

*Before the*

**SUBCOMMITTEE ON BORDER, MARITIME  
AND GLOBAL COUNTERTERRORISM  
OF THE  
COMMITTEE ON HOMELAND SECURITY  
UNITED STATES HOUSE OF REPRESENTATIVES**

*Statement of*

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INDIANAPOLIS, IN**

*Representing*

**AMERICAN TRUCKING ASSOCIATIONS, INC.**

*On*

***Cargo Security at Land Border Ports of Entry: Are We Meeting the Challenge?***

October 22, 2009



***Driving Trucking's Success***

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## Introduction

Madame Chair Sanchez, Ranking Member Souter, and members of the Subcommittee, my name is Steve Russell, and I am Chairman, CEO and founder of Celadon Group, Inc., headquartered in Indianapolis, Indiana. Celadon is primarily a truckload carrier with approximately 3,000 power units, or tractors, and 10,000 53' trailers and about 3,900 employees. Celadon generates about forty percent of our business from the movement of freight across our land-borders with Canada and Mexico, while sixty percent of our business is generated domestically. Celadon is one of the top truckload carriers in North America serving a variety of customers providing time-sensitive cargo shipments through trailer “door-to-door” transport throughout North America. Celadon has been recognized for our safety record as well as for our environmental programs. For the second consecutive year, Celadon won the top award from the Environmental Protection Agency’s (“EPA”) Smartway program, as a result of our achievements in reducing emissions through various innovative programs.

Celadon is also a certified and validated member of the Customs – Trade Partnership Against Terrorism (“C-TPAT”) program, and we were the first motor carrier approved for participation in the Automated Commercial Environment’s (“ACE”) electronic manifest system. Both of these programs, as described further below, play an important role in improving the security of international commerce at our land borders. Celadon is also an ISO 9001 certified company and plays an integral role in our customers’ supply chain management process serving a variety of high-intensity production lines, distribution channels, and customer direct traffic.

Today I appear on behalf of the American Trucking Associations, Inc. (“ATA”), a federation of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the trucking industry. The ATA federation has over 37,000 member companies representing every type and class of motor carrier operation.

First and foremost, I want to thank this Committee, specifically your leadership madam chair together with Congressmen Thompson and Lungren, and Congresswoman Jackson-Lee, in getting the SAFE Trucker Act of 2009 introduced and passed by the House of Representatives. SAFE Trucker is critical to the men and women of the trucking industry, by bringing relief from redundant, unnecessary and expensive multiple fingerprint-based background checks. Again, on behalf of the three million commercial drivers who transport America’s cargo, we thank you for your leadership and support in passing the SAFE Trucker Act.

I commend the Subcommittee for holding this hearing today to gather information on the status of our land border ports of entry. The trucking industry supports efforts to address and eliminate to the greatest extent possible any threats posed to our nation’s security, including establishing the necessary infrastructure, both physical – i.e. “bricks and mortar” – and implementing technologies, to improve the clearance and throughput of trade with the highest standards of security. At a similar hearing two years ago, I focused my comments on three primary areas in relation to border operations:

- Ongoing security programs involving trucking operations across our borders with Canada and Mexico to ensure supply chain security;

- Implementing automated systems to improve the gathering and analysis of data for targeting and release of cargo, people, and equipment entering the U.S.; and,
- Strengthening the relationships among the three North American governments to develop joint border infrastructure and improve information sharing mechanisms.

My comments today will update this Committee on the status of these issues, in addition to discussing other critical aspects of cross-border operations.

## **Background**

Trucking continues to be a critical component of our country's economy, and trucks continue to transport the majority of cross-border trade with Canada and Mexico. However, compared to two years ago, today we are facing the most challenging global economic conditions with a significant negative impact on trucking operations.

Since 2007, freight levels have decreased dramatically: domestically, the number of loads within the truckload sector has decreased by more than 17 percent while revenue has decreased even further by nearly 29 percent. In terms of cross-border trucking operations, the value of trade transported by trucks with Canada has declined nearly 30 percent, and about 18 percent with Mexico. For the purpose of this hearing, it is important to keep in mind that this precipitous drop in cross-border trade volumes means that we are not seeing the same levels of trade that normally strain our border facilities and personnel during better economic times.

However, this reduction in trade flows doesn't mean that trade has stopped. Manufacturers, retailers, warehouses and, most importantly, consumers, continue to count on trucks to get the goods and products they need and use each and every day, transporting almost 70 percent of the value of freight between the United States and Canada, and about 80 percent of the value of U.S.-Mexico freight<sup>1</sup>. The trucking industry is proud of its role in delivering North America's freight and we will continue to do so with the highest regard for security and efficiency.

Today, we continue to work in partnership with our government counterparts to improve the security and efficiency of cross-border trucking operations. Our industry supports programs that help motor carriers increase the security and safety of their operations, especially if such programs can be implemented in an effective and efficient manner and provide real security benefits. ATA believes that the end goals of security and efficiency are not mutually exclusive. Though it is impossible to achieve absolute security without bringing trade to a standstill, we can greatly reduce the potential of being targeted by our enemies by managing risk, increasing security awareness among company personnel, and implementing simple cost-effective security measures. In essence, we must continue to strive to establish a "security culture" within our companies and we must continue to improve our partnership and cooperation with our government counterparts.

For many years, ATA has supported efforts to elevate the coordination of human resources, infrastructure, and technology in improving clearance systems and processes at our land borders. For example, long gone are the days when our tractors and trailers were literally

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<sup>1</sup> Bureau of Transportation Statistics, U.S. Department of Transportation (2006)

drilled to inspect the inside of the conveyances – making our equipment look like Swiss cheese and resulting in very costly repairs. Now, through the use of Non-Intrusive Inspection (“NII”) systems, x-rays and gamma rays are used to capture images of any anomalies within our commercial vehicles. Such technological advances and tools have improved CBP officers’ enforcement capabilities while improving the efficiency and throughput of commercial vehicles across our borders.

### **Cross-Border Security Programs**

Security in cross-border operations pre-dates the 9/11 attacks on our Nation due to the threat posed by drug and alien smugglers – a threat that continues to challenge us, especially at our southern land border. Through programs such as the Land-Border Carrier Initiative Program (“LBCIP”) started in the mid 1990’s, trucking companies and their drivers were certified to participate in this “low-risk” program after undergoing audits and background checks. In return for participating in the LBCIP, motor carriers gained expedited clearance of their cargo.

The LBCIP concept was upgraded immediately after 9/11 with the creation of the C-TPAT program, which included the development of the Free and Secure Trade (“FAST”) program specifically established for motor carriers with cross-border operations in North America. The overall goal of C-TPAT is to ensure the security of the entire international supply chain: from overseas manufacturing operations, to transportation providers, to entities such as importers, brokers, and forwarders involved in the processing of cargo entering our country.

In order to participate in FAST, motor carriers must become C-TPAT certified (See Appendix I for C-TPAT Minimum Security Criteria) and their commercial drivers must complete an application and undergo a background check through various databases. Once such steps have been taken and verified, motor carriers benefit by receiving expedited clearance of their equipment, driver, and cargo – as long as it belongs to a C-TPAT importer – in addition to getting access to a dedicated FAST-lane for use only by FAST participants.

#### The Need for FAST-Lanes at Ports of Entry

The biggest challenge trucking companies continue to face with the C-TPAT/FAST program is the lack of “true” FAST lanes – in essence, lanes that extend far back from the port of entry, instead of FAST lanes that begin only a few yards prior to arrival at the primary inspection booth. This results in low-risk C-TPAT carriers being stuck in the same traffic as non-C-TPAT certified carriers. Thus, C-TPAT certified motor carriers with drivers who have undergone FAST background checks are not getting the benefits that were promised for investing to comply with the program.

I urge this Committee to consider alternatives for developing and implementing extended FAST lanes to ensure the security of C-TPAT operations by keeping these low risk vehicles moving and segregated from regular traffic.

#### Suspension of C-TPAT Benefits: Single Incident vs. Systemic Problems

Another major challenge that motor carriers face regarding participation in C-TPAT is the fact that a single security incident that involves a motor carrier tends to result in the immediate revocation of that carriers’ C-TPAT status. Such a drastic measure takes place before any investigation is undertaken to understand what led to the security incident. For example, if

during an inspection it is found that a truck belonging to a C-TPAT carrier has illegal narcotics on board, the motor carrier is suspended immediately without knowing if the illegal cargo was placed aboard the conveyance at the point of loading or during the manufacturing process unbeknownst to the motor carrier. It is simply unfair and unjust to hold the motor carrier liable for a security breach that occurred at another point within the supply chain.

ATA and its members have met with U.S. Customs and Border Protection (“CBP”) officials on repeated occasions to discuss our concerns. ATA fully supports and applauds the efforts by the C-TPAT office for an open dialogue with industry and working to improve the C-TPAT program. They clearly recognize the security challenges faced by cross-border trucking operations and have been extremely helpful in trying to resolve industry concerns. However, our discussions have not yet arrived at a “justifiable” suspension process for motor carriers involved in a security incident.

ATA believes that the following steps should be considered and taken prior to a motor carrier being suspended from C-TPAT due to a security incident:

- If this is the motor carrier’s first security incident, CBP should:
  - Not immediately suspend the motor carrier, and thus it should not “turn off” its Status Verification Interface (“SVI”) number, until an investigation determines the nature of the narcotics and at what point the illicit cargo was introduced into the conveyance;
  - Consider putting the motor carrier on “probation” if the investigation demonstrates that the carrier was not at fault. The “probation” period can be lifted once CBP is satisfied that the motor carrier has taken steps to properly implement all the Minimum Security Criteria and considered establishing applicable recommended best practices to reduce the risks of future security breaches;
- If an investigation demonstrates a willful disregard on the part of the motor carrier of the C-TPAT Minimum Security Criteria, CBP could:
  - Suspend the motor carrier and turn off its SVI number;
  - Require the motor carrier to reapply and undergo again a full validation of the C-TPAT requirements prior to being re-admitted to C-TPAT.

It is important for CBP, and for this Committee as well, to recognize that C-TPAT motor carriers take their responsibilities very seriously, and to recognize the challenging security environment that cross-border operations can represent on a daily basis. I would like to emphasize that no one is immune to the potential for “bad” actors infiltrating our operations: neither private sector companies nor the law enforcement agencies in charge of securing our border and protecting our country. We all face the same risk. Therefore, a single security incident should not result in a motor carrier being automatically suspended unless an investigation demonstrates a “systemic security” problem and a lack of proper security measures by the trucking company. Individual incidents, even if perpetrated by a company employee, should not be treated as systemic problems.

## Automated Clearance Programs

The trucking industry is also closely involved in the development of information systems and technologies to facilitate enforcement activities while at the same time expediting the movement of cargo across our borders. ACE is a system that has been under development by CBP for well over a decade, and is now fully deployed along our land border ports of entry. ATA and many of its members worked on the design and development of the ACE manifest data requirements necessary for the transmission of data. The deployment of ACE is an important tool to improve the efficiency for capturing trade data, clearing cargo entering the US, and provides CBP an improved system for targeting, risk analysis, and release of cargo. Although the ACE system has suffered through a number of challenges, including service interruptions, malfunctions of the in-bond system and of the FAST-ACE interface, carriers are generally happy with the new e-manifest system.

CBP is also developing the International Trade Data System ("ITDS") as an integral part of ACE. The ITDS concept is simple: Traders and carriers submit commercially based, standard electronic data records through a single federal gateway for the import or export of goods. As a single information gateway, ITDS distributes these records to the interested federal trade agencies, such as CBP, the Food and Drug Administration ("FDA"), DOT and others, for their selectivity and risk assessment. In standardizing the process, ITDS reduces the confusion and complexity of international trade, and speeds the processing of goods, equipment and crews across our borders. ITDS also benefits the government by providing more current and accurate information for revenue, public health, statistical analyses, safety and security activities, as well as significantly reducing data processing development and maintenance costs.

The development and implementation of the ACE/ITDS is an essential component in accelerating the flow of commerce while also improving the ability of CBP to analyze and target data entries.

The trucking industry encourages the U.S. government, in cooperation with both Canada and Mexico, to improve and to facilitate the capture and exchange of information on goods and people crossing our land borders. A large portion of the U.S. international trade and immigration transactions generated every day occur from transactions along our land borders. ATA recommends that the U.S. government move forward with an aggressive timeline in implementing both the *Smart Border Accord* between the U.S. and Canada, and the *22 Point Plan* between the U.S. and Mexico, as well as implementing the recommendations established under the North American Security and Prosperity Partnership.

## **Conclusion**

The trucking industry believes that through NII technologies, C-TPAT, ACE and industry initiatives, cross-border operations and the international supply chain are becoming increasingly secure. C-TPAT and FAST have created an excellent working relationship between industry and government to jointly confront these challenges, but closer cooperation and understanding between industry and government can yield an even higher degree of security at our borders.

In summary, ATA raises the following issues for attention by this Committee so we can continue to increase the security and efficiency benefits of cross-border operations:

- ATA encourages this Committee to work with other relevant Congressional Committees to analyze funding to improve border facilities and infrastructure. This is essential in ensuring a smooth flow of legitimate travelers and commerce across our borders while ensuring our national security.
  - Border infrastructure planning must incorporate the development of access roads and lanes at our ports of entry that are reserved solely for “low risk” and “trusted-travelers” programs, such as FAST.
  - Such an analysis should consider an appropriate level and mix of technology, equipment and personnel to maximize the capabilities of border facilities.
- CBP must establish clear, reasonable and manageable procedures for suspending motor carriers from C-TPAT and recognize the difference between “single” security incidents and “systemic” security problems.
- CBP/DHS must take a leading role among federal agencies in managing systems and processes at our ports of entry, especially with agencies outside of the DHS chain of command. Though other federal agencies not within DHS have statutory mandates requiring them to implement procedures for clearing certain goods entering at U.S. ports of arrival (for example FDA’s implementation of the prior import notice requirements under the Bioterrorism Act), these agencies should be required to coordinate and work closely with CBP on the ACE/ITDS system.

ATA and motor carriers throughout North America are committed to partnering with government and other sectors of our economy to improve and ensure our country’s national and economic security.