



Transportation & Logistics Law Alert

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The Customs Trade Partnership Against Terrorism – CTPAT: Benefits for the Transportation and Logistics Industries

History of Program

In response to the events of September 11, 2001, U.S. Customs and Border Protection (CBP) initiated a voluntary partnership program between the private sector and CBP to secure the supply chain for products entering commerce in the United States. The limited manpower of CBP allows only for physical inspection of approximately two percent of all containers entering the country. The purpose of the Customs Trade Partnership Against Terrorism (CTPAT), therefore, is to increase the surveillance of cargo by creating certain minimum standards for CTPAT members that will improve the security of the supply chain while, at the same time, providing benefits for participants.

Who is Eligible?

While press reports concerning CTPAT often focus on the value of the program to importers, a large number of potential participants are, in fact, transportation and logistics companies. Those that are eligible to participate include highway carriers operating between the United States and Canada and highway carriers operating between the United States and Mexico, rail carriers, sea carriers, air carriers, U.S. air freight consolidators, ocean transportation intermediaries, and non-vessel operating common carriers (NVOCCs), licensed U.S. customs brokers, and U.S. marine port authority and terminal operators. In addition, two new categories recently added were long-haul carriers operating in Mexico and third-party logistic providers (3PLs). Thus, a large number of companies involved with transportation and logistics activities are eligible for CTPAT membership, although many of them are not familiar with the program and/or have not taken advantage of the membership in the program. To inform our clients, and others, in the transportation and logistics industries who may not be fully familiar with the CTPAT program, we intend to highlight the benefits and obligations of the program.

Benefits of the Program

The benefits of the program vary with the type of company participating. Importers, of course, benefit from fewer inspections, less intensive inspections, and lower scores from the Automated Targeting System (ATS), which determine the likelihood of a shipment being inspected by Customs.



These benefits also inure directly or indirectly to the trucking companies that move the goods for these importers since it is the trucks themselves that may be tied up with lengthy inspections in CBP. Because many transportation companies are compensated based on distance and mileage, rather than time, long delays in CBP inspections benefit no one.

Moreover, CTPAT highway carriers operating between the United States and Canada and the United States and Mexico are also eligible to apply for a separate CBP program known as Free and Secure Trade (FAST). FAST allows trucks to use special FAST lanes on the borders that speed the time in crossing. This results in better utilization of equipment and manpower. The combination of fewer inspections in CBP and utilization of the FAST lanes can result in considerable cost savings to all involved. It is likely that a CTPAT-certified importer or Mexican or Canadian exporter will prefer to use CTPAT-certified carriers. This is, in part, due to the program requirement that CTPAT importers and exporters use vendors and business partners who are also CTPAT-certified or meet CTPAT standards. To be eligible to use the FAST lanes on the border, it is not sufficient that the importer and exporter be CTPAT-certified; the carriers must also be CTPAT-certified and meet certain driver requirements.

CTPAT Membership as a Marketing Tool

Just like the International Standards Organization (ISO), certification is a sign of meeting certain quality standards and is advertised on companies' letterheads, websites, and even business cards; CTPAT certification, along with the CTPAT logo, has reached a similar status. Companies competing for business from CTPAT-certified importers and exporters find that CTPAT membership is a desirable and almost compulsory marketing tool. This is most obvious in the automotive industry. All of the major original equipment manufacturers, including GM, Ford, Chrysler, Honda, Nissan, and others, are CTPAT members. Most have notified their Tier 1 suppliers and others that they expect all of those in their supply chains that are eligible for CTPAT certification to participate in the program or meet the CTPAT minimum standards. Therefore, carriers, logistic companies, freight forwarders, and others that wish to do business with CTPAT-certified companies have a competitive edge if they are CTPAT-certified themselves.

Obligations and Responsibilities of CTPAT Members

Naturally, the benefits of CTPAT also involve obligations that are consistent with CBP's reasons for implementing the program. The most recent updated minimum security criteria for highway carriers, which became effective on March 13, 2006 and had a phased-in implementation, applies to all United States-Canada and United States-Mexico highway carriers. Among the criteria are for highway carriers to conduct at a minimum, on a yearly basis, or as a result of any incidents, such as a security breach, a comprehensive assessment of their international supply chain's security practices based on the CTPAT minimum criteria. The supply chain for highway carriers for CTPAT purposes is defined as: (1) the point of origin from the yard or where the tractors and trailers are stored, (2) to pickup at the manufacturer's supplier vendor, and (3) through to the point of distribution. Although the CTPAT has very specific minimum requirements, CBP recognizes that international supply chain security practices should be based on risk and allows for flexibility and customization of a security plan. Space does not permit a full discussion of all of the CTPAT requirements for different categories of transportation and logistic companies, but some of these requirements include:

- 1. Business Partner Requirements** – Highway carriers must have written and verifiable processes for screening business partners, including carriers, agents of contracted highway carriers, and service providers. For business partners eligible for CTPAT certification, highway carriers should maintain documentation, such as CTPAT certificates, indicating that these partners are CTPAT members. For U.S.-bound shipments, CTPAT highway carriers that subcontract transportation services to other highway carriers must use other CTPAT-approved highway carriers under the direct control of a certified CTPAT carrier.
- 2. Security Criteria** – Tractor and trailer conveyance integrity procedures must be maintained to protect against introduction of unauthorized personnel and materials. Certain minimum security criteria also exist for physical access controls to the trucks, trailers, and trucking yard facilities (e.g. seals, fencing, cameras, visitor access control, etc.) as well as personnel security (e.g. background checks) and information systems security (e.g. periodic changing of passwords).

3. Consolidator Eligibility Requirements – Effective April 7, 2008, freight consolidators may be eligible for CTPAT if they are an active air freight consolidator, ocean and transportation intermediary, or non-vessel-operating common carrier (NVOCC). To be eligible, they must have a business office staffed in the United States and, if applicable, have an active Federal Maritime Commission or International Air Transport Association number. Similar minimum requirements exist for consolidators as for freight carriers with certain differences relating to the nature of services they provide.

4. Third-Party Logistic Providers Eligibility Requirements – The newest group that has obtained CTPAT eligibility are third-party logistic providers, sometimes referred to as 3PLs. To be eligible as a 3PL, the company must be directly involved in the handling and management of the cargo at some point in the international supply chain. Entities that provide only domestic services and are not engaged in cross-border activities are not eligible. Also, the new rules require that 3PLs be asset-based using their own transportation, consolidation, and/or warehousing assets and resources. The so-called virtual 3PLs that may only have a computer and an office but do not own or operate any physical assets, would not be eligible under the existing Customs interpretations. 3PLs must also have an office staffed in the United States and be licensed by the appropriate federal agency.

How to Apply for CTPAT

Although the CTPAT application process is not unduly burdensome, it does require care, experience, and attention to detail. Porter Wright has worked with many CTPAT applicants in helping them successfully obtain and retain CTPAT certification, and can help speed the process and free your manpower for other duties. In addition, Porter Wright can act as an interface with CBP to handle any questions or problems relating to your application. Finally, after a company is certified under CTPAT, CBP will conduct a validation visit any time from six months to one year after certification to insure that information in the application was accurate. It is important to be well prepared since failure at validation will result in revocation of CTPAT status. Porter Wright assists its clients by helping them prepare onsite for the validation visit and being present during the validation to handle any problems that might arise with CBP.