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## customs update: anti-terror measures trumping trade

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*MSK Client Alert*

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The General Accountability Office in March issued a startling report describing how undercover government investigators used fake documents to enter the United States with enough radioactive material to make two dirty bombs.

The report, prepared for the Senate Permanent Subcommittee on Investigations, described two breaches of security at the northern and southern borders despite detection by Customs and Border Protection's radiation portal monitors and inspections that were conducted according to protocol.

In response to the report, a senior subcommittee staffer was quoted as saying "It's just an indictment of the system that it's easier to get radiological material than it is to get cold medicine."

While a simplistic but catchy comment, it hardly does the situation justice. Customs has given radiation detection equipment to most, if not all, of its inspectors. However, there is no centralized database yet in existence which can validate the accompanying Nuclear Regulatory Agency documentation. It is irresponsible to insist that Customs personnel now also become experts at forgery, especially since such determinations often requires sophisticated equipment and extensive special training.

The report was issued at the same time as two others, "Combating Nuclear Smuggling -- Challenges Facing U.S. Efforts to Deploy Radiation Detection Equipment in Other Countries and in the United States," and "Combating Nuclear Smuggling -- DHS Has Made Progress Deploying Radiation Detection Equipment at U.S. Ports-of-Entry, but Concerns Remain." The former chastises the State Department for failing to have adequate accountability regarding the equipment and its uses. The latter report points out what are perceived to be the shortcomings of anti-smuggling efforts by the Department of Homeland Security.

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The first report also said that in the case of the nuclear-smuggling event, technical limitations of radiation-detection equipment, a lack of supporting infrastructure at many border crossings, and corruption of some foreign government officials hinder efforts to combat possible acts of terror.

After their successes, the GAO briefed both Customs and the NRC. The latter took exception saying that it did not consider the amount of radioactive material involved to be sufficiently large to trigger its "concern threshold." Nonetheless, the NRC and Customs are working on ways to more easily detect counterfeit documents. Jayson Ahern, Customs' assistant commissioner for field operations, has indicated an expectation a protocol to deal with the validity of NRC documents would be in place shortly.

For anyone who has crossed the border, whether by land, sea or air, what was particularly striking about the smuggling incident is that the GAO's undercover agents made at least incomplete statements to inspectors but suffered no consequences. In one instance, the agents are reported to have first said they had nothing to declare. When they were asked to open the trunk of their vehicle, they said they had specialized equipment being returned to the U.S. from Mexico. In a third statement, they said the equipment contained some radioactive material. From the way the GAO report reads, one could conclude that each time the inspector asked for information, additional facts were provided, but what is striking is how often such activity leads to seizure of goods and vehicles for making false declarations and did not in this case. It makes one admire the overall quality of the play-acting by the undercover GAO agents.

The lesson here is that Customs will continue to be in the headlines in ways that will result in Congress putting more and more demands on the agency, without necessarily providing any more funding. It also suggests the ongoing likelihood that staffing increases will take the form of inspectors and not the commercial operations personnel all of us in the trade community so desperately hope to see.

Any question about the direction of events can be seen in the current efforts of Congress to make the Customs-Trade Partnership Against Terrorism (C-TPAT) mandatory. There is also the looming threat of the introduction of an amendment to require physical inspection of all cargo traveling on passenger planes as part of the debate on Capitol Hill surrounding HR 5441, the DHS funding bill for fiscal 2007. Such a proposal is no doubt well-intended but totally unrealistic in terms of allowing the rapid movement of legitimate/compliant cargo, never mind the extravagant costs and delays which would result, thereby further seriously eroding the ability of the airlines to operate in a solid economic climate.

It leads one to wonder -- what is next?