

TESTIMONY OF

**MICHAEL C. MULLEN
EXECUTIVE DIRECTOR
EXPRESS ASSOCIATION OF AMERICA**

**COMMITTEE ON HOMELAND SECURITY
SUBCOMMITTEE ON TRANSPORTATION SECURITY
UNITED STATES HOUSE OF REPRESENTATIVES**

**HEARING ON:
TSA'S EFFORTS TO ADVANCE RISK-BASED SECURITY:
STAKEHOLDERS' PERSPECTIVES**

April 11, 2013

I. Progress of the Air Cargo Advance Screening (ACAS) Pilot Project

As I have testified to this committee before, the Express Association of America – which includes DHL, FedEx, TNT, and UPS – has led the partnership with the U.S. government (both U.S. Customs and Border Protection (CBP) and the Transportation Security Administration (TSA)) in the development of ACAS. Over the past three years, this pilot has expanded significantly both in terms of countries covered and industry participants. Today, over 70 million shipments have been analyzed through the pilot. Less than 6000, or less than .1 percent, of these shipments have required additional screening to verify the contents. No shipments have been identified as a threat to the aircraft or required a “do not load” response.

Several additional participants have joined the project. In addition to the four integrated express delivery companies which began the project, 5 passenger carriers and 3 freight forwarders are operational participants in the ACAS pilot. Twenty additional companies are in various stages of testing in anticipation of joining ACAS.

A high level of very productive cooperation among TSA, CBP and the private sector continues to be a hallmark of the ACAS project. Frequent meetings are held among these three parties to discuss both policy and technical issues. We have conducted realistic table top exercises to explore the operational procedures in place to respond to “do not load” scenarios that have tested the communication and information dissemination paths that would be used in the event of a real world incident. The lessons being learned from the pilot, addressed below, are the basis for continually expanding our mutual understanding of optimizing the air cargo security environment of the future and are pointing the way forward to a regulatory approach that will meet the needs of both the Government and industry. The process of “co-creation” that worked so effectively in establishing the ACAS pilot will also be used for drafting the regulation, and the private sector will be fully engaged in this effort.

But one issue has come up that threatens to derail the progress made under ACAS. One of the keys to the success of ACAS to date has been the Government’s willingness to accept the information on a shipment basis, separated from the data on the conveyance that will bring the shipment to the United States. This separation allows ACAS participants to send the data far in advance and allows the Government to complete the risk assessment early in the supply chain,

often before the shipment is loaded on a plane. Recently CBP has been indicating that when ACAS is regulated, they will require the shipment data (house airway bills) to be linked to the conveyance data (master airway bill), which would represent a real step backwards. The problems with this approach are explained in more detail below. The express industry strongly opposes this step and hopes CBP can continue to maintain the flexibility that allows ACAS to accommodate various business models within the air cargo industry.

II. Lessons Learned

The ACAS pilot has demonstrated that a close partnership with industry and across government agency jurisdictions in development and execution of new security measures can improve the safety and security of global networks while minimizing negative operational and economic impacts. Several key lessons have been learned during the pilot, and any rulemaking effort to formalize ACAS through regulation should consider the following:

- **Industry and Government Working Together As Partners:** Seeking industry input before proposed rulemakings are drafted allows for broader operational impacts to be considered in order to improve effectiveness. The absence of penalties during the ACAS pilot phase reduced “threshold anxiety” as a barrier to participation. Penalties should only be imposed in cases of gross negligence or willful circumvention of the rules, and not for the timeliness or accuracy of information (for reasons outlined immediately below).
- **Limited Data Can Be Used Effectively To Target Risk:** Separation of shipment and transport data was a necessary precondition to providing information earlier in the supply chain. The limited information on the shipment transmitted for ACAS is available much earlier than other data required for customs clearance, and “risk based targeting” against this limited data set has proven effective to provide a risk assessment sufficient to qualify a shipment as “trusted”. Further, the threat is posed by the shipment itself, not the route that a package takes. To date, targeting has been successfully done on the house bill data associated with the shipment. Mandating transport data such as the master airway bill (MAWB) routings or flight numbers, full Automated Manifests System (AMS) manifests, Harmonized Tariff System (HTS) numbers or any other commercial data as part of the advanced security filing not only fails to significantly improve targeting, but would also challenge the operational feasibility to provide data in a timely manner. Therefore, any decision to require the MAWB to be linked to the house bill data in advance of the departure of an aircraft poses a significant burden on the pilot – especially where the origin of the shipment is in the same country as the “last departure” airport for a flight bound for the U.S. – and could threaten the success of ACAS. Further, data provided for ACAS can be “raw data” where typographical or other clerical errors do not substantially affect the targeting capabilities.
- **ACAS Analysis Is Limited To Security:** While it is tempting to use advanced data for other purposes, the success of ACAS has been in part driven by the common goal to prevent a bomb from entering the network. This singular focus of utilizing air cargo advanced data for security risk assessment remains the top priority among private and public sector participants. Regulatory risk assessment to interdict IPR violations, illegal drugs or other

controlled substance trafficking, or other trade functions can and should be the focus of CBP officers upon arrival in the US. Any attempt to expand the ACAS scope to achieve the simultaneous completion of both security and regulatory risk assessments pre-departure would undermine achieving the primary goal of protecting the supply chain against terrorist attacks.

- **Flexibility Is Critical For Effectiveness:**

- ***IT Systems.*** ACAS has demonstrated that data can be transmitted via multiple types of IT systems and in various formats. This flexibility in the interface reduces the barrier to participation and avoids unnecessary costs and time delays associated with updating a company's IT system. Furthermore, the flexibility reduces the risk of competitive disadvantages arising from existing differences in the functionality and capacity of corporate IT systems. The final IT filing system developed for ACAS must remain flexible. It should continue to accommodate multiple data submission formats and provide for the return messaging options required by some business models of the entities utilizing the system.
- ***Operational Requirements for Different Business Models:*** The air cargo industry is not one-size-fits-all; the regulations and programs should not be either. Challenges and opportunities differ between business models, and the system can be flexible regarding who transmits the data and when. While the jointly held overriding goal is to intercept a high-risk shipment as early as possible, data can be transmitted by multiple partners, depending on who may be in possession of the shipment data. No specific time limit is necessary, as long as data can be transmitted in raw form as soon as available. Further, the government targeters have the ability to prioritize shipment reviews based on the urgency/timeliness of the shipment itself, thereby helping to address concerns for last-minute shipments in the just-in-time supply chain.

- **Information Sharing Remains Key:** The private sector is providing shipment level data to the government. At the same time, any government held intelligence of concern regarding a specific shipment must be shared with the private sector ACAS participants when appropriate. Information sharing should include:

- For a shipment that rises to the level of a DNL, the carrier in possession of the shipment must be given all information to quickly identify and isolate both that shipment and others in the network that may be similar.
- Other ACAS participants must also be made privy to the full information – for them to identify and isolate similar high-risk shipments.
- Finally, a secure means to provide broader threat information to the appropriately selected security staff within the ACAS carrier is needed. It would improve internal risk targeting prior to a shipment ever entering the network.

- **The Air Cargo Network Is Highly Secure:** Air cargo operators are highly motivated to ensure their systems are not targeted by a terrorist weapon and have made major investments in creating a secure aviation network based on multiple layers both from government regulations and additional corporate security measures. Of the millions of shipments screened through ACAS over a period of more than two years, less than one-half of one percent has required additional measures to verify the contents, and no terrorist threats have been detected. This indicates that existing measures are working effectively to deter attempts to exploit the network for terrorist purposes. Before any new regulations are proposed to improve the security of what is already a very secure air cargo system, government agencies should consider the operational impacts and weigh those against the marginal increase in security. This is the backbone of “Risk-Based Security.”
- **International Harmonization Critical For Long Term Effectiveness:** Most of the industry partners involved in the ACAS pilot are operating on a global scale. There are several initiatives similar to ACAS being planned in multiple countries, and preliminary pilots were conducted between the express carriers and four European countries last year. It is vital that the U.S. Government seek early alignment with international organizations and other partners/countries to develop internationally-recognized standards, procedures and processes for advanced shipment data provision to minimize the level of variability of systems and requirements and avoid duplication of data submission and security risk assessment where possible. The goal should be to develop a common global solution that recognizes and supports the different air cargo business models and to achieve mutual recognition of security programs and risk assessment results. The global solution should harmonize data requirements and eliminate duplication by ensuring shipment data is only submitted to one country for a single security risk assessment that is accepted by the other countries involved in that movement. This will allow international trade partners to share information globally and quickly, both reducing unnecessary cost and complexity while improving governments’ risk assessment capabilities.

III. Screening Issues

TSA has made significant progress in adopting a risk-based approach to air cargo screening requirements over the past year. By completing the mutual recognition of screening protocols and information sharing with the European Union last June, TSA more than doubled the size of the National Cargo Security Program (NCSP). The NCSP recognizes other countries with air cargo security protocols that provide a level of security comparable to the U.S., and allows operators to conduct necessary screening much further upstream prior to a shipment’s departure for the United States.

Due to the mutual recognition agreement with the EU, TSA has provided the air cargo industry with considerable more flexibility and taken a major step toward improved trade facilitation. This agreement required extensive work to ensure the correct standards were in place across the entire EU, and TSA deserves great credit for persevering through the negotiation to reach the final goal.

ACAS has served to illuminate issues around the operational protocols for screening shipments considered to be elevated risk. ACAS information analysis can result in a requirement to screen a shipment at origin, before it begins a trip to the United States that may involve

several plane changes. Through the NCSP, the results of this screening, and the identification of a package as non-threat, stays with the shipment as it moves through the supply chain. TSA is continuing to engage in discussions with the private sector about how ACAS can be leveraged to reduce overall screening requirements through an automated approach to identifying shippers as “known”. Carriers need to conduct necessary screening based on a shipper’s known status at the time and the location in the supply chain that is operationally optimum, ensuring full compliance with TSA requirements. This principle needs to be the centerpiece of any future modifications to the screening regime based on the ACAS experience.

IV. ACAS: the New Public-Private Partnership

ACAS represents a breakthrough in the development of public-private partnerships to achieve mutual security and trade facilitation goals, or, as the CBP Commissioner has described it, ACAS is a “game changer”. To establish ACAS, CBP and TSA employed an approach that has come to be known as “co-creation”, in which the private sector determined at the outset an operational concept for the project, how the data would be transmitted, and how the reaction to the results of the risk assessment would be managed. These pillars of the project were then discussed with the government and refined to ensure the effort would meet their requirements. The private sector also decided the pace and direction of the expansion of ACAS to additional countries, within a set of priorities that was determined by CBP and TSA. This approach differs significantly from the normal method of allowing the business community to comment on the government’s approach to a security issue only after a regulation has been drafted.

Based on the success of this approach, CBP and TSA intend to use a similar method to evolve ACAS toward a regulatory framework. After the pilot project has run for a sufficient amount of time and the results are analyzed, the ACAS private sector participants will engage with CBP and TSA to draft a regulation that is based on the operational lessons learned from the pilot and that incorporates the flexibility and feasibility of the approach employed in the pilot. The regulation will also not attempt to employ a “one size fits all” approach, but will recognize the different business models of the ACAS participants and provide a flexible approach to ensuring optimum security, tailored to the specific industry entities in the air cargo environment. While participation in ACAS is now voluntary, CBP and TSA have often pointed out that the primary benefit of engaging in the ACAS pilot will be the opportunity to engage in the regulation writing process.

The private sector ACAS participants have organized themselves into three working groups that are focusing on the policy aspects of the regulation, the messaging protocols to submit ACAS information and receive the Government’s response, and screening issues. The three groups have been meeting since late last year and are prepared to engage with the Government to discuss the key issues the regulation will need to address and a framework for including the lessons of the pilot. That process is just getting underway, and is being conducted under the auspices of the Commercial Operations Advisory Committee, or COAC, which is CBP’s main federal advisory committee. The goal is to produce the first draft of the regulation over the next year.