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**U.S. Senate Committee on Homeland Security and Governmental Affairs
Permanent Subcommittee on Investigations
“The Container Security Initiative and the Customs-Trade Partnership Against
Terrorism: Securing the Global Supply Chain or Trojan Horse?”**

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INTRODUCTION

Chairman Collins, Chairman Coleman, Ranking Member Lieberman, and Ranking Member Levin, thank you for the opportunity to return to your committee to discuss critical issues related to supply chain security. I am currently a principal at the consulting firm Mehlman Vogel Castagnetti, Inc. I also serve as an Adjunct Fellow at the Center for Strategic & International Studies, although the views in this testimony are my own and do not represent CSIS which does not take policy positions.

As you know, following action by this Committee and confirmation by the Senate in 2003, I served as Assistant Secretary for Border and Transportation Security Policy and Planning until my resignation from the Department of Homeland Security in March of this year. In this capacity, I was responsible for policy development within the Border and Transportation Security Directorate, reporting to Under Secretary Asa Hutchinson and Secretary Tom Ridge. BTS was created to coordinate policy development and operational activities in the fields of immigration and visas, transportation security, law enforcement, and cargo security which were largely carried out in the field by BTS agencies – U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, and the Transportation Security Administration.

Before discussing the specific topics which are the subject of this important hearing, I would be remiss if I did not thank this Committee for its extremely important efforts to support DHS during my tenure at the Department. Among other accomplishments in this regard were last year’s intelligence reform bill enacted last year, which included significant sections on border security and transportation security in addition to the intelligence provisions; the partial realignment of oversight of DHS within the Senate; and the day-to-day oversight of our activities which helped focus our priorities and responsiveness to the American people.

As a last introductory point, to the extent that legitimate analysis finds fault with the cargo security measures implemented by DHS over the past two years, I accept a large measure of responsibility for those shortcomings. I am proud of the efforts the first leadership of the Department under Secretary Tom Ridge. I strongly believe our initiatives have reduced the vulnerability of our country to terrorist attacks, including

attacks related to international shipping, but I also recognize that the country is still at the front end of a lengthy effort to craft policies and develop operational capabilities before we might be able to declare victory in this fight.

BACKGROUND

Today's hearing addresses the effectiveness of two of the major programs deployed by DHS to secure our international supply chain and global trade. This steady march of cargo containers and other types of international trade is the vehicle that drives our economy and provides for our prosperity. Poorly devised security programs would be the equivalent of driving this well-oiled-vehicle with the parking brake on: the damage to our way of life could be as great as any plot contrived by Osama bin Laden and his sympathizers. However, the massive scale and complexity of the processes which brings goods and materials from around the world to our tables, shelves, plants, and offices also represents an enormous vulnerability for the importation of terrorists or terrorist weapons.

People often ask me if we are safe and my answer is usually that we are safer but we are not safe. Since September 11th, we have reengineered our economy, our law enforcement focus, our intelligence system, and international travel practices, and have produced tremendous results in the war on terrorism.

Under the leadership of Commissioner Robert Bonner, the former U.S. Customs Service and current U.S. Customs and Border Protection have designed and implemented a series of innovative programs to secure international trade. While we should always strive to improve these initiatives, no discussion of this issue would be complete without recognizing the tremendous achievements to date: dozens of foreign ports allowing our inspectors to "push the borders out"; extensive information being submitted for review on each shipment, thousands of companies stepping up to the plate with aggressive and thorough security programs; the stand-up of the National Targeting Center; agreement with the European Union to develop common technical standards and inspection regimes; and leadership in world standard setting bodies in building a global consensus for supply chain security.

Thus, I strongly disagree with any analysis that argues that we are somehow worse off with the Container Security Initiative, the Customs-Trade Partnership Against Terrorism, and related programs in place than we would be without them. Minor program flaws due to budget needs, operational or technology limitations, or necessary integration with other initiatives should not obscure the massive contribution to our security that these programs have delivered.

However, if you look at some of the other major homeland security issues facing the government, we have implemented soup-to-nuts overhauls in many areas: intelligence, visa policy, entry-exit systems, aviation security, and information-sharing. But we really have not done so with supply chain security. The programs that CBP, the Coast Guard, and other agencies have implemented are surely part of a plan, but they are not a strategy by themselves. We need to determine what our desired end-state is. What do we want

the cargo environment to look like over the next three to five years? How can we get from here to there? As Will Rogers said, “Even if you’re on the right track, you’ll get run over if you just sit there.”

Before turning to the specific programs that are the subject of today’s hearing, this overall framework into which they fit must be discussed. Throughout the past year, my former office developed a draft cargo security strategic framework distributed at the DHS Cargo Summit in December of 2004. This effort was led by now-Acting Assistant Secretary Elaine Dezenski, working with CBP, TSA, the Coast Guard, and our Science and Technology Directorate, and directed by former Deputy Secretary Jim Loy and former Under Secretary Hutchinson. Following comments from a wide range of stakeholders and analysis by the Homeland Security Institute, a comprehensive national strategy for cargo security is now in final development as part of the Secretary’s “Second Stage Review” of DHS organizational structures and policy priorities.

First and foremost in the strategy, we must adopt a zero tolerance policy towards the arrival of weapons of mass destruction at our borders, beginning with radiological and nuclear threats. CBP is already in the processes of deploying equipment to detect radiation at U.S. ports, but we must address a number of lingering questions: Can the reliability and sensitivity of these systems be improved? Can we minimize the amount of cargo that arrives at U.S. ports without having been screened for WMD? And most importantly, is our current balance of resources and programmatic priorities properly structured to achieve this objective? The recent announcement by the S&T Directorate seeking next generation detection devices is a positive step toward making sure we are seeking and deploying the best possible equipment in the area. The development of the proposed Domestic Nuclear Detection Office also represents an opportunity to steer resources and attention to this most urgent priority.

Second, while the admissibility decision will always be one of DHS’s most powerful authorities, we must be able to make more informed decisions. This will require more information from segments of the supply chain we do not currently have visibility into.

The U.S. Coast Guard is working with its sister agencies in DHS and throughout the federal government to develop a system for Maritime Domain Awareness. Through this effort, the Coast Guard will deploy a capability to track vessels in our ports and coastal approaches, providing DHS with additional knowledge about ships that are carrying the cargo we are investing so much in to secure. Much of this work is being carried out under the rubric of Homeland Security Presidential Directive 13 issued by the President last December.

Third, DHS is also committed to improving our awareness of individual shipments through the application of secure stuffing procedures and in-transit intrusion detection. The best evidence that something is awry with an international shipment is physical evidence of tampering. DHS has no such awareness today. As a short-term solution, DHS will soon mandate the use of high security mechanical seals on all loaded, in-bound containers. Via Operation Safe Commerce and the Advanced Container Security Device

program, DHS plans to bring to market vastly improved capabilities over the next five years.

This growth will require effective tools for processing information. The rapid build-out of the Automated Commercial Environment (ACE) platform for targeting and selectivity across modes is a top priority for DHS. The Administration and Congress should support ACE as the single portal for trade data submitted to DHS and the root analytical capability for all cargo and trade related targeting. This approach will eliminate redundancies, promote consistency in the operational environment, and simplify interfaces with DHS. This tenant of the framework clearly exemplifies the dual mission of security and facilitation.

CSI AND C-TPAT

Turning to the specific programs reviewed by GAO, GAO's critiques of the programs appear to be accurate generally, an assessment that DHS and CBP appear to share. I normally found GAO's review of DHS initiatives to provide constructive analysis and view these reports in a similar fashion.

In terms of CSI, I completely agree with the GAO suggestion that CBP and DHS redouble efforts to ensure that sufficient personnel are assigned overseas to conduct targeting operations. Obtaining approvals, funding, and space to assign DHS personnel overseas has proved to be a difficult problem, not only in the CSI context, but also for the Visa Security Program authorized by the Homeland Security Act. However, to the extent that certain targeting operations can be conducted in the United States at the National Targeting Center, as opposed to overseas, personnel overseas should be encouraged to spend that extra time developing relationships with local law enforcement and customs officials to develop more leads than can make that targeting all the more valuable. Further, for CSI teams which include special agents from Immigration and Customs Enforcement, if freed up from conducting targeting operations, these agents should be able to provide valuable assistance to other DHS missions in the host country beyond cargo security. It is also important that CSI team members, to the greatest extent possible, be stationed for as long as a term as possible to minimize personnel rollover that hinders development of the personal relationships with host country customs and law enforcement officials that are the most likely mechanism for developing leads and targeting concepts.

In terms of C-TPAT, the effectiveness of CBP in attracting companies to apply has changed the overall dynamic of the program. In addressing a key priority of Under Secretary Hutchinson and myself, CBP has committed to hiring a significant number of new validators to ensure that promises made are being implemented. But as GAO points out, the total number of members who have been validated is still just a small fraction of the overall members, or even those whose paperwork has been certified to be in order. It clearly should be a priority for CBP to continue to increase the number of validators and to vastly increase the percentage of enrollees who have received a robust validation. Part of the solution may be to slow down recruitment of new C-TPAT members.

However, for the many thousands of companies, especially importers, who have enrolled and are awaiting validation, the question remains how their shipments should be handled. I understand that CBP has recently introduced a tiered system to provide some, but not full, benefits for such companies as their cargo is being evaluated by CBP's Automated Targeting System. This strikes me as a reasonable risk assessment to prioritize inspection activities on those about whose security practices we know very little, but to withhold full facilitation benefits pending validation.

It is worth noting that many of the critiques of C-TPAT in the GAO report have been highlighted in the Maritime Transportation Security subcommittee of the Commercial Operations Advisory Committee (COAC) which Under Secretary Hutchinson and I chaired at DHS. This subcommittee provided valuable feedback to DHS, BTS, and CBP as to proposed improvements in C-TPAT.

In addition, C-TPAT has undergone significant strengthening since the underlying work in this GAO report was concluded. In March of this year, following extensive vetting with the trade and within DHS and BTS, CBP announced new guidelines for existing and future C-TPAT members. New requirements for hardening of physical security requirements, internal security requirements, and business partner security requirements will represent, when implemented in phases, a major leap forward in the effectiveness of C-TPAT.

How to measure that effectiveness continues to present a major challenge for DHS. CBP has struggled with appropriate performance measures that would capture the value of C-TPAT to security and the benefit to enrolled partners. While the sheer numbers of participating companies and percentage of cargo that arrives under the framework of CSI and/or C-TPAT are useful statistics, they probably do not actually capture the deterrence value of the programs, nor the value they represent in detecting the needles in the cargo haystack. It is perhaps unremarkable that such performance measures have been elusive as the government has struggled to quantify the effectiveness of similar programs designed to fight crime or interdict drugs. As DHS improves its ability to conduct strategic planning, the department should continue to strive for such performance measures, with the understanding that no perfect analytical system is likely to emerge.

Lastly, I believe that DHS and the Congress should begin to review whether C-TPAT should be transformed into a more typical regulatory framework. As the guidelines become more and more a de facto industry standard and place more and more demands on the trade, converting C-TPAT into a series of regulations that apply to all relevant players in the supply chain might provide more transparency into our public policy making and build more public confidence in those policies. The process by which DHS and CBP have developed and imposed C-TPAT guidelines is an unusual one, especially when compared to the massive legal framework of statutes and regulations that undergird CBP's other mission to implement our nation's immigration laws.

POLICY-MAKING AT DHS

This committee which holds jurisdiction over the organizational structure of DHS should take careful note that neither of the GAO reports discussed today even mention the existence of the Border and Transportation Security Directorate or any other segment of DHS which has a role in crafting department-wide policy. I have little doubt that if follow-up reports are conducted within the next year, DHS will have established a robust policy and planning office that will be the heart of long term strategic thinking about issues like supply chain security. The current structure of DHS has only a small and non-publicized policy arm reporting to the Secretary, although it was staffed by many excellent public servants. My former policy office situated in BTS has more staff, visibility and official responsibilities but lacked authority to force coordination between BTS agencies and other parts of the department such as the Coast Guard and the Science and Technology Directorate. And very little policy development has been incorporated into long-term budgeting or strategic planning.

The obvious solution to this shortcoming is a robust policy and planning office operating under expansive authority of the Secretary to resolve disputes between parts of the department, to identify departmental budget and policy priorities, and to integrate interaction with foreign governments and international organizations into policy development. Many commentators have associated this concept with the “DHS 2.0” paper authored by the Heritage Foundation and CSIS in 2004, but for those of us who labored under difficult resource and structural limitations after the creation of DHS, this office was a “no-brainer” from the start. I believe I speak for the entire former leadership team – including Secretary Ridge and Deputy Secretary Loy – in this regard and am extremely confident that this new office will emerge soon from Secretary Chertoff’s “Second Stage Review” underway to develop improved structures and clear priorities for DHS.

CONCLUSION

The title of today’s hearing attempts to portray the work-to-date by DHS to secure supply chain security as a choice between complete success and failure. In reality, that work will always be a work in progress. Working under a strategic plan, each new programmatic decision, deployment of each piece of advanced technology, each commitment by a private sector entity, and each hard day of work by our nation’s front-line inspectors, investigators, and analysts is a brick in the wall of security that is being constructed.

I congratulate the Committee and Subcommittee for its continued cooperation with and oversight of DHS and its component agencies. I thank you for the opportunity to appear before you today and look forward to your questions.