

**Commercial Customs Operations Advisory
Committee (COAC)
Rapid Response Subcommittee
Northern Triangle Working Group**

August 21, 2019



Commercial Customs Operations Advisory Committee (COAC)
August 2019

Report of the Work of the COAC
Subcommittee on Rapid Response (RR)- Northern Triangle Working Group

Co-Leads
Brian White – The J.M. Smucker Company
Lenny Feldman – Sandler, Travis & Rosenberg, P.A.

1. Background:

During the February 27, 2019, COAC meeting Commissioner Kevin McAleenan requested a Northern Triangle Working Group (NTWG) be established to identify and develop recommendations on reducing the nontariff trade barriers and improving customs processes in the Northern Triangle region of Central America, comprised of Guatemala, El Salvador, and Honduras, for the purpose of reducing migration driven by economic push factors. In particular, the NTWG would concentrate on how to enhance the trade flows in the region that are affected by poor and slow information exchange, limited coordination among border agencies, weak infrastructure and border control operations, customs delays and the lack of a risk management or true trusted supply chain partnership approach among the authorities in the region. Due to the urgency of this humanitarian and national security crisis, CBP and COAC established the NTWG under the COAC Rapid Response Subcommittee.

COAC and CBP have brought together over fifty (50) stakeholders to form the working group. It includes representation from CBP, USAID, UNICEF, DOC, DOS, USTR and other NGOs and private sector companies regularly conducting business in the region representing the apparel, agricultural, mass merchandising, shipping, express courier and other industries. The working group held calls nearly once a week and convened for a two-day face to face meeting in Washington, D.C. in early July.

2. Statement of Work:

CBP and COAC established the NTWG to provide feedback and formulate strategic recommendations related to reducing nontariff trade barriers and improving customs processes in the Northern Triangle. Specifically, the NTWG focused on the following strategic objectives:

- Identify customs process challenges impacting trade within the Northern Triangle and between the U.S. and the Northern Triangle
- Identify other (non-customs process) nontariff trade barriers within the Northern Triangle and between the U.S. and the Northern Triangle
- Identify U.S. legal, regulatory and policy reform that could positively impact U.S. business capabilities with the Northern Triangle
- Identify investment opportunities for customs infrastructure development in the Northern Triangle and Southern Mexico.

- Develop a proposed foreign industry engagement strategy with commercial stakeholders in the Northern Triangle to align and collaborate with U.S. industry to conduct and/or invest in business in the Northern Triangle.
- Develop a proposed U.S. industry engagement strategy to encourage commercial stakeholders to conduct and/or invest in businesses in the Northern Triangle, which will support regional prosperity and reduce migration driven by economic factors.

The NTWG's recommendations consider the following:

- Achieving outcomes beneficial for economic prosperity in the Northern Triangle region, which would also be beneficial to U.S. industry
- Incentivizing U.S. and foreign industry participation in Northern Triangle efforts
- Feasibility of implementation by CBP and international partners

3. Summary of Activities:

Throughout June 2019, CBP and COAC hosted several educational sessions telephonically with all NTWG stakeholders. Each of the following public sector members presented content to provide context to the existing environment in the Northern Triangle and to provide a baseline to develop recommendations.

- Michael Tucker, Assistant Chief, U.S. Border Patrol, detailed to the Office of International Affairs (INA), CBP
- Andrea Curaca Malito- Senior Director for Central America and the Dominican Republic, USTR
- Monica Darer, Child Protection Specialist, Regional Office for Latin America & Caribbean, United Nations Children's Emergency Fund (UNICEF)
- Katie Tobin, Government Relations Officer, United Nations High Commissioner for Refugees (UNHCR)
- Siobhan Siaca, Attorney-Advisor - Commercial Law Development Program, Office of the General Counsel - U.S. Department of Commerce
- Leah Cobelli, International Trade Specialist - Office of Trade Agreements Negotiations and Compliance (TANC), Enforcement & Compliance | International Trade Administration - U.S. Department of Commerce
- Rich Stetson, Deputy Director, Office of Textiles and Apparel | International Trade Administration - U.S. Department of Commerce
- Tom Lersten, Deputy Director for the Office of Central American Affairs, Bureau of Western Hemisphere Affairs, Department of State
- Steve M. Fondriest, Bureau for Latin America and the Caribbean, U.S. Agency for International Development

During the same period, NTWG leadership requested members to identify barriers/practices in the Northern Triangle countries; determine relevance/impact; suggest steps to address barriers/practices; identify feasibility; and present timeframes for action. We received over thirty (30) pages of content from working group members. In an effort to organize the work, NTWG leadership organized the work into five (5) key themes:

1. Trade Finance and Economic Growth - (banking and foreign direct investment, tax system)

2. Trade Facilitation – (customs and non-tariff trade barriers, legal and regulatory, Free Trade Agreements and regional integration)
3. Infrastructure - (ports/roads, congestion, technology, energy)
4. Security and Corruption – (smuggling/counterfeit trade, transparency, AEO, admin/judicial process)
5. Capacity Building – (trade education, building manufacturing base, in- country and external engagement)

From July 1 - 2, 2019, CBP hosted the NTWG at its offices in Washington DC. The purpose of this in person meeting was to validate the content received as aligned with the five (5) key themes; discuss timeframes, feasibility, enhancement steps and relevance; capture the collective knowledge of all participants to fully distill all the information; and develop practical solutions that will deliver a meaningful impact.

4. Summary of Findings:

Introduction

From the outset, the NTWG participants stressed that in order to address the economic and trade-related push factors related to North Triangle migration to the U.S., it was necessary to consider the available intelligence as to the reasons triggering the spike in migration. Along these lines, it was felt that messaging and communication from the U.S. government needs to appropriately pinpoint and target the push factors, encouraging individuals to remain in country by providing clear reasons why it was in their best interests to stay, apart from the dangers and fears associated with the journey to the U.S., including human trafficking.

The NTWG participants felt that addressing security issues was critical if nationals were to remain in the region. Not only physical security but also educational security - to attend school, get trained in necessary skills and find job opportunities – was needed to address the domestic push factors. The participants added that regional, state and local community business and economic leaders would need to encourage and embrace such initiatives, with assistance from the U.S. and also neighboring countries such as Mexico and Costa Rica.

The NTWG also recognized the importance of enhanced outreach concerning the importance of trade facilitation and how to execute such principles in a holistic manner. It was suggested that this would reduce government bureaucracy and costly delays as well as increase the level of professionalism, bolstering business certainty and confidence overall in the customs administrations and more specifically in programs such as the DR-CAFTA that would serve as a catalyst to economic progress.

In any case, the NTWG members felt that innovative, open-minded, collaborative leadership in-country and from U.S. and other foreign envoys truly was tantamount in making any meaningful impact to address the Northern Triangle push factors.

Trade Finance and Economic Growth

Challenges:

In the context of trade finance and economic growth, the NTWG discussed the need for a “rule of law” that addresses the informalities in the financial sector. The NTWG recognized that in many cases there is a lack of transparency in lending, where individuals are not sure exactly who is providing the loan, if the loan is legitimate, and the terms and requirements associated with the loan, particularly in the event of a default. The problem appears exacerbated by the fact that very few U.S. banks operate in the region. The NTWG agreed that transparency and formality in lending was critical to provide the necessary capital to support and sustain businesses in the region.

NTWG members also commented as to the specific challenges to small and medium sized enterprises (SMEs) or microfinance opportunities to obtain financing and support from second or third tier banks to build business opportunities in the region. In many cases there were perceived difficulties in managing bank balances and a lack of confidence in banking systems particularly in getting paid through letters of credit.

Opportunities:

NTWG members noted that some U.S. banks such as Citibank operate in the region and should be increasingly relied upon to provide funding in necessary sectors. Also, Banamex or Citibanamex of Mexico was cited as an example of a bank that the U.S. government should leverage to promote financial opportunities in the region. Further, OPIC, USAID, IFC, EXIM Bank and the IADB were recognized as institutions that should be encouraged to continue to provide the necessary financial support to individuals and companies in the region due to the transparency and rule of law under which they operate. In particular, the NTWG recognized the potential for OPIC that currently possesses thirty (30) billion in development capital that will double to approximately sixty (60) billion by October 2019.

NTWG members recognized that in some cases U.S. companies, often multi-nationals, could support businesses in various ways. In some cases, they could provide direct finance to SMEs who supply them with product for the regional market as well as for the U.S. market. In other cases, the support was more of a vertical nature whereby the U.S. companies would make direct investments in regional infrastructure and production providing more employment opportunities within these larger enterprises. The members felt both models should be encouraged and where possible enhanced with U.S. support and capital to integrate smaller businesses as well as individuals into the supply chain.

Trade Facilitation

Challenges

Initially, NTWG members felt a culture of trade facilitation needs to prevail throughout the region, wherein the North Triangle governments understand and appreciate that facilitation increases

investment and revenue. To a varying extent, members felt a lack of a regulatory framework hindered facilitation in the region, despite the countries' ratification of the WTO Trade Facilitation Agreement ("TFA"). Similarly, the NTWG mentioned that the region had not significantly implemented the WCO SAFE Framework of Standards.

Due to a dependency on ports across the Northern Triangle, NTWG members indicated that a lack of consistent hours of operation hampered facilitation. Further, border policies and requirements regarding documentation, permits/licenses, etc. reportedly were inconsistent from one country to another, and in some cases from port to port within the same country. Extensive delays have occurred during the permit/license approval process of importing new items into foreign trade zones and with the approval to dispose of obsolete assets and materials. Allowing local as opposed to more centralized, national decision-making further exacerbated these challenges, particularly due to paper and labor-intensive processes requiring substantial human intervention.

NTWG members also stressed the need for improvement in the foreign trade zone (FTZ) process and review of current FTZ regulations. For instance, members indicated that FTZ operational hours often were not aligned with customs staff hours and regulatory policies severely hampered transfers from one FTZ to another that were critical to efficient commercial operations.

Opportunities

NTWG members indicated that harmonizing customs processing and port operations across the three countries would positively impact trade in the region. Implementing a Central American Single Declaration Form (DUCA) was mentioned as facilitating trade. NTWG members also stressed the harmonization of licenses and permits to avoid delays and bureaucracy. Coordination between the various agencies regulating cargo admissibility and clearance also would be critical to such process improvements. Further, less paper and more automation would result in reduced person to person interaction that was viewed as subjective and inconsistent. For instance, NTWG participants cited the need for more non-intrusive inspection (NII) at ports where technology was available to enhance facilitation.

The NTWG members clearly recognized the continued value of the USTR's and Commercial Law Development Program's (Department of Commerce) efforts to enhance TFA implementation in the region including publication of decisions and a stakeholder notice and comment period prior to the issuance of such decisions. The NTWG emphasized that building on the work of these U.S. agencies, the countries should implement a national trade facilitation committee with private sector engagement. Further, NTWG participants suggested that the Department of Commerce Prosper Africa initiative and President's Advisory Council on Doing Business in Africa designed to unlock opportunities to conduct business in Africa and substantially increase two-way trade and investment between the U.S. and Africa should be considered in the context of Northern Triangle trade facilitation.

Further, the NTWG members suggested that providing training and engagement in a broad, national and even regional level as opposed to a more ad hoc port specific manner would build a more facilitative environment. This ideally would encourage more central, controlled and uniform decision-making. However, it was noted that changes in leadership ideally should not disrupt the

entire customs and border function as national policy and process should empower and promote accountability for, and implementation of, sound decisions at all levels.

NTWG members cited the benefits of the U.S. approach to FTZ management and encouraged in-country outreach in that regard. Coordinating FTZ processes nationally, and if possible regionally, would greatly add value to such commercial operations particularly if public sector work hours could be aligned with the needs of the business community. Further, cargo movements between FTZs should not be considered new FTZ admissions but rather expedited through a transfer process.

NTWG members also suggested that “best practices” could convert to limited processing times and workload for government officials, for instance by implementing unified cargo processing where two countries collaborate to conduct one joint inspection. By identifying the manner in which both the government and private sector could engage to execute best practices, cargo clearance would be enhanced in concert with the necessary port infrastructure improvements.

Finally, the NTWG discussed the possibility of providing additional incentives for industry to conduct business in the Northern Triangle by enhancing DR-CAFTA opportunities particularly in textiles/apparel and agriculture trade. It was suggested that Congress pass legislation, for instance a “Northern Triangle Trade and Job Promotion Act” for limited duration that would provide special program benefits. These could include: tariff preference levels (TPLs), a 2 for 1 earned import allowance program (where for every two square meter equivalent or “SME” of apparel assembled using U.S. yarn and fabric, one SME could enter the U.S. duty-free using third party yarn and fabric) or cut and sew or other more generous substantial rules of origin to stimulate regional apparel trade. Additionally, NTWG members mentioned that offering more liberal rules for the use of synthetics in the apparel industry could bring back certain regional production that could compete with Asia. Further, the legislation should consider benefits to address the under-utilization of TPL agricultural quotas in the region. However, in doing so, it was mentioned that the U.S. Government would need to ensure that such a program(s) would not disenfranchise U.S. or other business interests that have relied on the rules currently in place as the Department of Commerce generally opposes unilateral preferences to inputs.

Infrastructure

Challenges

The NTWG members cited several infrastructure challenges that will require substantial investment and initiative to yield meaningful improvement. For instance, road conditions in El Salvador to the Port of Cortes requires significant financial investment. Congestion occurs at road crossings between Honduras and El Salvador due to inconsistent work hours, which exacerbates border processing delays. In many cases passengers and cargo are processed in the same crossing, enhancing delays. Additionally, in some ports containers are not released until the entire vessel is unloaded and reloaded with outbound containers, causing a forty-eight (48) hour delay.

In certain cases, substandard housing and accommodations for customs officials diminishes morale and productivity. As many officials find themselves stationed in parts of the country away from their homes and families, this creates personnel challenges.

Finally, power often is unreliable and energy costs remain a challenge. Such instability prevents broader application of automated processing between the public and private sector.

Opportunities

U.S. and foreign investment, for instance from Mexico, coupled with local investment could positively impact infrastructure in the region. Further, coordinating customs operations at the Honduras and El Salvador border could avoid congestion due to staggered processing and traffic, particularly through road improvements between Puerto Cortes (which also could use an additional entrance and exit) to and from the border crossing at El Poy, El Salvador.

However, policy changes such as permitting release of container as they are unloaded will be necessary in order for infrastructure improvements to have a meaningful impact. Automation and facilitation, as previously discussed, would further solve these issues. The NTWG also would encourage separate processing of passengers and cargo in dedicated lanes where infrastructure permits as well as creating a FAST lane for zone to zone as well as port moves.

The Department of State and the Millenium Challenge Corporation have cooperated on a promising pilot in El Salvador and other ports to assess the feasibility of a dormitory for government officials. The selected location would promote collaboration between El Salvadoran and Guatemalan officials as a proof of concept that can be replicated in other locations. However, the NTWG participants also mentioned the need for improved customs facilities at the Honduran and El Salvadoran borders.

The NTWG members recommended working with a more manageable port to demonstrate the value of such infrastructure investments. They cited the case of the OTC terminal in Honduras, which now that it has been privatized costs have increased. NTWG members indicated that stakeholders must consider what type of investment they are willing to make to support infrastructure in the region, that is, what type of fees or costs are they willing to pay in return for the potential savings that will be realized in the long term.

Some of the sea and land ports that NTWG suggested for infrastructure improvements and/or training to enhance technical expertise are as follows. For seaports: Puerto Cortes, HN; Puerto de Henecan, HN (San Lorenzo); Puerto Barrios, GT (discussed below); Puerto Castilla, HN; or Puerto La Union, SV. For land ports: El Poy, SV; La Hachadura, SV; Agua Caliente, HN; Puerto Santo Tomas de Castilla, GT; Puerto Quetzal, GT; Tecun Uman, GT; or Pedro de Alvarado, GT.

Security and Corruption

Challenges

The NTWG members generally agreed that the lack of security was the most critical issue impeding growth and development throughout the region. Such insecurity breeds corruption, which calls for a greater degree of professionalization by public sector officials in executing trade-related operations. However, NTWG members also expressed that in many cases public sector employees viewed corruption as vital to their survival due to low wages.

NTWG members also pointed out that agricultural requirements, such as licensing and permitting, fostered security and corruption issues. This was due to the trade community's need for prompt action and the perceived subjectivity associated with decision-making in this area.

Inconsistent trade enforcement was believed to create a barrier to business, at times encouraging an unprofessional environment. NTWG members indicated that counterfeiting and transshipments posed additional challenges. Further, in some cases companies reportedly were not taking advantage of CAFTA preference opportunities due to perceived inconsistent trade enforcement issues not only in the Northern Triangle but also on the part of CBP in the U.S.

NTWG Members also mentioned that while AEO programs were growing in the region only a fraction of traders currently were taking advantages of such opportunities. Accordingly, there still is significant work ahead to build meaningful partnerships and relationships with the trade community that foster mutual trust and professionalism.

Opportunities

NTWG members indicated that any outreach and training to address corruption should emphasize the key principles and tenants set forth in the WCO Revised Arusha Declaration of the Customs Co-Cooperation Council Concerning Good Governance and Integrity in Customs. This would set the tone that such efforts should be consistent with global declarations and standards for professionalism, not just the policies and laws of one particular country like the U.S. NTWG members suggested hosting programs for senior leadership in Miami, Florida and/or a U.S./Mexico land border to provide a demonstration of actual port operations, training and trade facilitation.

NTWG participants suggested that the Security Governance Initiative (SGI) between the U.S. and six African partners that offers a comprehensive approach to improving security sector governance and capacity to address threats, could serve as a model or template to address such issues in the Northern Triangle. In particular, this approach: focuses on the systems, processes, and institutions that reinforce democratic security sector governance; uses rigorous analysis, shared data, and agreed upon goals, and is supported by regular measurement and evaluation; matches targeted investments with willing partners to strengthen specific military and civilian institutions; and relies on commitment and accountability for results on the part of the U.S. and its partners. In particular,

the SGI leverages an interagency U.S. government team to support national leaders in addressing security and corruption challenges through a coordinated Border Management Secretariat.

The NTWG also suggested that centralizing and automating the agricultural admissibility process could greatly reduce the potential for corruption. Repeatedly, sanitary and phytosanitary processes were cited as an area for improvement.

The NTWG members expressed that if government officials could receive higher wages, they would be less incentivized to request facilitation for processing cargo. Additionally, benefits such as housing or education for individuals or their families could increase professionalism.

NTWG participants suggested that the Northern Triangle countries should seriously consider developing a police to business alliance to enhance and maintain employee security. As an example, the participants cited the joint security effort in Honduras whereby businesses work with the police to increase law enforcement and security for their companies and communities, as a whole.

The NTWG suggested that the Northern Triangle customs administrations strongly should be encouraged through training and outreach to adopt consistent and transparent enforcement policies and procedures. Further, enhanced outreach and information within the Northern Triangle, using the U.S., Mexico, Costa Rica and other neighboring countries as models, should clarify the requirements and standards for customs clearance, particularly the documentation needed to support CAFTA and other claims.

The NTWG also suggested that growing the AEO programs in the Northern Triangle coupled with U.S. mutual recognition agreements would help address security and compliance challenges. As has been the case in most administrations, stronger partnership programs would enable the Northern Triangle customs administrations to leverage the business community as a force multiplier resulting in greater co-creation and innovation that will enhance professionalism and security as well as facilitation.

One example of good governance is Puerto Barrios, GT where Mayor Hugo Saraceño borrowed funds from outside sources and fixed and improved their electricity generating plants owned by the city and built water and sewer systems. They also installed modern street lighting and even built a ring road around the city with a bicycle path, lobbying with an NGO to donate the bicycles. Violent crime declined by more than thirty percent (30%) and employment rose by more than twenty percent (20%) while the city now maintains a balanced budget. Accordingly, Mayor Saraceño may become the future head of the league of mayors throughout Guatemala.

Capacity Building

Challenges

Due to the lack of a comprehensive legal framework, NTWG members felt capacity building in the form of greater education and outreach as well as mentoring is critical to address the economic challenges in the region. Particularly, NTWG participants hoped that such programs could address port delays and bureaucracy. However, it was noted that a lack of infrastructure and of the necessary officials to train others, *i.e.*, train the trainer, could impede such efforts.

To an extent, NTWG members felt that the public and private sectors of communities had not been engaging or shown how to engage in a cohesive manner to address economic and trade-related challenges, hampering potential advances. This public-private partnership was viewed as a critical component to any successful capacity building plan.

The NTWG members mentioned the grave challenges for youth to remain in school and graduate due to influences from cartels and the lack of job opportunities, some of which required a specific skill set. In fact, crime was stated to overtake numerous educational opportunities.

Opportunities

NTWG participants cited the Commercial Law Development Program within the U.S. Department of Commerce as an example of an excellent framework for providing workshops and content that could be synergistic to the necessary education and outreach in the region. NTWG members readily recognized that trade and facilitation programs were necessary, but also mentioned that outreach regarding an individual's financial or economic independence and life management/choices likewise were critical.

While NTWG participants recognized that in-person sessions were ideal, they indicated that webinars could be effective as an alternative. It was suggested that CBP's Centers of Excellence and Expertise could be in a position to lead such educational sessions in the region to build awareness to the legal and regulatory requirements needing to be met prior to export to and arrival in the U.S. For instance, deploying the Container Security Initiative (CSI) to the Northern Triangle ports would enable U.S. inspectors to provide "on-the-job" capacity training by leveraging NII or other technology where available.

Similarly, the NTWG members suggested that trainers from neighboring countries with well-developed facilitation programs such as Mexico and Costa Rica should be encouraged to conduct training and outreach based on international best practices. Ideally, this would lead to sustainable in-country capacity building via a train the trainer approach. NTWG members cited the Instituto Tecnico de Capacitation y Productividad (INTECAP) in Guatemala City as a possible location to conduct regional outreach concerning such issues.

The NTWG members emphasized the importance of connecting local as well as national industry and top business owners with multilayered government bodies, including municipal, state and national officials and boards to jointly tackle trade and commercial related challenges. This would

create ownership and accountability, collectively, through an alliance between the public and private sector on many levels.

NTWG participants recognized the excellent work of UNICEF and UNHCR that must persist in addressing education gaps and encouraging technical education in the region. For instance, the Mesmo-American Education Initiative was mentioned as an invaluable program, reaching over 500,000 secondary students and teenagers through apprenticeships, providing training and improving school safety.

Similarly, several multinationals operating in the region were cited for their outstanding work in providing jobs as well as education to workers and their families. Growing or replicating these programs were viewed as essential to successful capacity building.

CBP officials suggested that the NTWG identify a community where CBP can assist in building a coalition of local and family owned businesses in buildout and development of a community owned school such as a high school with vocational certificate programs embedded. These certificate programs would have direct ties to local employers. The overall goal or intent is twofold; buy in from the community leaders and youth, and sustainability in providing a source of personnel for recruitment to local employers. The process would require a clear plan of action and objectives established through meetings in-country with local leaders and faith-based organizations. Ideally, CBP officers would serve as a liaison in the region as ambassadors of change to help address critical issues and build efficiencies. NTWG members suggested San Salvador, SV; La Jutosa (Choloma), HN; Santo Tomas de Castilla, GT; or El Calan (near San Pedro Sula), HN for such a program.

5. Conclusion:

The COAC is indebted to the public and private sector members of the NTWG that expended such effort in a short period of time to contemplate and strategize how to continue to address the push factors impacting North Triangle migration to the U.S. We are hopeful that the accompanying recommendations as explained in further detail within this report will meaningfully impact trade facilitation and flows in a manner that enhances the economic and day to day well-being of those living throughout the Region.