

**IMPORT SAFETY COMMERCIAL TARGETING AND ANALYSIS CENTER**  
**MEMORANDUM OF UNDERSTANDING**  
**AMONG**  
**THE IMPORT SAFETY COMMERCIAL TARGETING AND ANALYSIS CENTER,**  
**PARTICIPATING GOVERNMENT AGENCIES**

**1. INTRODUCTION**

On July 17, 2007, Executive Order 13439 established an Interagency Working Group on Import Safety to conduct a comprehensive review of current import safety practices and determine where improvements could be made. On September 10, 2007, the Interagency Working Group on Import Safety issued a Strategic Framework outlining a risk-based approach to import safety that focuses on prevention with verification. The Strategic Framework approach was intended to ensure that identified risks were addressed and any risk mitigation was verified at the most appropriate point of production and distribution. In November 2007, the Interagency Working Group on Import Safety issued an Import Safety Action Plan that consisted of several recommendations to improve import safety practices including recognizing the need to share certain import and export information between government agencies. The need for government agencies to share information and coordinate more effectively was also recommended by the Food Safety Working Group established by President Obama.

Federal agencies with authority governing the safety of products imported into the United States acknowledged the need to share information about the safety of those products. To advance that goal, the Department of Homeland Security (DHS), through U.S. Customs and Border Protection (CBP), and in coordination with the U.S. Immigration and Customs Enforcement (ICE), U.S. Consumer Product Safety Commission (CPSC), the Food Safety Inspection Service (FSIS), and the Animal and Plant Health Inspection Service (APHIS) (collectively referred to herein as the "Parties" or "CTAC PGAs"), established the Import Safety Commercial Targeting and Analysis Center (CTAC) in Washington, DC.

**2. PURPOSE**

This Memorandum of Understanding (MOU) shall serve to establish the parameters for the assignment of representative employee(s) (Representative(s)) from the Participating Government Agencies (PGAs) to DHS/CBP's interagency CTAC. Furthermore, this MOU outlines the mission goal of the CTAC, recognizes the responsibilities of all PGAs, and memorializes the relationships among CTAC PGAs in order to maximize cooperation and to create a cohesive unit capable of addressing complex import safety issues. For purposes of this MOU, the term "import safety" includes matters relating to the public health and safety of imported products. This MOU supersedes all existing MOUs that address CBP CTAC operations.

**3. MISSION**

The mission of the CTAC is to provide a vehicle to facilitate the sharing of information and leverage the collective resources of the PGAs for the prevention, preemption, deterrence, and investigation of violations of importation laws that affect United States interest in the import

safety environment. The sources of the information that may be shared at the CTAC include, but are not limited to, certain data located in systems controlled by CTAC PGAs. A listing of those systems with each controlling PGA is contained in Appendix A. Appendix A will be amended, as necessary, to recognize the inclusion of new systems or sources of information as they become available or, alternatively, to recognize the removal of existing systems or sources of information as they are deemed no longer necessary or available.

All CTAC activities, including the collection, retention, and dissemination of any personal information will be conducted in a manner consistent with U.S. law and applicable PGA policies.

#### **4. AUTHORITY**

This Agreement permits the implementation of provisions supporting the International Trade Data System, which is established by section 405 of the Security and Accountability For Every Port Act of 2006, ("SAFE Port Act"), Public Law 109-347. Furthermore, this Agreement implements the recommendations of the Interagency Working Group on Import Safety, established under Executive Order 13439: Interagency Working Group on Import Safety (July 18, 2007).

#### **5. MEMBERSHIP**

CTAC shall initially consist of employees from CBP, ICE, CPSC, FSIS, and APHIS. As appropriate, other federal agencies may be added to the CTAC. Changes in membership will be done in accordance with section 16 of this MOU. PGA Representatives to the CTAC, as well as appropriate supervisory personnel responsible for these individuals, must have a cleared full field background investigation or a U.S. Office of Personnel Management (OPM) Type 25 (Public Trust) background investigation prior to participating in CTAC operations. CTAC Representatives must complete any non-disclosure forms required by participating PGAs and maintain such forms with the Representatives' home agencies. CTAC Representatives will provide these forms and documents related to background investigations upon written request by any PGA.

#### **6. RESPONSIBILITIES**

The CTAC PGAs agree:

- 6.1 To provide each CTAC PGA Representative with access to data that fulfills the stated purpose of this MOU, within the limits of applicable law and policy;
- 6.2 To assist other CTAC PGAs in the execution of their import safety responsibilities as appropriate;
- 6.3 To engage in timely exchanges of import safety related information, including data related to the safety of imported products, with and among CTAC PGAs as necessary.

- 6.4 That information collected under their respective authorities and contributed to the CTAC includes information restricted from disclosure by law, such as highly sensitive commercial, financial, and proprietary information, which may be exempt from disclosure pursuant to the Freedom of Information Act (FOIA)(5 U.S.C. §552(b)(4)) and restricted from disclosure by the Trade Secrets Act (18 U.S.C. §1905).
- 6.5 To be responsible for properly marking their respective data in such a manner as to effectively identify PGA's ownership.
- 6.6 To coordinate with PGA(s) which provided the subject information (the "providing PGA") regarding requests made under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act of 1974, (5 U.S.C. 552(a)) related to data collected from the providing PGA(s) via CTAC operations and, when appropriate, to refer the request to the providing PGA for processing.
- 6.7 To not disclose information received from a providing PGA to third parties, public or private. All 3<sup>rd</sup> Party requests for data that is not owned by the PGA shall be forwarded to the appropriate PGA that owns the data. For purposes of this MOU, information shared with another PGA pursuant to this MOU, including any amendments thereto, is not considered a disclosure to a third party. Furthermore, DHS and each of its components are not considered "third parties" for purposes of this MOU and, therefore, transfers of information to DHS and to any of its components, on a need to know basis, are not considered third party disclosures under the terms of this agreement.
- 6.8 That, notwithstanding section 6.7, any PGA information provided to DHS/CBP, that is subsequently maintained in DHS/CBP's ATS as part of the information comprising specific targeting rules, may be disclosed through ATS to other entities authorized by DHS/CBP to access such data through ATS. Said entities are not considered third party agencies for the purposes of this MOU and shall be bound by the terms of this MOU with respect to handling such data. To the degree that entities include agencies outside of DHS, CBP will advise CTAC PGAs of those agencies.
- 6.9 In the event that another PGA is sued in a civil action arising from an alleged unauthorized release by the PGA, or an employee or contractor of the PGA, of information shared pursuant to this MOU, PGA agrees to assist the Department of Justice in defending such lawsuit.
- 6.10 All media releases related to CTAC operations will be mutually agreed upon by the affected PGAs and jointly handled consistent with PGA guidelines regarding press releases.
- 6.11 To the extent practicable, notify CTAC PGAs of discrepancies identified in data provided to the CTAC.
- 6.12 To provide training to eligible PGA Representatives that is necessary to accomplish the purpose of CTAC. In particular, PGAs are to provide training (and make PGA Representatives and their supervisors available for such training), both computer-based and in person, as deemed appropriate by the respective PGAs, with regard to the relevant systems to

be accessed at CTAC, prior to providing access to such systems, as applicable.

- 6.13** To ensure that adequate security measures are in place and utilized to protect access to PGA data that is transferred to the CTAC, as necessary. The aforementioned security measures will meet the requirements of all PGAs.

## **7. MANAGEMENT, DIRECTION AND SUPERVISION**

The management of the CTAC is the responsibility of CBP Headquarters. The PGAs will develop and implement joint procedures related to the operation and collaboration within the CTAC. Each PGA Representative to the CTAC will report to his or her home agency for personnel administrative matters. The home PGA of the PGA Representative shall be responsible for the pay, overtime, leave, performance appraisals, and other personnel matters relating to its employees assigned to the CTAC.

In order for CBP to manage the CTAC, each PGA must provide CBP with an annually updated list of its Representatives, and their respective supervisors, to the CTAC.

## **8. INFORMATION SHARING AND CONFIDENTIALITY**

Each PGA is responsible for ensuring the integrity of records transferred to it from other CTAC PGAs, or accessed by it through the CTAC, pursuant to this MOU. Furthermore, all PGAs are responsible for maintaining system safeguards to prevent any unauthorized disclosure of transferred or accessed data. Disclosure of the data will be consistent with all applicable laws and the terms of this MOU.

PGAs agree that in the performance of the CTAC functions access to any other PGA's system(s) does not make said system(s) a "system of records" for that PGA for Privacy Act purposes. PGAs agree that the PGA who owns the system(s), is the system manager and is responsible for publishing any notifications concerning the system(s) that is required by law. PGAs agree to publish Federal Register notifications concerning their respective system(s) that is required by the Privacy Act, 5 U.S.C. §552a. Further, PGAs agree not to place records accessed through other PGA's system(s) into a separate "systems of records", unless authorized pursuant to a separate sharing agreement.

- 8.1** PGAs agree to comply with the appropriate PGA administrative security provisions related to the use and dissemination of the information in another PGA's system(s) and to consider all information in said system(s) as "Sensitive But Unclassified, For Official Use Only" or "Controlled Unclassified Information," unless otherwise specified.
- 8.2** Each PGA may monitor and audit the usage of its own system(s) to ensure the security of the network/data and to prevent its use for any purpose that constitutes a violation of applicable law or policy, or the terms of this MOU. Use of another PGA's system constitutes consent to such monitoring and auditing. Unauthorized attempts to gain access, upload or change information is strictly prohibited and may be subject to criminal prosecution.

**9. FUNDING**

Unless otherwise agreed in writing, each party shall bear its own costs in relation to this MOU. Obligations/expenditures by each party will be subject to federal budgetary processes and availability of funds pursuant to applicable laws, regulations, and policies. In the event that the transfer of funds is deemed necessary in the future, the Parties may enter into an Interagency Agreement outside this MOU.

**10. SEVERABILITY CLAUSE**

Nothing in this MOU is intended to conflict with the current laws, applicable regulations or respective policies of the CTAC PGAs. If a term of this MOU is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this MOU shall remain in full force and effect. Unless particularly specified, this agreement in no manner affects any existing MOUs or agreements between CTAC participating government agencies.

**11. EMERGENCY SITUATIONS**

During times of national emergency as indicated by changes in the Homeland Security Advisory System, DHS/CBP reserves the right to suspend, interrupt or modify as necessary access to DHS/CBP systems and CTAC operations provided for pursuant to this MOU. Notice of any such action will be communicated promptly to all CTAC PGAs by DHS/CBP.

**12. NO PRIVATE RIGHT OF ACTION CREATED**

This MOU is an internal government agreement among the CTAC PGAs. This MOU is not intended, and should not be construed, as creating any right or benefit, substantive or procedural, enforceable at law or otherwise by any third party against the Parties, their parent agencies, the United States, or the officers, employees, agents or other associated personnel thereof.

**13. REVIEW**

The Parties agree to review the terms of this MOU and its Annexes on a bi-annual basis, or at such other interval as the Parties mutually determine appropriate, to ensure the effectiveness of its terms.

**14. LIABILITY**

Issues of Federal tort liability will be governed by the Federal Tort Claims Act and other applicable laws and implementing regulations. For Federal Tort Claims Act purposes, PGA Representatives to the CTAC will not be considered the agent of any other CTAC PGA. Each agency shall be liable, if at all, for the torts of its own Representatives or agents, committed within the scope of their official duties.

**15. DATE EFFECTIVE**

This MOU shall become effective upon the date of signature by the authorized agency officials.

**16. MODIFICATIONS**

This agreement may be amended only by mutual written consent of the Parties. The modifications shall have no force and effect unless such modifications are reduced to writing and signed by an authorized representative of each CTAC PGA. New Parties/CTAC PGAs may be added to the CTAC upon the mutual consent of the then existing Parties and the new Party/CTAC PGA's assent to the terms of this MOU which shall be confirmed in writing in an Appendix to this MOU.

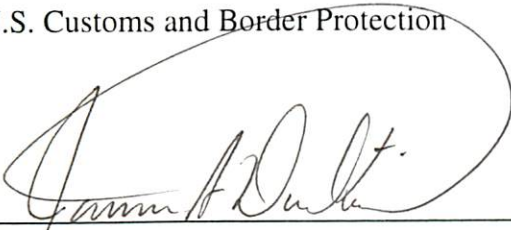
**17. TERMINATION**

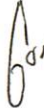
Any Party may terminate participation under this MOU and withdraw from the CTAC upon one hundred twenty (120) days advance written notice to all CTAC PGAs. Termination of participation under this MOU by one CTAC PGA shall not result in the termination of the MOU with respect to the other CTAC PGAs. The terms of this MOU shall continue to apply with respect to any information provided by the withdrawing CTAC PGA to the CTAC, or accessed by the withdrawing CTAC PGA through CTAC operations.




Alan D. Bersin  
Commissioner  
U.S. Customs and Border Protection

DATE: 10/21/10




 John Morton  
Director  
U.S. Immigration and Customs Enforcement

DATE: 10-21-10



Inez M. Tenenbaum  
Chairman  
U.S. Consumer Product Safety Commission

DATE: 10/21/10



Alfred V. Almanza  
Administrator  
Food Safety Inspection Service

DATE: 10/21/10



Cindy J. Smith  
Administrator  
Animal and Plant Health Inspection Service

DATE: 10/21/10

Appendix ACBP:

Automated Commercial System (ACS)  
Automated Commercial Environment (ACE)  
TECS<sup>1</sup>  
Automated Targeting System–Inbound (ATS)<sup>2</sup>

CPSC:

Integrated Field System (IFS)  
Import Examination Logbook

FSIS:

Import Alert Tracking System  
Automated Import Information System  
Public Health Inspection System

APHIS:

Agriculture Quarantine Activity Systems (AQAS)

---

<sup>1</sup> Access to TECS and access to any data maintained therein is conditioned upon the signing of a separate Memorandum of Understanding between DHS/CBP and each PGA.

<sup>2</sup> Because of the unique nature of CBP's Automated Targeting System (ATS) a separate appendix, Appendix B, is attached to address ATS access issues.



## Appendix B

### Participating Government Agencies (PGA) – Inbound Cargo Automated Targeting System (ATS) Access

Pursuant to the Import Safety Commercial Targeting Analysis Center (CTAC) Memorandum of Understanding between the Department of Homeland Security, U.S. Customs and Border Protection and Participating Government Agencies (PGAs), (hereinafter “the MOU”), DHS/CBP intends to provide designated representatives from the respective PGAs (Representatives) with access to the functionality of, and the ability to view relevant data (including data derived through CTAC operations which may be incorporated into ATS with the authorization of the originating PGA), available through CBP’s Automated Targeting System – Inbound (ATS-Inbound), for purposes of carrying out the activities contemplated by the MOU and this Appendix. DHS/CBP will review each PGA’s ATS-Inbound access, at least annually, to determine if all PGA Representatives have a sufficient need for such access. DHS/CBP will notify PGA Representatives of any change in its ATS-Inbound access status.

Designated PGA CTAC Representatives will be provided access to relevant DHS/CBP manifest and supporting entry information, as well as information incorporated into targeting rule sets from DHS/CBP sources and PGA sources (including PGA), through ATS-Inbound (CTAC Data), for use by PGAs in the prevention and investigation of violations of U.S. importation laws that affect United States interests in the import safety environment, consistent with the terms of the MOU. Accordingly, PGA CTAC Representatives will be allowed access to such data as a means to implement the recommendations of the Interagency Working Group on Import Safety, established under Executive Order 13439: (July 18, 2007). Any such access is subject to the terms of the MOU and this Appendix.

Each PGA will designate no more than two (2) employees as CTAC Representatives to be granted access to CTAC data through ATS-Inbound, consistent with the terms of the MOU and this Appendix, during their assignment to the CTAC, in Washington, DC. DHS/CBP Security Policy requires that all ATS users must have a completed, favorable full-field background investigation or U.S. Office of Personal Management (OPM) Type 25 (Public Trust) background investigation. The designated PGA CTAC Representatives will not be granted access to ATS-Inbound without the required background investigation and approval of the PGA’s request for system access (See CBP form 7300). Approval for ATS-Inbound access for the PGA CTAC Representatives will be conditioned upon satisfaction of all security criteria required for access to the relevant DHS/CBP systems. Access to ATS-Inbound by PGA CTAC Representatives imposes security requirements on PGAs to adhere to DHS/CBP procedures for security administration, incident reporting, and security training and awareness. PGAs will take steps to ensure that their CTAC Representatives complete the appropriate annual security training as required by the Federal Information Management Act, through CBP-provided web-based training, annual agency security training, and other training required by DHS/CBP.

The PGAs acknowledge that information available through ATS-Inbound is provided to the PGAs, through their PGA CTAC Representatives, consistent with the terms of the MOU and this

Appendix, and only for the prevention and investigation of Federal violations of importation laws that affect United States interests in the import safety environment, which fall within the PGA's mission to prevent import safety violations and to protect the American public.

Furthermore, PGAs acknowledge that information made available to them through ATS-Inbound information shall be employed only for uses consistent with the aforementioned purpose, shall be handled in a manner consistent with applicable DHS/CBP policies, and in accordance with the terms of this MOU and this Appendix. In particular, information provided to PGAs cannot be released to any third party, as defined under the MOU, without the express, written consent of DHS/CBP.

PGAs also acknowledges the following: by accepting access to DHS/CBP systems and the information available therein, PGAs agrees to assist, cooperate, and intercede on DHS/CBP's behalf to address and deal with any unauthorized release by PGA of the provided information. In accordance with 44 U.S.C. §3510(b), if DHS/CBP provides PGA with access to data pursuant to the MOU and this Appendix, all the provisions of law (including penalties) that relate to the unlawful disclosure of information, apply to PGA to the same extent and in the same manner as the provisions would apply to DHS/CBP. Furthermore, in the event that DHS/CBP and/or PGA are sued or held liable in a civil action arising from an unlawful release by either DHS/CBP or PGA of the information provided to PGA by DHS/CBP, each acknowledges its own responsibility for assisting the Department of Justice in defending such lawsuit. However, under no circumstances will DHS/CBP be held financially responsible for any release by PGA of CTAC Data, and PGA will not be held financially responsible for any release of data PGA data provided to DHS/CBP pursuant to this MOU and this Appendix.

**The unauthorized disclosure of data accessed or provided pursuant to the terms of the MOU or this Annex, and/or failure to abide by any term thereof, will result in immediate deactivation of the access provided.**