

**HEARING OF THE COAST GUARD AND MARITIME TRANSPORTATION
SUBCOMMITTEE OF THE HOUSE TRANSPORTATION AND
INFRASTRUCTURE COMMITTEE**

SUBJECT: FOREIGN OPERATIONS OF U.S. PORT FACILITIES

CHAIRMAN: REPRESENTATIVE FRANK LOBIONDO (R-NJ)

WITNESSES:

**STEWART A. BAKER, ASSISTANT SECRETARY FOR POLICY,
DEPARTMENT OF HOMELAND SECURITY;**

**REAR ADMIRAL CRAIG E. BONE, DIRECTOR, INSPECTIONS AND
COMPLIANCE DIRECTORATE, UNITED STATES COAST GUARD; JAY
AHERN, ASSISTANT COMMISSIONER FOR FIELD OPERATIONS, CUSTOMS
AND BORDER PATROL**

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Body

REP. FRANK LoBIONDO (R-NJ): Good morning. The subcommittee will come to order. Before starting I'd like to ask unanimous consent that members of the committee who are not on the Coast **Guard** Subcommittee may participate in the hearing today. We'd like to open this up. Do we hear any objection to that? I don't think so, okay. We welcome members of the full committee.

Mr. Filner and Mr. Oberstar are on their way. I'm going to ask the members -- we have on both of our panels we have folks who have critical schedules and I know the most important of this will be coming to the questions. We talked to Mr. Filner's office and I'm going to start with my opening statement and ask Mr. Filner and Mr. Oberstar and Mr. Young if they're here for their statements, ask the other members to please forego opening statements. We'll get into the testimony of the panel members and then get right into questions.

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So without further ado, the subcommittee is meeting this morning to review foreign operation of terminal facilities at U.S. ports and to review the federal government's process in implementing effective port security measures. Given the high level of foreign operations at U.S. ports, the complete implementation of the Maritime Transportation Security Act is vital to protect our security without dampening the international trade that is the linchpin of our economy. I still remain concerned and opposed to the pending transfer of operational control over several U.S. port facilities to Dubai Ports World. A number of us still have many questions about this proposed deal and hope that the witnesses' testimony will be able to address these complex issues.

Specifically, I am interested in learning to what level was the Coast Guard, Customs, and Department of Homeland Security were involved in the initial review of the proposed sale and what level of participation each will have in the more stringent second review. Secondly, what are the concerns that were raised by the Coast Guard and the department and how were those concerns addressed? Also, does the fact that DP World is a foreign state-owned entity affect the Coast Guard's ability to share sensitive information with security officers who by nature of their employment could be considered agents of a foreign government?

I believe that these questions clearly demonstrate that we need to do a great deal more and we have to give very serious thought and investigation before this sale is approved. Along with my opposition to this specific transaction, I am extremely concerned with the administration's lack of progress in implementing the broader port security measures this Congress passed as part of the Maritime Transportation Security Act of '02 and successive legislation. It is now more than three years after the passage of the Maritime Transportation Security Act, and I am very frustrated to hear that many of these programs have not been implemented, and in fact on some of them we have no idea when they might be.

Under MTSA, the Department of Homeland Security is required to develop the Transportation Workers Identification Credential, known as the TWIC program, that will issue biometrically embedded security cards to maritime workers that can be used interchangeably at any U.S. port. To this date, we have not progressed beyond the prototype stage for this critical program and without any creditable explanation. The department has not developed a format for the card or the readers that will be used to restrict access to secure areas in our ports. They have not developed a procedure to carry out background checks for individuals who are applying for the card, or for the statutorily- required biometric information that will be carried on the card.

I find it totally unacceptable that the department has allowed this program to be delayed for this long, clearly not giving it any priority. The TWIC card will be one of the primary means of keeping unauthorized personnel out of our ports, and I hope that the witnesses will be able to take back with them the very strong message that we expect this program to be moving forward and that we are tired of the delays that have occurred.

Likewise, MTSA requires the Coast Guard to develop and implement a system to track vessels up to 2,000 nautical miles from shore that will compliment the near shore tracking capabilities under the Automatic Identification System. The Coast Guard has previously testified that they are working through the International Maritime Organization to develop the components of a global system rather than implementing a long-range vessel tracking system domestically. While I guess I understand and somewhat agree that we should work with our international partners to develop a standardized system, again very concerned by the administration's apparent decision to delay the implementation of this system here at home. Excuses and delays for critical maritime security measures such as the TWIC card and the tracking system are unacceptable.

Finally, the department is required to establish a Secure Systems of Transportation program -- that's protecting our supply chain -- to establish standards and procedures to secure the maritime cargo supply chain from the point of loading to arrival in the U.S. And of all the things that we're doing, making sure that these containers are protected before they get here is one of the most important. This program will include standards for screening of cargo in foreign ports, standards for locks and seals to maintain security while in transit, and procedures for the federal government to ensure and validate compliance with this program. It is imperative that we develop robust measures to assure that this and other maritime security programs are being complied with, and I do not understand why the department has absolutely disregarded this statutory requirement.

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Integrity of our containers is essential and crucial if we're able to effect any measure of maritime antiterrorism and port security. We have taken steps to enhance security at our ports, but I believe we must do much more. The proposed transfer of port terminal facilities to a foreign state-owned entity only highlights the need for the administration to fully implement the full extent of the maritime security programs required under the Maritime Transportation Security Act and other laws to work with Congress to develop any further requirements. The American people expect us to take the necessary actions to secure our ports, and this subcommittee will continue to work with the entire Congress to develop legislation to enhance our maritime homeland security. I thank the witnesses for appearing today.

John, do we know if Mr. Oberstar and Mr. Filner are -- okay. We will break from the witnesses' testimony when Mr. Filner and Mr. Oberstar come in to see if they still wish to make any opening statements.

But I'd first like now to welcome our first panel. Mr. Stewart Baker, assistant secretary of Policy for U.S. Department of Homeland Security, accompanied by Rear Admiral Craig E. Bone who's the director of Inspections and Compliance Directorate with the United States Coast Guard, and Mr. J. Ahern, assistant commissioner of Field Operations for Customs and Border Patrol.

Mr. Baker, please proceed.

MR. STEWART BAKER: Thank you, Chairman LoBiondo and members of the subcommittee and the committee. I will be brief. You have a prepared testimony. I will not be discussing port security which Admiral Bone will discuss, or cargo security which Mr. Ahern will discuss. What I thought I would do is simply address some of the questions about the CFIUS process that may have arisen in connection with this transaction.

First, as the chairman asked, what was the involvement of Coast Guard and CBP and the Department of Homeland Security in the process? The short answer is that both Coast Guard and CBP were closely consulted about this transaction and DHS actually within the department took the lead in addressing some of the security concerns that we in fact had raised. As a result of DHS's efforts, rather than simply approving this transaction, it was approved only with a letter of assurances from the company -- from both companies. That letter of assurances had two principal safeguards: first, it took several programs that are voluntary for other companies and made them mandatory. A best securities practices program called the Customs Trade Partnership Against Terrorism -- for every other company that's a voluntary program. You enter it in order to get certain benefits in processing. For P&O Ports North America and for DPW those programs are not voluntary they are mandatory. That requires a lot of record-keeping and a lot of specific best security practices across the board.

They also assured us that we could have access to any data about their U.S. operations and that without a subpoena, without a warrant, we simply have to give them a written request for that data. That will allow us, among other things, to do background to obtain a list of all their current employees and to do background checks, run them against security watchlists and the like, and we will be exercising that authority as soon as the letter takes effect. So we do have substantial protections that were at the instance of DHS and run to the benefit of both CBP and the Coast Guard.

That is a very brief overview of the process. We'll be glad to take questions. I do want to emphasize that we certainly agree that the focus on port security and the many measures that the chairman mentioned are appropriate areas of concern. We will be glad to work with the members of the subcommittee and the committee with respect to how to improve port security and we look forward to discussing those ideas in the course of this hearing. Thank you.

REP. LoBIONDO: Okay, thank you, Mr. Baker.

Admiral Bone.

ADM. CRAIG E. BONE: Good morning, Chairman LoBiondo, Congressman Filner and distinguished members of the committee. Rear Admiral Craig Bone, director of Inspection and Compliance for the Coast Guard with

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responsibility for maritime ports, vessels, facilities, both their safety and security operations. As Assistant Secretary Baker stated -- well, as he stated I'll be responsible for the security portion of this hearing and we've undertaken and completed numerous improvements in our port, vessel and facility security since Congress enacted the Maritime Transportation Security Act and IMO established the International and Ship Port Security code which parallels MTSA.

Key to our efforts has been the federal interagency cooperation coupled with the engagement of the maritime industry and state and local officials as well as law enforcement agencies. This was accomplished not just at the national level and through the regulatory process but also carried out in our daily operations through establishment of area maritime security committees with full interagency maritime stakeholders and state and local agency involvement. All U.S. 3,200 MTSA facilities and over 11,000 U.S. flag commercial vessel security plans have been completed by the operators and reviewed satisfactorily by the Coast Guard.

Annual compliance examinations are conducted as well as unscheduled targeted vessel boardings of U.S. and foreign flag vessels. Sixteen hundred boardings since July of 2004 have resulted in 143 major control actions including in some cases actually expelling the vessel from the port or not allowing it to come to the U.S. at all. Annual compliance examination and random assessments at port facilities have been conducted with 700 violations and 44 major control actions taken since July 2004. Those 44 would either stop cargo operations or even shut down the facility.

We truly appreciate the congressional support which has provided additional assets in the way of MSSTs, small boats and crews, armed helicopters, increased inspectors, escorts at sea marshals to protect high risk vessels, manned center improvements to integrate operations, AIS receivers, improved traffic management systems, intelligence personnel and many more. We've also conducted national level exercises as well as local area exercises to test our response capability to threats or to an actual incident occurring to make sure there's better coordination.

Now, as I've said that, we know there's much more to do. Some examples include implementing Homeport which is a web-based systems to improve communications within the ports and the stakeholders within the maritime community and the law enforcement agencies. We're conducting studies on the use of barrier booms to improve high risk vessels and critical infrastructure, developing a marine security response team deployable 24/7 as a counterterrorism capability. We're working to improve screening technologies and training for our passenger screening, both at ferry and large passenger facilities. Expanding AIS and LRIT, as you mentioned, through IMO, and improving our maritime domain awareness as well as continuing replacement of our deepwater assets, our aircraft, our command centers and systems in order to support offshore operations so the threat -- we don't wait until the threat arrives here but we address it as far offshore as possible.

And finally, working with TSA to implement the TWIC card which you mentioned which is a critical element to port security in our environment. And while much has been done, I don't want in any for the members here to think that we're complacent or feel that we've closed the vulnerabilities in our ports, in our waterways or maritime commerce that it supports. We look forward to working within DHS and across all the federal, state and local agencies, and with the members of Congress as we continue to pursue security in the maritime environment.

Thank you, sir.

REP. LoBIONDO: Thank you, Admiral Bone.

Mr. Ahern.

MR. JAY AHERN: Good morning, chairman and members of the committee and the subcommittee this morning. My name is Jay Ahern and I'm the assistant commissioner for United States Customs and Border Protection and my responsibility is for our field operations to include our ports here within the United States.

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It is important I believe today for us to have the opportunity to discuss what role that we are playing in not only the CFIUS process but also in securing the United States, particularly at our ports of entry. I think it's also important to have this committee and subcommittee have a full understanding of what our roles and responsibilities are and I'll hope to outline some of those for you with our layered defense and our mechanisms that we have in place for protecting containers coming into this country. And our priority mission within CBP is homeland security. We don't take that lightly at all and we believe we are America's front line at our ports of entry for protecting against the entry of terrorists, terrorist weapons or weapons of mass destruction or effect from coming into this country.

And certainly I think it's also important to realize that America's seaports -- the trading system is a global one and it's important to continue to understand that process.

And as we secure our seaports we take that into consideration and it's certainly work in process as we craft an efficient system for providing the security that is necessary for that supply chain but also making sure at the same time we don't stifle legitimate trade coming into this country that our economy and the global economy so much counts on.

I will tell you also that I believe very strongly that our 322 ports of entry in the United States are far safer today than they were previous to 9/11. And I believe since 9/11 our country as well as our organization has made great strides in protecting the supply and promoting trade and travel into this country while again maintaining the vitality of our economy but never once taking our eye off of our security responsibilities.

Our government responsibility and our private sector partners have instituted unprecedented programs to secure our seaports and the cargo moving through those seaports. And I think it's important that I state that none of these programs existed previous to 9/11. Before 9/11 also we had four different agencies responsible and three different departments of government for protecting our borders at ports of entry and today we have one unified border agency for that responsibility under the creation of the Department of Homeland Security, and Customs and Border Protection that has responsibility rests within this department and this organization.

After 9/11 Customs, now Customs and Border Protection, developed a layered defense to secure the movement of cargo, particularly for this discussion containerized cargo coming into this country, again beginning security of supply chain as deeply as we can in that supply chain taking our officers and our strategies overseas to employ a defense and depth strategy, not making our ports of entry here in the United States the first opportunity to intervene or interdict but to focus on prevention and getting as deep as we can in the supply chain.

The first part of that five inter-related strategies I'd like to briefly talk about is the 24-hour rule in the Trade Act. It required advance electronic information on 100 percent of the cargo coming to the United States, 100 percent of the cargo is sent electronically under the Trade Act prior to lading in a foreign environment to the National Targeting Center here in northern Virginia. The National Targeting Center then deploys a risk-based system called the automated targeting system which is based on intelligence information as well as a rule-based algorithm set of rules to target containers for risk coming into this country.

So it's important to know that that did not exist prior to 9/11. At the National Targeting Center we have representatives from the Coast Guard linking to the Intelligence Coordination Center as well as to the FBI, Immigrations and Customs Enforcement Joint Terrorism Task Force as many other agencies have representatives at this center as well.

The third component is the cutting edge technology we've deployed as well. At our seaports and also overseas we're deploying radiation portal monitors and large x-ray systems to have an ability to look inside the containers and also scan for radiation. Before 9/11 there were no radiation portal monitors deployed in our country. Today we have 181 at seaports around the country and we continue to deploy in a very rapid pattern. Those 181 radiation portal monitors have the ability to screen 37 percent of the 11 million containers that come into this country at their departing terminals and ports within this country to enter into the commerce of the United States. By the end of this calendar year we will have 65 percent of the containers through our continued deployment of the radiation portal monitors. That's a very key link and a key component of our strategy as we go forward.

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The fourth initiative is very critical in pushing our borders out is the container security initiative. Again this did not exist before 9/11. Currently we have 43 ports, and that's changed from testimony in the last week and the week before from 42 because just yesterday we opened up in the port of Salalah, Oman. So we now have 43 ports accounting for about 75 percent of the containers coming into this country originate in ports where we have United States Customs and Border Protection officers working with host country counterparts using large-scale imaging technology as well as radiation detection capabilities to look at those containers that have scored for risk that we received 24 hours prior to lading. Again we did not have officers overseas before 9/11. As we move forward with the rest of this year we will be at 50 ports and account for about 85 percent of the cargo coming through those ports.

The fifth initiative is the Customs Trade Partnership Against Terrorism, and as the assistant secretary mentioned, that is a key component and it is one of the things we did put forward as part of the assurances process. And 5,800 certified members are part of this program and these are some of the largest importers in the United States that are joined in partnership. I believe it's one of the largest and most successful public and private sector partnerships since 9/11 working together to ensure supply chain security.

Together, when you take each one of these five components and aggregate them together I believe there is a very good layered strategy that's in place. Certainly every one of those programs is under a path of continuous improvement and our goal is to continue to do that. But when you aggregate these five initiatives together I believe it provides a greater protection against the introduction of the threat of terrorist attacks in this country through the maritime supply chain.

I will conclude there, Mr. Chairman, and look forward to taking any questions on any of the layered defenses I've spoken about.

REP. LoBIONDO: Thank you, Mr. Ahern.

I'm now going to thank the ranking member, Mr. Oberstar, for joining us and ask Mr. Oberstar for his opening thoughts.

REP. JAMES L. OBERSTAR (D-MN): I thank you very much, Mr. Chairman, for moving out so vigorously and forthright manner on this legislation and for your quick response on the aviation MPRM that involves a similar issue of national security with our commercial airlines and the civil reserve air fleet issues that are associated with a proposed regulation change that would subject our airlines to foreign ownership and endanger our national security with the commercial airlift that was critical to Gulf War I and Gulf War II moving personnel and equipment to the frontlines aboard U.S. carriers.

For the past four years since we enacted the port security legislation from this committee, and it was this committee that was the driving force in the House Senate conference on that legislation, we've been trying to get the rest of the Congress and the administration to pay attention to port security. It's taken this Dubai Ports issue, rather badly understood by the public and not so well presented by the news media, to mobilize the country into an outrage over the proposed sale of terminals at critical U.S. ports to a foreign interest which apparently a great body of the American public do not trust.

I would separate the issue that is before us today, Mr. Chairman, into two parts: the ownership issue and the capital flows associated with it, and the underlying but more important far more overshadowing port security issue. The question of capital flows is one that we have to think about as we look to ways of financing our ports and to understand that you have to put it in some context, that 20 percent of the world trade tonnage comes to the United States. Ninety-five percent of non-land trade, that is from Canada or from Mexico, 95 percent comes by ship into the United States. Seventy-five percent of the value comes by ship into the United States. We have 95,000 miles of shoreline, 361 U.S. ports. Eighty percent of our port terminals are operated by foreign companies. Ninety-eight percent of the cargo that we import or export goes on foreign flag vessels. And that is an issue that has been going in the wrong direction for the last 32 years that I've served in Congress despite all of our efforts to build a U.S. flag maritime fleet.

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So now we have in the range of 13 million containers coming into the United States, the question is where should they be screened. Our Port Security Act had the basic principle of pushing the border out, the further you go out with that border the more secure, the safer the United States is. Well, a witness just said that we're going to have radiation portal monitors soon checking 65 percent of cargo, once it's here it's too late. We need and the point of the Port Security Act was to screen those containers and that cargo overseas before it gets into our zone, our 200 mile economic zone. And that is the really significant failure of the last four years -- a failure to enforce and carry out the provisions of the law, the five key provisions.

Our port security grants. The Coast Guard said that we need \$5.4 billion to address the security needs at home and abroad. Congress has appropriated \$883 million.

The administration has invested 700-some million -- we're short by any yardstick of measurement. Background checks -- the law requires the Department of Homeland Security to set standards for background checks for persons who have access to the secure area of ports. No background checks are required, no standards set for background checks.

Foreign flag security plans. The Coast Guard went to the international negotiations two years ago and settled on a plan that allows -- stops the Coast Guard from hands-on investigation of and assessment of the security plans in ports and of vessels and vessel owners and satisfies itself with the overall scheme of the country that says we have a security plan. They look at the plan and say okay, that's good enough for us. That's wrong. That's wrong and we in 2004 tried to set the record straight and give the Coast Guard greater authority to go into those plans.

Foreign port security plans. The law requires the Coast Guard to conduct foreign port assessments on screening of cargo, access controls, authorized personnel, security management of those ports. Those assessments have not been completed for our largest trading partners. Container seals, fifth point of the security act. We in the law required the Department of Homeland Security to establish standards and procedures to secure cargo and monitoring the security while in transit, including standards for tamper-resistant seals. None of that has been done.

If those provisions had been put in place, Mr. Chairman, they would have greatly mitigated the concerns or fears of some foreign country or foreign company taking over management of the terminals at major U.S. ports. It still raises the question of whether the security review under the Florio Act has been carried out properly and there's been a 45-day extension, but the president said, "My position hasn't changed. If there was any doubt in my mind or the people in my administration that our ports would be less secure and the American people in danger, this deal wouldn't go forward" he said. Well, giving another review it seems he's made up his mind.

Well, we're going to in this hearing get to the bottom of some of those issues and questions and I appreciate very much that you've called this hearing and I expect that we'll have a good in-depth look at the issue. Thank you, Mr. Chairman.

REP. LoBIONDO: I thank Mr. Oberstar for his leadership on these issues. And again one of the things Mr. Oberstar referred to which is disturbing for a number of us is that this proposal comes on the heels of what we found out sort of through the back door in November I guess that for the first time in our history we're proposing to allow foreign ownerships of U.S. airlines. And there are many of us who feel that any foreign ownership of critical infrastructure is wrong.

That having been said, Mr. Baker, can you tell us -- we understand that Secretary Chertoff was not made aware of the review that was ongoing in this process. Is that your understanding that he was not made aware?

MR. BAKER: That is correct.

REP. LoBIONDO: Can you tell us why not?

MR. BAKER: Yes. This process is run at the policy level ordinarily by the Treasury Department. The Treasury Department has a set of escalating committees so that disputes can be resolved as they ordinarily are in the

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interagency process. The usual process is that if a transaction can be agreed on at the assistant secretary or staff level, then it is not raised to higher levels for discussion by the deputy secretaries or the secretaries. In this case the transaction received considerable scrutiny at DHS from my office, from the Coast Guard, from CBP and from other offices. We decided that we wanted to get more assurances from the company than had been provided. We negotiated those assurances.

When we got the assurances that we wanted, since we were the last of the agencies with questions and concerns about the transaction, we reported back to CFIUS that our concerns had been satisfied. The CFIUS process then determined it wasn't necessary for deputy secretaries or secretaries to meet on the transaction and it went forward. For DHS purposes, the buck stops with me. I decided that we had sufficient assurances and did not brief the deputy secretary or the secretary because they were not going to be asked to opine on the transaction in the interagency process.

REP. LoBIONDO: Well, that's somewhat troubling to a number of us. I want to use my additional time initially here to talk about the overall maritime security measures. And we had a discussion last week when you appeared before the Armed Services Committee about the transportation worker identification card. After that hearing, there was an ABC news report that indicated a major security breach at the ports of New York and New Jersey. They went on to talk about the two ports handling millions of tons of cargo, scores of cruise ships that pass through each year, and that truckers who transport much of the cargo are issued ID cards which give them access to all areas of the port.

And ABC News learned that the cards given to thousands of truckers by the Port Authority of New York and New Jersey were issued with virtually no background checks and that an investigation at these two ports found stunning gaps in security. That the DHS report which was obtained by ABC News shows that of the 9,000 truckers checked, nearly half had evidence of criminal records, more than 500 held bogus licenses and that officials were unsure of who the real identities were of these people. The intelligence report found that truckers that were in the category of not being checked had been convicted of homicide, assault, weapons charges, sex offences, arson, drug dealing, identity theft and cargo theft, and that some of those involved were identified with a gang called MS-13 which has been described as one of the most dangerous gangs in the United States.

Now, my question is if this is going on at the second busiest cargo port in the United States, why and how can DHS explain that we have not put into place the identification card system and as of last week you could not tell us when we might expect it. Has there been -- can we know anything about where we're going with this project?

MR. BAKER: Yes, sir. First, I'm aware of the study and of course that was done by -- the responsibility for those cards and the background checks or not was the responsibility of the Port Authority of New York and New Jersey. They made the determination not to carry out the background checks for a variety of reasons. I'm sure it is a subject of considerable controversy what kinds of background checks and what kinds of criminal behavior ought to exclude people from working in the ports. There are not a lot of former choirboys who sign up to be longshoremen, and the longshoremen are concerned that irrelevant criminal behavior far in the past might be considered disqualifying. So there are some reasons on the other side of those background checks why the Port Authority might not have determined that certain crimes were disqualifying for entry into the port.

Nonetheless, we agree with your basic point which is that we do need to do background checks on the people who have access to our ports. That is why we have decided that with respect to this transaction we'll exercise our authority under the assurances letter to gain access to the names of all the persons who work for the terminals that are being acquired so that we can do background checks on all of them.

More broadly you asked about the transportation worker identification cards and I have taken back the concerns that you raised at the last hearing in quite urgent terms and I think it's fair to say that the department understands the urgency of beginning this process. We finished the pilots last year about the middle of the year and I think in August received an evaluation of it. We have been planning on what we will do to roll out a transportation worker

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identification card. Those efforts have been substantially accelerated and I think that we'll be making an announcement within a matter of weeks to get that program up and running.

REP. LoBIONDO: I certainly hope that's the case, Mr. Baker. We have such a high degree of frustration in not knowing how we can convey any more strongly than we have the unacceptability of the delays and all the rhetoric doesn't account for anything. It's been pointed out over and over again if we have a terrorist incident at one of our ports it's likely to shut down all of them. And all of these measures, including the Secure Systems Transportation Program, securing the supply chain which Mr. Flynn has been so eloquent about explaining we've got to do something before these containers get here.

Unless the department takes the cue from Congress with the laws that we pass and put some emphasis on this, we'll be here a year, two, three years from now talking about the same thing of why there were delays. I can't say it strongly enough.

MR. BAKER: I fully appreciate the concern here and we share it. I'll defer to Mr. Ahern with respect to the details of some of the cargo programs but we certainly don't believe that we are anywhere close to done with improving the security of that -- of the supply chain or of the ports.

Mr. Filner

REP. BOB FILNER (D-CA): Thank you, Mr. Chairman. Thank you for holding the hearing.

Thank you for being here. I apologize for missing your opening statement but from the tone of your answers, Mr. Baker, I don't see any sense from the administration that you've changed your tone deafness on this issue of the Dubai Ports in specific or the port security in general. In answer to Chairman LoBiondo you said well, the buck stopped with you and Chertoff didn't hear this and the president didn't hear this. I mean there was no sense of any mistake made. Do you think you made any mistake or do you regret the second guessing? Would you do it differently this time around -- the next time around?

MR. BAKER: Absolutely I would.

REP. FILNER: Well, thank you. It's like a revolution from the country to say something but I just don't understand the lack of seeming concern. The administration says it's still backing the deal. The 45 days doesn't mean anything. In your opening statement you didn't say anything about that. The House Appropriations Committee, as you know, yesterday voted 62 to 2 -- I don't know if there's any vote on that committee like that on anything -- to overturn the sale. Are you still going to recommend a veto of this when the Congress does pass a stop on this?

MR. BAKER: There's certain constraints given that we are in a 45-day period in which we're carrying out our deliberations but I can assure you that this is a full review without preconceptions about how it will come out. We are conducting additional fact gathering with respect to the security practices of Dubai Ports World, with respect to P&O Ports North America, with respect to the port of Dubai. Other parts of the government are looking very closely at the record of Dubai and the UAE with respect to proliferation and trade. So I think we are conducting without preconceptions a --

REP. FILNER: I mean I hope you'll tell the president what the results were because he seems to have a preconception. He's continually since this supposed review started that he still backs the original agreement. And Dubai I think this morning announced that if we retaliated this way they would keep ships out of American ports. And it just seems that your initial I mean unconcern about it from the point of view of security is leading us into a bigger crises.

MR. BAKER: I would beg to differ with respect to the notion that we weren't concerned about security. The assurances that we received in this case were unprecedented. For the first time ever we asked for special assurances in the context of a transaction involving U.S. ports.

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REP. FILNER: But the record this administration has on port security which this committee has raised since 9/11 -- Mr. Oberstar outlined them to begin with. I mean you have not even implemented the MTSA, the Maritime Transit Security Act I guess it's called, in almost any of its demands on you. For example, we don't have security standards for containers, we don't have a way to -- we're not scanning the containers before they get into the United States. We don't have background checks, that's just been noted. We don't have secure entry to the marine terminals, we don't have closed circuit TVs. I mean we have more closed circuit TVs but we don't know what's in those containers when they land here, and on and on.

So we're not convinced that the concern was fully taken because there's all this other evidence. This is just sort of brought to the surface the problems that this administration has been having. And I represent San Diego, California, as you know. We were told by your agency that we did not qualify as a threat in your UASI -- I don't know how you pronounce it -- the Urban Area Strategic Initiative Grants. And when I pointed out to Secretary Chertoff or some of your staff that I don't know of any port in America that has three nuclear carriers, a dozen nuclear subs, we have a nuclear power plant right nearby, we have the biggest Navy base in the world, and we're not a threat. And the reason we are not a threat, according to your staff, is that the Department of Defense assets are invisible to our calculations when dealing with threats. That is because -- that's what they said. Because we have the Navy there we are defended.

I mean, with that kind of reasoning we are a sleepy fishing village in the eyes of the Department of Homeland Security. And with that kind of thinking and that kind of blindness, of course we're not convinced that you took this seriously with the Dubai thing because you haven't taken anything else seriously. If you can't take six nuclear reactors sitting in the harbor of San Diego as a serious potential threat to terrorists -- and we know that two of the hijackers were casing us out for six months very much openly there, then something is wrong with your department. And I said I didn't know the president's nickname to Secretary Chertoff but I would say he's doing a heck of a job, Cherty, for all this and I say that to you based on your answers here. Why -- it doesn't seem you're taking all of this stuff with the seriousness -- and why isn't San Diego a threat because we're the biggest Navy base in the world. Why wouldn't that be a potential threat to the Department of Homeland Security?

MR. BAKER: We actually certainly appreciate the leadership this committee has shown on both sides of the aisle in addressing these security issues --

REP. FILNER: All right, we're not going to get an answer here. I'll just move on, Mr. Chairman. I've used my time.

REP. LoBIONDO: Mr. Coble.

REP. HOWARD COBLE (R-NC): Thank you, Mr. Chairman.

Gentlemen, good to have you all with us. When I view the operation of a port I see a four-legged stool. You have Customs and Border, you have United States Coast Guard, you have the terminal operator, and the port authority. Am I reading that correctly? Do you all see the same stool that I see?

Now, I met with a group of our colleagues and business leaders about three years ago from Denmark, Norway, Finland and America, and many expressed concern there that port security must be enforced to the letter. They were concerned that perhaps some of this enforcement may result in compromising the free flow of commerce. Do you all have any comment on that?

ADM. BONE: Congressman, there's always a tradeoff any time you decide you're going to provide prescriptive measures or checks and balances in the system because you're going to take the time to review, screen, examine, stop the flow or delay the flow. So there's always that tradeoff. And it's a matter of risk management always in that process. And making sure and finding ways to target that through intelligence -- not just through intelligence but also through history of working with those entities or those organizational entities as well as randomly. We're able to do that.

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Now, do you operate a system with zero risk? No. Do we live in a world of zero threat? No. And I think the challenge for us and with the guidance of Congress is identifying what is that acceptable level, what are those measures? And we usually work that through our regulatory process to help define that. And then we prescribe it and we put it into place.

REP. COBLE: I got you. Mr. Hayes and I represent a state that has two ports: Morehead City and Wilmington but these ports do not reach the volume of ports in say New York, Miami et cetera. Are ports such as Morehead City and Wilmington receiving adequate resources to address the threats that are there?

ADM. BONE: Again, from the Coast Guard's aspect, we put into place the resources that Congress has provided based on risk and we best place those in those ports working again with state and local entities. I would have added a couple more things on your stool legs which would have included the state and local authorities which provide security and assist us as well.

REP. COBLE: Good point.

REP. COBLE: Mr. Baker, I'm by no means a financial planner but I know we're trying to come to some sort of conclusion that will assuage any of the discomfort that some of us have about Dubai. Has anyone thought about the possibility of passive ownership that would perhaps remove them from the day-to-day operation of moving cargo -- offloading cargo? Has that been raised to any threshold?

MR. BAKER: That is certainly an approach that has been used in other CFIUS cases usually in the context of Defense contracts involving very sensitive technology where it's important for every piece of information that the Defense contractor is dealing with could be shielded from the foreign owner. So because we're carrying out this review without preconceptions, that is certainly one possibility that we are going to look at.

REP. COBLE: Mr. Ahern, I've ignored you, but not intentionally. Do you want to weight in to this before my red light illuminates?

MR. AHERN: I would like to make a couple of comments I think, you know, back to your question of the impact of security in the port of Wilmington. By our assessment, Wilmington and Morehead City are considered one and the same port. And only 37,000 containers out of the 11.3 million that come into this country come through those ports, so we appropriately deploy the resources and the technology there to meet that threat.

I would also like to go back to your other question too about taking into consideration the impact on global trade and movement of trade as we move forward with security measures, and I think it also addresses a couple of the points that were brought up by Congressman Filner and also Congressman Oberstar challenging the department to move quicker, and certainly we want to move quicker and we are. But I think it also needs to be re-stated factually again that we have taken our efforts overseas, we have begun defense in-depth. We did not have anybody overseas pre 9/11.

Today in 43 ports throughout the world we have United States Customs and Border Protection officers there doing the screening and doing the examinations with the host country counterparts of those containers that pose a risk, and also to again factually re-state, as far as the radiation portal monitors are the tail-end of our layered process, and once they're clearing at a port in the United States and leaving to go into the commerce of the United States. That's not the first or the only opportunity we have for intervention. That's the last step. So that's the end of our multi-layered systems as we go forward. So I just wanted to re-state those facts to all.

REP. COBLE: Thank you. I've seen my time has expired. Thank you, Mr. Chairman.

Thank you, gentlemen, for being with us.

REP. LOBIONDO: Thank you, Mr. Coble.

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It's greatly appreciated that members try to be considerate of all the folks who are here, that we try to accommodate with staying within the timeline. We've been alerted that we expect the first vote of the day probably in about a half hour. It is expected to be one vote, and then we should be uninterrupted for a while.

And with that I turn to Mr. Oberstar.

REP. OBERSTAR: Thank you, Mr. Chairman.

The additional review that is underway has brought this response from Dubai Ports World. They jointly request CPS to conduct a full 45-day review. Quote: "DP World and P&O Ports of North America will abide by the outcome of the review but nothing herein shall constitute a waiver of any rights of DP World or PO PNA that have arisen from the original notification."

You're familiar with that, Mr. Baker?

MR. BAKER: Yes, I am.

REP. OBERSTAR: What is the meaning of the statement that they're not waiving their rights from the original notification? Does that original notification, after the 30-day review, give them the right to complete the deal, that is, go to closing?

MR. BAKER: Our view is that they have submitted themselves to CFIUS review, that that gives us the authority -- the president the authority -- to say this transaction will not go forward, or this transaction will go forward only when certain conditions are met, and that they are in no different condition than anyone else who offers --

REP. OBERSTAR: So this statement that this further review does not constitute a waiver of any of their rights, that vitiated by that review?

MR. BAKER: In our view that does not prevent us from issuing whatever order we'd like to issue.

REP. OBERSTAR: And in the course of that 45-day review, they cannot close the deal themselves; cannot state that the original notification constitutes an authority to close?

MR. BAKER: The Exon-Florio Act doesn't distinguish between closed deals and open deals. The transaction is subject to review, and if the deal has closed, then the president has the authority to order divestment; if it hasn't close, he has the authority to prohibit the authority.

REP. OBERSTAR: You can give this committee an iron clad assurance that, notwithstanding the statement by Dubai Ports World that if the further 45-day review concludes that this is a security threat, that it can be terminated or modified in some way to protect the security interests of the United States?

MR. BAKER: That is our view, and we think we have -- it is our interpretation of the statute that will govern -- this is American, anybody can sue over anything, so I can't guarantee you there wouldn't be a lawsuit over that.

REP. OBERSTAR: But a \$6.8 billion deal with stay on hold?

MR. BAKER: Most of the deal of course it has nothing to do with the U.S. ports. The U.S. ports are about 10 percent of this deal.

REP. OBERSTAR: Or it could go to closing and you could order divestiture?

MR. BAKER: That's correct.

REP. OBERSTAR: Right. On the container security initiative, Mr. Ahern, that's managed by your agency, Customs and Border Patrol. The proposal is to establish a regime to ensure that all containers that pose a security potential will be identified and inspected at foreign ports. However, not all foreign governments allow our Customs and

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Border Patrol to see a scan that has been requested. You only get notification that the scan was completed. And if it's passed, they'll tell you it's passed but that's all. What are you going to do about that?

MR. AHERN: I think, first off, that that's not the case, with the exception of possibly one country, where we have some concerns with certain privacy and authorities within one particular country. But in most circumstances we have our officers there with the host country counterpart as the scans are being conducted, and it has to be done to our satisfaction or we will issue a do-not-load order for that container not to be put on a vessel for the United States if it's not reached to our satisfaction.

REP. OBERSTAR: Will you list for the committee those -- in a separate document -- those countries where you have such presence and such screening?

MR. AHERN: The 43 countries we have?

REP. OBERSTAR: Yes.

MR. AHERN: I'd be happy to produce all of them for the 43 countries that we have.

REP. OBERSTAR: In a review that conducted of the principle points of export to the United States, that was certainly not the case. Less than 5 percent of containers coming to the United States are screened.

MR. AHERN: Five percent of the universal 11.3 million is actually scanned.

REP. OBERSTAR: Yes.

MR. AHERN: One hundred percent of the containers coming to the United States are reviewed for intelligence and informational concerns through our National Targeting Center to score them for risk. One hundred percent of those that pose a risk through our scoring gets examined. If it's in a location where we have our officers as part of the container security initiative, that scanning is done overseas.

REP. OBERSTAR: I want to see the documents that you have. We've had difficulty getting accurate data, and I'd like to have that.

MR. AHERN: I have them right in front of me, sir. Okay. We'd be happy to provide that.

REP. OBERSTAR: Thank you.

REP. LOBIONDO: Thank you, Mr. Oberstar.

Mr. Diaz-Balart.

REP. MARIO DIAZ-BALART (R-FL): Thank you, Mr. Chairman.

Let me just make sure I understand this, because there is now this additional review, this further review. Was that also done -- are there other facilities that have the same type of arrangements with foreign companies, like the one from Dubai now is trying to get?

MR. BAKER: The generally accepted figure is that about 80 percent of U.S. terminals are owned by foreign companies. So there are lots of foreign companies and some foreign government owned companies that own or lease terminals. I should stress that it is not necessary to go through CFIUS to acquire, or even to acquire a company to obtain those interests. A foreign company could come into a port authority anywhere in the United States and ask to sign a lease, and if they met the port authority's requirements, they could simply sign a lease, and that transaction would never be seen at the federal level, at least as far as CFIUS is concerned. We wouldn't have the authority to --

REP. DIAZ-BALART: And it's been like that historically. Correct?

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MR. BAKER: That's correct.

REP. DIAZ-BALART: Are there -- for an example, does communist China have that sort of arrangement with any of our ports?

MR. BAKER: There is a company in I believe the port of Long Beach that is affiliated with the Chinese communist government that has at least stevedoring arrangements. I'm not sure that they have a terminal.

REP. DIAZ-BALART: This would be the same communist China that held a U.S. military plane hostage and that summarily -- who executes its own civilians pretty much at will? Was there a second review done there? I'm not saying there shouldn't be a second or third or fourth review. My question is, why was that not done with entities such as this group from communist China or other governments -- or other such countries?

MR. BAKER: My understanding is that those transactions were carried out before this administration took office, and I don't have details on it, based on my experience.

REP. DIAZ-BALART: But, as far as you know, this kind of review didn't take place, including with such an organization that has close ties or maybe even be owned by the communist Chinese government, the same communist Chinese government that held a U.S. plane hostage. As far as you know, there is no review like this?

MR. BAKER: This review is the first review in which we were -- the Department of Homeland Security was a member of CFIUS, was in a position to raise concerns. We raised concerns, and the agreements that we obtained here are without precedent. So these issues were not flagged prior to our becoming part of the CFIUS process.

REP. DIAZ-BALART: Thank you, Mr. Chairman.

REP. LOBIONDO: Thank you, Mr. Diaz-Balart.

Ms. Brown.

REP. CORRINE BROWN (D-FL): Thank you, Mr. Chairman.

Mr. Baker, I have a question and I need some understanding, the committee and the country. The law is very clear. In plain language it says that the Department of Homeland Security rationale for deciding not to proceed with the mandatory investigations as required by the plain language in this statute -- "that the president shall" -- it didn't say may -- "shall make an investigation in any instance in which an entity controlled by a foreign government should seek to engage in any acquisitions that shall affect the national security of the United States".

MR. BAKER: The interpretation of that language, which is that if there is no agency that believes that national security is at risk in the transaction --

REP. BROWN: Put a pin in it right there. And similar -- the Coast Guard -- the Coast Guard expressed serious concerns about the deal. I have a letter that was sent. Now, is the Coast Guard a part of an agency in this administration?

MR. BAKER: It is, but I don't think the Coast Guard expressed those concerns to the department. Those concerns -- I believe you're talking about an excerpt taken somewhat out of context, saying that there were certain intelligence gaps with respect to --

REP. BROWN: Excuse me. What is an intelligence gap?

MR. BAKER: There were certain things that the Coast Guard did not know when it put together that report. In that report, despite the lack of that information --

REP. BROWN: Sir, maybe the Coast Guard knew stuff that Homeland Security didn't know.

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MR. BAKER: The Coast Guard concluded that this transaction could go forward, notwithstanding that memorandum which -- and that memorandum itself concluded that there was not a risk to the national security from the transaction.

REP. BROWN: You know, I have never seen an administration that has such a contempt for the Congress in my entire life. The Coast Guard estimated that we need 5.4 billion for facilities security. What did the administration request?

MR. BAKER: Five point four billion --

REP. BROWN: Yes, a billion, with a "b".

MR. BAKER: An estimate of the cost that would be incurred by the private sector in carrying out the Maritime Transportation Security Act. Those costs were not intended to be appropriated. Those costs were incurred by the private sector and have been incurred. The administration has requested approximately --

REP. BROWN: Forty-six million, for all port security.

MR. BAKER: Three point four billion for port security, counting the --

REP. BROWN: This year?

MR. BAKER: Yes. If you add in the port security operations of the Coast Guard, the C-TPAT and container security initiative and the port security and security grants, it's well over three billion.

REP. BROWN: Sir, listen. Don't play with me. Now, I'm asking about port security grants.

MR. BAKER: Port security --

REP. BROWN: In fact the administration requests doing away with them. And in answer to Mr. Filner's question, we put language saying that we wanted those ports to have high consideration with military -- with military -- because they have 14 ports in Florida, and so we had to go back because we wasn't rated properly on the scale. We have all of that military equipment coming in. We put language in there that they should get high consideration. But now you all have recommended that we do away with port security. And who is bearing the brunt of this? It's not the federal government. It is local government, and it is the state. The federal government is not pulling their weight on this.

MR. BAKER: I think we have suggested that the programs be consolidated so that they can be used --

REP. BROWN: Bull. Consolidated. That means that you are taking the money and doing something else with it. Consolidation -- I know exactly what it means, and local government knows what it means. With no help from the administration, Congress have provided \$883 million for port security, however, that amount represents only 16 percent of the Coast Guard estimated need. Explain that to me.

MR. BAKER: The Coast Guard estimated those costs would be incurred by the private sector to carry out the facility security requirements of the act. Those costs have actually been incurred. That's been done. Those are private-sector costs. They weren't expected that we were going to be paying for them.

REP. BROWN: Those are private security. Can a Coast Guard person respond?

ADM. BONE: Again, what he stated is accurate. Whenever you put a regulation in place, you have to do an economic impact analysis. Part of that analysis -- in other words, is the cost worth the risk investment. In the case, this is what we had to say, these would be the costs incurred, not just by the industry, but also by the other enforcement agencies, you know, state, local and individuals that would be engaged in providing assistance to secure the facilities and the vessels. This was both for vessels and security around the facilities.

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So it wasn't implied that while there is an understanding that Congress put together a grant program to try to assist them, it was --

REP. BROWN: It was my bill, you know, so I know the intent -- I know the intent of the bill.

ADM. BONE: Yes. And I'm not questioning the intent. I'm just trying to make sure the framework of what the estimate was based on. And I believe it appeared to me, from where I was sitting, that the bill was to assist them with those costs.

REP. BROWN: I yield back.

REP. LOBIONDO: Thank you, Ms. Brown.

Mr. Reichert.

REP. DAVID G. REICHERT (R-WA): Thank you, Mr. Chairman.

Just a question for the panels regarding Seattle, Tacoma port areas. We have companies owned by Korea, Japan and Sweden, and I understand that there may be right now a deal on the table, a discussion, negotiations occurring with the Chinese government. Are you aware of the Chinese government showing some interest in operating port facilities in the Tacoma port or Seattle port?

MR. BAKER: I am not. I believe that if there's a change of control, that that would trigger a reconsideration of the facility's security plan, so that if it happens, the Coast Guard will get an opportunity to review the security aspects of that.

REP. REICHERT: Yes, sir.

ADM. BONE: There is one facility that currently is Taiwanese that has operations which has a Taiwanese relationship. So there may be -- you know, because of that, already, that link would already be in there. It's possible that something like that could be underway.

REP. REICHERT: Thank you. Who has -- we talked about this four or five-legged stool -- who has the ultimate authority for a particular port? Is it the captain of the port -- for security?

ADM. BONE: Yes. To allow a vessel to come in for port operations within the port itself, any vessel, we can deny any vessel to come in. We can close any facility or restrict its operation. We can restrict any person from coming to a facility or going aboard a vessel. We can expel a vessel from the port. We can dictate operations and restrictions within the port in the way it's carried out, and set requirements around operations if we believe there to be a security threat.

REP. REICHERT: Does the captain of the port also have responsibility for training -- security training?

ADM. BONE: For Coast Guard security training, but also for standards set, to establish standards for industry as well, other than that which might have been by other regulation or Congressional regulation.

REP. REICHERT: So the port facilities owned by foreign governments or foreign companies would come under the jurisdiction of the captain of the port, as far as training?

ADM. BONE: Yes.

REP. REICHERT: Are the facilities also responsible for hiring any security personnel?

ADM. BONE: Yes. They're responsible for both a training under MTSA and under the regulations that were implemented, as well as identification of security personnel and their responsibilities in providing security.

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REP. REICHERT: Who does the background investigation on those security personnel hired by those foreign governments or foreign companies?

ADM. BONE: The background investigation at this time is subject to state and local background checks.

REP. REICHERT: There's no federal background investigation on these employees?

ADM. BONE: No, there isn't.

REP. REICHERT: Who's responsible for the training of the longshoremen? Do they participate in security training?

ADM. BONE: Again, the facilities normally where longshoremen are employed, it should be included as part of their plans. And I know in New York and New Jersey, by example, there's an organization that went about training them collectively because they operate between multiple facilities.

REP. REICHERT: Thank you, Mr. Chairman. I yield the balance of my time.

REP. LOBIONDO: Thank you, Mr. Reichert.

Mr. Taylor, are you prepared or do you need a minute? You're always prepared is the answer, I know.

MR. GENE TAYLOR (D-MS): Thank you, Mr. Chairman.

Admiral, I want to congratulate the Coast Guard on having the courage not to tout the company line, and I'm sure somewhere somebody's career is probably grinding to a halt, but I want to let you know I appreciate the concerns that have been expressed on the part of the Coast Guard, and I think a democracy is best served when people do speak their minds, even if it's not what the folks in the White House and maybe even the folks in this building want to hear.

What troubles me, and I think you articulated it pretty well, is, rather than a fiscal or even electronic search of the containers, it has been the Coast Guard's policy to more or less rely on an honor system, an honor system involved in many instances a foreign manufacturer, a foreign port, a foreign steamship, and then you add to that equation quite possibly now a foreign nation held port on our end. So, given all of that, you've already got three weak links in the chain. Why would it make sense to add a fourth weak link in that chain?

ADM. BONE: Well, first off, post 9/11 we have infrastructure and the laws that we have with regard to utilization of ports who can operate within them, et cetera, and MTSA has provided certain authorities to execute within that.

I don't see everything as a weak link. In fact I see much of industry as part of our strength in that they've made significant investments in order to provide security. They have significant investments in it by themselves and the manufacturers themselves to protect their cargoes and not allow them to be compromised, so --

REP. TAYLOR: If I may, Admiral?

ADM. BONE: Yes, sir.

REP. TAYLOR: What percentage of these Chinese firms that we're counting on to tell us something is wrong would be state owned?

ADM. BONE: I don't have the exact --

REP. TAYLOR: Is it fair to say that some of them would be state owned?

ADM. BONE: Government owned or influenced, if they're Chinese, I would imagine so.

REP. TAYLOR: And are we at opposite positions over the future of Taiwan with the nation of China?

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ADM. BONE: Yes, but we've also had areas where we agree.

REP. TAYLOR: Okay. But getting back to the Taiwan issue, which apparently is the biggest issue at the moment, so, again we're counting on, I regret to say, a possible foe, not necessarily a definite foe, but a possible foe to tell us if something in that container could arm America?

ADM. BONE: I would have to defer to Customs on container specific issue, as they own the container cargo proportion of the supply chain. But we work closely as they target containers for examination, and if we find there is a threat and we believe there to be a threat, we'll intercept it offshore and it won't arrive at our ports, if it's believed to be a threat and we are able to vet it.

I guess what I'm not -- I don't want to leave an impression with any member of Congress or anyone else that if there's a viable threat in the supply chain, that we don't vet that out collectively with CBT, Coast Guard and any other agency, including DoD, to assist us in removing that threat from the U.S. or not allowing it to come here. And it could be a chain or it could be an individual, it could be some other cargo that's not in a container. We know that drugs and illegal immigrants come in every day and not in containers. I don't void myself of all the other potential threat factors.

REP. TAYLOR: I'm just curious, Admiral, and again it's to make my point on what I think is the weakness of your honor system. What's the Coast Guard's policy on drugs for your personnel?

ADM. BONE: Zero tolerance.

REP. TAYLOR: Do you count on your personnel to come forward and say, I smoked a joint last weekend, or do you have random testing?

ADM. BONE: No. We have testing. And maybe -- I'm sorry, you might not have been in here earlier, but since July 2004 we've boarded 16,000 vessels and turned away 143 of those vessels or expelled them from the ports as a result of their inability to provide for the security that's necessary. We do -- we provide protection and escorts around other vessels so that they can't be compromised and there couldn't be a small boat attack.

Are we doing everything? Are we examining every vessel that comes in? No, but we're using the best intelligence in the targeting system in order to address that threat, and we don't believe -- I don't believe for a minute that a terrorist will say, "Hey, here I'm coming, I've got a weapon and I'm going to bring it to the United States". We address and we evaluate threat and risk every single day on every movement, whether or not it's coming foreign or it's moving through our waters domestically, and decide how to address it.

REP. TAYLOR: What percent of the approximately 20 million container equivalents that came into the country last year were inspected by the Coast Guard or Customs?

MR. AHERN: I can tell you exactly, of the 11.3 million containers that came into the country from foreign, 569,250 of those containers were examined by United States Customs and Border Protection. That's the 5 percent figure that continues to be utilized.

But I think it's important again to go back to the various layers in the overall supply chain. If we do begin overseas, we're getting manifest information 24 hours in advance. We then run that through a very rigorous intelligence system to determine which one of those pose for risk. We look at that body -- that hundred percent body that has been scanned and scored for risk, then receives our attention upon arrival.

We need to take into consideration also as far as with the verification process -- we like to call it the validation process -- of those partners that we have under the Customs-Trade Partnership Against Terrorism. We've gone to the foreign locations, to the suppliers, vendors, manufacturers, to see what kind of security practices they have in place. So it is a trust but also it is a verify process that we have in place under that particular undertaking of our layered strategy.

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REP. TAYLOR: Thank you, Mr. Chairman.

REP. LOBIONDO: Thank you. I would please ask and remind all members -- we have a lot that want to ask questions -- to try as best they can for the five minutes.

With that, we'll go to Mr. Simmons.

REP. ROB SIMMONS (R-CT): Thank you, Mr. Chairman. I will do my best to stay within the limit.

Thank you, gentlemen, for coming in and testifying today. This is clearly an important issue. Many of us have ports in our districts and many others are concerned about the security implications of this proposal.

Secretary Baker, on page 8 of your testimony you refer to the role of terminal operators, and you say there's been a lot of attention in recent weeks about the threats posed by terminal operators. Let me clarify what they do. They do not run ports. They certainly don't provide overseas security for the entire port complex. That's the responsibility of the government and the local port authority, which is usually a government agency. Terminal operators do not obtain a comprehensive window into the breadth and depth of security measures, et cetera.

I think I understand what you're saying, but when I refer to Coast Guard regulations 33CFR chapter 1, section 105-265, it states, "Security measure for handling cargo. General: the facility owner or operator must ensure that security measures relating to cargo handling are implemented."

It goes on, MARSEC level 1. "MARSEC level 1, the facility owner or operator must ensure the implementation of security measures.

MARSEC 2, the facility owner or operator must also ensure the implementation of additional security measures. MARSEC level 3, the facility owner or operator must ensure the implementation of additional security measures."

The facility operator is listed in these regulations at every level of security. And so I don't understand. As I understand your testimony, facility operators or terminal operators have no responsibility for security, but under the Coast Guard regulations they have responsibilities at every level. How are we to understand who is responsible, what those responsibilities are and how are we to understand why there shouldn't be security concerns about foreign facility operators when it appears under the regulations that they are charged with security responsibilities at every level?

MR. BAKER: I certainly would not suggest that they have no responsibility for security, and I think if you read on page 9, we actually say that the Maritime Transportation Security Act requires each terminal operator, because they operate inside the ports, to file a facilities security plan with the Coast Guard that specifically details their compliance with all of the security measures required by federal law, including those enforced by the Coast Guard.

So there was no effort to say there was no security responsibility on the part of a terminal operator. I think it's fair to say that the early coverage of this issue, in particular the first week, suggested that somehow we were outsourcing security for eight major ports to a foreign company.

That was never the case, but it was a mis-impression that we were seeking to combat. There is no doubt that everyone who has a facility inside a port has security obligations that are enforced by the Coast Guard.

REP. SIMMONS: According to these regulations, the facility operator is charged with detailed responsibilities at every level for security. According to your testimony, they don't run ports, they don't provide or oversee security for the complex, they do not obtain a comprehensive window into the breadth and depth of security measures. I just think that if there's confusion on this issue out there, and I would say that in my district there's not a lot of confusion, they don't want these facility operators to be engaged in any great detail with the security operation of the port, but the regulations say they are. And that's the crux of the problem.

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If I can't figure it out, based on your testimony and based on the regulations, how can the American people figure it out? And I guess their feeling is: hey, enough already. this is bad deal. Vote no.

ADM. BONE: Congressman, maybe just to explain a little bit.

Within the confines of the facility itself, again within basically the pier through the gates where the trucks come in and out as our people enter, and the fences around it, that facility, that's the responsibility of that foreign operator to provide for the security. In other words, access control measures, not to let people through, not to let people have access to those cargoes that -- in other words, not unrestricted access to those cargoes, and to vet people as they come through there and to protect that facility against an external threat which may be by an individual or some other entity.

Those different MARSEC levels are different threat levels, and they correspond then to protective measures. It may be increased patrols, it may be increased security around particularly restricted areas where high-risk cargoes may be placed. But that's what that responsibility really entails. It's not in any way do they know what Coast Guard, Customs or ICE or other agencies or even the state and local police, security operations are with regard to other protective measures, or even our oversight and review of their operations in the conduct of their responsibilities.

So I guess I don't want to leave kind of a misunderstanding of what port security is versus that facility security responsibilities of that owner. Hopefully that helps.

REP. SIMMONS: Thank you, Mr. Chairman.

REP. LOBIONDO: Thank you.

We're going to go to Mr. Nadler for Mr. Nadler's five minutes, then we're going to break for the vote and then -- or go for a short recess for the vote and then come back.

Mr. Nadler.

REP. JERROLD NADLER (D-NY): Thank you very much, Mr. Chairman.

Mr. Ahern, I think you stated that in 43 foreign ports, all high- risk containers are screened electronically. Is that what you said, when we score the risk on the containers overseas at the 43 ports, the protocol is for those to be resolved before loading?

MR. AHERN: The answer is yes.

REP. NADLER: Thank you.

What percent of all containers in foreign ports are screened electronically?

MR. AHERN: Electronically?

REP. NADLER: What percentage of all containers are screened by gamma ray technology and by radiation scanners?

MR. AHERN: That wasn't your first -- you said electronically. A hundred percent are.

REP. NADLER: Forget that. I'll just ask the second question.

MR. AHERN: It would be 1 percent.

REP. NADLER: One percent of all containers are screened in a way that would assure us there is no nuclear materials aboard?

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MR. AHERN: That is the current number today, yes.

REP. NADLER: One percent? And when are we going to get to a hundred percent?

MR. AHERN: As we continue to deploy additional resources and technologies in these ports.

REP. NADLER: I asked for a date.

MR. AHERN: A specific timeframe? I don't have that.

REP. NADLER: Would it be within a year or two?

MR. AHERN: As we move forward for the rest of this calendar year --

REP. NADLER: You're not answering.

MR. AHERN: -- it will be 43 to 50 ports, and that'll get us to 85 percent of the container --

REP. NADLER: No, no. That'll get us to 85 percent of the risky containers. Right?

MR. AHERN: That'll get us to 85 percent of the entire universe of containers.

REP. NADLER: Eighty-five percent of the entire universe of containers will be screened by gamma ray and --

MR. AHERN: No.

REP. NADLER: That was my question. Please answer my question.

MR. AHERN: Well, give me an opportunity to provide it in the full context.

REP. NADLER: I'm not asking for that. You provided it before.

You are saying basically that eventually we'll get to -- we will have this equipment in 85 percent of foreign ports and we will screen a lot containers that we determine are high risk?

MR. AHERN: That is correct.

REP. NADLER: Okay. My point is that I think it's absurd, the same department that determined that the Dubai deal is not high risk, determines which containers are high risk. I feel very secure with that.

I believe that since any container -- any low-risk container from a reliable supplier on the way from the factory to the port somebody can substitute an atomic bomb for a television set. There's no such thing as a low-risk container. This country will not be safe until every container is scanned by gamma ray and other technology to make sure there are no nuclear materials are brought.

Am I correct in assuming that there is no plan within a specific timeframe by this administration to put into place a situation in which every single container is scanned in the way that I was talking about?

MR. AHERN: That would be our understanding within our organization that I --

REP. NADLER: Okay. There's no plan to scan every container.

Let me ask you a different question. Has the DHS mandated the use of tamper-proof seals on containers once they are scanned?

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MR. AHERN: We're currently in testing with container security devices and advanced container security devices. In the initial results we're only seeing about a 94 percent accuracy rate, which means 6 percent of that universe of 11 main containers need to be resolved because of false alarms or nuisance alarms. So we need to get a higher --

REP. NADLER: And so, right now there is zero percent using these tamper-proof seals?

MR. AHERN: We're in testing with the sum number of those containers. Until we actually get a reliable --

REP. NADLER: And 94 percent isn't reliable enough is an improvement over zero percent?

MR. AHERN: Well, it means we'll have to be resolving nuisance alarms or false positive --

REP. NADLER: And it's better to risk atomic bombs in American ports than to resolve nuisance alarms?

MR. AHERN: Of over 600,000 containers that are just nuisance or false alarms, that's not a good utilization of our resources, sir.

REP. NADLER: Okay. Now, not all foreign governments allow CBP personnel to see the scans. Sometimes they only report the results of the scans to CBP. Is that correct?

MR. AHERN: That is correct in --

REP. NADLER: And what do we do to those foreign governments to get them to change that policy?

MR. AHERN: We're continuing to engage to go out and change that --

REP. NADLER: We're talking to them, in other words?

MR. AHERN: Until we're able to go ahead and actually have the images remoted to us, we're looking at that technology currently. And also please understand too that we have the ability to issue a do-not-load order if it's not resolved to our risk prior to putting on board --

REP. NADLER: Well, are we prepared to issue a do-not-load order to every single container that we don't see the scan of? And if not, why not?

MR. AHERN: If that makes sense to us, that's what we will do. That would not be --

REP. NADLER: Excuse me. I asked you a question. Are we prepared to do that now; not if that makes sense? Does that make sense?

MR. AHERN: We do it now when our risk is not resolved prior to lading.

REP. NADLER: Well, you're estimating a risk. I asked a different question. Does it make sense -- and if not, why not -- to insist that on a do-not-load order on every container if we haven't seen the scan? And if not, why not?

MR. AHERN: That if the risk is not resolved to our satisfaction before it's placed on a vessel, it will be given a do-not-port order.

REP. NADLER: Excuse me. Why should we not insist that we see every single scan? Why does that not increase our security?

MR. AHERN: We're in the process of doing that right now with the remaining country that we've had some challenges with, but we're getting --

REP. NADLER: You just told me we're not doing that. You're not prepared to order a do-not-load order on every container that we don't see the scan of. You just said that.

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MR. AHERN: Let me put it in full context again, please. If the risk is not resolved prior to being put on board a vessel, we will give a do-not-lade order.

REP. NADLER: Is there any other -- you're saying if the risk is not resolved. But that's somebody's estimate of the risk. On the assumption that every container has a risk if we haven't seen the scan, what are we doing, and when will we be assured that we will see every single scan? Not every single scan of a container that someone decides is a risky container. Every single container.

MR. AHERN: I don't agree with your assumption. I think there needs to be risk management employed on this.

REP. NADLER: Okay. So you don't agree with the assumption that we should inspect or scan and see the scan of every single container, only those containers that on the basis of outside parameters are judged to be high risk?

MR. AHERN: No. What I want to state is, as accurately as I can responsive to your question is, not every container poses a risk. You have a different view of that.

REP. NADLER: Yes, I do. Now, why do some containers not pose a risk? Because they're reliable suppliers? Why?

MR. AHERN: Verification of the supply chain, suppliers, vendors, manufacturers that have had --

REP. NADLER: Right. But once you've verified the supply chain and you've got a reliable supplier, et cetera, how can you guarantee that some driver wasn't bribed to take a long lunch hour and somebody walked in, especially when we do not have tamper-proof seals, that communicate with you as a government on that container, how do you know someone didn't put something in that container, didn't replace a television set with an atomic bomb? So how can you always be certain of that?

MR. AHERN: We can never be a hundred percent certain.

REP. NADLER: So there's always some risk.

MR. AHERN: We assume a certain level of risk.

REP. NADLER: Assume a certain level of risk, and we're not willing to follow a policy to zero out risk on potential atomic weapons? That's what you're telling me.

MR. AHERN: No, I wouldn't say --

REP. NADLER: You're saying minimizing the risk but you're not saying zero it out.

MR. AHERN: I'm saying we need to accept a certain level of risk.

REP. LOBIONDO: Excuse me one minute. I apologize for interrupting. We're just about at the six-minute mark, Mr. Nadler. You're well over five minutes.

REP. NADLER: Okay. I'll conclude by summarizing that you want to minimize the risk but you don't think it's feasible or proper or desirable to eliminate the risk. And we disagree on that.

Thank you very much.

MR. AHERN: I don't think it's feasible to scan every single container coming into the United States overseas.

REP. NADLER: Why not?

MR. AHERN: I don't believe, first, there's a risk present to do a hundred percent.

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REP. NADLER: Well, you just said it isn't feasible. Why is it not feasible, if we wanted to, if we spent enough money? Why is it not feasible?

MR. AHERN: Well, I think certainly if there is no limitations to finances, then certainly anything is possible.

REP. NADLER: Would it cost billions, or hundreds of millions, or millions?

REP. LOBIONDO: Let me apologize once again. Some of us don't want to miss the vote. I apologize to the panel. We'll be in a short recess. We will be back once the vote is over.

(Recess.)

REP. LOBIONDO: We're going to reconvene. If our panelists would please take a seat.

Mr. Boustany was going to be next, but he is not here, so we're going to go with Mr. DeFazio.

REP. PETER A. DeFAZIO (D-OR): Thank you, Mr. Chairman. I'm in simultaneous mark-up on aviation security. I appreciate the latitude.

I would like to go to the issue of the containers. Mr. Ahern, when I had to leave to go to the other mark-up, you'd mentioned that if a container is identified by intelligence as a risk, it will be screened overseas if we have persons available. That's correct?

And then I understand that subsequent, you said 1 percent is screened overseas but another 4 percent are screened here. So that means a total of 5 percent of all containers are identified as being at risk. Is that correct?

MR. AHERN: Five percent of the universe is identified for risk.

REP. DeFAZIO: Okay. Now, let me see if I understand the system. There will be a factory somewhere or some place where they load the container. We have inspected some portion of these workplaces to see that they have a paper plan and they have a security guard or whatever else, but we don't have an ongoing presence at any of the places where these containers are packed. Is that correct?

MR. AHERN: We have done validations and --

REP. DeFAZIO: You've done -- yes, you've visited the site once at some point in time and said, okay. Okay, so, there is no American presence when it's packed. So then we receive an electronic transmission or a bill of lading for that container which purports to tell us what's in the container. And then we crank that into our security universe and decide whether it's a risk. So we're not there when it's packed.

Now, when the container comes to the port, 1 percent are screened overseas. Okay. Now, I understand there was also a discussion of the seals while I was gone, and you have 94 percent confidence that the seal is not good enough. But that doesn't get into the whole idea of removing an entire panel of the container to access the contents and going around to the seal, does it. I mean, basically, these containers can be opened without disturbing the seal. And even then, if you disturb the seal, you may be able to, you know, fudge that. Is that correct?

MR. AHERN: The full answer that was provided on the 94 percent figure, I like to re-state for you were correct. We're currently --

REP. DeFAZIO: Okay. But the answer would be yes?

MR. AHERN: We're currently in testing, and we have a 94 percent accuracy rate of the containers that are currently in testing, meaning we have 6 percent --

REP. DeFAZIO: Again, any and all entry, not just the seal?

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MR. AHERN: A 6 percent false alarm rate on the current container security devices that are being tested.

REP. DeFAZIO: But even that false alarm rate doesn't go to whether the container was entered somewhere else?

MR. AHERN: These are container security devices. We're testing actually four or five different --

REP. DeFAZIO: Okay. That's good. Well, hopefully we can move ahead and we're not, you know, going to delay further.

MR. AHERN: We are --

REP. DeFAZIO: Excuse me, sir. So we have a container. We didn't observe it being packed. We've examined what they have told us that's in it. One percent of the time we validate that. And then we have seals that can fail.

Now we get to the admiral. Admiral, we then load these things on ships. Is that correct? And these ships, do we know who owns a ship registered in Liberia? Can we see through the registry now?

ADM. BONE: We do have the owner and the operator information as well as the flag state.

REP. DeFAZIO: Well, we have really, or do we get back to a lawyer somewhere?

ADM. BONE: If you're asking do we know the banking transitional, you know, and every layer behind it?

REP. DeFAZIO: Right.

ADM. BONE: No.

REP. DeFAZIO: Okay.

ADM. BONE: We have someone -- an entity that's legally liable and responsible.

REP. DeFAZIO: Right.

But that doesn't tell us who really owns it, whether Osama bin Laden owns a fleet of ships or not. We don't know.

ADM. BONE: Well, --

REP. DeFAZIO: Well, if we could, let's go to the crews. And we got into this a few years ago. The IMO has certified schools in the Philippines, it's never physically visited them, and they've been documented in news reports as selling certificates. Now, that's a problem because you end up with incompetent people. But beyond that, can you tell me that background checks are being run on the crews of foreign ships coming here?

ADM. BONE: I can tell you that all the crews, every individual that comes here runs through an intelligence background.

REP. DeFAZIO: Right. With their fingerprints?

ADM. BONE: No, there's --

REP. DeFAZIO: We use the name -- the name that they gave in the Philippines when they bought the phony certificate.

ADM. BONE: They have a passport or a travel document --

REP. DeFAZIO: Sure. Right. Those can't be forged though? A Belgian passport. Do we accept those?

ADM. BONE: And we have people trained to basically find and identify those, and we have.

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REP. DeFAZIO: Right. Sure. But, you know, so we don't know what's in the ship, we don't know what's in the containers, and we don't know who the crews are.

ADM. BONE: We do know the crews, sir.

REP. DeFAZIO: Well, you know the names of the crews. They aren't fingerprinted. We haven't run a thorough background check. They're flying a flag of convenience. Okay. Let's give you that. Do we track the ship -- because they have to tell us where they've been? How do we know where they've really been? Do we track the ship? Do we require transponders on the ships?

ADM. BONE: There is AIS transponders. There's no long-range identification tracking in place yet.

REP. DeFAZIO: Right, a few miles, and it only covers a few ports. Is that correct? We don't cover the entire coastline of the United States with that equipment?

ADM. BONE: The AIS transponders are required on all the vessels, and the transponders are able to be received by aircraft as well as by Coast Guard vessels.

REP. DeFAZIO: But we don't track every ship within 20 miles of our shore?

ADM. BONE: We don't have a vessel tracking system that you're referring to, but we have the ability.

REP. DeFAZIO: We have the ability. That's good. I appreciate it. Hopefully some day we'll actually use that ability. Now, there are maritime companies that actually track their ships beginning to end because they're worried - now, let's say -- let's give you everything on the containers. That's great -- 94 percent reliability.

What if the ship stops in the Straits of Malacca and loads a nuclear bomb? Do we have any way, other than our intelligence people tell us about it if they know about it? But we're not tracking that ship, so we don't know that they made an unscheduled stop in the middle of the ocean in the Straits of Malacca because we're not requiring known technology, technology that's used commercially, the United States of America isn't saying, you know what, no ship is coming to the United States of America unless we know where that was at all times and we track it at all times, because we're concerned they might stop somewhere and put -- do we inspect the hulls of the ships? I mean, we're worried about containers, but what about something that gets loaded on the ship? We're not very good on containers. What about loading something on the ship?

ADM. BONE: Let me answer your first question about tracking. We'd have to do into a classified environment if we're going to talk about all the mechanisms of tracking that we have access to. We don't have a commercial tracking system that we track all ships --

REP. DeFAZIO: Right. So if commercial companies can afford it, and some of the better ones use it or they're worried about piracy, but -- and we don't require it?

ADM. BONE: Again, the Coast Guard does not have a commercial tracking capability that the Coast Guard owns and operates, other than near shore capability.

REP. DeFAZIO: Right.

ADM. BONE: And even the long-range identification tracking will be run out of some international body, most likely, rather than just a U.S. owned or Coast Guard owned and operated that will allow us to track commercial vessels. In fact we have a group right now at IMO looking at the technical requirements at COMSAR, and expect a vote this May from the full committee at IMO on LRIT, which looks extremely favorable. But we're working to get to where you're asking, but we're not there yet.

REP. DeFAZIO: Right. But I guess the point is, after 9/11 the United States could demand these things, we're the people who are buying all this junk from around the world and running a huge and growing trade deficit and people

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want to ship things here, we're not shipping much out, so they couldn't put retaliatory demands on us that we couldn't meet.

So the idea would be, why not, if it's commercially viable technology, begin to demand that? But let's -- okay, so we don't know exactly what's in the containers, but we might screen them here. We don't know if the ship stops somewhere and they load it. What are we doing -- you know, routinely, in terms of ship inspections, given the fact that maybe the bomb isn't in the container, maybe it's been loaded into the hull of the ship at sea.

I'm not talking about once it gets in the port, because once it gets in the port, we've kind of got a problem if they decide to detonate.

ADM. BONE: At sea -- in fact, there are at sea boardings. As I said, there's 16,000 boardings --

REP. DeFAZIO: Out of how many ships?

ADM. BONE: Out of 7,500 foreign flag vessels that make approximately 7,200 visits in the U.S. a year.

REP. DeFAZIO: Right. So we do a quarter of them, basically? A little more -- a little less.

ADM. BONE: But I think, again, you're going to go back to the same issue of targeting based on historical information and based on intelligence that we basically target vessels for that, both with regard to the cargo, their owner, their operator, their background history, as well as that of the people on board, as well as not -- as well as where the cargo itself and who it may be bound for.

Those are all determinations of the vessel --

REP. LoBIONDO: Excuse me, Mr. DeFazio --

REP. DeFAZIO: Thank you, I'm over time --

Thank you, Mr. Chairman. I've got to go back to Aviation, thank you.

REP. LoBIONDO: Okay, thank you.

Mr. Boustany.

REP. CHARLES W. BOUSTANY (R-LA): Thank you, Mr. Chairman.

Last week I read the Coast Guard report pertaining to the DP World transaction, which cited intelligence gaps that would make it difficult to determine the actual risk involved with this transaction. And Coast Guard in general terms reported that these gaps included a potential for foreign influence on DP World, unknown backgrounds of DP World personnel and general questions about terminal security.

And it's my understanding that these were resolved before the CFIUS approval, but they were resolved merely by obtaining assurances, as you have stated, Mr. Baker, that DP World would in the future provide the Coast Guard with additional information about personnel at the terminals, and that they would enroll in the Customs Trade Partnership, where they're saying that they will tighten security in exchange for the privilege of foregoing certain container inspections and so forth.

Has any additional information surfaced that's been provided by DP World at this time, as of today?

Either of you?

MR. BAKER: Why don't I let the Coast Guard address the intelligence report that they generated, and we can also talk about additional information.

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REP. BOUSTANY: Thank you.

ADM. BONE: Again, just as you stated, you know, this was an internal assessment, as we're a member of DHS and we're a full partner actually in review of the CFIUS process. And you're correct in that the letter of assurance -- this is one of those areas where you know what you know and what you don't know, you don't know.

The letter of assurances will provide us access to that information. And again, the contract portion hasn't been -- at which point in time, the department can ask for those names of those individuals, employees and other members of DPW or P&O, if P&O personnel are being kept on, to have the background check conducted, et cetera.

So we don't see anything that limits us, not only to know that, but also to know what other agreements or operational agreements they have with other entities. We don't have that visibility anywhere else, other than, as the secretary indicated, you know, certain military load out facility areas, where those similar type of agreements have been reached.

So I don't see anything that's going to preclude us from obtaining that. We also have 30 days before a facility's allowed to operate, that they're required to amend their facility security plan, at which point in time, for example, these letter of assurances, we can require that information or any other information we believe necessary to provide for the security of that facility. That's an amendment process and it's currently in our regulations that we carried out under MTSA.

Now, we don't -- that doesn't necessarily prescribe a full security plan review, but it -- we can identify those areas of risk that we believe we need to address.

REP. BOUSTANY: What action would you take under this promise of assurances, what actions would you take if you don't get forthcoming information within this prescribed period?

ADM. BONE: We don't allow operations.

REP. BOUSTANY: Okay.

ADM. BONE: But no vessel could go to the facility and, you know, you can have -- you can own something, but nobody can operate.

REP. BOUSTANY: Do you feel like some of the information you've requested is starting to flow at this time?

ADM. BONE: Again, I think that once the transaction process goes to some level of completion, I don't know that specifically, but as that gets completed, then I fully expect and I know that Secretary Baker's intent is to pursue that aggressively.

MR. BAKER: We have talked to the company, indicated we expect to receive the information and they've been entirely cooperative. And so as soon as we make the request, we expect to get the information. We have done, using the assurance letters already, baseline reviews with both the Coast Guard and CBP, inspecting current operations of the P&O North America terminals, and have gotten a substantial amount of information there.

We also, I believe, are -- Coast Guard is also doing a foreign port inspection of Dubai in this 45 day period.

ADM. BONE: What I might offer is we have completed examination of the P&O ports that they're planning to acquire. And we've found them to remain in compliance. And part of the reason for that was literally to be able to say -- for DPW to be able to not say, oh, these were problems that existed currently at this facility before we acquired it, these weren't problems that we brought on.

And these accurate -- our folks just returned from Dubai, visiting all the DPW ports in Dubai and conducting port security assessments, compliance with ISPS, and found them in compliance with ISPS, and in fact in many areas exceeding what we have in the United States with regard to security measures.

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REP. BOUSTANY: And you're referring to all the ports owned not only by DP ports but P&O as well? The entire system that would be --

ADM. BONE: The P&O ports that are being acquired by DPW, or where even DPW's stevedore operations take place.

REP. BOUSTANY: Thank you. My time's expired.

Thank you, Mr. Chairman.

REP. LoBIONDO: Thank you.

Ms. Kelly.

REP. SUE W. KELLY (R-NY): Thank you very much, Mr. Chairman.

There's been a great deal of attention paid to the container security, and appropriately so. But too often it's forgotten that Dubai Ports World would also operate the Manhattan cruise terminal, where tens of thousands of passengers get on and off of boats. They enter and leave the country every year.

We have seen that al-Qaeda operatives have targeted cruise liners. The Washington Post reported that just three weeks ago. The United States does not let foreign countries play any role in security at America's airports, so it's concerning that they may play a role in security at America's flagship passenger seaport. Before you answer, Mr. Baker, this question is directed at you, I know that you're going to reiterate the Coast Guard's responsible for ship security and terminal operations will continue as before, but you and I both know that operating the Manhattan terminal would give Dubai Ports detailed information about sailing times, passenger lists and locations, destinations, crew names and addresses and other vital information that can compromise the safety of the ship and its passengers after it leaves the dock.

Tell me what specific safeguards, if any, the United States government has demanded from Dubai Ports to prevent any of this information from being shared with the company and utilized in an adverse way.

MR. BAKER: I think the assurances that we've received to date address that to some degree. We have the ability to see any information about their U.S. operations. That would include, if we were concerned that they were gathering or transmitting information about sailing times or people involved in cruise ship landings, we could --

REP. KELLY: Excuse me, Mr. Baker, but how do you know if they're gathering it? If this -- we are in an electronic world, there's no paper trail.

MR. BAKER: Well, we have authority to ask for electronic trails as well, and it's very difficult in fact to hide electronic trails, both in transmission and in the systems that you use.

REP. KELLY: Well, what is their obligation to respond if you request? Is it merely a request, or is there some penalty attached?

MR. BAKER: They have committed to us that they will provide without a subpoena any information that we ask for about any aspect of their U.S. operations. And as I think you heard Admiral Bone say, we have all of the authority we need to make sure that if they lose our trust, they're not going to be doing business in the United States.

REP. KELLY: Well, if they own the ports, it's hard to say that they can't do business in the United States. I am extremely concerned about the flow of information that could jeopardize our cruise terminal in Manhattan. It's an important piece of the economics of Manhattan.

I want to go to another question I have, because I have only a few minutes and I know you're in a hurry because you need to leave also. The Wall Street Journal recently reported that the UAE refused a request from the U.S.

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government in 2003 to intercept a shipment of nuclear technology facilitated by a man who was later convicted by the United States for violating the weapons of mass destruction sanctions.

Can you discuss how this may have been factored into the government's view of the UAE and this specific port deal?

MR. BAKER: I'm aware of the allegation and we have assured that that's going to be examined in the course of the 45 day review by the intelligence community and by the members of CFIUS, so we're looking at that closely. I am not sure whether it was looked at by the intelligence community in the first review, and I'm not sure that the charge has been verified. It appeared on a website, I don't know whether it's accurate.

REP. KELLY: The charge against whom, sir? The man was found in -- he was found guilty in a U.S. court, as I understand it, in 2003.

MR. BAKER: I think the question of whether -- I'm sorry, I thought you were referring to a 2003 incident in which Dubai was alleged not to have cooperated in an investigation.

REP. KELLY: No, the man was -- this instance I'm talking about, a man was convicted by the United States of America for violating the WMD sanctions, and I want to know if this was factored in on the UAE with regard to this ports deal?

MR. BAKER: We did examine through the intelligence community all of the proliferation and terrorism risks associated with Dubai, the owners of the company. We also took into account our own experience with both companies, and they have been entirely cooperative and professional in their dealings with us.

REP. KELLY: I would like to have you give us more information about this if you could. I know you're in a hurry and I'm out of time, but I would appreciate getting more information about both of my questions.

Mr. Chairman, I hope that's all right with you.

REP. LoBIONDO: Yes, without objection.

REP. KELLY: Thank you.

MR. BAKER: Thank you.

REP. LoBIONDO: Okay. Thank you, Ms. Kelly.

Mr. Poe.

REP. TED POE (R-TX): Thank you, Mr. Chairman.

I represent southeast Texas. We border Louisiana, where Mr. Boustany represents those good people. Between us is a river. We're glad about that. It's the Sabine-Neches Riverway. And you travel all the way up the Sabine-Neches Riverway, you show up at the port of Beaumont. The port of Beaumont ships one-third of the military cargo that goes to Iraq and Afghanistan. We get it from Fort Polk and we get it from Fort Hood.

One of the terminals and stevedore operations involved in this UAE deal is a terminal and a stevedore operation that happens to load that cargo to Iraq and Afghanistan.

Of course, the port is protected by the Coast Guard and, Admiral, I want to tell you that the Coast Guard folks there do a tremendous job going up and down that riverway in those rubber boats. About half the people on active duty are reservists from all over the United States, they do a good job. I wanted to let you know that.

But this whole thing concerns me about homeland security. My background as a judge, trying outlaws for 22 years, always makes me suspect of what I see going on.

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And, Mr. Baker, if I understand your comments correctly, you say that a UAE government-owned corporation is going to employ the best securities practice. And the more I hear about the cooperation of the UAE, this government that happens to own a corporation in our country, it sounds like we're turning over security to that country.

We're outsourcing homeland security to a foreign government. Now, we can label it something else, but that's the way I see it and the way it comes across to me. A couple of questions. In this CFIUS situation, how many proposals have been denied since 9/11?

MR. BAKER: It's difficult to say that any have been denied, a number have been --

REP. POE: Let me understand the question. Have any of them been denied?

MR. BAKER: Formally, no. Several I'm sure --

REP. POE: How many of them have been reviewed?

MR. BAKER: We do about 65 or 70 a year, so approximately 450, I think.

REP. POE: And they've all found to pass muster on security issues?

MR. BAKER: No, that's not correct.

REP. POE: But none of them have been denied?

MR. BAKER: Well, in many cases people have withdrawn them because they did not believe that they would get approval.

REP. POE: Because they didn't pass muster on security issues?

MR. BAKER: That's right.

REP. POE: All right. We've heard that the administration's responsible for homeland security, and basically through the Homeland Security Department, comments have been made that we're in charge of that, so you can trust us. I don't do trust us. I want results and obvious security measures that are employed.

Let me ask you a hypothetical.HSE-TRANS-CG PAGE 60 03/09/2003 .STX

You know, if the war on terror takes us to some other country that happens to be an ally with the UAE, and here we're shipping cargo from Texas to the war on terror all over the world, doesn't common sense say that might be a problem, giving that information to a government that happens to own a country and a port that ships cargo for the war on terror?

Doesn't common sense say that's a problem?

MR. BAKER: Obviously there's a lot of information that you wouldn't want to provide to anyone outside the U.S. government, and we do our best, as the Defense Department --

REP. POE: Well, let's just talk about the information they have. They have a stevedore operation, they have the manifest, they know when ships are leaving, they know what's on the ship, they know where the ship is going, they know who loaded the ship, they know when the ships are coming into port, they know where they come from and what's on those ships.

That doesn't seem like maybe a security risk, letting a foreign country have that information?

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MR. BAKER: It depends on the information. The information about what's coming in is not necessarily -- what's in those containers is not necessarily known to the terminal operator or the stevedoring operation. The know what container they're supposed to move, they don't --

REP. POE: But you don't see in my hypothetical -- I'm sorry, I just have a couple of minutes. That hypothetical, you don't see that being a problem?

MR. BAKER: There is risk in every transaction, and I'm not trying to say that there's no risk in --

REP. POE: Then why would we want to take another risk?

MR. BAKER: This risk we believe we've taken special steps to minimize, well beyond the steps that have been taken in the context of all the other foreign owners and operators of terminals in the United States today.

REP. POE: It just seems like to me that this U.S. port marriage to the UAE has all the semblances of a bad marriage starting out. You know, they say that a failed marriage starts out, what a deal, then it's an ordeal, then it's no deal. And I think this ought to be a no- deal before it becomes an ordeal, Mr. Baker.

And I want to thank all of you for your time for being here, I have some more questions and I'm going to turn them in in writing.

Thank you, Mr. Chairman.

REP. LoBIONDO: Thank you, Mr. Poe.

We're kind of in a dilemma here, because we've got more questions for the first panel.

I know, Mr. Baker, you have an appointment you're late for.

Mr. Flynn has a plane to catch, we desperately want to hear you. And the other second panel members also have challenging timelines.

We thought we were doing a good thing by opening this up to the full committee, I'm having second thoughts about it.

But to the first panel, gentlemen, thank you very much. We'll probably want to try to follow up on some things at a future date, but thank you very much and we'll do a switch out to the second panel.

I thank the second panel for joining us. We have Dr. Stephen Flynn, who's the Jeane J. Kirkpatrick senior fellow for national security studies, Counsel on Foreign Relations. We've got Mr. Kurt Nagle, who's president of the American Association of Port Authorities.

We have Dr. James Jay Carafano, senior research fellow for defense and homeland security at the Heritage Foundation. Mr. Robert Scavone, who's the executive vice president of strategic planning and development for P&O Ports North America. And Mr. Gary Brown, who's the union security liaison for the International Longshoremen and Warehouses Union.

We're going to -- with your indulgence, gentlemen, I'm going to ask that Dr. Flynn give his statement and we'll try to allow you, Dr. Flynn, to get on your plane.

And then, Mr. Carafano, we know you have a pretty important appointment this afternoon and we'll try to clear you out as well.

Dr. Flynn, please proceed.

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MR. STEPHEN FLYNN: Thank you very much, Mr. Chairman. I'm delighted to be back with you again to talk about this very sobering topic.

This morning we're talking about the federal government's progress in implementing the maritime security measures as required by the Maritime Transportation Security Act of 2002. And I'd also like to provide some of my recommendations on how to advance this critical agenda.

Certainly the controversy surrounding the takeover of five American container terminals by Dubai Ports World has had the salutary benefit of engaging Washington and the American people in a national conversation on the state of port security. This is long overdue given the enormous national security and economic security stakes, should the next catastrophic terrorist attack on U.S. soil involve the global maritime transportation system and America's waterfront.

While it has too often been lonely work, Chairman LoBiondo, I commend you and your committee for your leadership in advocating that our critical maritime infrastructure should not be overlooked in our post-9/11 efforts to secure the American homeland.

This is my second opportunity to appear before this committee. On August 25, 2004, I provided testimony that I entitled The Ongoing Neglect of Maritime Transportation Security. At that hearing I said, quote, "I believe maritime transportation is one of the nation's most serious vulnerabilities, and we are simply not doing enough to respond to the terrorist threat to this critical sector."

Sadly, I have seen too little progress in the ensuing 18 months to modify that assessment. Based on my visits to a dozen major seaports within the United States and abroad since 9/11, my conclusion is that the security measures that are currently in place do not provide an effective deterrent for a determined terrorist organization intent on exploiting or targeting the maritime transportation system to strike at the United States.

At the federal level, the primary frontline agencies, the Coast Guard and Customs and Border Protection Agency, are just grossly under-funded for what has become essentially a brand new mission for them, a major mission for them on 9/11. On the local and state levels, the size of port authority police forces remains tiny, providing often only token police presence within most seaports.

While the Maritime Transportation Security Act of 2002 represented a constructive stepping off point for advancing security within this sector, we have made little meaningful progress since the passage of that act. In my remarks today, I will speak to both the shortfalls of our port security efforts within the United States and with our efforts to advance port security overseas and provide some recommendations on how to proceed.

Our domestic and international efforts must be complementary because seaports, at the end of the day, are simply onramps and offramps into a global transportation network. To focus on just the security of U.S. seaports is a bit like hiring a network security manager who only puts in place firewalls for the computers in reach of his desk. If the whole network is not secure, such an effort will be futile.

To begin with, we must be candid in acknowledging that the MTSA is more of a sketch than a security blueprint. That is, it sets forth general requirements without establishing minimum standards for satisfying those requirements. For instance, the MTSA requires vessels and marine facilities have a plan for establishing and maintaining physical security, passenger and cargo security, and personnel security.

However, it does not actually define what that security is. It requires that there be a system for establishing and controlling access to secure areas of vessels or a facility, but it does not elaborate how that should be done. It mandates that there be procedural security policies, but provides no guidance on what those policies should be.

MTSA requires that there be a qualified individual to implement security actions, but sets no standards on what it takes to be qualified. There are not even any minimal training standards that are required. The Coast Guard has worked with the Maritime Administration to create a model training course, but there is no requirement that facility or

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ship security officers attend a certified course base on that model curriculum. The International Maritime Organization's International Ship and Port Facility Security code, the ISPS code, mirrors the MTSA in that it provides a framework of requirements without stipulating specific standards for satisfying those requirements. Ships and port facilities must have security plans, security officers and certain security equipment, but the code leaves it up to each foreign government to provide the specifics.

There are no minimum training standards for becoming a qualified security officer. There are no mandatory guidelines for what constitutes perimeter security. There are no mandated requirements to govern facility access controls. It is also important to point out that while most ships are in the business of moving cargo, the ISPS code does not address cargo security.

When it comes to port security, the buck is essentially stopped outside of Washington, DC. Since seaports in the United States are locally run operations where port authorities typically play the role of landlord, issuing long term leases to private companies, it falls largely to those companies to provide for the security of the property they lease.

Just how far we have to go I think is best illustrated by the case of the port of Los Angeles, the nation's biggest port complex with Long Beach. In the case of Los Angeles, they have 7,500 acres of facilities that run along 49 miles of waterfront, being provided for -- and that security is being provided for by minimum wage private security guards and a tiny port police force of under 100 officers.

The situation in Long Beach is even worse, with only 12 full time police officers assigned to its 3,000 acres of facilities and a small cadre of private guards provided by the port authority and its tenants. I saw more security guards on the security check on my way down here today than we have to patrol the entire port of Long Beach.

The problem of how to control what comes into the terminal is compounded by the fact that there are 11,000 independent truck operators who are authorized access to the port terminals, and yet there is no credentialing system in place to confirm the backgrounds of the drivers.

Mr. Chairman, you mentioned about the ABC report. At least in the case of New York and New Jersey they actually have a pass system for who comes into the port. In L.A., Long Beach and most of our ports that doesn't exist. So it'd be difficult for DHS to go in and do these background checks of whether people have criminal records or not, simply because there is no pass system in place in most of our seaports.

The West Coast terminal operators have no way of identifying who's in their facilities at any given moment. In the four years since September 11, the two cities have received less than \$40 million in federal grants to improve the port's physical security measures. That amount is equivalent to what American taxpayers spend in a single day on domestic airport security.

Now, all this is on the onramp side of things here or the offramp here in the U.S. The real challenge is that we're facing a threat that's likely to emanate beyond our shores. And here the problems that I worry about are -- I've talked about frequently before this committee and others, is to focus on the issues of the intermodal container, because it goes way into a country where we initially put it into a factory, load it on local trucks that bring it off into multiple weigh stations before it gets to a major port, and then is loaded on a major ship arriving in the United States.

There's a lot of places along that trail where there's a chance for real mischief. And we know there is because we've seen lots of crime and smuggling in the same system here. And yet when we look at the safeguards that we have in place to deal with all this, in addition to the limits of what's absent on the ports themselves, the challenge of physical security, perimeter security, access control and so forth, and when we face -- another piece of this would be the ships coming to us, we'd like to know where they are.

And again, we have this automated identification system set by the MTSA and yet the Coast Guard basically has a line of sight system where it does not have the means to routinely track vessels coming from long distances away.

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It's an honor system. The 96 hour rule that requires that vessels tell us the last five port of calls, that tell us what cargo they're bringing, that tell us who's on the ship is an honor system.

There's no way to verify they're 96 hours out. There's no way to verify those were the last five ports of calls they made. You can do a lot of detective work, but it's an honor system. The Coast Guard isn't routinely out there verifying that the vessels are where they say they are.

And for most shipping, since it's legitimate, that works fine. But it's a problem of worrying about the illegitimate that we need to focus on. The customs of course overseas is relying on Container Security Initiative teams -- this is a big progress, putting agents overseas. However, their targeting over there is the same targeting criteria used here, which is ultimately based on reliance on the cargo manifest information.

This manifest information may not even provide the point of origin where the container was first stuffed. That would be an import document, but that's not routinely provided to Customs 24 hours in advance of loading. The decision about what poses a risk is based on essentially second party information provided to ocean carriers who basically tell Customs, this is what we think our customer says is on board, and from there we decide what poses a risk or not.

The issue of course going back to the supply chain, relaying on C-TPAT, this is a very positive thing involving the private sector in this enterprise, but because Customs does not have adequate resources to actually even process the applications, never mind routinely verify that in fact companies are living up to the security plans they provide them, and this is a complicated business.

We have a lot of free riders in the system. People who participate in the program that, frankly, are not investing much in security. We have of course the ISPS code, we're required by MTSA, that requires the Coast Guard confirm that in fact overseas ports and terminals are abiding this agreement.

And yet the Coast Guard has a total of 13 international security liaison officers to service Europe, Africa, the Middle East, Latin America and the Caribbean. Now, Brazil has 25 ports onto itself, but a country visit is often a two to three day stop by, visit one port and the country's good to go.

What we're building here is a house of cards. What's going to happen when we have a maritime is virtually all of these initiatives to manage risk are going to be implicated. It will be from a C-TPAT company. It will be going through a CSI port on an ISPS-compliant facility on an ISPS-compliant vessel, and it will arrive in the United States and we'll have a major maritime terrorist incident, and when we want to restart the system as we close down afterwards, it's going to have -- we're not going to be able to restore public trust, because the kind of questions that you're asking today is going to be asked with a lot more rigor post the next event.

And if we can't answer satisfactorily that risk can be managed, we're going to shut down the system. We are putting a lot of money into something like missile defense. The technology that's associated with that is a very high bar. The expense is quite high. But we're saying in that program basically a zero tolerance about the risk of a weapon of mass destruction put on a ballistic missile sent to the United States.

And yet we have a trust but don't verify system for being able to safeguard us in the event that a weapon of mass destruction is put in a cargo container and shipped into our ports.

We have a very long ways to go. The technology is there, I think the will and the capabilities within these agencies are largely there, they simply haven't been resourced, it hasn't been made a priority.

And if we don't get this right, what we're seeing I think in these last few weeks is the kind of reaction that we would likely get post an event. This is like a World Trade Center one scenario here. We're worried about the potential security risk associated with DP World's deal. And in my own view, it ranks very near the bottom of the concerns that I have, the specific issue of terminal operators. Because all these other gaps should be of much higher priority.

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But we're worried about it enough that we're looking at fundamentally changing the way this system works. And I worry that post the event that we may have in the not distant future, we won't even have a conversation about how best to do this, we'll just simply take actions that may in fact be cures worse than the disease.

Now is the time to act, to work out the kinks, to put into place a robust system. But what's key to remember here is that the terminal operators at the end of the day, the global terminal operators like DP World, whether it ultimately gets this piece of properties on the U.S. or not, is going to have to be a part of how we deal with global security, maritime security.

You know, Dubai World is going to have one half of the port of Karachi. If you want to get a weapon of mass destruction from Pakistan to Dubai or anywhere else in the Middle East, you're going to probably go through a container terminal. One half of this is going to be a global terminal operator named Hutchison Port Holdings, the other is going to be Dubai Ports World.

We're going to need to cooperate with that terminal operator to put in place counter-proliferation controls, even if something's not destined here. And so we have to be very careful, I think, as we proceed with this -- our legitimate concerns about seaport security in the United States, that we're keeping an eye on the fact that it's a global system and we have to work with all the partners who are legitimate.

If that's what the end of the 45 day review gives us, we have to work with them in order to put in place the adequate safeguards.

Thank you very much, Mr. Chairman.

REP. LoBIONDO: Thanks, Dr. Flynn.

We're going to ask a couple of questions of Dr. Flynn and let him try to catch his plane.

Thank you for this rather comprehensive overview of where the shortfalls are. And I know that you have been talking about this for years. And if there's any good to come out of this latest incident with the United Arab Emirates, it is that I think more attention is being paid to maritime domain awareness. Your testimony last week before Armed Services I think was very powerful.

I've appreciated the fact that you've at least gotten the attention of more people with your ability to get the story out on 60 Minutes and national public radio, which I both listened to -- I've listened to both. But we -- I have a great deal of frustration, because most of the members are off doing other things, everybody's pretty busy, and this window that we have to make an imprint on changing how we're handling port security is I think very small.

And I'm very frustrated that we can't seem, no matter how loud we shout, no matter how loud you shout, to get other members of Congress, to get the administration to pay attention to these issues. Obviously if we had an incident people would pay attention very quickly. And obviously if we had an incident the faucets of money would open up and money would flow into port security like it did to aviation security, some \$25 billion overall.

With what you have seen, Dr. Flynn, and what you have heard and what you've observed, we've got the aspects of the MTSA which have not been implemented, where no action has been taken. And there are a lot of critical areas here. But the difficult part of getting any of them started is then trying to prioritize because they're not going to do them all at once.

If you had to offer us advice on what we should focus the most on the quickest, what would you say?

MR. FLYNN: I think that first is the need to focus over there. To continue what has been an effort -- certainly the administration has taken important steps in putting Customs agent overseas and adopting international -- the ISPS code in order to get our trading partners and other maritime nations to share a common vision about where we need to go.

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The problem is there still isn't much behind these curtains. And so I think the top priority should be working with the overseas terminal operators and putting in place a system that is being piloted in Hong Kong, where every container coming in to the truck gate -- one of two truck gates in two terminals in the port of Hong Kong -- the busiest terminal in the world is Hong Kong International Terminal -- is going through, getting a radiation image, a cargo scan image and a picture of the container's number and putting it into a database.

The ability to capture all that data, not necessarily to examine and scrutinize everyone, but to capture all that data is something that I think the industry can put in, the technology is available and would help us in so many positive ways. Both in terms of creating I think a more effective deterrent than what we have now in the system, but basically give a primary screen tool even to deal with false alarm issues that we don't have right now if we target a container overseas, which can wear out your welcome mat.

For the 1 percent you have, if you constantly pull boxes out and it turns out there's nothing there, you're causing disruption, you're causing expense. And so primary screens of everything coming through could be helpful. It also can support counter-proliferation. I was talking about in my remarks the Karachi to Dubai issue.

You know, that's -- the Department of Homeland Security doesn't have that as a focus, but the president has made counter-proliferation a top priority. Well, this stops moving the material -- as we know from the car (ph) network moves through the system. As we build visibility in the system, we provide the means to support counter-proliferation as well. And I would hope that some resources coming out of the intelligence community could then be applied to this problem, not just relying solely on Customs and Coast Guard's resources to deal with this. So putting this -- basically turning to the terminal operators, the four biggest in the world would account for about eight for every 10 boxes coming into the United States.

Encouraging them to essentially make this investment, which they can recover to a surcharge, for importers coming through would be a big step forward that I think many who have looked at it have said, this can work at a reasonable cost without disruption that would make it a qualitative leap forward in giving us physical evidence that low risk is low risk.

The second priority I would make would be the issue of some sort of third party audit of the security plans. Customs will never have enough agents to do this, Coast Guard will never have enough agents to check everything overseas, let's create essentially a third party audit system, where we then -- government -- audit the auditors by setting high bars, bonded systems, folks that go out and check whether in fact companies are living up to what they say they're doing in terms of supply chain security.

And the third option in terms of priority would be getting a handle on the whole issue of who's in the port on our end. Because you can attack a port not just by bringing stuff overseas, but just by driving a truck in it full of explosives, and there's plenty of that stuff around here as well.

And so the need to get on with the credentialing process and knowing who's in the port, the TWIC process plus anybody who's in that port, we should know who they are, in order so that we can -- if we have intelligence, we can manage that, but we can have some sense of adult supervision in these critical assets.

So those would be the three things I would focus on, moving towards overseas, developing a radiation and gamma ray imaging and other technologies, creating a database so it moves through the system, the third party audit and then lastly, the TWIC process.

I just want to make a -- I think an important point as well about radiation portals that we've currently deployed a lot in our ports, that the Assistant Commission Ahern spoke about. Radiation portal technology, the one we're using today, will not help you find a nuclear weapon, they will not find -- they will not be able to detect a nuclear weapon, they won't help you to be able to detect a lightly shielded dirty bomb and they won't detect highly enriched uranium.

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Other than that, it's a great technology. Now, it's capable of spotting plutonium and an unshielded dirty bomb. And the idea of putting radiation portals with gamma ray imaging together is that the radiation forces the need for shielding, and then the screening will see a dense object where there's not supposed to be a dense object.

That application makes sense, it's affordable, it's been demonstrated in Hong Kong, but running away with lots of radiation portals in the United States and doing ribbon cuttings to say we've made ourselves safe from nuclear weapons here is not quite true with basically what that -- representative of what that capability really provides.

We really need to get a handle on that.

REP. LoBIONDO: How long has the Hong Kong trial project been running?

MR. FLYNN: It started first in one terminal, Modern Terminal, in September, the first sort of start up, but it really has been running a full test since January, 2005. So a full year now -- well, 14 months. In that time, they've collected more than 1.2 million images of everything moving into those gates, and if I put that in contrast, CBP through the Container Security Initiative has examined about 3,500 containers during that year under the CSI protocol.

So we're capturing and have the ability to capture that amount of information. And this is no U.S. money and no Hong Kong government money. This is the terminal operator who invested in this capability, one who, by the way, does not have any terminals here in the United States. Hutchison Port Holdings has no terminals in the United States but is vested in the network and vested in the system and is terrified -- legitimately -- that if we shut it down, their whole enterprise implodes.

Again, I think it's important to realize these global terminal operators, with appropriate checks and supervision, are an ally in how we can go about building the system. They're not just the problem. The key is not the ownership, for me, it's adequate rules and oversight of those rules. And we have to partner with foreigners, as part of dealing with that outside world, and we have to make sure that they're playing by rules that safeguard our interests.

And my experience has been dealing with terminal operators, all of whom are foreign-owned, and many of the liners, is that they're forward leaning on doing this, because it's their billions of dollars of capital investment that are at stake.

REP. LoBIONDO: My recollection from Armed Services last week when you gave testimony on the Hong Kong pilot project was that DHS indicated that maybe this could work, but we don't have anywhere near enough data and we've got to wait much longer to see if in fact this is viable. In your view, how much longer do we have to wait before we decide that this is a viable system?

MR. FLYNN: Well, the good news is there is progress. DHS, the deputy secretary, Michael Jackson, has essentially directed the department in late December, Customs to take a solid look. They've begun the process, they have a sample, I believe, of 20,000 images which are now sort of looking at how would they work into the protocol.

So it's not a case that they have not been entirely disengaged in this process. They've been tentative, because it's not a sponsored project, there's no requirement for them to evaluate this or anything else, so they've been looking at it sort of hesitantly. But now there's more engagement on it, which I think is constructive.

The issues are legitimate on CBP's part. You know, they have legitimate concerns about being -- essentially giving another big ticket highly visible program without the resources to actually manage it. The IT backbone, numbers of inspectors and personnel and so forth. Those are legitimate concerns.

I mean, if this type -- if the industry ends up making what could be about a \$1.5 billion investment to do this globally in the four biggest terminal operator companies and we work to get that built on the rest of the area, and it turns out that CBP doesn't have the IT trunk to access those images, doesn't have enough inspectors to do examinations, then it's an albatross for them.

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And so given the track record of sending new requirements like the MTSA -- I mean, the MTSA requires that the Coast Guard do all these audits, but nobody provided any new abilities for them to do it. They had to take it out of hide. So there's legitimate concerns, I would say, within the bureaucracy about taking on another ambitious program but not adequate funding to actually execute it and then end up being with more egg on their face.

This is a soluble problem, we're not talking massive numbers of people, the IT problem, it's manageable. The people in San Diego can right now see all those images that are being collected in real time through -- remotely in San Diego. Though it could be done in northern Virginia, where the National Targeting Center is as well, as the actual containers are moving through, if they knew to target it. But certainly they can go after the archive.

It's doable, but there are practical issues. You need to have the IT backbone, you need the bodies, and if this is a big program then they need the resources, they need commitment from the administration and from this body, obviously they'll get them.

REP. LoBIONDO: I've got a couple more, but let me turn to Mr. Nadler.

REP. NADLER: Thank you, Mr. Chairman.

It's good to see you again, Dr. Flynn. Dr. Flynn, this morning's testimony, I don't know if you heard Mr. Ahern's testimony in response to my questions this morning, he said that it was not feasible to require scanning of all containers in the foreign port. Is there any reason it's not feasible?

MR. FLYNN: I think in principle, yes, we could mandate it happen. What I would be worried about is right now there is not the technology available to deploy this in this next year. If he said this applies by July 1, everybody has to have it, it wouldn't be feasible --

REP. NADLER: Because we don't have enough of the scanning machines?

MR. FLYNN: Yeah. The machines would have to be -- nobody's taken on that scale of a project, so you'd have to manufacture them, you'd have to deploy them --

REP. NADLER: How long do you think it would take to do this?

MR. FLYNN: I think you could set a clock, a reasonable clock of two to three years.

REP. NADLER: So we could require that in two to three years every container be scanned in the foreign port before it gets put on a ship bound for the United States?

MR. FLYNN: I think that the marketplace could respond to that requirement if it were set with that kind of timeframe. What I would say is that there is an opportunity here I think with this controversy that the main operators would do it on their own, if they know that in fact the data they would produce is going to be used and if basically they can apply a surcharge to cover their costs.

REP. NADLER: Now, Mr. Ahern also said that we don't need to do that, in effect, because we are on track, that we are going to be scanning all the high risk containers. Now, it's my contention -- and I sort of said this to him, that we don't really know what high risk containers are, that, you know, a low risk container, the driver can be bribed to take an extra long lunch hour and somebody can put an atomic bomb in a container operated by a very reputable company and no one knows the difference.

So in your judgment, is it necessary for the security of this country to really go on track toward scanning all the containers, as opposed to somebody's judgment as to what high risk containers are?

MR. FLYNN: I think the good news with the application in Hong Kong is it's not possible to build it into the truck entry process without scanning every container, including those who don't come to the United States. But basically

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it doesn't make sense, we can't create a traffic pattern for just U.S.-bound containers. That means the cost of doing this is applied to everybody.

The issue becomes actually analyzing all those images and the time that that would take. Now, clearly I think in time you're going to see computer-assisted tools that will support that, but the -- the particular concern I share that you have, Congressman, which is, how does Customs know what's high risk?

And the fact is we know our intelligence services are broken big time, and we're having a real struggle reorganizing that, and I would say it's 10 to 15 years before we've probably got a --

REP. NADLER: So we don't really know what's high risk and what's low risk?

MR. FLYNN: We don't. And further, the assumptions about what is risk is built around past efforts of criminality, which are ongoing conspiracies. And there we can see that there's a tendency to gravitate to the weakest links in the system, but acts of terror are likely to be a one shot deal.

And so penetrating a legitimate company once is doable in almost any circumstance.

REP. NADLER: And therefore there's no definition of high risk and low risk? That makes sense.

MR. FLYNN: Well --

REP. NADLER: In an anti-terror situation.

MR. FLYNN: Well, I think we have to view every container as a Trojan horse and as a high risk unless we can verify it, and the systems that we're talking about here would provide the means to verify that low risk is low risk.

REP. NADLER: So we should go to a system where we require every container to be scanned as rapidly as feasible?

MR. FLYNN: I think we can go to that system and it would be -- again, setting a reasonable timeframe so the market could respond --

REP. NADLER: As rapidly as feasible.

MR. FLYNN: And that what I'd do -- what I would set, though, is a tiered system for analysis right now.

REP. NADLER: Okay.

MR. FLYNN: So you basically use --

REP. NADLER: You said that in your testimony.

Let me ask you a different question. Right now, we don't require seals on the containers that would -- that are tamper proof and that would notify in effect a GPS or somehow notify the United States if that container was tampered with or opened after it was scanned.

Do you think it would be a good idea or a mandatory idea to require such seals on all containers after they were scanned?

MR. FLYNN: Yeah, I think we've certainly got to do something about the seal issue. Again, there's lots of ways one can defeat the technology, you would want to have it checked. I would say one thing about building this beachhead and overseas terminal is if you did have the seal and it had that information and could be downloaded before it enters the terminal, so that would work -- well, there's some still kinks with the seal. The false alarm issues and how you reconcile them and so forth.

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One thing is the operation safe commerce initiative went on but nobody knows what the results are. You know, this has been treated as super secret stuff. We need to know what basically we learned as a government by doing lots of tests and figure out how we can improve on it. But I think we'll reach a point where seals are used and then containers are tracked for supply chain visibility and accountability purposes.

REP. NADLER: Thank you.

Finally, Congressman Oberstar, the ranking member of the full committee, and I yesterday introduced the Sail Only if Scanned Act, the SOS Act, which essentially requires -- the bill said one year, maybe we'll change it to two years -- that no container can be put on a ship bound for the United States unless that container has been scanned with the latest available technology as defined -- as you've been talking about, gamma ray plus radiation detection, and has a proper tamper-resistant seal that will tell you if it's tampered with.

And that we should require as a matter of law that no container can be put on a ship bound for the United States until that has been done. Now, within this timeframe of two to three years, do you think that's reasonable legislation? That that would greatly enhance our security, or not?

MR. FLYNN: The key is the timeframe.

REP. NADLER: Within the timeframe that you specified before.

MR. FLYNN: My sort of approach here right now is let's see if we can get the four main terminal operators to jump forward and do it here and work out the kinks, and then definitely set the requirements that would move out of it. We want a universal system that gets us there.

And I think there's an opportunity here for the terminal operators themselves to embrace this if they get the right signal from the U.S. government that we've used the data and moved forward. There is some value in that, obviously, again, the market takes the ownership of the issue.

But the signal from Congress that basically we need to have a trust but verified system and we need the best --

REP. NADLER: And what we heard from the administration this morning is that they see no necessity of scanning any but the high -- as they define the high risk containers. Your testimony is we don't really know what high risk containers are, because of a one shot terrorist deal and that we must go to a system where we will scan every container as soon as feasible.

MR. FLYNN: I think if we could adopt that globally we'll also make a big step forward on counter-proliferation, which is also another critical issue of our times.

REP. NADLER: Yes. Thank you very much.

REP. LoBIONDO: Just one last question, Dr. Flynn. Is Hong Kong able to do anything with chemical or biological scanning?

MR. FLYNN: Let me be clear that what this pilot was -- which was put there by the private company -- was designed to show it's possible to collect this scanning data on every container truck entering into a busy terminal at 300 trucks an hour. No analysis was done on this data, because the private players don't make judgments about the risk. It was do we make this available. So the answer is no on the chemical and biological, that there's not sensors in place. There's a radiation portal, there's gamma ray technology, that's what it would be focused on.

REP. LoBIONDO: So that would be a whole separate problem we'd have to worry about?

MR. FLYNN: It is a complicated problem. Particularly when you get to biological. The problems with biology, most of the tests we used, like pregnancy tests, have very limited shelf life, because they actually have live agents in it to react to the agent. Chemical's a little more straightforward.

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But with the tools we have, I think, you know, what you're able to do is both the imaging I think is important to see whether you're seeing things in a shipment that's not supposed to be there, the notion is that it evolves, as you merge commercial data you'll start to have archival information, what Nike sneakers look like, repeatedly, and the software will automatically check for you, say, there's a big something in here which doesn't belong.

It could be a weapon, it could be components for a weapon of mass destruction, or it could be chemicals or whatever. That would be helpful for obviously if we're dealing with the counter-drug issue as well. A lot of the chemicals, for instance, that feed -- that we use for methamphetamine are coming out of places like India, but legitimate companies and transactions end up in Mexico, we can't see that right now and that feeds that problem.

The more transparency and visibility we can advance in the system, a lot of public good will be served beyond just the terror threat.

REP. LoBIONDO: Mr. DeFazio, Dr. Flynn was trying to catch a plane. I don't know if you've got questions, if you'll be able to --

REP. DeFAZIO: I've read his book, I appreciate his comments, Mr. Chairman. Sorry, I've been back and forth with the Aviation Transportation Security Administration markup, and I don't know if this will be repetitive.

But if you could, Dr. Flynn, I've seen your comments in the press regarding the Dubai transfer and where it doesn't raise to a level of concern but you're raising other points about security at the ports, I don't know if you were here for the first panel.

MR. FLYNN: I was, yes.

REP. DeFAZIO: You know, I mean, do you think that some of the issues I raised, the fact that we really don't track ships as they move, I mean, something could feasibly be unloaded, even if we had secure containers -- and my understanding from the testimony is we don't have secure containers.

I mean, is that -- are you looking outward and sort of, you know, moving back into the U.S. in terms of your ideas? Because, I mean, the idea that we screen 1 percent of overseas and the rest here seems a problem, because once it's here, they don't necessarily have to deliver it to a pre-designated spot to cause mayhem.

MR. FLYNN: I am. And I think all those scenarios are there. Again, it's largely an honor system we have in place right now for a very scary scenario, which is a bit crazy, I think. But certainly in terms -- every ship crossing the Pacific and Atlantic Ocean that's legitimate and a legitimate size is using MR-SAT (ph) to communicate with their home office.

You can't talk to a satellite without giving away where you are. It would be possible to use the existing technology of commercial networks here to track most of the ships moving across the ocean at a nominal cost. And why we're not there, why we're building a whole system to see line of sight -- look, the Coast Guard's not out there patrolling every bit of the time around the clock.

Twenty miles at 20 knots is an hour. In a very big ship. And I don't think a plane will fall out of the sky when you shoot at it, you've got to stop something with a lot of momentum. And that's not going to happen if there's nobody there. There was a sea marshal program, as you may recall, early after 9/11, the Coast Guard ran out of money so it stopped doing it.

So now it's relying on risk data and intelligence. Well, this is an area that we don't exactly have -- it wasn't the top of the intelligence food chain to monitor what was going on in the maritime transportation industry. And so how we miraculously after 9/11 had such good intelligence we could run a risk-based approach without having any verifications in the system I think is a bit of a stretch.

There is -- we need the best intelligence we can get, but we need verification along the way, and there is lots of it in the transportation logistics industry that makes that required. But again, I think one of the things -- part of this -- I

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don't know the nitty-gritty and certainly not a part of the classified review on DP World, but they will be the third biggest terminal operator in the world.

And if we're talking about deploying a global system, you want to be able to work with the operators in that system. And so the challenge here is obviously legitimate concerns about what this means for U.S. ports, but given the context, that if we're pushing the borders out we need all the partners we can get.

And I think we should leverage this moment to get DP World along with the other terminal operators to do more on improving security instead of throwing them out of the club essentially, being here, and then we've got to work with them in any event. That's -- I'm trying to be pretty pragmatic about this, and I know it's not what's driving --

REP. DeFAZIO: Right. Well, I mean, I guess I'm questioning whether I would -- the UAE would be the partner I would look for in having a global system of security.

MR. FLYNN: They will have the system. So in my view, you don't look at the ownership issue, you say, will you put in place this equipment and let us access the data, is it maintained? And when they're not, then there's some leverage that you use there. So you work with the partners you have.

REP. DeFAZIO: But I'm just intrigued by your comments about an honor system, which seems to me -- I mean, we're so reliant upon essentially the bills of lading, you know, I mean, I don't know if you're familiar with the crew issue, but it was sort of the --

MR. FLYNN: It's an honor system there as well.

REP. DeFAZIO: Right.

MR. FLYNN: I mean, the 96 hours, you list the crew. Well, you hope they've put it all in and they spell them right. And these are complicated names, often, to spell. So -- and again, there's no underlying intelligence that supports most of that, so it's a problem.

The real issue is not so much that we'll have a single incident. The real issue for me is that we will have an incident, it's almost inevitable. And our reaction, because these programs aren't as robust as they need to be, will we have these cascading -- we'll pull the drawbridge and we'll end up causing ourselves much more harm than the terrorists could cause themselves. So we need to keep that duality in mind here.

It's both trying to deal with the threat, but also the threat ourselves -- the threat of damage that we will do to ourselves by not having adequate systems in place that will pass the smile test for the American public, post the event.

REP. DeFAZIO: Thank you.

MR. FLYNN: Thank you.

REP. DeFAZIO: Thank you, Mr. Chairman.

REP. LoBIONDO: Okay, thank you very much, we appreciate it, thank you for continuing to be such a strong advocate, please keep shouting.

MR. FLYNN: My apologies to the rest of the panel for taking -- (off mike.)

REP. LoBIONDO: Dr. Carafano.

MR. JAMES CARAFANO: Thank you, Mr. Chairman. I have submitted a statement for the record and if I could I'd just like to make five very brief comments. And thank you for trying to accommodate my schedule, I hope to get over to the White House for the signing of the PATRIOT Act, which I think is something that will make us a lot safer.

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I share and I validate the Congress' concerns and frustrations with the manner in which the administration handled the Dubai Ports World deal and particularly the lack of notification and infrastructure. And I think we all share the good news here, is that we have America's attention and I think simply most Americans don't realize that the global maritime system is simply the lifeline of the American economy.

I mean, the internet could crash, we could ground all the airplanes tomorrow and pretty much the U.S. economy would still be there. But if we stopped moving goods and services out of this country by sea, this economy would simply grind to a halt. And I admire and commend the chairman and everyone on this committee for all the work they've done, realizing the number of vulnerabilities that are out there and the spade work that's required to close them and the enormous amount of work that's left to be done.

My approach to maritime security has been the same as my approach to all the aspects of strategy in the long war. And I'm always arguing that there's four components that you have to have in every aspect of your long war strategy. That's security, promoting economic growth, protecting the civil society and civil liberties and winning the war of ideas.

And if you have any security solution that doesn't meet all four of those criteria equally well, then you've got a bad answer and you need to go back and start over. And I would hope that the Congress would use this kind of criteria as they look forward to determine what are the next and most important steps to take. I have three.

My top three on the list of what I would do to maritime security. And number one is simply fix the Coast Guard first. The Coast Guard is involved in every aspect of maritime security, and unless they're fully funded and have all the resources they need, everything else really hangs on that skeleton.

And I think this is not just about funding Deepwater, which I think if the administration funds this at anything less than \$1.5 billion a year it's inadequate, but I think it's time to have the conversation about building the kind of robust, specialized law enforcement capability tracks in the Coast Guard, building specialized special operations capabilities in the Coast Guard that are equivalent to the other services, building a corps of security professionals. I mean, a degree of expansion in the Coast Guard that we simply haven't seen, and actually bringing to fruition some of the concepts of maritime domain awareness.

Number two would simply be we need better commercial information into the targeting process before containers are loaded on ships. And I think that commercial information is available, I think it'd make high risk targeting a lot more efficient. And that I think would be my second priority.

And my third would be international cooperation. I really think that we've lost the bubble and that we're not focusing on the weakest link in the system, which is the shippers and ports in the developing world, which I think are the entrée end of the system that I think terrorists are most likely to use.

I think there are legislative -- with regards to foreign ownership, I think there are legislative remedies that the Congress could do to give more confidence to the American people that these issues are being addressed. And I would point out two very quickly. One is MTSA, and the other is the law that governs the CFIUS process.

MTSA was simply not designed to think about the notion of changing of ownership and changing foreign ownership. And I think we have to ask, what appropriate amendments could be made to the law that could strengthen our degree of confidence when maritime infrastructure is transferred between foreign ownership or to foreign ownership?

And I think there's some common sense things that we could add to the law. Number one is a requirement that the security officer of the company be a U.S. citizen and have a suitable background check. And I've listed these in my testimony, I'll just summarize some of the ones here.

Number two is a mandatory review of the security plan by the Coast Guard on notice of an application. Also there would be a mandatory requirement after the application's been approved and ownership's taken, a mandatory

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requirement that changes have been made to the plan. Mandatory commitments to assist in law enforcement investigations. And most important, penalties for non-compliance with these measures.

In regard to CFIUS, I think the problem with CFIUS is that the process is just too informal. And that what it needs is a stronger set of regulatory requirements as to exactly what the CFIUS process is supposed to accomplish. I think there should be mandatory regulatory requirements for agencies to obtain commitments where there's significant national security interests involved.

I think there should be penalties in the law established for non-compliance with those commitments. I think that where there is a significant national security interest identified, I think that CFIUS approval should be based on the joint conclusions of DOJ, Department of Homeland Security and DOD, not a consensus agreement by the committee as a whole. And I think there should be very firm and clear and specific reporting requirements to Congress.

And I look forward to your questions.

REP. LoBIONDO: Thank you very much.

Do you -- I'm taking that you do share Dr. Flynn's assessment about doing something on foreign shores before containers are actually loaded?

MR. CARAFANO: I do, but, you know, I really oppose this notion that this about pushing the border out. I think that's really the wrong impression. Because that really doesn't get you anything. Okay, let's say we've pushed the border out and we're 100 percent confident between Singapore and the United States that we're good to go.

Well, you know what? Singapore is one of the key hubs of global commerce in the world. And if the terrorists get to Singapore and they do something in Singapore or Hong Kong, that's going to effect all of us almost as badly as if something happened in Los Angeles.

So we need to get over this notion that it's about pushing security out. That's exactly the wrong impression. What we need to be talking about is securing the global common, securing the domain that we all use, that makes us all healthy and well. Now, you know, in regards to specific solutions, I have to admit, I have a predisposed dislike of security screening as a measure, because what you wind up doing is spending 99 percent of your time and resources on things that are not a problem.

I mean, this is the problem that we have in the aviation realm. I mean, we screen -- we spend \$6 billion a year, that's the budget of TSA, screening people that get on planes every day that we almost know for a fact are no security risk. And I much prefer security regimes that put the majority of the security resources against the threat, as opposed to mass screening, which I think is very, very inefficient.

I have no problem with a mass screening scenario. The problem I have with the specific technologies, if somebody can make a sound business case for these technologies, Stephen and I totally agree that there has to be two fundamental requirements if we're going to do this.

One is that there's got to be a business case for it. And two is, it's got to be global so it's a level playing field for everybody. But in terms of where screening of cargo, mass screening of cargo fits in my list of priorities, I quite frankly think it's not high. One, because I think mass screening is inefficient, it has high false positives and false negative rates.

It puts a lot of drag on the system and actually doesn't give you a lot of security in the end, because in a global supply chain there are so many intervention points that mass screening secures one intervention point. But you get on either side of that point, you're vulnerable again. So it's a system that can be relatively easily defeated.

And I think the scenarios that we use to justify it, which is the nuke in the box, I think it's among the most implausible of terrorist scenarios. If a terrorist has a nuclear weapon, then he wants -- and this is true with every

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terrorist attack. Terrorists have limited assets and they like predictability. They like predictability in knowing what they're going to face and they like predictability in knowing the outcome of their attack.

And if you look at every terrorist tactic, it's based on trying to gain that predictability.

Well, what's wrong with the nuke in the box scenario is if I have one nuclear weapon, why would I put it on a cargo container which I have no control over in environmental conditions -- and there are -- when you have a nuclear weapon or any kind of bomb, you are concerned about environmental conditions -- and send it off out of my control?

I mean, if I had a nuclear weapon or a deadly biological weapon or a dirty bomb that I wanted to get into the United States or a U.S. port, I would do it the way smugglers do it. I would take it a non-commercial vessel, I would land it in Mexico and I would drive it across the border.

Or I would take it on a non-commercial vessel and I would land it between a port of entry which is totally unguarded and I would walk it in. Or if I really wanted to blow up the port itself, I would take it on a non-commercial vessel, I would take it into the port and I would blow up the port.

So this notion that we're going to build -- do 100 percent screening to keep the nuke in the box out of the United States I think is just simply silly. You know, if you have an infinite number of vulnerabilities and you take one away, you have infinite number of vulnerabilities minus one. That doesn't really make you much safer.

REP. LoBIONDO: Do you share the confidence that Customs and Border Patrol indicated in their process of identifying high risk and then running it through --

MR. CARAFANO: No, sir, I don't. I think that -- I agree with high risk analysis and screening of high risk cargo. I don't think that they have access to the kind of information they need to do a quality high risk assessment. And I think Steve and I agree on this, that you have to have information that goes to the beginning of the supply chain.

And I've listed some of these requirements in my testimony, but you have to know the ship or the country of origin, who packed it. And that kind of commercial information needs to be part of the risk assessment before the container's loaded on the ship.

Now, the other thing I think it's very, very important to realize is, will risk assessment give you 100 percent confidence? And the answer is no, of course not. But the other thing is that people have to realize that you're not depending on the risk assessment as your last line of defense. Risk assessment in conjunction with robust law enforcement and auditing capabilities, that gives you real security.

You know, it's like we don't ask the police to stop every car they see. We say, you know, stop the people that break the law. And I think that should go on here. What you want is you want a high risk assessment that's going to give you a degree of some confidence in the system, but you can't trust the system, and I think any part of the system that's based on honor is stupid. I mean, Reagan had it right when he said, "Trust but verify," which meant, don't trust anybody. So you have a system which provides high risk assessment which gives you some clues, but that's backed up by robust law enforcement and auditing. That's what gives you the confidence that the system is secure, not the screening process itself.

REP. LoBIONDO: And that's where the critical nature of funding the Coast Guard comes into play?

MR. CARAFANO: Absolutely. I mean, this is simply silliness. I mean, quite frankly -- I mean, to make an analogy, there's a burglar in the neighborhood. You know, Steve's solution is, let's wall up all the houses. You know, if there's a burglar in the neighborhood, you know, let's tell everybody to lock their doors and then let's hire some cops to go and get the burglar. That's the right answer.

And so I think you're right. If there is an Achilles heel or the emperor has no clothes in this is that we have -- the one institution which really links all this stuff together and makes the system that we have credible is the Coast

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Guard because they touch every aspect of maritime security, whether it's law enforcement or screening or maritime domain awareness, and they simply do not have the resources to make this system legitimate.

REP. LoBIONDO: Have you had -- you mentioned the deepwater program which is certainly near and dear to me, and the funding of it which has certainly been inadequate and each year we seem to fight that battle. You I think mentioned anything less than 1.5 billion is really a bad mistake. Was I correct in --

MR. CARAFANO: Yes, I think that's a very modest number.

REP. LoBIONDO: Have you had an opportunity to see up to this point to at all review and study how they are spending the money? In other words, with all the challenges of replacing the assets, some of what -- how they're choosing to replace these assets, have you looked at that?

MR. CARAFANO: Yes, quite frankly, and I think -- and I think this is actually true for all the services. You know, in many senses they're making poor choices, and what they're doing is they're making choices -- they're making the choices they can make as opposed to the choices that over the long-term would be the most cost-efficient.

You know, for example -- I mean, if this was a private sector firm they would say, you know, spending a billion -- you know, spending \$5 billion over three years buys you a heck of a lot more than spending \$10 billion over 10 years because, you know, replacing equipment, older equipment, more quickly in the long-term just saves you a lot of money.

So I think what they're doing is because we haven't accelerated the acquisition of the program, what they're doing is they're -- what -- they're not making the most cost-effective choices, they're making the most operationally effective choices. In other words, they're trying to keep the car from falling apart, and so, well, you really ought to buy a new car, so instead what they're doing is they're doing things like, well, they're fixing the brakes, you know, just to keep things running, but in the long run that just costs you more money.

So I think that many of the choices that they're doing are grossly sub-optimal because they're dealing with the fiscal realities of having to go out and do their job every day, and they can't -- they can't buy the stuff they want to because, you know, the stuff they've got has got to work tomorrow.

REP. LoBIONDO: I understand that. What I'm actually trying to get at is I think some of their decisions to spend money on the biggest ticketed items that -- in the range of what they have to do is what I question when they're spending all this money on a couple of huge ships and I could, you know, be spreading it out and getting a whole lot more bang for the buck, and that's --

MR. CARAFANO: But I think that's part of the -- I think -- I agree with you, and it's part of the same problem is they're forced into making these sub-optimal choices. You know, as we know, the big ticket items get people's attention and the big ticket items are easier to get funded, and the little -- you can have -- you have 15 little things you're much likely to get whittled to death than if you have, you know, one big thing.

So it's -- I think that we've just -- you know, we've given them an impossible job. We've told them how to figure out how to do all this and then we haven't -- and then we've kept the check book in the drawer and kept them on an allowance. I mean, I just can't -- I mean, it's just unfair to ask these guys to make smart decisions on the amount of money we're giving them.

REP. LoBIONDO: The last question, I think. How do we improve the quality and quantity of information that comes into the Customs and Border Patrol through the advance submission?

MR. CARAFANO: I think that -- I mean, that simply has to be done by -- through the international agreement, and I just don't think that we've been aggressive enough in terms of pushing the envelope on this. And I think that, you know, Steve's right, the United States has an enormous stick because we are one of the world's largest global traders, and I just think we should be much more aggressive.

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REP. LoBIONDO: Okay. Dr. Carafano, thank you very much.

We're now going to move to Mr. Nagle. Thank you for joining us.

MR. KURT J. NAGLE: Thank you, Mr. Chairman.

Good afternoon.

Thank you for inviting us to testify before your committee on areas where additional efforts are needed to meet the objectives of MTSA. I ask that my full written testimony be placed in the record.

Enhancing maritime security and protecting America's seaports from acts of terrorism and other federal crimes is a top priority for AAPA and our member U.S. port authorities. Ports handle 99 percent of our overseas cargo by volume, enable the deployment of our military, and serve as departure points for millions of cruise passengers each year.

Let me begin with some comments on the proposed DP World acquisition of P&O Ports. In reviewing a transaction of this type, it is the appropriate role of the federal government to determine if there are national security concerns with any proposed business arrangement involving non-U.S. interests, whether that involves port operations or any other business. There should be a rigorous process to appropriately consider and resolve those questions.

AAPA believes that the current 45-day process underway regarding the Dubai Ports World's acquisition of P&O Ports should be allowed to run its course prior to Congress taking any action either on this proposed arrangement, or on any blanket prohibition against a foreign government affiliated company from providing terminal operating services at U.S. ports.

With regard to individual business arrangements, public port authorities often have leases with terminal operating companies to operate port-owned facilities. Those leases typically provide that any assignment of a lease to a successor company, in the event of a merger or acquisition, must be approved by the port authority. Leases generally cannot be transferred or assigned without permission.

The recent focus on port security has made many question what else this country needs to do to secure our ports. My testimony today will focus on three areas. One, the Port Security Grant Program. Two, the Transportation Worker Identification Credential, TWIC, which has been mentioned this morning. And, three, adequate resources for federal agencies primarily responsible for port and maritime security.

Soon after September 11, Congress established the Port Security Grant program to provide much needed help to port facilities to harden security to protect these vital ports of entry from acts of terrorism. While the program has provided much needed funding, it still have several problems.

Let me begin with the funding level. From its inception, the Port Security Grant program has been dramatically under-funded. DHS has been able to fund only about 20 percent of the identified needs through the applications. AAPA recommends an annual funding level of \$400 million for this program. Limited funds have placed huge burdens on port authorities as security projects compete with funds required for maintenance of facilities, channel dredging and other port expansion projects to meet growing international trade. The biggest impact of funding limitations, however, is a delay in making security enhancements. Limited funds mean slower progress.

This low level of annual funding has resulted in DHS limiting the eligibility of the program. Last year DHS decided to limit eligibility, leaving nearly half of our member ports ineligible to even apply. We support a risk-based system, however, we believe that each port facility that must meet the requirements of MTSA should be able to apply. We are also concerned that limits on eligibility might leave a class of perceived under protected ports.

The administration also has been mentioned this morning has sought to eliminate the Port Security Grant program during the last two years by lumping port security into a broader Targeted Infrastructure Protection Program. This is not the time to dilute the focus on port security. It should remain as a separate, dedicated program.

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AAPA is also concerned by the slow pace in making the funds available. For FY '06 we are still waiting for the application process to open for the Port Security Grants, nearly six months after the Appropriation Bill became law.

The second priority for AAPA related to port security is quicker implementation of the TWIC. Four years after this requirement was enacted in MTSA we are still far from implementing a TWIC system nationwide.

The third area AAPA believes should be a priority for port security is ensuring that adequate resources are available for the federal agencies with primary responsibility for port and maritime security, and again there's been a significant discussion of this both this morning and in this panel. The U.S. Coast Guard and Customs and Border Protection are the two key agencies that need adequate resources to address port security. Both have done a great job to address these new challenges post-9/11.

Projections on container and passenger volumes, however, show a huge increase at seaports in the coming years. Congress needs to take a careful look at whether these agencies will have the manpower and resources to handle this growth and their security responsibilities.

In conclusion, our nation and its public ports have made great progress in enhancing port security since September 11, in large measure due to the actions of this committee and your leadership in moving forward MTSA legislation. However, we continue to need to make progress in this area.

On behalf of the American Association of Port Authorities and our member ports, thank you for the opportunity to be here this morning -- this afternoon, and I am willing to answer any questions at your time.

Mr. Chairman, thank you.

REP. LoBIONDO: Well, thank you very much. There's so many different areas to talk about. The Port Security Grant issue is one that has disturbed us a great deal. Depending on what numbers we use, the current requested level of funding from DHS I think last week looked like it would take us out some 60 years before we come to even the bottom line of what was required. In the meantime, you're expected to continue to do more. You're just given more and more mandates. And we're hoping that we can get someone's attention or the secretary, Mr. Baker, carries back the message. There were some pretty strong messages last week on armed services, and I think here again today.

But I'd like to ask you some specific questions about -- how do you interact with the Coast Guard and other DHS agencies to carry out the common mission of the port security?

MR. NAGLE: I think as was related this morning and certainly with representative Coble's discussion as far as the four-legged stool. It definitely is a partnership effort between the federal agencies again, and certainly Customs on the cargo security side and Coast Guard on the vessel and facility security side have primary responsibility. However, the public port authorities have a role in that, the terminal operators have a role in that, as well as the private sector that are involved.

As indicated, all of the facility operators, whether they're public agencies or private, do need to prepare and provide a facility security plan that is reviewed and approved by the Coast Guard. And then as -- so you have a facility security plan process that's approved and in place and ongoing. You then also have a -- essentially a local port area maritime security program that is chaired by the Coast Guard captain of the port, and the local port authorities are part of that local security committee that looks at the broader beyond individual facilities to the generally the port area.

And there are -- also as part of that there are studies, analysis, et cetera to determine and make recommendations as far as what security or enhancements are required to address security in the broader port area.

REP. LoBIONDO: Do you receive sensitive or classified information from the Coast Guard or any other federal agency regarding potential threats to homeland security at all ports?

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MR. NAGLE: We -- AAPA do not receive sensitive security material. If there are -- and in many cases at the local port authority, the facility security officers or others that may well have security clearances would be able to receive that information, but as a general course of matter, and certainly through the association, we are on the -- certainly the correspondence with Department of Homeland Security regarding security sensitive information that they are able to provide that we can provide through the association to our local individual members, but not secure information.

REP. LoBIONDO: I take it from your testimony that the top two items that you would suggest the federal government needs to get on quickly would be additional port security grants and then the TWIC card?

MR. NAGLE: I would say from the port authority's perspective, I think all three of the areas are -- I would certainly indicate as equal. The two you mentioned as well as the additional resources for Coast Guard and Customs. Again, the first two are principally looking at the security of the port facilities and making sure that the people that are on that facility are who they say they are, and have authorization to be on that facility, and to take cargo either onto or off that facility as appropriate.

The third area as far as the Coast Guard and Customs is in the -- essentially outside of the terminal gates responsibility regarding cargo and vessels that are entering the U.S., and has been mentioned whether you define it as pushing the borders out or however you define that process. Certainly there is significant value and interest in moving the determination of any -- either vessels or cargo at risk before it reaches the U.S. port.

As Mr. Oberstar mentioned earlier, certainly while it's the last layer of defense doing something, radiation portals also at the U.S. port, in many instances that could potentially be too late.

REP. LoBIONDO: Could you say what is the biggest risk, exposure, threat because of lack of port security grants? What gaping hole is that leaving that the private side is not able to pick up? We know there's an enormous number of dollars that are necessary to even come up close. How would you rank -- what are the areas that are most at risk because of the lack of port security grants?

MR. NAGLE: The areas that our members tell us are the areas that they have identified as still requiring significant enhancements at the funding, because of lack of funding is being at least delayed if not -- you know, it's not -- not being able to be done, period, are in the areas of access control. Again, whether that's physical access controls or credentialing systems et cetera that again are -- the main case is having to wait to be implemented because of the TWIC, not knowing what the requirements are going to be from the federal TWIC to make sure that they're compatible with what a local port authority would do in terms of credentialing et cetera.

But access controls, perimeter security, whether again that's physical perimeter security by personnel or by fencing, lighting, video surveillance, certainly utilizing technology to better being able to provide surveillance of the facility. Communications systems, being able to communicate amongst the various -- whether it's the port authority security personnel, local law enforcement. In general those would be the first responders in any incident related to a port or maritime environment. Communications, command and control systems are certainly recognized as very important.

And probably the final area that again is still a subject of particular interest is waterside security, and the Coast Guard has primary responsibility for that, but with their limited resources they're obviously not able to be at every single facility at all times. So looking at the opportunity of either patrol boats and either radar or sonar detection devices that help provide a level of security regarding any intrusion from the waterside.

Those are I'd say the four areas that our members have identified as most in need of additional funding.

REP. LoBIONDO: So are you saying that if we had an incident with one of your members, with one of the ports, that there'd be an inability for the different entities involved to communicate directly?

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MR. NAGLE: Yes, I would say that there are still cases that you're still looking at the compatibility. I think that was one of the -- certainly given the experience in September 11, the inability of the various responders to be able to communicate --

REP. LoBIONDO: What we're getting at?

MR. NAGLE: Yes, and certainly there's been progress made on that, but I would not say that there has been certainly a conclusive determination of what that interoperability between systems is between all those local responders. In many cases, they're outside the control obviously of either the port authority or the federal, say, Customs, Coast Guard et cetera because you're coordinating with the local and state agencies that would have their own communications system, so it's a matter of trying to coordinate all of those various potential first responders and be able to communicate amongst themselves. That's still an issue.

REP. LoBIONDO: I have a hunch you're being pretty kind in your description of how that's come together and where we are with all that. The last question I have, would you have any estimate of what your members have spent either on their own initiative or mandated on port security that's been non-governmental help?

MR. NAGLE: I can't give you an actual figure, but essentially we have been able to determine, I would say it's beyond what's provided in the Port Security Grant funding which has been to date actual \$707 million, and then with the additional 175 million that will be coming out in this upcoming round, so you know, roughly a little over \$880 million.

In general, it looks like there's been I would say hundreds of millions dollars spent by the port authorities, in addition to that figure. I think the numbers that were referenced this morning, the \$5.4 billion estimate, was only for facility security. There was some intimation that that was for a broader level of security beyond facilities.

The estimate when Coast Guard looked at the cost of implementing MTSA on facility security was \$5.4 billion over 10 years. The first five rounds of grants, there's been a total identified needs applied for of \$3.8 billion and only 700 million has been applied. That's the 20 percent that I was referencing in the reference that you made as far as how little has been provided to public ports.

So I think there's been some level of correspondence between the level of identified needs that have been applied for and that Coast Guard estimate that gives us the general feeling that that total figure of \$5.4 billion seems to be certainly within the ball park.

REP. LoBIONDO: I thank you very much. We apologize and we thank you for adjusting your travel schedule. We understand that you've missed your original flight and had to reschedule, and we very much appreciate that. And if in fact you need to go, please feel free.

MR. NAGLE: At this point because of the switch I'm fine, and if you would prefer for me to stay for the panel I'd be happy to do that.

REP. LoBIONDO: There might be an additional question.

MR. NAGLE: Okay.

REP. LoBIONDO: Mr. Scavone, please.

MR. ROBERT SCAVONE: Thank you, Mr. Chairman. I've submitted my comments for the record. I know that you, sir, heard my remarks at the Armed Services Committee last week. I will mention a few points relative to my comments to date and try not to be repetitive.

In addition to being also responsible for security at P&O I also serve on the board of the National Association of Waterfront Employers who did submit comments on port security to the Senate Congress Committee today, and with your permission, sir, I would like to send those into this committee for its record.

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REP. LoBIONDO: Without objection.

MR. SCAVONE: I would like to offer first a few comments on the security of the global supply chain. Of late we have become accustomed to hearing that our ports in the U.S. are the most vulnerable points of entry. This tends to lead to the conclusion that the ports themselves are the location where security needs most to be enhanced. That is not a correct conclusion.

Our ports in the U.S. are already the one point in the supply chain over which we have the most control.

It would be more accurate to say that if the security of the supply chain in a foreign location should fail the place where we in the U.S. will be first exposed to that failure would be in the U.S. port. However, no amount of security on the part of the terminal operator in that U.S. facility will change that fact.

Therefore, the enhancement of the security of our U.S. ports and by extensive our homeland is best accomplished by improving the security at the point of origin. We've heard today about programs like the 24 hour rule, C-TPAT, the CSI program, which have all contributed to that goal.

If efforts will be made to continually improve our security, this is where the focus must remain, to include such matters as the integrity of container seals, the improved capability to conduct non-intrusive inspections at port of loading, ideally at the direction of U.S. Customs, and the upgrading of Customs automated targeting systems.

Some of these objectives will experience substantial progress by the simple decision to devote more resources to them, which has been discussed already today. Others would require a global program, joining the governments of virtually every trading country with carriers, terminal operators, technology vendors and international standards bodies such as the International Standards Organization, or ISO.

Which leads me to a few points about foreign ownership. The fact that foreign interests own many of the companies that manage our terminals in the U.S. has recently, as we know, become a major point of discussion. Focus has been on the extent to which such ownership may impact the security inside our terminals. The answer is, it does not impact the security function at all.

We have already heard that the Coast Guard, Customs and the port itself continue to be responsible for that security. We, as terminal operators, do have responsibility to have access controls to our facilities, but that function is approved, monitored, audited and enforced by the Coast Guard.

The terminal operator has no role in verifying or inspecting the declared contents of any container entering the United States. The terminal operator does not open a container to verify its contents. Inspection is performed exclusively by U.S. Customs under its own supervision, and no container leaves a U.S. facility until U.S. Customs indicates that it is free to go.

In every case of which I am aware foreign ownership of terminal operating businesses in the U.S. is conducted by U.S. subsidiaries employing predominantly U.S. citizens and U.S. labor. However, under no circumstances does this permit the foreign shareholder to control any port or terminal in the U.S. Obviously, the shareholder will control indirectly the overall business strategy of the company, but like any business it will be subject to the laws of the countries in which it operates, and it may only exercise its influence within those limits.

If you accept that the security at the originating end of the supply chain is the area most requiring attention you will then recognize that the participation inside the U.S. of the major global terminal operating companies of the world alongside our U.S. terminal operating companies permits us to have a much broader global cooperative effort to address the ways and means to enhance the security of that supply chain.

For example, the global operators who also have a U.S. presence represent possibly the single greatest resource in the effort to deploy scanners in foreign countries and to supply to U.S. Customs the scans of every container they move onto a vessel bound for the U.S., which in turn addresses the question of intervention that Dr. Carafano

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raised where you could potentially intervene at any point along the way. But if you check the box before it's actually loaded onto the vessel heading for the U.S. there is no additional intervention after that.

A question was raised about the impact of the DP World deal on the security of the New York cruise terminal. By agreement with the Coast Guard at the New York cruise terminal the role of the facility security officer is actually filled by Michael Stapleton and Associates, a private security firm composed of ex-NYPD detectives and officers. That firm in cooperation with the Coast Guard prepared our facility security plan and they operate it.

The Coast Guard has been highly complimentary of our security efforts there, which include measures beyond those required by the regulations, such as canine patrols, and nothing about that is going to change. Further, we do not have access to passenger lists or crew lists, those are kept by the cruise lines and CBP. The sailing schedules on the cruise line web sites, thus the sail of the P&O parent company in London will have no impact on the security at this terminal.

In Beaumont, Texas, we load military vehicles on vessels chartered by the military. We use longshoremen to do it. Numerous military personnel are always present to supervise that operation. The only information we receive about the cargo is a written list of equipment to be loaded. If anyone wanted access to this information they would only have to stand outside the terminal fence and count what goes in and out. The point being, the information we have is not confidential to begin with.

In conclusion, Mr. Chairman, when we discuss risk in the supply chain I believe it is important to distinguish between risks that exist today and risks that might somehow be created if P&O is sold. I believe we have seen that those who know how security really works are virtually unanimous that this sale is not an issue from a security standpoint.

Thank you, Mr. Chairman, for the opportunity to submit these comments today.

REP. LoBIONDO: Thank you.

Mr. Brown, thank you for your patience. Thanks for making a very long trip, and I'm waiting for your remarks.

MR. GARY BROWN: Thank you, Chairman LoBiondo, and members of the committee. I want to thank you for having the opportunity to come to speak here and the invitation.

My name is Gary Brown, I'm a third generation longshoreman in the port of Tacoma, Washington, roughly 37 years down there. I'm also privileged to serve as the security liaison officer for the International Longshore and Warehouse Union, and in this capacity I have received numerous security certificates and certifications from the Coast Guard. I've taken a class with FEMA, and I'm very fortunate to have taken a class that was sponsored by the U.S. Attorney's Office for anti-terrorists. That's a little bit of my background.

And also on February 14 to 16 of this year I organized a port security training session for the ILWU and its members in conjunction with the Pacific Maritime Institute, which is one of the few government recognized organizations institutes. I had longshore workers from every local up and down our coast and international, including two members from Hawaii, and they were trained on facility, company and vessel security regulations required by the Coast Guard.

I had the distinct pleasure of having retired captain, Danny Ellis, Coast Guard, and assistant chief, A.D. Vickery, Seattle Fire Department, who's been involved in several of these -- I guess he's the grandfather, as they say, the founding father for the marine terrorist response program in Puget Sound and which is going to be nationwide.

They've helped me with my program and nice enough to have -- the Coast Guard had sent two people to speak at the class. Customs sent two people, and along with like I said the fire department, first responders and a gentleman that was retired from the Treasury Department to speak on some anti-terrorist things for us to be watching up for.

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So it was a very good class. It was -- all the members were certified, so it was -- and this is totally funded by and paid for by the ILWU. We were obligated to pay and initiate this because our employer had failed to conduct the proper training courses, which is required by the Coast Guard. And on that note there, that's where we're at with our training, and I've -- if we could get any help with any funding, we'd appreciate it.

Just to touch on the Dubai Ports deal as far as the International Longshore and Warehouse -- our stand is that we fully support the bipartisan calls in Congress for the Bush administration to direct a committee on foreign investment, to conduct a full 45 day investigation, because our seaports are part of a global economy.

The ILWU believes that we should not rush to open the doors for such assets to companies owned or operated by foreign countries where there were serious concerns with existing terrorist activities and funding.

Therefore, we're urging that the decision for the approval to be based on the national security interests of the United States and not on commercial interests of any one company or one country. We also urge the federal government, including Congress, to focus attention beyond the controversy over the future commercial contract and to recognize and correct the immediate major deficiencies of security that exist today in American ports. It is the current lack of effective port security since the terrorist attacks of 9/11 that is the real concern of all the dock workers and millions of Americans who live within close proximity of our nation's ports.

To touch on that, we had -- you've heard several discussions from everybody today on panel one, and the gentleman here was on, like seals. Seals was something that we as longshoremen used to conduct, physically check the seals, and now they're done via the cameras, and the cameras, you can't see the number and you can't tell if that is secured. It's a severe problem.

Another problem is empties. This is something that was brought up and a lot of people wonder why empties are such a problem. Empties are -- it's a perfect example of an access for somebody to use to put something in to transport something in because they're not examined. We used to examine them for several reasons. Number one, to make sure they were empty. Number two, to make sure they were clean because a lot of the customers require a certain type of container, and we also check for structural damage, which, you know, is a safety factor.

And not only that, but we have found -- I've personally found 25 Chinese in a container one night that was an empty, and unfortunately the only reason that we found it was because we were getting ready to stack it in the storage area, which it would have probably stayed for about four or five days. And for some reason it was close to lunch time so I told my driver, just leave it on the ground, and within five minutes I got calls on the radio that there were people running all over the terminal down there and so I caught one of them and that's what I found, they had been in that container, it was an empty.

And another problem we have is we don't have -- like on our shipping list. They talked about -- the gentleman earlier talked about the honor system, and we work with several of those companies that are on this honor system, but these same companies -- we have containers -- if we get a discharge list of approximately 450 containers, we have 462 come off, it's 12 extra, and they're not on the list. Well, according to regulations and if everybody was to follow the rules you'd call Customs because now you've got a breach in security, you've got 12 extra containers. Unfortunately, the company's response is, write those numbers in and worry about it later on, and this is something that we deal with every day, and this is not acceptable.

We talk about rules and regulations, and they're not being followed. And like I said, with the seals, with the loads, with the empties, we have loads coming off ships now and it's such a fast-paced business that we're getting their -- if you happen to look at some of these manifests on it they're listed as "dummy" d-u-m-m-y, because they don't want to take the time to stop and verify that container so they come through as dummies.

And I've had several meetings with the companies, and I says, you know, what's the process with that because you have these dummy containers? Well, what they'll do is they'll run it through and the computer will pick it up, where in the old days, you know, I had -- I'm a marine clerk, and I had the manifest, I would verify these things. I'd verify

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the seal, verify the container, and you know, at one time we knew what the contents were, and we don't have access to any of that any more.

And this is all done through the computer process, and this is where our concerns are at because we don't access to that any more. And we've had several that were -- there was an incident in Long Beach where the container blew up. Had we had access like the old days, what we're supposed to do is check that container, we'd have found out that it had propane in it. But on this list that was sent on, it was FAK, Freight All Kinds/dummy.

And, you know, luckily nobody was killed, but it blew the container doors off and they -- my understanding, it blew things about 40 feet behind it. And these are our concerns. You know, the empties, the loads, and of course now we have -- at our gates now we have -- I'll give you a quick incident, if I could.

We used to be down in the lanes, when a driver would pull in, he could give us his manifest, we'd double-check to make sure the container was right, the seal number was right, plus it was locked. You could physically grab it and pull it. And if it was placarded with "hazardous" you'd walk around and make sure it had all the placards on it because of Coast Guard regulations.

Well, now a driver pulls up and he gives you the seal number over the phone, and of course, your camera only shows -- you look on your camera and you know the density and stuff, it just shows a block, there's no way you can verify the number and there's no way you can verify that that seal is actually secure.

In this one incident the gentleman came out of Canada and it was hazardous, and he pulled up through the lane down there and I asked him the seal number and he gave me a seal number. Well, he'd had placards on it so I had to go down and walk around it. Well, when I got to the rear of the container there was no seal, and I walked up to the driver and I said, "You gave me a seal number over the radio, where's -- there's no seal on the door," and he just shrugged his shoulders, and I said, "Did you check the container before it left the dock in Canada?" and he goes, "No." And, of course, he didn't stop because he used a fast lane coming across the border where he doesn't have to stop. And I said, "Did you stop anywhere along the way?" and he goes, "No." And I said, "Where's the seal? There's no seal on this," and he says, "I don't know."

So at this point I'd just finished one of my classes and of course that was a red flag, foreign container, hazardous, no seal, a breach of security. And so the response was -- the protocol is to call Customs. Well, unfortunately, when I called the terminal operator and explained to them that's their job to call Customs, their response was to throw another seal on it or it's going to miss the ship. And I said, "No," I said, "We've got a severe breach here and we have to call Customs." So I was chastised for that, but I called Customs and that container was, you know, taken aside and -- I don't know what happened at the end of that, but this is just what -- one of the things we go through daily down there as far as security.

And it seems they have great concerns because like with the empties, I'd like to touch back on that, there's also the empties coming in from inside, not just the ones coming off the ship, because we've found tons of things in there. And the gentleman alluded earlier about the empty containers and the drivers. Drivers come in and a lot of these companies, the terminal operators, a couple of them own their own trucking companies now, and so they actually have a little kind of a card they put on a dashboard and they're just in and out of those terminals, you know, and there's no way you can monitor these guys.

I've seen drivers come in with giant sleepers and just out of the corner of my eye catch them where they're parking in the terminal, and I see two or three guys pile out of this sleeper, you know. They're either helping him with a container or, you know, they're loose on it. And you know, those aren't being inspected and the drivers aren't being ID'd, you know. That's another concern of ours. And since we're not checking empties any more, you know, people ask me, they say, why would you check an empty? Because I told them -- I said, well, I've found people in there, I've found cargo in there. And, you know, and the stuff that's -- we're looking at loads and we're looking at seals, you know, this is where we're concentrating.

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But we've also got to concentrate on these empties because, as we know, you know, the people that want to do us harm are very methodical and they're very inventive. And if they could see, you know, we're paying attention to loads and seals and all this stuff but not on emptying, because these empties are loaded on the ship next to the loads, and the empties are loaded on and off trucks, just as they do with the loads, and if we're not paying attention to those empties, you know, it's a golden opportunity for these people.

And I say, from the enemy within, because, as we all know, unfortunately the terrorists that attacked us on 9/11, that attack occurred within the United States, within our States, and I believe after some of the classes I've been and listening to some of the people, that, you know, there are people in this country that have pretty much established themselves, and, you know, for them to put -- if their goal is to destroy or disrupt our docks, you know, they could very easily build a bomb or whatever they want in Scottsdale, Arizona, and ship it, and once it's on the terminal, ignite it. So, you know, the concern from inside as well as outside is very sincere.

And, like I said, you have my statement, and I thank you for the time, and if you have any questions.

REP. LOBIONDO: What would be -- in your order of priority you mentioned a lot of things, but the top three things that we need to do from your perspective to better secure the ports?

MR. BROWN: Well, like I said, Mr. Chairman, the sad part is is that we used to do the job of, like, say, checking the seals and checking empties. That's something we don't do any more. There was a -- we actually had letters from terminal operators that don't want it done anymore. I've been to several meetings and on committees and stuff where people have asked me, you know, why did you guys quite doing it? I said, well, it wasn't us, you know. And they thought it was pretty silly, you know, in this day and age, after what we've had happen, we should be, you know, a little bit more vigilant and a little bit more, you know, checking this stuff. And we just -- it's just gone backwards.

It's actually the checking of the seals, the documentation, you know, and -- because, like, right now we cannot -- if a container pulls up to the terminal, we're looking at the seal now with a camera, and you can't tell the number. You have to take the driver's word for it. And unfortunately you can't go find out if that thing is -- I did a test with a news reporter up in our area about a year ago and I told them. And they said, well, what's the big hoopla about seals, once they're sealed? Well, there was a broken seal. It has already been cut. And I went over and put it on a container using my chewing gum, put the tip back on it, stood back, and I said, now look through your camera and it looks like it's sealed. They said, yeah. So I went over and popped it off.

And when we were doing it, you know, you'd give it a good yank to make sure, and make sure the number matched and all that stuff. And we would look for, you know, any abnormalities on that stuff. And we're just not doing that any more, and that's the big concern, because, you know, like I said, people in there, you know, if they wanted to store something in there, that's -- but the seals and the empties and the -- probably the drivers that come, the truck drivers. And a lot of these guys, they're on the terminal, they're not monitored. And you get on a busy terminal down there and you've got a couple of thousand people roaming around there, it's impossible, absolutely impossible to catch.

And the only time we come across -- like I mentioned earlier with the empties coming off the container ships, that's when I called or had my members call Customs or Coast Guard, and they will respond and, you know, but we have to catch them. And on a busy day, you know, like I mentioned before, the Coast Guard and Customs, those people are very thin. They can't be at every port. They can't be in every ship. And, you know, this is kind of like when -- that's what we're down there for.

And with this training and stuff, you know, we figured, you know, we're down there daily. We know who belongs or who doesn't, you know, and we'd be a valuable resource working with the first responders.

I'll give you a quick instance of why we wanted to enhance our training and be there to help, is: they had a ship fire up in Seattle, and the Fire Department -- I mean, it was an intense fire, and they stood on the dock and they weren't going to go aboard because there was a container right on the middle of the deck and it had placards on it, and

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they were waiting for that. They didn't want to get on board and have that thing blow up and then kill a whole bunch of people. And nobody knew what to do. But the longshoreman, one of our members, had gone back up the crane and hoisted that container out of the fire, got it off the ship.

And so, this kind of brought on our program, because I've worked with a lot of first responders. And like the fire chief says, he says, I don't know how to drive a crane and you don't know how to drive a fire truck, but together, if there's an incident and event, you know, we'll make a hell of a partnership. And that's kind of where our program has gone.

REP. LOBIONDO: Thank you.

Mr. Scavone, if the acquisition of P&O Ports by Dubai Port World was approved, would Dubai Port World also have direct control over stevedoring operations in the 16 additional ports? MR. SCAVONE: Yes. Well, they would own P&O Ports, which would remain a place as a U.S. company with U.S. employees operating in the U.S. yes. They would be the ultimate owner of that company, about five or six corporations up the chain.

REP. LOBIONDO: And how does P&O Ports' involvement at U.S. ports where it operates terminals differ from its operation as a stevedore in the 22 U.S. ports?

MR. SCAVONE: The 22 locations I think you're referring to, Mr. Chairman, includes the six where we actually manager terminal facilities. All this information is on our web site and has been for a long time.

In most ports, we serve purely as a stevedore, simply to remove the cargo from a vessel and put it down in the terminal. But in those cases the terminal itself is operated by -- for instance, a port authority that is an operating port authority, like Houston or Norfolk, and that entity would be the one responsible for the security of the terminal facility and for the preparation of the facility security plan with the Coast Guard, whereas in places like Port Newark, we also operate the terminal itself. So, in addition stevedoring the vessel, we manage the terminal facility, and then it becomes our responsibility to agree with the Coast Guard a facility security plan, which is primarily the access controls to that facility for people in vehicles, under the supervision and direction and enforcement of the Coast Guard.

REP. LOBIONDO: Gentlemen, I thank you very much. It's been very helpful and informative. I appreciate your patience. And the committee stands adjourned.

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