



May 1, 2006

Dear Member of Congress:

On Tuesday, April 25, the House Homeland Security Committee reported the SAFE Ports Act (HR 4954). During the markup, an amendment named "Sail Only if Scanned (SOS)" was offered and defeated. That proposal would suspend trade with any nation whose ports did not undertake 100% inspection of containers before vessel loading. We understand that the SOS amendment may be offered to the bill again this week when the SAFE Ports Act reaches the House floor.

Similarly, Amendment 3724 has been introduced to the Supplemental Appropriations bill in the Senate requiring the same inspection of inbound containers, and it may be debated this week in the Senate.

As a result, it is possible that this proposal will be considered by both the full House and Senate this week.

These proposals are unworkable, would cause significant conflict with foreign governments, and would severely impair America's trade.

Please find attached a short fact sheet outlining problems with this proposal.

We urge the defeat of these amendments should they be considered in either the House or the Senate.

Thank you for your consideration of this issue.

Sincerely,

The World Shipping Council
The National Association of Waterfront Employers
United States Maritime Alliance, Ltd.
Pacific Maritime Association

Attachment

Comments on 100% Container Inspection Proposals Pending In the Congress

Markey/Nadler “Sail Only If Scanned” (SOS) Proposals in the House ***Schumer Amendment No. 3724 in the Senate***

These amendments would gridlock American commerce, create disputes with America’s trading partners, and do not address the implications for maritime security strategy. They should be subject to careful analysis and further scrutiny before unintended consequences wreak havoc on port security and international commerce.

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Background

1. On Wednesday, April 26, the House Homeland Security Committee favorably reported H.R. 4954, the SAFE Port Act on a bipartisan basis. In Committee, Congressman Markey offered an amendment, the “Sail Only If Scanned” or “SOS” bill originally introduced by Congressman Nadler, requiring 100% container inspection before containers could be loaded onto ships destined for the United States. Under the Amendment, import commerce would be terminated for noncompliant ports. This Amendment was opposed by the World Shipping Council (WSC) accompanied by a detailed analysis of the implications of the Amendment (*see* letter to Committee Members explaining reasons for this opposition on the WSC’s website at www.worldshipping.org), as well as a multitude of American businesses that import and export containerized goods (*see, e.g.*, the Supply Chain Security Coalition letter to Congress signed by importer, exporter, broker and forwarder and U.S. port interests at www.retail-leaders.org). The “SOS” Amendment was defeated 18-16 on what was largely a party line vote, just as the Amendment had been defeated in Subcommittee on a party line vote.
2. The House of Representatives is scheduled to consider H.R. 4954 on Thursday, May 4th. It is expected that Congressman Markey will seek to offer the “SOS” proposal again.
3. Senator Schumer has introduced Amendment No. 3724 to the Appropriations Supplemental bill that is similar to the House “SOS” amendments, it proposes to prohibit containers from being shipped to the United States unless they have been inspected in the foreign port. The Appropriations bill is scheduled for consideration by the Senate during the week of May 1.
4. Thus, it appears that this issue is being prepared for possible debate on the floors of both the House and Senate this week.

5. The concerns and issues raised in the cargo community's letters to Congress mentioned in paragraph 1 remain valid. The following are additional concerns arising from these legislative proposals.

Supply Chain Security Requires a Clear and Thoughtful Strategy

6. *Who Will the Government Trust to Perform Container Screening?* During this past February and March, Congress rejected Dubai World Ports as an acceptable and trustworthy domestic port terminal operator. Amendment 3724 and the House versions of the "SOS" legislation now propose to embrace Dubai World Ports and other foreign terminal operating companies as entities that would be performing container screening for the United States in foreign ports, one of the most security sensitive function in the chain of container security.

These Amendments require Congress to confirm whether it is its intent that foreign terminal operators are to perform this container screening function for the United States. Amendment 3724 makes it clear that this is the intent as it says the system should be modeled "after the Integrated Container Inspection System (ICIS) established at the Port of Hong Kong", which is a pilot project led and operated by Hutchison Whampoa, a Chinese terminal operator, and not the local customs authority.

This is an important and relevant question. In the U.S., **only** the federal government operates the container scanning equipment.¹ A decision to change that current operating principle and strategy and to accept foreign terminal operators in this role is certainly possible, but it should not be done without a clear, reasoned analysis and a clear conclusion. If Congress were to now embrace this change in strategy, it would be wholly unfair, unjustifiable and hypocritical to later question or criticize the value of the screening products because they had been produced by Dubai World Ports, Hutchison Whampoa or other companies. It does not seem rational for Congress to offer in the current "post-Dubai World Ports environment" a legislative proposal that would mandate such a change without recognizing and addressing this unavoidable aspect of the proposal.

7. *Damaging Relations With Nations Cooperating in the Container Security Initiative:* Amendment 3724 proposes to prohibit containerized imports from countries' ports that do not comply with this 100% container inspection

¹ The question here is confined to the issue of who is to install and operate the container inspection equipment. Operation of the screening equipment does not necessarily entail *analysis* of the images generated, and the Amendments provide that the task of analyzing the screening equipment images is the responsibility of U.S. Customs and Border Protection. However, issues such as equipment operation, equipment calibration, equipment maintenance, record keeping, etc. can have significant security and equipment effectiveness implications. While the government may decide that these functions can be carried out satisfactorily by the world's terminal operating companies, it is an issue that must be addressed as part of the analysis of what the government's cargo chain security strategy is to be. Hutchison Whampoa executives have called on the U.S. government to accept the world's marine terminal operators in this role, and this request poses a question that deserves a carefully considered and clear answer. Neither Amendment 3724 nor the "SOS" bills address these questions.

requirement, but it limits the 100% inspection obligation to those countries that have voluntarily agreed to join with the U.S. in the Container Security Initiative – a bilateral set of Customs-to-Customs agreements to help enhance cargo security. (CSI Agreements cover approximately 75% of all U.S. import cargo.) Thus, ironically the Amendment would threaten trade restrictions against those very nations that have agreed to cooperate with the U.S. government in the CSI program, while not applying such sanctions to non-CSI countries. The security rationale of this is not evident.

Those nations that have voluntarily agreed to work with the U.S. government in enhancing cargo security could, under the terms of the Amendment, simply drop out of the CSI program in order to circumvent the impact of the Amendment on their nation’s commerce and port operations.

Further, the Amendment and the “SOS” bills are inconsistent with the rationale behind the CSI program. CSI is an international cooperative program pursuant to which other governments have agreed to work with the U.S. government to review and inspect containers that are determined to present a security risk, not to inspect every container. A 100% container inspection obligation is unlikely to be easily accepted by these nations, especially as the U.S. applies no such regime to its exports.

8. *Termination of the Customs’ Trade Partnership Against Terrorism (C-TPAT) Program:* The “SOS” bills and Amendment 3724 require every container bound for the U.S. to undergo radiation and gamma ray scanning in a foreign port and for U.S. Customs and Border Protection to then review and approve all these images before the container could be loaded on a vessel destined for the United States.

These Amendments reject the rationale of, and would effectively result in the termination of, the C-TPAT program. Under C-TPAT, U.S. importers, who agree to voluntarily undertake measures to enhance the security of their supply chains, receive lower container inspection rates because they are lower risk shippers. Because this Amendment and the “SOS bills” would require that all containers go through a container inspection process and all of its delays, C-TPAT importers’ benefits would be terminated and there would be no reason for them to participate in the program. C-TPAT’s supply chain security enhancements would be lost. Rejecting the concept of low risk cargo that does not need inspection and terminating C-TPAT should not be undertaken without a very careful consideration of the consequences.

These Amendments reject the strategic concept that there is low risk cargo that does not require inspection, and in doing so, they reject many U.S. and international governmental efforts to create programs that reward supply chain participants for enhancing the security of their supply chains by inspecting their cargo less frequently. These Amendments would change the U.S. government’s strategy from inspecting all containers that present a security risk, to inspecting all containers, even those that do not present a risk.

9. *Bringing Gridlock to U.S. Trade:* The U.S. will import roughly 12 million containers this year. It is not physically possible to undertake the task of inspecting all containers before vessel loading in foreign ports without reducing U.S. international containerized commerce to a trickle, and severely damaging the American economy. Government, as well as industry security, experts agree that the state of current technology would not permit 100% container inspection without a significant disruption to efficient operations. Chaotic disruption to commerce would result.

10. *Effect on U.S. Exports – Reciprocity in Global trade:* The U.S. applies virtually no radiation screening and no inspection to its exports. These Amendments propose that the rest of the world must subject their exports to processes and procedures that the U.S. does not apply to its own commerce. Congress should expect the United States’ trading partners to consider imposing reciprocal requirements on U.S. cargo should these proposals be enacted. The U.S. could not object to restraints on its exports that it imposed on other nation’s exports. The U.S. may believe its exports pose a low security risk, but that is also how many other countries view their exports. As U.S. ports and DHS are not equipped or organized to perform such inspection and screening of all exports, reciprocal requirements would cause substantial U.S. port, rail and highway congestion, and would impair U.S. export trades and cause some lost markets for U.S. businesses, especially export commodity businesses where alternative sources of goods are available.

11. *A Deliberative Congressional Review Process is Warranted:* There have been no hearings on these legislative proposals in either the House or the Senate. The sponsors have not addressed the ramifications of their proposals. Neither the expert government agencies nor the trade community have had the opportunity to testify on these bills. Neither the Senate nor the House should vote on or approve such dramatic and significant proposals without a full and complete examination of the proposals, the appropriate supply chain security strategy going forward, the impact and effects on our trading partners and their governments, and the many significant implications to the flow of commerce and to supply chain security.

The *Seattle Post Intelligencer* has characterized these Amendments as “grandstanding”.

These issues are too important to be trivialized by political sound bites.