

## APPENDIX 10

Email COAC received March 25<sup>th</sup>, 2012

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You have listed among your eight agenda items these four:

3. One U.S. Government at the Border –Interagency Issues;
4. Automation/International Trade Data System;
5. Enhancing Air Cargo Security; and
6. National Strategy Global Supply Chain Security and the Secretary's work to foster international standards and cooperation.

My comments below address Nos. 3 and 6 directly and Nos. 4 and 5 indirectly.

### FIVE AREAS OF CURRENT VULNERABILITY

Cross-border security vulnerability is not limited to individuals coming into the United States illegally. The U.S. southern border, access of Mexican trucks and the blatant weaknesses in the "in-bond" carriage across borders and through the U.S., along with the e-manifest and the knowledge it imparts about the materials that are truly coming into our country, are also serious considerations. I have written much about the security of the U.S. southern border in relation to the transport of imported and exported products, but this matter has gone unacknowledged by The Department of Homeland Security (DHS), Customs and Border Protection (CBP), and Immigration and Customs Enforcement (ICE).

### COMMERCIAL OPERATIONS AT THE SOUTHERN BORDER

There is no other area in North America comparable to our southern border with respect to cross-border carriage of imported and exported products by commercial trucks. In 2009, there were 4,291,000 incoming truck crossings through the southern border in volume alone. Almost 100% of those trucks were not permitted to enter the United States directly. The Mexican long-haul carriers dropped their trailers and containers in drop lots, often unsecured, for days and weeks on the Mexican side of the border, waiting for a certain class of Mexican businessmen to release or give permission for the containers and trailers to cross into the United States.

What is, perhaps, even more amazing is that this class of Mexican businessmen, who are Mexican Customs Brokers, also stop all U.S. cargo entering Mexico **on the U.S. side** of the border until they give the cargo permission to cross. If a product is exported to Mexico by air or by sea, does the U.S. exporter need the goods to be "released" or permitted entry into Mexico by a Mexican businessman **before** the plane departed from the United States? Or, would the vessel have to wait until its Mexican-bound cargo is "released" for entry **before** sailing to Mexico? Of course not. Furthermore, with respect to air and vessel carriage, would the U.S. freight forwarder or U.S. air cargo agent (should one be used) be federally regulated? Yes, but not on the border, for unknown reasons, despite the legal requirement of having to be registered and regulated under the *ICC Termination Act of 1995* (P.L. 104-88). Of course, there are

nationally and internationally recognized freight forwarders and 3rd party logistics companies on the southern border that are registered and regulated.

So why do we have a system of foreign controls delaying cargo and using unregistered U.S. freight forwarders? Simply, it is the means to force the Mexican exporter to pay the Mexican Customs broker up-front for sending the good across the border, essentially creating a guaranteed cash business.

For a U.S. exporter sending goods to Mexico it is the same, except the U.S. goods remain on the U.S. side at a Mexican "exclusive forwarding agent," avoiding the definition of freight forwarder as described in the *ICC Termination Act of 1995*. Like the Mexican outbound goods, the U.S. outbound goods ultimately wait in the U.S. forwarding agent's lot or distribution area until the Mexican importer pays the Mexican Customs Broker to cross the cargo, pay the duty (if any) and, of course, the Mexican Customs Broker's fees. Additionally, the carrier that crosses the cargo into Mexico is usually a Mexican drayage or transfer trucking company that is often owned or controlled by the Mexican Customs Broker --- another means of revenue in the controlled process.

### **CONTROL OF THE CROSSING PROCESS**

If one divides the crossing practice of commercial trucks into four segments of revenue generation --- first, outbound from Mexico on Mexican side; second, inbound into the U.S. on the U.S. side; third, outbound from the U.S. on the U.S. side; and fourth, inbound to Mexico on the Mexican side --- it is clearly evident that 75% of revenue and 75% of control are exclusively in the hands of the Mexican Customs Broker. Only that portion of the inbound U.S. side (25%) is in the hands of a **U.S. Customs Broker**, who is not aware whether the drayage driver came directly from the CBP's facilities or stopped elsewhere so that cargo could be removed or added before arriving at the U.S. Customs Broker's facilities. The U.S. Customs Broker, who has already arranged to clear the goods through CBP, may never actually check the contents of the trailer or container.

This Mexican control is equivalent to a monopoly and amounts to a cartel of Mexican businessmen who not only control the process, but also create and maintain a system that adds to the vulnerability of our security. Because this control is also present on the U.S. side of the border at forwarding agents' facilities of the Mexican broker, there is clearly a U.S. legal issue about the registration of the forwarders who claim that they are exempt from regulation because they are "exclusive agents" for the Mexican broker. This is especially important with respect to inbound shipments crossing from the United States into Mexico that are opened and manipulated at some forwarding agents' facilities.

It doesn't take much imagination or profound thinking to realize that the very nature of this system surrenders control of trailer content of both inbound and outbound shipments to a foreign non-government entity about which, in most cases, we know very little. This process and the lack of knowledge of those who control it become a serious risk.

### **THE VULNERABILITY OF THE PROCESS**

The vulnerability of the process consists of knowledge of contents beginning at the origin of the shipment; access to cargo waiting at drop lots; knowledge of and control of drayage firms; and control of exclusive forwarding agents on the U.S. side.

### **(1) Knowledge of Contents at Mexican Origin**

Unlike the United States where we have information and knowledge of contents, carrier, and even driver, cargo identity is really unknown to the Mexican long-haul carrier or driver when it is picked up at the origin in Mexico. Additionally, U.S. authorities know very little about the Mexican manufacturer or carrier. Consequently, except for Mexican manufacturers and carriers who are members of the Customs Trade Partnership Against Terrorism (C-TPAT), CBP has little or no knowledge of what is actually in the trailer or container.

Even with the use of the Automated Commercial Environment (ACE) system and the e-manifest used on the southern border, CBP only knows what the container is "said to contain," or that the trailer is even the same trailer that left its place of origin in Mexico. The level of what is known about the cargo coming from Mexico through our land ports-of entry can best be explained by the actual words of a major U.S. Customs Broker. I asked, "How do you know that what is said to be in the conveyance is, in fact, in the conveyance." His answer was: *We don't. It is all on good faith.*

### **(2) Access to Cargo Waiting at Drop Lots**

Probably no greater opportunity to access a trailer and remove or add cargo is at the location where the trailer is dropped by the Mexican long-haul carrier to await for permission by the Mexican Customs broker to cross it into the United States. Unless it is a "hot" or specially treated shipment, **all** trailers with cargo bound for the United States are literally dropped and stored at some type of trailer yard until the Mexican Customs Broker executes a *Pedimento de Exportacion* which releases the goods for movement into the United States. Many, if not most, of these lots are unsecured; therefore, drugs, contraband, illegal human traffic, or even weapons of mass destruction (WMD) may be present in these trailers.

Additionally, there is no law or regulation by the Mexican government that mandates these drop lots or even this system of control by the Mexican Customs Brokers. Drop lot usage provides an opportunity for the drug cartel and for terrorists to manipulate contents and possibly use the trailer as a weapons system.

### **(3) Knowledge of the Drayage Firm, the Driver, and Its Activity**

The e-manifest requires information on the drivers and passengers bringing cargo into the United States, their conveyances, and equipment used. There are problems, however. The first problem is driver information. The truck e-manifest is not linked to the other driver-connected CBP programs like Free and Secure Trade (FAST). FAST uses an ID card for Mexican drayage drivers coming into the United States. To a degree, the FAST card authenticates and approves drivers entering U.S. ports-of-entry. However, although the truck e-manifest mandates driver information, it does not require all drivers to have FAST cards. Therefore, duplicate information must be transmitted, actually causing the expedited entry process to be diminished. The second problem is that the truck e-manifest implementing regulations (19 CFR 123.92) require any inbound truck with commercial cargo to report its arrival to CBP electronically --- but only those authorized to report electronically can do so.

Unfortunately, the motor carrier that crosses cargo into the United States is a transfer or drayage carrier and, in most cases, would not even have access to a computer because the transfer company is essentially a "mom & pop" short-haul carrier that merely shuttles trailers from one side to the other. As one Mexican

motor carrier told me, "... the control of the drayage crossing is often done by someone with a cellular phone while shopping at the grocery store." Nonetheless, CBP has defined the carrier as the one entering the import lot/compound. The transfer carriers have two options: They can report to CBP themselves or hire a third party (such as a U.S. Customs Broker or the Mexican Customs Brokers' Association), or, as of March 15, 2007, other truck carriers who already have ACE portal accounts, allowing anyone with a valid ACE account may transmit in the portal or through an electronic data exchange.

Whether long-haul or drayage, CBP needs information on the driver and the cargo. The core problem, however, is that the use of drop lots mandated indirectly by the Mexican Customs Broker cartel's crossing system necessitates the use of a drayage firm about which we know little, if anything, and the use of drop lots that provide access to the trailer as it awaits crossing, typically more than a week depending on the Mexican broker and the port at which he operates.

#### **(4) Exclusive Forwarding Agents on the U.S. Side**

The Mexican Broker cartel also avoids U.S. federal law covering freight forwarders by defining freight forwarders as "exclusive forwarding agent," rather than the legal term. Surface freight forwarders provide essential services like transportation, break-bulk or deconsolidation, warehousing, and even Customs brokerage. Because of their growth and essential role in global trade and cross-border operations, Congress reregulated them by virtue of the *ICC Termination Act of 1995*. The Act clearly defines the term as such:

*FREIGHT FORWARDER --- The term 'freight forwarder' means a person holding itself out to the general public (other than as a pipeline, rail, motor, or water carrier) to provide transportation of property for compensation and in the ordinary course of its business-- (A) assembles and consolidates, or provides for assembling and consolidating, shipments and performs or provides for break-bulk and distribution operations of the shipments; (B) assumes responsibility for the transportation from the place of receipt to the place of destination; and (C) uses for any part of the transportation a carrier subject to jurisdiction under this subtitle.*

Section 13906 of the Act requires the freight forwarder to carry liability and cargo insurance and to comply with other sections of the law to meet requirements related to service of process and court proceedings. To register, the applicant must complete an **Operating Authority form OP-1 (FF)**, which requires the applicant to provide proof of insurance; type of business structure; owner of business identification; business partners, if partnership; agent address, and whether applicant or principals have been convicted of a federal or state offence involving the possession or distribution of a controlled substance. In other words, in the United States much is known about surface freight forwarders --- except, of course, many of those working the southern border.

Since most forwarders along the southern border claim **not to be** freight forwarders under U.S. law, but instead, exclusive forwarding agents of the Mexican Customs broker, the U.S. Department of Transportation (USDOT) and even the U.S. Internal Revenue Service (IRS) know very little about those intermediaries working for foreign business entities in the control of inbound and outbound cargo.

The control of commercial crossings at the southern border by Mexican drug cartels and customs brokers is a thriving "business." Yet, it remains unaddressed by U.S. agencies that are in existence as a means of

decreasing and controlling illegal crossings of any type into the U.S. There has been a lack of attention given to the vulnerability issue raises the obvious question: Why hasn't DHS, USDOT, CBP and ICE addressed this?

Having lived on the Mexican border, worked extensively on border crossing issues, and testified in the U.S. Senate and House and in the Texas House, I can say with absolute certitude that CBP is aware of the issue. Even ICE is aware of the vulnerabilities posed by cross-border trailer and container movement. In fact, in 2009, ICE made a video in Laredo, Texas depicting the ease of bypassing the required seals used on containers and trailers that enter through our ports.

I have a copy of that video, but it seems to have not garnered the attention of those in DHS, nor those on the House and Senate Homeland Security Committees. In fact, I have been told by CBP in Laredo, Texas that there is nothing it can do, and it is a matter for the U.S. Department of State and the Administration to confront. According to CBP, it's a political issue --- and I agree with CBP.

Unfortunately, this "political issue" is a genuine security concern for all of us, especially those living in U.S. port cities along the border. It is a political issue far above the level of CBP. Why, especially now with Congress knowing that there are terrorists using Mexico for entry into the United States, is there no ostensible interest from Congress or the Administration, especially when the border is becoming even more dangerous?

## **ROLE OF THE MEXICAN DRUG CARTELS**

It is undeniable that the Mexican drug cartels are a serious issue not only for Mexico but for the United States as well. It is also undeniable that the Mexican Customs Brokers operate as a business cartel by controlling the commercial crossings at our southern border. Is it possible that there is cooperation between the Mexican Customs Brokers and the Mexican drug cartels? So far there is no evidence available to the public of any such cooperation.

It makes sense, however, especially to this former FBI and OSI agent, that there is or could be a relationship. I have been told about interference by one drug cartel in certain high-valued shipments, and we know about other drug cartels putting drugs into trailers bound for the United States. Additionally, my own intelligence gathering of drug cartel activities indicates that there are at least three Middle Eastern entities now connected to the cartels in Nuevo Laredo, Mexico, which is directly across from Laredo, Texas. I have imparted that information, among other intelligence, to the U.S. Drug Enforcement Agency (DEA) and received a "thank you" from them. I also passed it along to CBP, with no response.

Is there a nexus between the apparently uncontrollable Mexican Customs Brokers and the apparently uncontrollable drug cartels? I do not know as of the time of this writing, but here is the problem: The Mexican Customs Brokers are not willing to change their business practices. Why would they? Their practices are tantamount to a "pay first, cash-only" business, but their practices are the reason for the drop lots, the use of drayage, and the use of many unregulated U.S. freight forwarders. The United States knows very little, if anything, about the background of these businessmen.

The Mexican Customs Brokers also are **not** part of our C-TPAT program, so we don't know much about their security measures, if any, or about their business partners or business relationships. However, C-TPAT allows Mexican manufacturers and motor carriers to participate in the C-TPAT program and even be audited to insure C-TPAT compliance. Finally, while it is a foreign seaport program, it is also important to recognize that Mexico is not part of the U.S. Container Security Initiative (CSI) Program, even though they are a NAFTA partner. Our other NAFTA partner, Canada, is a member and has developed its own supply chain security program call Partners in Protection (PIP) that, along with C-TPAT, is mutually recognized by both the United States and Canada. Only as of this month did Mexico announce its equivalent to C-TPAT called *Programa Alianza Para El Comercio Seguro* (PACS).

Sincerely,

Jim

Dr. Jim Giermanski, Chairman

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