

ACE, the E-Manifest, C-TPAT and the Southern Border

Dr. Jim Giermanski

Customs and Border Protection (CBP) has done it again. CBP has implemented “one size fits all” requirements which cannot work well or efficiently at the Southern border. In addition, the requirements fail to address the heart of the commercial trucking security problem – the commercial crossing practices, especially the use of drayage or transfers of cargo from one side to the other and the core operations and practices of the less-than-truckload (LTL) industry. The introduction on the Southern border of the Automated Commercial Environment (ACE), the truck e-manifest and the new motor carrier requirements for participation in Customs Trade Partnership Against Terrorism program (C-TPAT) will likely not work well, if at all. These programs will falter, first, because of existing Southern border commercial trucking culture and practices, and second, because both U.S. security programs are not enthusiastically received in Mexico. C-TPAT numbers for Mexican-only shippers and carriers are low, and Mexico has not only refused to join in the Container Security Initiative (CSI) but also refused to agree to its Declaration of Principles.

ACE and the Truck E-Manifest

The Trade Act of 2002, one of the many statutes enacted in response to September 11, as amended by the Maritime Transportation Security Act of 2002, required that CBP promulgate regulations to begin collecting all manifests electronically. A key function of ACE is to arm CBP personnel with the tools and information they need to decide, before a shipment reaches the border, what should be targeted because it is high risk and what should be expedited because it complies with U.S. laws. All shipments without exception must include complete bill of lading information, electronically entered into the ACE system. Information on the ACE Application discloses, “Under one step, current ACE plans call for access to the record for any given shipment to be available to the carrier, importer, the customs broker and the insurance company.”

Under U.S. law for inbound shipments through our Southern border, the ACE program relies on two entities for information, the inbound carrier and the U.S. Customs broker. Additionally, along both Southern and Northern borders, ACE requires the use of the truck e-manifest. The e-manifest has five critical areas of information: drivers/crew, cargo, conveyances, equipment, shippers and consignees.

1. Drivers/Crew/Conveyance/Equipment

The e-manifest requires information on the drivers and passengers bringing cargo into the United States, their conveyances and equipment used. The first problem is driver information. The truck e-manifest is not linked to the other driver-connected CBP program, 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. Therefore, only those authorized to report electronically can do so. However, 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. The transfer company is essentially a “mom & pop” short-haul carrier, merely shuttling 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.

Third-party reporting works like this. Anyone with a valid ACE account may transmit in the portal or through an electronic data exchange. The additional requirement for EDI is that the transmitter must provide a letter of intent to connect and an interconnectivity service agreement and go through a certification process for their software. For portal use, they must possess a valid ACE Portal account as an importer, U.S. broker or carrier. However, as long as they are transmitting through a valid source, the carrier need only have a valid SCAC (Standard Carrier Alpha Code) identifier, issued by the National Motor Traffic Freight Association.

What does this mean for security – Nothing! For instance, what does a driver center used on the Northern border near the Ambassador Bridge know about the trailer’s contents, the shipper, or the driver? What do other firms who provide this service at the Southern border really know about the shipment? Again, nothing! They become no more than a conduit for electronic data. Regardless of the option used, the question remains: What do the U.S. Customs Broker, U.S. importer, third-party service provider and now a third-party motor carrier really know about the shipper, driver, trailer and its contents?

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The third problem is the conveyance or equipment hauled into the United States. Drayage drivers only own tractors. The nature of their business is simply to hook up and cross somebody else's trailer. That trailer could contain an explosive device. It is not the role of the drayage carrier to know what cargo he is hauling. He simply picks up a trailer at a designated drop lot located at the border, when instructed to do so by the Mexican Customs Broker. Some transfer drivers do not even know much about the conveyance and equipment to be hauled until they arrive at the drop lot.

2. Cargo-Shipper-Consignee

Cargo is really unknown to the driver, or consignee, and it could not be known to even the shipper if the conveyance were breached along its path to the Southern border where it waits for transfer into the United States. The U.S. Customs Broker also has no idea of what is actually in the trailer or container, since he is not and cannot be a party to the contract of the international sale of goods, which is legally between the U.S. buyer and Mexican seller under federal law. Therefore, all three entities have no assurances that the container/trailer that crosses into a U.S. port of entry contains the goods it is said to contain, or that it is even the same conveyance that left its place of origin in Mexico. The level of what we know 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." So how does the truck e-manifest and ACE impact security on the U.S. - Mexican border? In and of itself it doesn't. C-TPAT is supposed to do that.

C-TPAT

C-TPAT (Customs Trade Partnership against Terrorism) is a government-industry volunteer program intended to strengthen the global supply chain and domestic border security. The approved participants in C-TPAT are supposed to receive trade facilitation treatment at U.S. land ports-of-entry along the Southern border from CBP. C-TPAT is open to the following types of industry:

- Importers
- U.S. Licensed Customs Brokers
- Air Carriers
- Sea Carriers
- Land (rail and truck) carriers, including foreign truck carriers
- Air Freight consolidators
- U.S. Marine Ports/Terminals
- Foreign Manufacturers (Mexico)
- Warehouses

The problem is that Mexico is not a significant participant in C-TPAT. In June 2004, there were only 45 Mexican-only (not U.S. "related parties") manufacturers exporting to the United States. In March 2006, there were only 43. One published estimate of Mexican manufacturers can be found in the Mexican Manufacturers Directory that lists 45,000 manufacturers. Proportionately, it is no better with respect to Mexican carriers. In March 2006, there were only 158 Mexican-only motor carriers participating. Of the estimated more than 100,000 Mexican registered carriers, 158 Mexican motor carriers are simply inadequate, especially when most of the Mexican carriers are not the carriers bringing in the cargo to the United States. A note on numbers: The numbers used here are one year old. The quest for accurate numbers is difficult if not impossible. Suffice it to say

that one hopes the numbers quoted here should be higher than they were one year ago. Also it should be noted that regardless of increases, Mexico has not been a good partner in C-TPAT or CSI.

On March 13, 2006, CBP published its new motor carrier requirements. Each U.S. motor carrier participant must ensure that its Mexican motor carrier business partner meets the same requirements as the U.S. carrier. The culture of the Mexican motor carriers simply won't accommodate those mandates that amount to 61 "Must-statements." What is difficult to believe is that CBP, knowing full well the problem of security in the commercial Southern border crossings, ignores, attempts to hide, or masks the real issues (knowledge of Mexican shipper, knowledge of the contents of conveyance, knowledge of the Mexican long-haul carriers, drop lot access, drayage and access to the conveyance). In the end, it relegates itself to pleading for cooperation: C-TPAT recognizes the unique situation of the cross-border cartage industry in the Laredo, Texas, corridor and encourages and endorses carriers to work within the supply chain to make a reasonable effort to ensure the integrity of trailers, especially during the cross-border segment.

Finally, the security benefit gained by using ACE and the truck e-manifest is simply not there. Security does not rest on automated data. Security comes from first knowing what has been placed into the conveyance at origin, security of access while moving to the border, security of access to the trailer/container as it waits in a Mexican drop lot where it waits to be released by the Mexican Customs Broker for exit from Mexico to the United States, and the security background of the Mexican drayage driver.

Conclusion

In January 2007, an inbound container passed through the Southern border. At its disposition in the interior of the United States, it was opened. Upon opening, the U.S. firm found a "plastic jug of urine, a plastic bag of urine, a backpack, a can of sardines (unopened), a hat, a fannypack and a white tank top." Who entered the country? What was their purpose? What if it were a bomb instead of people? The real threat of terrorism, drugs, or illegals in commercial conveyances on the Southern border will not be solved by ACE, the e-manifest, or C-TPAT. The need for a comprehensive reform in Southern border-crossing practices and a change in commercial culture is essential, not just automated data entry. Security begins at "stuffing" at origin and unloading at destination. For ACE to work, especially along the Southern border, Mexican shippers, Mexican carriers, U.S. brokers and the Mexican Brokers associations must be involved in the enhancement of its application in the unique commercial-crossing environment of the Southern border. Furthermore, the broker and carrier must support its use in a reasonable way to avoid potential government punitive action for events for which the carrier and broker have no culpability. Alone, the use of truck e-manifests and ACE in the current operating and institutional crossing environment along the Southern border does little but make more work for those outside of CBP. Only high-level Administrative action, likely through the coordinated efforts of the U.S. Department of State, the Trade Representative's Office and DHS, can fundamentally change the current system and improve our security. Electronic data entry will not.

Jim Giermanski, is Professor of International Business and Director of the Center for Global Commerce at Belmont Abbey College. He is also chairman of the board of Powers International Inc.