

IMPLEMENTATION OF THE MARITIME TRANSPORTATION SECURITY ACT, H.R. 3712, THE U.S. SEAPORT MULTIYEAR SECURITY ENHANCEMENT ACT, AND H.R. 2193, THE PORT SECURITY IMPROVEMENTS ACT OF 2003

(108-72)

HEARING
BEFORE THE
SUBCOMMITTEE ON
COAST GUARD AND MARITIME TRANSPORTATION
OF THE
COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES
ONE HUNDRED EIGHTH CONGRESS
SECOND SESSION

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IMPLEMENTATION OF THE MARITIME TRANSPORTATION SECURITY ACT, H.R. 3712, THE UNITED STATES SEAPORT MULTIYEAR SECURITY ENHANCEMENT ACT, AND H.R. 2193, THE PORT SECURITY IMPROVEMENTS ACT OF 2003

Wednesday, June 9, 2004

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION, COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE, WASHINGTON, D.C.

The subcommittee met, pursuant to call, at 10:00 a.m., in room 2167, Rayburn House Office Building, Hon. Frank A. LoBiondo [chairman of the subcommittee] Presiding.

Mr. LOBIONDO. Good morning and welcome. The committee will come to order. Today we are meeting to hear testimony on the implementation of the seaport facility and vessel security measures established by the Maritime Transportation Security Act of 2002, and to review two bills that aim to enhance security at our Nation's ports.

Following the events of September 11, the Coast Guard was identified as the lead Federal agency responsible for securing America's maritime transportation system. The service has been working hard to incorporate these responsibilities with its many traditional missions by maximizing its limited resources and personnel. It is imperative that the Coast Guard be provided the tools necessary to ensure security at our ports. Our Nation's maritime transportation system is one of the most inviting targets for future terrorist attack. More than 8,000 foreign and domestic vessels enter American ports each year from points overseas carrying more than 95 percent of the trade coming into this country.

We must all work together to fully implement MTSA and ensure that the Coast Guard has the ability to enhance maritime security while maintaining the steady flow of commerce in and out of American ports. MTSA seeks better integration among Federal, State, and local and private law enforcement agencies to oversee security at our seaports.

On October 22 of 2003, the Coast Guard issued final regulations implementing maritime security requirements mandated by MTSA. These regulations require, among other things, that facilities and vessels have their detailed security plans approved by the Coast Guard by July 1st of this year. I look forward to receiving an up-

date on the level of compliance by the maritime industry, with these regulations. The Coast Guard has estimated that it will cost approximately 7.5 billion to comply with the new maritime security regulations over the next 10 years.

I strongly believe we need to continue Federal funding in the form of port security grants to help defray some of this cost. I look forward to hearing from the Coast Guard and other witnesses as to how they feel these costs should be met.

This committee also realizes the large administrative burden this will have on the operating budget of the Coast Guard. For this reason we need to be assured that the Coast Guard has the necessary personnel and funding to administer these regulations without further eroding the budget for traditional missions. Also, we must be assured that the Coast Guard implements a robust port State enforcement effort to ensure international vessel and security compliance with the new international ship and port facility security code. This committee has been involved with securing the safety of the lives of property along America's coast.

MTSA was developed by members of this committee. And as the committee with the jurisdiction over port security issues, I know that my fellow members will join me in continuing our rigorous oversight of this implementation as we approach the July 1st deadline.

Finally, the subcommittee will be considering H.R. 2193, Port Security Improvement Acts of 2003 and H.R. 3712, United States Seaport Multi Year Security Enforcement Act at this hearing. These bills aim to provide Federal funding for various seaport security improvement projects. I look forward to hearing comments on these two bills, especially for hearing from Ms. Millender-McDonald and look forward to hearing the witnesses' views on each.

I thank everyone for coming today. And just before I move on to Mr. Filner, let me announce to everybody that today is Commander Patti Seeman's last hearing as the subcommittee's Coast Guard fellow before she takes up her new assignment at the Coast Guard Academy. We very much appreciate her diligence and dedication to this committee and we wish she, Paul and Abigail very good luck in Connecticut. Patti, thank you very much.

Mr. Filner.

Mr. FILNER. I thought you were going to suggest that we rename her Ronald Reagan, since we are doing that to everybody here. Thank you for scheduling this hearing, Mr. Chairman. And we know that the implementation date for the MTSA is less than 3 weeks away. According to law, all facilities on that date, along the navigable waters of the United States must be operating in accordance with security plans approved by the Coast Guard. All U.S. and foreign flag vessels must be operating in accordance with these vessel security plans. As you mention, under the international ship and port facility security code, all foreign port facilities must be operating with approved facility security plans. Yet the information that we have, for example, most recently in a survey by the International Maritime Organization, show that only 9 percent of the more than 20,000 ships have had their security measures certified.

While only slightly more than half have even submitted their plans for approval, this does not sound like we are close to imple-

menting the legislation. In addition, only 5 percent or so of the 5,578 ports surveyed have had their security measures approved. Here in the United States, the middle of security plans by vessel and security operators may be completed, but it is unclear how many facilities will have their security plans fully implemented by the July 1st deadline.

So the question is for our panels today, what is the true status of implementing security for vessels and facilities under the MTSA? If a foreign vessel does not have its ISPF certificate, will it automatically be denied entry into the United States? While the denial of entry of ships due to noncompliance with security requirements be of such a magnitude that it will affect our economy in this country?

Now, we know that the Coast Guard has been working very hard over the past couple of years to implement this Act. You have held hearings around the country and tried to answer the questions posed by the various segments of the maritime industry. The challenge, of course, is to secure the maritime transportation system from being used as a conduit for terrorism. To illustrate the challenge, let's compare that to the war on drugs, where, despite the billions of dollars we have spent on interdiction, we are probably interdicting only 20 percent of the drugs entering the United States. This, despite the fact that we know the majority of the drugs come from one source, Colombia.

Success in the war on terrorism can't be defined by saying that we have only stopped 20 percent of the weapons of mass destruction that may enter the United States. We must stop 100 percent. Yet how do we do that when al Qaeda can simply hire today a narcoterrorist from Colombia to ship their WMD to the United States for them?

Let me say, in addition, Mr. Chairman, and to the panels that we will have today, the people who know our ports probably the best are the ones who work every day at them, the longshoremen, the dock workers, people who deliver things to the ports. They know best what is going on everyday. In addition, they would be the first affected by any attack. I mean, it is their bodies that are on the line first if such an occurrence occurs. It seems to me, from talking to them and to ports, not only in San Diego, where I represent, but other places, that we are not utilizing these experts and their expert advice to the—in the manner in which we ought to.

We have not fully incorporated their ideas and we will hear from them today. I have had occasion to talk at length with some of these experts. They have showed me, for example, how easy it is to avoid detection of a so-called empty container. The detection system may only monitor two-thirds of the container, for example. Somebody could be in there and jump out with a machine gun or some other weapon after having been cleared, that that container ship is empty, that container is empty. They move around. They are on various places on the grounds in the nearby area. Nobody fully monitors that movement or the potential for that—for those as carriers of weapons. So I would hope that we all come away from today's hearing with an appreciation of the expertise that the longshoremen have and to incorporate their suggestions much more fully into our official reports and plans. So thank you, Mr. Chair-

man for scheduling today's hearing. I look forward to hearing the witnesses on what more we can do to improve our security.

Mr. LOBIONDO. Thank you.

Ms. Millender-McDonald.

Ms. MILLENDER-McDONALD. Thank you, Mr. Chairman, and good morning to everyone. Let me first thank Chairman LoBiondo for his leadership on this issue and responding to my request and the request of other members in holding this hearing so that we can discuss port security issues, and specifically my legislation, H.R. 3712, the United States Seaport Multi Year Security Enhancement Act, which I introduced on January the 21st. I would also like to thank the Ranking Member Filner for his guidance and his leadership on my behalf for this bill as well. Our Nation's 361 seaports are considered a major terrorist target. It is known that al Qaeda has strong ties to the shipping industry, and that one of the aims of this terrorist network is to weaken the economic security of our country.

Our Nation's coast line is our longest border, which is a 95,000-mile coast that includes Great Lakes and inland waterways. Protecting America's seaports is critical to the Nation's economic growth vitality, and security. Seaports handle 95 percent of our Nation's overseas trade by volume, support the mobilization and deployment of the U.S. armed services and armed forces, and serve as transit points for millions of cruise and ferry passengers. Maritime industries contributed \$742 billion per year to the U.S. gross national product. As a sitting member on both the Aviation and Coast Guard Subcommittees, I am proud of the way Congress has worked to address the security needs of our Nation. But we must do more. I have seen the benefits of what can be accomplished when this committee focuses our resources to address a problem. For example, since the tragic events of 9/11, Congress has provided upwards to \$11 billion for aviation security.

In my district, the Long Beach Airport is the fastest growing commercial airport in the country. Without the screeners, without the technology and equipment as well as the methodology that has been implemented, flights would be delayed and passengers would be gridlocked. This would result in a breakdown in the system. A breakdown in the system, as we have all witnessed, results in the loss of confidence by our citizens and our economy. I reference aviation because there are many lessons we have learned from what has been accomplished, both good and bad.

There is a strong parallel between our aviation system and our infrastructure. Our aviation system carries the confidence and spirit of the American people. Our Nation's ports are the cradle of our national economy. I have a specific interest in port security because in southern California, our region's two ports are the largest complex in the country, and third largest in the world. As a member representing the 37th congressional district, I have serious concerns about the safety and security of communities around the ports. As a Member of Congress, I have serious concerns about the safety of our Nation and the economic impact on our national economy.

When we speak about security, we cannot separate the local from the national. My legislation, again, H.R. 3712 calls for an invest-

ment of \$4 billion over 5 years to address the infrastructure needs of our ports. H.R. 3712 calls for a grant program to be created in the Department of Homeland Security to provide a predictable and reliable stream of funding to be dedicated to securing our ports. At an annual rate of 800 million a year, this is an investment our Nation must take in our ports and in the future and security of our national economy. The numbers that I have proposed in my bill follows the Coast Guard recommendations. The Coast Guard has recommended that the immediate and future needs of our Nation ports are as follows: \$1.1 billion for the first year investment and \$5.4 billion for the investment over the next 10 years. That is a total of \$6.5 billion.

My bill follows these recommendations and puts an immediate focus on our needs with a few caveats. I have subtracted 30 percent operating cost of the Coast Guard, and \$442 million that has already been allocated through the port security grant program to arrive at the \$4 billion over 5 years or again, \$800 million a year. I have condensed these recommendations from 10 years to 5 years, because if we are going to address the security issue, we must do that now more than later. In addition, I have taken on the fundamental elements from the aviation security legislation, and that is the letter of intent to provide multi year grant funding for those ports that have large infrastructure investments.

The letter of intent approach has worked well in addressing the immediate and long-term aviation security needs for our Nation, and I am confident that through this lesson learned it will work well in securing our Nation's ports. At its core, my legislation provides a predictable and reliable stream of funding for our ports to address immediate and future security needs. Today there is no fluid mechanism for ports to address their immediate and future needs. As it stands, ports must submit applications for ground support security grants that may be awarded in a month, 2 months, sometimes in a year. This process, in my view, is ineffective. It does not allow for ports to develop and implement immediate and long-term security plans and initiatives.

In short, our Nation's ports are reduced to waiting for port security funding while the administration decides what to do and how to distribute the funding. Developing a comprehensive port security program will take coordination and cooperation. If we are going to seriously address port security, there must be a partnership between the ports, the Federal Government and private industry. Finally, I would like to comment on where we are with port security funding. Now, the administration has proposed \$46 million for port security funding in fiscal year 2005. This does not come close to addressing the needs set forth by the Coast Guard. Likewise, the House Homeland Security Subcommittee on appropriations has proposed \$125 million. It is the same amount proposed last year.

Now, we can do better and we must do better. As you may remember, back in 2002, during the West Coast Lockout, our western ports were closed for 10 days. The impact on the national economy was estimated at \$1 billion per day. That is a total of \$10 billion. \$11 billion is the amount we have spent on aviation security since 9/11. My proposal, at \$4 billion for our ports is less than a half of the investment Congress has to make and has made in aviation.

We must make this investment now. After the tragic events of 9/11, Congress and this committee was forced to react. We did so quickly and in a bipartisan manner. Mr. Chairman, we have a great opportunity before us to prepare and to assure the American people that we as Members of Congress are addressing the security needs of the Nation. We have created the Department of Homeland Security to shepherd us into this post-9/11 era.

Congress and the administration have provided resources and recommendations to address these homeland security threats. We must also provide guidance and leadership. This is what you and the ranking member are doing, and I applaud you immensely. My legislation is an essential first step in addressing the needs of our ports. Let us now use these tools and focus them on protecting our Nation's ports and securing our national economy. We have done this before with aviation. Now let's do it with our ports and the communities that surround them for the future health of our economy. We owe it to the American people and to the community surrounding our ports to lead and not react.

Mr. Chairman, due to my having to manage a resolution on the Floor, I must leave, but I appreciate your inviting the witnesses today, Rear Admiral Larry Hereth and from my own district, Mr. Noel Cunningham, who is the director of operations for the port of Los Angeles. Thank you for having him, along with Mr. Michael Mitre. Thank you so much Mr. Chairman.

Mr. LOBIONDO. Thank you for your input and energy that you are putting into this issue. Mr. Simmons, do you have anything you would like to say?

Mr. SIMMONS. Very briefly, Mr. Chairman. Thank you for your leadership in addressing these maritime security issues involving our ports. Connecticut has three small ports and—but the problems that we face in securing them are replicated across the country with the 361 ports, some of the major ports of entry for trade into this country. On the one hand, we don't want to disrupt the trade because there is a dollar cost in that, a value in that that we don't want to lose. On the other hand, we don't want terrorist groups to take advantage of the openness of our ports to do us damage. So it is an important issue and again, I appreciate your leadership in holding this hearing.

Mr. LOBIONDO. OK. The Chair would like to note that Congressman Ose, whose legislation we are considering today had fully intended to be present at this hearing, but was unavoidably detained in California and will not be able to be present.

Mr. Thompson.

Mr. THOMPSON. Thank you, Mr. Chairman. I too would like to thank you for holding the hearing and for your leadership on this issue. I don't disagree with anything or any of the concerns that have been raised. And I want to thank the Coast Guard and Admiral for all the good work that you do. I do have some things that I wanted—some concerns that I do want to bring up, and hopefully you will be able to address those in your remarks. And as has been mentioned, I too am very concerned about the issue of underfunding. You have got a big job to do. And it is clear you don't have the money you need to do it. And I need to know how you are going to handle that, especially in light of the increased threats that we

are hearing about that may run over the course of the summer and what you are doing differently, or what we can expect to see that will bridge the gap between the money being made available and the need.

The other issue is we hear a lot about prioritizing. We hear from, you know, the big harbors about the more imminent concerns coming out of there. It seems to me that if we do the good work that I know you are going to do in those priority areas, it is just going to make the less priority areas a target. And having a couple of harbors in my district, I would be very interested in knowing how we are going to deal with that problem because all of a sudden, they become the priority areas, and I think areas that we should really be concerned about. So I look forward to hearing your testimony on these issues. Mr. Chairman, again, thank you very much.

Mr. LOBIONDO. Thank you.

Mr. Baird.

Mr. BAIRD. Thank you, Mr. Chairman. I appreciate your holding this hearing and your leadership on this. I have been speaking with folks on the docks, the folks that are front line on defense out in my district, and they have raised a number of concerns and I would like to put those out on the table and perhaps the Admiral could speak to them or other witnesses today. The first has to do with the issue of inspection of empty containers. People are being told that there is no need to inspect empty containers. However, there is some concern that what we may think are empty containers, may not, in fact, be empty containers, and therefore, that would be an ideal way for people to smuggle weapons or even individuals and terrorists into our country.

There is belief that some of the terrorists who attacked an Israeli port recently may have come in that way. A second issue has to do with the seals on containers, and when and where and how those are inspected. People on the docks have been telling me that they have actually been instructed to not bother to check the seals, the assumption being that they have already been properly checked overseas. Well, when we have people come through our airports, we like to check them when they go through the security. And it just makes sense to me that we be responsible for our own security and we not just trust some overseas port with probably very little oversight and regulation.

And so I would urge you to address that issue and let us know what the status is on that. Both of those two concerns relate to a much broader concern and that is people who again who work on the docks are telling us that it is their sense that there is resistance to implementing the existing requirements and resistance to any new requirements. Now we understand the economic concerns there. But as the President and others have pointed out, the cost of missing a terrorist or a weapon of mass destruction that comes in far outweighs the costs of intercepting those. And I would be interested in your comments about whether you have encountered resistance to implementing and carrying through the rules that exist, and if so, what we can do, because I share my colleague from California's point about funding.

Even if we fully fund the operation, if the people on the ground give a wink and a nod and say we are just not going to follow that

requirement, we have got a serious gap in our system, and I would very much appreciate if you could testify to that and others and give us your insights. I thank the gentleman for giving me this time.

Mr. LOBIONDO. Thank you, Mr. Baird.

We will now go to our first panelist. We would like to welcome the director of port security for the United States Coast Guard, Rear Admiral Larry Hereth. Admiral, thank you for being here today and thank you for the job you are doing. Please proceed.

**TESTIMONY OF REAR ADMIRAL LARRY HERETH, DIRECTOR
OF PORT SECURITY, UNITED STATES COAST GUARD**

Admiral HERETH. Thank you and good morning, Mr. Chairman, and distinguished members of the committee. It is a pleasure to appear before you today to discuss the Coast Guard's efforts in implementing the Maritime Transportation Security Act of 2002, MTSA.

When the President signed MTSA on November 25, 2002, landmark legislation was enacted that establishes, for the first time, a mandatory security regime within the maritime sector focused on reducing the vulnerabilities in the maritime transportation system. Since its enactment, the Coast Guard has worked diligently to not only implement the robust provisions of the Act but to also lead our international trading partners through the International Maritime Organization in the development and implementation of a global strategy on maritime security.

In the first year after the MTSA was enacted, the Coast Guard published six interim final rules taking into account comments received through a series of seven public meetings throughout the country. Four months after the release of the interim rules, final rules were published that considered nearly 2,000 comments from the maritime industry and the public. Approximately 9,200 vessels and 3,200 facilities were captured under the implementation of our regulations, and I am pleased to report over 99 percent have now complied with the rules by submitting a security plan to the Coast Guard.

With only 3 weeks remaining before July 1, the compliance date, the Coast Guard is continuing its efforts to ensure that all security plans appropriately document the required security measures; and we are presently conducting a nationwide pre-enforcement campaign involving our Port State Control Program for foreign vessels and for foreign ports.

Regarding area maritime security, a broader look at security, our Coast Guard Captains of the Ports have developed 43 area maritime security plans, required now by the regulations, covering 361 ports, the Great Lakes, the Inland Rivers and the Outer Continental Shelf region. All these area maritime security plans, I am pleased to report, were approved and worked through the system not later than the first of June this year.

Area maritime security committees, comprised of Federal, State and local agencies and members of the local maritime industry, were established to assist the Captains of the Ports in the development of the air and maritime security plans. These committees are enhancing the exchange of communication between the Coast

Guard, Federal, State and local agencies and the maritime stakeholders throughout the port community.

Of the nearly—regarding facility security, of the nearly 3,200 marine facilities covered under our regulations, nearly all of those facilities conducted a self-assessment and submitted a facility security plan to the Coast Guard for approval. To date, we have completed the review of over 98 percent of the facility security plans and completed entirely 1,200 plans. About 1,800 plans remain in process undergoing review.

And I guess I would add that we have, for the last 6 weeks, been working at the plan and review centers 6 days a week, 10 hours a day, to bridge that gap and make sure that we get all the plans reviewed and approved and out in a timely fashion.

On the vessel security front, over 9,200 vessels were captured by our regulations. They were required to develop and submit security plans to the Coast Guard, and I am pleased to report on that side that over 99 percent of those vessels have conducted self-assessments and have submitted their plans to the Coast Guard. To date, the Coast Guard's Marine Safety Center, which is our hub of vessel security plan approval, has approved over 90 percent of those plans. We believe that the remaining 10 percent are nearing the final approval stage, and we anticipate that all those plans will be approved before the 1 July deadline.

On December 12, 2002, in the international community, the IMO adopted amendments to the SOLAS Convention that incorporated a new International Ship and Port Facility Security Code, the ISPS Code. One hundred and forty-seven nations are party to the SOLAS Convention and have agreed to this code, to implement this code.

On a quick international timetable, which actually corresponds to the same date, the first of July date, the security amendments to the SOLAS Convention were done at the behest of the United States and are based largely on U.S. input that is very commensurate with the provisions of MTSA.

At our most recent meeting with the IMO, held just a couple of weeks ago, the vast majority of nations have reported that they believe that they will meet the July 1st ISPS Code entry into force date and that their ships will be acting under approved security plans. In fact, our pre-enforcement campaign does reflect an increasing percentage of vessels showing up into United States ports at present with completed certificates and implemented security plans.

Regarding Port State Control and our international port security assessment program, an effective Port State Control program in our opinion is paramount to ensuring the security of our ports. Each foreign flag vessel arriving in the United States and U.S. ports will be required to demonstrate that it has fully implemented the security measures of the SOLAS Convention and the ISPS Code. To accomplish this task, the Coast Guard has trained more than 500 inspectors and positioned Title 10 reservists throughout the country to assist our permanent active duty staff.

Foreign flagged ships that cannot provide advance certification that they have implemented a ship's security plan through the

issuance of an International Ship Security Certificate will not be allowed to enter U.S. ports.

As you are well aware, the Coast Guard Authorization Act of 2004 contains a provision that would expressly require foreign vessels to submit security plans to the Coast Guard for review. This provision runs counter to the SOLAS Convention and the ISPS Code and, if enacted, would detract from, we believe, rather than enhance U.S. maritime security. The Coast Guard believes that on-site examination confirming implementation of an approved plan is the only method that verifies that a vessel has proper security measures in place.

Our aggressive Port State Control regime will be coupled with the Coast Guard's interagency international port security assessment program. This involves the state of compliance for foreign importance around the world, and this is required under MTSA. In this effort, representatives of the Department of State, Department of Defense, Customs and Border Protection, TSA and MARAD are assisting the Coast Guard in assessing both the effectiveness of anti-terrorism measures deployed in foreign ports and the foreign flag administration's implementation of the SOLAS amendments and the ISPS Code.

In summary, the MTSA has dramatically raised the security bar with which U.S. and foreign interests must comply. Aggressive implementation is now under way of MTSA, and that is essential if we are to maintain the security of our ports and waterways at acceptable levels.

I would urge the committee's support for the Coast Guard's fiscal year 2005 budget request to maintain our momentum that has already begun that provides for increased capability and capacity directly supporting maritime security. Specifically, the request includes \$101 million in new resources to implement MTSA. It provides for crucial field resources to conduct MTSA and ISPS Code verification examinations and to continue our strong field compliance efforts.

Mr. Chairman, thank you for the opportunity to testify before you today; and we will be pleased to answer any questions that you or the panel members may have. Thank you sir.

Mr. LOBIONDO. Thank you, Admiral, very much.

We are, obviously, by what you can tell from opening statements and just ongoing dialogue, very concerned about not the Coast Guard's technical ability to do this but their practical—your practical ability to do it through a resource and personnel standpoint. You reference the '05 budget request for \$101.7 million for operating funds of implementation. Could you give us just a little bit more of a breakdown of how you intend to use this money? But, more importantly, is this going to be enough or are we going to find out at a hearing in midstream down the line that the request was a good start, but it is just not making ends meet for you?

Admiral HERETH. Sir, we have scrubbed those numbers quite a few times, and we believe that that is an appropriate amount. Obviously, this is a newly developing program, but as best we can speculate, as best we can project, that number will cover the resource needs for this next fiscal year. It will be a continuing need, and we want to emphasize that compliance and development of se-

curity measures, including the good work that is happening at the area committee, is not something we can assume that once we have reached a certain plateau it is done and kind of rest on our laurels. We have to continue to press this issue and make sure that we are outsmarting the bad guys and making sure we continuing to plug these vulnerability gaps and that, in fact, the port community is consistently applying the security measures that are now the required standards.

One of the members commented about the consistency and the presentation of soft targets around the country if only certain ports are hardened, and we would concur fully with that. We think that consistency is a common thread that needs to be applied not just among companies in the waterfront but among States and among countries.

The good news is that we now have this international code and we have MTSA to serve as our bench marks in that regard. So our constant theme has been consistency of security measures, and, to do that, we need a continuing, recurring effort pushing hard on that front until this becomes institutionalized and commonplace, somewhat like the Oil Pollution Act 10 years ago. The initial challenges were difficult, and then finally people got with the program. And, you know, here we are in 2004, and it is a common practice, and we hope—we envision that kind of state 5 or 10 years from now in security. But it is going to take pressure and constant attention to do that, so we would appreciate your budgetary support.

Mr. LOBIONDO. Admiral, on the security plans that are due July 1st, I understand you to say you believe they will all be submitted and approved.

Admiral HERETH. I am more confident on the vessel side than I am on the facilities side. Facilities present much more of a challenge because of the diversity in the maritime mode of transportation and the range of facilities and the fact that our regulations are performance based. That gave people quite a bit of flexibility in designing a program that is customized and deals with risk as it relates to their particular operation at their facility, but that has complicated and made much more complex our review process.

But the good news is all but about 75 facilities have submitted plans that we consider substantial. As I mentioned in the opening statement, about 1,200 of those were fully completed and ready for approval and about 1,800 are still in process; and a large shrug of those 1,800 have been through the mill a couple of times and were very much engaged with the plan submitters to dot the I's and cross the T's.

Again, ensuring that a consistency of approach is taken from facilities from Maine to California, from Washington to Florida is our challenge. But that is why this National Review Center is turning out, we think, to be a very excellent way to do business. It has taken us a while to crank through the plans, and we still have a lot of work to do in the next few weeks, but I think at the end of the pipeline, at the end of the day, by the first of July we are going to be in pretty darn good shape.

From a policy standpoint, we have a few relief valves that will allow us to issue interim approval letters or, per the statute, an authorization to operate; and we will find workarounds so that if peo-

ple, for example, have contracted for a fence but they can't have it installed by the first of July we can try to work with them locally to find a workaround so that we don't have to cease their operation on the first of July when they are, in fact, making good progress.

We believe that most of those plans will be to that stage, and we think that any shutdowns that might be required will be modest in number. Within the next week, we are going to take a ground turn on that number of facilities that do present a concern to us, and we intend to present that to the committee and to Members of Congress to invite their support or provide for their information and their support to reach out to some of those companies that maybe haven't quite gotten the word or quite gotten with the program and submitted something that would be acceptable to us yet. But we again think that that number is going to be somewhat modest; and the impact of those facilities are somewhat modest in scope, also.

Mr. LOBIONDO. Well, this is an area of great concern for us. The intention was July 1st. There really wasn't design flexibility behind this. Beyond that, the idea of letters being issued—I mean, how should we read the impact on security for those plans that aren't completed? If you are finding that you have got plans that have not moved to the level you think they should, I mean, what's going to happen? Will you take action? How are we going to be assured that security is going to be the top priority here?

Admiral HERETH. Security is the top priority. You can be assured that we are actively engaged at several different levels with the facilities, for example, that are in process, both from our national plant center and from our local Captain of the Port; and I can assure you that the standards will be met.

The plan, however, for example, may have some administrative details that need to be more fully addressed like how training is going to be conducted exactly; how exercises and drills will be conducted exactly; roles and responsibilities, are they nailed down? So in some of those cases there are administrative fixes that still might stretch out beyond the first of July but we don't think too much longer beyond that. Any issues that deal directly with security provisions that are substantial in nature must be dealt with in some way, shape or form by the first of July.

Mr. LOBIONDO. Or you will take action.

Admiral HERETH. Or we are taking action.

For instance, if a fence can't be constructed in the meantime, then we will have to work with the facility operator to come up with a scheme for perimeter control like a sentry or a gate guard or some other stopper watch or something like that that covers that particular issue, whether it is perimeter control or access control or about another six or eight different provisions that we consider key to security: communications, identification of roles and responsibilities and such as that.

Mr. LOBIONDO. Do you feel that you are getting the level of cooperation from facilities who are not able to meet the technical deadline to meet the practical security needs that you are laying out?

Admiral HERETH. We do. I think we are getting excellent cooperation. There are some very fine plans that have been submit-

ted and through the system, and the 1,800 plans that are still in process we are getting very favorable response. We are facilitating that whole discussion by providing best practices that we have gleaned out of the review of the good plans already. We are feeding those back into the system, back into people that are still in process. That is helping them through the administrative chore of getting their plan done.

We are essentially holding everyone to a very high standard. I mean, to be honest, the plan submitters, when they first received the discrepancy letter back from the plan centers, sometimes they are very lengthy; and so we get shock and awe: Oh, my God, how am I going to fix all of that? So we try to coach everybody through that, and we provide best practices. We have job aids. We have outreach through telephone calls. We have personal visits that the Captains of the Ports and their unit inspectors have accomplished across the country. We are trying to facilitate this, but we are holding facility operators, for example, and the vessel operators to a very high standard and there is a significant change. But we believe we are making very excellent progress and getting good cooperation.

Mr. LOBIONDO. Thank you.

Mr. Filner.

Mr. FILNER. Thank you, Mr. Chairman.

Thank you, Admiral, for your testimony.

There is a couple of areas that the Congress has expressed its will either through legislation or that has passed or is about to be passed that the Coast Guard keeps struggling with us about, and I just don't understand why you have such a negative sense and, at least in one case, don't seem to be following the law, as you point out in your own testimony, the requirement that this House has passed and in fact insisted upon in an overwhelming vote that followed in our conference with the Senate, that foreign vessels must submit security plans to the Coast Guard; and you keep opposing that.

The Admiral, the Commandant has done other testimony; and I just don't understand why you think this country is going to feel safe with plans approved by foreign governments, whether they be Liberia, Panama or whatever, that you don't, in fact, require, and you don't want that requirement. I understand some of the staffing demands that that may put on you, but, hey, this is post 9/11. We keep saying, get those; and you keep saying, no, we don't want them. I still don't understand.

I will let you say it for the record again. But I hope the Congress passes this provision, and I don't merely hope but I will insist that you follow that provision if it is passed. Do you have any comment on that?

Admiral HERETH. Sure. Yes, sir. I would be glad to comment on that.

Let me begin by saying our intention is to push in the exact same direction that you are. You are concerned about U.S. security, and we are vitally concerned about that same thing. We are trying to rationalize the language in the Act that was very supportive of international engagement with the comment about the plan approval. In our regulations we attempted to deal with that by sug-

gesting that the plan approval process that was set up under the international code was, in fact, negotiated and pushed by the United States government and really, in many ways, parallels the development of MTSA, which started about a year before both the international and MTSA were—

Mr. FILNER. Why are you putting that ISPS Code on such a high level? I mean, it is not a law in the United States. It has not even been ratified, I don't think, by our bodies. I mean, why is that higher than anything else we do?

Admiral HERETH. It is not higher than anything else we do. I am just trying to explain that the provisions of the ISPS Code were, in fact, driven by the United States and, therefore, very much akin to what MTSA has. We believe that the code which was part of the SOLAS Convention was, in fact, ratified by Congress back in the '70's. This is a technical change to that, albeit some would view a significant change; and that is presenting the confusion.

But the process, if I could explain it just for a minute, that gives us some assurance that security in the United States will be improved by this process is as follows: First of all, the flag states must approve the plan. That is the first certification that must happen. Then an auditor that is separate from the flag state must go on board and certify that that plan has, in fact, been approved and implemented on the vessel. Then, thirdly, before the vessel comes to the United States, the master, through our notice of arrival regulations, must provide us certification that the plan—they have a plan, it has been implemented, and they have a duly authorized certificate, an International Ship Security Certificate, on board and valid. So those three steps have to occur before the vessel can even come to a U.S. port, and that is where our Port State Control program then kicks in.

Mr. FILNER. All right. We are going to just keep arguing, but none of those three steps involve U.S. certification. I mean—

Admiral HERETH. But the Port State Control program, the last program—

Mr. FILNER. I understand, and I hope we are going to insist on this in our legislation.

Another piece of legislation we passed, or part of the MTSA, requires all the vessels operating in the navigable waters of the country to have transponders to make navigation very—more efficient. Your regulations only require those who are operating the so-called VTS, vehicle traffic service, areas. Why are your regulations not in accordance with the law?

Admiral HERETH. We took that first step simply, and it is just a first step, because those are the only areas where we can in fact receive the AIS signals. To gain the security benefit, you need a shore side reception facility. So—a shore side communication station. So we are in the process of expanding that initiative to include and address the rest of the country; and further regulatory projects will expand to comply with MTSA in terms of applicability, down to 65 feet, and including all vessels down to 65 feet and tow boats down to 26 feet. So our intention is to fully comply with the statute. It is just stretched out a little bit, exacerbated to some degree by the lack of a shore side infrastructure, also by the cost projections.

Mr. FILNER. OK. I am pleased it is your intention to follow the law, but I would like you to tell the Commandant that we insist that the law be followed. You know, this was done for different reasons than you may have suggested in your answer, but the fact of the matter is that the law requires it, and you haven't complied with it as yet. If you want to give us a schedule for complying with it, I would like to see that.

Mr. Chairman, I know—let me just quickly ask the Admiral. In your testimony, under port security, you said that the maritime security committees are comprised of Federal, State and local agencies and members of the local maritime industry. When the Commandant was here talking about that, we gently suggested that he include people who are actually working day to day on the docks in these committees; and he said, yes, they will.

Again, I don't know if you purposely—when you say "industry," does that mean the people working there, or—I wish you would include very explicitly our working people who, to me, are the experts on what is going on there and should be involved in every phase of the development of these plans. So, I mean, is that assumed here? And if it is, I would like you to put it in writing next time. Every time it comes up, we mention it here, and it is still—nobody seems to think that is important enough to explicitly say the working people on the docks.

Admiral HERETH. Sir, we agree 100 percent with you. It is explicitly noted in our policy guidance that has been published for several months now, probably 6 months, that deals with the area committees. It does suggest that the membership be inclusive, rather than exclusive; and it does specifically highlight labor and other organizations that directly operate either vessels or operate on the waterfront.

Mr. FILNER. OK. I just would like to see it in your language.

Lastly, since the Admiral won't be here—I don't know if he is going to stay for the next panel. You have heard this concern from Members up here and the people who are going to testify later on the empty container situation. Would you like to comment on that now?

Admiral HERETH. Sure. Both issues are being addressed or have been addressed by the container working groups that are chartered and led and participated on by a number of different agencies and do have industry representatives on them, as I recall. Industry—

Mr. FILNER. Hold on. Hold on. Hold on. I guess you are not going to agree with me, which is your right. But I just said, every time you say "industry," do you mean working people? And I asked you to say explicitly, and you just said it again, you know, the industry. Do you mean the people who are working on the, you know, day to day, unloading and loading?

Admiral HERETH. Yes. Yes. We view management and labor as part of the industry.

Mr. FILNER. I am not sure that everybody takes that at the use of the word.

Mr. LOBIONDO. Mr. Filner, with all due respect, I think I have given you a lot of leeway here. If you have a direct question you want to—the Admiral is trying to answer. He is obviously not an-

swering the way you would like him to answer. You know, if you have any further—

Mr. FILNER. Well, if you don't like the way I ask the questions—

Mr. LOBIONDO. Well, I just think a certain amount of respect without laughing at the Admiral is due.

Mr. FILNER. I have respect for him. I am asking for the respect that—I just went through a definition of terms, and he ignored me. So I just want to point out that he ignored me. And if he, you know, if—that is OK, if he wants to. I am just going to point it out, and I am going to point it out whether anybody likes it or not.

Admiral HERETH. I apologize, sir. Let me just directly respond. The empties should be checked as they cross a threshold entering a facility and seals should be checked. Seals and tampering of a container is a concern. That is one of the provisions that, along with about a half dozen other provisions, are required to be checked upon containers and cargo entering a facility. We, of course, consider Customs as the lead on cargo security and the supply chain integrity, but, nevertheless, collaborated with Customs in the production of our regulations and did embed about a half dozen requirements that attached to containers, principally related to tampering. In subsequent policy statements, both by national work groups chaired by Customs and Coast Guard policy statements, we do address the empties and we do address seals, checking seals. Both are provisions that make a great deal of sense to us.

Mr. FILNER. I hope you will stay or have somebody stay and hear the next panel with that testimony.

Mr. LOBIONDO. Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman.

Mr. Chairman, I have three meetings being conducted simultaneously, hence my belated arrival, and I apologize to you for that.

Admiral, good to have you with us.

The chairman examined one question pretty thoroughly with you that I had. Let me try this one; and you may have touched on this, Admiral, prior to my arrival.

The MTSA requires assessment of foreign ports and intervention by the United States when a foreign port is not maintaining effective anti-terrorism measures; and I am told that the Coast Guard has established an international port security program to oversee the conduct of these assessments in the Coast Guard's ports security training program. Let me put a two part question to you, Admiral.

Very briefly, tell us how the implementation of the international port security plays out, A, and, B, which foreign ports have had their security assessment completed and what is the schedule for completing the remaining foreign port assessments?

Admiral HERETH. Yes, sir. This is a challenging but a very effective piece of MTSA, we believe, and the answer to that is encouraging and requires us to do outreach and assess effectiveness measures around the world with our trading partners. The U.S. trades with about 145 nations; and, to begin the program, we are reaching out to those countries through cables, through networks, through maritime meetings and so forth to engage with them and try to un-

derstand their policies related to the implementation of the new international code, which very much parallels MTSA.

We think that is a—MTSA is a benchmark. It is mirrored in the international code, and so we think therefore that is a relevant benchmark to use. So we are pushing that out to everybody.

We are then comparing their policies against our policies, and we will have a team of auditors that will be collocated here in D.C. so we can liaise with other—and partner with our other agencies. And teams of auditors will move around the world, about 45 countries a year, when we are at full operating strength to assess the implementation procedures of the international code and the effectiveness of those deployed at local ports.

Now, with 3,000 ports around the world, we probably won't be able to do each and every single port, but through a network of intelligence and information and a variety of inputs to our system we will be tracking the expected compliance or the expected implementation of security measures at all those ports. We will periodically put out port security advisories and advise vessel operators on the precautions to take when they go to certain ports that we believe to be noncompliant, and as we perceive that vessels are noncompliant we will tighten up the pressure through initial administrative measures such as correspondences, correspondence and demarches; and then we will escalate to offshore boardings and other things that might delay vessels and transiting and bringing cargo from certain ports that might be noncompliant.

And then finally, in an interagency forum, recommend that trade be ceased with that country because they haven't afforded us appropriate security measures.

So it is a somewhat developing process, but we have a number of people assigned to the program right now. We expect 12 this summer and probably about 36 all told by next summer involved in the program.

Mr. COBLE. And how many are in full compliance now, Admiral?

Admiral HERETH. We won't know that, sir, until the 1st of July, when they report their international compliance. And then we will start tracking that very closely. We will use IMO. We will use information from intelligence. We use information from DOD, we will use information from State Department. The regional security officers will use information from ship charters and brokers and operators, from a variety of inputs. And we have worked with Sandia Labs to develop a database to track all this information for the ports around the world.

Mr. COBLE. Mr. Chairman, I would like to request that the Admiral or some appropriate party with the Coast Guard advise us as to when that information has been resolved.

Admiral HERETH. Sure.

Mr. LOBIONDO. Is that acceptable?

Admiral HERETH. Yes, sir. I would be glad to.

Mr. COBLE. Thank you, Admiral.

Thank you, Mr. Chairman.

Mr. LOBIONDO. Mr. DeFazio.

Mr. DEFazio. Thank you, Mr. Chairman.

Admiral, unfortunately, the pages aren't numbered, but on the third to the last page of your testimony at the bottom you comment

that H.R. 2443, the Coast Guard Authorization Act of 2004 contains a provision that would expressly require foreign vessels to submit security plans to the Coast Guard for review. The provision runs counter to SOLAS and ISPS code and, if enacted, would detract from rather than enhance maritime security.

And then you go on to say that boarding is preferable.

What percentage of the foreign vessels does the Coast Guard board on an annual basis that are coming into U.S. waters?

Admiral HERETH. Well, sir, we mobilized quite the training program of workforce: 508 people have been deployed to the field offices expressly for the purposes of MTSA implementation. We have trained over 500 people on ports, deck control inspections and vessel and facility inspections. We intend to board every single vessel on their first trip to the United States after the first of July. We are geared up and ready to do that.

All told, there are about 8,000 vessels that make 50,000 port calls—distinct vessels, 8,000 vessels, distinct vessels that made 50,000 port calls a year in the United States. When you do the math, it is about 160 or so vessels that call on U.S. Ports every day, and we are geared up to take that volume and deal with it. And so that the first time a vessel visits, we will in fact examine the vessel's implementation of the new international code and make sure that we feel that they have actually implemented a security code and have robust security measures.

Mr. DEFAZIO. So every vessel on first visit after July 1? That is good. That is ambitious. I congratulate you on that. At what point are we going to visit them? At 12 miles or in the port?

Admiral HERETH. We screen vessels on three parameters. And if they screen and cause us—we see all the vessels in transit as bundles of risk. And so we are looking at risk from safety, environmental protection, and now security. So we have several different risk matrixes that we go through each vessel that comes to the United States. And, of course, we use the time period, the 96 hours, to run that information and vet that information.

Mr. DEFAZIO. 96 hour notification?

Admiral HERETH. Yes, sir. And in cases where we are concerned, from a security standpoint, we will conduct the boarding offshore. If we don't have concerns and we have seen the vessel and they are a frequent caller, then we will allow them to come to the dock to do that first boarding. But we are very much in the trust-but-verify mode.

As I mentioned before, there are several screens that have to happen before a vessel can even get to us. Several people have to certify that in fact they have implemented security plans in an appropriate fashion, and we are going to be out there checking in a very aggressive way the fact that they have in fact implemented those plans and people know enough about them to talk about them. We are going to be asking the master and crew members lots of questions. And of course, as you know, if they fail to answer those questions properly, that is clear grounds, and we will follow up and potentially control the vessel's movement or deny entry or send them out of the port.

Mr. DEFAZIO. And then on a recurring basis, who will be—will it be random? Will it be targeted and random? Will it just be tar-

geted from the watch list? Or how are you going to do it on a recurring basis?

Admiral HERETH. It will be targeted and random. We believe a random piece is appropriate for any security program. But it will also be targeted. Targeting, we think, gives us the appropriate focus. It also surfaces, and we are going to—we will have specific information in our data base about flag states, for example, on the foreign fleet, recognized security organizations, class, societies, operators, and the history of the vessel. So we are looking at lots of detail that—any of those details add up to points. And if you get to a certain risk factor, it triggers an offshore boarding, for example, or more—a greater degree of frequency or follow-up exams and such as that. So it is going to be a targeted process. We think that is the appropriate way to deal with any form of risk, whether it is safety, environmental protection, or security.

Last year, I believe, of the 50,000 arrivals, we conducted about 12,000 to 15,000 boardings. We expect that number to go up significantly this year, but that is the numbers that we are talking about.

Mr. DEFAZIO. And you can, do you have adequate budget and staff resources, personnel resources to do this at this point?

Admiral HERETH. We believe we do, sir. Yes, sir.

Mr. DEFAZIO. OK. Thank you.

Mr. Chairman, I would just like to in advance apologize. I will have to go to a different briefing on aviation security and miss the second panel, not out of lack of interest.

Mr. LOBIONDO. Thank you for being here.

Mr. Simmons.

Mr. SIMMONS. Thank you, Mr. Chairman.

This week, we were commemorating the D-Day landing, and it took me back to a little bit of a European history. The national line, which the French built after World War I to prevent the Germans from invading France, again, as I recall, they rode around the line through Belgium in bicycles. So that investment was a waste of money, essentially.

World War II, the Atlantic wall, Rommel referred to it as impregnable, and yet three out of the four beaches that were hit on D-Day, the defenses were breached within an hour. I think the fourth beach took 24 hours.

And so when I review the massive bureaucratic challenge of securing our 361 ports, when I consider that some facilities, such as commercial fishing fueling facilities are exempt, when I look at the massive effort to secure our commercial vessels but I realize the fishing boats are exempt from many of these provisions, I try to think like a terrorist. And I try to think, how much money are we going to be spending and how effective is that going to be with all of the planning and all of the bureaucratic hurdles that we are creating? And yet, perhaps a terrorist cell operating in an unmonitored fishing boat supplied in a port that is not covered could very easily go into one of our major ports and create a heck of a lot of havoc. So that leads me to my question.

The Coast Guard is now a member of the United States intelligence community. Presumably you are plugged into that system. Given all of the other things that you have been working on, to what extent is the Coast Guard attempting to think like a terror-

ist? To what extent is the Coast Guard accessing information that might provide a lead on a likely attack? To what extent are we attempting or are we trying to focus our interest as opposed to dealing with this, this massive challenge of securing every port and every ship and working with every country? To what extent do you have people that are focusing your attention on what the real threat may be in a specific time scenario?

Admiral HERETH. A great—sir, we have a great deal of focus on that. We are partnered with the Navy out at the National Maritime Intelligence Center. There are 1,200 Navy folks and 125 Coast Guard folks that are focused—their principle role in life is to search out and gain intelligence about any vessels coming towards the United States that might present a risk to us or a threat to us.

And to supplement that, we have also created two fusion centers, one on each coast that are joint interagency operations to again focus regionally on any threats that might present, using the intelligence developed by the community and any regionally or locally based information to supplement concerns, and so we have a better and fuller knowledge about everything that is moving on the water.

This is in the context of the development of an initiative we have been calling the Maritime to Main Awareness Initiative, which is again a multi-agency effort that needs to address exactly what you are getting at, and that is knowledge of all vessels coming from foreign that may present a risk to us, all the way from the small recreational craft that comes from Canada or from the Caribbean up to the large commercial vessel. We need to know about all of it. We need to understand who is on it and where their intended course is and why they are coming to the United States.

We are in the process of working at very high levels on the interagency, along with our brother agencies within DHS, CBV for example to talk about the best way to require not only people to report information but to acquire position information and track information about all vessels coming in our direction. And not only to acquire that information in a confused state, but then to build it into what we are calling a common an operational picture which can be deployed to Coast Guard units and others in the maritime community that have a need to know about that kind of information. And we envision that not only being practical but then divided into an unclassified and a classified version so that we can share it with anybody in high levels of government that might be working from an intelligence standpoint and dealing with classified information so that we can move information around to those that have a need to know so that we can focus our efforts on the maritime mode itself. But we have to gain an understanding of the movements of everybody out there. I think that is what you are getting at. It is a very critical aspect of this, and it is well under way, great progress is—there is great potential to do some good things.

There is lots of information. There are a lot of sensors. There are lots of people engaged in the collection of information. It is packaging that up in a sensible product that can be shared and operationalized that is the challenge. And we have a directorate that is now focused on that specifically.

Mr. SIMMONS. Mr. Chairman, one 10-second question as a follow-on?

Does that involve any or all of the 60 countries with whom we are working as well?

Admiral HERETH. It involves international engagement to some degree, to the degree that they can provide information to us. But initially it is mostly U.S. centric.

Mr. SIMMONS. Thank you. Thank you, Mr. Chairman.

Mr. LOBIONDO. Ms. Millender-McDonald.

Ms. MILLENDER-MCDONALD. Thank you, Mr. Chairman. And thank you again so much for holding this hearing.

Rear Admiral, I have some concerns about the plans on connecting the terminal operators security plans with the long-range plan for the ports of Los Angeles and Long Beach, too. That coordination, how does the role of the long shore persons play into this and port officials and the community in the terminal operators security plans?

Admiral HERETH. ILWU is part of the discussions—and other labor unions are part of the discussions on the area maritime security committee that has been in existence down in Southern California now for some time. It preceded 9/11 actually as a port security committee, subcommittee as part of the harbor safety committee. It has now been—you know, it is a much more robust and active committee now, and it does have a variety of members on the security committee including labor. They are key members of the whole discussion about security, in our opinion.

As pointed out by the other members, they are out there working every day. They have great insight to the movement of cargo, potential vulnerabilities and gaps that need to be plugged. And so when I was captain of the port out in San Francisco, we often consulted with and visited with members of labor to talk about their issues and what their perspective is on the movement of cargo, on security for facility, on security about vessels. So it is a key part of the discussion. We want to make sure that all stakeholders are around the table when port security discussions happen.

Ms. MILLENDER-MCDONALD. You know, if terminal operators are going to each have their security plans—and that is my understanding, might be wrong—how do you coordinate all of these to get them more uniformed? And if that will be a thing that can be done by July 1st, when you have the date sets for such a coordination?

Admiral HERETH. Sure. The way it is happening is all those plans to back to a national plan review center. We have hired a contractor. We have about close to 150 people involved in that effort looking at all plans from all around the country. We are doing that so that we can ensure consistency from terminal to terminal, because we don't want to put anybody at a competitive disadvantage simply because they went through a review process that was slightly different. So that consistency is very important along the waterfront. And from company to company, I think we will have that consistency. They are all reviewed and approved according to the same exact standards.

Now, the coordination that occurs is at the area committee level, where the captain of the port, now designated the Federal Mari-

time Security Coordinator, working with this area committee, then takes notice of the plans that are in place and other infrastructure within a port that needs security measures attached to it, such as bridges, tunnels, recreational and tourist waterfront kind of locations, and all those things need to be addressed. And that is what we felt the area maritime security committee was such a powerful way in which to bring people together to talk about security in their back yard. And then they can take notice of the regulated facilities and then try to deal with the rest of the infrastructure and the rest of the operations in the port. But it is all supposed to be coordinated and addressed within the context of that area maritime security plan.

Ms. MILLENDER-MCDONALD. What are the examples of ongoing operations and maintenance costs, and who should bear these costs?

Admiral HERETH. Well, we believe costs are certainly a challenge, and we have heard a lot of comments about that in our regulatory process. As was mentioned by the Chairman, the—I think it is \$1.5 billion the first year, \$7.5 billion over 10 years, not significant—but it is almost something we can't not do. The costs and the value added by the Maritime Transportation System, Southern California being an extraordinary example, New York being another extraordinary example, is huge to the U.S. economy, to our prosperity and quality of life. And were we to sustain an incident in a port and, you know, have to shut down some other ports, the economic impact would be dramatic.

And so it is something we have to move ahead on. And the concept of shared responsibility I think is appropriate. We believe that it is very appropriate. The owners of the infrastructure around the United States are mostly private entities, and therefore they own the infrastructure. They profit from that infrastructure, and they probably deserve to share in the responsibilities to protect that infrastructure. The U.S. Government through DHS and other agencies is doing lots, spending lots of money to protect infrastructure all over the country. And so we think a shared responsibility is a principle that is a reasonable proposition.

Ms. MILLENDER-MCDONALD. Thank you, Mr. Chairman.

Mr. LOBIONDO. Mr. Baker. Thank you for joining us today.

Mr. BAKER. Thank you, Mr. Chairman, for calling this hearing. I am most appreciative for your focus on this important subject matter.

Admiral, I just want to express my appreciation for the professionalism of the folks down in the New Orleans office. They do a really fine job with the limited resources, given the fact, as I understand it, they have the largest surveillance reach of any Coast Guard division in the country.

Coupled with the fact that New Orleans and Baton Rouge ports combined represent probably the largest, by bulk, cargo for certain, activity centers in the Nation, I have extreme concerns.

The Federal Maritime Administration was given the responsibility to administer a grant program. In year one, Baton Rouge received no consideration, although some private interests even got money for various security upgrades. In round two, we got a little money which was enabling the port to actually acquire some cam-

eras so we could record in real-time the disaster as it occurs. We still don't have any response capability on the river except for a Boston Whaler on a trailer, which is a fine boat; I understand it has a lifetime transferable warranty. But in holding it up against a 700 or 800 ton vessel that takes a mile to stop with the most intensive petrochemical-chemical reach anywhere in the world, with limited rail crossings across the Mississippi River, any one of which if lost has a national and international economic consequence—with somebody simply sinking a tanker in the deep water canal, which we have to dredge to keep open to commerce, I can't understand why we haven't had a more significant on-the-ground, on-the-river, physical response.

I have been in pursuit for three years, I have actually—at Coast Guard station, and would vote for anything that would enable that to happen. Realizing that wasn't in the scope of reality, I was in pursuit of just a boat. The city would build a dock. Private companies would put up money. There is no lack of willingness on the local communities' contribution to make this happen.

Now, I started my remarks complimenting the New Orleans office, and I am sincere in that. I have the belief that they have made every legitimate effort to provide for an upgrade of their capacity, and I have talked to everybody up the command chain I can get an opportunity to visit with. And I don't in any way mean any disrespect to you, because I know of the enormity of your task with the limited resources Congress gives you, with our continuing insistence on you doing more.

My reason for my comments is just to request some ability to communicate with the right sets of people to come to an evaluation of the current risk in light of the exposure that we face from the coast to Baton Rouge and a plan. Not even—I am not looking for somebody to say we are going to put a boat on the water. I am just looking for something to take back to the mayor and the plant managers and the people who have huge investments along that reach of river.

We had just a minor incident at Southern University about 3 years ago. We had a barge tow get out of control, we had a chemical release. There were about 200 people adversely affected by that small incidental event. If there were devious minds in the world intent on causing economic and personal injury, it wouldn't take me long to think of the targets that are now susceptible really to unintercepted risk in pursuing that goal.

I am really respectfully asking for some—you tell me what we need to do and I assure you, sir, we will stand at your side to completion.

Admiral HERETH. OK, sir. Let me just offer a couple of comments. One is, we would be glad to sit down with you and brief you on our area Maritime security plan, which has just been developed. The purpose of that plan, now regulatory-required, is to address area security throughout that zone. So we would be glad to brief you on the details of that plan at your convenience.

I also would offer that one of our new Maritime safety and security teams is being commissioned and will be positioned down in the New Orleans area within this next fiscal year.

And, thirdly, as you were talking about boat capabilities and needs for boat capabilities, there are State plans and there are significant grant monies available through ODP. And we would be glad to work with you on trying to foster the development of a proposal from the state or local forces through the Office of Domestic Preparedness and DHS. We have done that on a couple of occasions with some other folks, and certainly the local—State and local police and law enforcement efforts can be bolstered by the maritime application of boats and other equipment that might be suitable for Maritime.

Mr. BAKER. One more observation and I will yield back my time, Mr. Chairman.

The view has been, if we are doing our work in New Orleans, there is really no need to do it again in Baton Rouge. The river is a fan. The top of the fan is the problem. And anybody can get in that river at any point and go south. We drain every drop of water between the Rocky Mountains and the Appalachians. Two-thirds of the Nation flows past the front door of Baton Rouge. I am not worried about what comes to us up the river from New Orleans; I am worried what comes to us down the river from two-thirds of the Nation. And just, please, have somebody do a new assessment. I think we are missing some vulnerabilities. I thank you very much, sir.

I yield back, Mr. Chairman.

Mr. LOBIONDO. Thank you, Mr. Baker.

Admiral, thank you very much. We will now take a brief break and move to the second panel.

[Recess.]

Mr. LOBIONDO. Thank you very much. We would like to welcome our second panel. Panelist Mr. Noel Cunningham, the director of operations. Thank you very much for joining us.

And Mr. Michael Mitre. Is that the correct pronunciation?

Mr. MITRE. Mitre.

Mr. LOBIONDO. Excuse me—who is the coast port security director for the International Longshoreman and Warehouse Union.

Gentlemen, thank you for being here.

TESTIMONY OF NOEL CUNNINGHAM, DIRECTOR OF OPERATIONS, PORT OF LOS ANGELES; MICHAEL MITRE, COAST PORT SECURITY DIRECTOR, INTERNATIONAL LONGSHORE AND WAREHOUSE UNION

Mr. LOBIONDO. Mr. Cunningham, please proceed.

Mr. CUNNINGHAM. Good morning, Mr. Chairman, and Members of the subcommittee. My name is Noel Cunningham. I am director of operations and emergency management for the Port of Los Angeles.

Today I am speaking for the American Association of Port Authorities, AAPA, U.S. Delegation, and for the San Pedro Bay Ports of Los Angeles and Long Beach, commonly referred to as the Los Angeles and Long Beach Port Complex.

AAPA was founded in 1912, and it represents 150 public port authorities throughout the United States, Canada, Latin America, and the Caribbean.

Port security is a top priority for AAPA member ports. Our concerns focus on complying with the new regulatory requirements and on increased Federal funding to improve port security infrastructure, and to meet the increased demands placed on our Nation's ports to safeguard our borders while continuing to keep the flow of cargo and international trade moving forward. My testimony will review the port industry's experiences in implementing the Maritime Transportation Security Act of 2002, MTSA, as well as speak to H.R. 3712, the U.S. Seaport Multiyear Security Enhancement Act, sponsored by Honorable Representative Juanita Millender-McDonald, and H.R. 2193, the Port Security Improvement Act, sponsored by the Honorable Representative Doug Ose.

Both of these bills focus on AAPA's top priority and the most important challenge currently facing the U.S. port industry, and that is obtaining sufficient Federal financial assistance to fund port security infrastructure projects that will address all of the vulnerabilities ports face.

As you are aware, Mr. Chairman, more than 95 percent of the U.S. overseas trade moves through our seaports. As a premier U.S. port of entry for cargo, the Port of Los Angeles is the 7th largest container port in the world, and number one in this country. Together with the Port of Long Beach, we handle more than 42 percent of the containerized commerce imported into the United States.

The L.A.-Long Beach port complex is the third busiest port in the world. Furthermore, Los Angeles is the fourth busiest cruise port west of the Mississippi, managing movements of more than 1 million passengers.

Due to the time element, Mr. Chairman, I will highlight and not read the complete context due to the time consideration for the panel members time.

Mr. LOBIONDO. Thank you, Mr. Cunningham. And without objection, your full statement will be submitted for the record.

Mr. CUNNINGHAM. Thank you, sir.

Following the tragic events on the attack on our Nation, Congress enacted MTSA, and the Coast Guard rapidly developed regulations to establish security standards for the port facilities. These regulations required the terminal operators to submit their facilities' security plans by December 31st, 2003. The deadline for implementation is July 1, 2004. This aggressive schedule has posed significant challenges for both the Coast Guard and Port Authorities.

For an example, the Coast Guard—the MTSA envisioned the Coast Guard conducting assessments that would be the basis for our facilities security plans. But due to the tight deadline, the burden was placed upon individual facilities. The regulations also allow some flexibility through alternative security plans, but many of these plans are still under negotiations with the Coast Guard. The tight deadline leaves little room to negotiate any changes needed before July 1.

The role of U.S. Port Authorities has changed significantly since 9/11. Previously, port authorities served to manage the safe and efficient movement of passengers and cargo, and to direct the growth of the port to accommodate the Nation's maritime transportation and economic strength. But as we moved into what will truly be

the new normalcy, port authorities will take on an important role in the security of their ports and of commerce that supports the American economy.

I would like to highlight several of the port security initiatives, and I will quickly summarize those initiatives without going into great detail, again because of time.

Several of the initiatives are very important, but one I would like to speak to this day is the transportation worker identification card. This particular card is a pilot project being managed by Transportation Security Administration. And this program has entered its third phase, and that would include testing equipment and processes. We consider that a Federal prevention program is really the backbone for our ports' security. It may be a major part of the solution to our security needs. We fully support the transportation workers identification program, and we really ask Congress to support this, and we encourage Congress to provide adequate funding for this program. This program is now in an experimental stage with the ports of L.A., Long Beach, Delaware River, and state of Florida.

Another important initiative that I want to speak to is the Joint Container Inspection Facility. And this particular security program is one that gets to the heart of some of the questions that were posed to the admiral dealing with empties, dealing with checking seals.

The Joint Container Inspection Facility, however, the main focus of this particular facility would be inspect those containers that are coming in from points overseas. We are processing some 12 million containers through our port complex coming from all places overseas, and many of these locations are of course coming from countries that are hostile to our culture.

The container inspection facility will have an array of sophisticated container screening capabilities for use by our Customs and Border protection unit as well as other law enforcement agencies, and it will provide a means to efficiently screen a greater number of containers using the most effective technologies available.

I also want to comment in regards to Operation Safe Commerce. Operation Safe Commerce is an experimental program designed by Congress to support testing technologies as well as processes in the supply chain. It is within this particular program that the Port has done some checking on empty containers. I would like to comment at this time that this project Operation Safe Commerce, the sole purpose of this project of course is to secure containers from the port of origin, tracking those containers from the point of origin through the ports of New York, New Jersey, New York—excuse me, Long Beach, Los Angeles, and Seattle, Tacoma. We would test technologies, test the systems and the various methodologies, using examining the best practices in order to find solutions in securing our supply chain.

The port also has, both Port of L.A. and Long Beach have also worked very closely under this project with our dock workers union in submitting Federal grants in order to do studies and examine some of the issues associated with empty containers. Some 10 to 15 percent of the containers that are unloaded for return are coming back into the port from the heartland are empty containers.

The Operation Safe Commerce also examines the seals that are attached to the containers. I agree with the concept that containers are a critical element of port security. Either the containers must be inspected manually, by inspections, or with some type of mechanical seal or device. This is critical to a complete port security program.

The primary source of funding for port security projects has been Federal grants administered by Department of Homeland Security. The first three rounds of these grants would combine operation—Office of Domestic Preparedness money have distributed \$516 million to ports and facilities nationwide. The current fourth round will distribute an additional \$49.5 million. The Department of Homeland Security awarded these grants through a competitive process to individual port facilities to help them attain compliance with MTSA regulations and to port authorities to fund major security infrastructure projects. Some of those projects I just named—the JCIF was one of those projects—is included for Federal funding.

In the first three rounds of grant awards, DHS funded less than 20 percent of the submit applications. The Maritime Transportation Security Act authorizes a grant program to help pay for security enhancements. The current program has been moved three times, and the President recently requested only \$46 million with no allowance for personnel costs for the program. This allocation represents only 4 percent of the first year of cost of complying with MTSA. The grant program must have higher visibility and resources within DHS. The Coast Guard estimates the first-year cost to be \$1.25 million. AAPA has called for \$400 million in funds during fiscal year 2005.

Of significant concerns to the port authorities are the varying degrees of security systems that are in place. Of the 27 regulated facilities within the Port of Los Angeles, Long Beach has also a like number, 12 were awarded grant funds from the first three rounds of grants. These facilities will be installing highly sophisticated state-of-the-art security systems. We are seeing that the facilities that have not received grant funds are seeking MTSA compliance through lower cost options. Therein could lie some of our security problems.

Representative Juanita Millender-McDonald's bill, H.R. 3712, authorizes a grant program within the Department of Homeland Security that calls for \$800 million a year in grants over 5 years. This figure is based upon cost estimates projected by the Coast Guard to accomplish port security throughout the United States. While the MTSA authorized a grant program, it was not within Department of Homeland Security and had no funding amount authorized. Furthermore, the legislation provides for a multi-year funding through a letter of intent for long-range projects requiring more than a year to complete. Again, I repeat, the projects such as the Joint Container Inspection Facility are estimated to be approximately \$54 million. A major advantage to this approach is to guarantee a funding before a port undertakes such a project.

I would just like to just take the time and use it as an example the competitive nature of grants.

Mr. LOBIONDO. Excuse me, Mr. Cunningham. If I could ask you, please, we are well into the 12- or 13-minute mark. I want you to finish, but if you could try to condense it a little bit.

Mr. CUNNINGHAM. Yes, sir. I would like to comment that AAPA supports H.R. 3712 as legislation that will help ports more efficiently achieve large security projects.

Similarly, Congressman Ose's legislation, H.R. 2193, would dedicate a portion, over \$16 billion, in Customs duties collected annually through maritime transportation at each port and redirect those dollars back to respective ports for security infrastructure improvements. L.A., Long Beach, pays some \$12 million a day in Customs duties, gives you an example of the amount of monies available at this particular site. We encourage you to strongly support this legislation.

In addition, we urge your continued support of current Federal initiatives that will be critical to creating a strong security system for U.S. ports, such as the Transportation Workers Identification Card, Operation Safe Commerce, Joint Container Inspection Facility and Security Training.

This concludes my testimony. And I look forward to answer any questions.

Mr. LOBIONDO. Thank you.

Mr. Mitre.

Mr. MITRE. I would like to thank you for inviting me here, Mr. Chairman, Ranking Member Filner, and Congressman Millender-McDonald.

My name is Michael Mitre. I live and I work in the Port of Los Angeles and Long Beach, which represents the busiest seaports in America.

As director of security for the ILWU, I have had the privilege to provide testimony previously to the Senate and advice to the Coast Guard and other Federal agencies concerning matters on port security. Today, I am not going to read my whole statement. I would like to enter it into the record, if I could, for matter of brevity.

Mr. LOBIONDO. Without objection.

Mr. MITRE. On March 14th, terrorists entering the Port of Ashdod in Israel subsequently killed 10 dock workers, concealed into—when they went in, concealed in a cargo container.

On April 28th of this year, a container exploded at the TRAPAC container facility in the Port of Los Angeles. This was not a terrorist act, but it was an accident. This accident I am going to briefly go over. And one thing this accident did was it really showed some of the gaps and loopholes in some of the security problems we are having.

What happened was that the incident in L.A. was caused by an export container, not an import container, that had been allowed entry under conditions contrary to and in violation of some of the regulations as well as by established practice. This was a container that contained a private vehicle with a leaking gas tank and over 900 bottles of LPG butane gas. It arrived at the entry in-gate without the legally required hazmat placards. It should have arrived with corresponding documentation detailing the hazardous contents, and it didn't.

The container door should have been locked with a standard industry seal, and it wasn't. And upon entering into the terminal, the container should have been segregated from other cargo, and it wasn't. In fact, no placards were displayed, a violation of the DOT over-the-road regs, as well as a violation of terminal and facility regulation and practice. Upon entry into the terminal, the documentation simply described the container's contents as FEK, that is freight of all kinds.

The important thing is, this container was never required to show what the contents were. This is a very important point. Export cargo is not treated the same way as import cargo. We have cargo coming in through the gates that is not having to show what the contents are. And this is a huge security loophole. This generic cargo description is frequently used, and it is so generic that, like I said, it is no longer allowed to be used in conjunction with import cargo. While the container doors had a seal, they also had a metal padlock, which is contrary to industry practice, and something that usually traditionally sets off alarm bells. The hazmat container was not segregated from other cargo. Like I said, it was allowed to sit inside the facility for 3 days leaking flammable gas until the explosion. This container exploded as it was being taken to the ship.

Fortunately, it was not next to the ship; 2 or 3 minutes later, it would have been right next to the ship where dock workers would have been immediately behind it. They unlocked the pins on the doors where the container actually sits on the chassis.

What happened when it exploded is the back doors blew open, and fortunately, the butane bottles blew out the back unexploded. It was just the fumes in the gas tank that seemed to go. If this would have been loaded onto the vessel, it was found out later that the planners themselves didn't know what was in the can either. So they planned the can to go on the vessel, and they put it directly beneath another hazmat can that had kerosene, which is listed as a 5.1 hazmat cargo. If it would have been constricted so the doors wouldn't have blown open with containers all the way around it, the butane could have gone up, the kerosene could have gone up, and the resulting explosion could have done major damage to ship as well as killed or injured either the crew or the dock workers.

One of the major problems and one that I think is very important here is this is an automated gate system now. They have replaced the clerk at the entry gate with this new automated system. The automated system simply photographs the container number, sends that number to remote located personnel. The screen that that remotely located person sees doesn't show the contents of the container; neither does it show flammable or hazardous contents.

The way it used to be was, when there was a person at that gate, they had a truckers bill of lading or interchange. It would almost always show either what the contents were or if it was flammable or hazardous. In the case if it came in without placards, that was the time that the terminal personnel would tell them, "Go get some placards and put it on because you may be in violation of over the road, but in the terminal you have got to put it on."

This is one of the problems with some of our new automated systems, especially at the entry gates: They are showing less documentation information than they ever have before. And this could

be an immense problem, especially considering now some of the models that we have seen, some of the think tanks and the analysts, that a lot of the terrorists that are planning to do things here in the United States are located here now.

There are terrorist cells that are located here, they have well-funded and they have good intelligence. We have already seen what can happen when people can stay here, and they have the intelligence beforehand. And for us, port security equates to worker safety. In the event of a terrorist incident, the dock workers are going to be the first ones who are going to be killed or injured. Most dock workers live within close proximity of the port and certainly within the impact radius of any incident or an explosion, be it chemical, biological, or radioactive. This is our families, our children, our homes. It is in our own best interests to make sure that the ports are secure.

One of the big problems that we have is access control procedures. Truckers coming into the ports, one of the big problems—and this is covered in the regulations very clearly. Truckers are the largest single occupational group that work on the terminals today. Access is granted with little authenticity of identity and virtually no inspection of the sleeper cabs of the truck. When a trucker comes in, he may have to show an ID, but no one ever looks inside the truck. Many truckers, when they come in have friends or family that ride with them in the trucks, their IDs are never checked.

With this TWIC, the Transportation Worker Identification program that Noel was talking about, the ILW insists that this must include full trucker compliance. Truckers have to be in full compliance, as with any TWIK program.

Another problem is complete documentation of cargo that must be confirmed before it enters the facility. Right now, cargo is able to be entered without full documentation. And what happens is they are able to send documentation later on, and they set aside the cargo. This must change.

Proper documentation placarding and separation of dangerous cargo this is also required by regulation, and it is not being done at the present time in all cases.

We get to the seals and the empties. This is a big deal for us. Container seals is one of the most basic things that can be done to ensure nontampering. This is one of the biggest problems with terminal operators. Terminal operators have already told ILWU that, come July 1st, that they will not inspect the seals of any containers coming off the vessels.

They said they are planning on inspecting some seals coming through the gates, but no seals of any coming off the vessels at all will be checked. The regs just simply say you will check the seals. And we believe the seals should be checked. It is a basic thing that can be done. When a seal is missing or if that seal does not match up with the manifest, you know something is wrong; it can be set aside for either Customs inspection and further information can be looked into.

Empty containers. A big problem. We have all spoken about it.

I would really like to speak on this interpretation that the admiral was talking about. In the regulations, it says that cargo containers and other cargo transport units will be checked. The Admi-

ral agreed that empty containers should be checked. I feel they should be checked. The port agrees they should be checked. What I would like to know now is, is the Coast Guard going to insist now that empty containers be checked? We have given the Coast Guard over the past 6 months letters from different facility operators and stevedores who have notified us since 9/11 that they will no longer check the empties. We have also given them letters that said they will no longer check the seals.

We have requested, we have argued with, we have done everything, had meetings with the different facility operators. We just can't get them to do it. And to get them to do it, it is going to take the intervention of the Coast Guard. And I sincerely hope in the future that this will be done.

The final thing I would like to speak about is the Coast Guard's role in enforcing the regulations July 1st. The Coast Guard has traditionally been a waterside and a vessel specialist. I used to have a masters license; I ran tug boats and ferry boats before I was a longshoreman. The Coast Guard has done a great job in the Port of Los Angeles. And by the way, on terminals, both the Port of L.A. and the Coast Guard, they have been really great with us in L.A. Fantastic.

But my question is this: The Coast Guard has never traditionally been an on-terminal enforcer of regulations. This—you don't ever see teams of Coast Guard on the grounds. The Port of L.A. and Long Beach, the two largest ports in the country, together the third largest port complex in the world. It is huge, it is a huge job. Having a young 19-year-old come on is going to take an immense amount of training. Usually training comes in the form of osmosis. People that run these terminals, they have been working on them 5 to 10 years before they really fully understand how unique terminal operation is.

For Coast Guard to enforce these regulations, they are going to have to have a great deal of knowledge about the operation of marine terminals, how containers are brought in, the differences between export and import containers. I would like to say that I think that, with Congresswoman Millender-McDonald's bill, I think it is exactly on the right track because I think that funding is absolutely necessary.

L.A./Long Beach at the present time has too many security loopholes. I think that, in the future, if we are going to have a good and a really effective port security program, we are going to have to have a Coast Guard that can really enforce these regs. Terminal operators in some aspects, yes, they will go for the regs. But there are other aspects that, when it feels it is going to cut their commercial production, it is going to very, very difficult. This is something—I have worked on these terminals a long time—I have seen it before, and I know.

So, anyway, I would be glad to take any questions. I would like to thank you for having me here today. Thanks.

Mr. LOBIONDO. OK. Thank you, gentlemen, for your testimony.

I would like to ask for either one of you to comment. What specific challenges have your terminal operators and facilities faced during this security plan approval process? And then, what is your feeling about the Coast Guard? Have they helped with this? Did

they hinder with this? What did it matter? What was their involvement? Mr. Cunningham, do you want to try that first?

Mr. CUNNINGHAM. Yes, I will.

Our experience here at the Port of L.A.—and I believe I speak for the Port of Long Beach in checking with Long Beach on this, anticipating this type of question, has been very positive.

There are approximately 60 terminals that are regulated by our local captain of the port, Pete Debter, and his staff, and they have done an excellent job of communicating the expectations and working with our terminal operators on the MPSA guidelines. We are presently at L.A. conducting a survey and putting into a matrix the various deeds where we may be able to find support and help in dealing with whatever may be lacking and reaching a level playing field for all the security standards for each of the terminals. Some terminals are further along than others because of the amount of resources that they have dedicated to those.

And as Mike Mitre has mentioned there are others that perhaps are not further along because they have chosen to spend less or dedicate less resources toward that goal.

But overall, all of our terminals are expected to be in compliance. We have been, we have a rapport, an excellent relationship with the Coast Guard on this issue.

Mr. MITRE. My answer is a little different. As with the explosion at TRAPAC, one of the most distressing issues was the fact that, once the explosion occurred, there was virtually no response. There was no evacuation. There was no shutdown of work. No one could determine whether it was—it could have been anything, like it was a minor explosion, but it could have been something as a biological or chemical release. It could have been a radioactive release. No one knew. But at the time, the terminal was absolutely not prepared, number one.

Number two, with the facility security plans, we do have one member on the area maritime committee that people have spoken to. But the problem is, these plans are considered classified. We do not see these plans. They went out to a consulting group, as has been said, but as far as until probably a month or 3 weeks ago, they haven't been back, and we haven't seen them. The evacuation procedures are paramount for us. That is something that will really concern us. And the TRAPAC incident showed that they really were not prepared at that facility to take care of an incident like this.

So in certain areas and instances, I am not real happy with the way the facility security plans are being implemented or written.

Mr. LOBIONDO. As a follow up. You mentioned the area of maritime security committee and that you have, longshoremen, have a seat on that. Do you feel that it is an active seat? Do you feel that you are able to—it is sort of a full seat at the table? Your concerns - I know you haven't seen the plan that you would like to see, but how did you feel about your involvement on that?

Mr. MITRE. No, I have to be fair. It is has been—it is really good. It is. It is a good committee, and we do have a full vote and a full say.

Mr. LOBIONDO. So you have full participation in that?

Mr. MITRE. Yes, we do.

Mr. LOBIONDO. So that, representative of industry and labor, was a fair representation of saying how that worked?

Mr. MITRE. Yes. It is a great committee.

Mr. LOBIONDO. Thank you.

Mr. Filner.

Mr. FILNER. Thank you, Mr. Chairman.

I find the testimony, Mr. Mitre, rather frightening and putting us on notice. We have been talking about this for some time. You have been trying to say this for—probably since 9/11, maybe even before. And you are still saying it. So I am not sure the processes are in place to acknowledge it, accept it, or act on it. So, can you just go over a little bit maybe in more detail how we might respond to this?

By the way, is the Coast Guard represented here in the audience right now? I am sorry. One person raised their hand. We are—how many were here when the admiral was testifying? About a dozen? Making sure he testified right?

Look, I had asked the Admiral—you talked about respect, Mr. Chairman. These are serious issues. And it seems to me that the Coast Guard ought to have been here in full force to hear this testimony and respond to it officially.

Maybe we ought to have, as I have asked and gotten on other committees, the Administration testify after the public so they can at least sit here and listen to what the public had to say. They all take off after their say and nobody has to hear anything. So I find that very lack of respect for the issues here—I am sure the one person here is going to take back everything that was said, but it does say something about the respect for the testimony.

So—you have been saying these things for some time. You are still saying them. So they obviously haven't been heard at the appropriate places or implemented. What would you advise us? How would you advise us to take that advice and implement it.

Mr. MITRE. Well, first of all, I would like to see their regulation about empty containers specifically spelled out. I don't think there has been any disagreement here. I think we have all said the same thing. However, the terminal operators in certain cases are not going to do it. They have told us, just told me point blank, it is not going to be done unless they are forced to do it.

The other thing—

Mr. FILNER. Is that an issue of cost for them, or just, I mean, indifference? What—what is the issue there?

Mr. MITRE. Basically I think it is two things. I think it is cost and it is slowdown of production of allowing for containers being brought back in. L.A.-Long Beach ships an incredibly large volume of empty containers back to Asia. Huge, huge amount, 10 to 15 percent, like Noel was just attesting to; but on some days it could be 30 percent, 40 percent. It is a huge amount.

I drive a crane at one facility and sometimes we will load as many as 1,500 empties back on a ship. That is a lot of containers going back on one vessel alone.

Mr. FILNER. And there are also, as you explained to me on other occasions all over the place—I mean, there is not any real control of where these might be sitting, where they might be stored and moved around. It is not a very supervised situation.

Mr. MITRE. I believe it is a national security concern, and I will tell you why. It is a port security concern, but it is also a national security concern. You have containers going all over the United States. Once a container is empty, there is no seal, there is nothing put on by the last person that empties it out.

They could sit next to the warehouse. They could sit next to the store for any amount of time.

One thing that we see a lot is, a lot of times they are brought back to the port or close to the port where they are just dropped because certain parts of the day the queue lines are real long and a guy with an empty might have to wait 3, 4 hours. It behooves him instead to go back and try to get another—you know, they work on piece work—to get another load. That is why many of the local cities have now adopted ordinances forbidding containers of all kinds being dropped in the area, which I know local people realize.

I think that what we are facing here—and I would hate to say it, but we are the ones that are working down there—is, if I were a terrorist and it was what Congressman Simmons alluded to, thinking like a terrorist, it is an ideal way to do something. And they are all over the place, and you can do virtually anything with one.

And these certain companies, they said, we will not; it is our program, we will not inspect the empties. People know it. It is common knowledge.

Mr. FILNER. They need to be—they need to be directed to do so by law?

Mr. MITRE. I believe so.

Mr. FILNER. OK.

You also—I wonder if you would put on the record, you once explained to me in private, we do have certain detection devices for empties. But even though probably only a couple of percent are ever done anyway, even those are rather lacking in, shall I say, completeness. Do you want to just explain that to me?

Mr. MITRE. Well, some of the new automated systems, what they are doing is, they are trying, they are shooting the empty containers with a camera at some of the facilities. I think two facilities in L.A. The problem is, when you shoot it, the light availability—the camera goes in about two-thirds of the way and then it washes out. So anything in the back of the container doesn't show up.

Another thing is the angle of the camera. The higher the camera is, you are only going to see as it shoots in; the angle will obviate your being able to see back also. So what happens is these automated systems don't work as well as a lot of people would advertise they do.

Mr. FILNER. Mr. Chairman, I think you see why I have called these folks experts. They know what is going on. We need to listen to them, and I hope we find a way officially to let the Coast Guard know that we take very seriously, on this committee, this kind of testimony.

Mr. LOBIONDO. Mr. Cunningham, were you anxious to say something there.

Mr. CUNNINGHAM. Yes, I was.

In regards to the inspection of empty containers, it is a cost issue, a significant cost, staffing and cost for the, quote, industry; and that is one of the reasons why Mr. Mitre finds not 100 percent cooperation on this issue. Many of these companies are very low-profit margin and security has not been at the highest priority.

One of the features in regards to a comprehensive security plan that we would like to put in in L.A.-Long Beach, and it could be a model for the country, would take in inspection of empties and using technology that would be shared by all of the port facilities, where containers would be screened prior to returning to the port; and that way it would reduce the cost and level the playing field as far as the business community is concerned. But the emphasis for the country has been the import of a terrorist act, not the export of a terrorist act. And the fact of the matter is that I think that is the right priority at this point in time. Of course, we do know that the first line of defense are the dock workers and the police officers that are on the docks working those containers.

So Mr. Mitre's testimony is testimony that has to be listened to.

Mr. FILNER. We would probably do better by calling them first responders and then maybe we can get them some additional aid there.

Mr. LOBIONDO. Ms. Millender-McDonald.

Ms. MILLENDER-MCDONALD. Thank you, Mr. Chairman.

I would like to thank Mr. Cunningham and Mr. Mitre, both my constituents, for being here, because their testimonies are telling. It goes to the—I guess the core of the issue that we are talking about.

Mr. Chairman and Ranking Member, when I was told about this empty container that was there with explosives in and around and about, I became very furious, because it is a national security issue. You will blow up, I mean, miles and miles of communities, as well as those ports, if something had ignited, and it would have been explosive.

And so, Mr. Chairman and Ranking Member, I would suggest that we send a letter to the terminal operators, those who are suggesting that they will not inspect container seals, that is an obligation for them to do, given 9/11; and they do not have the right to go against regulations that we have put forth instructing them to do just that.

I am sorry that the rear admiral had to leave, but we must send a letter as strong as it should be, sent to the Coast Guard that they have to enforce regulations that we have outlined, or they have outlined; and that it is a threat to the two largest port complexes in this country, representing tons of goods and containers that go throughout this country, making this national economy flourish.

Now, if they do not adhere to that, then it is my understanding—it is my—this Member's thought that we should do some punitive actions. We cannot allow folks to totally disavow regulations that we put forth for the sake of security and workers' rights and community safety; and they are pompous to tell us that they are not going to do it.

To me, a letter should be forthcoming, Mr. Chairman and Ranking Member, on this immediately.

I also speak to what Mr. Mitre said about the truckers. You know, the state highway patrol came to me to say that trucks are not inspected. They don't know what is in these trucks as they come out of those ports, going out into our communities. And they have even thought about, why is it that we are not making trucks come in compliance with security like all other modes of transportation. And so that is another area that we must look at, because even the California Highway Patrol chief has come to me, concerned about trucks not being inspected inside; and we don't know what is going on and what is being transported throughout our communities there, not only in Long Beach in Los Angeles, but throughout this Nation, because that is where the bulk of that comes from, these two ports.

And so it comes across to your cities and towns as well, and we should be very much interested in that. I regret I did not pose the question. I had the question in mind, but I did not pose that question on shippers securing empty containers. That is something that I would like the person who is representing the Coast Guard to take back as a question that I have, and please get that to me, to my office in Longworth; and this is, are ports and shippers securing empty containers? Because we need to know how secure are those empty containers as they leave our shores to go across the waterways into other countries.

But, indeed, how are we protecting our national security? It goes back to the point that we have secured the aviation. We have given \$11 billion. We are not looking at the most vulnerable, vulnerable points of our country, and that is the ports and the workers and all who work there, the personnel. And I am just really—it really goes to the—goes through my soul as to why is it that we have not given this much more attention.

I say to either one of you, who was to respond when this incident happened? That is a question that you are raising to us.

You don't know. We don't know. There are 60 different plans in just these two cities alone. How in the world do you get who is supposed to be doing what, when and where?

Mr. Chairman, that is another question that we should be raising here: Who was responsible for that, and why is it that there were people grappling down in my area and the area of Congressman Dana Rohrabacher as to who should have been responsible when these explosive devices were found in this exporting container?

And so, it is very troubling to me to know that we are still grappling with something that the Ranking Member has said, and you certainly have identified that we have been dealing with for years, for months of Sundays. 9/11 happened in 2001; this is 2004, and we are at the middle of this year and we are still talking about port security.

Mr. Cunningham, the security plan that both Long Beach and Los Angeles have put together, that 5-year plan, does it speak to any of these issues we are talking about? Or how effective, I know it has been very effective if what we are doing is just the plan that you have, the joint container inspector facility.

But how will this plan that we are doing on our own there in our region be folded into what we are doing on the national front? And

will they—will the input of what you are doing be an effective input on what I suppose the Coast Guard and that plan is being done? I need to know whether or not what we are developing, our security plan, will be part of their security plan, I guess is what I am saying.

Mr. CUNNINGHAM. Absolutely. And I must say that the primary responsibility for securing empty containers does not rest with the Coast Guard. It is the owner of the container, the shipping company, that has the primary responsibility.

The Coast Guard's responsibility—

Ms. MILLENDER-MCDONALD. But they have to enforce it, don't they?

Mr. CUNNINGHAM. No, they do not.

Ms. MILLENDER-MCDONALD. They do not have to enforce it?

Mr. CUNNINGHAM. Here are several agencies that play a role in the inspection of the empties, and that would be the AQMD, that would be the port authority police that in this particular instance did inspect this particular container. It was a battery.

The container that Mr. Mitre referred to was a battery that was taken. It was properly disconnected, but it was not supposed to have been stored with the truck. And it was a hot day that day and the fumes of the battery caused the battery to explode with a truck that was being shipped to the Samoan Islands.

That particular instance was an industrial—it was improper packaging and it was a violation of Federal regs. Those violations are being pursued by port police. And the shipper is being held accountable for that.

Ms. MILLENDER-MCDONALD. But are you saying that the local police only should be responsible? AQMD, you say?

Mr. CUNNINGHAM. Well, there are several agencies. There is AQMD, there is Customs that is responsible for regulating the export. There is also the fire department that has a role in ensuring that HazMat and packaging, and so there may be several other regulatory agencies that I am not familiar with.

Mr. FILNER. If you would yield, there is no Homeland Security agency that is supposed to inspect that right now?

Mr. CUNNINGHAM. No, there is not.

Mr. FILNER. If the gentlelady would yield then.

Ms. MILLENDER-MCDONALD. Yes.

Mr. FILNER. Mr. Chairman, you know, oversight hearings tend to be this give-and-take and a little bit of—I don't know—a game. But it seems to me, we have some serious issues presented here, that we have—we should make a statement or a finding or a report back to somebody, the administration, about this.

I mean, if, for example, we conclude that empties ought to have some Department of Homeland Security oversight and investigation, I think we should have a committee statement to that effect and make this hearing, you know, meaningful from that respect, not just sort of give-and-take and having a little bit of an—as I said, a game here.

But—and I would hope that after we have some further thought about the testimony that we think about making findings and sending a report to our—to the agencies and let them know what we have concluded today.

I thank the gentlelady for yielding.

Ms. MILLENDER-McDONALD. I thank you so much and thank you so much for the leadership that both of you can provide on this, Mr. Chairman.

Mr. LOBIONDO. Sure. And just by way of comment, Ms. Millender-McDonald, when your questions concerning the plan for taking care of the incident that happened at the port, that is part of what is being put together right now.

So, no, we don't have somebody there. But that is what is coming in the next couple of weeks and that is what should be giving the details of who will be doing—be responsible for what areas. That is exactly what is being worked through right now.

Ms. MILLENDER-McDONALD. Thank you, Mr. Chairman.

Mr. LOBIONDO. I think this was some very good information. I would like to thank our panelists for being here today.

The committee stands adjourned.

[Whereupon, at 12:17 p.m., the subcommittee was adjourned.]

DEPARTMENT OF HOMELAND SECURITY
UNITED STATES COAST GUARD
STATEMENT OF REAR ADMIRAL LARRY HERETH
ON
MARITIME TRANSPORTATION SECURITY ACT IMPLEMENTATION
BEFORE THE
SUBCOMMITTEE ON COAST GUARD & MARITIME TRANSPORTATION
COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE
U.S. HOUSE OF REPRESENTATIVES
JUNE 9, 2004

Good morning Mr. Chairman and distinguished members of the Committee. It is a pleasure to appear before you today to discuss the Coast Guard's efforts in implementing the Maritime Transportation Security Act of 2002 (MTSA).

Introduction

When the president signed the MTSA on November 25, 2002, landmark legislation was enacted that establishes, for the first time, a mandatory security regime within the Maritime Sector focused on reducing the vulnerabilities of our Maritime Transportation System. Since its enactment, the Coast Guard has worked diligently to not only implement the robust provisions of the Act, but to also lead our international trading partners through the International Maritime Organization (IMO) in the development and implementation of a global strategy on maritime security. In my testimony today, I will provide you with an update on both our domestic and international efforts.

MTSA Implementation

The MTSA imposed an ambitious schedule of requirements on a number of Federal agencies. The Secretary of Homeland Security tasked the Coast Guard with lead responsibility for the majority of the Act's requirements, and I'm pleased to report to you today that we are well poised to meet all of our mandated deadlines.

In the first year after the MTSA was enacted, the Coast Guard published six interim final rules taking into account comments received through a series of seven public meetings throughout the country. Four months after the release of the interim rules, the Coast Guard published its final rules that considered comments from the maritime industry and the public. This was a significant accomplishment for the Coast Guard to publish, in final form, its implementing regulations within the one-year of the passage of the Act, and I'm very proud of the men and women of the Coast Guard that worked so diligently to make this happen. The Coast Guard was aided in our efforts by a very supportive interagency team including Customs and Border Protection (CBP), the Transportation Security Administration (TSA), and the Maritime Administration (MARAD), and by the cooperation and meaningful comments received by the maritime industry. Approximately 9,200 vessels and 3,200 facilities were captured under the implementing regulations and over 99 percent have now complied with the rules by submitting a security plan to the Coast Guard. We are now in the midst of a significant plan review and approval process. The implementation of all of these security plans will mark a tremendous step forward in reducing the vulnerabilities of our ports and waterways while providing secure trade lanes that are essential to our economic prosperity.

With only three weeks remaining before the July 1st compliance date, the Coast Guard is wrapping up its efforts to ensure that all security plans appropriately document the required security measures and shifting focus on our task of fully exercising our Port State Control Authority in the conduct of compliance examinations for foreign flagged vessels to confirm that approved security plans have been fully implemented.

Aggressive implementation of MTSA is essential if we are to maintain the security of our ports and waterways at acceptable levels. To implement and enforce these regulations, the Coast Guard has a recurring requirement to develop, review, approve, and ensure vessels and facilities are sustaining their own security responsibilities for all aspects of maritime security.

Port Security

The Coast Guard, working through the Captains of the Ports (COTPs), has developed 43 Area Maritime Security Plans covering the 361 ports, Great Lakes, Inland Rivers and Outer Continental Shelf region. COTPs are designated as the Federal Maritime Security Coordinator (FMSC) under the MTSA, and it is in this capacity that they have steered and coordinated the development of these plans.

Area Maritime Security Committees, comprised of the other Federal, state, and local agencies, and members of the local maritime industry, were established to assist the local COTPs in the development of their security plans. While the establishment of these Committees was optional under the MTSA, the Coast Guard determined that communication with other maritime stakeholders was an integral part of the security equation and required their establishment. As a result, these committees are enhancing the exchange of communications between the Coast Guard, local agencies and the maritime stakeholders, and it is through this cooperative spirit that the Coast Guard has developed coordinated, comprehensive Area Maritime Security Plans.

Each FMSC submitted their Area Maritime Security Plan to the Coast Guard District Commander by May 1, 2004, representing 100 percent completion. Subsequently, each plan has been favorably reviewed and endorsed by the District Commander and forwarded to the Atlantic and Pacific Area Commander as appropriate for final approval. All Area Maritime Security Plans were approved by June 1, 2004 and they will be fully implemented on or before July 1, 2004 as directed by the MTSA.

Domestic Port Security Assessment Program

The Coast Guard has completed comprehensive Port Security Assessments at 19 of the top 55 most significant military and economic ports in the U.S. and will complete the assessments of the remaining 36 ports by the end of calendar year 2004. These assessments will augment those port security risk assessments conducted at the local port and facility level and will continue to enhance the level of preparedness outlined in our Area Maritime Security Plans.

Facility Security

A major component of the MTSA involves the security of facilities within our ports. In implementing the MTSA, the Coast Guard identified approximately 3,200 marine facilities that could be involved in a Transportation Security Incident. Nearly all of these facilities have since conducted a self-assessment and submitted a facility security plan to

the Coast Guard for approval. To date we have completed the review of over 90 percent of the facility security plans. The remaining 10% will be completed prior to the July 1st deadline.

Vessel Security

Vessel security is also a major component of the MTSA. Under the implementing regulations, over 9,200 vessels were required to develop and submit security plans to the Coast Guard. I'm pleased to report that over 99 percent of those vessels have conducted self-assessments and have submitted plans to the Coast Guard. To date, the Coast Guard's Marine Safety Center has approved over 90 percent of those plans. The remaining 10 percent are nearing the final approval stage, and I anticipate that all plans will be approved before July 1, 2004. Once a Vessel Security Plan is approved, the U.S. Coast Guard will verify the ship's compliance with the provisions of the MTSA during an onboard examination. Vessels that have declared their intent to sail internationally will be issued an International Ship Security Certificate (ISSC) in accordance with the Safety of Life At Sea (SOLAS) Convention.

National Maritime Transportation Security Plan

Vessel and facility security plans are written to be consistent with the Area Maritime Security Plan, which will be implemented in conjunction with the National Maritime Transportation Security Plan, the Transportation Sector Specific Plan, and the larger National Critical Infrastructure Plan mandated by Homeland Security Presidential Directive 7. The initial timeline for the development of the National Maritime Transportation Security Plan spans two years with development of the final plan by the end of fiscal year 2005. The Coast Guard is using an inter-agency development team similar to the approach taken for developing MTSA regulations. The initial national plan inter-agency coordination meeting was held on February 11, 2004, and regular inter-agency working group meetings commenced on April 22, 2004.

AIS and Long Range Vessel Tracking

MTSA regulations require certain commercial vessels to install an Automatic Identification System (AIS) by the end of 2004. The Coast Guard is on schedule to have AIS capabilities at each Vessel Traffic Service by this date and is diligently working toward our long-term goal of nation-wide AIS coverage.

The Coast Guard has also instituted measures to expand surveillance beyond the reaches of AIS and to increase Maritime Domain Awareness – a combination of intelligence, surveillance, and operational information to build as complete a “Common Operating Picture” as possible of the threats and vulnerabilities in the maritime realm. The Coast Guard is evaluating a variety of options for tracking vessels on the high seas and will continue to press to push our virtual borders out to provide a protection and awareness buffer zone.

International Ship and Port Facility Security Code

On December 12, 2002, the IMO adopted amendments to the SOLAS Convention that incorporated a new International Ship and Port Facility Security (ISPS) Code. The SOLAS Convention is the most important of all treaties dealing with maritime safety and security. 147 nations are party to the SOLAS Convention, and those nations combined represent over 98 percent of the world's shipping tonnage. The security amendments to

the SOLAS Convention were done at the behest of the United States and are based, largely, on U.S. input that is commensurate with the provisions of the MTSA. The international security regime requires vessels and port facilities to submit security plans to their respective administrations for approval and requires all vessels and port facilities to have implemented those plans by the mandatory July 1, 2004 entry into force date.

At our most recent meeting with the IMO, held just two weeks ago, the vast majority of nations have reported that they will meet the entry into force date and their ships and port facilities will be acting under approved security plans. Each country is required to report to the IMO the status of their compliance with the SOLAS Convention and the ISPS Code on or before July 1, 2004, through the use of a shared database. In this way, the Coast Guard will be able to determine which vessels and port facilities are reported to be in compliance. This will be a useful tool in assisting the United States in the execution of an aggressive Port State Control Program.

To assist other nations in ensuring that vessels that visit their countries are in full compliance, the IMO recently adopted stringent control and compliance guidelines that invite other Contracting Governments to exercise effective port state control programs to ensure that the provisions of the ISPS Code have been fully implemented.

Port State Control and the International Port Security Program

An effective Port State Control program is paramount to ensuring the security of our ports. The Coast Guard drafted extensive foreign vessel security boarding policy doctrine and has dedicated a significant number of personnel and the training resources necessary to ensure we are fully prepared to exercise our Port State Control Authority to its fullest extent. Each foreign flagged vessel arriving in U.S. ports will be required to demonstrate that it has fully implemented the security measures of the SOLAS Convention and the ISPS Code. To accomplish this task, the Coast Guard has trained more than 500 inspectors and positioned additional personnel, through the use of Title 10 reservists, throughout the country to assist our permanent active duty staff in accomplishing this critical task.

Additionally, the Coast Guard has met with nearly 60 countries representing the vast majority of foreign flagged ships arriving in the U.S., reinforcing our commitment to the ISPS code and clarifying our zero tolerance policy for ships intending to enter U.S. ports. Foreign flagged ships that cannot provide advance certification that they have implemented a Ship Security Plan through the issuance of an International Ship Security Certificate will not be allowed to enter U.S. ports. Additional Port State Control efforts will include tracking the performance of all owners, operators, flag administrations, recognized security organizations, charterers, and port facilities. High-risk vessels will be subject to a range of control measures, which could include denial of entry into port or the requirement for an at sea boarding that includes a security sweep of the vessel. The United States will be vigilant in its Maritime Homeland Security mission and will continue to work with the IMO to secure the global maritime transportation system.

As you are all well aware, HR 2443, the "Coast Guard Authorization Act of 2004" contains a provision that would expressly require foreign vessels to submit security plans to the Coast Guard for review. This provision runs counter to the SOLAS Convention and the ISPS Code and, if enacted, would detract from, rather than enhance, maritime

security. Conversely, the Coast Guard believes it is much more important to board a vessel to see, first hand, if required security measures have been implemented rather than reviewing unverified paperwork that indicates that measures are in place. On-site examination is the only method that verifies a vessel has proper security measures in place.

An aggressive Port State Control regime will be coupled with the Coast Guard's inter-agency International Port Security Program (IPSP), required under the MTSA. In this effort, representatives from the Department of State, Department of Defense, CBP, TSA, and MARAD, are assisting the Coast Guard in assessing both the effectiveness of anti-terrorism measures in foreign ports and the foreign flag administration's implementation of the SOLAS amendments and the ISPS Code.

Full deployment of the IPSP Code will greatly enhance the Coast Guard's port security posture by identifying and correcting weaknesses overseas thus increasing our ability to prevent potential threats from reaching U.S shores.

Mariner Credentialing

Inherent in a safe and secure marine transportation system are appropriate safeguards for merchant mariner documents, licenses, and port workers credentials. The U.S. successfully negotiated an international agreement that provides assurances for the identification of seafarers that will enter U.S. In June 2003, the International Labor Organization adopted ILO 185, a revised Convention on Seafarer Identity Documents. The new identity documents will contain a biometric indicator based on a uniform, international standard, to significantly enhance tamper resistance. It will also be linked to national databases to verify the legitimacy of the document. The standards and procedures contained in this Convention will fulfill the requirements for uniform, verifiable identification for seafarers required under the MTSA. However, the Convention also specifies that, for purposes of shore leave or transit, seafarers holding a new identity document will *not* be required to hold a visa. This provision is inconsistent with U.S. immigration law and may prevent the United States from ratifying the Convention. However, the U.S. may still adopt, through regulation, the technical specifications outlined in ILO 185 Convention in order to further meet the requirements of MTSA.

The Coast Guard is also tracking the progress made by the TSA in the development of the Transportation Worker Identification Credentials (TWIC) Program. As an interim measure, until the TWIC program is fully developed, the Coast Guard included a requirement in the MTSA implementing regulations for access control for vessels and facilities that mandates checking the identification of individuals seeking to enter facilities and to board vessels.

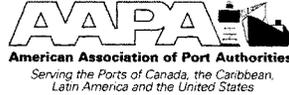
Summary

The MTSA has dramatically raised the security bar with which U.S. and foreign interests must comply. It has also been the vehicle through which many international negotiations have taken place. Aggressive implementation of MTSA is essential if we are to maintain the security of our ports and waterways at acceptable levels.

A cooperative international approach to establishing, maintaining, and enforcing, security standards involves global partnerships and it is through these partnerships that we will successfully implement a new global security regime. With all parties acting collaboratively we will confront, broadly, the defined threats to our common and interdependent maritime security. We must continue to work globally to improve security domestically.

I urge your support of the Coast Guard's fiscal year 2005 budget request, which provides for increased capability and capacity directly supporting maritime security. Specifically, the request includes \$101 million in new resources to implement the MTSA. It provides for crucial field resources to review, approve and verify implementation of the approximate 9,200 domestic vessel, 3,200 domestic facility, and 43 domestic port security plans as well the verification of security plan implementation on over 8,100 foreign vessels calling on U.S. port annually. It provides for critical increases in intelligence capabilities to enhance Maritime Domain Awareness. It provides for new and expanded capabilities, including underwater threat detection, for the highly successful Maritime Safety and Security Teams, which were incepted in the days immediately after the attacks of September 11th, 2001 to counter emerging threats. Finally, the request provides for critical funding for the Deepwater, Rescue 21, Automatic Identification System and Response Boat-Medium projects critical to recapitalize operational assets crucial to America's homeland security not just today but for decades to come.

Thank you for the opportunity to testify before you today. I will be happy to answer any questions you may have.



AMERICAN ASSOCIATION OF PORT AUTHORITIES

1010 Duke Street, Alexandria, VA 22314
Phone: (703) 684-5700 ▪ Fax: (703) 684-6321

Testimony of Noel K. Cunningham

Director of Operations and Emergency Management

**Port of Los Angeles
Los Angeles, California**

For The American Association of Port Authorities

Before the

Subcommittee on Coast Guard and Maritime Transportation

House Transportation and Infrastructure Committee

JUNE 9, 2004

Good morning, Mr. Chairman and members of the Subcommittee. I am Noel Cunningham, Director of Operations and Emergency Management for the Port of Los Angeles. Today, I am speaking for the American Association of Port Authorities' (AAPA) U.S. Delegation, and for the San Pedro Bay ports of Los Angeles and Long Beach, commonly referred to as the Los Angeles/ Long Beach Port Complex. Founded in 1912, AAPA represents 150 public port authorities throughout the United States, Canada, Latin America and the Caribbean.

Port security is the top priority for AAPA's member ports. Our concerns focus on complying with the new regulatory requirements and on increased federal funding to improve port security infrastructure projects to meet the increased demands placed on our nation's ports to safeguard our borders, while continuing to keep the flow of cargo and international trade moving forward.

My testimony will review the port industry's experiences in implementing "*The Maritime Transportation Security Act of 2002*" (MTSA), as well as speak to H.R. 3712, "*The U.S. Seaport Multiyear Security Enhancement Act*" sponsored by Representative Juanita Millender-McDonald, and H.R. 2193, "*The Port Security Improvements Act*" sponsored by Representative Doug Ose. Both of these bills focus on AAPA's top priority and the most important challenge currently facing the U.S. port industry, and that is obtaining sufficient federal financial assistance to fund port security infrastructure projects that will address all of the vulnerabilities ports face.

THE IMPORTANCE OF MARITIME TRADE AND PORTS

As you are aware, Mr. Chairman, more than 95 percent of U.S. overseas trade moves through our seaports. As a premier U.S. port of entry for cargo, the Port of Los Angeles is the seventh largest container port in the world, and number one in the United States. Together, with the Port of Long Beach, we handle more than 42 percent of the containerized commerce imported into the United States. The Los Angeles/Long Beach port complex is the third busiest port in the world. Furthermore, the Port of Los Angeles is the fourth busiest cruise port in the U.S., and is number one on the West Coast, managing the movements of more than one million passengers annually.

Trade through the Port of Los Angeles has grown steadily by an estimated 20 percent each year over the last five years, and we expect this trend to continue. Likewise, the industry expects national maritime trade volumes to double by the year 2020, although some economists have predicted that such doubling may occur as early as 2014 due to the demands of the American marketplace.

In the event of an incident that shuts down the nation's ports, we are responsible to efficiently move cargo into the stream of American commerce. A recent example of the effects of a shut-down was realized in the fall of 2002 when a labor lockout caused a 10-day shutdown of the Los Angeles/Long Beach port complex and brought trade to an immediate halt. This action cost the nation's economy an estimated \$1 billion a day, which included the unavailability of goods and products that Americans rely upon daily. A healthy U.S. economy relies heavily on secure, functioning ports throughout the United States. Therefore, it is imperative that Congress make adequate seaport security funding a priority.

MARITIME TRANSPORTATION SECURITY ACT REGULATIONS

Following the tragic events of September 11, 2001, Congress enacted MTSA. The U.S. Coast Guard rapidly developed regulations to establish security standards for port facilities. These regulations required the terminal operators to submit their facility security plans by December 31, 2003; the deadline for implementation is July 1, 2004. This aggressive schedule has posed significant challenges, for both the Coast Guard and the port authorities. For example, the MTSA envisioned the Coast Guard conducting assessments that would be the basis for facility security plans. Due to the tight deadline, this burden was placed on individual facilities. The regulations also allowed some flexibility through alternative security plans, but many of these plans are still under negotiation with the Coast Guard. The tight deadline leaves little time to negotiate changes before July 1.

However, we are pleased to report that all of the facilities within the Los Angeles/Long Beach port complex – cargo terminals, liquid bulk and dry bulk terminals, and the World Cruise Center, for example – are on track to be in compliance, either fully or on an interim status, by the July 1, 2004, deadline. Full compliance with the new security standards achieves an important milestone; however, this is only part of the port security and supply chain security challenges that face U.S. port authorities.

THE NEW ROLE OF THE PORT AUTHORITY

The role of U.S. port authorities has changed significantly since 9/11. Previously, port authorities served to manage the safe and efficient movement of passengers and cargo, and to direct the growth of the port to accommodate the nation's maritime transportation and economic strength. As we move into what will truly be the "new normalcy," port authorities will take on an important role in the security of their ports, and of commerce, that supports the American economy. As our individual facilities achieve compliance with Coast Guard regulations, they will turn their focus back to their commercial functions, as they must do in order to succeed. Port authorities must continue to fully secure ports, waterways, transportation infrastructure, and cargo supply chains.

CURRENT PORT SECURITY INITIATIVES

Access control to ports and port facilities is a critical component of port security, and access control will require a comprehensive credentialing program. The Los Angeles/Long Beach port complex, along with the Delaware River and the State of Florida, are participating in a pilot project for the "Transportation Worker Identification Credential" (TWIC) program, authorized in the MTSA. This program is entering its third phase, which will include testing of equipment and processes. We consider a federal credentialing program, such as TWIC, to be the solution to this major security challenge. To date, the TWIC program has not incorporated worker background checks, which has the potential to be of serious concern. We fully support the TWIC program and look forward to its full implementation. Ports throughout the nation are waiting for the TWIC program guidance before they can fully complete their access control systems and hope that the program will be compatible with programs put into place to meet the July 1 deadline for access control.

Supply chain security, particularly containerized freight, is a significant vulnerability. Because of the sheer volume and efficiency of the movement of goods through U.S. ports in containers, potential acts of terrorism involving freight containers represent a major threat not only to U.S. ports, but also to the entire nation. There are a number of projects underway to address this threat, one of which is Operation Safe Commerce. Three U.S. ports, Los Angeles/Long Beach, Seattle/Tacoma, and New York/New Jersey, in coordination with U.S. Customs and Border Protection, are participating in this program. Operation Safe Commerce is testing technologies and processes that will improve the security of international supply chains beginning at the foreign port of origination. AAPA encourages continued support for this important testing program, and we encourage Congress to incorporate the results of Operation Safe Commerce into any final container security program.

Another important supply chain security initiative within the Los Angeles/Long Beach port complex is the Joint Container Inspection Facility (JCIF). The JCIF will have an array of sophisticated container screening capabilities for use by U.S. Customs and Border Protection, as well as other law enforcement agencies. It will provide a means to efficiently screen a greater number of containers using the most effective technologies available. This project has received

grant funding for a feasibility study and preliminary design; however, funding for its construction, estimated at \$54 million, has yet to be identified.

The MTSA also requires security training for port facility employees. The Maritime Administration has several new initiatives underway to develop standards and certification for training programs. This is most welcome and will be very helpful. Additionally, several ports have undertaken training programs and are seeking training funds from the Office of Domestic Preparedness to help pay for the training mandates under MTSA. At the Port of Los Angeles, we are working on an Internet-based computer program to provide training at our facilities.

PORT SECURITY FUNDING NEEDS

The primary source of funding for port security projects has been federal grants administered by the Department of Homeland Security (DHS). The first three rounds of these grants with combined ODP money have distributed \$516 million to ports and facilities nationwide. The current fourth round will distribute an additional \$49.5 million. The DHS awarded these grants, through competitive process, to individual port facilities to help them attain compliance with MTSA regulations and to port authorities to fund major security infrastructure projects. In the first three rounds of grant awards, DHS funded less than 20 percent of the submitted applications. The MTSA authorizes a grant program to help pay for security enhancements. The current program has been moved three times, and the President requested only \$46 million and no personnel for this program. That represents only 4% of the first-year costs of complying with the MTSA. The grant program must have higher visibility and resources within DHS. The Coast Guard estimates the first-year cost to be \$1.25 billion. AAPA has called for \$400 million in funds for FY'05.

Of significant concern to port authorities are the varying degrees of security systems that are in place and coming on line at our facilities. Of the 27 regulated facilities within the Port of Los Angeles, 12 have been awarded grant funds from the first three rounds of grants. These facilities will be installing highly sophisticated state-of-the-art security systems. We are seeing that facilities that have not received grant funds are seeking MTSA compliance through lower-cost options that will not provide the same level of security. Within the Los Angeles/Long Beach

port complex, we are conducting a survey of our facilities to capture specific information on their security systems. We intend to use this information to seek the additional funding that will be required to bring all of our facilities to the same level of security, using state-of-the-art access control, surveillance, intrusion detection, and communications systems.

Many U.S. ports are now working to fully integrate their security systems. At the Los Angeles/Long Beach port complex, we are preparing a five-year security infrastructure development plan that will guide our efforts. In a previous grant round, our two ports were awarded a grant to construct a Joint Command and Control Center that will serve as the focal point for security operations within the port complex. We believe that this integration is vital to ensuring the security of the entire port complex, and that it will result in the most effective return to the nation of grant award dollars that go to individual facilities. This type of systems integration represents significant additional costs. Projects such as command and control facilities, port-wide surveillance systems and fiber optic data links cost tens of millions of dollars, and manpower. It will be essential that ports receive multiyear funding commitments to accompany annual appropriations.

As sophisticated security systems come on line throughout U.S. ports, facility managers and port authorities are beginning to address the issue of reoccurring costs for system operation and maintenance. These costs can be as much as 10% to 15% of the acquisition costs. We believe that these reoccurring costs will pose a significant challenge in the future.

PENDING PORT SECURITY FUNDING LEGISLATION

Representative Juanita Millender-McDonald's bill, H.R. 3712, authorizes a grant program within the Department of Homeland Security that calls for \$800 million a year in grants over five years. This figure is based on the cost estimates projected by the Coast Guard to accomplish port security throughout the United States. While the MTSA authorized a grant program, it was not within DHS and had no funding amount authorized.

Furthermore, this legislation provides for multiyear funding through a Letter of Intent for long-range projects requiring more than a year to complete. A major advantage to this approach is the guarantee of funding before a port undertakes such a project. AAPA supports H.R. 3712 as

legislation that will help ports more efficiently achieve large security projects. To ensure that ports seeking smaller single-year projects are not disadvantaged, AAPA recommends that Congress establish a cap on the percentage of funds allocated to multiyear awards.

Similarly, Congressman Ose's legislation, H.R. 2193, would dedicate a portion of the over \$16 billion in Customs duties collected annually through maritime transportation at each port and redirect those dollars back to the respective ports for security infrastructure improvements. AAPA supports H.R. 2193 and the utilization of Customs revenues as a source of dedicated funding for security.

AAPA believes these bills, along with adequate appropriations levels, would create adequate funding for port security projects. As you are aware, the maritime industry is already subject to a large number of fees. AAPA and its member ports oppose new taxes or fees placed on maritime commerce as a means to pay for security improvements.

IN CLOSING

In closing, Mr. Chairman and members of the subcommittee, on behalf of AAPA and the Los Angeles/Long Beach port complex, I appreciate the opportunity to discuss these important issues. We encourage you to strongly support legislation that will provide badly needed funds for port security such as H.R. 2193 and H.R. 3712. Additionally, we encourage you to continue to support the initiatives that will be critical to accomplishing robust security for U.S. ports such as the TWIC program, Operation Safe Commerce, the Joint Container Inspection Facility and security training.

This concludes my testimony, and I look forward to answering any questions you may have.

TESTIMONY OF MICHAEL MITRE
DIRECTOR OF PORT SECURITY
ON BEHALF OF 60,000 MEMBERS OF
INTERNATIONAL LONGSHORE AND WAREHOUSE UNION



BEFORE THE
COAST GUARD & MARITIME TRANSPORTATION SUBCOMMITTEE
HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE
MARITIME AND PORT SECURITY OVERSIGHT

JUNE 9, 2004,

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My name is Michael Mitre. I live and work in the Ports of Los Angeles and Long Beach, which represent the busiest seaports in America. Together they constitute the 3rd largest port in the world. The ILWU represents about 60,000 working Americans, not just in the longshore and maritime industry, but also in warehouse, hotel-restaurant, health care, mining, office clerical and a variety of other industries in California, Oregon, Washington, Alaska, Hawaii and Canada.

As the Director of Port Security for the ILWU, I have had the privilege to provide testimony to the U.S. Senate and advice to the U.S Coast Guard and other federal agencies concerning port security matters for the West Coast. West Coast facility operations are unique; the sheer volume of containers entered, stored, loaded and discharged is awesome. As a result, the enforcement of the MTSA regulations is going to be difficult. Over ten million containers were imported (through just fourteen terminals) into the port complex last year. The port infrastructure in Los Angeles and Long Beach is among the most heavily invested anywhere. West Coast marine facilities were constructed to meet an incredible volume demand that is unique. The Pacific Rim Supply Chain, the single largest mover of goods and products in the world, ships the lion's share of this cargo to just three West Coast ports. Over half of these goods are processed through the complex in Southern California alone.

I. SUMMARY OF COMMENTS

On March 14, 2004, terrorists were able to enter the port facilities in Ashdod, Israel concealed within a cargo container. They subsequently killed ten (10) dockworkers in this Israeli port. On April 28th of this year, a container exploded at the TRAPAC Container Terminal in the Port of Los Angeles. Fortunately, it was not an act of terrorism and no one was killed or injured. But this incident, as well as the one in Israel, characterizes the threat-potential, danger, & the continuing level of security deficiencies within the ports.

The incident in LA was caused by an export container that had been allowed entry under conditions contrary to and in violation of Coast Guard regulations, (as well as by established practice.) It contained over 900 bottles of flammable LPG gas as well as a small truck with a leaking gas tank. It arrived at the entry In-Gate without legally required HazMat placards. It should have arrived with the corresponding documentation detailing the hazardous contents. It didn't. The container doors should have been locked with a standard industry seal. They weren't. Upon entry into the terminal, the container should have been segregated from other cargo. It wasn't.

In fact, no placards were ever displayed; a violation of DOT required over-the-road regulations, as well as a violation of terminal and facility regulation and practice. Upon entry the documentation simply described the containers contents as -- "FAK" -- (freight of all kinds,) this

is a generic cargo description that is frequently used and doesn't require the containers contents to be listed. It is so generic that **it's no longer allowed to be used in conjunction with import cargo. Unfortunately, it is still allowed with "export cargo."** While the container doors had a seal, they also had a metal padlock, contrary to industry practice and something that always traditionally sets off alarm bells. The HazMat container was not segregated from other cargo, and was allowed to sit inside the port facility for three days, leaking flammable gas until the explosion.

The container exploded as it was being transported to the vessel for loading. A couple of minutes later and the dockworkers who routinely unlock the container from the chassis (next to the ship) would have been in the direct line of fire and could have been killed. Federal and state investigators at the scene remarked that, if the blast had occurred after loading aboard the vessel, it could have triggered further explosions of other containers containing flammable cargo. In addition to endangering and possibly even killing workers, the chain reaction could have sunk the ship.

At the time no one knew the cause of the explosion. No measures were taken to safeguard dockworkers or other terminal personnel immediately after the explosion. Who knew if it was terrorism? Was it biological or chemical? Who knew if a radioactive agent had been released? Despite all these possibilities, facility personnel milled around the blast site, uncertain and untrained in what to do. And all the while, the facility continued to receive and process additional cargo without pause.

This recent incident is a valuable lesson. When you consider the chain of events leading up to the incident, once again we find that our West Coast ports are not secure. Do not misconstrue this as an indictment of the local port authorities. In Southern California no one has worked harder than the Port of Los Angeles, along with the Coast Guard, to build relationships and create better security. One of the main problems is that prior to 9/11, a premium was never placed on security because no one really thought about it. Until fairly recently fences weren't a requirement, and at some places you could drive right up to the vessel. There certainly weren't cameras everywhere, and the ports were dark and sometimes dangerous places. Much has changed. Everyone is involved. But the fact remains that the attempt to build better security and protect ourselves has been a "band-aid" approach. I say this in the context that any future port expansion must be accompanied with a security and infrastructure "build-in." Until now it hasn't.

Port security equates to worker safety. In the event of a terrorist incident, the dockworker is the first one who is going to be killed or injured. Most dockworkers live within close proximity of the port and certainly within the impact-radius of any incident or explosion; be it chemical, biological or radioactive. We are talking about our families here, our children and our homes. It

is in our own best interest to make sure the ports are secure; our family's lives and our livelihoods are at stake. We are the front-line Homeland Defense and we know who belongs on the terminals and who doesn't. Most of all, we know what it takes to secure them. Our commitment to port security is real, and it is not watered-down or diluted by cost or commercial concern.

Despite everything that has happened, America's seaports remain vulnerable. Some of the gaps and loopholes are glaring – and continue uncorrected. Some have actually gotten worse since September 11th.

One of the major problems has been the lack of funding and infrastructure. The overarching problem we now face is making the enforcement mechanism effective and capable of ensuring that essential port security measures mandated by Congress are fully implemented. However, the Coast Guard is a waterside and vessel enforcement specialist. They are not a "landside" or "terminal" enforcer of container terminal regulations and operations. What is going to be the USCG's defined enforcement role and how is it going to differ from the past? How is the USCG going to "force" terminal operators to conform? What is going to be the compliance trigger if and when terminal operators are found to be non-compliant? Most importantly, "who is going to create the procedures and protocols to instruct the Coast Guard in the basics of terminal operations? Effective port security regulation compliance will require a comprehensive, fully funded, land-side compliance program employing large numbers of Coast Guard personnel who must be trained in terminal container operations and complex information systems format. This is a complex industry, and the volumes are astronomical.

Security mandates may impose significant and additional operating costs on the maritime industry. However, port facility operators have repeatedly refused requests to implement some of the following, all of which are mandated by the Coast Guard regulations, because of cost and/or commercial concern:

- 1) Access control procedures for the positive identification of people, vehicles and cargo before entering a port facility must be immediately implemented as required by regulation 33 CFR 105.255(a), (e)-(g), and 105.265 (a)-(d) – Presently, truck drivers are the largest single occupational group working within the terminals. Access is granted with little authentication of identity and virtually no inspection of their "sleeper cabs," which frequently house friends and family. Ironically, these drivers, once inside the terminals, have unlimited access to all areas of the terminals without oversight or supervision. Any of the fourteen terminals in the Ports of LA/Long Beach may have hundreds of drivers on each of the terminals at any one time.
- 2) Complete documentation of cargo must be confirmed before entering a facility as required by

regulation 33 CFR ' 105.255(c) and ' 105.255(e)(1), (3). – Presently, cargo is received with missing or incomplete documentation; but the cargo is allowed to enter with a STC (said to contain) designation or with the ambiguous “FAK – freight of all kinds” which often means there will be NO LISTING OF CONTENTS AT ALL. This container is allowed to be “entered” into the facility without ever knowing what is inside.

3) Proper documentation, placarding and separation of all dangerous cargo and hazardous material must be performed as required by regulation 33 CFR ' 105.265(a)(9). – Presently, hazardous cargo is frequently unmarked and integrated with other cargo;

4) The integrity and correctness of all seals on containers must be checked as they enter a port facility and as they are placed in inventory on the docks to detect and deter any tampering, as required by regulation 33 CFR ' 105.265(b)(4) and 105.265(c)(4). Presently, this is not being done at most port facilities. In fact, since September 11, many facility operators have discontinued past practice of checking these seals.

5) All port workers must be trained as to the basic requirements of the port facility security plan, the detection of security problems and, most importantly, the proper response and evacuation procedures during a security incident as required by regulation 33 CFR ' 105.215. -- as of today, port facility operators refuse to share with dockworkers any parts of their security plans on grounds of “confidentiality”; Dockworkers cannot protect themselves or our ports if they are excluded from security initiatives.

Many of these are relatively low cost, yet potentially high yield issues. If facility operators cannot see and understand even the simplest of common sense solutions, how difficult is enforcement of the new regulations going to be? Many of the new regulations are much different than traditional practice. For example, denial of entry of containers without sufficient information or documentation has not previously been done. For years, containers have been “entered” awaiting further information and/or documentation.

Facility operators allege that compliance with the MTSA regulations is not technically required until July 1, 2004. However, many of the regulations are basic security measures. They should be implemented without waiting for an arbitrary technical compliance date. What may be more disturbing is that we have seen little or no physical or operational preparation, nor any formal training of dockworkers regarding the July 1 implementation date.

While most of the deficiencies in port security can be corrected through continuous and rigorous enforcement of the Coast Guard regulations, there are at least two additional security

measures, not specifically covered in the regulations that should be immediately implemented in order to protect our ports.

- **EMPTY CONTAINERS-** The inspection of all containers marked as “empty” upon entering a port facility is a no-brainer. On any given day, as much as forty percent of the containers delivered into West Coast ports consist of “empty” containers. Many facility operators presently receive and process “empty” containers without confirming that they are truly empty. Containers marked as **empty** provide a golden opportunity. The good news is that unlike containers filled with cargo, the inspection of empty containers is quick and easy. It is a relatively cheap and painless way of confirming the absence of a dangerous substance or device, and the absence of persons illegally attempting to gain access. This, of course, makes the inspection of “empty” containers all the more compelling and an absolute necessity in any port security program. *There have been assertions made by industry officials that all West Coast terminal operators are inspecting empty containers. This is simply not true. The ILWU has furnished the Coast Guard with formal letters from both stevedores and terminal operators informing the union that, at certain facilities, empty containers will no longer be inspected.*
- **24 ADVANCE NOTICE “EXPORT CARGO”** - Requiring the proper documentation of export cargo 24 hours in advance of its receipt at the port facility is logical and follows the rule for import cargo. While U.S. Customs requires twenty-four-hour advance notice of the contents of all containers arriving aboard vessels, *see* 19 CFR 4.7(b), current federal regulations require no comparable notice for export containers arriving by truck or rail. Imposing a 24-hour detailed notice rule on inbound cargo, but not trucks or trains delivering “outbound export cargo” into the terminals makes little sense. Requiring such notice would provide facility personnel additional time to spot errors relating to the misidentification of cargo, fix the honest mistakes, and determine what containers require further inspection. It would also lead carriers to spot more unidentified HazMat materials before they are transported.

It is important to understand that while “empty” containers and export cargo are ultimately destined for other countries, they also pose immediate security risks for our seaports and the country. This is a national security issue for two reasons:

1. Once the cargo within the container has been unloaded at its eventual destination, there is no system, protocol, or requirement in place making the last shipper responsible for closing and sealing the doors. As a result, this empty container will travel over-the-roads of the U.S. unlocked and open. It may serve as a platform or vehicle for anything or anyone who may desire to do harm to our country. It may lie

unattended on city streets or even within the port for days or even weeks until it is returned to the terminal for shipment (usually back to Asia.) Who knows what has been stored or smuggled inside? Who knows what kind of plan someone may come up with utilizing this empty container?

2. Once loaded onto a vessel, empty containers travel with that vessel between and among U.S. ports until they are eventually off-loaded, whether in a foreign port, or still here in the U.S. At any point along the vessel route, a weapon of mass destruction, planted inside an "empty" container or among export cargo, could be later detonated at the next American port-of-call. The Al Qaeda terrorists executed their September 11 attacks from within the United States. The same strategy may well be used again and should be anticipated. Prevention with respect to cargo and containers in our marine transportation system depends on a thorough knowledge of containers and cargo handling methods and operations. The 9/11 terrorists exhibited an amazing ability to gather intelligence, and then plan, fund and execute a successful operation. The defense of our country demands no less.

II. The April 28, 2004 Explosion at Trapac in Long Beach Exposes Current Deficiencies and Loopholes in Port Security That Must Be Corrected

The container that exploded at the TRAPAC facility had been transported across the State of California without "HazMat" placards or paperwork even though it contained hazardous materials; bottles of LPG butane and a pick-up truck with a leaking gas tank. The container arrived at the facility with a non-standard seal and ambiguous paperwork; the contents were not identified or listed. The in-gate automated system, which has replaced the gate clerk, reported to remote located personnel that the container had arrived and assigned it a parking spot next to other containers awaiting vessel load-out. The remotely sited clerk never "saw" the container. She never knew it arrived without placards, and she wasn't furnished a list of contents. She was not aware of the (2) different commodities of HAZ-MAT cargo loaded inside; a small vehicle with a leaking gas tank placed next to butane gas. In fact, her computer screen showed very little information. Without the human presence, how can anyone reasonably expect that this will not occur again? Terminal management must reformat entry systems to insure that a container's contents, HazMat materials, and any other dangerous or threatening commodity or information is furnished to whoever is "receiving" the cargo and that it's easily identified.

The container at the Trapac facility did have a seal. But contrary to the industry standard; it was locked with a personal padlock. The booking information contained no description of the containers contents, only a FAK moniker. Despite this lack of information and the unusual presence of a personal padlock, the container was permitted to enter the facility where it was

stored for three days.

The disorder that ensued after the explosion occurred because there was no clear procedure in place for responding to such an incident. In addition, no one at Trapac knew what the container contained, including whether it may have been biological agents or hazardous substances that may have been released into the atmosphere by the explosion. Nonetheless, Trapac did not evacuate the facility or even stop new cargo from entering the gate. Workers milled around the site looking into the container until the ILWU agreed to shut down the facility pending investigation.

The ports must be made more secure. However, rather than take steps to improve port security and comply with the Coast Guards regulations, some facility owners and operators are violating the regulations and have gradually watered-down the screening processes by automating more steps and eliminating actual inspections by human beings. Facility owners and operators seem to want to remove themselves from the responsibility of knowing the contents of the containers that enter and leave their facilities. By failing to take responsibility and comply with the federal regulations that require them to take responsibility, facility owners and operators are placing the lives of dockworkers and surrounding communities at risk.

III. Facility Owners and Operators Violation of Existing Port Security Regulations

A. Not Implementing Measures to Screen Materials Entering the Facility.

Port security regulations require facility owners and operators to ensure the implementation of security measures to:

- (1) Deter the unauthorized introduction of dangerous substances and devices...
- (2) Secure dangerous substances and devices that are authorized by the owner or operator to be on the facility and,
- (3) Control access to the facility.

33 CFR ' 105.255(a). Specifically, facility owners and operators must, among other things screen vehicles and cargo entering the facility including performing visual inspections of cargo when appropriate, prevent unauthorized cargo from entering the facility and check seals. *Id.* ' ' 105.255(e)-(g), 105.265(a)-(d).

But rather than take steps to implement these regulations, many facility owners and operators are doing nothing. Worse yet, some are reducing the amount and quality of screening that is performed. At many facilities within the Ports of Long Beach and Los Angeles, when a truck arrives at the gate to enter a facility, a clerk performs very little or no screening at all before

permitting the truck to enter. A clerk housed in a remote location checks the chassis number and container number using a stationary video camera positioned at the gate and asks the driver for the number indicated on the seal attached to the container. The clerk does not visually inspect the seal to determine whether it is attached to the container or whether the seal is intact and unbroken. The clerk also does not check to ensure that the number on the seal on the container matches the seal number indicated in the booking. These procedures violate the regulations requiring that facility owners and operators ensure that seals are checked. What is more, many of these checks were ones previously conducted by entry gate clerks. However, as a consequence of increased automation, containers without seals or with broken seals can and do enter facilities every day.

Clerks also are unable to verify the contents of a container or check the delivery note against cargo documents, as the regulations require. Often, a clerk has no access to a record of the contents of the container. Frequently, the booking information available to the clerk merely says FAK. The clerk has no way of knowing whether a container actually includes hazardous or dangerous materials. Previously, clerks had access to more information about the contents of containers. Under new systems, clerks located in remote towers and booths actually have less access to information now. Facility operators have chosen to program the systems so as to make this information unavailable.

This lack of information was a direct cause of the container explosion on April 28. The booking information available to the clerk was only FAK. Had the clerks at the entry gate had access to detailed information about the container's contents, they could have checked this information and determined that the container included hazardous materials, inspected its contents, secured them properly and placarded the container as hazardous, thereby preventing the explosion that occurred.

What is more, when delivery documentation appears inconsistent or inadequate, the standard practice at many facilities is to permit the container to enter the facility with a "dummy" booking and then resolve the issues once the container is inside. Thus, containers with unknown contents and unknown designations for loading are stored at facilities without restriction for several days. This practice is an obvious violation of the new regulations.

B. Facility Owners and Operators are not Implementing Measures to Screen People Entering the Facility.

Facility owners and operators also must establish an identification system . . . for checking the identification of facility personnel or other persons seeking access to the facility. @ *Id.* ' 105.255(c). Specifically, facility owners and operators must screen persons . . . and

vehicles . . . for dangerous substances and check the identification of any person seeking to enter the facility, including examining some form of identification. *Id.* ' 105.255(e)(1), (3).

As with cargo screening, facility owners and operators have watered-down the screening of people entering facilities, particularly truck drivers. At some facilities no one checks to make sure that truck drivers are who they say they are. At another facility, the drivers entering the facility swipe their license, then pull up to a telephone stand where a clerk at a remote location asks the driver to verbally provide his or her security identification number. However, clerks do not have access to a database to determine whether the identification number and drivers license information match the same driver. Further, no one at the facility checks to ensure that the photograph on the license matches the driver of the vehicle. Thus, a driver can easily enter a facility using false identification. A staff member at one facility remarked that he believes that approximately half of the California licenses swiped at the entry gate are fraudulent.

Even worse is the fact that there is no requirement to inspect the interior of the thousands of trucks, (especially the "sleeper cabs,") that enter these facilities everyday. A person or persons could easily be smuggled into one of our marine facilities in a "sleeper," not only without having to show identification, but with no record of them ever appearing at the facility entrance.

C. Facility Owners and Operators Are Not Implementing Measures to Check and Track Dangerous Cargo once it Arrives at the Facility.

The regulations require that facility owners and operators track dangerous cargo once it enters a facility. Facility owners and operators must create, update, and maintain a continuous inventory, including location, of all dangerous goods or hazardous substances from receipt to delivery within the facility, giving the location of those dangerous goods or hazardous substances. 33 CFR ' 105.265(a)(9).

At many facilities, personnel do not know whether a container includes dangerous or hazardous substances. As discussed above, clerks at the entry gate often have no access to information about a container's contents. They must blindly trust that the shipper has correctly identified the contents as non-hazardous. However, as the Trapac explosion revealed, shippers do not always mark containers appropriately. Regulations and common sense require that facility owners and operators take reasonable steps to catch these inaccuracies.

The failure to verify cargo entering the facility resulted in an explosion that could have been catastrophic. As discussed above, the container was scheduled to be placed on a vessel below another containing highly flammable material. Had the explosion occurred only minutes later aboard the ship, many lives, thousands of tons of cargo and the entire vessel could have

been lost.

Further, facility owners and operators at many facilities fail to track even those containers that are properly marked as containing hazardous materials. At approximately half of the facilities in the Port of Long Beach, the planners determine where containers will be stored in the yard and where they will be placed aboard vessels and trains. The problem is that they have no access to information indicating whether a container contains hazardous materials. This is a violation of the regulations.

D. Facility Owners and Operators Are Not Implementing Measures to Check The Seals of Containers For Possible Tampering

The regulations require facility owners and operators to routinely check containers, including their seals, once the containers arrive at the facility as well as when placed in inventory on the dock to prevent tampering. *Id.* ' 105.265(b)(4) and 105.265(c)(4). Facilities in the Ports of Los Angeles and Long Beach have no system in place to ensure that these checks are performed. In fact, recently, and since September 11, facility operators have actually discontinued the prior practice of checking the integrity of container seals as they enter the terminal from inbound vessels.

E. Facility Owners and Operators are Not Training Personnel in Port Security.

The regulations require that all facility personnel, receive training in,

- (1) Relevant provisions of the Facility Security Plan (FSP);
- (2) The meaning and the consequential requirements of the different MARSEC Levels as they apply to them, including emergency procedures and contingency plans;
- (3) Recognition and detection of dangerous substances and devices;
- (4) Recognition of characteristics and behavioral patterns of persons who are likely to threaten security; and
- (5) Techniques used to circumvent security measures.

See 33 CFR ' 105.215.

Facility owners and operators should be, but are not providing training on these topics or taken any actions to educate personnel about them. To the contrary, owners and operators have taken the position that their FSPs are confidential and cannot be released to anyone including their own employees. It is meaningless to have Coast Guard-approved security plans if the very employees who must follow and implement the plans are not permitted to know what they

contain. Therefore, the ILWU has taken the lead and in coordination with the local fire departments, is working to formulate training criteria.

The failures that occurred at Trapac must not be repeated. Personnel simply did not know how to respond. Trapac did not evacuate the facility or even stop operations despite the fact no one knew the cause of the explosion or whether the container held toxic substances. The ILWU finally suggested closing the facility until there were some assurances of safety.

IV. In Order to Comply with the Regulations, Facility Owners and Operators Must Intensify Screening and Increase Employee Access to Information.

The following are some of the procedures that facility owners and operators must implement in order to comply with the regulations. As indicated below, many of these are actions that were previously performed by facility operators and have been eliminated as a consequence of systems automation.

A. At the Entry Gate:

- Require guards to check the "sleeper cabs" of all trucks entering the facility for people and potentially dangerous substances.
- Provide clerks working the entry gate with access to a database that can match driver's licenses with a driver's security identification number. (Previously done at facilities)
- Require personnel to ensure that these identification materials match before permitting a driver to enter a facility. (Previously done at facilities)
- Require visual inspection and photo match-up of the driver's license of each driver entering the facility. (Previously done at most facilities)
- Require a visual inspection of the seals on all containers entering the facility to ensure that the seals are present, unbroken and match the seal information contained in the booking. (Previously done at most facilities)
- Require visual inspection of the contents of a container whenever a clerk finds that a seal is absent or broken or doesn't match the information in the booking. (Previously done at most facilities)

- Provide clerks with access to computer screens that list the contents of all containers entering the facility and require clerks to review the list of contents of each container. (Previously done at most facilities)
- Outlaw the FAK cargo designation altogether. There is no reason that import cargo should outlaw it, yet export cargo is still using it.
- Send a driver to the “trouble window” for additional investigation including visual inspection of cargo in the event information in the booking does not match the information presented, or if the booking contains incomplete information. (Previously done at most facilities and currently done at some facilities now.)

B. Within the Facility:

- Provide yard, vessel and rail planners with access to information about the contents of all containers, including containers containing hazardous materials or dangerous substances. (Previously done at most facilities)
- Use the existing systems to continuously inventory and track all containers containing hazardous materials and dangerous substances. (Previously done at most facilities)
- Require that staff inspect the seals on containers at designated intervals and before the containers are loaded onto vessels or trains for transport to ensure that seals are present, unbroken and match the information in the bookings. (Previously done at most facilities)
- Perform random visual inspections of the contents of containers containing both hazardous and non-hazardous substances to ensure that the contents match the description of the contents contained in the booking.

C. Training

- Immediately provide security training to all facility personnel.
- Make the FSP available to all facility personnel who will be responsible for its implementation including foremen, chief supervisors and stewards.

V. The Existing Regulations Must Be Enhanced To Require 24 Hour Advance Documentation of Export Cargo and the Inspection of Containers Marked As “Empty”

and are insufficient.

Forcing the terminal facility owners and operators to comply with the existing regulations would go a long way toward making the Ports of Long Beach and Los Angeles safer and more secure. However, additional regulations are also needed to assist in the screening of cargo entering the facilities.

While U.S. Customs Service regulations require twenty-four-hour advance notice of the contents of all containers arriving aboard vessels, *see* 19 CFR ' 4.7(b), federal regulations require no comparable notice for containers arriving by truck or rail. Further, Customs regulations require that the notice for all containers arriving by vessel include a detailed description of the container's contents. *Id.* ' 4.7a(c). Customs regulations expressly state that generic descriptions, specifically those such as FAK (freight of all kind), and STC (said to contain) are not acceptable when used with import cargo. By contrast, containers arriving by truck or rail designated for export can and often are marked generically, like the container marked FAK that exploded at the TRAPAC facility.

Imposing a "24-hour advanced notice rule" on containerized imports arriving aboard vessels, but not on outbound "export" cargo and containers transported into the facilities aboard trucks and trains makes little sense. History has painfully demonstrated that acts of terrorism can be launched from within our borders as easily as they can be launched from outside the country. In fact, many of the terrorist models put forward today maintain the threat may more likely come from within the country from a group or person already located here. The regulations not only fail to sufficiently guard against the internal threat, they actually might facilitate just such an incident. This places not only the ports and surrounding communities at risk, but also places the entire nation at risk because of vague identifiers and cargo designations such as the "FAK" and "STC." They lead to the unmonitored transport of hazardous substances over public highways in virtually every state in the nation. Indeed, the container that exploded at the TRAPAC marine facility could have just as easily exploded on such a public highway.

The federal regulations should be amended to require **24 hr.** advance and detailed notice of the contents **of all containers** entering U.S. marine terminals and facilities. Such a notice would provide facility personnel the additional time necessary to spot errors relating to the misidentification of cargo, fix those that are mistakes and determine what containers require further inspection. It would also lead carriers to spot more unidentified HAZ-MAT materials before they are transported at all.

In addition to seal inspection and documentation definition, we urge this Committee to advocate for a new regulation mandating the routine inspection of all cargo containers marked

“empty,” and as referred to in 105.265(b). The proper handling of empty containers is often overlooked and under-rated. It is a serious and real risk to U.S. terminals, ships and infrastructure. On any given day as much as forty percent of cargo delivered into any facility is comprised of empty containers being recycled back to the Pacific Rim. Containers marked “empty” provide an easier opportunity to house a destructive or explosive device or material and therefore, present an increased security risk warranting their inspection at port facilities. The good news is that unlike containers filled with cargo, empty containers can be inspected easily and quickly. It is relatively inexpensive, and at most facilities it would take no more than ordering a person already employed to do this. The time frame is about 60 seconds.

The physical inspection of all container seals, the verification of containers marked “empty” as well as the requirement that documentation, 24 hours in advance preceding the arrival of export cargo, are vital to an effective port security program.

VI. Congress Must Adequately Fund Coast Guard Enforcement of MTSA and Related Infrastructure Needed to Implement and Enforce Port Security Regulations

All the words and rhetoric of the MTSA and Coast Guard regulations are relatively meaningless without proper follow-through and enforcement. Our U.S. ports have become the gateway of our new “import” economy. Effective port security requires a comprehensive and fully funded “landside” compliance program. It will mean employing greater numbers of Coast Guard personnel trained in the particulars of marine terminal operations, new marine terminal systems technology, and the complex and intricate methodology of cargo and container terminal “throughput.” Only through proper funding, training and implementation will America will truly be committed to developing a progressive and effective Port Security Program

ATTACHMENT

UNITED STATES CUSTOMS – 24 HOUR RULE

A new rule requires that certain information about cargo being shipped to the United States by sea must be transmitted to U.S. Customs 24 hours prior to the loading of that cargo onboard a vessel. The purpose of the rule is to help prevent the smuggling of weapons of mass destruction into the U.S. For any vessel arriving in the United States, Customs must receive from the carrier the vessel's Cargo Declaration, Customs Form 1302, or a Customs approved electronic equivalent, 24 hours before such cargo is laden aboard the vessel at the foreign port. Bulk cargo, such as oil, grain, or coal, which can be pumped or run through a chute or articles such as bricks pig iron, lumber, or steel that require mechanical handling, are exempt.

The rule became effective on December 2, 2002. Initially Customs advised that they would not enforce the provisions of the rule for unintentional violations until February 2, 2003. As the deadline for this implementation period draws near, Customs has made an additional announcement regarding its enforcement posture. At the January 24, 2003 meeting of the Treasury Advisory Committee on the Commercial Operations of the US Customs Service (so called COAC), Customs Commissioner Bonner stated Customs will take a 'measured' approach to enforcement. Effective February 2, 2003 Customs will limit enforcement to the requirement for a precise description of the cargo. Details on this requirement follow below. Customs did not commit to a time limit for the enforcement of other aspects of the rule. Again, Customs will enforce intentional violations including penalties against parties not making an effort to comply.

The rule requires that the following data elements be reported on the Cargo Declaration made to Customs:

- The last foreign port before the vessel departs for the United States.
- The Standard Carrier Alpha Code assigned to the carrier.
- The carrier-assigned voyage number.
- The date the vessel is scheduled to arrive at the first U.S. port in Customs territory
- The numbers and quantities from the carrier's ocean bill of lading, either master or house, as applicable.
- The first foreign port where the carrier takes possession of the cargo destined to the United States.
- A precise description (or the Harmonized Tariff Schedule (HTS) numbers to the 6-digit level under which the cargo is classified if that information is received from the shipper) and weight of the cargo or, for a sealed container, the shipper's declared description and weight of the cargo. Generic descriptions, specifically those such as "FAK" (freight of all kinds), "General Cargo", and "STC" (said to contain) are not acceptable.
- The shipper's complete name and address, or identification number, from all bills of lading. The identification number will be a unique number assigned by U.S. Customs upon the implementation of the Automated Commercial Environment.

- The complete name and address of the consignee or the owner or owner's representative, or identification number, from all bills of lading. The identification number will be a unique number assigned by U.S. Customs upon implementation of the Automated Commercial Environment.
- The vessel name, country of documentation, and official vessel number. The vessel number is the International Maritime Organization Number assigned to the vessel.
- The foreign port where the cargo is laden on board.
- Internationally recognized hazardous material code when such materials are being shipped.
- Container numbers for containerized shipments.
- The seal numbers for all seals affixed to containers.

Failure to file the required information accurately and 24 hours in advance of the vessel loading may result in penalties for the party responsible and in cargo not being permitted to be unloaded from the vessel at U.S. ports.

An important element to be reported is the description of the goods. As noted above, Customs will not accept the terminology of FAK, general cargo or STC. The description must be precise enough for Customs to be able to identify the shapes, physical characteristics, and likely packaging of the manifested cargo so that Customs can identify any anomalies in the cargo when a container is run through imaging equipment. On its website at www.customs.gov, Customs has posted information in the form of Frequently Asked Questions (FAQ) that specifies what is and what is not acceptable descriptions of freight. For example, clothing or shoes are acceptable - apparel or wearing apparel are not. The actual chemical name of a product is acceptable but the brand name only or the term chemicals are not. Computer, telephones, or C.D. players are acceptable but the term electronics or electronic goods are not. As an alternative to a narrative description, Customs will accept the 6-digit Harmonized Tariff Schedule number for the imported goods. Although the carrier is responsible for reporting this information to Customs, the importer should insure that the shipper provides the most accurate and complete description possible in order to avoid having the containers barred from loading.

Confidentiality of the information on the manifests will pertain to the name and address of the shipper and importer only, and must be requested in writing by the importer. Once approved, the importer must request such confidentiality every two years. Customs, by law, cannot keep any other information confidential other than the names of the sending and receiving parties.

As previously mentioned, the above-described regulation applies to cargo shipped to the United States by sea. Legislation passed in 2002 requires that Customs adopt similar pre-manifesting regulations for the remaining modes of transportation: air, rail and truck. Customs recently posted suggested proposals for these modes on their website and accepted comments. At the January 24, 2003 COAC meeting Customs Commissioner Bonner accepted the Committee's offer to develop more realistic proposals for these modes. Ultimately revised proposals or regulations will be available for comment. Customs must have final regulations in place by October 2003. Mary Jo Muoio, President

of Barthco Trade Consultants sits on the COAC and can be consulted for additional information (m.muojio@barthco.com).

Testimony of Congressman Doug Ose on H.R. 2193
Transportation & Infrastructure Coast Guard & Maritime Transportation Subcommittee Hearing
“Implementation of the Maritime Transportation Security Act”
June 9, 2004

Chairman LoBiondo, thank you for the opportunity to testify before your Subcommittee on my bi-partisan legislation entitled the “Port Security Improvements Act” (H.R. 2193). I believe that this Congress should enact legislation to ensure a dedicated multi-year funding stream for essential port infrastructure improvements, especially to ensure port security, and I commend you for holding a hearing on my bill.

The tragic events of September 11, 2001 shook the confidence of the U.S. government and its citizens in the nation’s security. On November 19, 2001, the President signed the Aviation and Transportation Security Act. Congress then turned its attention to port security. On November 25, 2002, the President signed the Maritime Transportation Security Act. To provide Congressional and public input into the regulatory decisionmaking process, on April 24, 2003, my Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs held a hearing entitled “What Regulations are Needed to Ensure Port Security?”

In response to this hearing, in May 2003, with my Subcommittee Ranking Member John Tierney, I introduced H.R. 2193. Our bill speaks directly to who should pay for port infrastructure improvements. To date, Congress has provided extensive Federal funding to fully ensure air security. However, Congress has not provided sufficient Federal funding to fully ensure port security, which is equally important to protect America from terrorist threats.

The U.S. maritime system includes more than 300 ports with more than 3,700 cargo and passenger terminals. The top 25 ports account for 98 percent of the more than 6 million container shipments entering U.S. ports yearly. The vast maritime system is particularly susceptible to terrorist attempts to smuggle personnel, weapons of mass destruction, or other dangerous materials into the U.S. Also, terrorists could attack ships in U.S. ports. A large-scale terrorist attack at a U.S. port would cause widespread damage and seriously affect our economy.

The witnesses at my Subcommittee hearing made several thoughtful recommendations, including: (a) the urgency for the Department of Homeland Security to issue a regulation governing a standardized “smart” common Transportation Worker Identification Credential; (b) the need for some standardization of security requirements for each U.S. port, each facility in a U.S. port, and each vessel entering a U.S. port; and, (c) the need for an additional significant Federal investment in port security.

The General Accounting Office (GAO) estimated that the U.S. Customs Bureau annually collects \$15.2 billion in duties on commodities entering the U.S. through marine transportation. H.R. 2193 directs a portion of these duties toward port security enhancements. In addition, H.R. 2193 sets deadlines for issuance of regulations governing transportation security cards, and requires regulations that include a national minimum set of standard security requirements for ports, facilities, and vessels. The Coast Guard’s October 22, 2003 final rules fulfill part of this

legislative requirement since they establish some standardization of security requirements for ports, facilities and vessels.

To understand the logic of dedicating a portion of Customs duties, let's look at the Port of Los Angeles. It is the busiest port in the U.S. and the seventh busiest in the world. In 2002, Custom duties collected in this port accounted for 32 percent of all Customs duties collected in all U.S. seaports. However, since the passage of the Maritime Transportation Security Act, this port has only received a small fraction of what it needs for port security enhancements¹ and a substantially inadequate share of the funding distributed to date relative to its importance in the commerce of this country.

Currently, 70 percent of Custom duties are deposited in the Treasury general fund; under law, the other 30 percent are devoted to agricultural purposes. Section 3 of H.R. 2193 provides a portion of Custom duties collected at ports to be dedicated for 5 years to port security enhancements, including infrastructure improvements. The bill includes a funding formula, which is based on the business concept of income (duties collected at a port) minus expenses (Federal agency expenditures at the port). H.R. 2193's 5-year funding level of \$3.3 billion was based on the Coast Guard's December 2002 10-year estimate of \$6.0 billion. On October 22, 2003, the Coast Guard issued a revised 10-year estimate of \$7.3 billion. Therefore, the bill's funding level should be adjusted upwards.

Under the bill, "entitlement" funding to duty-collecting ports and their facilities and vessels will flow through the Department of Homeland Security, which by law must review and approve each Area Maritime Transportation Security Plan, Facility Security Plan, and Vessel Security Plan. The distribution within a port would be based on the approved Area Maritime Transportation Security Plan.

Since America's ports are crucial to our economic well being, it is essential that we find the right balance between increasing port security while not impeding the flow of commerce and trade. I am sensitive to the costs of excessive government regulation. However, in a post-September 11th world, I realize that we must take additional precautions to protect our fellow citizens and our economy. We need to make sure that our ports are safe. I am not convinced that they are safe today.

H.R. 2193, which has 34 co-sponsors, will ensure that America's ports receive the security upgrades they need. This legislation links customs duties collected in our ports to investments in greater security at these ports. In contrast, the Senate Committee on Commerce, Science, and Transportation's "Maritime Transportation Security Act" (S. 2279) originally included a proposed new security fee but, on April 8, 2004, it was rejected and then the bill was reported out without a designated funding source.

¹ In the three rounds of grant funding, to date, the Port of Los Angeles has received only \$4.8 million (some of which was for joint projects with the Port of Long Beach), out of the \$97.8 million requested, i.e., less than 5 percent.

**STATEMENT OF THE HONORABLE DON YOUNG,
AT THE
COAST GUARD AND MARITIME TRANSPORTATION
SUBCOMMITTEE HEARING ON
THE IMPLEMENTATION OF THE MARITIME
TRANSPORTATION SECURITY ACT, AND ON H.R.
2193, THE PORT SECURITY IMPROVEMENTS ACT OF
2003, AND H.R. 3712, THE UNITED STATES SEAPORT
MULTIYEAR SECURITY ENHANCEMENT ACT**

JUNE 9, 2004

**MR. CHAIRMAN, I AM PLEASED THAT YOU ARE
HOLDING THIS HEARING.**

**I EMPHASIZE THAT THIS IS THE COMMITTEE OF
JURISDICTION OVER PORT SECURITY ISSUES.**

**THIS COMMITTEE CRAFTED THE MARITIME
TRANSPORTATION SECURITY ACT AND REQUIRED
THE COAST GUARD TO IMPLEMENT NUMEROUS
PORT SECURITY MEASURES BY REGULATION.**

**I COMMEND THE COAST GUARD ON A JOB WELL
DONE FOR PUBLISHING A MONUMENTAL AND
TIMELY SET OF RULES.**

**HOWEVER, I AM CONCERNED ABOUT THE
FINANCIAL BURDEN ON THE REGULATED INDUSTRY
AND ALSO ON THE REGULATORS.**

**I WELCOME SUGGESTIONS FROM TODAY'S
WITNESSES ABOUT WAYS TO FINANCE SECURITY
UPGRADES TO OUR SEAPORT INFRASTRUCTURE.**

**THE COAST GUARD'S RESOURCES ARE
STRETCHED SO THIN THAT ITS TRADITIONAL
MISSIONS LIKE SEARCH AND RESCUE, FISHERIES
LAW ENFORCEMENT, AND MARINE SAFETY MAY
SUFFER DAILY IN THE QUEST FOR SECURING OUR
PORTS.**

**FINALLY, JULY 1 IS NOT ONLY A U.S.
DEADLINE, BUT ALSO A WORLDWIDE MANDATE,
AND NO PORT, FACILITY, OR VESSEL GETS OFF THE
HOOK.**

**THE COAST GUARD MUST ENSURE A ROBUST
ENFORCEMENT OF FOREIGN VESSELS ENTERING
OUR PORTS.**

**I LOOK FORWARD TO HEARING FROM OUR
WITNESSES, AND AGAIN COMMEND THE CHAIRMAN
FOR HOLDING THIS IMPORTANT HEARING.**

For the Record

Coast Guard and Maritime Transportation
Hearing Regarding Implementation of the Maritime Transportation Security Act
 June 9, 2004

Thank you for the opportunity to provide testimony regarding implementation of the Maritime Transportation Security Act. On behalf of the shipping association and marine exchange members of the National Association of Maritime Organizations (NAMO), we extend our gratitude to Chairman LoBiondo for his vigilance with U.S. Coast Guard and Department of Homeland Security oversight of the commercial maritime security. The members of NAMO are directly involved with international vessel operations as they are impacted by security requirements in U.S. ports and waterways. Most often, our members work with bulk and break bulk vessel operators. The USCG has recognized that dry bulk and break bulk carriers are naturally low risk vessels. We are concerned about security regulations and compliance efforts which were originally created to address high risk container ships and are unnecessarily adding a burden to bulk operators and USCG inspection personnel.

We recognize that this hearing is specifically about the MTSA implementation, particularly as it impacts the USCG ability to meet compliance reviews on or about July 1, 2004. However, we will also comment on other security requirements under the U.S. Coast Guard and their DHS partner, the Bureau of Customs and Border Protection. We believe they are intrinsically tied together because customs manifest, crew manifest, advance notice of arrivals, and other foreign vessel notification requirements as well as law enforcement boardings are all handled by the vessel agent on behalf of the vessel operator before or as a vessel enters U.S. waters or ports. NAMO has often stated that Congress and government develop voluminous security requirements that are directed to vessel operators with the thought that there is a big corporation with large resources to respond. Yet, it is often one vessel agent on the dock who assumes responsibility for many if not most of these regulations. NAMO seeks to provide a perspective from that person on the dock who works directly with the field operators under USCG and CBP.

Vessel Security Plan Compliance: NAMO believes that the USCG does not have sufficient resources to perform their security inspections on all vessels arriving on or after July 1, 2004. We recognize that USCG has performed pre-inspections to alleviate the potential congestion and backlog on July 1st, yet USCG has had difficulty in performing the security inspections at the busier ports. Some vessels have requested pre-inspections to avoid the July 1st crunch and USCG has been unable to meet those requests.

Inspections at Sea: USCG will attempt to inspect vessels at the sea buoy particularly when a vessel is a new construction and in its first call on the U.S. This is nearly an impossible task that unduly burdens a limited number of USCG inspectors because it requires difficult logistics and added expenses. Local USCG representatives have assured many of us that most boardings will be at berth. We would like a written policy from headquarters to guide port captains in deciding when a vessel must be boarded at sea and that boarding at berth is a priority unless legitimate intelligence dictates otherwise. We do not believe that new construction implies heightened security risks.

Cargo Operations: Local Captain of the Ports (COTP) need written direction by which inspection personnel can to the extent possible limit interruption with cargo operations. If inspectors are not available when a vessel is at berth, and the vessel would not normally pose any heightened security risks, the vessel should be allowed to sail and inspected on its next arrival. Allow us to reiterate that bulk operators tend to be low risk operations which also require more longshore labor. Vessel agents have deadlines by which dock labor must be called and reserved for specific start times. Holding start times while awaiting USCG inspections or stopping labor after ordered is extremely expensive. This underscores the concern that a July 1 backlog is inevitable and may impede trade. Coast Guard should give the carrier the earliest possible indication of any foreseen problems that could negatively impact the vessel's schedule or commercial port activities.

Three Strike Enforcement Policy: The current plan states that the vessel will be denied entry if it does not have a current ISSC on or after July 1, 2004. The USCG should adopt a "Three Strike" enforcement policy for vessels that arrive in the U.S. without an ISSC. We recommend a three strike enforcement policy as follows: First offense, a fine of \$X; Second offense, a fine of \$Y; and for the third offense, the vessel would be denied entry into the U.S. This approach allows for MTSA enforcement tempered with an understanding of needs of commerce.

Compliance Status of US Facilities: The USCG should publish a list of U.S. facilities with approved facility plans. Potentially, a ship can arrive with a belly full of cargo and be prevented from discharging because the discharge facility doesn't have an approved plan. The USCG's enforcement affects many innocent parties in the supply chain who are being punished because of someone else's offense. Again, this impacts the bulk trades more because their ports of call change with the customer and cargo. Unlike container ships which call on the same port repeatedly, a bulk ship could be at a port in the Great Lakes one month and a small Gulf port the next. It is entirely possible that a bulk ship could call on a dock/terminal facility it has never been to before.

Transportation Worker Identification: NAMO members have experienced problems with the lack of worker identification in port facilities. A vessel security plan may require proper identification for each worker expected to work on or around the vessel. Yet, there is no national standard for worker I.D.'s which fit into international vessel security plans and no direction from USCG to assist in this problem.

Declaration of Security: The procedure by which a bulk ships can create a "Declaration of Security" with a facility operator must be simplified. The DOS is required in certain tank vessels all the time but is only required with other bulk vessels at raised MARSEC levels. A MARSEC level could change while the vessel is en route. The agent should be allowed to develop the DOS with the facility operator before the vessel arrives such that final approval and signature by the vessel security officer can be completed upon the vessel's arrival. Creating the DOS after the ship's arrival will only loading/unloading. Again, most bulk vessels are of low risk such as stone, cement, and steel.

"Contaminated" Port Issue: We request that the USCG provide to the greatest extent possible information to industry regarding the status of foreign port compliance to ISPS. We understand that USCG will be visiting foreign ports to inspect for security plan compliance. The reality, of course, is that USCG will visit container ports first. This unnecessarily puts the bulk trades at a disadvantage for delays and entry denials merely because they are in a different trade. The security status of the foreign port from which a U.S. bound vessel has sailed will be in the boarding matrix which determines the security risk of that vessel. How will bulk and break bulk vessels compensate from calling a "contaminated" port before coming to the U.S.? NAMO recommends that any vessel entering the U.S. with such a contamination be designated to operate at one MARSEC level higher.

Great Lakes Destined Vessels: Foreign vessels seeking to call on U.S. ports in the Great Lakes and that need corrective action regarding MTSA compliance or other security issues should be addressed by USCG before entering the Great Lakes. In particular, we believe that joint CBP and USCG vessel pre-inspection reviews should be handled in Montreal.

Security vs Safety: NAMO urges USCG to move rapidly towards combining security and safety inspections with appropriately trained teams. We recognize that Coast Guard is performing separate vessel boardings to get through the July 1 implementation. NAMO urges USCG to enhance their traditional port state control vision by augmenting the safety and environmental protection under port state control targeting, inspection and re-exam efforts with security needs. Ultimately, the teams should be crossed trained.

NAMO also would like to add the following issues regarding international vessel regulations in U.S. ports and waters:

Vessel Boarding Procedures: NAMO urges USCG to perform law enforcement and security boardings in a professional manner which are respectful of the master, officers and crew of the vessel. There have been incidents where USCG has acted in a manner which appears harsher than circumstances would warrant. For example, we note times where crew was mustered on the fantail in cold and inclement weather for extended periods of time. The vessel is home to the crew members and common courtesy and respect should be extended to them as such. It is truly rare that intelligence warrants intimidation tactics.

Consistent Boarding Policies: NAMO members have found that there is often inconsistency between COTP's regarding what constitutes a vessel which needs boarding and which does not. For example, one vessel coming from a particular foreign port will be boarded. The USCG will report that every ship coming from that port will be flagged for boarding. Its sister ship coming from the same port will not be boarded under a different COTP elsewhere. Policies seem to differ from U.S. port to U.S. port even though the criteria do not change.

USCG Reorganization: We understand that USCG is reviewing organizational change to address broadened responsibilities. NAMO is concerned that industry has not been involved in this process and it is not clear how the MTS will be impacted by any reorganization. We are also concerned that maritime safety expertise is not being fully valued and that decision-making in the field can be relegated to those without the safety expertise necessary. Commercial maritime cannot function efficiently if field activities are overseen by USCG personnel with little or no expertise with our industry.

Maximize Coordination with DHS Partners: NAMO asks Congress and the Department of Homeland Security to consider the impact of regulations from different DHS agencies and expedite the merge of advance notice requirements from foreign vessels such as with cargo manifesting, crew manifesting, and USCG advance notice of arrivals.

Thank you for the opportunity to provide a perspective from vessel agents and bulk and break bulk operators engaged in foreign trade to U.S. ports. Please feel free to contact the NAMO if there are questions. NAMO President, Helen A. Brohl, 973-345-2534 or usglsa@cs.com or www.NAMO.org.