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May 6, 2008

Mr. Claude St. Denis **VIA E-MAIL AND REGULAR POST**  
Program Development Section  
Canada Border Services Agency  
191 Laurier Ave  
Ottawa, Ontario K1A 0L8

Re: Proposed PIP Process Documentation

Dear Claude:

I am writing on behalf of I.E.Canada, Canadian Association of Importers and Exporters, to provide comments on the proposed Partners in Protection (PIP) Process Documentation covering acceptance/rejection, approval/denial, suspend/cancel and appeal/reinstate procedures. I would like to begin by thanking you for taking into consideration our comments on the initial draft of the suspension and cancellation criteria.

### Acceptance/Rejection

We recommend that timeframes be established for acknowledging receipt of applications and advising applicants whether their applications are incomplete or the minimum security criteria are not met. Receipt of applications should be acknowledged immediately. We recommend that applicants be advised within one week if their application is incomplete or within two weeks if the minimum security criteria are not met.

With respect to the Eligibility Criteria in Appendix A, our comments and questions are as follows:

- Under Criteria #1, we suggest substituting “be represented by” with “fall within.”
- Under Criteria #2, a U.S. company that is a non-resident importer cannot qualify for the FAST program as non-resident importers are not eligible for the Customs Self-Assessment program.
- What constitutes “good character” for purposes of Criteria #3 given that applicants will generally be corporations?

- What is meant by a “good record of compliance”? As stated in previous submissions, we do not think that it is appropriate to link supply chain security with customs/trade compliance. We suggest adding after “record of compliance,” “with other security-related programs or security-related legislative or regulatory requirements.”

## Approval/Denial

- We also recommend that timeframes be established for the various stages of the approval/denial process. Where there is a history of non-compliance, we recommend that the letter advising of the reasons for denial be issued within two weeks of receipt of the application by the Risking Unit. Where there is no history of non-compliance, we recommend that the validation/site visit be carried out and the letter advising of the reasons for denial or alternatively transmitting copies of the Memorandum of Understanding be issued within 60 days of receipt of the application by the Risking Unit. In both cases, the letter should be accompanied by the report from the validation/site visit. The letter of approval should be sent within one week of receipt by CBSA of the signed Memorandum of Understanding. If CBSA is unable to act or respond within these timeframes, the applicant should be advised in writing of the delay, the reasons therefore and when a decision can be expected.
- We assume that “validation” of the applicant’s minimum security requirements means a site visit. This should be clarified.
- Before denying an application, CBSA should consult with the applicant (especially existing PIP members) to determine whether another resolution is possible.
- Existing PIP members should be given preference when processing applications as failure to renew PIP membership could have serious business implications for some PIP members especially those that participate in the FAST program. To the extent possible, CBSA should work with existing PIP members to assist them in qualifying for the new PIP program rather than simply denying their application.
- As stated previously, we are concerned that the PIP program not be used as a means of enforcing customs/trade compliance, and that the focus be clearly on security. We do see a distinction, however, between a person being convicted of an offence under the Customs Act and being assessed a civil penalty or receiving an assessment. We note that while Criteria 1 of Appendix B refers to customs “offences,” Violation # 6 in Appendix D refers to an “infraction” under the Customs Act. The terminology used should be consistent, with “offence” being the term used in both cases. Criteria #1 should also be reworded to state: “Applicant has been convicted of significant customs offences within the last five years.” In Criteria #2, “non-compliance with other relevant legislative and regulatory requirements” is too vague. Consistent with our comments on Appendix A above, we recommend that this language be substituted with “non-compliance with other security-related programs or security-related legislative or regulatory requirements.” What constitutes “good character” for purposes of Criteria #3 of Appendix C?
- We recommend that it be possible for an applicant to submit an action plan as part of the application process. Given the significant changes that are being made to the

PIP security criteria, it may be difficult for some existing PIP members to implement these new criteria by the December 31, 2008 deadline to reapply for the program. This will be especially important for small and medium sized companies. To distinguish between an action plan submitted as part of the application process from the action plan referred to in Appendix C, we suggest that the latter be referred to as a Corrective Action Plan.

- We reiterate our previous comments with respect to adopting a tiered approach to the PIP program that would allow applicants to be accepted into the program before they undergo a validation/site visit. We are concerned that CBSA will not have sufficient staff to process the applications and carry out the site visits during the proposed transition period. A tiered system could also be used to take into consideration companies that have not fully implemented their action plans but are in the process of doing so.
- We question why the same appeal process would not apply to the denial of an application as to the suspension or cancellation of the program.

### Suspend/Cancel

- We assume that the first bullet point should refer to Appendix D rather than Appendix A. We note that Appendix D refers to “Violations” rather than “incidents of non-compliance.” Consistent terminology should be used. We recommend not using the term “non-compliance” as it suggests and could be interpreted as linking the PIP program with customs or trade compliance.
- The third bullet point should refer to Appendix C. We suggest using “Corrective Action Plan” for the reasons stated above.
- In the fourth bullet point, to be consistent with the terminology used in Appendix D, we suggest using “violation” or “violations” instead of “infraction” or “infractions.” In the last sentence of this bullet point, case-by-case “level” should be case-by-case “basis.”
- We recommend that it be stated that any post-incident analysis should be performed in a timely manner not to exceed two weeks to ensure that there is no business interruption or that it be kept to a minimum.
- With regard to Appendix D, we recommend rewording Violation #1 as follows: “Failure to maintain the member’s/participant’s minimum security requirements.”
- In Violation #4, the phrase “that can trace back to the Member’s supply chain” is unclear.
- As noted above, in Violation #6, “infraction” should be “offence.” “Committed” should be substituted with “been convicted of.”
- For purposes of Violation #7, what does “good character” mean? We recommend that a Post Incident Analysis be conducted in the case of such violations.
- We note that there is no reference in Appendix D to a security incident or breach or commission of criminal offences as violations.

- Decisions to suspend or cancel a PIP member's program should not be made without first consulting with the member to determine whether another resolution might be appropriate.

### Appeal/Reinstate

- As mentioned above, we question why the same appeal procedures would not apply to the denial of an application.
- Which directors would make up the appeal committee? Has consideration been given to having a more senior CBSA official, such as the Vice President, Enforcement, hear appeals?
- We assume that in stating that "three directors will hear appeals" that a hearing will be held. This should be clearly stated. Where will these hearings be held?
- Because of the potential disruption to business, the appeals process should be as expeditious as possible. We recommend that the Appeals Committee should be required to make its decision within 30 days.
- The Appeals Committee should be required to provide written reasons for its decision.
- It should be possible to appeal the decision of the Appeals Committee to an administrative tribunal or court.
- Except in exceptional circumstances, PIP members should not have their PIP privileges suspended or cancelled while the decision to suspend or cancel is under appeal. Loss of such privileges can have a serious impact not only on the PIP member's business but others in the supply chain as well, such as importers who depend on a carrier that is a participant in the FAST program.

We appreciate this opportunity to comment on the proposed PIP (PIP) Process Documentation. Please do not hesitate to contact us if you have any questions or would like discuss the foregoing.

Yours truly,



Mary Anderson  
President

- cc. Ms Kimber Johnston, Vice President, Enforcement Branch, CBSA  
Anie Pulsifer, CBSA  
Robert Lidstone, CBSA  
Fred Lemay, CBSA  
Grace Gregoire, CBSA