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COMMITTEE ON ARMED SERVICES
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STRATEGIC FORCES

COMMITTEE ON
HOMELAND SECURITY
EMERGING THREATS, CYBERSECURITY, AND
SCIENCE AND TECHNOLOGY
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PREPAREDNESS AND RESPONSE

Congress of the United States
House of Representatives
Washington, DC 20515

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May 6, 2010

The Honorable Alan Bersin
United States Customs and Border Protection
Office of the Commissioner
1300 Pennsylvania Avenue, NW Room 4.4A
Washington, DC 20229

Dear Commissioner Bersin:

I am writing to you in reference to the Customs-Trade Partnership Against Terrorism (C-TPAT) eligibility criteria for Third Party Logistics Providers (3PLs) that went into effect in January 2009.

Section 212 of the SAFE Port Act 2006 (Public Law 109-447, enacted October 13, 2006) anticipated a C-TPAT program open to all that wanted to meet the criteria. The proposed criteria, however, appear to eliminate all 3PLs that do not operate their own equipment.

As you know, 3PLs in all modes play an essential role in selecting and managing the carriers that move freight across our land and sea borders. The rules, therefore, should be inclusive rather than exclusive. In reviewing your criteria, I am concerned that a large number of providers of logistics services would be unable to meet the proposed 3PL eligibility criteria as in order to be eligible for participation in the C-TPAT program, the 3PL must:

- Be directly involved in the handling and management of the cargo throughout the international supply chain, from the point of loading of trucks (or stuffing of containers) up to the first U. S. port of arrival.
- Manage and execute logistics functions using its own transportation, consolidation and/or warehousing assets and resources, on behalf of the client company.
- Not allow "double brokering" or subcontracting of service beyond a second party, other than to other C-TPAT members.
- Be licensed and/or bonded by the Federal Maritime Commission, the Transportation Security Administration, U.S. Customs and Border Protection or the Department of Transportation (Federal Motor Carrier Safety Administration).

Non-asset based 3PLs; non-vessel operating common carriers (NVOCCs) and forwarders licensed by the Federal Maritime Commission; indirect air carriers or property brokers and forwarders licensed by the U.S. Department of Transportation and involved in cross border logistics arrangements by any mode; should be eligible to voluntarily join the C-TPAT program.

By excluding from C-TPAT eligibility and enrollment 3PLs "who do not own warehousing facilities, vehicles, aircraft or other transportation assets," CBP is discriminating against logistics providers arranging transportation into the United States and is failing to extend the security benefits of

C-TPAT to the millions of trucks selected by these 3PLs that cross U.S. northern and southern borders each year.

The reasons for these restrictions are especially difficult to understand in light of CBP's previous decisions to allow customs brokers, non-vessel-operating common carriers, ocean freight forwarders and cargo consolidators into the program, even though none of these entities own or operate the transportation assets that they use to provide service to their customers. On many occasions, a customs broker is only providing information to Customs so that a duty can be paid. They are not physically part of the original load, whereas many 3PLs – in addition to having the same information as the customs broker – also arrange for the loading of the truck and the carrier, and in many instances are physically present when the cargo is loaded. It makes no sense that customs brokers would be included and not all 3PLs.

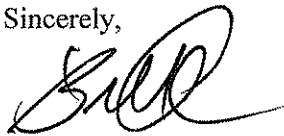
It is my understanding that the C-TPAT program was designed to ensure the security of goods before they are imported into the United States, not afterward. The criteria that limits participation in C-TPAT is a disservice to the safety of our citizens as there are millions of trucks that cross U.S. borders under the direction of DOT licensed brokers and forwarders, whether domiciled in the United States, Canada or Mexico.

Additionally, as we move closer to mutual recognition with the European Union (EU) on global supply chain security, an incongruity exists between the EU's Authorized Economic Operator (AEO) program and C-TPAT. Ironically, the European Union program certifies non-asset based 3PLs while its American counterpart does not. Again, this seems counterintuitive.

Prior to being a Member of Congress, I was involved for many years in cross-border trade and had many interactions with Customs. It appears to me that this ruling does not take into account how business actually functions but rather tends to impede how business functions. I have discussed this with a number of 3PLs and they all understand and agree that if they are granted C-TPAT enrollment, they will have to follow carrier selection criteria prescribed by CPB in selecting transportation service providers.

While I appreciate the time that CBP has taken to develop these requirements, it seems to restrict eligibility to participate in the program. I would appreciate your addressing the concerns that I have raised within the next 30 days. I look forward to your timely response.

Sincerely,



BILL OWENS
Member of Congress