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It's All about the Money: Advancing Anti-Money Laundering Efforts in the U.S. and Mexico to Combat Transnational Organized Crime

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It's All about the Money: Advancing Anti-Money Laundering Efforts in the U.S. and Mexico to Combat Transnational Organized Crime

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"The prevention of money laundering and combating financial terrorism is a fundamental part of the state's comprehensive strategy against organized crime."

Felipe Calderón - President of Mexico

Introduction and the Threat Posed by Money Laundering

In the course of examining transnational criminal organizations (TCOs) operating in the U.S. and Mexico, we focus on their most prominent illicit activities like the trafficking of drugs, arms, and persons, and kidnapping, extortion and money laundering. These criminal enterprises leverage global supply chains and weak governance to move their products and services to meet market demand. While the globalization of organized crime is not a new phenomenon, the magnitude, pace and violence accompanying its illicit activities is alarming. In the past five years, Mexico has witnessed unprecedented levels of drug-related violence claiming over 47,000 lives since 2006.²

According to the U.S. National Drug Intelligence Center, major Mexican-based TCOs and their associates are solidifying their dominance of the U.S. wholesale drug trade and will maintain their reign for the foreseeable future. Their preeminence derives from a competitive advantage based on several factors, including access to and control of smuggling routes across the U.S. border and the capacity to produce (or obtain), transport, and distribute nearly every major illicit drug of abuse in the United States.³ These TCOs are extremely well funded and well armed: and they are presenting a formidable threat to the security, prosperity, and psyche of the people of Mexico and the United States.

For transnational criminal organizations, including those operating in the U.S. and Mexico, "it's all about the money." Criminal enterprises seek to maximize profit at every opportunity and minimize their risk of being detected and interdicted. Money is the lifeblood for any

¹ The views expressed in this article are those of the author, and do not reflect the official policy or position of the Center for Hemispheric Defense Studies, the National Defense University, the Department of Defense, or the U.S. Government.

² Eric Olson, "Considering New Strategies for Confronting Organized Crime in Mexico," Wilson Center, March 2012, <http://www.wilsoncenter.org/publication/considering-new-strategies-for-confronting-organized-crime-mexico>

³ U.S. National Drug Intelligence Center (NDIC), "National Drug Threat Assessment 2011," <http://www.justice.gov/ndic/pubs44/44849/44849p.pdf> (accessed April 4, 2012)

organization including governments, private companies, and criminal enterprises. From purchasing goods and services to paying employees, money is the oxygen for any activity, licit or illicit. TCOs engage in money laundering in order to enjoy the spoils from their crimes. Contrary to what some may believe, money laundering is not a victimless crime. The proceeds of crime enrich and empower transnational criminal organizations and allow them to undermine state institutions and economic prosperity. Illegal drug export revenues from Mexico in 2011 were estimated at approximately US\$ 6.2 billion, comprised of the major drugs: cocaine (est. \$2.8 billion), followed by marijuana (\$1.9bn), heroin (\$0.9bn) and methamphetamines (\$0.6bn).⁴

The governments of the U.S. and Mexico recognize that they must attack the economic power of transnational criminal organizations to weaken them. Mexican President Felipe Calderon has said, "The prevention of money laundering and combating financial terrorism is a fundamental part of the state's comprehensive strategy against organized crime." In 2011, the U.S. released its Strategy to Combat Transnational Organized Crime that describes how TCOs and their activities, including money laundering, present a threat to U.S. national security. This paper outlines the use of the economic and financial instruments of national power aimed at degrading transnational criminal organizations in the U.S. and Mexico and increasing their cost of doing business. It will examine the major modes of money laundering employed by the TCOs, describe current U.S. and Mexican anti-money laundering measures, and offer some options for advancing the U.S.-Mexican fight against money laundering.

Some options the U.S. and Mexico should consider going forward include:

- Make combating money laundering a top priority of their strategies to combat transnational organized crime,
- Establish a centralized coordinating mechanism for U.S.-Mexican anti-money laundering activities, such as a TCO Finance Working Group,
- Dedicate adequate human, financial, and technological resources to their agencies responsible for combating money laundering,
- Enhance bilateral cooperation on money laundering investigations and prosecutions; and
- Engage the private and civic sectors in the fight against money laundering and transnational organized crime.

Major Modes of Money Laundering in the U.S. and Mexico

Transnational criminal organizations operating in the U.S. and Mexico employ various mechanisms to move and launder the vast income they generate. According to the U.S. Department of the Treasury, money laundering refers to financial transactions in which criminals seek to disguise the proceeds, sources, or nature of their illicit activities. Money laundering

⁴ Olson, *op.cit.*, 2.

facilitates a broad range of serious crimes and ultimately threatens the integrity of the financial system.⁵

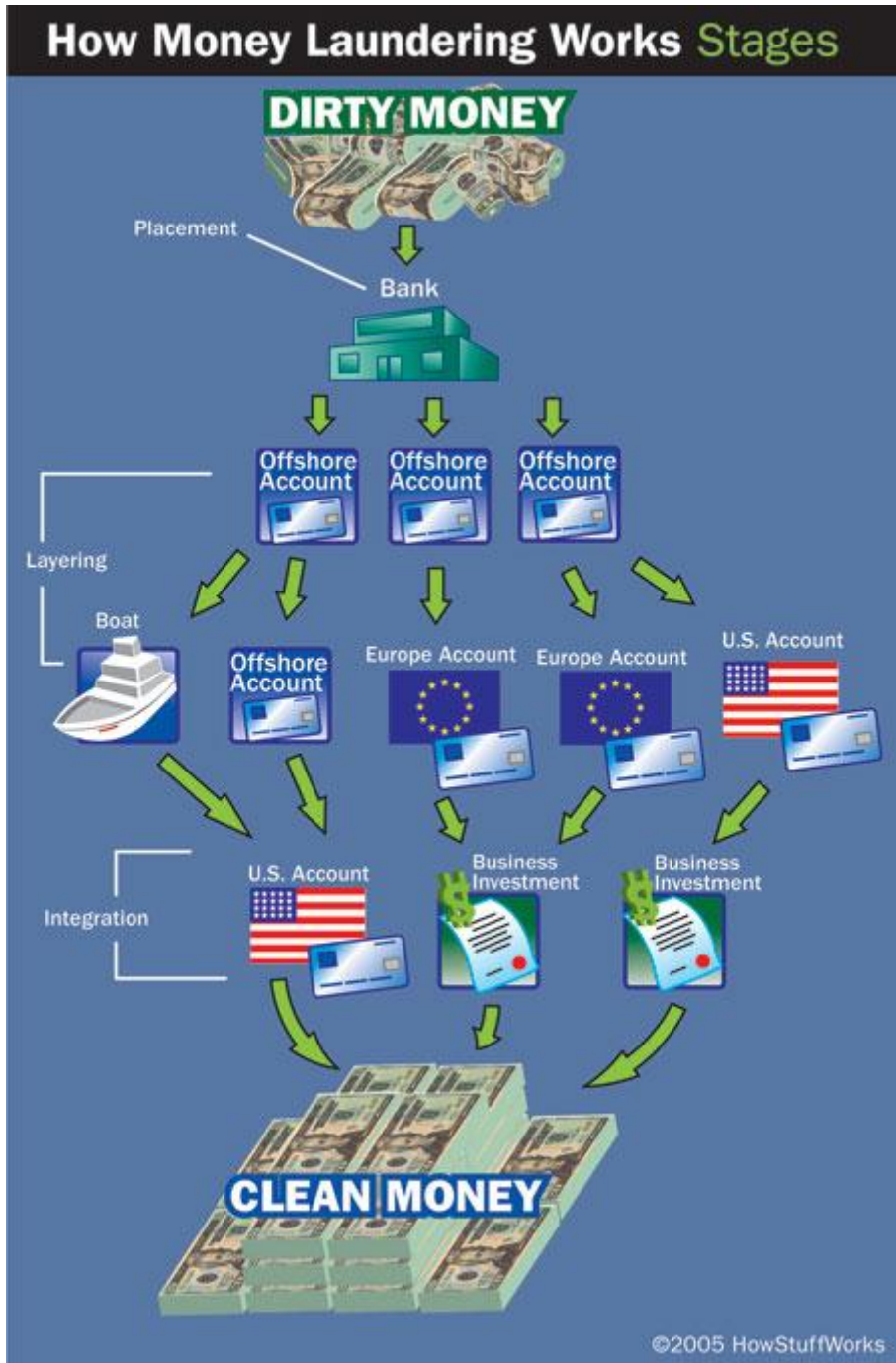
The Three Stages of Money Laundering

Money laundering is the process of making financial proceeds from illicit activities appear legal through the three stages of placement, layering, and integration.

1. “In the initial - placement - stage of money laundering, the launderer introduces “dirty” illegal profits into the legitimate financial system. This might be done by breaking up large amounts of cash into less conspicuous smaller sums that are then deposited directly into a bank account, or by purchasing a series of monetary instruments (cheques, money orders, etc.) that are then collected and deposited into accounts at another location.
2. After the funds have entered the financial system, the second – layering – stage takes place. In this phase, the launderer engages in a series of conversions or movements of the funds to distance them from their source. The funds might be channeled through the purchase and sales of investment instruments, or the launderer might simply wire the funds through a series of accounts at various banks across the globe. In some instances, the launderer might disguise the transfers as payments for goods or services, thus giving them a legitimate appearance.
3. Having successfully processed the criminal profits through the first two phases the launderer then moves them to the third stage – integration – in which the now-“clean” funds re-enter the legitimate economy. The launderer might choose to invest the funds into real estate, luxury assets, or business ventures.”⁶

⁵ U.S. Department of Treasury , “Resource Center: Money Laundering,” <http://www.treasury.gov/resource-center/terrorist-illicit-finance/Pages/Money-Laundering.aspx> (accessed October 18, 2011)

⁶ Financial Action Task Force, <http://www.fatf-gafi.org/>



The Modes of Money Laundering in the U.S. and Mexico

The transnational organized crime and the global drug trade generate billions of dollars annually that traffickers must collect, consolidate, and inject into the international financial system to profit from their trade. Illicit drug sales in the U.S. are predominantly conducted in cash, presenting the daunting challenge of how to deposit vast amounts of currency into financial institutions while maintaining an appearance of legitimacy. U.S. authorities estimate that drug trafficking organizations send between \$19 and \$29 billion annually to Mexico from the United

States.⁷ Mexico is currently the primary placement area for U.S.-generated drug dollars.⁸ To move and launder the proceeds of their crime, transnational criminal organizations operating in the U.S. and Mexico predominantly rely on bulk cash smuggling, traditional bank and wire transfers, and trade-based money laundering schemes.

Bulk Cash Smuggling. Despite more sophisticated means of moving and hiding illegal income, cash remains the preferred payment method by criminal enterprises cross the globe, including the Mexican cartels. Cash is king! Bulk cash smuggling which entails physically transporting large quantities of cash is designed to bypass financial transparency reporting requirements.⁹ It usually occurs in U.S. Dollars that are widely accepted as international currency and can always be converted. Many cash movements by this method provide no paper trail or a third party, such as a bank official to become suspicious of the transaction. According to the U.S. National Drug Intelligence Center (NDIC), bulk cash seizures in the U.S. alone totaled \$798 million from January 2008 through August 2010. These seizures were mostly related to drug trafficking cases. Since 2002, Mexico has seized over \$457.5 million in bulk currency shipments. In 2010, bulk-cash seizures amounted to US \$32.4 million and 87.3 million Mexican pesos (approximately \$7 million) amounting to some US\$ 39.4 million which is a pittance in light of the billions generated by the Mexican-based TCOs.¹⁰ As anti-money laundering expert and former U.S. Attorney in Los Angeles Duncan Deville notes, bulk cash smuggling does not actually constitute a money laundering mechanism as the cash remains in its original form and does not enter the formal financial sector.¹¹

The size of bulk cash seizures when compared to the estimated value of exports suggests that the seizures have had a negligible effect on transnational criminal organizations. NDIC stated in their 2011 National Drug Assessment Report that “bulk cash interdiction efforts have not impacted overall TCO operations to a significant extent.”¹² While U.S. counternarcotics strategies focus on drug interdiction efforts, proceeds from drug trafficking empower the transnational criminal organizations to control global supply routes, employ personnel, and corrupt government authorities. As a result, U.S. agencies including the DEA and the Department of Homeland Security continue to aggressively pursue the detection and disruption of bulk cash smuggling operations.

⁷ NDIC, *National Drug Threat Assessment 2009*.

⁸ NDIC, *National Drug Threat Assessment 2011*.

⁹ Financial transparency reporting requires Currency and Monetary Instrument Reports, which obligates the filer to declare if he or she is transporting across the border \$10,000 or more in cash or monetary instruments.

¹⁰ U.S. State Department, International, “International Narcotics Control Strategy Report (INCSR)2011,” Volume 2, 149, <http://www.state.gov/documents/organization/156575.pdf> (Accessed, March 7, 2012)

¹¹ Duncan Deville, interview by author, March 17, 2012.

¹² NDIC, *National Drug Threat Assessment Report 2011*, 40.



Source: The cache of money found in the Mexico City home of Zhenli Ye Gon, an accused drug trafficker: \$207 million US Dollars, mostly in \$100 bills, and other assorted currency – the largest bulk cash seizure of its kind to date.¹³

Traditional Banking/Wire Transfers/Money Services Businesses. While transnational organized crime is a predominantly cash-intensive business, Mexican-based TCOs still use the formal banking sector through traditional banks, money services businesses, and casas de cambio (currency exchange houses) to launder the proceeds of their crime. The placement and layering of criminal proceeds usually begin with the cash transported across the border and then deposited into U.S. or Mexican financial institutions from which the funds can be wire-transferred to correspondent accounts at U.S. or foreign banks. For example, after the cash crosses the U.S.-Mexico border, the cash typically is represented as a deposit to a U.S. bank account on behalf of a Mexican casa de cambio or financial institution.¹⁴ Similarly, TCOs use wire remittance services to move criminal proceeds.¹⁵ In one such case, a criminal enterprise hired individuals to move criminal proceeds through wire transfer from New Mexico and Texas, and Texas announced a \$94 million settlement agreement with the company that had been accused of

¹³Paul Duggan and Ernesto Londoño. “Not Your Average Drug Bust,” Washington Post, July 25, 2007, <http://www.washingtonpost.com/wp-dyn/content/article/2007/07/24/AR2007072400150.html?nav=hcmodule> (Accessed Oct 29, 2011)

¹⁴ National Drug Intelligence Center, *National Drug Threat Assessment 2007*, <http://www.justice.gov/ndic/pubs21/21137/mlaund.htm>

¹⁵NDIC, *National Drug Threat Assessment 2011*.

allowing people who worked for the criminal enterprises and human traffickers to wire funds from the United States to Mexico.¹⁶

Suspicious financial transactions associated with TCOs operating in the U.S. and Mexico that have raised red flags indicating possible money laundering activities include:

- Numerous Bank Secrecy Act (BSA) filings by multiple financial institutions.
- Large cash deposits inconsistent with business type.
- Large payments to foreign companies that are inconsistent with the amount of product received from these companies.
- Unusual withdrawal, deposit or wire activity inconsistent with normal business practices, or dramatic and unexplained change in account activity.
- Sudden changes in customer's normal business practices, i.e., dramatic increase in deposits, withdrawals or wealth.
- Structuring financial transactions at money service businesses (MSBs) (multiple financial transactions structured under the \$3,000 MSB's reporting limit on the same day).
- Numerous incoming wire transfers or personal checks deposited into business accounts with no apparent legitimate purpose.¹⁷

While regulatory oversight of the U.S. and Mexican financial systems has been stepped up over the past several years, the sheer volume of trade and commerce across the U.S.-Mexican border make it a daunting task to detect, investigate and prosecute all suspected cases of money laundering.

Trade-Based Money Laundering. Trade-based money laundering is the movement of illicit funds through commercial transactions and organizations that are and/or appear to be legitimate. With the enhanced oversight of banking and cash transactions, trade-based money laundering has become increasingly employed by the TCOs operating between the U.S. and Mexico. This money laundering method might involve over- or under-reporting of the amounts of invoiced goods or services (e.g., shipping more items than documented to allow the recipient to profit from resale), repeating invoices (e.g., delivering one set of items but receiving payment for two sets), falsifying receipts (e.g., the goods shipped are described as a less expensive item when they're really something more costly), and selling commodities for prices that are above or below market.¹⁸ The transactions can be simple (two parties colluding to use a commercial transaction to deflate the value of an exchange to benefit from the difference between the resulting understatement in cost and the value of the goods on the open market) or complex (involving multiple parties in numerous nations, knowingly or unknowingly involved in the fraudulent aspects of the transactions). The key is that these practices take advantage of true

¹⁶ U.S. Department of Homeland Security, "United States –Mexico Bi-National Criminal Proceeds Study 2010," <http://www.ice.gov/doclib/cornerstone/pdf/cps-study.pdf> (Accessed March 30, 2012)

¹⁷ U.S. Department of Homeland Security, "Project STAMP: Smuggler and Trafficker Assets, Monies and Proceeds," http://www.dhs.gov/files/programs/gc_1297182316667.shtm

¹⁸ U.S. Immigration and Customs Enforcement, "Trade-Based Money Laundering," <http://www.ice.gov/cornerstone/money-laundering.htm>

commercial opportunities to hide their intended purpose and to mix illegally obtained funds into the legitimate financial system.¹⁹

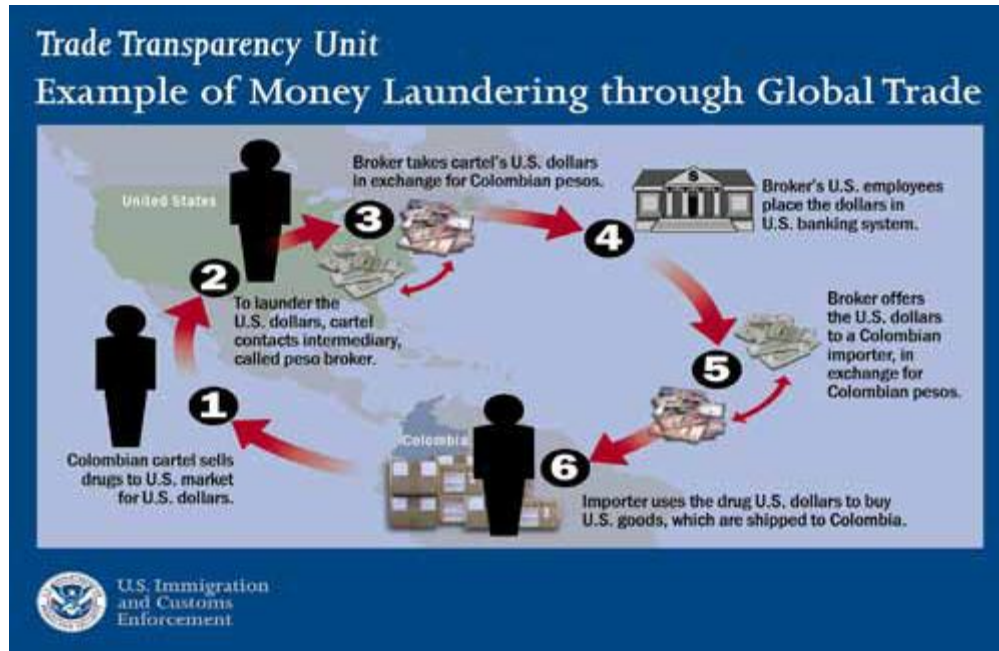
According to the Los Angeles Times, “Faced with new restrictions on the use of U.S. cash in Mexico, drug cartels are using an ingenious scheme to move their ill-gotten dollars south under the guise of legitimate cross-border commerce. Instead of smuggling the money the old-fashioned way, by simply carrying it south in bags and trucks, teams of money launderers working for cartels use dollars to purchase a commodity, and then export the commodity to Mexico or Colombia. Paperwork is generated that gives a patina of propriety. By turning their mountain of proceeds into tomatoes, say, or bolts of Chinese fabric shipped and resold in Mexico, cartels accomplish two goals at once: They transfer earnings back home to pay bills and buy new drug supplies while converting dollars to pesos in a transaction relatively easy to explain to authorities.” “It’s a better way to conceal proceeds,” said Raymond Villanueva, head of an ICE unit that investigates international money-laundering. “It’s not going to raise so many flags.”²⁰

Law enforcement is cognizant of many of these trade-based money laundering methods, but given the volume of international trade, it is impossible to screen and detect fraud in every transaction. In addition, the variations of the fraud and the goods and services used to mask the illegitimately gained money on behalf of the illicit networks are ever-changing. Regulations demanding reporting as well as education and outreach to private-sector staff who might encounter such fraud are helpful, but are neither fool-proof nor deterrent against this mode.²¹

¹⁹ *Ibid.*

²⁰ Tracy Wilkinson and Ken Ellingwood, “Cartels use legitimate trade to launder money,” Los Angeles Times, December 19, 2011, <http://articles.latimes.com/2011/dec/19/world/la-fg-mexico-money-laundering-trade-20111219>, (accessed March 7, 2012)

²¹ Adapted from interviews with DHS officials.



Source: DHS Homeland Security Investigations, Trade Transparency Unit
<http://www.ice.gov/doclib/news/library/reports/cornerstone/cornerstone7-3.pdf>

Store of Value Cards/Prepaid Instruments. Store of value cards represent an emerging mode of money laundering for criminal enterprises. Prepaid or store of value cards have come to replace the use of cash for many consumers: from the retail gift cards that we receive during the holidays to the reloadable expense cards for our morning coffee or commute. The total market for these cards is projected to reach nearly \$550 billion by 2012.²² Consumers regard them as a convenient means of transferring and carrying funds without the hassles of the paperwork and background checks that are required for debit and credit cards; issuers and retailers love them because they attract customers, particularly from the hard-to-reach unbanked segment (i.e., those without bank accounts, often due to their lack of legal identification).²³

Criminals find them convenient as well, especially since many can be loaded and reloaded with minimal oversight and maximum anonymity. They can be carried legally across the border without being declared or seized.²⁴ According to the National Drug Intelligence Center, in 2009, Colombian drug traffickers in the Philadelphia area were found to be using prepaid cards to launder and carry their illicit proceeds. The cartels preferred the cards to the Black Market Peso Exchange because of the ease of movement and the more favorable rates once they exchanged

²² Mercator Advisory Group, "Seventh Annual Prepaid Card Forecast"
http://www.mercatoradvisorygroup.com/index.php?doc=news&action=view_item&type=2&id=571

²³ Per 2009 statistics, the unbanked make up 7.7% or 9 million U.S. households. This amounts to 17 million American adults. FDIC Survey of Unbanked and Underbanked Households, December 2009
http://www.fdic.gov/householdsurvey/executive_summary.pdf (Accessed Oct 29, 2011)

²⁴ Prepaid or "Stored Value" cards are not defined as "monetary instruments" under U.S. law and thus, they cannot be seized under requirements to declare currency upon crossing the United States border.

the dollars for Colombian pesos.²⁵ Some of these cards' vulnerabilities may be limited soon with new U.S. federal regulations. A recently finalized rule requires reporting from some of the vendors within the prepaid instruments supply chain.²⁶ According to Mr. James H. Freis, Jr., the Director of the Financial Crimes Enforcement Network (FinCEN), the regulation is designed to "provide a balance to empower law enforcement with the information needed to attack money laundering, terrorist financing, and other illicit transactions through the financial system while preserving innovation and the many legitimate uses and societal benefits offered by prepaid access."²⁷ There are plans in place to begin regulating the international transport of prepaid access products, as well, per a notice of proposed rulemaking issued on October 11, 2011.²⁸ While the prepaid cards have not been widely abused by TCOs operating in the U.S. and Mexico, their convenience can pose an emerging money laundering threat that should be monitored.

Mobile and Electronic Payments. In many countries, including the U.S. and Mexico, consumers have been using their mobile phones to make basic monetary exchanges through simple transactions, such as trading phone minutes and downloading ringtones. The proliferation of smart phones and the ability to use mobile payments has accompanied increasing web access. Studies suggest that 35% of Americans currently own smart phones,²⁹ an increase from 17% of adults in 2009.³⁰ Whether one uses a phone as a mobile wallet that is preloaded with currency or as a tool to access bank or phone accounts for payments or as a vehicle for financial transactions via text/SMS, web browsers or applications ("apps"), the phone may become the consumer's financial settlement method of choice. Long available in countries like India, Mexico, Kenya, and Afghanistan, the explosion of mobile services in the U.S. and globally is imminent. This mode of payment is particularly popular with remittances by overseas foreign workers back to their home countries. One projection sets the mobile payments market at \$630 billion U.S.

²⁵ National Drug Intelligence Center, "Philadelphia/Camden High Intensity Drug Trafficking Area Drug Market Analysis 2009," February 2009, <http://www.justice.gov/ndic/pubs32/32787/abuse.htm#foot3> (Accessed Oct 29, 2011)

²⁶ Specifically to address these issues, and as ordered by Congress via the "Credit Card Accountability, Responsibility, and Disclosure (CARD) Act of 2009," a new rule by the Financial Crimes Enforcement Network (FinCEN), an agency of the United States Department of the Treasury, will change how cards are issued, reloaded, and reported in the US: <http://www.gpo.gov/fdsys/pkg/FR-2011-07-29/pdf/2011-19116.pdf> (Accessed Oct 29, 2011) Effective September 27, 2011. This rule also renamed stored-value cards or prepaid cards and related instruments as "prepaid access products."

²⁷ "FinCEN Issues Prepaid Access Final Rule Balancing the Needs of Law Enforcement and Industry," July 26, 2011, http://www.fincen.gov/news_room/nr/html/20110726b.html (Accessed Oct 29, 2011)

²⁸ "Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations – Definition of "Monetary Instrument" October 11, 2011, http://www.fincen.gov/statutes_regs/frn/pdf/Prepaid_at_the_Border_NPRM.pdf (Accessed Oct 29, 2011)

²⁹ Pew Research Center "Smartphone Adoption and Usage," July 11, 2011, <http://pewinternet.org/Reports/2011/Smartphones.aspx> (Accessed Oct 29, 2011)

³⁰ Forrester, "2009: Year Of The Smartphone — Kinda," January 4, 2010, http://blogs.forrester.com/consumer_product_strategy/2010/01/2009-year-of-the-smartphone-kinda.html (Accessed Oct 29, 2011)

Dollars globally by 2014.³¹ Banco de México announced that in the month of December 2011, Mexico received a remittance inflow of \$177 million, representing an annual growth of 3.5% in dollars. Thus, cumulative remittances in 2011 totaled \$ 2.28 billion, recording a 6.9% annual increase, the largest since 2007.³² Remittance services are increasingly incorporating mobile payment applications.

The World Bank estimates that \$58.1bn was remitted to Latin America and the Caribbean (LAC) in 2010. Mexico had the largest share, with \$22.6bn of remittances in 2010, followed by Brazil and Guatemala, both with \$4.3bn. According to the Inter-American Dialogue, Western Union had 30% of the market for US remittances to Latin America and the Caribbean in 2010, followed by MoneyGram with 10% and two other money transfer operators, Ria and Vigo, both with 8%. Xoom, an online remittance service, had 3%. The Inter-American Dialogue says that nearly 90% of Hispanic migrants use MTOs to send money from the U.S. while three percent use banks, two percent use the web, and the rest use informal methods such as sending cash via travelers to their home country.³³

The extent of criminal abuse of mobile payments and the remittance system is unknown at this time. What is certain is that where there is money, there are criminals. Phone or web-based transactions can be more secure than other means of financial transfer (e.g., credit cards which often leave the account holder for use and which are widely targeted by criminals who copy or steal the account access), but can be abused by cybercriminals. While not considered a method widely employed by TCOs in the U.S. and Mexico at this time, mobile banking and web-based transactions should be considered and monitored as an emerging avenue for cross-border money movements and laundering.

U.S. Anti-Money Laundering Measures

U.S. and Mexican efforts to combat money laundering associated with the TCOs operating in both countries have been underway for decades, closely associated with the war on drugs. These efforts can be evaluated through the lens of five basic elements of an effective anti-money laundering regime:

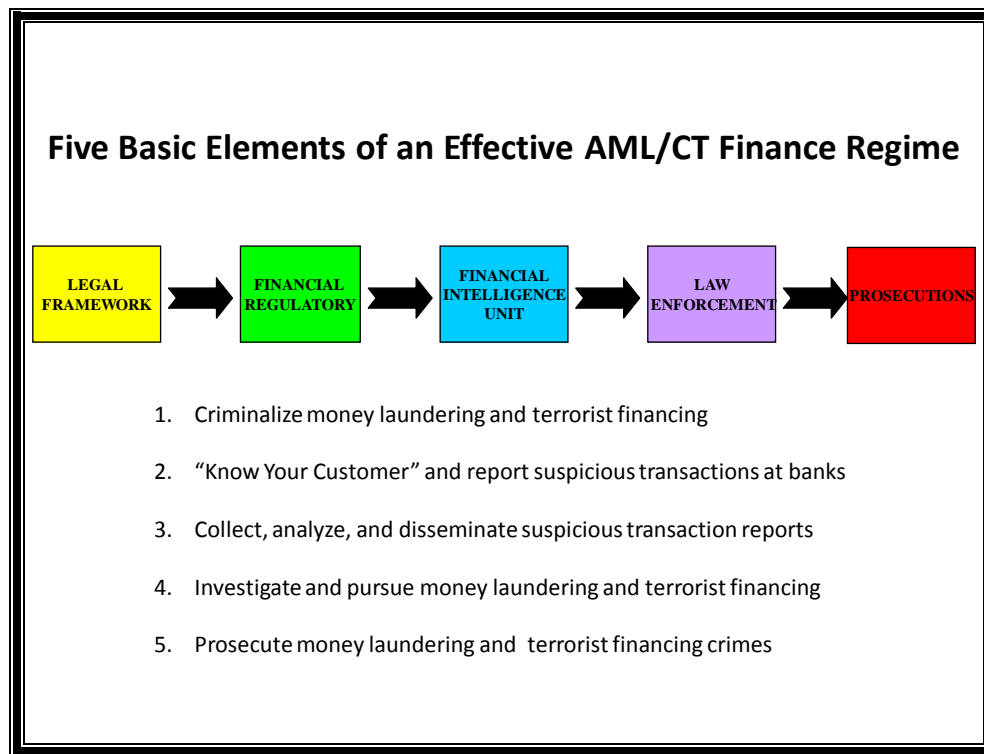
1. The legal framework that criminalizes money laundering
2. The regulation and oversight of the financial sector
3. The financial intelligence unit that analyzes suspicious transactions

³¹ Juniper Research Limited, “mPay, mShop, mTransfer!”
http://juniperresearch.com/whitepapers/mPay_mShop_mTransfer

³² Funcacion Bancomer, BBVA Research Migration Flash, Mexico, “In 2011, remittances to Mexico recorded its highest annual growth from the last 5 years,” February 1, 2012,
http://www.bbva.com/KETD/fbin/mult/120201_FlashMigracionMexico_07_eng_tcm348-285523.pdf?ts=542012

³³ Robin Arnfield, “Banks focus on electronic remittances,” *Electronic Payments International*, March 30, 2011,
<http://www.vrl-financial-news.com/cards--payments/electronic-payments-intl/issues/epi-2011/epi-285/banks-focus-on-electronic-remi.aspx>

4. Law enforcement investigations and
5. Prosecutions that bring money launderers to justice.³⁴



Source: Celina B. Realuyo

Legal Framework. The U.S. has various statutes that criminalize money laundering for decades. In 1970, the U.S. passed the Bank Secrecy Act, which requires businesses to keep records and file reports that are important in criminal, tax, and regulatory matters. The Money Laundering Control Act of 1986 criminalized money laundering. Following the terrorist attacks of September 11, 2001, the USA PATRIOT Act was adopted, and this led to a greater focus on compliance by financial institutions with measures to combat money laundering and terrorism financing. Title III of the USA PATRIOT Act amended the Bank Secrecy Act (BSA) to require certain financial institutions to establish proactive AML programs, through regulations issued by the Financial Crimes Enforcement Network (FinCEN), the financial intelligence unit of the U.S.³⁵

In addition to extensive anti-money laundering statutes, the U.S. has the Foreign Narcotics Kingpin Designation Act of 1999. The Kingpin Act prohibits U.S. or foreign persons, who play

³⁴ Celina B. Realuyo, “Building a Counterterrorist Finance Regime,” *U.S. Department of State E-Journal Economic Perspectives on The Global War on Terrorist Finance*, September 2004

³⁵ Financial Action Task Force, “Third Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism: United States of America,” (France: FATF Secretariat, 2006), 4.

a significant role in international narcotics trafficking, from conducting financial or commercial transactions with the designated individual and entities, and also freezes any assets they may have under U.S. jurisdiction.³⁶ Persons or entities are designated under the Kingpin Act due to their:

1. Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act;
2. Having owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or
3. Playing a significant role in international narcotics trafficking.

The Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury administers and enforces economic and trade sanctions to include the Kingpin Act based on U.S. foreign policy and national security goals against targeted international narcotics traffickers. As of April 2011, OFAC had designated 271 individuals and 135 entities tied to the financial and commercial networks of Mexico's most dangerous cartels since 2008.³⁷

Financial Regulatory. In the U.S., various financial regulators are responsible for oversight of the financial services industry. Their compliance regulation seeks to ensure “fair” and nondiscriminatory treatment for customers and to prevent financial institutions from being used for criminal or terrorist purposes. Under the Bank Secrecy Act of 1970, banks are required to submit Currency Transaction Reports to the Treasury Department for individual currency deposits and withdrawals exceeding ten thousand dollars. Banks also are required to follow “Know Your Customer” (KYC) practices and submit Suspicious Activity Reports for any banking transaction that seems suspicious or out of the ordinary for that customer. Due to the complex nature of the U.S. financial sector, the U.S. has several financial sector supervisors, including the Federal Reserve, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency and the Office of Thrift Supervision, as well as state regulators. These regulators work closely with the private sector to detect and guard against money laundering and terrorist financing.

Financial Intelligence Unit. FinCEN (Financial Crimes Enforcement Network) serves as the financial intelligence unit of the U.S. Its mission is to enhance the integrity of financial systems by facilitating the detection and deterrence of financial crime; it is a critical U.S. government agency in the fight against money laundering. The financial intelligence unit, Financial Crimes

³⁶ White House Fact Sheet: Overview of the Foreign Narcotics Kingpin Designation Act, April 15, 2009, http://www.whitehouse.gov/the_press_office/Fact-Sheet-Overview-of-the-Foreign-Narcotics-Kingpin-Designation-Act (accessed April 2, 2012)

³⁷ U.S. Embassy Mexico, “Fact Sheet Combating Money Laundering,” <http://mexico.usembassy.gov/press-releases/ep110429-hlmg.html>

Enforcement Network (FinCEN), has the main responsibility for the administration of the regulatory regime under the Bank Secrecy Act.

FinCEN carries out its mission by receiving and maintaining financial transactions data, analyzing and disseminating that data for law enforcement purposes, and building global cooperation with counterpart organizations in other countries and with international bodies.³⁸ FinCEN is working closely with the Mexican and other financial intelligence units (FIUs) in the region to monitor the impact of new regulations implemented by the Government of Mexico restricting U.S. dollar cash deposits at Mexican financial institutions. It monitors currency flows and suspicious activity reporting related to the Mexican regulations on U.S. dollar cash transactions.³⁹

FinCEN and its Mexican FIU counterpart, the Unidad de Inteligencia Financiera (UIF), have increased their tactical- and strategic-level collaboration based on the reciprocal sharing of relevant financial data available to FinCEN and the UIF, to include joint examination of cross-border currency flows. FinCEN is also increasing collaboration with Mexican banking regulators, including the National Banking and Securities Commission (CNBV), to share information on AML requirements and compliance to strengthen the defenses of U.S. and Mexican financial institutions against money laundering.⁴⁰ FinCEN's Southwest Border – Executive Steering Group activities focus on targeting the illicit use of money services businesses and sharing financial investigative information and intelligence through the Organized Crime Drug Enforcement Task Force Fusion Center and further coordinate with Mexico on anti-money laundering regulatory efforts, international tax administration, and financial crime.

Law Enforcement Investigations. Jurisdiction to enforce the money laundering laws of the United States, to include the laundering of narcotics proceeds, is the responsibility of the U.S. Drug Enforcement Administration (DEA), The Federal Bureau of Investigation (FBI), U.S. Immigration and Customs Enforcement (ICE), the Internal Revenue Service-Criminal Investigation (IRS-CI), and the U.S. Postal Inspection Service (USPIS).⁴¹

FBI Investigations: The FBI Financial Crimes Section oversees the investigation of financial fraud and to facilitate the forfeiture of assets from those engaging in federal crimes, including money laundering. In fiscal years (FY) 2010-2011, the FCS was comprised of the Asset Forfeiture/Money Laundering Unit (AF/MLU), the Economic Crimes Unit (ECU), the Health

³⁸ FinCen, “About FinCen,” http://www.fincen.gov/about_fincen/wwd/, (accessed April 2, 2012)

³⁹ FINCEN, “2011 Annual Report,” 48, http://www.fincen.gov/news_room/rp/files/annual_report_fy2011.pdf, (accessed, March 23, 2012)

⁴⁰ *Ibid.* 54.

⁴¹ Office of National Drug Control Policy (ONDCP), “International Money Laundering and Asset Forfeiture,” <http://www.whitehouse.gov/ondcp/international-money-laundering-and-asset-forfeiture>

Care Fraud Unit (HCFU), the Forensic Accountant Unit (FAU), the Financial Institution Fraud Unit (FIFU), and the Financial Intelligence Center (FIC).

The FBI Asset Forfeiture/Money Laundering Unit (AF/MLU) is intended promote the strategic use of asset forfeiture and to ensure field offices employ the money laundering violation in all investigations, where appropriate, to disrupt and/or dismantle criminal enterprises. The asset forfeiture and money laundering process identifies targets, disrupts, and dismantles criminal and terrorist organizations and individuals engaged in fraud schemes which target our nation's financial infrastructure. Through FY 2011, a total of 303 cases were investigated by the FBI resulting in 37 indictments and 45 convictions of money laundering fraud criminals. For FY 2011, the following money laundering accomplishments were achieved for the White Collar Crime Program: \$18.4 million in restitutions; \$809,414 in recoveries; and \$983,536 in fines.⁴² Given the vast amount of money laundered in the United States and size of the economy, these statistics on AML investigations, prosecutions, and restitutions are woefully low.

DEA Money Laundering Investigations: DEA's financial enforcement strategy is "mission driven" and focuses on the flow of money back to the international sources of supply, since this is the very money that is destined to finance the next cycle of illegal drugs that will target our consumer market here in the United States.⁴³ DEA financial investigations relating to the movement of funds to Mexico are not classified or segregated by any particular type of drug, but rather illicit drug proceeds can be categorized based on how they are used by the DTOs. Drug proceeds are used to pay sources of supply, to support the infrastructure of the organization, and to acquire personal assets. The "cash on hand" left over can be considered as either part of the organization's working capital or personal wealth.

"DEA works with Mexican authorities to gather and use information about these criminal organizations to counter the threats they pose to both of our countries," according to DEA spokesman Lawrence Payne. "As a result of this cooperation DEA has seized illicit transnational criminal organization money all around the world."⁴⁴ In FY 2010, DEA maintained 21 money laundering investigative groups to support its Financial Attack Strategy. Through several national initiatives focused on targeting the bulk cash derived from drug proceeds, DEA seized \$736.7 million in FY 2010. Further, DEA denied total revenue of nearly \$3 billion from drug trafficking and money laundering organizations through asset and drug seizures in FY 2010.⁴⁵

⁴² Federal Bureau of Investigation, "Financial Crimes Report to the Public: Fiscal Years 2010-2011," (October 1, 2009 – September 30, 2011) <http://www.fbi.gov/stats-services/publications/financial-crimes-report-2010-2011/financial-crimes-report-2010-2011#Asset>. Includes all cases. Not limited to Mexico.

⁴³ Drug Enforcement Agency, <http://www.justice.gov/dea/programs/money.htm>

⁴⁴ Terry Frieden, "DEA defends money-laundering operations with Mexicans," CNN.com, January 9, 2012, http://articles.cnn.com/2012-01-09/us/us_dea-money-laundering_1_dea-agents-drug-trafficking-laundering?_s=PM:US

⁴⁵ ONDCP, *International Money Laundering and Asset Forfeiture*.

Department of Homeland Security Efforts against Bulk Cash Smuggling and Money Laundering: U.S. Immigration and Customs Enforcement (ICE) is the largest investigative agency in the Department of Homeland Security. ICE is charged with enforcing a wide array of laws, including those related to financial crime, trade fraud, counterfeiting, cash smuggling and others. With regard to financial investigations, ICE's Cornerstone Initiative focuses on coordination and cooperation with other domestic and foreign law enforcement agencies and the private sector to eliminate vulnerabilities in U.S. financial systems and disrupt and dismantle alternative illicit financing mechanisms.⁴⁶

In recent years, the smuggling of bulk currency has become a preferred method for drug dealers and other criminals to move illicit proceeds across our borders. ICE has taken a leading role in combating bulk cash smuggling, teaming in 2005 with U.S. Customs and Border Protection (CBP) to launch Operation Firewall, a comprehensive law enforcement operation targeting criminal organizations involved in the smuggling of large quantities of U.S. currency. Operation Firewall targets the full array of methods used to smuggle bulk cash, including commercial and private passenger vehicles, commercial airline shipments and passengers, and pedestrians crossing U.S. borders with Mexico and Canada.

ICE and CBP partner to combat cash smuggling at U.S. ports-of-entry. In the U.S. interior, ICE works with state and local partners to identify and intercept smuggled bulk cash shipments being transported along domestic interstate highways. ICE Homeland Security Investigations (HSI) enforces bulk cash smuggling law beyond our nation's borders. ICE HSI and CBP also conduct Operation Firewall training operations with foreign law enforcement partners, including exercises with Mexican law enforcement that target the smuggling of U.S. currency through Mexico to Central and South America. In March 2009, U.S. Customs and Border Protection (CBP) reestablished an Outbound Enforcement Program in order to increase outbound enforcement activities and obstruct illegal currency and weapons being smuggled from the United States into Mexico. Results include a dramatic increase in outbound currency and inbound drug seizures. For FY 2010, the CBP Office of Field Operations seized a total of \$28.9 million in currency at land border ports of entry at the Southern border. In addition, the U.S. Border Patrol seized \$7.9 million in currency at the Southern border.⁴⁷

With operations in Mexico, Panama and Colombia, ICE HSI special agents and CBP officers provide hands-on training to law enforcement partners on passenger analysis and other investigative techniques that have proven effective in the United States. They also train Mexican and Panamanian law enforcement officers on how to use mobile x-ray units provided by the U.S. Department of State.⁴⁸

DHS/Trade Transparency Units (TTU's) to Combat Trade-Based Money Laundering: To detect trade-based money laundering schemes, the State Department, with DHS' Immigration and

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ U.S. Immigrations and Customs Enforcement, "Operation Firewall Fact Sheet," <http://www.ice.gov/news/library/factsheets/firewall.htm>, (accessed April 5, 2012)

Customs Enforcement (ICE) and the Department of Treasury, supports five trade transparency units (TTUs) in Latin America: three in the tri-border area of Brazil, Argentina, and Paraguay, one in Mexico, and one in Colombia. TTUs are entities designed to help identify significant disparities in import and export trade documentation and continue to enjoy success in combating money laundering and other trade-related financial crimes. The TTU has the unique ability to not only analyze domestic trade and financial data, but also trade and financial data of foreign cooperating partners. Similar to the Egmont Group of financial intelligence units that examines and exchanges information gathered through financial transparency reporting requirements, an international network of TTUs would foster the sharing of disparities in trade data between countries and be a potent weapon in combating customs fraud and trade-based money laundering.⁴⁹

Prosecutions/Asset Forfeiture. The Department of Justice’s Asset Forfeiture and Money Laundering Section (AFMLS) provides centralized management for asset forfeiture program and managerial direction to the Department's components in prosecuting money laundering. It initiates, coordinates, and reviews legislative and policy proposals impacting on the asset forfeiture program and money laundering enforcement agencies. AFMLS works with the entire spectrum of law enforcement and regulatory agencies using an interagency, interdisciplinary and international approach. The Section is mandated to: coordinate multi-district investigations and prosecutions; provide guidance, legal advice and assistance with respect to asset forfeiture and money laundering investigations and prosecutions; develop regulatory and legislative initiatives; ensure the uniform application of forfeiture and money laundering statutes; litigate complex, sensitive and multi-district cases; and provide litigation assistance to U.S. Attorneys' Offices and Criminal Division components.⁵⁰

AFMLS and its Mexican counterpart co-chair the Anti-Money Laundering and Asset Forfeiture sub-working group where cooperation to combat money laundering and enhance asset forfeiture cooperation between the countries is discussed. AFMLS provided a detailed paper with comments on draft Mexican legislation that would allow for non-conviction based forfeiture in Mexico and would enhance Mexico’s ability to cooperate on asset forfeiture matters with foreign countries, including the United States. AFMLS is providing software and training to Mexican officials that will allow Mexico to better track and maintain assets it seizes and freezes so that it can maximize the value of those assets once it has lawfully forfeited them.⁵¹

In March 2010, a four year case, led by the Drug Enforcement Administration (DEA) with financial investigation cooperation from the Mexican Attorney General and Financial

⁴⁹ U.S. State Department, *INCSR 2011*, 5.

⁵⁰ U.S. Department of Justice, “ Asset Forfeiture and Money Laundering Section,” <http://www.justice.gov/criminal/afmls/>, (accessed April 2, 2012)

⁵¹ Federal Bureau of Investigation, “FBI Fact Sheet: Department of Justice Efforts to Combat Mexican Drug Cartels,” April 2, 2009, www.fbi.gov/news/pressrel/press-releases/fact-sheet-department-of-justice-efforts-to-combat-mexican-drug-cartels (accessed April 3, 2012)

Intelligence Unit (UIF), concluded with charges against Wachovia bank, the fourth largest commercial bank in the U.S. Wachovia entered into a deferred prosecution agreement with the U.S. Department of Justice to resolve charges that it knowingly processed the proceeds of illicit activity and willfully failed to establish an anti-money laundering program. As part of the agreement, Wachovia forfeited \$110 million to the United States and paid an additional \$50 million fine to the U.S. Treasury. The case demonstrates that the U.S. will not tolerate abuse of the financial system to launder illegal monies, and is a prime example of what is possible when the U.S. and Mexico work together in financial investigations.⁵²

On March 26, 2012, U.S. Attorney General Eric Holder and Mexican Attorney General Marisela Morales Ibáñez signed a letter of intent to share approximately \$6 million in forfeited funds with the Office of the Attorney General of the Republic of Mexico (PGR). The letter of intent and anticipated fund sharing recognizes the PGR's valuable cooperation in the investigation and resolution of the U.S. government's case against Sigue Corporation for violations of the Bank Secrecy Act. In January 2008, Sigue entered into a deferred prosecution agreement with the DOJ on charges of failing to maintain an effective anti-money laundering program. As a result, Sigue forfeited \$15 million to the United States and agreed to commit an additional \$9.7 million to improving its anti-money laundering program. The Sigue forfeiture resulted from a case prosecuted by AFMLS and was investigated by the Drug Enforcement Administration and Internal Revenue Service. "The Department of Justice and the Mexican PGR have built strong and collaborative working relationships in order to combat transnational organized criminal groups," said Attorney General Holder, "Our intention to share approximately \$6 million in forfeited assets with our Mexican counterparts reflects another step forward in our successful crime prevention and public safety efforts. In an era where crime is not limited by physical boundaries, our international partnerships are more critical than ever in the work of bringing criminals to justice."⁵³

Mexican Anti-Money Laundering Measures

The Government of Mexico has made fighting money laundering and drug trafficking one of its top priorities, and has made progress in combating these crimes over the course of President Calderon's administration. Mexico has adopted a national anti-money laundering strategy, increased the capacity of law enforcement and supervisors, and established a vetted police unit. The Mexican government works very closely with U.S. law enforcement on transnational cases including money laundering investigations.⁵⁴

Legal Framework. Money laundering legislation in Mexico applies to the proceeds of all crimes committed in Mexico with its principal provisions contained under Article 400-Bis of the

⁵² U.S. Embassy Mexico City, Combating Money Laundering Fact Sheet, April 2011.

⁵³ USDOJ Press Release, "U.S. and Mexican Officials Sign Letter of Intent to Share \$6 Million in Forfeited Assets to Combat Financial Infrastructure of Organized Crime," March 26, 2012, <http://www.justice.gov/opa/pr/2012/March/12-ag-375.html> (accessed April 2, 2012)

⁵⁴ U.S. State Department, *INCSR 2011*, 142-143.

Federal Criminal Code and complemented by the provisions in the Federal Law against Organized Crime. The Federal Criminal Code applies more severe criminal sanctions for money laundering committed by members of a criminal organization. Mexican law allows for the prosecution of persons who commit both the predicate offense and the money laundering offense (self-laundering). The offense of money laundering extends to any type of property, regardless of its value, that directly or indirectly represents the proceeds of a crime. Criminal liability for money laundering does not extend to legal persons but recently proposed legislation may allow for it. The law provides for administrative and civil sanctions against legal persons if a member or representative of a legal entity engages in criminal conduct in the name of, on behalf of, or for the benefit of the legal entity.⁵⁵

In a move to combat money laundering, the Government of Mexico announced new regulations on June 15, 2010 to impose limits on U.S. dollar currency conversions in Mexico. The caps are applicable to both individuals and businesses for cash transactions from dollars to pesos, including deposits, credit payments, and service fees. Mexico expanded its anti-money laundering strategy on August 26, 2010, announcing new reforms, including greater interagency coordination to identify and investigate suspicious transactions, harsher penalties for using resources from illicit activities, and restrictions on the use of large amounts of cash. The proposal would also prohibit cash purchases of real estate and cash payments in excess of 100,000 pesos (\$7,700) for luxury items.⁵⁶

New Mexican AML legislation in 2010 limits bank deposits of U.S. currency by individual customers to \$4,000 per month and by individual noncustomers to \$300 per day and a total of \$1,500 per month. The daily threshold does not apply to non-Mexicans. It further prohibits U.S. currency deposits by corporate entities and trusts unless the corporate entity or trust is a bank customer and is located or conducts most of its business within a tourist area, within 20 kilometers of the U.S. border, or within the states of Baja California or South Baja California. In such cases, a corporate entity or trust may deposit up to \$14,000 in U.S. currency per month.⁵⁷

On April 28, 2011, the Mexican Senate approved a draft of “Federal Law on the Prevention and Identification of Operations from Illicit Sources” (the “Law”), which has since then been referred to the Mexican Chamber of Representatives for consideration. This initiative is intended to implement a system to combat organized crime by preventing the financing of its activities through money laundering. The proposed law will clearly increase the regulatory burden and

⁵⁵ International Monetary Fund, “Mexico: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism,” *IMF Country Report* (Washington, D.C.: IMF, 2009), 27.

⁵⁶ U.S. State Department, *INCSR 2011*, 384.

⁵⁷ NDIC, *National Drug Threat Assessment Report 2011*, 41.

associated cost of doing business in Mexico through a rather broad swath of industries.⁵⁸ As of this writing, the law has not been approved by the Chamber of Representatives.

Financial Regulatory. In Mexico, financial institutions fall into four main categories of institutions: *i*) banking; *ii*) nonbanking financial intermediaries; *iii*) securities, mutual funds and derivatives; and *iv*) insurance and bonding companies. Most are privately owned and can conduct multiple activities.⁵⁹ The Ministry of Finance and Public Credit (SHCP) is charged with regulating financial institutions and granting authorizations or licenses for the creation and operation of each of them. Ongoing supervision is conducted by decentralized supervisory agencies of the SHCP. The National Banking and Securities Commission (CNBV) is the supervisory authority for banking and nonbanking financial intermediaries and the securities sector in Mexico. The National Insurance and Bonding Commission (Comisión Nacional de Seguros y Finanzas) oversees insurance (including intermediaries) and bonding companies while the National Retirement Savings Commission (Comisión Nacional del Sistema del Ahorro para el Retiro) covers retirement funds.⁶⁰

In Mexico, institutions that must comply with Know Your Customer (KYC)⁶¹ regulations include banks and other financial institutions, including mutual savings companies, insurance companies, securities brokers, retirement and investment funds, financial leasing and factoring funds, casas de cambio, and centros cambiarios (unlicensed foreign exchange centers) and are required to file suspicious transaction reports for suspected cases of money laundering or terrorist financing. In Mexico, applicable Designated Non-Financial Businesses and Professions (DNFBPs) include real estate agents, dealers in precious metals and stones, lawyers, notaries and other independent legal professionals and accountants, and company services providers.⁶² It does not appear that compliance with KYC regulation in Mexico is scrupulously exercised since the FIU

⁵⁸ William (Hunt) Buckley and Gabriela Salazar Torres, "Mexico's Proposed Anti-Money Laundering Law," July 5, 2011, http://www.haynesboone.com/mexican_anti-money_laundering_law/

⁵⁹ International Monetary Fund, "Mexico: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism," *IMF Country Report* (Washington, D.C.: IMF, 2009), 27.

⁶⁰ *Ibid.* 18.

⁶¹ Know Your Customer (KYC) guidelines are intended to prevent banks from being used, intentionally or unintentionally, by criminal elements for money laundering activities. KYC procedures enable banks to know/understand their customers and their financial dealings better which in turn help them manage their risks prudently. Banks' KYC policies incorporate the following four key elements: Customer Acceptance Policy; Customer Identification Procedures; Monitoring of Transactions; and Risk management.

⁶² *Ibid.*

only received 48,471 reports of unusual transactions from October 2010-September 2011.⁶³ To improve these statistics, the private sector in Mexico may require more rigorous training and heightened awareness of anti-money laundering regulations.

Financial Intelligence Unit. The Mexican federal government created the Financial Intelligence Unit (FIU) in the Ministry of Finance and Public Credit with the primary function, aligned with international standards, of being a national central governmental body responsible for receiving, analyzing and disseminating financial information concerning transactions suspected of being related to money laundering or terrorist financing (ML/TF). The FIU is a vital agency that supports Mexico's National Strategy for Preventing and Combating Money Laundering/Terrorist Financing (ML/TF) with its two goals: (a) to prevent criminal organizations from using their gains, and (b) to effectively and opportunely prosecute highly significant ML/TF cases. The strategy has four priorities: 1) Information and Organization; 2) Regulatory Framework; 3) Risk-Based Supervision and Effective Procedures; and 4) Transparency and Accountability.

From October 2010-September 2011, the FIU received 48,471 reports of unusual transactions and 110 reports of internally concerning transactions from the obligated parties. An increase of 7% in unusual transactions occurred during the preceding year. During that same period, the FIU received 5.5 million cash transaction reports which is 28% more than the total received in the preceding period. This reflects an increased number of reports submitted by full-service banking institutions, which, in the period of reference, generated 97% of the cash transactions reported to the FIU due to newly imposed cash regulations.⁶⁴

From October 2010 to September 2011, 51 financial transaction analysis reports of suspected money laundering were prepared and submitted to the Office of the Attorney General implicating 121 people. As part of an effort to improve the preparation and effectiveness of the reports, there has been constant feedback from the PGR on the usefulness of the information provided and its incorporation into investigations. This joint effort has resulted in 100 percent of the reports submitted being used in pre-trial investigations. In the reporting period, the Unit responded to 1,176 requests for information from the PGR, for which information was reported on 1,694 individuals. With respect to the same period preceding this report, requests for information from the PGR increased 14%.⁶⁵ Although the number of suspicious transaction reports is relatively low given the size of the Mexican economy, the increase in the number of reports filed and requests for information is a positive and promising trend for anti-money laundering efforts.

⁶³ *Financial Intelligence Unit-Mexico Activity Report October 2010-September 2011*, http://www.shcp.gob.mx/inteligencia_financiera/ambito_internacional/grupo%20egmont/AR_102010_092011_FIU_UIFMX_ENG.pdf (accessed March 31, 2012)

⁶⁴ *Ibid.*

⁶⁵ 2010-2011 Annual Report of the Financial Intelligence Unit of Mexico, http://www.shcp.gob.mx/inteligencia_financiera/ambito_internacional/grupo%20egmont/AR_102010_092011_FIU_UIFMX_ENG.pdf (accessed April 4, 2012)

Investigations and Prosecutions. The Ministry of Public Security (Secretaría de Seguridad Pública), under Article 30 Bis of the Ley Orgánica de la Administración Pública Federal (Organizational Law of the Federal Public Administration), is empowered, inter alia, to develop the public security policies and federal criminal policies, including regulation, instruments and actions to efficiently prevent crimes. This agency leads the Public Security National Council and organizes, leads, administers, and supervises the Federal Police, which supports competent authorities in the investigation and prosecution of crimes, the arrest of persons and the seizure of property which constitutes the object of, proceeds from, or instrumentalities of, a crime. The Federal Police is responsible for preventing and combating federal crimes, by means of criminal intelligence, and the control and inspection of persons and merchandise entering or exiting Mexico, policing federal highways and railroads, and providing a support force if required. It has the power to seize currency or monetary instruments that have not been properly declared. The Federal Police does not specifically gather intelligence for money laundering purposes; however, if found, such information would be forwarded to the FIU⁶⁶

The Attorney General's Office (*Procuraduría General de la República*–PGR) is responsible for investigating and prosecuting all federal crimes, including money laundering and terrorism financing. The Deputy Attorney for Special Investigation of Organized Crime Special (SIEDO–Spanish acronym for *Subprocuraduría de Investigación Especializada en Delincuencia Organizada*) has primary responsibility for criminal money laundering and terrorism financing enforcement. The SIEDO is comprised of six specialized units: the Specialized Unit for the Investigation of Offenses Against Health (the Special Drug Offenses Unit); Specialized Unit for the Investigation of Operations with Resources of Illicit Origin and Forgery or Alteration of Currency (Special AML Unit); Specialized Unit for the Investigation of Terrorism and Traffic of Weapons (Special Antiterrorism Unit that will analyze, along with the AML Unit, the FT cases); Specialized Unit for the Investigation of Kidnappings; Specialized Unit for the Investigation of Traffic of Undocumented Persons, Minors and Organs (Special Human trafficking Unit), and Specialized Unit for the Investigation of Vehicle Theft. The Federal Investigation Agency (*Agencia Federal de Investigación*–AFI) is a police force under the PGR that is responsible for investigating a number of offenses, including kidnapping and money laundering, but does so only based on the PGR's instructions.⁶⁷

The Office of the Mexican Attorney-General (known as the PGR) is the body of the Federal Executive Branch responsible for investigating and prosecuting federal crimes including money laundering. The PGR is led by the Mexican Attorney General, who heads the Federal Public Prosecutor and its auxiliary bodies including investigative police agents and technical and scientific experts.⁶⁸ From September 2009 to July 2010, Mexican judges convicted 37 individuals on money laundering charges. Given that from 2004 to 2007, only 17 criminals were

⁶⁶ International Monetary Fund, *Mexico: Detailed Assessment Report*, 43

⁶⁷ *Ibid.* 103

⁶⁸ PRG website, <http://www.pgr.gob.mx/ingles/que%20es%20pgr/presentation.asp>

convicted of money laundering, this is a notable improvement, although still a relatively small number of cases involving a very lucrative business.⁶⁹ In March 2012, the PGR created a Specialized Unit for Financial Analysis to better investigate financial crimes including money laundering in Mexico.⁷⁰

Advancing U.S.-Mexican AML Efforts: The Way Forward

The U.S. and Mexico have made considerable progress in the fight against money laundering over the past few years. While there may be debate over the amount of money earned and laundered by criminal organizations, attacking the economic power of the Mexican-based TCOs has become an integral part of the U.S. and Mexican strategies to combat the TCOs. Constraining their operating environment and increasing their cost of doing business can damage the strength of the TCOs. To this end, there are several ways to further advance anti-money laundering efforts on both sides of the border. The way forward will require continued political commitment, the institutionalization of anti-money laundering measures and mechanisms, increased bilateral cooperation, and strategic communications to stigmatize transnational organized crime and money laundering with the general public.

First, both the U.S. and Mexico must demonstrate the political will and continued resolve to confront TCOs and focus on their finances. To combat TCOs, we must strike at the heart of their operations – their money. While anti-money laundering investigations are complex and cannot be captured by videotape like a law enforcement raid on a suspected trafficker’s safe house, “following the money trail” often times leads law enforcement to TCO leadership or their financial facilitators, and disrupting TCO money laundering operations increase the cost of doing business. Many bilateral anti-money laundering initiatives are underway in the U.S. and Mexico as described above, but these activities and authorities are often dispersed amongst various governmental agencies making coordination more difficult. In this context, the U.S. and Mexico should establish a coordinating mechanism such as a bi-national TCO Finance Working Group that would enable the governments to consolidate information on all anti-money laundering initiatives and investigations underway on both sides of the border. Such a measure could enhance interagency and bilateral cooperation and help evaluate the successes or shortcomings of anti-money laundering efforts in combating transnational organized crime.

Moreover, while both the U.S. and Mexico have the requisite legal authority and institutions in place to fight money laundering, they must dedicate adequate human and financial capital to more successfully pursue TCO financing. There have been indications that more staff will be

⁶⁹ U.S. State Department, *INCSR 2011*, 142-143.

⁷⁰ Procuraduría General De La Republica, Acuerdo A/049/12 de la Procuradora General de la República por el que se crea la Unidad Especializada en Análisis Financiero y se establecen sus facultades, March 2, 2012, <http://www.pgr.gob.mx/Normatec/Documentos/a-49-12.pdf> (accessed April 5, 2012)

added to anti-money laundering agencies in the U.S. and Mexico, but actions speak louder than words. On the strategic communications front, the U.S. and Mexico must educate and engage the private and civic sectors in the fight against the TCOs and money laundering.

Other policy options both countries might consider to advance anti-money laundering efforts and reinforce each country's anti-money laundering regime include:

Legal Framework:

- Swift passage of the “Federal Law on the Prevention and Identification of Operations from Illicit Sources” by Mexico’s Congress. This legislation would reinforce Mexico’s anti-money laundering measures for a broader swath of business activities that can be abused by TCOs, such as real estate, mortgage lending, commodity or currency exchange businesses.⁷¹
- Monitor and regulate new financial innovations and instruments like “store of value” cards or mobile banking that can be used for money laundering in both the U.S. and Mexico.
- Increase coordination between the U.S. and Mexico in the development and enforcement of Drug Kingpin designations; Mexico should consider taking steps to mirror U.S. financial measures that block the assets of those designated under the Kingpin Act to maximize the effectiveness of these measures.

Financial Regulatory:

- Mexico should extend anti-money laundering requirements to independent professionals and consultants in the accounting, tax, financial, and legal businesses who act as the attorney-in-fact for a client in the purchase or sale of real estate, in the administration and management of resources, securities, or other assets, management of bank or securities accounts, or organization of capital for the constitution, operation, or administration of a company.⁷²
- Improve the regulation and supervision of money transmitters, unlicensed currency exchange centers, centros cambiarios and gambling centers in Mexico.
- Engage and educate the U.S. and Mexican private and civic sectors of the threats posed by money laundering and transnational criminal organizations and anti-money laundering measures.

⁷¹ William (Hunt) Buckley and Gabriela Salazar Torres, “Mexico’s Proposed Anti-Money Laundering Law,” July 5, 2011, http://www.haynesboone.com/mexican_anti-money_laundering_law/

⁷² *Ibid.*

Financial Intelligence Unit:

- Enhance U.S.-Mexican cooperation between FIUs with increased and timely information sharing in examining suspected cases of money laundering.
- Deepen tactical- and strategic-level collaboration based on the reciprocal sharing of relevant financial data available to FinCEN and the FIU, to include joint examination of cross-border currency flows.
- Incorporate the latest technology to collect, analyze, and disseminate critical financial intelligence including cross-border wire transactions.

Law Enforcement:

- Incorporate financial intelligence in interdiction operations and “follow the money trail” to better understand criminal enterprises and identify their facilitators. Increase information and intelligence sharing among U.S. and Mexican law enforcement.
- Step up efforts to inspect outbound vehicles at U.S. border to detect bulk cash smuggling.
- Complement law enforcement training programs with anti-money laundering and financial forensics modules.

Prosecutions/Asset Forfeiture:

- Increase the number and efficiency of money laundering prosecutions and convictions in the U.S. and Mexico.
- Expand anti-money laundering and financial forensics training programs for judges and prosecutors which are currently limited due to a lack of trainers and funding.
- Pass legislation in Mexico that would allow for non-conviction based asset forfeiture. This would enhance Mexico’s ability to cooperate on asset forfeiture matters with foreign countries, including the United States.

All of these measures can enhance efforts to undermine the financing of transnational criminal organizations operating in the U.S. and Mexico. The phenomenon of money laundering by criminal enterprises will never be totally eradicated; however, measures such as those discussed above can significantly contribute to law enforcement and intelligence investigations targeting TCOs and create an operating environment hostile to TCOs by hampering their ability to launder the proceeds from their illicit activities that undermine the state, the economy, and society.

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