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Changes Along the Border



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Preparing for a new customs brokers' role at the U.S.-Mexican border

Editor's Note: In Part One of this exclusive two-part series, we discussed the efforts to clear up inconsistencies in the law regarding freight moving from Mexico into the United States. In this section, our authors will delve into the traditional role of the customs broker at the U.S.-Mexican border and how it is changing. To read Part One, please visit www.sdexec.com

Simply put, customs brokerage is a profession that involves the clearing of goods through customs barriers for importers and exporters. Customs brokers are private individuals, partnerships, associations or corporations licensed, regulated and empowered by U.S. Customs and Border Protection (CBP) to assist importers and exporters in meeting Federal requirements governing imports and exports. Brokers submit necessary information and appropriate payments to CBP on behalf of their clients and charge them a fee for this service. This includes:

- The Harmonized Tariff Schedule of the United States (HTSUS)
- Title 19, Code of Federal Regulations
- Specified Customs Directives
- Customs and Trade Automated Interface Requirements document (CATAIR)[1]

Brokers must have expertise in the entry procedures, admissibility requirements, classification, valuation, and the rates of duty and applicable taxes and fees for imported

merchandise. They are and have been essential to U.S. importers and, when functioning as a freight forwarder, also essential to U.S. exporters. But is change in the wind that may drastically change the role of the U.S. Customs brokers? We think so, especially on the border.

U.S. and Mexican Custom Brokers

Basically, all commercial motor carrier and rail crossings into and out of Mexico are in the hands of Mexican Customs brokers, a cartel of business enterprises that influences costs, speed of movement, integrity of the cargo and ultimately the security of our border as it relates to commercial crossings. To export goods from the U.S. into Mexico, Mexican regulations requires that the Mexican inward manifest (*Relacion de Entrada*) be submitted at the time of entry and have the relevant commercial invoice attached. This *Relacion de Entrada* and another entry summary document (*Pedimento de Importacion*) must be prepared and processed by a licensed Mexican Customs broker (*Agente Aduana*). This process involves a series of functions including appraisal, classification, inspection, inventory, and others. However, these take place on the United States side of the border. Mexico allows only Mexican citizens who were born in Mexico to be licensed customs brokers. U.S. Customs brokers and freight forwarders who are citizens of the United States are not allowed to perform these services although they must be performed in the United States. They may not forward freight to Mexico in their own names, even though the work is performed in U.S. territory.

American citizens also are not allowed to forward freight from Mexico to the United States. The exact reason for the requirement that a Mexican Customs broker is required to arrange to forward exports to Mexico is unclear. There seems to be something of a conspiracy of silence from the parties benefiting from the present scheme. Only Mexican citizens can facilitate cargo crossing into Mexico by land. (Air and vessel carriage are not controlled in the same fashion.) Therefore the U.S. customs broker's role is one of working for the U.S. importer's in-bound cargo into the United States.

This system has prevented the U.S. broker from forwarding freight into Mexico. This current Mexican-controlled process provides about 75 percent of the cross-border revenue to the Mexican broker, leaving the U.S. customs broker with only 25 percent of the market. But changes are coming. Mexico's official Federal Gazette, the *Diario Oficial de la Federacion*, published the Dec. 9, 2013, decree to amend current Mexican customs law. The impact of these amendments and changes will have a profound impact on current business practices on the border to include just about every stakeholder involved in a cross-border movement of international cargo with the most significant aspect being the elimination of the requirement to use a Mexican customs broker. The following are some of the other pertinent changes.

Customs Clearance

- Customs clearance of goods may be carried out at a different location other than the locations currently authorized.

- Importers and exporters will be able to carry out customs clearance of goods directly through an appointed and authorized legal representative, without the mandatory intervention of a customs broker.
- The concept of “legal representative” is created, while the concept of “customs agent or *apoderado aduanal*” is eliminated.
- Minimum requirements to perform as a “legal representative” of any given importer or exporter are included in the amendments. A legal representative shall be: a) a natural person of Mexican nationality, b) knowledgeable in foreign trade matters, c) in compliance with its tax obligations, and d) is an employee or has a work relationship with said importer or exporter.
- Pre-validating services, which were previously provided only by customs agents’ confederations and associations, can now be provided by other interested third parties.
- Deadlines for the bonded warehouses to deliver seized goods under their custody to Mexican customs, which have become property of the Federal Government, were increased from 3 to 10 days. The rules applicable to deem a good as “lost” were also amended. The goods will first be deemed as “missing” after five days (formerly three days) from the authorities request for their delivery and will be finally consider “lost” after 30 days from being deemed as “missing.”

Strategic Bonded Warehouses

- The customs authorities will be able to authorize strategic bonded warehouses throughout the country, even if they are not located inside or neighboring the customhouse or port.

Electronic Customs Clearance System

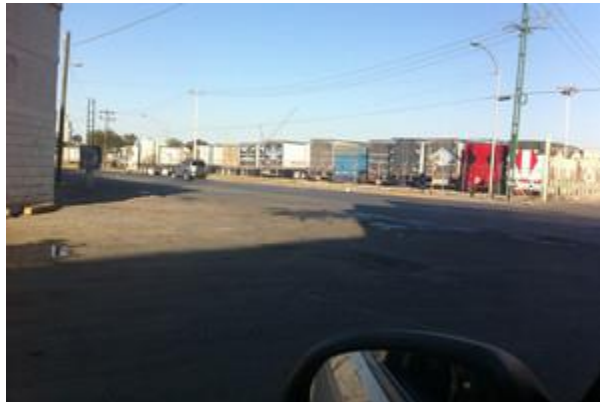
- Provisions are created to support the electronic customs clearance system, which will simplify and automate customs clearance of goods.
- Legal support is given to the electronic platform implemented by the government mid last year (VUCEM), including provisions related with the electronic value declaration of the goods (COVE).
- Electronic documents shall have full legal effect and shall be kept on electronic files unless it refers to documents relating to foreign trade operations, which shall be kept in the format in which they were issued or obtained.
- Foreign trade and customs audits will be performed considering the electronic file, however, when the customs authorities deems it necessary they may request physical documentation that the taxpayers is anyhow required to keep.

Notices related to procedures and applications submitted by means of the electronic customs clearance system will be served electronically. The system will generate an acknowledgment of receipt of the notice with the date and time it was opened in the system’s mailbox. After five days, if the mailbox is not opened, the notice will be considered served on the system’s notice board. Importers and exporters may authorize a maximum of five people to receive notices.

Responsibility

The “legal representative” of the importers and exporters that will carry out customs clearance of goods directly will be jointly liable for customs duties.

Clearly, this is a profound reversal of past practices, and it portends faster, cheaper, and more secure moves of cross-border cargo. And, though probably unintended, it will have the effect of reducing drayage or transfer services from one side of the border to the other. That means the risks imposed by having to drop southbound cargo at U.S. freight forwarders’ or customs brokers’ facilities can be eliminated. This “dropping off of the trailer” not only allows the “appraisal, classification, inspection, etc., function but allows access to the trailer for surreptitious practices of adding to, reducing, or changing cargo. It will also improve security on the Mexican side of the border by eliminating the use of *pensiones* or drop lots where northbound containers or trailers are placed until the Mexican customs broker releases them for movement into the United States. These *pensiones* are and have been historical locations for cargo access and manipulation.



A drop-lot in Mexico where trucks are lined up awaiting broker approval.

Benefits and Impacts

There are many stakeholders, including exporters, importers, supply chain security technology manufacturers and vendors and even the border cities themselves although some may not benefit immediately. The following are examples of impacts of the potential consequences of this historic change:

Benefits to Importers and Exporters

1. A qualified U.S. shipper can ship to itself in Mexico without the use of a Mexican exclusive customs agent or freight forwarder;
2. The Mexican importer or consignee can become his own responsible custom agent;
3. U.S. cargo to Mexico will no longer have to stop on the U.S. of the border and wait for release by a Mexican customs broker;

4. Electronic transfer of import data will facilitate speed, audits, and third-party server evidence;
5. There will be fewer costs involved in cross-border drayage;
6. There will be an increased use of bonded warehouses limiting payment of duties until the cargo enters the nation's commerce; and
7. The use of Incoterms 2010 [3] will be facilitated by reducing the selection of rules involving the costs and risks involved in the delivery of goods from sellers to buyers.

Negative Impacts on Mexican Customs Brokers

1. There will be an overall decrease in Mexican customs brokers' cross-border customs' business opportunities negatively impacting Mexican brokers business;
2. Mexican customs brokers will lose revenue through the loss and downsizing of the drayage they control and the drayage companies they own; and
3. Mexican customs brokers will lose the absolute control of their cross-border business practices, potentially reducing their revenue by at least 50 percent.

Benefits to Motor Carriers

1. There will a renewed interest in using qualified Mexican and U.S. motor carriers for origin to destination movements of cargo into and out of the territory of Mexico and the United States;
2. Depending on drayage levels, there should be a concomitant reduction in waiting times by virtue of reduced transfer traffic and resulting lines at crossing points;
3. Increased production and tractor utilization created by the elimination of pensions allowing the carriers to move to their border facility for equipment inspection and document preparation;
4. Increased revenue due to the reduction of third party drayage controlled by Mexican brokers;
5. Motor carriers may choose to provide cross border services previously provided by the Mexican customs broker at a reduced rate; and
6. There will be reduced delays caused by fewer drayage trucks being ticketed or placed out of service for failing to meet DOT safety standards.

Benefits to Container Security Providers

1. There will be an increased need for the use of current technologies which provide a chain-of-custody process to certify the identity and quantity of the cargo from origin to destination;
2. There will be a need to specifically identify the person verifying cargo at origin and at destination necessary to meet the responsible "legal representative" of the exporter and importer;
3. U.S. customs brokers involved in forwarding freight into Mexico will have to use chain-of-custody technology to verify cargo forwarded by them into Mexico;

4. U.S. customs brokers will have to require the use of chain-of-custody technology by Mexican shippers of cargo to the United States when the U.S. customs broker still handles the imported cargo for this customer; and
5. There will be an opportunity to expand the “single window” concept of funneling multiple data elements into a single portal for Customs acquisition and usage.

Potential Impact on U.S. Customs Brokers and Border Port Cities

1. There will be a decrease in truck traffic within border port-of-entry cities;
2. There will be a concomitant decrease in negative environmental impact produced by truck traffic volume;
3. By virtue of decreased drayage and bobtail (tractors without trailers) making border crossings, there will be a reduced need for truck inspections by the State Departments of Transportation;
4. There will be fewer applications to the U.S. Department of Transportation for operating authority;
5. There will be less need for warehousing, especially in cities like Laredo where its economy is based on international trade and warehousing;
6. There will be an increased opportunity for southbound forwarding and handling of cargo into Mexico by U.S. customs brokers as opposed to the current Mexican customs broker dominance; and
7. There will be a readjustment and movement of certain international cross-border trade activities which cannot be determined or defined and this time affecting U.S. Customs brokers and their border cities.

Benefits to Border Port Cities

1. Given the new ability to by-pass the Mexican Customs broker, there should eventually be more direct origin to destination motor carrier traffic reducing the drayage traffic issue within border port-of-entry cities;
2. There will be a concomitant decrease in negative environmental impact produced by truck traffic volume in general, but particularly by inferior transfer trucks which don't meet DOT standards and are put out of service to be towed back to their origin point on the U.S. side;
3. By virtue of decreased drayage and bobtail (tractors without trailers) making border crossings, there will be a better qualified tractor, driver, and improved motor carrier and traffic safety;
4. There will be faster truck inspections and perhaps, depending upon the degree of change, a reduced need for truck inspections by the State Departments of Transportation;
5. There will be an increased use of equipment belonging to long-haul Mexican motor carriers which is in greater compliance with U.S. Department of Transportation guide lines improving motor carrier efficiencies; and
6. There will be fewer applications to the U.S. Department of Transportation for operating authority.

Conclusion

We think it is imperative that we all understand that the new regulations will have a dramatic impact on the border and the way large entities do business. It is probable that smaller importers and exporters will continue to use current methods of clearing goods across the U.S.-Mexican border. Goods still will need to be classified; electronic documents will still need to be processed; and it may be more fiscally responsible to continue to use a third-party to provide these services. We do not expect to see the border operations change overnight. The volume of cargo crossing now will continue. Custody of goods will still be transferred from a Mexican motor carrier to a U.S. motor carrier and vice versa. What we should expect to see is a more expedient border crossing process as large importers and exporters will move expeditiously to clear their goods from one side of the border to another. A third party “the Mexican Broker” will no longer be able to impose unnecessary delays in the supply chain to meet its own control and revenue-generating agenda.

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