

**Statement of Robert A. Voltmann on
Behalf of the Transportation Intermediaries Association Concerning
the Customs-Trade Partnership Against Terrorism (C-TPAT)**

**Submitted to the U.S. Senate Committee on Commerce, Science and
Transportation in conjunction with the full Committee Hearing on
Transportation Security Challenges Post 9/11**

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The Transportation Intermediaries Association (TIA) is the leading education and policy organization for North American third party logistics professionals (3PLs). TIA is the only organization representing 3PLs doing business in both domestic and international commerce. With over 1200 members, TIA is the voice of 3PLs to shippers, carriers, government officials, and international organizations. As a condition of membership, all TIA members are required to sign and adhere to the TIA Code of Ethics. The members of TIA include property brokers, domestic freight forwarders, international forwarders and NVOCCs, airfreight forwarders, logistics management companies, and intermodal marketing companies. TIA is the U.S. member of FIATA (International Federation of Freight Forwarders Associations) representing more than 40,000 3PLs around the world.

TIA supports the government's effort to involve industry in the security of the supply chain. We support opening the C-TPAT Program to all companies with a significant involvement in the international supply chain willing to submit to the rigors of the program. We believe that the C-TPAT program must be run in a non-discriminatory, mode neutral manner. TIA supports mutual recognition of similar supply chain security initiatives by our major trading partners, and the steps being taken in that direction by the Department of Homeland Security. However, TIA is concerned that:

- C-TPAT is currently not open to all companies with a significant involvement in the international supply chain willing to submit to the rigors of the program.
- C-TPAT eligibility criteria discriminate against a significant segment of the third party logistics industry licensed by the Department of Transportation.

- C-TPAT rules do not comport with Federal law under Section 212 of the SAFE Port Act.

C-TPAT is currently not open to all companies with a significant involvement in the international supply chain willing to submit to the rigors of the program – C-TPAT excludes Department of Transportation licensed brokers and forwarders involved in cross border trucking. The Customs and Border Protection agency (CBP) of the Department of Homeland Security (DHS) has opened the C-TPAT program to the following types of third party logistics companies: customs brokers licensed by CBP, indirect air carriers authorized by the Transportation Security Administration (TSA) of DHS, and non-vessel operating common carriers (NVOCCs) and freight forwarders licensed by the Federal Maritime Commission (FMC). CBP has not, however, opened the C-TPAT program to brokers and forwarders licensed by the Federal Motor Carrier Safety Administration (FMCSA) of the Department of Transportation (DOT) involved in the selection and management of cross border truck and rail carriers. This exclusion has created a hole in the security network and discriminates against a significant market sector involved in the international supply chain. 3PLs assess and maintain qualification files on thousands of motor carriers engaged in cross-border traffic. Access to this capacity through C-TPAT would allow CBP another window into the small to medium sized motor carrier industry. Yet, rather than utilize a federal license as a requirement and develop a generic set of rules for all non-asset based 3PLs, CBP has instead staked out a confusing and discriminatory position that causes harm, confusion, and ultimately, a gap in our supply chain security network.

C-TPAT rules discriminate against a significant segment of the third party logistics industry and do not comport with Federal law. Criteria being followed by CBP for third party logistics companies do not properly reflect the nature of the industry as third party companies that select carriers, arrange for transportation and oversee the end-to-end movement of cargo in a mode neutral manner. Instead, the proposed rules would exclude third party logistics companies that do not own equipment or take possession of freight involved in the international supply chain. If ownership of transportation assets is to be a key qualification, it is unclear why CBP has allowed into C-TPAT customs brokers, indirect air carriers, NVOCCs, and FMC licensed freight forwarders that do not meet these equipment ownership requirements, but has singled out FMCSA licensed brokers and forwarders for exclusion. In any event, the existing rules applicable to 3PLs do not comport with Federal law. The SAFE Port Act of 2006 (Public Law 109-447) states at Sec. 212 “Eligible Entities”

Importers, customs brokers, forwarders, air, sea, land carriers, contract logistics providers, and other entities in the international supply chain and intermodal transportation system are eligible to apply to voluntarily enter into partnerships with the Department under C-TPAT.

While the Secretary is vested with the responsibility to draft rules, the existing rules are too narrow to comport with the law. DHS inexplicably has refused to admit non-asset based truck brokers “who perform duties such as quoting, booking, rating and auditing,” in clear violation of the statutory mandate.

Mutual Recognition between the United States and Canada appears to continue the discrimination against segments of the third party logistics industry. It is our understanding from Canadian officials that US CBP has urged Canada to bar FMCSA licensed brokers and

forwarders from the Canadian Partners In Prevention (PIP) program. There are scores of Canadian companies licensed by US FMCSA to operate as brokers and forwarders in the United States. These companies and their American counterparts select trucking companies and arrange for the transport of millions of trucks across the US – Canadian border each year. The effort by CBP to bar these licensed companies that want to participate in C-TPAT from the C-TPAT program is discriminatory and endangers the security framework of the United States.

Mutual Recognition Must Include Mexico. U.S. DOT licensed brokers and forwarders select and manage millions of trucking movements across the U.S. – Mexican border. These companies must be able to join the C-TPAT program like all other 3PLs. As Mexico develops its own system, there needs to be mutual recognition between the U.S. and Mexican programs.

Mutual Recognition between the United States and the European Union is a good first step, but more work is necessary. TIA endorses the position and concerns expressed by the International Chamber of Commerce (ICC) with regard to C-TPAT and mutual recognition. TIA echoes the ICC's concern that mutual recognition validation is welcome, but that the need for duplicative registration processes on both sides of the Atlantic need to be eliminated.

The Customs Advisory Committee on Commercial Operations (COAC) must be opened up to 3PLs and made more representative and transparent. COAC, as the industry liaison to CBP, played a central role in CBP's consideration of eligibility criteria for third party logistics providers. For reasons unknown, property brokers were excluded from the C-TPAT process while virtually all other members of the global supply chain were included. As noted, property

brokers assess and maintain qualification files on thousands of motor carriers engaged in cross-border traffic. They are in an ideal position to check on the security qualifications of those carriers as well, but COAC apparently recommended against including them in the program.

Apart from these security concerns, exclusion from C-TPAT eligibility has put property brokers, many of whom are small businesses, at an unfair competitive disadvantage in bidding against those already in the program for business from large shippers, such as automobile manufacturers, box store retailers and others who require their transportation and supply chain service providers to be C-TPAT qualified.

TIA believes that CBP may have adopted the unreasonable restrictions on 3PL participation in C-TPAT in part because it relied on faulty advice from the COAC, which is unrepresentative of the property brokerage community. Simply put, while COAC does not include property brokers, it does include members who may have a competitive interest in excluding property brokers.

TIA urges the Congress to mandate that membership in COAC must include non-asset based 3PLs. We also believe that Congress should explicitly require CBP to open the C-TPAT program to non-asset based 3PLs, as the SAFE Port Act originally intended. We would be pleased to work with the Committee in drafting legislative language to achieve those objectives.