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## Mexican Criminal Gangs Use C-TPAT Firms for Smuggling

Mexican criminal gangs have found the safest way to smuggle drugs into the U.S. is aboard transports of participants in the Customs-Trade Partnership Against Terrorism (C-TPAT), Juan Jose Bravo, director general of Aduana Mexico, told the World Customs Forum in Istanbul Oct. 7. According to other trade community members, the gangs have intimidated employees of C-TPAT firms in Mexico, threatening to kill them or their families, if they don't allow the gangs to put their goods on legitimate trucks and planes. Two employees of a German firm operating in Mexico reportedly were killed for refusing to cooperate with one gang.

Trade sources told WTTL the gangs have learned that C-TPAT firms face fewer cargo inspections than other shippers, which reduces the risk of having illegal cargos discovered. Many firms operating on the Mexican side of the U.S.-Mexico border have instituted anti-hijacking procedures, but threats of violence against truck drivers and staff have sometimes circumvented those procedures, they say.

Bravo told the Forum that the role of Mexican Customs has changed from tax administration to border control. "We obviously in Mexico right now are in a big fight against organized crime for two years," he said. "There is pressure to try to stop this flow of drugs and marijuana, but the problem with this is that it will hurt trade," he added. "We don't want to do that."

## CBP's Bersin Wants New Look at C-TPAT

Customs and Border Protection (CBP) is looking at ways to expedite cargo entry for firms participating in C-TPAT, but it won't be reducing its enforcement efforts, CBP Commissioner Alan Bersin told WTTL in an exclusive interview Oct. 7. Bersin, who earlier gave a keynote address to the World Customs Organization's (WCO) World Customs Forum, said he understands the trade community's concern that the program "has stalled" but disagreed with its expectation that participation in C-TPAT should mean less enforcement. "We have been engaging with the trade and listening to all the points, and now we've started an examination looking inward that will raise these issues," he told WTTL.

Bersin said the paradigms that were the basis of C-TPAT need to be reconsidered. "We have reached a point where we need to reconsider the paradigms because I think we actually, quite remarkably, have moved forward," he said. "I think it is fair to say we are at a juncture where we can reexamine some of the fundamental propositions here," he told WTTL. Bersin said he thinks the trade community has a "what-have-you-done-for-me-lately" attitude. Rather than less



enforcement, CBP will try to find ways to speed up cargo for C-TPAT member and reach mutual recognition agreements (MRA) with other countries that have Authorized Economic Organization (AEO) programs similar to C-TPAT. At U.S. ports, CBP is “proactively planning” a variety of ways to speed up cargo, including flagging mechanisms and security seals, Bersin said. He also said Customs may be willing to examine its procedures for auditing C-TPAT firms. Industry executives complain that CBP audits duplicate the audits companies are already doing as part of their C-TPAT commitments. Whether CBP audits are conducted according to “a standard routine as opposed to specific cause is a good question we should reexamine as well,” he told WTTL.

Bersin earlier told the WCO Forum that Customs is looking for alternatives to congressionally mandated 100% screen of cargoes (see story below). The Forum Oct. 6-7 in Istanbul drew more than 300 representatives of customs organizations and the trade community from 72 countries and the European Union (EU).

## **Bersin Calls for Change in View of Border Security**

In a keynote address to the WCO’s World Customs Forum Oct. 7, CBP Commissioner Alan Bersin said he wants the public and private sectors to take a new look at how they consider border security and trade facilitation to see the relationship as a single goal rather than a balancing of interests. “When we look at security and trade promotion and support facilitation as being mutually exclusive, we fall into an intellectual and practical and political trap of saying we have to balance them,” he told the meeting. “We cannot look at security and facilitation as being separate interests rather than seeing them as complementary and increasingly seeing them as a single, unitary interest – not two sides of the same coin,” Bersin said.

“When we use the word benefits in the context of the program [C-TPAT], we do so from the perspective of the private sector as being the absence of enforcement, so that the nature of the partnership turns out to be how to balance security on the one hand and trade facilitation on the other,” he said. “We look at these as mutually exclusive values and interests,” he opined. “We assume the government’s interest is solely in enforcement and security and the trade’s interest is solely in expediting trade and avoiding enforcement,” he said. That, Bersin declared, “is at the root of our dilemmas.”

A second paradigm that needs changing, he suggested, is in the way business and government share information. In the past, having information was considered power and keeping it away from others increased that power, he said. “In a digital, global, instantaneous world...the lesson today is you gain power by sharing information,” Bersin argued.

A third change Bersin suggested is in the way borders are viewed. While protecting citizens from harm still justifies security at the border, he said a new view is “to look at borders as ...the flows across the world of people and cargo, capital and ideas.” That will require moving the security process away from the border “so we can do inspections at their factories, logistical shipping points, so that we can certify them and move them quickly,” Bersin suggested. This is becoming increasingly necessary because goods no longer move just bilaterally between two countries but involve a supply chain going through several countries.

## **WCO Project Aims to Connect All Customs Agencies Globally**

The possibility of having one single, electronic record for both the export and import of goods around the world, with more than 100 national customs agencies having instantaneous access to the information filed, is the goal of a WCO effort to create a Globally Networked Customs (GNC). A WCO working group has been formed and has held several meetings to explore the requirements for establishing an electronic system for sharing trade data among WCO members. Speakers at the WCO Forum in Istanbul Oct. 6 said the initial stages of such a system would be

aimed at sharing information on security and compliance, but it eventually could speed up customs processing times, which now can account for one-third of the transportation time and 15% of the cost of goods moving around the world, speakers noted.

The GNC's main elements would be a common information technology system, a common set of data and common criteria for participation, according to Noel Colpin, administrator of Belgium customs and excise. "GNC is necessary to make 'Green Lanes' really work in practice," he said. Colpin claimed the system would produce tremendous savings and provide "the ultimate facilitation."

Colpin said the working group foresees a staged phase in of the GNC. Initially, it would be used to share enforcement data. Later it would add more data and the eventually all trade data. He acknowledged that legal issues might pose a hurdle to adoption of the system and legislation in WCO member countries might be needed to allow countries to participate. The idea "must be lifted to the political level" to be implemented, he said. In addition, procedures for governance of the system would have to be established and there will have to be capacity building help for developing countries, he noted.

## **Protests Fade With Release of Compromise ACTA Text**

The most vocal objections to an Anti-Counterfeiting Trade Agreement (ACTA) are dying down after negotiators on Oct. 2 released a near final version of the accord that doesn't include some of the more controversial proposals that have incited real and imagined fears among some business sectors during more than two years of talks on the deal. One observer called the released text a watered down version of previous texts that had been leaked onto the Internet. Negotiators say they expect to remove a number of remaining square brackets around language where disagreements still exist during further e-mail discussions. After a final deal is struck, an ACTA would still have to be approved by legislatures in the negotiating countries.

Concerns remain over how ACTA would expand international intellectual property (IP) enforcement based on U.S. digital copyright laws in nations without copyright limitations and exceptions, the Computer and Communications Industry Association (CCIA) says. U.S. companies could face charges in other countries for practices that are entirely legal in the U.S., it argues. CCIA worries that high legal costs could force U.S. companies to withdraw from some foreign markets.

The harmonization of U.S.-type "fair use" exceptions to copyright law is needed in the other negotiating countries to prevent U.S. companies from being exposed to liability in foreign courts, says CCIA President Ed Black. A U.S. business depending on certain copyright exceptions, including "fair use," has no certainty in foreign markets, he warns.

The scope of rights under ACTA is still in square brackets, according to an EU official close to the talks. The U.S., Korea and Mexico think the digital environment provisions should only deal with copyrights and related rights, he said. It is not yet clear whether those provisions will also apply to trademarks. The U.S. and EU still differ over how tough countries should be in imposing criminal procedures and penalties for the unauthorized copying of movies shown in public theaters. The U.S. wants tougher language; the EU wants softer language, he said. Geographic indications were only included in the last round as part of the broader IP rights category, EU officials said. However, they're not included in the section on criminal sanctions.

## **Deal with U.S. Moves Russia Closer to Joining WTO**

Russia moved closer to joining the World Trade Organization (WTO) Oct. 1, after Russian and U.S. trade officials claimed they have resolved the last outstanding bilateral issues blocking Moscow's accession to the trade body. Russia, however, still faces serious hurdles to WTO

membership, most importantly the opposition of Georgia, because of the continuing disputes between the two neighbors. The U.S.-Russia agreement followed a positive meeting of the WTO working party on Russia's accession Sept. 21 (see **WTTL**, Sept. 27, page 4). "Through a series of meetings, the United States and Russia have reached agreement on the substance of a number of Russian commitments that should be reflected in the final terms for its accession," USTR Ron Kirk said. "These commitments relate to areas of particular importance to U.S. trade policy interests, such as intellectual property rights (IPR), government procurement, and transparency in the decision-making process on trade-related issues," Kirk said.

"Ongoing and vigorous efforts will be required with respect to a number of important areas, such as the enforcement of intellectual property rights, trade in meat and other agricultural products, and Russia's regulation of imports of products containing encryption technology," a USTR press release cautioned.

Maxim Medvedkov, director of the department of trade negotiations in Russia's Ministry of Economic Development, predicted Russia would be a WTO member by the end of 2011 at an Oct. 5 briefing, according to translated reports. Medvedkov said discussions continue on such issues as agricultural subsidies, access to the Russian meat market, questions about export duties, primarily on wood, and transparency legislation.

Georgia, already a WTO member, says it won't support Russia's accession until their border issues are resolved. According to press reports, Georgian President Mikheil Saakashvili's press spokesperson reiterated her country's opposition at a press briefing. "Georgia will not support Russia's bid to join WTO until all the conditions that the Georgian government is setting are met, including the issue of customs offices [in Georgia's breakaway regions] and a number of other issues regarding Georgian-Russian relations," she was quoted as saying.

### \* \* \* Briefs \* \* \*

**SME EXPORTERS:** With increased focus on role of small and medium-size enterprises (SMEs) in fulfilling Obama administration goal of increasing exports, BIS in Oct. 6 Federal Register solicited comments on SMEs' understanding of and compliance with Export Administration Regulations. This public input will help BIS "administer and enforce export controls in a manner consistent with U.S. national security while facilitating and even increasing legitimate trade involving SMEs," agency said.

**DOHA ROUND:** Despite waves of occasional optimism, Doha Round could last until next election cycle in 2012, Islam Siddiqui, USTR's chief agricultural negotiator, cautioned in Brussels Oct. 5. "Unless a Doha deal is reached between now and the autumn of 2012, the next Farm Bill will have as its guidepost our current Uruguay Round commitments," he warned. Discussions with Congress on new Farm Bill have already begun, and drafting of legislation would begin late next year, he said.

**CHINA CURRENCY:** Even with overwhelming vote for China currency bill (H.R. 2378) in House Sept. 29, chances for Senate action could be dictated by election results, congressional sources say (see **WTTL**, Oct. 4, page 1). There may be effort to move similar bill in Senate during lame duck session, but mid-term election could move China currency down list of priorities, one source said. During Oct. 7 teleconference with reporters, Ways and Means Chairman Sander Levin (D-Mich.) said Senate vote may depend on what happens during meeting of G-20 countries in Seoul Nov. 11-12. Meanwhile, Treasury Secretary Timothy Geithner continued to fuel legislation in Oct. 6 speech in Washington. China's currency "is a problem because when large economies with undervalued exchange rates act to keep the currency from appreciating, that encourages other countries to do the same. This sets off a damaging dynamic," he said.

**SOFTWOOD LUMBER:** USTR requested formal dispute-settlement consultations with Canada Oct. 8 over "the apparent unfair under-pricing of timber harvested from public lands" in British Columbia under the 2006 Softwood Lumber Agreement (see **WTTL**, Aug. 23, page 3). Canada's Trade Minister Peter Van Loan said he was "disappointed that the United States has rejected cooperative dialogue on this matter."

**EU:** Draft European Commission document leaked Oct. 5 lays out potential future changes to Common Agriculture Policy (CAP). Proposed changes include ending dairy quota, targeting support to active farmers exclusively and having common strategic framework for EU farm funds. Idea of single, flat rate, direct payment to farmers was proposed during public debate, but rejected.