



ATLANTA AIR CARGO ASSOCIATION

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ATLANTA, GA 30320

Celebrating 40 Years - 1969-2009

**Mr. Henry Waxman, Committee Chairman
House Energy and Commerce Subcommittee on Health**

June 9, 2009 - Via FAX: 202-225-4099

Dear Chairman Waxman,

I represent an association of over 250 companies who operate as customs brokers in the United States. I wish to express my deep concern about a provision in the Energy and Commerce Committee's Discussion Draft of food safety legislation relating to customs brokers who process entries for importers of FDA-regulated products. Essentially, the draft bill treats customs brokers as if we are importers, imposing standards, fees and penalties that are significantly disproportionate to our role in international trade.

Customs brokers serve a unique and highly regulated role in the import process. Customs law already contains a comprehensive and carefully crafted licensing and regulatory framework governing all aspects of a customs broker's business, including due care responsibilities for *all* import entries we process.

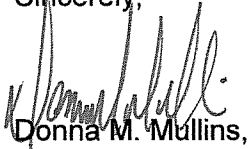
Customs brokers are *not* importers. Confusing the two is like confusing the travel agent with the traveler. A customs broker formalizes and processes the declarations made by the U.S. importer of record, our client. We do not have a relationship with the foreign supplier or producer. Nor does the broker have a financial interest in the commercial shipment other than the fee we receive for processing the entry. As customs brokers, we do not take physical or legal possession of the product and we do not distribute the product in U.S. commerce. Customs brokers simply do not possess the same level of visibility into the commercial transaction as the importer of the product, nor do we have the ability to gain such visibility.

Yet, the draft food bill empowers the Secretary of HHS to revoke a customs broker's ability to process FDA imports and impose penalties of up to \$500,000 if a customs broker makes an "inaccurate or incomplete statement or submission of information relating to the importation of food, drugs, or devices." **Completely overlooked is the fact that we must rely on the commercial documentation and other information provided by our customer, the importer, to prepare the entry documents.** We cannot, as a practical matter, independently verify the supply chain of the hundreds of importers we assist. And yet the committee's draft holds the customs broker strictly liable for the importer-supplied information – with truly debilitating fines and consequences if the information turns out to be inaccurate in any respect.

These provisions – with such a profound impact on our business – were only released last week and did not benefit from consultation with anyone in our industry. Yet, we understand it will be rushed to Subcommittee mark-up this week. This is a serious flaw in the committee's draft and we ask for your help in deleting these provisions.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Donna M. Mullins". The signature is written in a cursive style with a prominent initial "D".

Donna M. Mullins,
President