



**U.S. Customs and
Border Protection**

December 19, 2011

Carolyn N. Lerner
Special Counsel
Office of Special Counsel
1730 M Street, Suite 218
Washington, D.C. 20036-4505

RE: OSC File No. DI-11-3562

Dear Ms. Lerner:

The attached report is in response to your referral of allegations that may constitute gross mismanagement and a substantial and specific danger to public safety at the U.S. Customs and Border Protection (CBP), Customs-Trade Partnership Against Terrorism (C-TPAT). The Secretary, Department of Homeland Security, referred this inquiry to the CBP, and I have been designated as the official responsible for providing your office with the Department's report pursuant to 5 U.S.C. § 1213. The Department's findings are included in the attached report.

If you require further information regarding this matter, please contact Marc Weinberger in the Office of Chief Counsel at 202-344-2161.

Sincerely,

A handwritten signature in cursive script that reads "Thomas S. Winkowski".

Thomas S. Winkowski
Assistant Commissioner
Office of Field Operations
U.S. Customs and Border Protection

cc: Secretary, Department of Homeland Security
Commissioner, U.S. Customs and Border Protection

U.S. Office of Special Counsel (OSC) File No. DI-11-3562

1. SUMMARY OF THE INFORMATION WHICH FORMED THE BASIS FOR THE INVESTIGATION

In a letter dated October 17, 2011, the U.S. Office of Special Counsel (OSC) requested the Department of Homeland Security (DHS) to conduct an investigation regarding an allegation that management personnel of the U.S. Customs and Border Protection (CBP) Customs-Trade Partnership Against Terrorism (C-TPAT) engaged in conduct that evidences gross mismanagement. These allegations are that that C-TPAT management:

- A. Fail to properly train, outfit, and support Supply Chain Security Specialists (SCSSs) who travel to Mexico.
- B. Fail to provide TECS access such that it would provide SCSS with up-to-date information on any Mexican corporations currently under investigation.
- C. Require SCSSs to cross the Mexican border into unsafe areas with only an official passport, and in some cases wait in long lines without the benefit of expedited customs clearance.
- D. Require SCSSs to travel to company locations with company representatives unknown to the SCSSs without law enforcement escort or a secure (armored) vehicle.
- E. Fail to establish a comprehensive safety plan to protect SCSSs similar to the Immigration and Customs Enforcement (ICE) "Force Protection Plan," which would include such elements as travel in armored vehicles, escort by pre-approved law enforcement personnel, tracking devices, and a well-defined personal recovery plan.

2. DESCRIPTION OF THE CONDUCT OF THE INVESTIGATION

On or about October 27, 2011, the Office of Internal Affairs (IA), Investigative Operations Division (IOD) received a copy of the OSC letter provided to the Executive Secretary of DHS, dated October 17, 2011. CBP IA, the Office of Chief Counsel (OCC), and the Office of Field Operations (OFO) immediately met to discuss the scope of the investigation and how it would be conducted. Thereafter, IA prepared a series of interview questions for the alleged whistleblower, SCSS Cheryl Jacobo, which was used as the basis for her interview on November 14, 2011, by IOD agents from the Miami Field Office.

During the period of October 27 through December 1, 2011, OFO collected, reviewed and assessed all safety-related materials, protocols, policies, and trainings provided to all SCSSs in C-TPAT, and between October 27 and December 8, 2011, met several times with C-TPAT Acting Director, Sean Doherty to discuss the allegations and the agency's response.

3. SUMMARY OF EVIDENCE OBTAINED FROM THE INVESTIGATION

Former CBP Commissioner Robert Bonner created the C-TPAT program in response to the tragic events of 9/11. C-TPAT is an anti-terrorism program with over 10,200 participating companies. The program is a voluntary industry-government partnership that focuses primarily on supply chain security. The program is a CBP Headquarters initiative with seven field offices located in New York, Miami, Newark, Los Angeles, Buffalo, Houston and Washington DC. There are

approximately 120 Supply Chain Security Specialists assigned to the program whose primary responsibility is to conduct supply chain security assessments that are frequently located in high risk areas of the world. C-TPAT personnel conduct approximately 2,500 validations every year. Mexican highway carriers, long haul carriers and manufacturers make up almost 2,000 of these business partners. SCSSs are responsible for conducting domestic and foreign site validations throughout the globe, to include Mexico. Since its establishment, C-TPAT has conducted 4,461 site validations in Mexico, which account for 23.12% of all C-TPAT validations. Moreover, for calendar year 2011, C-TPAT postponed approximately 136 of the projected 692 Mexican validations due to security related issues.

CBP Informs all SCSS applicants of the inherent safety matters related to the position

The nature of the C-TPAT program - specifically the on-site validation of the integrity of the participant's supply chain - requires that SCSS travel to countries and areas within countries that are not tourist destinations, in large part under-developed, and fraught with inherent safety matters. This is clearly articulated to all SCSS applicants during the interview process. During initial and subsequent interviews, the interviewee is told that he/she will have to travel to high-risk areas throughout the globe, including Mexico. The interviewee has to verbally respond that he/she is willing to travel to high-risk locations.

During investigation of the OSC matter, CBP learned that although this discussion takes place verbally during the interview process with all SCSS applicants, it had not been uniform CBP practice to request a written confirmation from the applicant that such a conversation had occurred. The investigation also revealed that this matter was not specifically delineated in the Position Description under which Ms. Jacobo was hired in 2005.

CBP provides initial and on-going safety training related to travel in high-risk areas

Because SCSSs come to CBP with a wide variety of backgrounds, all receive the same security training regardless of their past work experience. This training takes the form of both initial orientation and monthly recurring training.

CBP ensures that all SCSSs receive an initial briefing on the inherent dangers related to foreign travel, and travel in the areas to which SCSSs are required to travel. SCSSs are therefore required to complete a "Foreign Travel Safety" course provided in the C-TPAT orientation training. Dr. Dan Mulvenna, Professor of the Centre for Counterintelligence and Security Studies, teaches the course. During this three hour course, Dr. Mulvenna specifically addresses the violence and narcotic-related matters in Mexico.

CBP provides required recurring and episodic training to ensure that SCSSs receive continuing training on safety/security matters in Mexico. Some examples of post-orientation training available either via web-based training, Webinar, Diplomatic Security, or internal peer SCSS training include: "International Pre-Deployment Curriculum"; "Internal Conspiracies"; "Foreign Affairs Counter Threat - FACT"; "Personnel Recovery"; "Counterintelligence Awareness"; "Border Violence"; "International Terrorist Threats"; "Situational Awareness." CBP has provided all of these training activities during the time in which Ms. Jacobo has been a SCSS.

Moreover, if a particular SCSS believes he/she needs additional safety/security related training, he/she may submit a request for special training to his/her Supervisor or Field Director. The Supervisor or Field Director then forwards the request to Headquarters for approval.

Pre-Travel procedures for each trip to Mexico by an SCSS include review of security matters

The Department of State (DOS) Electronic Country Clearance System must approve all C-TPAT foreign travel in advance. For travel to México, SCSSs must submit additional information to the DOS Regional Security Officer (RSO). The SCSSs are required to send an email notification to the DOS RSO with detailed information regarding the trip such as: the exact location of the site to be validated, a Google map of the location, point of contact information, and means of transportation to and from the site. The RSO must approve the country clearance request prior to the team traveling, and he/she or the agency can cancel travel if security circumstances warrant.

On February 3, 2011, the C-TPAT Director assigned a Supervisory Supply Chain Security Specialist (S/SCSS) to focus on Mexico Travel Security. This S/SCSS provides guidance to the field offices and interacts with the RSO on security related incidents on a regular basis. The RSO's office is responsible for identifying the dangerous areas or cities as "No-Go" zones. The RSOs have provided CBP with updated lists and color coded maps that delineate these "No-Go" zones. This information is then distributed to the various field offices who in turn distribute the information to the SCSSs. C-TPAT has recommended deferring until 2012 validations either identified in "No-Go" zones, or those requiring use of an armored vehicle and/or armed escort.

If in the event C-TPAT receives information from either the RSO or another source recommending against travel to a certain location, the SCSS notifies the C-TPAT Field Director, who in consultation with C-TPAT management will confirm the veracity of the threat. If the information is confirmed, the Field Director will cancel, postpone, or cut short the trip. In CY2011 to date, C-TPAT has conducted 522 validations in Mexico and canceled/rescheduled 136 validations due to security concerns in Mexico.

There is no C-TPAT policy that requires a SCSS to travel with, and be escorted by, a company official. SCSSs are required to ensure transportation for himself/herself to all required locations in order to conduct the validation. C-TPAT management indicated that SCSSs have the authority to request a list of vetted transportation services from the RSO. During the investigation, CBP management learned that C-TPAT could not confirm that SCSSs were aware of this resource.

SCSSs receive access to systems that allow him/her to conduct security related intelligence and research prior to departure

All SCSSs have access to seven different database and electronic analysis tools through which he/she may review, research, and vet companies that are to be validated prior to travel to Mexico. The systems available to the SCSSs include: TECS, Automated Commercial System (ACS), Trend Analysis & Analytical Selectivity Program (TAP), Automated Targeting System (ATS), ACE Secure Data Portal, Open Source Center, and Global Risk Analysis and Data Evaluation (GRADE). This is the TECS 2 level of access, which is the same level of access as all Customs and Border Protection Officers (CBPOs). This level of access does not provide the SCSSs the ability to research reports of investigations. If in the course of vetting a C-TPAT participant, a SCSS believes additional security related information is warranted, he/she can request reports of investigation from

the CBP National Targeting Center (NTC). During the investigation, CBP management learned that this was an informal, ad hoc arrangement, of which not all SCSSs were aware.

Security matters are monitored and assessed while the SCSS is in Mexico

As intelligence is received, the SCSS is notified via email communication or telephone. All SCSSs have been issued blackberry cell phones which have email capabilities. This enables C-TPAT to receive a call or message from an SCSS (in travel status) regarding travel in Mexico. All SCSSs are going to be included in the RSO SMS blast messaging system, which sends a message via blackberry so that the SCSSs can be informed immediately of an incident or security threat in Mexico and take appropriate action. In at least one known case, when a team contacted their respective C-TPAT Field Director to express concerns for the team's safety due to a specific threat, they were advised to end their meeting in Mexico, and granted permission to return to the United States immediately.

SCSSs have access to the Dedicated Commuter Lane for re-entry to the United States when returning from official business in Mexico

C-TPAT has explored the option of SCSSs using an expedited method of customs and immigration clearance upon returning to the U.S. Through this review, it was learned that the Secure Electronic Network for Travelers Inspection (SENTRI) policy provides that "CBP personnel who are on official duty and have been to Canada or Mexico in their official capacity may pass through a Dedicated Commuter Lane." C-TPAT informed all SCSSs how they can utilize this service through the issuance of C-TPAT SENTRI SOP, dated November 16, 2011, to the field offices.

C-TPAT has established an interim personnel recovery procedure

Since May 2010, the C-TPAT program has engaged different DHS/CBP components in regards to the Personnel Recovery (PR) efforts. These efforts include identifying what actions are needed to prepare personnel for the risk of hostage-taking or other isolating events. The objective is to prevent isolating events by mitigating the vulnerability of personnel abroad and increase the governments' response capabilities to such incidents as part of a coordinated effort.

C-TPAT has established an "Interim Personnel Recovery Procedure" effective July 20, 2011. C-TPAT Headquarters was immediately briefed on this plan. The plan involves communication and coordination with the CBP Attache's Office in the Mexico City Embassy, the National Commander of the Special Response Team, and the CBP Situation Room. Investigation revealed that the Interim plan was not distributed to the SCSSs, pending its final vetting and approval.

4. INVESTIGATIVE FINDINGS

U.S. Customs and Border Protection considers employee safety and security to be of paramount importance. The agency has always strived to ensure the safety and well being of every employee while traveling abroad. Based on the results of CBP investigation of this matter, it does not appear that there has been a specific violation of law, nor was one specifically alleged by Ms. Jacobo. CBP did find, however, several areas, where additional management action would enhance the overall safety and security profile of SCSSs traveling in Mexico. These are detailed in Section 5.

5. DESCRIPTION OF ACTION TAKEN OR PLANNED

CBP Action: C-TPAT management has rewritten the position description for all SCSSs to specifically indicate that the position requires travel to countries and areas within countries that are high-risk for security matters. The position description is under review and will be distributed to all SCSSs as soon as final review is completed by CBP management.

CBP Action: CBP will continue to hold monthly training for all SCSSs which will include safety/security training. It will continue to solicit potential topics and enhance previous trainings to reiterate the most serious matters affecting SCSSs traveling in high-risk areas of Mexico.

CBP Action: C-TPAT will formalize a written procedure for SCSSs, in consultation with his/her Field Director, to request reports of investigation through the NTC.

CBP Action: C-TPAT management will ensure that all SCSSs are aware that they may coordinate with consular RSO to obtain vetted car service.

CBP Action: On November 16, 2011, C-TPAT Headquarters disseminated a temporary SOP for using SENTRI when returning to the U.S. from Mexico. C-TPAT reminded field personnel that the driver and vehicle must be authorized to use the SENTRI lane.

CBP Action: On October 31, 2011, OTD issued a memorandum announcing officer safety trainings for CBP employees who travel outside the United States. The training is available in three separate tiers, and all C-TPAT personnel are required to complete by December 31, 2011, the Tier One course which establishes a baseline for all personnel traveling outside the continental United States.

CBP Action: C-TPAT will disseminate the "Interim Personnel Recovery Procedure" to all SCSSs through their respective Field Director.