



WORLD SHIPPING COUNCIL  
PARTNERS IN AMERICA'S TRADE

April 18, 2006

The Honorable Peter T. King  
Chairman  
House Committee on Homeland Security  
United States House of Representatives  
Washington, D.C. 20515

Dear Chairman King:

When Congress returns from its April recess the week of April 24<sup>th</sup>, we understand that the House Homeland Security Committee is expected to consider H.R. 4954, "The SAFE Port Act", a bill to enhance maritime cargo and port security. We are writing to you as a member of that Committee.

We have no objection to that bill. We are writing to express our views about H.R. 4899, the "Sail Only if Scanned Act" (the "SOS bill"), which we understand may be offered as an amendment to H.R. 4954 in Committee. H.R. 4899 would require every ocean shipping container to be "scanned" in a foreign port "before the container is loaded on the vessel for shipment to the United States". The "SOS bill" was proposed as an amendment in Subcommittee, where it was defeated. If it is offered again at full Committee, we hope that it will be defeated again.

If the "SOS bill" became law, it would cripple American commerce and almost certainly cause significant conflict with foreign governments. The World Shipping Council testified and expressed its concerns with this bill at the Committee's April 4<sup>th</sup> hearing on H.R. 4954. The following is a more detailed explanation of what we perceive to be some of that bill's problems and adverse consequences.

#### Issue Background

Today Customs and Border Protection (CBP) "screens" the cargo shipment data it receives on 100% of all import containers before vessel loading in a foreign port, and it performs a risk assessment on those containers. The CBP strategy is then to "inspect" 100% of those containers that it determines are "high risk" or otherwise worthy or

review. They may be inspected overseas or in the U.S. port, depending on various circumstances. CBP is also in the process of deploying radiation scanning equipment, with the objective of running almost all import containers through radiation detection equipment, at U.S. ports of arrival. Today CBP estimates that 51% of the import containers are being scanned for radiation, with the objective of getting that number close to 100% by the end of 2007.

CBP thus “screens” 100% of all containers before vessel loading, inspects all containers its targeting system identifies as high risk or otherwise deserving inspection (this constitutes about 5.5% of all incoming containers), and is in the process of installing radiation portal monitors that presently cover 51% of all inbound containers and should achieve radiation scanning on virtually all inbound containers in 2007.

Proponents of the “SOS bill” argue that the Administration is inspecting only 5% of the containers, that this is inadequate, and that every container should to be “scanned” or inspected before vessel loading. This bill would prohibit a container from being loaded onto a ship for the U.S. unless this has occurred.

The problems with the bill, however, are substantial.

#### Issue Analysis

The World Shipping Council and its member companies have consistently supported the efforts of the U.S. Coast Guard, Customs and Border Protection, and Department of Homeland Security efforts to construct an effective, multi-layered maritime security strategy, including ship security, port security, personnel security, and perhaps the most challenging issue, cargo security. The Council has fully supported having the cargo security system apply to cargo before vessel loading in a foreign port under the “24 Hour Rule”.

The vision of being able to inspect containers before vessel loading at the foreign port is an attractive one, and one in which various sectors of the maritime industry (including the World Shipping Council and its member shipping lines and some major marine terminal operating companies), and Department of Homeland Security (DHS) officials, have shown interest and support.

The difficulty is not in embracing this as a desirable vision, but in the legislation’s inflexible insistence that this be implemented for 100% of all containers, in a short time, its lack of clarity and failure to address fundamental issues related to implementation of the idea, and its mandatory sanction that, if not performed, trade with non-compliant foreign ports will be terminated.<sup>1</sup> The bill fails to address the many legitimate, fundamental, real world issues involved in the implementation of such a strategy.

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<sup>1</sup> The U.S. will import roughly 12 million containers of cargo this year, meaning roughly 33,000 containers are loaded onto ships in foreign ports each day from 176 different nations.

A responsible discussion of this concept would require Congress to address many issues that unavoidably arise from this legislation, including the following:

1. What does “scanned” mean? The “SOS” bill requires that each container be “scanned” with equipment that meets certain standards, but it does not define what “scan” means. Does it mean radiation scanning, or does it *also* mean gamma ray or X-ray non-intrusive inspection (NII) images? It is very important for the legislation to be clear about what it would require. These are two different technologies and processes, as discussed in more detail below. The equipment also produces very different operational and analytical implications. Further, does “scan” mean just taking a reading or image, or does it also require human analysis and assessment of the technology’s readings and images before the container can be loaded aboard a ship, and if so, by whom? The bill does not say; it simply says “a copy of the scan” should be sent to DHS.

2. Who is to do the “scanning”? The bill requires that each container be scanned and that a copy of the scan be provided to the Secretary of DHS, but, quite remarkably, the bill does not identify who is to do the scanning. This is obviously a fundamental question, both as to security strategy and to operational accountability.

The bill needs to be clear whether the required “scan” is to be or can be done by the foreign marine terminal operator (usually a private company) that is loading the vessel, *or* whether the bill intends that the scanning must be performed by foreign governmental authorities at the particular port of loading.<sup>2</sup>

Congress needs to articulate and establish a clear strategy if it is going to legislate on this issue. Recently, Congress castigated Dubai World Ports (DWP) as untrustworthy to unload or load ships in the United States, even though DWP would use U.S. labor and management, even though there were no facts that identified this company as a security risk, even though DWP loads ships bound for the U.S. every day at its facilities around the world, and even though it performs port services for the U.S. Navy in the Middle East.

Is the “SOS” bill now saying that its required container scanning is to be performed in foreign ports by a company that it would not allow to operate in U.S. ports?

The point of this question is not to raise questions about DWP’s fitness to perform this task (we believe that it would be as appropriate as any private marine terminal operator to do this), but to ascertain clearly the bill’s intent and strategy.

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<sup>2</sup> Congressman Duncan Hunter, Chairman of the House Armed Services Committee, has also introduced legislation, H.R. 4881, after the Dubai World Ports affair. It appears to call for the disinvestment of foreign capital from all U.S. critical infrastructure (which includes international liner shipping, where 95% of the cargo carriage is foreign owned, and U.S. port terminal operators, which are roughly 75% foreign owned), but his bill also calls for 100% mandatory inspection of all cargo entering the U.S. This bill, however, unlike H.R. 4899, appears not to trust any foreign role in the mandatory import cargo inspection process, and instructs U.S. government officials to inspect it all at the U.S. port of discharge.

The “ICIS concept” discussed in more detail below envisions such private foreign terminal operating companies’ participation in the task of overseas container inspection. The “SOS” bill should be clear whether that is an agreed element of its strategy or not, and whether Congress, notwithstanding its recent actions with respect to the DWP affair and notwithstanding the policies proposed in other legislation introduced in Congress expressing a distrust of foreign companies operating in this business (see Chairman Duncan Hunter’s bill discussed in footnote 2 above), trusts foreign terminal operating companies to perform this function as part of the nation’s cargo security regime.

Furthermore, as the “SOS” bill provides no funding for the implementation of this overseas container scanning requirement, it presumably intends that the cost of equipment acquisition and the costs of system operation will be borne by whomever it may identify as the parties who are expected to perform the scanning task. Clarity on this point is unavoidably essential.

3. How is this to work? The bill states that containers must be “scanned” by appropriate equipment, which must meet U.S. standards,<sup>3</sup> before they are loaded onto vessels bound for the U.S., and copies of the scans must be sent to U.S. Customs and Border Protection (CBP) within the Department of Homeland Security (DHS). It fails to say *when* the scans must be sent to DHS, *how* they would be sent,<sup>4</sup> *who* is to analyze and make judgments on them, *what* DHS is expected to do with them when it receives them and within what time frame, or address at what time and under what circumstances can an ocean carrier load a container aboard its vessel with confidence that the necessary “scanning” process has been satisfactorily completed.

Clarity on such issues is essential. A number of major private marine terminal operators have indicated that they may -- repeat, may -- be willing to consider installing and operating such equipment as part of the “ICIS concept” if the U.S. government clearly wants them to do so, but they have also been clear that they will not undertake the analysis or risk assessment of the technology’s data or imaging nor assume the liability for such functions – leaving that function to governments to perform. These issues clearly need to be addressed.

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<sup>3</sup> The bill would require DHS to establish scanning equipment technology standards, and then require that every major foreign government or marine terminal operator in the world adopt that standard, buy, install and operate that equipment, and apply it to all of their exports to the U.S. within 12 months. The bill then requires DHS to review these standards at least every two years. We note that the U.S. has not established such standards for itself yet, while this bill seeks to establish mandatory global standards that would be developed solely by the U.S. We question how acceptable this would be to other nations where the bill states the equipment would need to be installed and operated.

<sup>4</sup> The data files generated for millions of containers per year would not be insignificant, and practical technical data issues about the transmittal, storage, and retrieval of this data need to be understood. Are all images transmitted to CBP? Are all the images or readings that meet some particular criteria, such as a particular radiation reading, be transmitted to CBP? Does the terminal operator/foreign government hold the images and provide only those requested by CBP? How many other governments will ask the terminal operator for the files? Who has access to the files?

Advocates of the “SOS” bill appear to represent that the amendment would produce an *inspection* of every container before it is loaded on a ship in a foreign port, but is this a fair representation if the bill fails to address how, when, and by whom the inspection functions are to be performed?

4. Use of x-ray and gamma ray inspection equipment. If the bill requires x-ray or gamma-ray NII inspection as part of the “scanning”, it must address what it intends should be done with the NII images produced. Is every one of them to be analyzed by DHS before vessel loading, or only those that involve containers that CBP’s targeting center has identified as “high risk”? This is an essential question for the bill to answer.

The images generated by this technology require time to review and assess. Scanning luggage for airport security involves a review of an image of an object containing several cubic feet of space. A standard 40 foot container contains over 2,700 cubic feet. We understand that a trained CBP expert takes on average four to six minutes to review one of these images, and this must be done in conjunction with a review of the applicable bill of lading and other shipping documents. Image analysis software of reliable quality is under research but is presently not available to assist CBP with the task of analysis. A single ship with 4,000 containers would take many dozens of man-days to analyze, which would cause substantial delays to commerce and substantial congestion at ports around the world.

In short, if the intent of the “SOS” bill is that every container must be subjected to inspection by such equipment and the images of every container are to be analyzed by CBP personnel before vessel loading (i.e., “inspected”), commerce would come to a halt. There is no way CBP could perform this task -- unless CBP were equipped with an immense staff of image analysts, working 24x7 -- something the “SOS” bill neither addresses, nor provides for, nor funds. Further, the delays to commerce and the resulting, chaotic congestion that would result from such a requirement in foreign ports are not considered.

On the other hand, if the “SOS” bill includes x-ray or gamma ray imaging within its definition of “scanning”, but does not intend that CBP must review every image, but only those images that CBP’s targeting system identifies as “high risk”, that would at least be a sound objective and would improve the security tools available to the government to check suspect containers before vessel loading rather than at the U.S discharge port; however, that could not be accurately represented as “inspecting” all containers. Further, it is not at all evident how this technology and system could be established at all foreign port facilities that load cargo onto ships destined for the United States.

5. International cooperation and agreement is ignored. The permission, agreement and cooperation of foreign governments in the implementation of such an idea is necessary, regardless of whether the bill’s authors intend that foreign marine terminal operators or foreign governments are to perform the “scanning” required before vessel loading. For example, if a high radiation reading is received or a gamma ray image is

unclear and requires further consideration, what is to be done with the container, by whom, in the foreign port?<sup>5</sup> Will the foreign Customs authorities agree to inspect such containers if the program is dictated, rather than negotiated bilaterally through CBP and the Container Security Initiative or other bilateral agreement?

Rather than building on the international collaboration that Customs and Border Protection and the U.S. Coast Guard have been building since 9/11 through the ongoing Container Security Initiative and the International Port Security Program, this bill is a universal, inflexible mandate to foreign countries to implement a system according to American standards and to apply it to all their containerized exports to the United States, without any voice or advice from their governments, and with an arbitrary embargo on their commerce if they don't comply. In what may be perceived abroad as even more arrogant, the United States does not perform any of these functions on any of its export commerce.

Even if this vision could be implemented and applied to a significant percentage of cargo in major high volume ports, which at present remains questionable, what would be the impact on small and poorer ports that may not realistically be able to establish or finance such systems? For example, there are many small and financially challenged ports in the Caribbean and Central America. Do proponents of the "SOS bill" really intend to deny those ports the ability to load their exports onto ships bound for the U.S.?

6. Reciprocity in International Trade: The U.S. is entitled to inspect any import container arriving in the U.S., and it is deploying an extensive network of radiation detection and non-intrusive imaging equipment across U.S. ports and borders to do this. It is also working with foreign governments to establish agreements to have such equipment stationed and available at foreign ports to inspect "high risk" containers. The U.S. is not entitled to dictate what foreign governments do in their country. The "SOS bill" apparently recognizes this, and thus approaches the issue by providing that no container can be loaded onto a ship bound for the U.S. unless it has gone through the mandated screening process in a foreign country.

The "SOS" bill would require the suspension of container trade with any nation that is not in compliance with this mandate in the time frame mandated by the bill – 12 months in H.R. 4899, and three years in the House T&I Committee version of the bill, H.R. 4880. While it is not clear if this is consistent with other U.S. international legal obligations, if the bill were to become law, it would likely invite other countries to establish reciprocal requirements for U.S. exports, so that U.S. goods could not be exported, unless the U.S. government or U.S. terminal operators had scanned the container before vessel loading in a U.S. port, used technology that met a foreign government's standards, and sent the scan to the foreign government for its use on its terms. The "SOS" bill's proponents may wish to consider how they would feel if the Chinese or Japanese or European governments said there can be no U.S. exports to their

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<sup>5</sup> Many ordinary, safe products produce significant radiation readings, including bananas, broccoli, tile, marble, kitty litter, toilet bowls, etc.

countries unless the U.S. installs and operates container inspection equipment in U.S. ports, which meets Chinese or Japanese or European government technology standards, and sends the scan images to their government for review before U.S. port operations could begin to load a vessel.

Congress should be clear about what any such legislation intends to do, because the potential impact on the flow of over \$500 billion per year worth of American commerce will be substantially affected.

The Dubai World Ports controversy did not enhance the credibility of the U.S. government abroad. Neither would approval of the “SOS” bill. As Congress considers new maritime security legislation, a clearer and more thoughtful approach to the issue of supply chain security -- such as the approach embodied in H.R. 4954, the “SAFE Port” Act -- would be in order, if the objective is to improve the security of international commerce and to enlist foreign governments’ and the private sector’s cooperation in the worthwhile endeavor of improving the security of the world’s supply chains.

#### Is There a More Logical Approach?

Container inspection technologies, including non-intrusive inspection (NII) equipment and radiation screening equipment, clearly have an essential and growing role in increasing both the efficiency of inspecting containerized cargo shipments and the number of containers that can be inspected. Container inspection technology, particularly non-intrusive gamma ray or x-ray equipment, is of substantial interest because, unlike so many other technologies, it helps address the container security question of paramount importance, namely: “What’s in the box?”

There is currently a pilot program being run in Hong Kong, known as the Integrated Container Inspection System or the “ICIS concept”. This is a promising pilot program. It is not yet, however, an operating security system; it presently does no actual security analysis of the technology’s data products, and does not inspect or stop containers for further review. What it appears to be doing, however, is establishing that the technology exists to perform radiation and gamma ray imaging of containers entering port facilities, of acceptable quality, without slowing down commerce.

The “ICIS concept” assumes that foreign terminal operating companies install and operate the equipment. Does Congress agree with that? This is a threshold question.

The “ICIS concept” also assumes that the NII images can then be called up and used by Customs authorities to review “high risk” shipments, *not* that every image of every container would be analyzed by CBP. This too is an important threshold issue, because it is not feasible to inspect every container, even with this technology, without bring commerce to a standstill. Does Congress agree with this premise?

If so, the hard, but promising, work involving the “ICIS concept” remains to be done: terminal operators, carriers and shippers working with DHS and foreign

governmental authorities to determine how to integrate the products of this technology into an actual, operating, government security system, and agreeing on the many who, what, when and where questions noted above. This requires addressing significant, legitimate issues.

The “Sail Only if Scanned Act” addresses none of them.

No hearings on the “SOS” bill have been held. No record has been created of the necessary participants’ views, other governments’ views, the costs of implementation, or how the bill’s issues and consequences should be addressed.

Several members of Congress have visited Hong Kong to see and consider the ICIS concept, including Senators Schumer, Coleman and Graham. DHS Secretary Chertoff and Assistant Customs Commissioner Ahern have done the same. Understanding this concept, assessing the operational issues that would arise, and determining how they should be addressed, is an appropriate and commendable approach to this issue. Members of the House Homeland Security Committee may wish to consider doing this as well.

The international community, international commerce, and American importers and exporters look to the U.S. government for responsible leadership on this important issue. That is not an unreasonable expectation.

If the Congress wants to help shape an effective strategy in the area of overseas containerized cargo inspection, we recommend that it undertake a thoughtful analysis of what can realistically be done, by whom, in what time frame, involving participation of Department of Homeland Security officials, foreign governments, and the world’s marine terminal operators. The Committee’s thorough review of the “ICIS concept” would be a commendable first step towards achieving the objective of scanning and inspecting more containers overseas.

The “SOS” bill is not the way to go. If it is offered in Committee as an amendment to H.R. 4954, we recommend that it be defeated.

If you or members of your staff have any questions on this issue, the World Shipping Council would be pleased to try to be of assistance.

Sincerely yours,



Christopher Koch  
President & CEO