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WHAT REGULATIONS ARE NEEDED TO ENSURE PORT SECURITY?

HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES AND REGULATORY AFFAIRS

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

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WHAT REGULATIONS ARE NEEDED TO ENSURE PORT SECURITY?

THURSDAY, APRIL 24, 2003

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES AND REGULATORY AFFAIRS,
COMMITTEE ON GOVERNMENT REFORM,
San Pedro, CA.

The subcommittee met, pursuant to notice, at 10 a.m., in the Board Room of the Port of Los Angeles Administration Building, 425 South Palos Verdes Street, San Pedro, CA, Hon. Doug Ose (chairman of the subcommittee) presiding.

Present: Representatives Ose and Janklow.

Also present: Representatives Harman and Rohrabacher.

Staff present: Dan Skopec, staff director; Barbara Kahlow, deputy staff director; Melanie Tory, clerk; and Yier Shi, press secretary.

Mr. OSE. Good morning. Welcome to today's hearing before the Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs.

I ask that we allow Members not on the full committee to join us today for the purpose of this hearing. Hearing no objections, so ordered.

I want to touch on the rules when Congress holds committee hearings. We are now required under the rules of the House to extend written invitations within a certain period of time prior to the hearing, to which we get responses. The witnesses whom we do invite are discussed by the majority and minority. Both sides are allowed to invite witnesses, and the witnesses that have been invited and have been agreed on and have been invited long in advance in the hearing to come testify today. We are grateful for their joining us.

To the extent other citizens wish to submit written comments to the committee, we'll be happy to take them. Unfortunately, we will not be able to entertain oral testimony in this regard, but we will welcome your written submittals instead. The record of this hearing will be open for 10 days following its completion, during which time comments can be submitted by turning them into the clerk either here today or in Washington in the coming days. A number of our colleagues here will be joining us shortly. They are making their ways through the security downstairs.

This is an investigative committee. And, as an investigative committee, we routinely swear in our witnesses and put them under oath.

Congressman Janklow and I will and the other Members will be allowed to make opening statements. Then, we will go to a panel, from which we have received written statements, who will be allowed to make oral statements for the record. We will constrain each of these statements to 5 minutes maximum. We're always grateful for any statements that do not take the entire 5 minutes that are allocated.

So with that, I want to welcome our witnesses. As I said, we routinely swear in our witnesses. So, if you all would rise, please. Raise your right hands.

[Witnesses sworn.]

Mr. OSE. Let the record show the witnesses answered in the affirmative.

We do have apparently some folks here who are helping some of the named witnesses who are behind. I need to make sure I receive the names of these folks over here, so we can identify them for purposes of noting that they did get sworn in accordingly.

We are joined today by a number of witnesses. I am going to introduce them, and then we are going to go through opening statements. First is the executive director of the Port of Los Angeles, Mr. Larry Keller. Nice to see you again.

Mr. Tim Parker is the executive secretary of the Steamship Association of Southern California. Good to see you, Tim.

Mr. John Ochs, who is the security manager for Maersk SeaLand Limited. Good to see you again.

Mr. Rob Marshall-Johns, who is the director of Operations and Quality Control for the Oppenheimer Group. Nice to see you.

We will be joined by Ms. Stephanie Williams, who is the vice president of California Trucking Association.

And, then we have our good friend, Dr. Domenick Miretti, who is senior liaison for the Ports of Los Angeles and Long Beach, for the International Longshore and Warehouse Union. Pleased to see you, Dr. Miretti.

The tragic events of September 11, 2001, shook the confidence of the U.S. Government and its citizens in the Nation's security. Immediately after September 11th, the President and Congress began to examine the existing system, including the laws, regulations, and actual practices governing the Nation's security. Much was found to be in need of repair. Some changes were made immediately, others were made later, and more changes are still needed.

On November 19th of that same year, the President signed the Aviation and Transportation Security Act. This law established emergency procedures for the Federal Government to issue interim final regulations without the usual opportunity for public notice and comment, as provided for in the Administrative Procedure Act. To ensure congressional and public input into the regulatory decisionmaking process, this subcommittee held a November 27, 2001, hearing entitled, "What Regulations are Needed to Ensure Air Security?"

During 2002, Congress passed the Maritime Transportation Security Act to address security of the Nation's ports. On November 25, 2002, the President signed that piece of legislation into law. This law similarly provides for some interim final regulations without any public notice and comment. These include interim final

rules on anti-terrorism plans for port security, facility security, and vessel security, and other rules to follow, such as for transportation security cards.

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 annually. The Port of Los Angeles is the busiest port in the United States and the seventh busiest in the world.

The vast maritime system is particularly susceptible to terrorist attempts to smuggle personnel, weapons of mass destruction, or other dangerous materials into the United States. And, ships in U.S. ports could be attacked by terrorists. A large-scale terrorist attack at a U.S. port would not only cause widespread damage but also it would seriously impact our economy.

The Maritime Transportation Security Act raises questions about the right balance between increasing port security on the one hand and not impeding the flow of commerce and trade on the other. Standard versus port-specific security measures—in other words, what is our national standard and what are the unique circumstances of any given port? And also, what is the role of government in solving these problems, as opposed to the role of private industry?

Two other key questions are how the United States should pursue higher standards for port security abroad, in other words securing the original point from which a product is shipped to us, and how to generate funds for improved port security, both here and abroad. Currently, there is insufficient Federal funding to fully ensure port security. And, we are going to visit about that during the course of this hearing.

Many Federal departments and agencies have a role in port security. The two agencies with the most presence are the Coast Guard and the Customs Service. Since September 11, 2001, both have sought improved and timelier information, so that they can better evaluate the risk of ships, cargo, passengers, and crew destined for the United States, and decide which to target for additional and closer inspection. Currently, the Customs Service only inspects about 2 to 5 percent of imports and 1 percent of exports.

This hearing will examine what Federal regulations are needed to ensure port security for various aspects, such as security of U.S. and foreign ports, facility security, vessel security, cargo identification and screening, and transportation security cards and background checks. Federal regulations govern the conduct of non-Federal parties and specify detailed procedures to ensure uniform implementation of laws.

Key questions are whether the Federal Government should require a core, minimum, or baseline set of regulations; for instance, training, drills, fencing, cameras, lighting, and guards, and the like, for non-Federal private parties, or more prescriptive requirements, and if the Federal Government should allow self-certification by non-Federal private parties.

Coming out of business as I do, I recognize the difficulties of balancing the need for security with the demands of commerce. That is a very, very sensitive subject for us. I am particularly sensitive

to the costs of excessive government regulation. But I have to admit, I must say, we live in a changed world, and these additional precautions to protect our fellow citizens and our economic well-being are necessary.

I do look forward to hearing the testimony of our witnesses. I introduced them previously. I do want to add a couple of things.

First of all, we have prepared for this hearing. We came out here a month and a half ago to visit a number of you. We followed up on a number of things that we have talked about at that time. I am aware that this port—and this area in general—has far in excess in revenues than it spends in costs in the form of customs and customs duties.

I happen to think one of the things we ought to look at very closely is whether to take at least a portion of that excess and allocate it directly for investment in this port as a means of financing various commitments to a number of things that we will talk about today.

With that, I want to, first, welcome my good friend from this area who represent a number of geographic communities around America, welcome. I will recognize you for comments, Mr. Janklow, for the purpose of an opening statement.

[The prepared statement of Hon. Doug Ose follows:]

Chairman Doug Ose
Opening Statement
What Regulations are Needed to Ensure Port Security?
April 24, 2003

The tragic events of September 11, 2001 shook the confidence of the U.S. government and its citizens in the nation's security. Immediately after September 11th, the President and Congress began to examine the existing system, including the laws, regulations, and actual practices governing the nation's security. Much was found lacking. Some changes were made immediately, others were made later, and more changes are still needed.

On November 19, 2001, the President signed the Aviation and Transportation Security Act. This law established "emergency procedures" for the Federal Government to issue interim final regulations without the usual opportunity for public notice and comment, as provided in the Administrative Procedure Act. To ensure Congressional and public input into the regulatory decisionmaking process, this Subcommittee held a November 27th hearing entitled "What Regulations are Needed to Ensure Air Security?"

During 2002, Congress passed the Maritime Transportation Security Act to address security of the nation's ports. On November 25, 2002, the President signed it into law. This law similarly provides for some interim final regulations without any public notice and comment. These include interim final rules on anti-terrorism plans for port security, facility security, and vessel security, and other rules to follow, such as for transportation security cards.

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 Port of Los Angeles is the busiest port in the U.S. and the seventh busiest in the world.

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. And, ships in U.S. ports could be attacked by terrorists. A large-scale terrorist attack at a U.S. port could not only cause widespread damage but also seriously affect our economy.

The Maritime Transportation Security Act raises questions about the right balance between: (a) increasing port security while not impeding the flow of commerce and trade, (b) standard versus port-specific security measures, and (c) the roles of governmental agencies and private industry. Two other key questions are: (d) how the United States should pursue higher standards for port security abroad, and (e) how to generate funds for improved port security here and abroad. Currently, there is insufficient Federal funding to fully ensure port security.

Many Federal departments and agencies have a role in port security. The two agencies with the most presence are the Coast Guard and the Customs Service. Since September 11, 2001, both have sought improved and timelier information so that they can better evaluate the terrorist risk of ships, cargo, passengers or crew destined for the U.S., and decide which to target for closer

inspection. Currently, the Customs Service only inspects about 2 to 5 percent of imports and 1 percent of exports.

The hearing will examine what Federal regulations are needed to ensure port security for various aspects, such as security of U.S. and foreign ports, facility security, vessel security, cargo identification and screening, and transportation security cards and background checks. Federal regulations govern the conduct of non-Federal parties and specify detailed procedures to ensure uniform implementation of laws. Key questions are whether the Federal government should require a core, minimum or baseline set of requirements (e.g., for training, drills, fencing, cameras, lighting, and guards) for non-Federal private parties or more prescriptive requirements and if the Federal government should allow self-certification by non-Federal private parties.

I recognize the difficulties of balancing the need for security with the demands of commerce. As a Republican, I am sensitive to the costs of excessive government regulation. But, as an American in a post-September 11th world, I realize that we must take additional precautions to protect our fellow citizens and our economic well-being.

I look forward to the testimony of our witnesses. They include: Larry Keller, Executive Director, Port of Los Angeles; Timothy Parker, Executive Secretary, Steamship Association of Southern California (comprised of vessel owners, agents, terminal operators, and stevedoring companies); John Ochs, Security Manager, Maersk Sealand, Ltd. (largest container shipper in the Port of Los Angeles); Rob Marshall-Johns, Director of Operations and Quality Control, The Oppenheimer Group (shipper of fresh produce); Stephanie Williams, Vice President, California Trucking Association (since large numbers of trucks move in and out of ports); and, Dr. Domenick Miretti, Senior Liaison, Ports of Los Angeles and Long Beach, International Longshore and Warehouse Union (ILWU).

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April 17, 2003

MEMORANDUM FOR MEMBERS OF THE GOVERNMENT REFORM SUBCOMMITTEE ON ENERGY POLICY, NATURAL RESOURCES AND REGULATORY AFFAIRS

FROM: Doug Ose

SUBJECT: Briefing Memorandum for April 24, 2003 Field Hearing, "What Regulations are Needed to Ensure Port Security?"

On Thursday, April 24, 2003, at 10:00 a.m., the Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs will hold a field hearing on port security. It will be in the Board Meeting Room of the Port of Los Angeles Administration Building, which is located at 425 South Palos Verdes Street in San Pedro, California. The hearing is entitled, "What Regulations are Needed to Ensure Port Security?" Federal regulations govern the conduct of non-Federal parties.

After the tragic terrorist events of September 11, 2001, both houses of Congress initially focused on air security. On November 19th, the President signed the Aviation and Transportation Security Act (P.L. 107-71). Section 101(i) of this law established "emergency procedures" for the Department of Transportation (DOT) to issue interim final regulations without the usual opportunity for public notice and comment, as provided in the Administrative Procedure Act. As a consequence, to ensure Congressional and public input into the regulatory decisionmaking process, this Subcommittee held a November 27th hearing, entitled, "What Regulations are Needed to Ensure Air Security?"

During 2002, both houses sought a legislative solution to strengthen port security. On November 25, 2002, the President signed the Maritime Transportation Security Act of 2002 (P.L., 107-295). Title I, Maritime Transportation Security, of this law includes Section 102, Port Security. This law similarly provides for some interim final regulations without any public notice and comment. These include three interim final rules by June 30, 2003 on anti-terrorism plans for port security, facility security, and vessel security, and other rules to follow, such as for transportation security cards. Section 108 of the law authorizes the Customs Service to issue a rule requiring that cargo manifest information for inbound and outbound shipments be provided electronically prior to the arrival or departure of the cargo.

The hearing will examine what Federal regulations are needed to ensure port security for various aspects, such as security of U.S. and foreign ports, facility security, vessel security, cargo (containers and perishables) identification and screening, and transportation security cards and background checks. The Subcommittee will hear from the Port of Los Angeles, a representative of vessel owners and terminal operators, a large international container shipper, an international shipper of fresh produce, the California trucking industry since large numbers of trucks move in and out of ports, and unionized port workers.

A June 29, 2002 National Journal article, entitled "Port Insecurity," stated that DOT Secretary Mineta "called improving security at the nation's ports his top priority." It also stated that "many experts call the most glaring gap in American's defenses - the seaports." On August 5th, the General Accounting Office (GAO) testified that "an effective port security environment may be many years away." An August 10th National Journal article included an "Are We Safer" Report Card, which rated Cargo Containers a D. The bottom line is that the maritime transportation system could be used by terrorists to smuggle personnel, weapons of mass destruction, or other dangerous materials into the United States. And, ships in U.S. ports could be attacked by terrorists. A large-scale terrorist attack at a U.S. port could not only cause widespread damage but also seriously affect the maritime trading system, disrupting U.S. and global commerce.

The new Act raises questions about the right balance between: (a) increasing port security while not impeding the flow of commerce and trade, (b) standard versus port-specific security measures, and (c) the roles of governmental agencies and private industry. Two other key questions are: (d) how the United States should pursue higher standards for port security abroad, and (e) how to generate funds for improved port security here and abroad. Also, unlike the November 2001 air transportation security law, the November 2002 maritime transportation security law does not establish firm deadlines for some key provisions.

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. Most ships calling U.S. ports are foreign-owned and crewed; less than 3 percent of U.S. overseas trade is carried on U.S.-flag vessels. The U.S. is the world's leading maritime trading nation and its maritime trade accounts for 25 percent of its U.S. Gross Domestic Product (GDP) – which is up from 11 percent in 1970.

Many Federal departments and agencies have a role in port security, including the new Department of Homeland Security (DHS) – e.g., the Coast Guard (transferred from DOT), Customs Service (transferred from Treasury), Transportation Security Administration (TSA) (also transferred from DOT), Immigration and Naturalization Service (INS) (transferred from Justice), and Animal and Plant Health Inspection Service (APHIS) (transferred from Agriculture) – and the Departments of Commerce, Defense, Justice (e.g., the Drug Enforcement Administration and Federal Bureau of Investigation), and Transportation (primarily the Maritime

Administration, also known as MARAD). The two agencies with the most presence are the Coast Guard and the Customs Service. Since September 11, 2001, both have sought improved and timelier information so that they can better evaluate through "profiling" the terrorist risk of ships, cargo, passengers or crew destined for the U.S., and decide which to target for closer inspection.

In October 2001, the Coast Guard issued a temporary rule (which was finalized in February 2003), which changed the 24-hour advance Notice of Arrival (NOA) to a 96-hour NOA. The NOA now includes detailed information on the cargo, crew, passengers, and the vessel. In October 2002, the Customs Service issued a final rule requiring 24-hour advance information before cargo is loaded at a foreign port onto a U.S.-bound vessel; previously, this information was not available until the ship arrived at the U.S. port. In January 2003, the INS issued a proposed rule requiring all passengers and crews departing from or arriving at U.S. ports to submit additional information. Attached is a chart showing key Federal agency documents - including the key phases for these three rulemakings - published in the Federal Register from September 11, 2001 to present.

The chart also mentions two Customs Service initiatives that are part of Operation Safe Commerce. In January 2002, Customs initiated a Container Security Initiative (CSI), where U.S. Customs inspectors pre-screen U.S.-bound containers at major foreign ports to identify high-risk containers. Another aspect of CSI is the development of smart and secure containers. In April 2002, Customs initiated the Customs-Trade Partnership Against Terrorism (C-TPAT), which offers importers expedited processing of cargo if they secure their entire supply chain and are certified by the Customs Service.

Since September 2001, the Customs Service only inspects about 2 to 5 percent (up from 2 percent) of imported and 1 percent (same as before) of exported containers. TSA is studying credentialing port workers. The Coast Guard is also promoting the adoption of more stringent international standards for maritime security under the leadership of the International Maritime Organization (IMO), which is a branch of the United Nations (UN). Key questions are whether the Federal government should require a core, minimum or baseline set of requirements (e.g., for training, drills, fencing, cameras, lighting, and guards) for non-Federal private parties or more prescriptive requirements, and if the Federal government should allow self-certification by non-Federal private parties.

The Port of Los Angeles is the busiest port in the U.S. and the seventh busiest in the world. More than 3,000 vessels move through the port yearly. The port has 27 major cargo terminals. And, it is the fourth busiest cruise port in the U.S.

The invited witnesses for the hearing are: Larry Keller, Executive Director, Port of Los Angeles; Timothy Parker, Executive Secretary, Steamship Association of Southern California (comprised of vessel owners, agents, terminal operators, and stevedoring companies); John Ochs, Security Manager, Maersk Sealand, Ltd. (largest container shipper in the Port of Los Angeles);

Rob Marshall-Johns, Director of Operations and Quality Control, The Oppenheimer Group (shipper of fresh produce); Stephanie Williams, Vice President, California Trucking Association; and, Dr. Domenick Miretti, Senior Liaison, Ports of Los Angeles and Long Beach, International Longshore and Warehouse Union (ILWU).

Attachment

Key Federal Agency Documents in Federal Register: 9/11/2001 – 4/7/2003

Date	Agency	Document Type	Subject
2/28/03	Coast Guard	**Final rule** (33 CFR § 160)	Notification of Arrival (NOA) for arrivals to & departures from US ports – see 10/4/01 below
1/3/03	INS	**Proposed rule** (8 CFR §§ 217, 231 & 251)	electronic Manifest Requirements for vessel arrivals & departures, including crew & passenger info
12/30/02	Coast Guard	Notice of 7 public meetings	on subjects to be covered in 3 **Interim final rules** (due 6/30/03) on port security, facility security, & vessel security
12/17/02	Customs Service	Notice	modifications to test of Vessel Automated Manifest System (AMS) for electronic cargo info 24 hours in advance, effective 12/2/02 for test participants
11/20/02	TSA	Notice for public comments	on criteria for projects under Operation Safe Commerce (which includes Customs-Trade Partnership Against Terrorism or C-TPAT & Container Security Initiative or CSI)
10/31/02	Customs Service	**Final rule** (19 CFR §§ 4, 113 & 178)	advance Vessel Cargo Declaration 24 hours before cargo is laden abroad a vessel in a foreign port for transport to US
8/8/02	Customs Service	**Proposed rule** (19 CFR §§ 4 & 113)	advance Vessel Cargo Declaration 24 hours before cargo is laden aboard a vessel in a foreign port for transport to US
8/7/02	Coast Guard	**Clarification of rule** (33 CFR § 6 & 125)	Maritime Identification Credentials for access to ports & vessels in ports
6/19/02	Coast Guard	**Proposed rule** (33 CFR § 160)	NOA
10/4/01	Coast Guard (33 CFR § 160)	**Temporary rule** (33 CFR § 160)	NOA – from 24 to 96 hours prior to arrival at US port, including cargo, crew & passenger info

Mr. JANKLOW. Thank you. Thank you very, very much, Mr. Chairman, and thank you for conducting this hearing. I have been a Member of Congress now for just a couple of months, and was elected to represent my State and have very quickly moved in this direction. Let me show you clearly, the importance of dealing with issues such as this, and I say that because there can't be anything more timely than the security of the ports in this country.

Just in the last couple of weeks, we in Congress appropriated several billion for additional assistance to the airline industry, having only 2 years ago appropriated from Congress billions more for helping the airline industry. The assistance that has been given with respect to the major modality for moving goods into the United States, the shipping industry, has been minuscule compared to what has taken place with respect to the safety of the goods coming into our ports.

A classic example would be the huge reduction in thefts in this particular port over the last few years. But you can really see it at least from the statistics that I have looked at pre-September 11th, and the post-September 11th activity with respect to thefts within the port. There is an indication that, since September 11th, there has been an incredible reduction, which tells us it can be done. Safety can be made better when people really focus on it.

Looking at some of the testimony from the witnesses that are going to testify today, I am really excited to see the various comments that they have to make with respect to a common ID system, or an ID system of some type, and how they struggle to determine what may be the best thing. And, this may be something which is a seemingly unique Federal role that needs to be played.

The fact of the matter is, the terrorists are not going to send into our country trucks and cranes and huge vehicles. They are going to send into our country things like plutonium, the size of which would fit in this 12-ounce can, enough to make an atom bomb according to one of the lead physicists at the Lawrence Livermore Lab at UCLA. The amount of uranium–235 that it takes to make an atom bomb, assemble an atom bomb, would fit in a water bottle.

So an atomic bomb can be made nowadays by anyone who is trained as a physicist, and he has some rudimentary skills—or, I should say, reasonably good skills—in the manufacturing of technology. Not that I can do it, but there are five ways you can find on the Internet that will tell you how to assemble a device such as that.

We talk about the standards, and Congress very quickly passed things like the Maritime Safety Act, but didn't include really the standards that have to be applied by the executive branch with respect to the parameters of how this is going to be implemented. What makes that important is it is following the things that we should require all the local ports to decide for themselves what the average security mechanisms are that they have to follow.

Various National Guards from all over this country have been called to active duty recently. There are none of them wandering around active duty in the Armed Forces making their own plans, or coming up with their own schemes on how to win a war, and deciding what their roles will be in terms of our country's national defense.

Once they were called to active duty, they also fell under one unified command in terms of one set of implementation. It can't be under different with respect to the standards that are going to be applied to the safety of this country for the importation of things which come through our harbors.

In the written comments, Mr. Ose, you talk about the huge surplus that is generated in this particular port. I believe it was something like $600 million. It was gathered in collections of duties in this port in excess of the surplus that is generated in America. Forty-two percent of all the goods in America come through this port, and a minuscule amount of the number that has been appropriated for safety in this country has yet to come through this port.

That defies logic. There is no other way to look at it. And, recognizing that we in America are in the "me" business of homeland security—something honestly we haven't been concerned about since Pearl Harbor back in 1941—a whole new dimension. Recognizing that the only three things that were built in this country, with true security in mind, are the military bases, the prisons, and the banks.

There is nothing else that has been designed abroad for America to be concerned about national security, but we have got a huge amount of ground to cover in a short period of time.

As I say all the time, we talk about interim roles. The fact of the matter is, Al-Qaeda, the Hezbollah, the people who hate us, aren't on an interim schedule, and we can't afford to be on an interim schedule either.

Your calling this meeting today is so timely, and I appreciate the opportunity to participate in it with you, and the leadership that you have provided here for the safety of every man, woman and child in this country.

Thank you.

Mr. OSE. Thank you, Congressman Janklow.

We have been joined by both Congressman Rohrabacher and Congresswoman Harman. We have already passed unanimous consent to have them join us to participate in the hearing. You are certainly welcome.

I know one of the duties I need to take care of this morning is to duly have our last witness sworn in. Would please rise and raise your right hand.

[Witness sworn.]

Mr. OSE. Let the record show the witness answered in the affirmative.

I need to enter into the record that this was with unanimous consent a written statement by Councilwoman Hahn. Without objection, that will be done.

[The prepared statement of Ms. Hahn follows:]

News Release
Councilwoman Janice Hahn
15th District, Los Angeles City Council
200 North Spring Street, Room 435 Los Angeles, CA 90012
(213) 473-7015 Fax (213) 626-5431

For Immediate Release
April 24, 2003

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STATEMENT OF COUNCILWOMAN JANICE HAHN

Regarding Port Security Meeting of the House Government Reform Subcommittee on Energy Policy, Resources and Regulatory Affairs

"I would like to welcome Chairman Doug Ose and the other subcommittee members to San Pedro, which is part of my district, the 15th council district in the City of Los Angeles. I also want to thank the members for realizing the importance of port security and federal assistance and regulations. Following 9/11 our federal government focused primarily on air safety. While air safety is important, so is the security at our ports and I am encouraged by this meeting this morning.

Last month I toured the Port of Los Angeles because I was concerned about the communities surrounding the Port, particularly Wilmington and San Pedro. Following my meeting and tour with Port Officials, the Coast Guard, the Fire Department and the Port Police, I feel confident that the Port of Los Angeles is the best-monitored and best-patrolled port in the country. However, it is not enough.

Since 9/11 we have added personnel, sea marshals and divers at the Port. We have begun escorting and boarding ships as they enter the Harbor and are using bomb dogs at our terminals.

Most important, I learned that all departments and agencies that operate at the Port of Los Angeles have been working together to see that all lines of communication are open and that all threats are handled. Our dockworkers are even joining these agencies in reporting security breaches.

One area in which we are still lacking, however, is in container screening. This subcommittee is meeting today to explore possible ways of ensuring safe cargo without impeding the flow of commerce through our ports. While searching every container by hand would significantly limit our commerce movement, technology can allow us to ensure container safety and I want to share with this subcommittee some of the steps we are taking in Los Angeles to improve and develop such technology.

-more-

When I traveled to Asia with the Mayor in November, we signed a Memorandum of Understanding (MOU) with Modern Terminals in Hong Kong. Under this MOU the Port of Los Angeles and Modern Terminals will test security enhancements, including the use of tamper proof container seals, on cargo heading to Los Angeles.

Also, I serve as Chair of the Alameda Corridor Transportation Authority (ACTA). The Alameda Corridor is a 20-mile freight rail expressway linking the Port of Los Angeles and the Port of Long Beach to the national rail network at the railroad yards near downtown Los Angeles. ACTA is currently participating in a pilot study to test the effectiveness of electronic seals on rail cars traversing the Alameda Corridor. Preliminary tests have proved positive, and the group is preparing a proposal for a $1.2 million federal grant to conduct field operations tests.

I believe that it is these types of programs, utilizing advanced technology, will allow us to ensure safe containers while not inhibiting the flow of commerce.

I would also like to take this opportunity to ask our federal representatives for funding. We are all aware that our airports have received substantial federal funding, but our ports are lacking. The City of Los Angeles has made a decision not to let security suffer while waiting for promised federal funds, but I truly feel that we will we need federal funding to take port security to the next level.

Again, thank you for being in San Pedro this morning. And thank you in advance for considering this testimony. "

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Mr. OSE. I would like to recognize my friend from UCLA, Congressman Rohrabacher, for the purpose of an opening statement.

Mr. ROHRABACHER. I will try to make this short. First of all, my gratitude to Congressman Ose. I have worked with him for several years now in the House of Representatives. He is probably one of the hidden treasures in Congress, and probably the folks down here don't know about you, but he is one of the creative and energetic leaders that we have in Congress. We are very grateful that he is now focusing on a problem that concerns the safety of our local area, as well as our families, and we are very grateful for the leadership you are providing here today.

We have taken for granted security and safety issues in the ports for far too long, and we could get away with it in the world the way it used to be. We cannot get away with it anymore. There is a crying call now for us to act, not just to talk but to act, and to take those steps that are necessary to make sure that our ports are not the entry portals into our society from which terrorists will be able to murder millions of our people.

This is a very awesome responsibility, but we need not only to be caught up in the overwhelming nature of this challenge but also we need to be able to break loose and make the decisions and do what is necessary to make the changes, so that we are no longer vulnerable, or at least to dramatically reduce the vulnerability.

To do this, we will need technology development. I understand that there is technology being developed. We will need the cooperation, and that is cooperation between the members of government, but also between government and the private sector, and also in the private sector cooperation between management and labor.

Third, we are going to need resources, and I do not believe that we should just look at traditional areas for resources with duties collected alone as the means of achieving this goal. We have to be creative.

I have proposed that we consider a container fee on the containers coming in and out of this port that would then be used to finance the upgrades in security and other types of infrastructure upgrades needed by this port and by the various ports in our country. This will mean that the people using the ports overseas, in Shanghai or wherever, would be paying the costs, because they are paying a fee to use the containers through the port.

They would be paying the cost, rather than having the American people pick up the entire cost for making this more secure, and, thus, basically paying for an infrastructure cost for our competitors overseas.

So, that is my suggestion, and I will be looking forward today to hearing the testimony and hearing other people's description of the problem, but also offering their solutions.

Thank you very much.

Mr. OSE. I thank the gentleman.

I would like to welcome our good friend and a staunch advocate for California's and the country's security interests among others, Congresswoman Harman, for the purpose of an opening statement.

Ms. HARMAN. Thank you, Mr. Chairman.

I apologize for being late. Dana Rohrabacher and I were participating in a forum in Torrance, CA, up the road on hydrogen power.

The reason I mention that because maybe some of you folks are interested in that, but also one piece of the answer long-term to our national security problem is energy independence, and I feel very strongly about that, and do take to heart my curmudgeon self-identified curmudgeon friend's observation: We always have to ask, what will it cost, and who will pay? But I do think it is important to think about, what will it cost, and who will pay, if we don't wean ourselves from dependence on Middle Eastern oil.

Segue to this hearing, which I think is extremely important and commend you for coming down here. We are physically this minute in the 36th Congressional District, which I represent, and I also represent the neighbors around the port. The port was well cared for, I hope, in the last decade. It will continue to be well cared for, the actual physical port, by Dana Rohrabacher, who has reacquired it as part of his congressional district.

My point in mentioning all of this incredibly interesting history is to make the point that we are here together to work together. National security and homeland security issues are not partisan issues. The terrorists won't check our party registration before they blow us up. We had better darn well work together, all of us in government, all parts of this community, labor and management, and so forth, if we are going to solve this problem.

In that regard, I would really like to commend many of the people in this audience, all of whom are different, but one of them Coast Guard Captain John Holmes. Are you here, John? Where are you? There he is.

On September 12th, if I remember this—or maybe it was September 11, 2001, he made the Federal Government resources in this area work together, and he would also have to commend Janice Hahn for what she does at the local level to make this work. I would like to commend the leadership of the port for what it does.

I would like to commend the private sector, both organized labor, the ILWU, and management, for what they are doing to make all of us work together.

Well, let me make some points that you may have made, but they stand out in my mind particularly today because the Homeland Security Director Tom Ridge arrives in the neighborhood in about 2 hours. He is not coming here, although his Deputy, Gordon England, was here about a month ago.

Ridge will be downtown meeting with first responders from all over the State. He will then go to the Terrorism Early Warning Group, which is an emergency center set up by the county. Tomorrow he will be at LAX, which I think we all know is a top terrorist target. But, I know his mind is on, or better be on, what security is. I know he knows, as we do, that these ports are not just jewels of this neighborhood. They are the gateways of 40 percent of the trade in and out of the United States.

Now, as Dana Rohrabacher was just saying, while the consequences of not acting to make these ports safer are huge, and so by any of your thoughts, what does it cost and who is going to pay for it, I know the answer about the costs of inaction. So I commend you, Mr. Chairman, for this hearing.

I would just like to make a couple of comments on what you are holding this hearing about, this Maritime Act that we passed last

year in the Congress. It is a good thing, but in the fiscal 2004 budget, you should be aware that the administration has not requested full funding, and it is—as far as I can tell as yet unlikely that this bill will be fully funded. I think the consequences of that are sobering.

It is not, of course, only about money. It is about cooperation and strategy. But, let me just point out something that I think we should all reflect on, and that is that a little while back, a few months back, we had a lockout in this port for 10 days. That was not related to homeland security. It was related to a labor-management dispute.

But, the loss to the U.S. economy from 10 days of closure was $2 billion, with a B, a day. The ramifications were felt from Wilmington, CA, to Wilmington, DE. Everybody got hurt. Imagine the disruption. Some ports were instead affected by the international sinking of a ship in the outer channel or the detonation of weapons of mass destruction inside of containment at one of the terminals.

Indeed, a recent simulation which was an exercise, actually, I was involved in, determined that steps following the identification of a radiological device on an inbound ship could lead to a $58 billion loss to the U.S. economy. So, this is real money. These are real people. This is an urgent problem.

Hopefully we will fund the MSTA fully, but beyond that we will develop one national integrated homeland security strategy that values ports as much as it values airports. That will be, I think, the critical agreement and something I am going to talk to Tom Ridge about.

I really commend my colleagues for their work on this and the electives in the audience and the officials here, I am happy to welcome you all to the 46th Congressional District.

Thank you, Mr. Chairman.

Mr. OSE. Thank you, Congresswoman.

We will now go to the witness panel. There are six witnesses. We have received written testimony from each of you, and we have them recorded. Our standard operating procedure is that the witnesses will be given 5 minutes to summarize their testimony that they have previously submitted.

For the members of the audience, there are copies of their written testimony at the entrance to the room. You are welcome to get copies of those.

I recognize Mr. Keller for the purpose of 5 minutes for an opening statement.

STATEMENTS OF LARRY KELLER, EXECUTIVE DIRECTOR, PORT OF LOS ANGELES; TIMOTHY PARKER, EXECUTIVE SECRETARY, STEAMSHIP ASSOCIATION OF SOUTHERN CALIFORNIA; JOHN OCHS, SECURITY MANAGER, MAERSK SEALAND, LTD.; ROB MARSHALL-JOHNS, DIRECTOR OF OPERATIONS AND QUALITY CONTROL, THE OPPENHEIMER GROUP; STEPHANIE WILLIAMS, VICE PRESIDENT, CALIFORNIA TRUCKING ASSOCIATION; AND DR. DOMENICK MIRETTI, SENIOR LIAISON, PORTS OF LOS ANGELES AND LONG BEACH, INTERNATIONAL LONGSHORE AND WAREHOUSE UNION

Mr. KELLER. Thank you, Mr. Chairman. We appreciated your visit in February, and we welcome you back today. Thanks, too, to the members of the Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs for inviting the Port of Los Angeles to testify before you to share our concerns about what is needed to enhance our port security. Our concerns focus on Federal port security grants, international cooperation, and smart economics.

As you know, the Port of Los Angeles is one of the Nation's busiest ports. As a premier port of entry for the cargo on the West Coast, the port occupies 7,500 acres of land and water, along with 43 miles of waterfront. Together with our San Pedro Bay neighbor, the Port of Long Beach, we handle more than 42 percent of the Nation's containerized commerce. Additionally, the Port of Los Angeles is the fourth busiest cruise center in the United States, and is No. 1 on the West Coast with over 1 million vacationers annually.

At this time in our Nation's history, the Port of Los Angeles must balance the increasing demand for development and international trade with critical security requirements. Without a doubt, as a critical hub for commerce, the Port of Los Angeles is vital to our Nation's economic well-being.

We take very seriously our responsibility to maximize security for cargo, people, and property. In the event of an unforeseen incident, whether caused by outside sources or natural disasters, it is our responsibility to stay up and running without delay in order to bolster the national economy.

Since September 11th, we have spent approximately $6 million of our own funds to enhance the port's security. We have added manpower and equipment resources for our Port Police. We have spent millions to improve our World Cruise Center, so it is now a model for efficient and safe passenger handling for Customs, Immigration, and the cruise line passengers.

There is, of course, always room for improvement, and we are no exception. With Federal funding through the TSA's Port Security Grant Program, we will be more than able to pursue security enhancements for port facilities and infrastructure improvements. We have started the process to assess our needs and to serve as a national and international model for credentialing inspection systems, but funding is needed to implement these measures.

Since September 11, 2001, just $92.3 million of $368 million in appropriations has actually been distributed to ports in the first round of TSA grant funding. During that initial round of grants, the Port of Los Angeles received only $1.5 million for a joint grant

request with the Port of Long Beach, despite the fact that we are the busiest port complex in the Nation.

More is truly needed as our Nation depends on efficient and safe transportation networks to distribute cargo efficiently along our trade corridors. The ability to move cargo seamlessly through the Port of Los Angeles is crucial to the overall economic vitality of the Nation.

The second round of grants for these funds, which closed last month, drew requests for nearly $1 billion in improvements, with only $104 million available. We have a long way to go. The Port of Los Angeles applied for approximately $15.5 million. I have provided a detailed list of our proposed programs with our submitted testimony. The Port of Los Angeles is not seeking frivolous enhancement. We are, however, seeking improved security measures through the available Federal grants.

Security infrastructure and improvements at the Port of Los Angeles are critical to ensure that the flow of international trade is maintained at the highest and safest best possible standards.

Our Nation requires these security enhancements to safeguard our transportation systems which are dependent upon international commerce.

A terrorist attack at the port would not only cause havoc in our region but also seriously affect the maritime trading system and thus disrupt U.S. and international commerce. As part of the Nation's largest port complex, we need to receive a reasonable and appropriate share of the Federal port security funding. Security funding needs to be based on the potential consequences of terrorist activities.

Realizing that the safety of southern California's port system is closely tied to international transportation hubs, our programming has also extended offshore to our Asian partners. Focusing on containers, we have instituted measures to push back our borders to the points of origin for the millions of containers crossing our docks each year.

Of primary concern was the ability to ensure that a cargo container hasn't been tampered with at the port of origin or in transit. We believe that it is a far better approach than applying maximum security once the container reaches our shores and it is basically too late.

The Container Safety Initiative, as part of Operation Safe Commerce, is the vehicle currently being utilized to review the supply chain of containerized cargo. Operation Safe Commerce is a $28 million pilot project funded by the Transportation Security Administration and managed by the U.S. Customs Service and the Department of Transportation.

Customs officials are being dispatched overseas to Hong Kong and Singapore, among other ports. The project will provide security gap analysis and act as a testing ground for a myriad of technologies. OSC was approved in July 2002.

The port complex of Los Angeles and Long Beach is one of only three load centers in the Nation chosen to participate in this unique project. The other participating port complexes are New York/New Jersey and Seattle/Tacoma. Modern Terminals in Hong Kong became the first foreign terminal operator to agree to partici-

pate in Operation Safe Commerce with us, and Mayor Hahn, following his initiative. We anticipate that the Port of Singapore Authority will sign on as well near in the future.

Sandia National Laboratory is the port's security consultant for Operation Safe Commerce and is already doing evaluations here and abroad.

Mr. OSE. Mr. Keller, given the number of witnesses, can you—I have your written testimony. Can you summarize, sir, in the remaining time?

Mr. KELLER. I certainly can, sir.

Mr. OSE. Thank you.

Mr. KELLER. The costs are high, indeed. You understand that. But we implore you to give us the funding we need. We don't believe we are not asking for a handout. We are asking for some help, so we can do with technology and modern tools what we are currently doing with manpower and sweat and blood right now.

Thank you, sir.

[The prepared statement of Mr. Keller follows:]

Testimony by Larry A. Keller
Executive Director, Port of Los Angeles
before the
House Government Reform Subcommittee
on Energy Policy, Natural Resources and Regulatory Affairs
April 24, 2003

Thank you, Mr. Chairman,

And thank you to the members of the Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs for inviting the Port of Los Angeles to testify before you to share our concerns about what is needed to enhance port security. Our concerns focus on federal port security grants, international cooperation and smart economics.

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At this time in our nation's history, the Port of Los Angeles must balance the increasing demand for development and international trade with critical security requirements. Without a doubt, as a critical hub for commerce, the Port of Los Angeles is vital to our nation's economic well-being. We take very seriously our responsibility to maximize security for cargo, people and property. In the event of an unforeseen incident, whether caused by outside sources or natural disasters, it is our responsibility to stay up and running without delay in order to bolster the economy.

Since 9/11, we've spent approximately $6 million of our own funds to enhance the Port's security. We've added manpower and equipment resources for our Port Police. We've spent millions to improve our World Cruise Center so it is now a model for efficient passenger handling for Customs, Immigration and the cruise lines.

There is, of course, always room for improvement and we are no exception. With federal funding through the Transportation Security Administration's (TSA) Port Security Grant Program, we will be more able to pursue security enhancements for Port facilities and infrastructure improvements. We have started the process to assess our needs and to serve as national and international models for credentialing and inspection systems, but funding is needed to implement these measures.

Since September 11, 2001, just $92.3 million of $368 million in appropriations has actually been distributed to ports in the first round of TSA funding. During that initial round of grants, the Port of Los Angeles received only $1.5 million for a joint grant request with the Port of Long Beach, despite the fact that we are the busiest port complex

in the nation. More is truly needed as our nation depends on an efficient and safe transportation network to distribute cargo efficiently along our trade corridors. The ability to move cargo seamlessly through the Port of Los Angeles is crucial to the overall economic vitality of the nation.

The second round of grants for these funds, which closed last month, drew requests for nearly $1 billion in improvements, with only $104 million available. The Port of Los Angeles applied for approximately $15.5 million. These grants would allow the Port to improve its infrastructure and overall security by providing:

A Construction of a High Risk Container Inspection Facility to provide the screening of containerized cargo. $2.5 million is needed for this, in addition to the $1.5 million previously received for design and assessment work.

A Container Screening System that would allow for gamma ray imaging and radiation detection portals to screen containers. $4 million is needed for this.

An Underwater Rapid Response Team to fill an identified need for diving and support equipment to quickly deploy, and support the Port's first responders underwater rapid response team. $1.8 million is needed for this.

A Database to Support Background Checks for all unescorted personnel with access to Port owned land. This prepares the Port for quick actions to implement the federal Transportation Worker Identification Card guidelines. $1.25 million is needed for this.

A Perimeter Security Enhancement which allows for selected priority segments of the 43 miles of waterfront security standards in terms of perimeter fencing and lighting to reduce the current threat of intrusion. $1.5 million is needed for this.

A Facility Security Monitoring System that will introduce a port-wide monitoring control system for Port-owned properties, including a common security infrastructure such as gates, reinforced doors, alarm systems, secured wireless and wired communications. $1.45 million is needed for this.

Harbor Patrol Equipment is needed to procure rapid response detection platforms in the form of water patrol crafts to mitigate threats to the inner harbor facilities. These threats include fast approach boats laden with explosives, munitions, chemical and or biological weapons. The cost is $800,000

A joint Command and Control Center for the Ports of Los Angeles and Long Beach to integrate facility access control and cooperation allowing for a wide area air-surface and subsurface sensors and an interoperable communications network. The cost is $700,000.

Water Surface Surveillance and Subsurface Surveillance allows for operational assessment of the technologies needed to secure the 43 miles of main and inner Harbor waterfront approaches to critical infrastructures including bridges, fuel tanks, pipelines, container and oil terminals, ships and dockside faculties. $875,000 is needed.

Enhanced Radar Surveillance at the Ports of Los Angeles and Long Beach to enhance the vessel tracking system to improve ship tracking, surveillance and domain awareness. The cost is $300,000.

The World Cruise Center Security Assessment requires a comprehensive planning effort involving all stakeholders in the successful operation of the cruise terminal with enhanced integration of safety, security and contingency plans that address emergency response across jurisdictional boundaries. $300,000 is needed.

The Port of Los Angeles is not seeking frivolous enhancement. We are, however, seeking improved security measures through the available federal grants. Security infrastructure improvements at the Port of Los Angeles are critical to ensure that the flow of international trade is maintained at the highest and safest possible standards. Our nation requires these security enhancements to safeguard our transportation systems which are dependent upon international commerce.

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There has been discussion on a number of fronts regarding the proposal of adding additional "user fees" to shippers and truckers to fund security enhancements at our nation's ports. We do not believe such proposals to be warranted. The economics of such proposals should be carefully analyzed, even with seemingly minimal costs.

In an already weak economy, adding these "user fees" to shippers and truckers will result in higher costs to consumers and ultimately cause additional inflation. The ripple effect will be felt in the imported goods lining the shelves of stores across the U.S., and will also further impact the markets for US manufactured products exported to overseas markets, many of which incorporate some imported content. If these costs are too high, other nations will get their goods from someplace other than the U.S. The highest overall benefit to the American consumer can only be achieved through unhampered access to reasonably priced high quality goods.

Lastly, Mr. Chairman, when you visited the Port a few months ago, you requested that we provide comparative cost benefits for the collection of U.S. Customs duties against operational costs. According to the Marine Transportation Study prepared by the U.S. General Accounting Office, Customs duties for import commodities through marine transportation for fiscal years 1999, 2000, and 2001 were about $14.3 billion, $15.6 billion and $15.6 billion, respectively. The cost of Customs operations for the same years was about $484.2 million, $538.4 million and $577.2 million, respectively. According to U.S. Customs, our Port users pay approximately $12 million each day in Customs duties, with the Los Angeles Customs District leading the nation in total duties collected for maritime as well as air cargo.

It is our understanding that most of the Customs duties are deposited into the general fund in support of federal activities, with the exception of approximately 30 percent of the gross Customs receipts specifically designated for agricultural and food programs. We, therefore, continue to strongly believe that Customs revenues can provide the appropriate source for funding the additional security required at our nation's ports.

Thank you for this opportunity to express our needs and concerns to you. We hope you will be able to help us provide the needed facilities infrastructure improvements and security enhancements at our Port to allow us to continue to provide support for local, regional and national economies.

Mr. OSE. Thank you for your testimony.

We have done some quick math up here. I have doublechecked it and triplechecked it, which is unusual in a Federal agency. We are going to come back to the question on funding relative to the amount of duties that are collected here and what has been reinvested here by the Federal Government. So make sure we get back to that question. OK?

Mr. KELLER. Certainly.

Mr. OSE. I would like to now recognize Mr. Tim Parker for the purpose of an opening statement for 5 minutes.

Mr. PARKER. Good morning. My name is Timothy Parker. I am the executive secretary of the Steamship Association of Southern California, which represents 45 shipping lines and terminal operators at the ports of Long Beach and Los Angeles, collectively the largest port complex in the United States and the third largest in the world.

In the way of background, the Steamship Association of Southern California and the Pacific Merchant Shipping Association, based in northern California, have recently voted to merge to form one united organization representing shipping companies throughout California. Collectively, under the name of the Pacific Merchant Shipping Association, we believe that we will be even better able to meet the challenges we face in the evolving environment at the local, State, and Federal levels.

One of these challenges is clearly security. We greatly appreciate your invitation to appear before you. We would like to share some of our insights on how we can all work together to enhance port security and ways that seem insecure at this time.

My brief presentation is framed around four core themes. What are shipping companies doing today? How are the cities, counties, and State of California assisting us? What can the Federal Government do to enhance these efforts? And, what are the economic ramifications?

First, I would like to state that while shipping companies are ready, willing, and able to support and assist the government to protect our ports, we cannot act as government functionaries. We cannot, for example, perform law enforcement activities, such as patrolling the waters around the ports. We can, on the other hand, control access to our terminals and facilities.

Current measures include increased security at terminal gates and vessel gangways to verify both cargo and personnel movement. These additional costs are borne by shipping companies and terminal operators.

We have made numerous upgrades to computer systems at every terminal to meet the new regulations of the Customs 24-Hour Rule. This cost is now part of the overall transportation cost to a consumer. We work directly with the Coast Guard in the Sea Marshall Program, which provides the escorted vessels to dock areas.

As representatives for the ports of Los Angeles and Long Beach have indicated, they are collectively spending significant portions of their revenue for additional port police, security equipment, port infrastructure, including cargo inspections, identification, and security systems.

At the same time, these are tough times for State and local agencies. There is a growing temptation for local government to cost-shift more obligations onto private shipping and stevedoring concerns for basic port operations. State and local governments are also imposing more regulatory conditions on port operations, some of which may actually divert resources from port security.

A proposed $1 billion bond measure would secure $200 million for port security, with a significant amount targeted for southern California. There, however, are no immediate fixes, nor approval of this bond measure.

While the Federal Government has taken a lead role in securing our harbors, there is more it can do. I have to commend the leadership of the U.S. Coast Guard for running what I think is the best command in the United States. The random boarding of vessels and unannounced inspections, among other measures, are crucial steps. U.S. Customs Service and Immigration and Naturalization Service have also been very supportive of efforts to keep our facilities secure.

The focus and attention of each of these Federal agencies is crucial, since the shipping companies and terminal operators cannot perform Federal functions, whether it is patrolling the waters, inspecting cargo, or checking the identification of seafarers.

That said, there are two areas where the Federal Government can provide the necessary leadership. First, it should fully fund the activities of government agencies to provide port security in a comprehensive and effective manner.

Second, it should ensure, by Federal preemption where necessary, that operating requirements and restrictions imposed by State and local governments are consistent with the goals of the overall port security. The U.S. Coast Guard, for example, should be given authority to ensure that State and local mandates are consistent with enhanced port security.

There has been much discussion at both port and Federal and State levels of applying some of the cost of added security to the cost of cargo or transportation. As an industry, we believe that fees placed on cargo or goods movement would have a disastrous effect on both the regional economy and broader economic objectives of the United States.

I thank you for your time.

[The prepared statement of Mr. Parker follows:]

Congressional Testimony
To the
Government Reform Subcommittee
On
Energy Policy, Natural Resources and Regulatory Affairs
April 24, 2003

Timothy J. Parker

Good morning.

My name is Timothy Parker. I am the executive secretary of the Steamship Association of Southern California, which represents 45 shipping lines and terminal operators at the Ports of Long Beach and Los Angeles.

In the way of background, the Steamship Association of Southern California and the Pacific Merchant Shipping Association, based in Northern California, have recently voted to merge to form one united organization representing shipping companies throughout California. Collectively, under the name of the Pacific Merchant Shipping Association, we believe that we will be even better able to meet the challenges we face in evolving environments at the local, state and federal levels.

One of those challenges is clearly one of security. We greatly appreciate the invitation to appear before the Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs today to share with you some of our insights on how we can all work together to enhance port security in what sometimes seems to be a time of insecurity.

My brief presentation today is framed around four core themes:

1. What are the shipping companies currently doing to contribute to the overall safety of the ports?

2. How are the cities, counties and State of California assisting us?

3. What can the Federal government do to further enhance those efforts?

4. What are the economic ramifications of port protection?

What is the shipping industry now doing to secure our ports?

First, I would like to state that while shipping companies are ready, willing and able to support and assist the government to protect our ports, we cannot act as government functionaries. We cannot, for example, perform law enforcement activities, such as patrolling the waters around the ports; we can, on the other hand, control access to our terminals and other facilities. Current measures include:

- We have increased security at terminal gates and vessel gangways to both verify cargo and personnel movement. The additional costs are borne by the shipping companies and the terminal operators.
- We have made numerous upgrades to computer systems at every terminal to meet the new regulations of the U.S. Customs, specifically to adhere to the "24 Hour Rule." This cost is now part of the overall transportation cost to the consumer.
- Working directly with U.S. Coast Guard in the Sea Marshal program, which provides for the escort of vessels to dock areas.

What are the Cities of Los Angeles and Long Beach, and the State of California doing to assist?

As representatives for the Ports of Los Angeles and Long Beach have indicated, they are collectively spending significant portions of their revenue for additional port police and security equipment, port infrastructure, including cargo inspections, identification and security system analyses.

At the same time, these are tough times for state and local agencies. There is a growing temptation for local government to cost-shift more obligations onto private shipping and stevedoring concerns for basic port operations. State and local government are also imposing more regulatory conditions on Port operations – some of which may actually divert resources from port security.

If this continues to occur, shipping traffic may very well move to other ports. Jobs and economic benefits of the Ports of Los Angeles and Long Beach will move elsewhere.

A proposed $1 billion bond measure would secure $200 million for port security, with a significant amount targeted for Southern California. There are, however, no immediate fixes.

Federal regulations

While the federal government has already taken a lead role in securing our harbors, there is more that it can do. I have to commend the leadership, of the U.S. Coast Guard for running what I think is the best command in the United States. The random boarding of vessels and unannounced inspections, among other measures, are critical steps. The U.S. Customs Service and the Immigration and Naturalization Service have also been very supportive of efforts to keep our facilities secure.

The focus and attention of each of these federal agencies is critical, since the shipping companies and terminal operators cannot perform their federal functions, whether it is patrolling the waters, inspecting cargo or checking the identification of seafarers.

Desired Federal Role

That said, there are two areas where the federal government can provide necessary leadership:

- First, it should fully fund the activities of government agencies to provide port security in a comprehensive and effective manner.
- Second, it should ensure – by federal preemption where necessary – that operating requirements and restrictions imposed by state and local government are consistent with the goals of overall port security. The U.S. Coast Guard, for example, should be given authority to ensure that state and local mandates are consistent with the enhanced port security.

There has been much discussion at both the federal and state levels – of applying some of the cost of added security to the cost of cargo or transportation. As an industry, we believe that fees placed upon cargo or goods movement would have disastrous effect on both the regional economy and broader economic objectives of the United States.

I thank you for your time and would now be happy to answer any questions.

Mr. OSE. Thank you, Mr. Parker.

Our next witness is Mr. John Ochs, who joins us from Maersk. Thank you for joining us. You are recognized for 5 minutes.

Mr. OCHS. Good morning, Mr. Chairman. I am John Ochs, representing Maersk SeaLand. Maersk SeaLand sails a fleet of 250 ships, owns 1 million containers, and manages 13 terminals here in the United States.

We salute the effort of the Federal Government to secure our Nation against terrorism. I am pleased to report that Maersk was the very first ocean carrier to become certified under C-TPAT, the Customs Trade Partnership Against Terrorism. We are also active participants with both the container security goals and the Operation Safe Commerce.

Maersk supports the intent of the Maritime Transportation Security Act and is prepared to comply with the MTSA and the related Federal interim rules expected to be promulgated this summer. A review of the pending regulations has produced some concerns that I would like to bring to your attention this morning.

These issues are generic to every waterfront facility, including refineries, powerplants, and ferry terminals. Although we do not represent our peers in the container industry—who are also our competitors—we are confident that they would agree with our observations.

The key point for your consideration, sir, is the basic concept that port security must be a true partnership between the government and the maritime transportation community. We each have different roles, because we each have different responsibilities, jurisdiction, and legal authority.

Over the last year, prudent measures have been implemented to control access into waterfront facilities. As a waterfront facility operator, we can inspect personnel and vehicles as a condition of entry into our terminal. But, our employees do not have the power to detain or arrest, and, clearly, do not have the legal authority to actually search a vehicle as is suggested by the pending regulations. Further, we lack the special equipment and dogs required to actually detect potential explosives.

The pending regulations imply that each waterfront facility should deploy their own fleet of security boats. We do not conduct patrols on the public roads outside of our property line and should not be expected to conduct waterside security operations on public waterways next to our terminals. We do not have the legal authority to police the navigable waters of the United States.

The regulations also suggest that each terminal have their own staff of divers to inspect pier structures prior to the arrival of a vessel. The detection of underwater explosives is a national defense mission performed by the military, or a counterterrorism activity conducted by a very few police departments with specially trained dive teams. Clearly, this responsibility cannot be deferred to civilian resources.

As a commercial enterprise, we do not enjoy the government's certain sovereign immunity, and, therefore, cannot be expected to conduct either law enforcement or military operations. In fact, if these responsibilities are thrust upon us, we doubt that any facility would be able to obtain property or liability insurance.

The Maersk SeaLand container terminal here in Los Angeles is the largest container terminal in the world. It is protected by the Los Angeles Port Police, the Coast Guard, and the other Federal agencies reporting to the new Department of Homeland Security. These agencies are staffed by dedicated professionals who train and operate as a unified team. They comprise the finest law enforcement and port security cadre in this Nation.

The $8 billion—I want to repeat that, $8 billion—in Federal funds used to protect our airports should serve as the benchmark for additional resources that our local agencies require to enhance their capabilities to secure this economically strategic harbor.

In conclusion, some of the pending Federal regulations blur the line between commercial responsibilities and government duties. We hope you will agree that any mandate to actually conduct searches or to patrol public waterways must be performed by a government agency that is staffed with the trained personnel, the proper equipment, and the legal jurisdiction and actual authority to arrest potential terrorists, identify contraband, and detect explosives.

I appreciate the opportunity to share our concerns with you here this morning about how these regulations will impact the security of our Nation's strategic commercial seaports. Thank you, Mr. Chairman, for your attention to the critical issues regarding the partnership between the maritime industry and the government.

[The prepared statement of Mr. Ochs follows:]

Good morning Mr. Chairman. I am Glenn Eddy, Vice President of Maersk Pacific Limited. We are the marine terminal operators for the Maersk-SeaLand steamship line. Maersk-SeaLand sails a fleet of 250 ships, owns 1 million containers, and manages 13 marine terminals in the United States.

Maersk Pacific salutes the efforts of the Federal government to secure our Nation against terrorism. I am proud to report that Maersk was the very first ocean carrier to become certified under C-TPAT { *Cee – tee - Pa t* }, the Customs' trade partnership against terrorism. We are also active participants with both the Container Security Initiative and Operation Safe Commerce.

Maersk Pacific enthusiastically supports the intent of the Maritime Transportation Security Act. I instructed my staff to ensure we are prepared to comply with the M-T-S-A, and the related interim final rules regarding port security that the Coast Guard is expected to promulgate this summer. Our thorough review of the pending regulations has produced some concerns that I would like to bring to your attention today. These issues are generic to every waterfront facility, including refineries, nuclear power plants, and commuter ferry terminals. Although I do not represent my peers in the container industry - who are also my competitors - I am confident they would agree with our observations.

The key point that I offer for your consideration is the basic concept that port security must be a true partnership between the Government and the maritime transportation community.
We each have different roles, because we each have different responsibilities, jurisdiction, and legal authority.

Over the last year prudent measures have been implemented to control access into waterfront facilities. This process would be more effective if there was a common, tamper proof, biometrically validated credential available. The Transportation Workers Identification Card, or TWIC, is currently in the prototype test and evaluation phase. I encourage the T.S.A. to accelerate this process, expeditiously establish a National standard for the TWIC , and to actually issue the credentials this year.

Terminals are guarded by watchmen. Their job description is to "observe and report".
The pending regulations imply a mandate to randomly inspect and search individuals and vehicles entering waterfront facilities. Although we can inspect vehicle passenger spaces and trunks as a condition of entry, the watchmen do not have police power to detain or arrest, and clearly do not have the legal authority to conduct searches. Further, the watchmen lack the equipment or dogs required to actually detect explosives and are not trained to identify potential hidden explosive devices – these are law enforcement activities.

The pending regulations suggest that each waterfront facility deploy their own security boats. We do not conduct patrols on the public roads outside of our property line, and should not be expected to conduct waterside security operations on public waterways. We do not have the legal authority to police the navigable waters of the United States. The regulations discuss the use of diver's to inspect pier structures prior to the arrival of a vessel. The detection of underwater explosives is a National defense mission performed by the military, or a counter-terrorism activity conducted by a few police departments with specially trained dive teams.
Clearly this responsibility can not be deferred to civilian resources.

In summary, the pending regulations imply that each terminal will hire a trained and fully equipped posse to search personnel and vehicles, crew boats patrolling offshore from our docks, and search for underwater ordinance.

As commercial enterprises we do not enjoy the Government's sovereign immunity, and therefore can not be expected to conduct either law enforcement or military operations. Additionally, waterfront facility operators would suffer from significant liability exposure if deemed accountable for discovering hidden explosive devices. In fact, if this responsibility is thrust upon our industry, I doubt that any facility would be able to obtain property or liability insurance. As you know, ships carry 95% of the cargo that supports our Nation's manufacturing and agriculture export trade, and the consumer market import supply chains.
The L.A. – Long Beach port complex handles more then 40% of the containerized cargo shipped to and from the U.S.

The Maersk-SeaLand container terminal here in Los Angeles, Pier 400, is the largest proprietary container terminal in the world. It is protected by the L.A. Port Police and the various Federal agencies reporting to the new Department of Homeland Security. These agencies are staff by dedicated professionals who train and operate as a unified team. Collectively, they comprise the finest law enforcement and port security cadre in the Nation. The 8 billion dollar Federal appropriations to protect our airports should serve as the benchmark for the additional resources these agencies require to enhance their capabilities to secure this economically strategic harbor.

In conclusion, some of the pending Federal regulations blur the line between commercial responsibilities and governmental duties. I hope you will agree that any mandates to search personnel, baggage, cargo, vehicles, watercraft or underwater structures must be performed by a Government agency that is staffed with the trained personnel, the proper equipment, and the legal authority to arrest potential terrorists, identify contraband, and detect explosives.

Thank you, Mr. Chairman, for your attention to these critical issues regarding the partnership between the maritime industry and the Government. I appreciate the opportunity to share our concerns with you today about how these regulations will impact the security of our Nation's strategic commercial seaports.

Mr. OSE. Thank you, Mr. Ochs. I appreciate your sharing with us your testimony.

Our next witness is Mr. Rob Marshall-Johns who is the director of operations and quality control of Oppenheimer Co. Thank you for joining us. You are recognized for 5 minutes.

Mr. MARSHALL-JOHNS. Thank you, Congressman Ose, thank you to the committee for the opportunity to testify here today. The Oppenheimer Group is an international marketer of produce, with our imports into the United States and Canada.

The security rules and requirements, we believe, must be collaborative in nature on an international basis. We see that the requirements for U.S. and foreign port security should be centered around recommendations on a systematic approach for inclusion in the global or international port security—for example, through the International Maritime Organization, as a branch of the United Nations.

U.S. Federal agencies should be focused more on an auditing role. This will allow individual countries and ports flexibility due to individual physical requirements, laws and requirements, similar in content to the C-TPAT, of which we are a member.

The focus, as it has been outlined in the proposal, shall be based on three areas, and this is important for facility security. At the present moment, the U.S. Coast Guard is adequately controlling or monitoring vessel security. We see that any new rules or regulations must be consistent across all agencies. For example, the 24-Hour Rule for U.S. Customs and the proposed FDA Bioterrorism Act have similar requirements, as far as presentation of information prior to arrival. However, there are inconsistencies in how that information is to be delivered, and, therefore, this is adding extra costs to the exporter, in particular.

Port security. Again, we have been doing this for the consistency required in terms of mandated requirements, and this has been left up to the individual port facilities to undertake. We see that the role of Federal agencies should be an auditing or monitoring role in assuring that these requirements are met.

Facility and port security. We have to investigate the restrictions of access to certain areas at certain times, whether its locked-downs during lunch breaks, or whether its restrictions of personnel to specific parts of the facility. Personnel security needs to be improved, and we have heard a lot about the transportation workers identification cards, the pilot program that is now about to be implemented in the port of Philadelphia.

BC. Background checks and ID cards are an absolute necessity. For instance, in the trucking industry, we see a need for the same. This is part of the total transport network that is involved in the ports. The screening and monitoring of cargo going into and out of their ports must be checked on a random basis.

The cargo identification and screening, under the U.S. Customs 24-Hour Rule, we believe, is far too restrictive on the produce industry. The requirement is now 24 hours' advance notice prior to loading. Based on climate, based on the perishable nature of products, there should be some way that you would get some latitude here.

We believe that U.S. Customs screening, which is required now, should be included as part of the previously discussed international standards, we should see random screening in the ports of loading, and also random screening at the ports of discharge. The costs can be excessive, and they must be spread across the whole community.

At the moment, we are seeing charges of anywhere between $100 and $800 per container charged to the exporter for each screening. We believe that perhaps we should be looking at a surcharge across all cargo. The transportation security cards, as I was saying, we need to ensure that anybody who has access to any of our port facilities across this Nation and perhaps internationally is carrying them.

We see that product security is an important part of trying to defend and ensure that the supply of food to the consumer is not in any way jeopardized, and that we've tried to strengthen it. We see this in the protocols that we have developed for our own internal use—for our own company and for all of our service providers and suppliers this is something that we have now—we're not forcing, but we're requesting that they adhere to.

Just in closing, September 11th changed our lives forever, and I think we, as a community feel, the cost of security is for everybody to be involved. It can't be loaded on one person. It can't be loaded on one company. And, whether it comes through from Federal agencies, taxes, whatever way, the consumer is going to end up paying. Security is the responsibility of us all, and it should be proactive versus reactive in nature.

[The prepared statement of Mr. Marshall-Johns follows:]

"What Regulations Needed to Ensure Port Security"
From the Perspective of Shippers of Agricultural Produce

Presented by Rob Marshall-Johns
Director of Operations and Quality Control
David Oppenheimer and Company
April 24, 2003

Food safety and security are among the chief concerns of David Oppenheimer and Company. In 2002, the Seattle, WA-based organization brought over three billion individual pieces of fruit grown overseas and domestically into the North American marketplace. As such, Oppenheimer recognizes the serious responsibility it has to ensure that the produce it introduces into the American food supply is safe for public consumption and enjoyment.

Oppenheimer is a full-service produce marketer with 11 offices throughout North America and Chile. It represents thousands of growers from around the world, importing apples, pears, kiwifruit, apricots and berries from New Zealand; oranges, apples and pears from Japan; kiwifruit from Europe; oranges from Australia, mangoes from Mexico; and a range of fruits from Chile, to name a few.

Last year, Oppenheimer undertook a survey of its customers in effort to learn more about company performance and specific industry trends. Food safety and security emerged as the most critical issue on the minds of American retailers, most of whom believe this will be among the most critical areas of their business for the next half decade.
The company is involved in all aspects of the supply chain. Its direct relationships with growers enable Oppenheimer to ensure that the fruit it markets is grown and packed in the safest manner possible. And once the fruit has been harvested,

Oppenheimer can influence food safety and security during the voyage, discharge, storage, and ground transportation phases of the process.

Oppenheimer has long been cognizant of the importance of food safety. For example, it has standards in place to represent only growers who adhere to Hazard Analysis Critical Control Points (HACCP)-based growing practices. HACCP is a system for identifying potential points of contamination during production. In addition, Oppenheimer's quality assurance protocols are able to trace each pallet of fruit that enters its distribution system to the orchard where it was grown, so any concerns can be quickly and efficiently addressed.

The events of 9/11/01 changed the scope of "food safety" forever. Now, it not only encompasses hygienic growing, harvesting, packing, and shipping practices; it also focuses on protection from bio (or agri) terrorism at all aspects of the post-harvest chain.
Oppenheimer adheres to strict food security protocols which it put place in January, 2002. The protocols were developed to help ensure that imported products are safe from potential acts of terrorism as well as contamination from natural sources. Oppenheimer's confidence in its ability to provide safe, secure produce to the American market is so strong that the company brand now appears on a significant proportion of the product packaging The Oppenheimer policy concentrates on three key aspects of security:

1. **Employee Security**
2. **Equipment Security**
3. **Product Security**

Each of these areas are addressed at key points of the distribution chain, from vessel transportation from the country of origin straight through to transportation of product to American retailers and wholesalers (see flow chart, Appendix A). All facets of the operation have been evaluated with a view to ensuring the security of Oppenheimer product during all phases of the distribution process.

Critical areas include: Vessels at Sea, Vessels at Discharge, Stevedores, Pier Facilities, Trucking Companies, Produce Industry, Off Port Cold Storage.

1. **Employee Security:** The disciplines in this area ensure that the personnel who interact with the product along the chain are appropriate and have passed security requirements. Protocols include:
    - Background checks for ship crew and others as appropriate
    - Screening process undertaken for any temporary employees
    - Identification badges to be worn at all times by crew, stevedores, pier/off port storage staff and truck drivers, federal personnel
    - Truck drivers must hold TWIC cards, as per the pilot program developed by the Transport Security Administration to be implemented on the Delaware River and a West Coast location
    - Personal items belonging to personnel are subject to search and must be kept out of key areas on vessel, discharge and cool store areas.
    - Access limited to physical areas specific to each person's position
    - All personnel trained to be vigilant for signs of unusual behavior among peers
    - Any visitors to vessels, pier facilities and cold storage units must be accompanied by authorized personnel
    - Visitor logs must be meticulously maintained.

2. **Equipment Security:** Protocols in this area relate to the security of vessels, facilities and trucks. Requirements include:
    - Security personnel assigned to watch such key areas as gangways, waterside of vessels while docked, and areas where containers are stored. Patrols also required at potentially vulnerable times, like during discharge and truck loading, and at night.
    - Automated entry systems/alarmed exit doors in place

- Restricted access to sensitive areas, i.e. ship's bridge, chemical storage areas, etc.
- Physically secure perimeter (e.g. fences with razor wire) that are strictly patrolled.
- Posted signs advising that a restricted area is being entered and vehicles are subject to search
- Parking allowed in designated areas only
- All doors, gates, hatches and decks secured
- Any suspicious packages or signs of tampering with buildings must be reported to authorized person.

3. **Product Security**: Disciplines in this area are dedicated to the security of the actual product being transported. Key requirements are:
    - Regular inspections of refrigeration and air intake systems on vessel and in storage
    - Application of seals to hatch/decks, containers, and trucks. Log must be kept to show record of seals being broken, and explanation provided by person who broke the seal.
    - Facilities where product is stored must be locked during work breaks and at night.
    - Any evidence of tampering must be reported to authorized person.

Oppenheimer relies upon its staff, growers, and service providers (such as stevedores, cold storage facilities, and shipping lines) to implement its food safety and security requirements. The company makes adherence to these requirements mandatory as it contracts with these groups.

Cargo Identification and Screening

Oppenheimer contends that it is the responsibility of the country of export to establish a system that satisfies U.S. requirements, and that U.S. Federal Agencies will monitor these systems through such disciplines as the U.S. Customs 24-hour rule and other means.

All cargo *must* be identified by unique identification systems – bar code readable pallet numbers, bar-code readable individual case coding, and adherence to existing federal regulations. Oppenheimer believes that this should apply across all products and origins.

The U.S. Customs 24-hour rule (notification of shipment contents 24 hours prior to the loading) for break bulk vessels and containers presents some challenges for fresh produce. Unlike a manufactured product where the specifications are generally consistent, many factors (different sizing, pack types, varieties, maturity issues at harvest, etc.) come into play when dealing with fresh fruits and vegetables. Sometimes the actual product specifications are not known until immediately before the vessel is loaded. The North American produce industry would find a 24-hour rule *post* departure from the country of export could be more easily implemented.

Cargo screening on a random basis at the time of arrival in the U.S. is imperative to ensure compliance to any U.S. federal regulations. However, it should not be so onerous that it causes significant delays which may affect product integrity, and incur costs that have a negative impact on margins and returns to growers. Initiatives such as C-TPAT (of which Oppenheimer is a partner) allow importers (and their associated exporters) to show their proactive actions in minimizing the potential for contamination on the product, should allow the importer to be on a lower level of screenings/reward and penalty system.

Transportation Security

Anyone involved in any aspect (shipping, stevedoring, trucking, importing, storing, processing, etc.) of the transport system must have a federally-issued ID card – the opportunities for abuse of any other system are too great. Oppenheimer believes that the pilot program for the TWIC (Transportation Workers Identification Card),

as proposed by the TSA, is the correct process to ensure security of personnel and believes this is a significant step forward in ensuring food security during the ground transportation phase of the distribution process.

Background checks should be (and are required by Oppenheimer) part of the natural process for the hiring of personnel involved in any way in the handling, inspection, or transfer of any products – both domestic and imported.

Also, a system should be put in place for the advanced electronic screening for any person involved in the transfer of any fresh produce on an international or domestic basis. Such a system should include, but not be limited to, passenger and crew manifests as well as cargo information.

Transfer of products by any means should follow strict procedures were the product is sealed be any means (conventional seals, electronic locks which record any opening/closing of the seal lock, etc.).

Food Safety and Security in the Produce Industry

While American grocery industry is very dynamic, one constant theme across all levels is an overriding concern about food safety and security. A case in point: recently a top North American retailer issued a letter to all suppliers indicating that all product delivered to its warehouses must be transported in sealed trucks. Oppenheimer expects other retailers will soon follow suit. Also, the U.S. and Canadian Produce Marketing Associations are working together to create traceability practices that can be implemented across the North American produce trade and extend out to growers who export to this continent.

Thus, the produce industry, along with its retail partners, and service providers, and growers, are pooling their efforts to ensure the American food supply is protected from risk.

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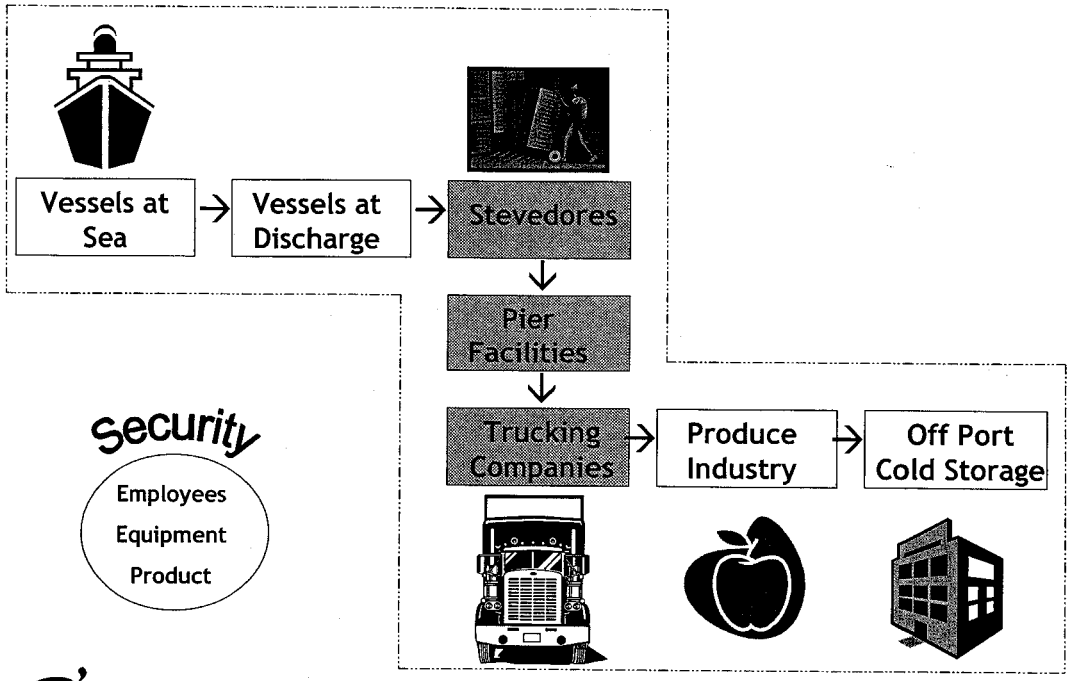
Oppenheimer Food Security Protocols



security

Employees
Equipment
Product

THE OPPENHEIMER GROUP

Mr. OSE. Thank you, Mr. Marshall-Johns.

I want to come back to the protocols that you mentioned, but I would like to examine them, so don't let us get away without coming to those, OK?

Mr. MARSHALL-JOHNS. Sure.

Mr. OSE. Ms. Williams, we appreciate your coming. Stephanie Williams joins us as the vice president of the California Trucking Association. You are recognized for 5 minutes.

Ms. WILLIAMS. Thank you. Good morning, and thank you for inviting the California Trucking Association to this hearing. We appreciate being participants in this and want to continue being participants as this moves along.

We, of course, are most concerned of the landside operation, and I think, as you look at the ports, especially in California, the landside has been ignored for a very long time, and it has caused lots of conflict with communities, with the trucking industry, in general, in the State of California.

We have actually had a number of bills move forward on security in California that may conflict with what is happening federally, and we are hoping that the Federal Government would preempt and make consistent the protocols for all ports. Either way, they would include what California has done but in a way that is fair to the ports in California from a competitive side versus those on the East Coast.

There was initially, a bill passed, S.P. 1257, by the Senate Transportation Chair Murray that requires trucks moving interstate/intrastate loads to lock their facilities with some particular lock right now. So this particular bill is going to have far-reaching impacts on interstate trucking.

There are 1.8 million intrastate/interstate trucks allowed to come into California registered in the IRP. There are only 207,000 intrastate trucks registered here. Some of the things that are happening in California with respect to intrastate loads carried by interstate carriers, they are going to have far-reaching impacts. So, we would hope that the Federal Government does step in and prevent some of the things that are happening as we move along.

The definition of a port facility will have long-lasting impacts on some of the carriers located near the port facilities. There are trucking companies that have facilities on port operations, and it would make sense for a trucking company to be held to a port security protocol, because they truly are moving freight and moving boxes from point A to point B. So, we would like that to be considered when rules are coming down.

Our biggest concern is the background check and the credentialing. Although we feel supportive that it is a good time to do that, if you look at the land-side facilities you imagine that there are more trucking people, drivers, moving through those facilities than probably port people moving through those facilities. You really can see that the problems can come from both sides.

The number of drivers and the type of drivers that we have at our port facilities, we really need to be considerate of congestion and people standing around with idle time. There is really a lot more concern on the land side that we see that is worth being addressed that is being addressed on the port side.

When a big ship comes in, there are a lot of people that handle that one big ship. Just on the land side you have got 12,000 people interfacing on the streets and at the terminal gates. It is a time when you need to look at how much the trucking industry should interface in the port side, and should we even be inside the ports? Should we stop at the gate and remain there, and let the port people handle what is on the inside of the port and the truck people handle the outside land side?

There are lots of things that could be considered here, but, on a safety side, there are more trucking individuals operating inside port facilities right now than port employees.

Our comments go through our concerns on credentialing, and the American Trucking Association and California Trucking Association have a common interest in this. The background checks, we want to see them done once. There is a lot of duplication between aviation imports, hazardous materials credentialing, explosives, goods for the Department of Defense, carrying those, border crossings.

I think the worst-case scenario is Florida, which has 14 ports, 14 credentials, 14 background checks, and I am sure the FBI is not very happy with them. It is costly, it is duplicative, and it seems like we could just come up with one really good credential and that would apply to everybody, and we could have periodic checks where you could make sure that something hasn't gone wrong.

The disqualifying criteria: we have a driver shortage. It is difficult to find drivers that want to work in the ports because of the conditions. We don't want to have the drivers we have disqualified, so we would like to be more involved in that. We would like to see what it is that would possibly disqualify a driver.

It is very arbitrary to us, and there is too much delegation to the Secretary, meaning that the disqualifying standard is if the Secretary determines the applicant poses a security risk. We would like that defined and possibly have the criteria defined, and then the security can disqualify it after one of the criteria were met. Just so we would have a better idea what we could expect from our drivers.

We would like to see the background check tied to the credentialing card just done once, possibly have that card be in lieu of the hazardous waste and hazardous materials; have those put together, combined.

I think the most important part is we want to be at the table, because there are more people interfacing on the truck side at the ports right now than are on the marine side. But for some reason, we are just not at the table. I think we have a lot to bring to this as far as safety for the ports, as far as safety for the communities, as far as safety for the State of California.

Thank you for the opportunity to testify.

[The prepared statement of Ms. Williams follows:]

April 22, 2003

Comments Submitted to: Subcommittee on Energy Policy, Natural Resources & Regulatory Affairs

Comments Submitted by:
Stephanie Williams
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Subject: CTA Position and Items of Concern on Port Security

1: Definition of facility under the port area security plan.

In some ports, trucking terminals are located on port property. Even though their function is not of a "marine" nature, these terminals will dispatch equipment to deliver cargo and containers in an out of the "maritime environment." While the portion of the operation that interfaces with maritime operations will need to take into account the requirements of the port security plan, clearly many of the International Maritime Organization (IMO) security protocols do not directly apply to truck operations. Facilities located adjacent to navigable waterways may be designated under the port security plan. If a trucking terminal (on private, non-port property) is located near a critical maritime infrastructure, such as a dock, or could be used to launch an attack on shipping, such as a fuel operation located next to a critical ship canal, these facilities could be required to participate in the port security plan, and to submit a security plan for approval by the captain of the port.

Potential inter-agency inconsistencies, planning requirements and needs must be recognized and reconciled to avoid conflicting and potentially disruptive requirements.

Concern 2. THERE SHOULD BE ONLY ONE BACKGROUND CHECK OF A TRUCK DRIVER AGAINST THE FEDERAL DATABASES THAT IS UNIVERSALLY APPLICABLE AND RECOGNIZED.

- A truck driver today may potentially be subject to background checks against the same NCIC database under the following regimes: 1) aviation; 2) ports; 3) carrying hazardous materials; 4) carrying explosives; 5) carrying goods for the Department of Defense; 6) border crossings under the voluntary Free and Secure Trade ("FAST") program; and 7) numerous state and local criminal background check requirements (e.g. ports in Florida and South Carolina)

- It is costly and duplicative to check the same driver against the same database; however we support periodic checks/renewals (i.e., requiring one check every three years)

- The federal background check for truck drivers must preempt all other state and local requirements

3. THE BACKGROUND CHECK MUST BE QUICK, EFFICIENT AND COST-EFFECTIVE

- Earlier estimates by FMCSA regarding implementation of the USA PATRIOT Act predicted the turnaround time for a hazmat endorsement to be between 3-6 months

- Many states do not even allow a person to apply for renewal of a hazmat endorsement more than 30-60 days out (a chart listing state requirements is attached); thus any greater delay would put drivers out of jobs

- The states have neither the infrastructure nor the funds to put in place an efficient system

- Private sector models, including the aviation and banking industries, turn around NCIC checks in 4-7 days

- Any background check regulation should be flexible enough to allow private sector solutions

4. THE DISQUALIFYING CRITERIA SHOULD BE CLEAR AND CONSISTENT AND THE RESULTS OF THE BACKGROUND CHECKS COMMUNICATED TO THE EMPLOYER.

- Under the USA PATRIOT Act, the disqualifying standard is if the Secretary determines the applicant poses a security risk; what does that mean?

- When the Secretary makes a determination that the driver poses a security risk, the driver's employer should be informed concurrently as to why

- THE EMPLOYER, AT A MINIMUM, SHOULD BE AFFORDED LIABILITY PROTECTION FOR EMPLOYMENT DECISIONS ARISING OUT OF A MANDATED BACKGROUND CHECK

5. THE ONLY WORKABLE SOLUTION APPEARS TO BE TYING THE BACKGROUND CHECK TO THE ISSUANCE OF A TRANSPORTATION WORKER IDENTIFICATION CREDENTIAL AND NOT A DRIVER'S HAZARDOUS MATERIALS ENDORSEMENT.

- There are background check requirements at ports and airports; not all drivers carrying goods there have hazmat endorsements to their CDLs

- Many shipper-customers are requiring second forms of identification; a TWIC could become the universally accepted standard

- The CDL was always aimed at a driver's safety fitness; the TWIC could be developed with security fitness in mind

6. IMPLEMENTATION OF THE BACKGROUND CHECK RULE MUST NOT DISRUPT THE FLOW OF COMMERCE.

- Any background check rule should be phased in over a reasonably sufficient period of time to ensure compliance is feasible given the volume of drivers that will be subject to such rule

- Drivers must be permitted to continue driving while the background check is being conducted

- The impact on the trucking industry's ability to continue hauling the Nation's freight must be carefully considered

- Qualifications for facility security officers in "non-marine" facilities must take into account the relationship between trucking and the maritime environment.

7. THE TRUCKING INDUSTRY SHOULD BE AT THE TABLE

While it makes sense for marine facilities to have security staff with expertise in the IMO security protocols, it does not make sense to require a land-based facility like a motor carrier to have marine/IMO security expertise. The fact that trucking operations require different skills and knowledge must be reflected in the security requirements placed on their facilities, and the associated port security committees and plans. Intermodal motor carriers must have a seat on each local port security committee.

At many ports it is quite likely that more trucking personnel enter ports with greater frequency and numbers than any other category of persons, including port employees themselves. Accordingly, their perspectives and expertise are crucial to assure development and implementation of a successful security plan, and at the same time, maintain the efficiencies of the intermodal freight system that yield universal benefits. To assure proper localized representation, a state-based motor carrier industry organization, or its designee, should hold this seat.

8. System Interoperability — The personnel credentialing system at one port should match all other ports. Resulting interoperability is fundamental to intermodal freight systems' efficiencies, and vital to governments' intelligence and security objectives.

Myriad data collection and processing systems are currently available for both freight tracking and secured facility access. Most of them are proprietary and many have associated subscription fees. To move freight throughout the country, motor carriers and others often must subscribe to several different systems. This is equivalent to having to use multiple transponders. If government develops newly required systems,

the picture only gets worse. Government leadership and responsiveness to private sector stakeholders is the key to achieving interoperability across all freight systems.

A perfect example of how not to implement security objectives and related technology is found in Florida. Prior to September 11, 2001, the Florida legislature mandated that each of their 14 marine ports establish an identification card system with an associated criminal background check. Void in this plan were any requirements for interoperability, so that the system at one port was interoperable with any other port. This was done in spite of the fact that the Executive Director of the Florida Trucking Association cautioned and pleaded with lawmakers to make the system interoperable. The legislature ignored industry. As a result, each truck driver seeking access to all 14 ports must fill out 14 applications, pay 14 processing fees, get fingerprinted 14 times, be in possession of all 14 cards, and renew them periodically. This means that all 14 applications from a solitary driver are sent to the same Florida law enforcement agency for processing, and for that lone driver, the FBI is burdened 14 times to conduct a fingerprint and background check, and return 14 reports to the Florida agency. The resulting burden to the driver is truly ridiculous. Moreover, American businesses struggling to be globally competitive are reliant on cost-effective intermodal freight service. Ultimately, they suffer from the cost of this boondoggle too. But perhaps the most unacceptable result from ignoring interoperability, is that to do so, creates security system redundancies that enlarge the potential for security failures.

By stark contrast, the trucking industry commends the United States Coast Guard for seeking the participation of the private sector.

9. Port Driver/Worker Credentialing System — The trucking industry strongly supports an interoperable Port Worker's Identification Card, which works in an open-architecture environment.

The technology of the Port Worker's Identification Card should closely resemble the concept developed by the Credentialing Direct Action Group. The day after September 11, Secretary Norm Mineta organized the National Infrastructure Security Committee (NISC), and charged that group with fortifying America's infrastructure against terrorists' nefarious aims. The NISC formed several subgroups where the trucking industry is well represented. Under the NISC, the Credentialing Direct Action Group developed the conceptual framework for a Transportation Workers' Identification Card. This concept generally incorporates protocols, open architecture, protection of confidential personal and corporate information, and technical features that result in an efficient and interoperable system vital to truckers' interests. In its Federal Register Notice on December 30 of 2002, the USCG (at page 79750) states its intention to incorporate these concepts to provide secured personnel access to security sensitive port areas and facilities. America's trucking industry strongly supports USCG in this objective.

Technology Selection Criteria: When good security proposals also portend increased economic efficiencies, this helps to offset costs (both start-up and perpetual costs). The trucking industry astutely understands the need for accurate, dependable and secure driver credentials. Increasingly, motor-carriers' customers are pressuring them to develop a system that not only identifies a driver as holding a valid CDL, but also confirms who he works for and that he or she is authorized to pick up a load. The

features associated with the Credentialing Direct Action Group meet these criteria. Accordingly, motor carrier customers could voluntarily adopt the same technologies for security at their places of business. The effect would be to drive down costs through efficiencies of scale.

10. Data Privacy must be protected.

The trucking industry, like the other three freight modes, does not collect freight data and information without a clear purpose. In almost all cases it is collected as part of conducting business in a competitive environment. Consequently, while there is a substantial amount of freight data, much of it is proprietary. The trucking industry supports security programs but government, and the systems they propose building, must be extremely sensitive about protecting data.

Any drivers' personal data, and business' proprietary and confidential information, must enjoy robust protection by the system. Laws must severely punish criminals unlawfully obtaining or using this information, and include far-reaching financial sanctions and lengthy incarceration.

11. Mandated Vs. Performance-Based Systems: Government should focus on functional needs and let the industry decide how to meet and deliver those functional requirements.

Among other objectives, terrorists seek to destroy our economy. Government, with the assistance of industry, must make every effort to effectively build sufficient security infrastructure without being so costly or cumbersome as to destroy the economy it seeks to protect. USCG should be praised for its deliberate and copious efforts to develop optimum systems, procedures and policies. In this vein, it is important to understand that the trucking industry has already invested in highly sophisticated and very expensive systems. Since September 11, thousands of government agencies and private businesses have been waiting for Congress, and the agencies it controls, to provide leadership to specify the open architecture and protocols necessary and antecedent to further investment. The intervening uncertainty has been extremely frustrating to all stakeholders. Key to America's success in thwarting domestic terrorism is to shun mandates reliant on proprietary vendors, and to engage in industry and government partnerships to jointly analyze, field test, and determine security programs.

Mr. OSE. Thank you, Ms. Williams, for joining us today.

The next witness comes to us as a senior liaison to the ports of L.A. and Long Beach from the International Longshore and Warehouse Union. It is Dr. Domenick Miretti.

Dr. Miretti, before I recognize you, I want to extend to you and your colleagues in the union here, the appreciation of the Members of Congress. It is little known, but it is a fact that after September 11th, in the face of great uncertainty as to what other threats or dangers existed, the longshoremen took upon themselves a conscious decision to go back on the docks and load commerce, and we are grateful.

And, for no other reason, I mean, I want to say to you and your colleagues that this country and this Congress is grateful for your colleagues' willingness to do that blind, purely blind.

You are recognized for 5 minutes.

Dr. MIRETTI. Thank you very much, Mr. Chairman, for your generous remarks and for including organized labor as a part of this hearing and for asking me to speak on their behalf.

Because labor is involved in numerous maritime activities, we have a wide range of port security concerns. For those additional issues too numerous to mention, please see our written testimony.

The smuggling of weapons of mass destruction in containers through our ports is labor's worst nightmare. Those containers that are empty provide the easiest, most logical hiding place. Labor believes that therein the soft underbelly of port security.

In the congressional subcommittee report, the ILWU put forth a program based on standardized procedures for inspecting empty containers. Under this plan, dock workers would inspect empty containers. Container seals would also be checked to ensure that they haven't been tampered or altered. This ILWU proposal is in keeping with the minimum criteria for a model port as set forth in the Graham Commission on Port Security.

An additional area of concern is with those individuals entering marine terminals. Included in this group are truckers, contractors, vendors, or any occasional port visitor. Their arrival and departure must be more closely scrutinized. Recently, a trucker was given clearance to enter a containment facility. Once in the yard, two individuals hiding in the truck's sleeper proceeded to strip yard equipment for spare parts. They were apprehended, but this raises the question, how secure are the terminal gates?

The ILWU has proposed the creation of holding areas where truckers could drop off and pick up containers near terminal gates. These secured holding areas would not only limit the number of truckers in a terminal, but would also expedite the flow of cargo.

Organized labor working on the docks is also concerned about security force management and practices. The ILWU advocates minimum men and training standards for security personnel at local seaports. Presently, security guards at marine terminals have little or no training in crime or terrorist detection, prevention, or what course of action must be followed should a terrorist attack occur.

Unfortunately, some local port security guards with invaluable on-the-job experience are being replaced by a less expensive work force. When workers are paid a living wage, they provide a depend-

able and responsible work force. Low-paid security officers become a revolving work force creating weakness in port security.

If and when a terrorist event does occur, port contingency plans will take effect. But, unfortunately, individual workers don't have a clue as to what they should do. Final instructions will be broad and general in nature, and will vary from terminal and terminal. What is needed is a worker port readiness plan. Once implemented, port readiness exercises will be conducted with total worker involvement.

In order for this plan to work, there must be a centralized and integrated communication system that ties together all port terminals. Should a terrorist event occur, all facilities could then act in unison.

Mr. Chairman, I believe that the level of security at which our ports will ultimately function will be driven in large part by port productivity and the cost involved in funding anti-terrorist measures. Industry's ability to increase revenues is critical in their staying competitive.

Unfortunately, as security measures are increased, most often, productivity levels decrease. New anti-terrorist technology and more on-the-job worker involvement could, and should, play a crucial role in keeping our ports safe, secure, and productive.

Three critical questions still beg to be answered. One, what realistic level of funding will be required to develop best practices and basic principles for marine terminal security? Second, is such an effort affordable or too costly to achieve? And, third, how involved or committed will the Federal Government be in funding port security programs and badly needed infrastructure improvements around our ports?

Mr. Chairman, hopefully, you can help provide us with an answer to my last question.

Thank you.

[The prepared statement of Dr. Miretti follows:]

TESTIMONY OF DOMENICK MIRETTI
BEFORE THE
SUBCOMMITTEE ON ENERGY POLICY,
NATURAL RESOURCES AND REGULATORY AFFAIRS
APRIL 24, 2003

My name is Domenick Miretti. I am a professor at East Los Angeles College, and director of International Commerce and Career Center. I am equally proud to be a longshoreman and an active member of the International Longshore and Warehouse Union (known as the "ILWU") for 52 years, which since 1934 has been chosen by the thousands of West Coast port and dock workers to represent us in all matters related to our employment. Our union, the ILWU, presently represents about 60,000 working men and women, 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. I am honored that my union appointed me to be ILWU's liaison to the Ports of Los Angeles and Long Beach where I have served for 19 years.

Before going further, I want to thank you, Chairman Ose, and the entire Subcommittee for the opportunity to share with you my views concerning port security. For many of us on the docks, port security is not just one among many issues on the post 9-11 American agenda. For us, port security is a matter by which we, our families and our port communities live and possibly may die every single day.

If you can imagine unloading thousands of containers, each filled with unknown items packed by unknown people at any and all locations throughout the world, and virtually none of these containers or ships go through any security screening before you, the longshoreman, work the ship, then you can begin to appreciate the risks and fears we face every day and understand why port security is our absolute, top concern. Working these foreign flag ships is like boarding an airplane, owned, operated and crewed by foreign nationals, a plane loaded with luggage from countless places and the luggage, for the most part, has never, ever been inspected! And one wonders, will it explode? Am I being exposed to some poison or bio-weapon infecting not just me but my family, friends and neighbors? We hope you know that the members of the ILWU are committed to making our ports and surrounding areas safe, secure, and free of criminal or terrorist activities. It is a simple matter of survival for us.

And we hope you can also appreciate that our views on port security are formed by actual, hands-on experience. We know better than just about anyone how ports and commercial docks operate and what are real, and what are imagined security problems. It is in this context that we present our views today and urge that Congress and the Administration provide for effective, not cosmetic, security measures to protect our ports and port workers.

As you know, the Maritime Transportation Security Act was passed and signed into law last year after Senator Hollings dropped his insistence that a user fee pay for the necessary security enhancements to our ports. The Coast Guard is developing implementing regulations that will soon be published. The U.S. Customs Service wisely forced the industry to submit manifests 24 hours before loading cargo destined for a U.S. port. The maritime industry is asking Congress and the Administration to provide the funds to meet the mandates of the legislation. Funding is an important issue, but frankly, the industry has failed to change its business practices to meet the security needs of the country, and they continue to resist implementing common-sense changes to business practices that would make a real difference in securing the port.

For example, the business practices subcommittee of the container security working group, a private sector advisory committee moderated by Anthony Furst, Transportation Security Administration specialist, recommended business practices that would enhance security. The subcommittee recommended that empty containers be inspected prior to entering a marine facility and again before the empty container is loaded on conveyance. Many countries, including Japan, require such inspections because of the increased risk that these empty containers pose for the placement of bombs, weapons and contraband. The United States expects other countries to follow this common sense, affordable procedure, to ensure the safety of empty containers yet our own industry continues to resist this practice because they have chosen higher profits over the security of the nation. One terminal operator, Stevedoring Services of America, which operates the terminal for Chinese Ocean Shipping Company refuses even to inspect empty containers as they enter the terminal, much less inspect them a second time.

Mr. Furst addressed the security working group of the Marine Transportation System National Advisory Council and reiterated that the subcommittee recommended that empty containers be inspected twice at a marine terminal. Yet the industry continues to ignore this common-sense recommendation to enhance container security.

The containers on vessels and in port facilities need to be subject to some type of security screening to protect U.S. seaports and international maritime commerce. Longshore workers have the experience, training and knowledge to provide the type of security screening that would greatly enhance the security of our ports. Port workers who receive containers should be assigned to **inspect the integrity of the outside seal** on each container. A broken seal would alert the port facility that the container has been tampered and that it needs to be carefully inspected before entering a facility or being placed on a vessel. A systematic check of container seals also provides authorities with a record as to the parties responsible for placing the seal on any container that may be the means of a terrorist act.

Forty-seven warheads shipped from Europe and destined for U.S. Department of Defense use were discovered by the U.S. Coast Guard on a foreign owned and foreign crewed containership at the Port of New York/New Jersey before the government allowed the vessel to dock two days later, according to a story written by John McLaughlin and

published in the April 8, 2002 edition of Lloyd's List. McLaughlin's investigative report said the warheads were discovered by the Coast Guard boarding party in an on-deck container after **noticing that its safety seal appeared to differ from the one put on the box when it was loaded.** It was serendipity that allowed the Coast Guard to catch this breach of national security. Longshore workers stand ready to assist the authorities in the inspection of every seal on every container that moves through the Ports of Los Angeles/Long Beach.

Our employers must also work with trucking companies to ensure that operations related to pickups and deliveries are safer and more secure. For example, today truckers have access to the entire terminal and have ample opportunity to commit a destructive act. The terminal operators should set up secure "staging areas" at the entrance of each terminal to protect the terminals and vessels from any possibility of attack by a truck.

Regulations should require security clearance requirements for all vessels, their owners, and operator and crew before being allowed to enter a U.S. port. Presently, these vessels operate under secrecy and without regulations by the scheme of flying the flag of a country that lacks any meaningful regulations and scrutiny. The London Times reported that the terrorist group, Al Quada, presently operates dozens of flags of convenience ships. One of Osama bin Laden's ships was reportedly used to transport weapons to Africa for the purpose of blowing up the U.S. embassy in Kenya. Regulations must require transparency in ship ownership.

As a general matter of policy, the ILWU membership opposes background checks on any workers. During the investigation of the Interagency Commission on Seaport Security (the Graham Commission) the ILWU challenged the Commission to prove their assertion that internal conspiracies are a problem at many of our nation's ports. We asked them for an example of an internal conspiracy to commit crimes involving ILWU longshore workers. They could not produce one example of ILWU workers at our nation's ports involved in criminal conspiracies. Not one. In fact, the only involvement our members have with serious criminal activity is reporting to authorities suspicious activities and cargo. In previous testimony before the Senate Commerce, Science and Transportation Committee, we pointed out that the actions of one longshore worker at the Port of Tacoma led to the largest cocaine seizure in the Port's history

Obviously, the majority of members of Congress disagreed with our position and passed legislation that required criminal background checks on individuals with access to secure areas. Workers would be issued Transportation Worker Identification Cards. We recommend that regulations require the highest level of privacy for individuals who are subjected to federal background checks and that the TWIC card be used for positive identification security purposes only. Based on the employers' own statements, we have concerns that the Pacific Maritime Association will use the information on cards for purposes that should be in the venue of collective bargaining.

I was appalled to hear that American President Lines recently fired its experienced security guards and hired other personnel to handle security on the docks. Security

guards have not been adequately trained, nor equipped to help secure the ports from acts of terrorism. We assume that APL fired security guards so that they could hire lower paid and less qualified workers. This is wrong in terms of workers rights and it is so wrong in terms of the security of our nation. These ports need more security guards that are trained, well-paid, and professional. Some of the problems that the ILWU has cited when adequate staffing and training standards are not enforced include:

- Unauthorized pedestrians enter waterfront facilities with little interference through employee turnstiles, parking areas and unattended gates.
- Unauthorized persons embark upon vessels because there are no requirements for terminal operators to provide gangway security.
- Unauthorized persons enter terminals where there is insufficient gate security to handle the traffic on entry lanes for both truck and vehicular traffic and also exit lanes simultaneously.
- Some terminal operators may have only one security officer for an entire facility, leaving the operation vulnerable in numerous areas.
- Rail gates and rail operations will require greater security. As rail operations increase so will the opportunity for stowaways and other unauthorized activity.

I believe the Congress erred in the Maritime Transportation Security Act by allowing terminal operators to draft their own security plans rather than allowing the Coast Guard in conjunction with the local port security committees to write the facility security plans. The terminal operators have shown a propensity to cut corners on security if it means increased productivity and profit. It is incumbent that the local port security committees have an enhanced role to review security plans and ensure that operators actually institute security and change business practices so that our ports will be as secure as feasibly possible.

Finally, Congress can help the maritime industry deal with the costs associated with security mandates by funding infrastructure improvements around our ports. For over ten years, Long Beach has been pleading for improvements to the one, singe freeway that acts as both the only artery into and out of the port, as well as the only citizen access into Long Beach. The 710 Freeway is a small 6-lane artery that has not been significantly improved for decades. Yet the Port of Long Beach has seen truck traffic double and triple every couple of years. The freeway is choked with traffic between the hours of 8:00 am and 5:00 pm, unable to accommodate residents and visitors because of unbelievable bumper to bumper, 5 mph truck congestion. Infrastructure investments can make our port communities more productive and more secure.

Thank you for allowing me to testify today. I would be pleased to answer any questions from the Committee.

Mr. OSE. Thank you, Dr. Miretti.

All right. The way we are going to proceed here is that each of the Members on the dais here, in a systematic manner, will be given 5 minutes to ask questions. We will have as many rounds as the Members wish to ask questions of the witnesses. The questions may range far afield, but they are all adjoining.

To the extent that there are questions and we are running out of time in terms of our scheduled period in this room, we have the opportunity to submit written questions to you, in which case we would appreciate timely responses back. That is the purpose of leaving the record open.

The order we are going to proceed is I will go first, then the vice chairman of the subcommittee will proceed, and then we will go to Mr. Rohrabacher and then Ms. Harman, and we will just repeat that process over and over. If a Member has no questions, then they pass.

With that, we will proceed.

My primary interest in this is, what is the worst-case scenario that the citizens of commerce would be as exposed to in a port security incident? I am going to proceed from my right to my left here. Dr. Miretti, how do you view that question? What is the worst-case scenario? What are we confronted with here?

Dr. MIRETTI. The worst-case scenario I believe would be a situation where security might be breached, some type of weapon of mass destruction does find its way into the port, a bomb could be detonated, some kind of chemical warfare could be used, something of that sort.

So it would not only be devastating to life and limb, but it could be catastrophic in terms of shutting down the port. Congresswoman Harman indicated the devastation that would incur in terms of the national economy. So that there, not just loss of life and limb, could occur but could help bring the economy of the United States to its knees.

Mr. OSE. Mr. Ochs, one of the things that we hear about in Congress is blockading a port, or sanctions on perhaps some of the other countries in the world that the United Nations puts in. Could a ship be dropped in the entry to a port, and thereby just block it? And, if that happened, how long would it take to clear the channel?

Mr. OCHS. I think folks look back on the incident with the USS Cole and think that a similar situation could occur here and shut down the port. I guess, to give you a brief answer, sir, the Cole is a small ship. A small ship could be sunk in the channel here. I think a small ship could be cleared in a matter of days.

A large ship, like most of the container ships are and the tanker ships are, are literally unsinkable. And, if you think back to the experience you had in the Persian Gulf in 1988, where the Gulf was mined after the USS Princeton was literally broken in half by a mine, the Navy ships followed the tankers through the Persian Gulf.

So a USS Cole-type strike against a merchant ship, in my opinion, is unlikely because it would be unsuccessful. Just from the structural nature of the merchant ship, from the sheer size of the ship, and the fact that a container ship, because it is full of steel boxes, is essentially multi-hulled.

Mr. OSE. Mr. Keller, do you agree with him?

Mr. KELLER. I do, Mr. Chairman. We have examined this at some length. It is one of the worst scenarios that anybody could face. But, in examining it in great detail, as Mr. Ochs says, the types of ships that we have here, the large nature and the target types that would be afforded, are essentially—I wouldn't say unsinkable but certainly have the capability of being maneuvered out of the way rather than create some kind of inert blockage.

Adding to that, we have also made sure that we have standing contracts with people with heavy lift equipment with the ability to move these ships as quickly as possible to reopen our channels.

Mr. OSE. Congressman Janklow, you are recognized for 5 minutes.

Mr. JANKLOW. Thank you very much, Mr. Chairman.

If I could, Mr. Keller, in your testimony, you list several things that you have requested funding for there on the second page. Starting with construction of a high-risk container inspection facility, and ending with a security assessment for $300,000. Are these in your order of priority, or are they just listed on there?

Mr. KELLER. I don't believe they are in a list of priority.

Mr. JANKLOW. Something really bothers me. It is a practical thing. Are you saying that for $15 million, in the estimation of you and your team, you can make this port adequately secure? Or is this just a round of funding that you are looking for?

Mr. KELLER. This is a round of funding, Governor. These are some of the most important things that we see right off the top. As I said in my testimony a few minutes ago, we really need to get beyond using people to do things that technology can do better, so we can redeploy our people.

Mr. JANKLOW. I notice that everyone wants to be at the table. Has labor been at the table? Has the trucking industry been at the table? Have the private shippers been at the table? Has the shipping association been at the table? Have all of these people been at the table, as you folks were preparing your plans for what is necessary to make this port secure?

Mr. KELLER. I am not certain that there is a single table. I mean, we have all dealt with multi-agencies at various levels.

Mr. JANKLOW. I am not so sure I know what that means.

Mr. KELLER. Well, we tend to be very maritime-focused. So we have certainly been at the table with labor and the shipping companies. I think the trucking companies probably deal with it at a little different level of Federal and State officials and have probably been at that table.

Mr. JANKLOW. How do you get this stuff out of your port, once it comes in on a ship or a boat?

Mr. KELLER. Truck and rail.

Mr. JANKLOW. Pardon me?

Mr. KELLER. Truck and rail, basically.

Mr. JANKLOW. Has rail and trucking been at the table with you?

Mr. KELLER. They have been at various venues, but not at all the same.

Mr. JANKLOW. How many different law enforcement agencies are there that you deal with that have different communication systems?

Mr. KELLER. Myriad. I could begin listing them, but in terms of the communication systems, there is probably two or three. I think we have, in this area, certainly come a long way to harmonizing those.

Mr. JANKLOW. Mr. Ochs, in your testimony you talk about the Maritime Security Act and the things that you like about it, and that you generally support it. With respect to the doing the security things, you assume that, for example, you want to be watchman, but you don't have the power to arrest them, you are not looking for the power to arrest. It is not your job to go around and figure out what are explosives and those types of things.

Mr. Keller, do you agree with that?

Mr. KELLER. I do, Governor. I think that is exactly right, and it is particularly pertinent here, because we are what you call a landlord port, and we don't operate. But, for instance, we do have our own police force. We do have a dive team with that police force, and we work very cooperatively with Federal agencies who do the waterside and some landside enforcement as well.

Mr. JANKLOW. Mr. Marshall-Johns in your testimony you talk about the programs that your company has implemented. When you talk about employee security, you say that you do background checks for ship crew and others appropriate, but you do a screening process for temporary employees. Why should there be a difference between temporary employees and full-time employees?

Mr. MARSHALL-JOHNS. The background checks and screening are carried out on all employees, particularly the full time employees. They are undertaken on all employees that have any possible safety contact with the product, and the concern was——

Mr. JANKLOW. But, they all have some background check, all of those who have contact with the product?

Mr. MARSHALL-JOHNS. Yes, they do.

Mr. JANKLOW. OK. So we are looking at the difference, then, between temporary and full-time in that respect.

Mr. MARSHALL-JOHNS. In that respect, no.

Mr. JANKLOW. Why would you need to use the logs meticulously? Wouldn't that be an after-the-fact thing that would help you?

Mr. MARSHALL-JOHNS. It is part of precautions that we consider that security is knowing who has been in a facility at what times.

Mr. JANKLOW. My time is about up, but I have one more question for you, sir. You say, "Our personnel are trained to be vigilant for signs of unusual behavior among peers." Could you tell me how you train people for that? What would the training modality be for training people to be vigilant for unusual behavior among peers?

Mr. MARSHALL-JOHNS. What that involves is just being cognizant of what has happened and what has consistently happened around you at all times.

Mr. JANKLOW. Do you hold classes for that?

Mr. MARSHALL-JOHNS. Yes, we do. Internally, we hold classes. We hold our own training sessions as part of our safety and security program.

Mr. JANKLOW. Well, I am talking about goofy behavior of others. I am just wondering what kind of class you would hold to look for unusual behavior among peers. Before the witness answers, I just

want to remind you that this is Congress you are talking to. [Laughter.]

Mr. MARSHALL-JOHNS. It is a matter of just being logical and a matter of just being observant of what is happening around you. That is the key thing. Especially with new employees, the younger employees, it is a matter of just identifying where a particular risk could be.

Mr. JANKLOW. Thank you, Mr. Chairman.

Mr. OSE. Thank you, Congressman.

Congressman Rohrabacher for 5 minutes.

Mr. ROHRABACHER. Thank you very much. Obviously, there are some things that we can do—watch out for goofy behavior, etc.—that will not be costly, but other things seem to be very costly.

In your testimony, you suggested that, if I heard you correctly, that it would cost $800 per container to have the proper inspection of containers.

Mr. MARSHALL-JOHNS. That price would be in some ports for the Customs screening of containers would be charged, depending on the freight and the location, and it would be from $100 to $800 per container for the screening.

Mr. ROHRABACHER. So $100 to $800?

Mr. MARSHALL-JOHNS. Yes.

Mr. ROHRABACHER. Not $800. That is your maximum cost?

Mr. MARSHALL-JOHNS. That is the maximum cost.

Mr. ROHRABACHER. And, that is at the current level of technology when you are doing it on a very manual basis?

Mr. MARSHALL-JOHNS. Correct.

Mr. ROHRABACHER. All right. OK. I got you.

We have discussed a lot of issues here, and there have been a lot of great suggestions, which I hope that there is a method of following up on some of the suggestions. I know from the trucking industry, you just had a whole lot of good things.

I want to know how we are going to be sure that we just don't listen to this, that we do something about it. I think your idea is also—I mean, a lot of it stems from the fact that you are going to have a new standard in terms of where the truckers were and where the truckers weren't.

That is a very interesting approach as well, and so I am going to be watching this very closely and working with you. Please feel free to call me at my office, and we will see what we can do to implement some of these specific suggestions.

And, that would be true, for the others, except of course, you weren't just asking for money. A lot of people are just asking for money. You are asking for a change in the way we do things. I think that we have to handle every one of those type of recommendations that we can, and we also have to know, in terms of spending money, I would suggest, Mr. Chairman, that, if we spend money, it has to be in the beginning. We have to spend the money in a way that will help us come to grips with the worst-case scenario, which you, Mr. Chairman, had the panel outline. So what is it going to cost us to handle this worst-case scenario? What will we have to do? The worst-case scenario being someone trying to smuggle into the United States a chemical/biological weapon or a nuclear weapon.

We have to have the technology necessary and the system established that will handle that worst-case scenario without major delays box-side. OK?

We have heard the suggestion for overseas inspection as a part of the new way we organize things. Again, that may not be a major expense, but it may be a change in the way we do things. In terms of inspection on the dock, it won't cost $800 a container, because we will try to—we have to develop a system, and probably using technology where containers can be scanned as they are being taken off a boat. By the time it reaches the dock, that has already been taken care of.

We are a people, a bright people, and we should be able to develop that technology. That, however, will be costly. Let me note, again, these things are costly and will cost money. We should do the things that we can do without costing money. The things we need to pay money for, we should try to find new sources of revenue.

Again, sorry to disagree with your testimony, the very best way to do that is through a container fee that will permit people overseas to make a contribution, the people who are using the containers and using the system that we are developing, to sell their products, rather than simply taxing the American people in order to come up with the revenue that lets people overseas make money through using our ports.

Thank you very much.

Mr. OSE. I thank the gentleman.

I am pleased to recognize the Congresswoman from San Pedro and the surrounding areas, Congresswoman Harman, for 5 minutes.

Ms. HARMAN. Thank you, Mr. Chairman. I want to apologize to you and others that I have to leave shortly to return to the hydrogen event that Congressman Rohrabacher alluded to previous to this.

But, first, I want to mention to Mr. Keller that—I think you know this—Congressman Rohrabacher and I are supporting your request for approximately $15.5 million additional for a command-and-control center, a new screening facility, and an ID credentialing system. We were happy to send a letter together, this is true bipartisanship, in support of that request last week. I appreciate the input of the Coast Guard, by the way, in making sure that we understood what was needed.

I thought the testimony was very good. I particularly want to commend Ms. Williams for the way she comes at these problems. First of all, I learned a lot about trucking that I didn't know. What I liked about her testimony is that she said, "Here is the problem, and here is a suggested solution." Perhaps it is my advanced age and depleted brain cells, but it is really refreshing to hear somebody come up with some new ideas and suggested solutions, and so I commend you for that.

I also want to say to you, Dr. Miretti, that it is great to see you, and that I think that the comments made by our chairman about the role that ILWU had right after September 11th are correct, and I want to associate myself with him. I thought that was very considerate of him and appropriate of him to say that.

Dr. MIRETTI. If I may respond, I would like to thank you very much. You played a very active role with the ILWU. In fact, I had the pleasure of serving on a maritime advisory committee with you 8 years ago. Thank you very much for your involvement.

Ms. HARMAN. Well, you are welcome. I am glad that we had a happy outcome, some months back, to that lockout situation. It put that before us again as kind of the idea of what it would be like if we truly had a terrorist attack here. It would be like that times 10, and that is what we should keep in mind when we talk about worst case.

Let me just ask one question. I think Congressman Rohrabacher is right that it is not only about money. I think you all agree with that. No matter how much money we provide here, there are things that money can't pay for. It can't pay for courage. It can't pay for a cooperative spirit. It can't pay for true, creative innovation. It can buy stuff, but the creative ideas have to come from folks who truly apply themselves and think up new systems and technologies and programs and ways to share. So we can't buy all that stuff, and I think he is right about that.

I also think that there are things the Federal Government can do other than provide money, including help you bring best practices within the ports, provide for an integrated system of port security across the country, because I think we all get it, that even if we made these ports 99 percent secure, there is no such thing as 100 percent security.

The Port of Oakland, if it were not secure, would be an easy way for the bad stuff to get here anyway. So port security isn't port security unless there's an integrated system of port security.

The last comment, and I am just going to ask you for your reflections on what I am saying. What have you heard with these congressional people who have odd behavior—I'm trying to think about ways in which we can add value, in addition to paying for things. But, this whole notion of pushing borders outward, it does seem to me that, in addition to money, Congress, the Federal Government, through negotiation with foreign governments, can help push the borders outward, can make certain that foreign countries, points of embarkation, do what they are supposed to do to ensure that the cargo going into containers is safe, that those containers are inspected and hopefully sealed in some fashion so that we know what is coming along and don't have to inspect it offshore, don't have to worry about it offshore or onshore or on trucks or on rail.

My light is going off. If someone has a response to this, I wish you would make it briefly, so that I don't take any extra time.

Thank you, again, Mr. Chairman, for letting me participate.

Mr. OSE. Thank you, Congresswoman Harman. Does somebody have a response?

Mr. KELLER. Congresswoman——

Mr. OSE. Ladies first. We will go to Ms. Williams first.

Ms. WILLIAMS. As a newcomer to the congressional side of this—I always worked in a State—I understand why the world's biggest—the country's biggest port, L.A./Long Beach complex, is so far down in the highway moneys.

The communities in your district are bearing the burden. The trucking industry is congested, and, you know, at high levels of

frustration. But, when it comes time for doling out highway moneys, we are a donor. We provide the United States—you talked from Wilmington to Wilmington, why haven't they provided us the money to build 17?

Mr. OSE. Mr. Keller.

Mr. KELLER. I would just like to answer the question about accessibility of foreign ports. I think the U.S. Government has done a marvelous job of fashioning agreements in China, Hong Kong, Singapore, among other countries, overcome sovereignty issues, privacy issues, and some of the other things, too, and they really get it as a result of what the government has done. And, I do applaud Federal resources.

Mr. OSE. Mr. Ochs.

Mr. OCHS. I fully concur with the concept of extending our borders overseas. Right now we are playing defense. For us to scan or sniff the box on our dock and realize that we have something that is ticking or glowing here is bad. We need to sniff or scan it overseas and fix the problem prior to it arriving, not just at our port but at any of the ports in North America.

Your concept about a common approach for all of the ports in the United States is valid. I would say that it should also extend to the ports in Canada and Mexico under NAFTA and the free trade. Lots of the boxes that arrive in those ports end up here.

Thank you.

Mr. OSE. Mr. Parker.

Mr. PARKER. Yes. I think that is money that would be well spent. Protecting the borders is money well spent. I would much rather see us put that $100, or whatever fee we want to put on it, over there to ensure that nothing gets to the gate, rather than having a fee placed on something once it is inside the gate.

Mr. OSE. Mr. Marshall-Johns.

Mr. MARSHALL-JOHNS. From a Canadian company's perspective, from the Canadian international perspective, we see this pushing out the borders as part of a global problem. Terrorism is a global problem, and pushing the borders out to our international trading partners is part of trying to resolve the problem. So, I see that as a possibility and it's often mentioned in my oral presentation.

Going through the International Maritime Organization as part of the United Nations is a possible solution. That's one way of pushing them out, but I see that as a very real need.

Mr. OSE. Dr. Miretti.

Dr. MIRETTI. Yes. I think pushing the borders out is an excellent idea. However, I still think that we need to be very much concerned about what is exported from the United States. A lot of things can be put in containers prior to being loaded onto the ship. You can push the borders out all you want to, but we still have to know what's in the containers here, what is being exported.

There is an awful lot of non-intrusive kinds of technology today that might be able to help us with that, and checking containers, things of that sort. I think we need to be concerned about what is exported, as well as merchandise that is being imported.

Mr. OSE. I want to extend the subcommittee's appreciation for the participation of Congresswoman Harman. It is nice to be down

here visiting your district and the surrounding areas. We are grateful for your hospitality. Thank you for participating.

Ms. HARMAN. Thank you, Mr. Chairman.

Mr. OSE. One of the issues that we are struggling with—and I think Ms. Williams talked about it in Florida, in particular—had to do with every single different port having their individual identification cards. These are the folks who have the transportation worker identification credentials. I call it the TWICs for simplicity's sake.

Mr. Keller, Mr. Ochs put some written comments in asking to accelerate the development of TWICs. The question I have is: do you have any concerns about the viability of a standardized smart card, so to speak, for identification purposes?

Mr. KELLER. Mr. Chairman, as I said in my testimony, they are one of three areas that is now funded to test the prototype here. I think my greatest concern is the maintaining of the system once it is begun. As workers move from workplace to workplace, or from geographical location, or from one transport profession to another, the updating of the system I think is crucial. And, in there could lie a possible weakness, if these things aren't thought through.

Mr. OSE. Mr. Parker, does your enterprise have any input on this issue?

Mr. PARKER. Yes. As a matter of fact, I sit on the committee that meets out here for the Port of Los Angeles. We have been exposed not only to what is happening here in the port but also at the airport. I have a very strong feeling that the technology that we are moving toward is already there. We just have to decide what is the best one.

I share Mr. Keller's concern that we have to keep the database right, and that is a very difficult thing, with a very large work force and a very transient work force at times. Today, they can be working at one facility, and tomorrow they can be working at another. The question is: can we readily identify who the person is? Does that person belong here, and do they belong here today? And, those are the issues I think that are going to be critical to the success of the TWICs.

Mr. OSE. Well, one of the things I have been trying to be sure I understand is that of the pilot projects, of which one is here, there are different technologies that are being attempted to be implemented, the purpose being that we need to check the efficacy of these against each other.

Is there any indication yet from where you sit that one is superior to the other?

Mr. PARKER. No, not yet. Actually, they just identified, you know, first of all, where they are going to do it, and they are going to do it at two container terminals, one in Long Beach, one in Los Angeles. Those are perhaps harder to control, but the ones that are really going to be the proof in the pudding is going to be definitely, how do we deal with that terminal, with all of the people coming in and out of it?

Now, some of the test cards are going to be blind. The people won't know it. They will just get a green light when they go through. They will be able to test and see what it does, and it will be more sophisticated as we move on.

The fast track that TSA is operating under I think will come into fast decisions, and we have to get this thing identified, and then go for a full-scale test of one operating system.

Mr. OSE. Ms. Williams, you testified that you have probably more truckers moving around the immediate areas than there are employees onsite. What input, if any, would you provide us regarding the TWICs proposal?

Ms. WILLIAMS. I don't think we should be in the port facilities. I think the trucks should be on the land side, and staff on the land side, and the people inside should be part of the inside. That would be a number of things because yesterday many of us were at a funeral for a trucker who was killed pulling in his truck and another truck hit him. It's just not a safe environment for us, the untrained or truckers. Education not only reflects important work conditions, but with congestion in different areas this becomes more complicated. I think it is not safe, it is not fair, and I think that security would be better served by moving this outside.

Mr. OSE. I'm for it, because I have watched waterside and dockside. I've seen them moving the containers off the vessels onto the trucks. How do you move a container off the vessel and unto the truck or have the truck come in——

Ms. WILLIAMS. Yes. A train hostler is a smaller piece of equipment that transports it.

Mr. OSE. So, then you have to pick up the container twice?

Ms. WILLIAMS. Well, actually, if you look at what's going on right now. I have a presentation that, if you come to the office, we can actually give you. But we move in through the facility, and we drop them off empty. And then, depending on if it is the right brand then we put them over there. So then we would do that and come back and move the container onto the mounting chassis and we will move to go to the next turn to pick up a fill and "Oh this one's messed up." Then they will pick it up and take it over to the maintenance shop.

Mr. OSE. My concern is more related to the person driving the vehicle. In your testimony before you mentioned "It's just a mess."

Ms. WILLIAMS. Right.

Mr. OSE. You mentioned a chain around their neck with 14 parts. The standardization in that it would seem to me a great deal of eliminating that concern of yours.

Mr. WILLIAMS. Right. We don't want to be inside doing this, doing the land side. We want to pick up something else.

Mr. OSE. Right. Congressman Janklow.

Mr. JANKLOW. Thank you, Mr. Chairman. Let me touch briefly on what you've seen, Ms. Williams, to all of you. Are there any of you that feel that when it comes to let's say, an identification card there shouldn't be a uniform standard? You all agree that would be one. I assume you all agree there is some concern by different interests on the panel—and I read your testimony Ms. Williams—but with respect to the privacy of this information that is gathered by individuals from a background security check. Are there any of you that don't have concerns about a centralized place in the government where this privacy is guided? You have some concern, don't you? Yes, Mr. Keller.

Mr. KELLER. I think there is a natural concern of having anybody's personal data reside anywhere. The level of security and how that is assured is probably our greatest concern.

Mr. JANKLOW. I don't speak for others when I say this, but to all of you, but the fact that some of those do have a DWI in their background may be of keen interest when it comes to getting a CDI license or a current DWI, a drug conviction in the past, let us say. But for those things, are there any of you that feel that those things in and of themselves should make you a national security risk? I mean, I can't imagine anybody would suggest that makes you a national security risk.

Mr. KELLER. Not at all.

Mr. JANKLOW. The information that would really be gathered, and that we would look into as a country, ought to be whether or not the person that is giving you the ID card is someone that this Nation can trust, at least not be concerned about with respect to the security of others in the country. Do you all agree with that?

The question has come up about Federal corruption, and I would like to think I am probably the last of the Federalists. Do you agree that—and maybe this is targeted toward you, Ms. Williams. In your testimony, you talk about the fact that there may be Federal corruption with respect to identification cards. Do you disagree with that Mr. Keller—and I hear that, because you are operating the facility around here, so you focus on the other side?

Mr. KELLER. No, I don't disagree at all, Congressman. Part of the reason that I say that is that as this situation has gone on from September 11th, and people get frustrated, they see, you know, very little visible progress in the area of securing our facilities.

They tend to introduce legislation at State/local levels, as well as Federal, and the fact is there should really only be one standard. There should only be one national standard by which these things are done. There should be flexibility within those, so that it accounts for local conditions. But I think Federal preemption is absolutely necessary.

Mr. JANKLOW. If I can take, in a spare moment, the question I asked in your comments. When it comes to the plan, our standards if I can use it that way, our protocols that are necessary for defending the ports, if we do have some national standards and then a lot of things that are done by each port themselves call it semi-sovereignce. Or, we can have a pretty rigid set of national standards that courts have to follow with things that they could voluntarily add to that.

Are there any of you that are opposed to the latter? Go ahead, Mr. Parker.

Mr. PARKER. Thank you.

Mr. JANKLOW. Do you understand what I am getting at?

Mr. PARKER. I do. I do understand. Yes, I do believe that there should be some very, very rigid Federal standards, because the law wants to say every transportation worker, that's me, that's Mr. Keller, that is—and I am not just talking about workers. I am talking about the whole system of defense.

But, at the same time, let us say that because the State of California decides it wants to do something, I am concerned about the overall effect on the economy of southern California if we say, for

example, we are going to have a modified, enriched TWICs program that has a separate database, costs more, costs $15 million a year, and that has to somehow flow into the cargo and flow back to the shipper, or they may choose to go somewhere else.

And so, we don't have trucks showing up at our front door, because there would be no cargo. Clearly, there will always be cargo in southern California, but, we would like to see it be as much as it always has been.

Mr. JANKLOW. Thank you.

Dr. MIRETTI. If I might respond to that. Thank you. Mr. Congressman, you indicated at some point that we were asking the question about individual concerns about information that might be gathered about someone. I think there is a certain amount of concern on the part of workers. First of all, I think a worker would be very concerned about the confidentiality of that information.

Something else that might be of concern to the worker is, how might that information be used? Could it be used, for example, to terminate some individual's employment? Would it infringe, for example, on an individual's civil liberties? Just thinking off the top of my head.

As a recommendation, let's just say that post September 11th, or excuse me, pre-September 11th, I had developed a geopolitical interest in the Middle East. Let's just say that I had subscribed to a Taliban publication, attended some of their meetings simply to gain an understanding as an academician of what might be happening in that particular region.

If there was a background check, would that send up a red flag? Would I be suspect, for example? So I think there is a certain amount of concern in that particular regard.

I've owned a Coast Guard identification card that was issued in 1969. I was a bit concerned when I filled out the application for this particular card because of the questions that were asked. Have you ever read any of these publications? Have you ever attended any of these meetings? Do you belong to any of these organizations? How many times did you contribute to Harry Bridge's deportation defense?

Did that send up a red flag? Would that be of concern? These are the kind of concerns that I have. I am not against the TWICS kind of program, but I think we have to be very sure of how that program is developed, how it is implemented, and who is involved in that program, and what happens to that information. Thank you Congressman.

Mr. OSE. Congressman Rohrabacher for 5 minutes.

Mr. ROHRABACHER. Thank you, Mr. Chairman. I have to leave after this. Thank you very much, Tim, for your leadership. I appreciate the opportunity to participate. I also appreciate the fact that you are here in this area focusing on these ports and what we can do to make them safer, more secure, and at the same time not injure the effectiveness of the ports in doing the job that they have to do.

By the way, I would hope that some of you went to a—some sort of a school in Iran or Libya or someplace like that. I would hope that they are investigated and that we know that they are not engaged in activities that could put us at risk. There is certainly

some concern for people's privacy, but we really have to be concerned right now, because we know that there are people out there who have a grudge against the United States, simply for our way of life and they want to hurt us.

And so, I think it will take a high level of goodwill and cooperation on the part of all of us to, you know, overcome these challenges.

You asked a question earlier about why we don't get our share of the highway money. One of the first things I was approached on when they redistricted me into this area, again was how we need to change—put so much money into changing the 710 freeway or, you know, redoing it in a way.

Frankly, again, this is going to demonstrate what I meant by there are things you can do that will make things safer, make these ports safer, and make it more effective without having to spend large amounts of money.

When I went to the 710 Freeway to check on this, I found it to be absolutely vacant. There was no one on the freeway. I was told, "Oh, my gosh, the freeway is totally crowded, and you can't—" of course, I was there at 1 a.m. [Laughter.]

However, we have a freeway that is totally vacant and available to use, a huge asset that is available to use at that time of the morning. The Union would have to pay more money to work an overtime shift. That is why we don't have a 24-hour port. They can pay more money.

Why not pay a little more money to do an overnight shift? If an overnight shift is going to be a little bit more of a hardship on somebody, which it is, you pay them a little more money, and then do it, for Pete's sakes. I think we need to have some very serious and frank talks with one another about what specifically we can do to change the way things are operated. You give a lot of great suggestions. We have heard a lot of good suggestions today that will make it better.

We have to figure out what exactly we have to spend in order to at least bring down our vulnerability on our No. 1 scenario that we would hope to avert, which is some sort of mass chemical weapon or weapon of mass destruction being brought into the port.

So with that, thank you very much, Mr. Chairman. I have benefited by everything that is here, and I am looking forward to working with all of you to see if maybe we can have some sort of big pow-wow and come up with a list of those things that we all agree on how to restructure the way things are done, and then go about doing it.

So, you know, I am here to help. Thank you very much.

Mr. OSE. I would like to add my thanks to Congressman Rohrabacher for his hospitality here. He is a source of great influence and information for those of us in Congress who don't have large ports that are such academic engines. You serve the district well.

We are grateful for your attendance this morning. Thank you.

I wanted to examine a particular part of the new law, and that is the law that requires each facility with vessels to submit a security plan for Federal review and approval. My question is: what should such plans include for establishing and maintaining phys-

ical security, passing communication security, and personnel security and the like?

In the interim final rules before we go beyond this. The process, as it works, is that the law allows the agency to issue what are called interim final rules. They can do that without what is ordinarily called due process where they publish their rules for comment, people will comment, the agency responds to their comments, the agency amends the rule, and then the agency publishes it again.

The interim final rule process allows the agencies to issue such rules permanently without going through this particular process. There are people in the audience today who are prescribed, in other words prevented from participating in our discussion today, but who are involved in writing these interim final rules.

This is a new poll that we did on the interim rule thing shortly after September 11, 2001. We put out some proposed interim final rules. We didn't have time to go out and have a long, deep process exchange. We brought in a bunch of witnesses from El Al and elsewhere to talk about the steps that needed to be done. We need a public setting with people in attendance who are part of the interim final rulemaking process, listening but not participating. We were able to put forth a number of ideas.

That is the purpose of this hearing today is to convey to those individuals who are with us today but unable to participate by statute the ideas that industry and operators have for what ought or ought not to be included in these interim final rules. This is a very arduous piece of the process, but it is very critical for our success.

I want to come back to the original question that I started dealing with. And that is, what are the minimum requirements on these issues establishing and maintaining physical security, and establishing personnel security, establishing communication systems? What are the minimum requirements that the interim final rules can incorporate? Mr. Keller.

Mr. KELLER. Mr. Chairman, we have thought a lot about this. We certainly think that access control through the use of ID cards, the TWIC card, is probably the No. 1 issue in terms of the facilities, securing the facilities. It allows control of the access. It allows identification of people. It allows us to know who is in and who is out or the facility operated in and know at any given time who is in and who is out. We think that this is exceedingly important.

On the vessel side, and I am going to try to touch on a number of things, obviously, because there are so many pieces. On the vessel side, we think that the Coast Guard and Customs rules right now adequately define what is on a vessel and give some indication of the condition of the vessel as it approaches the port. We have the 96-hour, 72-hour, 24-hour notifications, which have served well on personnel, on possible intrusions on board the vessel as well as any indication that there might be cargo difficulties.

And also, incidentally, it has served as a good notification for people coming who are possibly ill with SARS, for instance.

On the trucking side or the railroad side, again, I think the idea that you know who is coming to the terminal and that the person who represents themselves is, in fact, the person who is designated to come to the terminal is exceedingly important.

In terms of physical security, which is the subject of some of the grant material that we have put in, we think that things such as fence heights, locks, and security, video surveillance, the physical barriers should have minimum standards that are observed as you so rightly said. Enhancements can come as necessary for adaptation.

Captain Holmes, in fact, our captain of the port, has done a fine job of taking a first cut at defining these minimum requirements. And, we have those, to some extent, in place already.

Mr. OSE. Dr. Miretti, do you have input on this?

Dr. MIRETTI. Yes. I would concur with what Mr. Keller indicated. I would like to add something, though. I think we are vulnerable in terms of rail access. We have a lot of stack trains, trains coming into the container facilities. And, they aren't being monitored quite as closely, as, let us say, a truck coming in.

We also have a lot of rail cars coming into our bulk container facilities. Those I think should be more closely monitored.

Mr. OSE. Your point being that a train that's waiting to come onto a boat, that's a pretty big piece of equipment, so to speak, for an engineer to keep an eye on, as compared to, say a cab in a trailer.

Dr. MIRETTI. Yes, that is correct. As I understand it, some of the stack trains are 8,500 feet long. And, certainly, as they come into the facilities, any one of those cars could have something illegal on the train.

Mr. OSE. Ms. Williams, any input?

Ms. WILLIAMS. Separation of the land side and the water side in the rules are completely separate.

Mr. OSE. On message, on task.

Ms. WILLIAMS. On message, on task. A fingerprinted Federal TWICs that is quick, efficient, efficiently turned around, doesn't disrupt the flow of commerce, and that there should be greater thought put in this big port in California in the adequate funding to supply the Nation the goods they have that are cheap.

Mr. OSE. Mr. Parker, any input?

Mr. PARKER. The issue that you raised on the security plan, obviously every terminal should have a security plan. Every ship that calls on a liner basis with containers should have a security plan. It covers the gate side, it covers the gangway side, but it also should cover the cargo side. Congressman Janklow mentioned the initial effect of if something were just put out in the yard, and somebody can get to it easily through non-traditional means rather than just a truck or a train, but right out the back door.

We need to make sure that part of the security is also dealt with, and I think we are doing a good job in getting it there. It is not perfect, but it is much improved, and both the city and the county are helping us.

Mr. OSE. Mr. Ochs.

Mr. OCHS. A national standard for all ports, a national TWIC that is on the street this year, and continued recognition of the partnership between the tenant and the landlord. We are very fortunate here that both the port and the Coast Guard are doing more than their fair share. They have met us more than halfway on securing our terminal.

Our concern is under the new regulations some of those lines are blurred, and some of the responsibility may be shifted to us as the civilian tenant.

Mr. OSE. So you need greater clarity in those areas.

Mr. OCHS. Yes, sir.

Mr. OSE. All right. Mr. Marshall-Johns.

Mr. MARSHALL-JOHNS. Yes. I think it is just focusing on the three areas again. The physical security of the premises that is defined as Ms. Williams put to be between the land side and the dock side. It is security of the personnel. And, it is also, last for the food industry, the security of the product, in particular. Reducing the susceptibility of some products we are discharging from vessels and the fumigation process, to the contamination of food, and effects on the people of America if such a contamination did occur. I think that is a real threat.

Mr. OSE. Are the protocols operated in any of those areas in the port?

Mr. MARSHALL-JOHNS. No, they are not. They are just requests. What we did was establish minimum protocols that would be supplied to the service providers in that flowchart that I showed that was on the screen earlier. It was basically looking at our whole chain of sequence, and all of those people that are involved in the process of working, handling, or delivering the product, or distributing the product. And, it is asking them to develop protocols to ensure that their product was kept as safe as possible throughout the chain.

Mr. OSE. Well I have some questions I don't want to ask in public, and so I might ask you the specifics in the protocols. [Laughter.]

Mr. MARSHALL-JOHNS. Thank you.

Mr. OSE. Mr. Janklow.

Mr. JANKLOW. Thank you, Mr. Chairman.

Dr. Miretti, in your testimony, about three pages in, it says, "Based on an employer's own statements we have concerns that the Pacific Maritime Association will use the information on cards for purposes that should be reviewed in collective bargaining." Specifically, what did you mean by that? What is that concern that none of them are more than you said?

Dr. MIRETTI. Thank you. In terms of utilizing information as to——

Mr. JANKLOW. I know they could use it, but what have they said that triggered that statement?

Dr. MIRETTI. I think anyone who belongs to a union, who is involved in union activities, who might become involved in any kind of a collective bargaining type of activity, might be looked at as someone who could be looked at, I guess, by the employer as being favorable to the outcome of contract negotiations. And, if they could gather information on that particular individual.

Mr. JANKLOW. I know they should do that, but it says, "Based on the employer's own statement." I understand that it could be done. But, I am wondering, is there a basis now, based on what somebody has said? If there is not, fine.

Dr. MIRETTI. I think that is basically a general term, taken in a general sense, because I think those kinds of things certainly

have happened over the years, and, if we go back a bit, certain kinds of information was used against individuals.

Mr. JANKLOW. I understand that it can be done. I just wondered if that was a prospective statement or a historical statement?

Dr. MIRETTI. I think that's a general term indicating that there certainly are possibilities it can happen and have happened in the past.

Mr. JANKLOW. All of you seem to feel very strongly that the Coast Guard and the Customs Service, since September 11th, have done a pretty good job. Are there any of you who don't feel that way? Are there any of you who feel there ought to be an expanded role for, first of all, the Coast Guard, with respect to port security, that they don't now have available to them in the existing law?

Is there any of you who would suggest, if you were in Congress or the executive branch, an expanded role for the Coast Guard? Is there anything they list in their timeline that they are required to do that you think ought to be taken from them?

Dr. MIRETTI. If I can respond, I think more Federal funding for the Coast Guard certainly would be in order. They are doing a tremendous job, and they're doing this enormous task without the funds that they desperately need.

Mr. JANKLOW. That is true for most of the government, we're $400 billion short——

Dr. MIRETTI. That is true.

Mr. JANKLOW. That's a problem. I understand that's 40 percent of the total, and I just don't know how much more we should send to the kids of America for what would be—are there others of you who feel that there's more or less of a role the Coast Guard ought to be doing? What about the Customs Service? Mr. Marshall, what do you think?

Mr. MARSHALL-JOHNS. I think, and I put in my oral presentation here, that the Customs Service and what they are doing; they are doing a tremendous job as is the Coast Guard. The one thing I see here is that, when you are looking at other Federal agencies, whether it is USDA, PPQ, or whether it is FDA, the only thing that I see is there is the inconsistency between the departments and how they do things.

And perhaps, Customs could take the lead, whether it comes under homeland security, whether it comes under transport security, there needs to be some more consistency in how procedures and processes are implemented.

Mr. JANKLOW. Did you say they are inconsistent?

Mr. MARSHALL-JOHNS. They are not seemingly consistent.

Mr. JANKLOW. Ms. Williams.

Ms. WILLIAMS. Are you talking about Customs at the border, which is——

Mr. JANKLOW. I am talking about ports. But, if it is more than that, go ahead. I am aware that they are probably used on the borders.

Ms. WILLIAMS. I think there is so much congestion on the land side, the trucking and communities are dealing with inefficiencies that should be resolved. And, that lines at the border—4 hours to get into the country, take back an empty, 4 hours to stay at the port.

I spent last night with a Wilmington community group, and something should be done. Something should be put there, because the taxpayers are being burdened that are closest to the facilities and providing these services for the Nation.

Mr. JANKLOW. So, Mr. Keller, you had something?

Mr. KELLER. I just wanted to say that we asked for certain enhancements for Customs after September 11th, and happily enough the appropriators saw their way to fully funding the ACE customers' computer, which it is pushing back the borders doing the work here. We think is absolutely necessary in determining which containers should be looked at and how frequently. But aside from that, no, we have had splendid relations here with our Federal partners.

Mr. JANKLOW. Thank you, Mr. Chairman.

Given the fact that within most of our lifetimes we haven't had to be concerned about this type of issue, at this magnitude, generally port security has been something related by theft or smuggling of things for profit as opposed to foreign attacks. Customs issues as opposed to national security.

And, recognizing that this is an immense port area—good grief, the impact it has on the—not just this local area, but the Nation and the world's commerces almost, you know, unfathomable. I'm thinking what the impact would be if it was shut down. But, also understanding that a weapon of mass destruction that could wreak havoc on America, could just as easily come into a very small port as it could the Nation's largest port.

And, I also recognize that it's one of the best ways to issue Congress to authorize the President to go to war against a country, if necessary. We don't fund it in advance. The President comes back with a supplemental to tell us what it costs and who will fund it. I don't understand why this, frankly, is any different. It is part of the war effort to protect America.

What mechanism do any of you have to suggest that—I mean, you are citizens, you are also in the industry, but you are also citizens—to the executive branch that's promulgating the rules now? Let me ask you this, first of all, do you all feel there's sufficient authority within the executive branch to solve the problem, or do you think it will take more legislation? How many of you think it will take more legislation? If so, what would it be? Ms. Williams.

Ms. WILLIAMS. Preemption legislation. Legislation that would preempt States from moving ahead in different directions. For example, the——

Mr. JANKLOW. I understand.

Ms. WILLIAMS [continuing]. Very important.

Mr. JANKLOW. OK. And what else? Anybody else? Dr. Miretti.

Dr. MIRETTI. Yes. I think if any kind of legislation were to occur, especially if it involves ports, that there has to be total involvement by the stakeholders to make sure that any kind of legislation really benefits the port itself.

We have 200, at least 200 ports in this particular country that are commercial ports. And, they all operate a little bit differently, so we have to be careful as to what kind of a standardized law that we might pass. We have to be careful that each individual port has a certain amount of latitude as well.

Mr. JANKLOW. With the concept that you're using, we can't keep cocaine and marijuana out of this country. I don't know what makes you think we can keep out small weapons of mass destruction. I just saw a shipment of a load of marijuana. [Laughter.]

We can't keep people from coming into this country by the hundreds of thousands, if not the millions. And so, I'm not saying it to be derogatory but I just feel like the task you folks have is almost unbelievable. It is a feeling about every place. What can be done to make your job easier in making this country safe? That is really what it comes down to.

Mr. KELLER. I don't think there is any magic bullet, Governor. You know, it is a lot of hard work. We have our Port Police working with the Federal and the county and the local guys. And, frankly, a lot of it is putting up a credible defense. I mean, getting out there letting the bad guys and the good guys know that we are working hard to make this safe.

It wouldn't hurt to put up TV cameras. It wouldn't hurt to see people see new fencing going up. It wouldn't hurt to see more uniformed guards at the gates. It wouldn't hurt to have people know that the equipment is overseas, as we talk about pushing back the borders, and that as containers come flying off ships from Indonesia and Pakistan and Manila and other places through Singapore, that they are going past radiation detectors. So, we take off that whole piece of it.

I think basically what we are suggesting is, when you see that level—not of a perfect system but of a system that addresses a variety of threats—that it makes people turn their eyes elsewhere. If, in fact, we are going to have a continuing threat against this country, I think what we want to let the bad guys know is this isn't the place to do it.

You do it here, and you are going to get caught, or your efforts are going to be frustrated. Or, if it costs you hundreds of thousands of dollars to put together the effort, it is not going to work here, because we are going to blunt it. That is the best we can do. This is a huge business. We are part of a global network now. We couldn't shut that down if we wanted to. That's such as our interdependence. But I think best measures, best practices, cost effective measures, are the best we can do.

Mr. PARKER. The issue or issues is not just money. There are other efforts. There are things—let us put the people in places where they can do the most good. If there is technology out there, let us not be blind to the fact that may cost a little bit of money, and spend it there. We can build a better, a bigger mousetrap because we have more money than anybody. Let us not do that. I don't think anyone is asking for that.

What we are asking for is a combination of that, and I think you have heard the common theme from my friend Dr. Miretti all the way down to over here, we think that there is a Federal Government role in things that make the most sense.

I don't want the PMA having information on people. I think that is a Federal function. I think that is something. I don't know how much that is going to cost, but I will come back with a supplemental on it and let you know.

Mr. JANKLOW. One last question. Thank you, Mr. Chairman, for the expanded time. I appreciate it.

Have each of your industries or all you been solicited or involved in the regulations that are being written at the national level? Has there been any request to have you submit your opinions in terms of what ought to be done, and how it ought to be done, when it ought to be done, and where it ought to be done? Have any of you, I mean, as you felt to write for the issue of regulations?

Dr. MIRETTI. We do have legislative representatives back in Washington who have been involved. However, we firmly believe that their involvement should be much greater than it is at the present time. Although we solicit the support of legislators, we also hope that they would contact us at the appropriate time and say, "Look, we would like to hear what you folks have to say. After all, you are the folks who work in the trenches, who work on the docks, and we would appreciate your input or submissions."

Mr. JANKLOW. We have been?

Ms. WILLIAMS. No, we haven't.

Mr. JANKLOW. Thank you, Mr. Chair.

Mr. OSE. I want to followup on something. We talked about a lot of things that need to be done. Mr. Keller's list is a little bit over $15 million. I just want to make sure I have this right. The information I have is that the surplus in Customs revenue over expense is $15.6 billion nationally in 2001.

Mr. KELLER. That is income. That is income. It is the gross income.

Mr. OSE. All right. Forty percent of that would be $6.2 billion. I don't have my calculator, but I presume it would be 42. But the share of these facilities relative to that overall number is over $6 billion. Over $15 million that we are talking about in terms of the list you put forward, Mr. Keller, constitutes one-quarter of 1 percent of the revenue generated from these facilities. Is my math on target here?

Mr. KELLER. You haven't lost a thing, Mr. Chairman.

Mr. OSE. OK. The question then becomes, what's the financing mechanism resource used to fund these port security upgrades, it seems to me that there is a whole lot of logic between tying the source of the revenue to the excess revenue over cost that is generated here with the facility that would otherwise benefit. Am I missing something here? Mr. Keller.

Mr. KELLER. Not at all. Not at all, Mr. Chairman. We think sources and uses is the perfect answer to this. I know that the Customs revenues go to the general fund with about a 30 percent exception that goes to agriculture and food programs, which is probably appropriate given the fact that much of that material is ultimately exported.

But, this is a growth industry, and we have submitted in our testimony the growth in Customs revenues from year to year, and it grows at almost $1 billion a year in the last 5 or 6 years. We are talking about possibly taking a single year's increment, not for the port of Los Angeles, but for all ports in the United States, as a set aside to allow us to have security material that we need in the ports.

Mr. OSE. Mr. Parker.

Mr. PARKER. I think that is a key point. We don't want what is happening now just give us the growth. Now, just focus in on what happened between 2003 and 2004 for your fiscal budget and say that is going to be set aside for security.

Mr. OSE. I mean, I want to zero in particularly on the steamship issue. I am not doing it pejoratively. I just need to make sure I understand this. If someone gets on a plane, there are some fees that get tacked on to their ticket through transportation that is provided. And then, a semi-fee for cargo that's moved by air.

Ultimately, if I were one of the appropriators, I'd say, "Look, we have to tie at least a portion of these funds going back to the place where they are generated from." They are going to say, "How much of it is cargo, and how much of it is passenger?" That will lead to discussion as to whether or not steamship passengers can pay a fee similar to what airline passengers pay. What arguments can we logically use to defeat the assessment or imposition of a new fee on customers and steamships?

Mr. PARKER. Well, I do think that we are looking at values of goods as they increase in the marketplace. That is part of this increase in the billion dollars. It is where the fees are coming from. You know, every shoe that comes in or every television set that comes in has a fee attached to it.

Mr. OSE. Right.

Mr. PARKER. Just in ad valorem value they are growing over time. And obviously, when a passenger comes in, we don't customize the bill. You know, he can come in for free, but he pays that security fee. So they found a mechanism of a head count, and that is exactly what happens in a passenger terminal.

Mr. OSE. What you are telling me is that your passengers, your human passengers, are already paying a fee?

Mr. PARKER. Right.

Mr. OSE. That is my question.

Mr. PARKER. I think that is right, because they are using the facility. I think the shippers of the cargo are paying it by paying duties and paying certain fees to each and every port. The operating port receives certain fees as well, and some of that goes into their general fund, and some of that goes into their general security measures.

Now, we are taking this quantum leap to get up to what needs to be done to bring us up to your worst-case scenario, and that is going to take something more than just the norm.

Mr. OSE. Mr. Ochs, in terms of risks positional risks, what feedback would you provide?

Mr. OCHS. Mr. Chairman, I would have a two-part answer. In regard to, is there any additional legislation needed, the answer would be no. I think the goals and the missions of the Coast Guard and the Customs Service are very clear. I think what their challenge is, that they are mandated to do many things that they are not funded for.

So I think from the Maersk standpoint, the cargo that we ship, our customers are already paying a fair share of this $16 billion that you talk about. I think we would like to see the money that is currently going into the general fund end specifically at this problem of port security as we attempt to defend our Nation.

Mr. OSE. Mr. Marshall-Johns, what is your experience around the world in terms of how such improvements are funded?

Mr. MARSHALL-JOHNS. Generally, it is a cost that is taken from the fund, that Customs regularly generates through duties, etc., from my experience is what is used to generate funding.

Mr. OSE. So they are tied together elsewhere? Is it practiced anywhere else but here?

Mr. MARSHALL-JOHNS. To some extent. It is the same all over the world. They are looking at what they can do as far as security in their ports, their facilities, and how we can be sure—it is a similar situation to where we are now.

Mr. OSE. Ms. Williams, you talk about the 710 the capacity of Mr. Rohrabacher's observation on 24-hour cycles used in examination. Could the money be used to address perhaps the capacity issues in 710?

Ms. WILLIAMS. I think it is important if the ports, especially in California, are going to service the entire United States, then I think the Federal Government is responsible for providing us highways that can do the job. If you look at 710, it is just awful. I have done it today——

Mr. OSE. So we've been hearing.

Ms. WILLIAMS. Yes. [Laughter.]

Mr. OSE. Dr. Miretti.

Dr. MIRETTI. On the question of funding port anti-terrorist programs and infrastructure improvements outside of the port, there has been a lot of talk about a container tax. We certainly want to look at that very carefully, we don't want to tax our ports out of business. I have heard talk about a gasoline tax.

Can a trucker afford any more costs attached to his equipment? He would basically go out of business. He has a very small profit margin that he works on. User fees are high. Maybe this is the question to ask: why can't the increase go to the allocation of funds for infrastructure improvement for terrorist activity programs and so on?

As I understand it, for road use we need to allocate even more money and funds for infrastructure improvement for terrorist activity preparedness?

As I understand it, for variable use or for low spending, I think the allocation from the Federal Government has dropped from 20 percent down to about 2 percent. So I would like to take a look at how we could allocate, or have the Federal Government allocate, even more money for the things we need here in the port.

Mr. OSE. Chair recognizes Congressman Janklow for 5 minutes.

Mr. JANKLOW. You know, there is another side to the user fee issue. It's the obvious one. Everyone who collects revenues for the government thinks that it ought to be spent on their particular issues. The liquor tax people think it ought to be spent on alcoholism treatment, and the lottery people think it ought to be spent on lottery advertising and compulsive gambling problems.

I mean, it doesn't work when everybody collects their piece of the pie and then eats their piece of the pie. I think we ought to understand that.

I think we also ought to understand these are unusual times. We are dealing with the national defense of this country. During the

Second World War, if I recall, they passed things like a luxury tax on jewelry, which lasted until the late 1960's. They passed various taxes to assist in financing the war.

Absent that, they fund it out of the National Treasury. This is war. I mean, we keep forgetting the only reason we are even here today, all of us, is because we are trying to figure out how to better protect the people of the United States before a number of catastrophic things happens to us in this war that people have declared on us.

I understand you have to labor in this port, except for the folks in southern California, maybe the trucking group. Has anyone estimated what it would cost to come up with the defense of the ports in this country? Is there a number that anyone has used, and I realize nothing is perfect, as you say. Mr. Keller, you said it very well. We should just keep doing things and hoping that each one incrementally is more effective.

Is there a number that it is going to take from someone's pockets, to fund all of this? Does anybody know the number? Have any of the industries pulled it together?

Mr. KELLER. Congressman, I am going to guess that maybe in some of the first rounds of grant requests somebody might at TSA or MARAD or someone else might have collected the numbers. Our first guess when MARAD asked last year was $36 million here to begin. We figured for something approaching a thorough system, just for the port of Los Angeles, it was probably $100 million. I mean, this is with the bells and whistles and all of the things that would say, "Hey, we have got this wired."

Mr. JANKLOW. Do you think if you had $100 million you would be wired? I ask that because I realize you have hundreds of ports in this country. But to take care of 42 percent of them, of all the traffic for $100 million, may be a cheap investment. I mean, we can't do them all at once.

Mr. KELLER. We are at a little over half of that 42 percent. Long Beach would require probably about the same amount of money. So, now we are at $200 million. We are getting into some stratospheric numbers here, and there is a lot of American ports. They are all going to need protection in some fashion.

I don't think we are looking for perfect solutions. At the same time, let me say this. We have to be looking, if I can argue with you for a moment, we have to be looking for the perfect solution, because all the security in the world doesn't make any difference. If I'm in the airliner that hits the building, it only takes one incident. It's no different from the gentleman sitting there in the policeman's uniform, the chief. It only takes one person to rob the store from all the citizens.

The way I look at it, you might not find it, but we have to be looking for the perfect solution. We shouldn't kid ourselves. Our enemies truly understand where we are vulnerable. They don't say that we want to talk about this. We're not the only ones that are going to talk about it. They talk about it every day. They aren't going to hit us where it's obvious; they're going to hit us where it isn't obvious.

And again, that is the best that we can do. I mean, we can go on with bells and whistles and some of these other things, but real-

istically when we say $15 million, and you see our list of things here, we think this is a big takedown. Now, maintaining it over the longer term, that is where the numbers come from. And, adding on and replacing, that is where the numbers come from.

Mr. JANKLOW. Good point. Well, let me just go back to your point about the liquor tax and some of these other taxes and the jewelry tax, and maybe, arguably, even airline taxes. Those to some point are choices that people make, whether you are going to drink or whether you are going to buy a diamond bracelet, or whether you're going to fly unless perhaps on business.

When we are talking about the goods now that we are moving, both the stuff that goes for retail and further manufacture, we are talking about America's goods. I understand it is tempting to think, for instance, that the exporter in China or Singapore is going to pay that bill, but somehow that is going to end up on the total cost of goods. It is going to be passed along.

Our economy over the last 3 or 4 years hasn't been so strong. This has been a strong sector, and we think, in our own small way, that we have contributed, through inexpensive transportation and the like, to keeping inflation low and keeping this vigorous.

Please understand, personally I agree with the comments that the chairman made when he was asking the questions. It is just given that the fact that our budget is $440 billion, depending on whom you listen to, it's $400–$500 billion out of whack, one. And, two, the excess money goes into the Treasury. So, to take a billion out of there is just to add a billion to the shortfall, or take a billion off the income. It still has the identical effect.

There may be no shortage of people that would think that what you do is, given the fact just that the trade deficit alone this year will be about $300 billion for this country. The total amount of goods that are imported into this country is just—the deficit of that is $300 billion, and it wouldn't be cheap to put another tax on to go ahead and pay for it all. I am trying to avoid heading in that direction in my comments. That is all.

Thank you, sir.

Thank you, Mr. Chairman.

Mr. OSE. We do have a little bit of information on the cost in terms of the port security plans. The Department of Transportation published a notice dated December 30, 2002, on behalf of the Coast Guard indicating that the plans alone—the present value of creating the plans—plans, not the actual improvements but the plans, the present value total through 2012, we estimate at $477 million.

I don't have any additional information beyond that. That is just the plans themselves, the submittals, if you will.

Let me take a second here.

I want to ask a question in terms of how we go about implementing these port security standards, if you will, at the forward point of contact, if you will, the foreign port. One of the ways it seems to me is either by negotiating on a very specific basis. What would be the feedback, or what would your feedback be individually in terms of suggesting to the administration that as they go into these international trade agreements that one of the pieces of those trade agreements is a resolution of how we are going to implement, if you

will, a forward security point? Would that make sense? Mr. Marshall-Johns, do you have any feedback on that?

Mr. MARSHALL-JOHNS. Yes, I believe it would make sense. Also, you have to look at going around to those international trade agreements already in place and how would you then develop the needs or the minimum requirements on that side of it. So, I think it is part of, when you look at the whole picture, it is part of an agreement. This is one of the requirements for importing into the United States.

Mr. OSE. Mr. Ochs.

Mr. OCHS. I would concur, Mr. Chairman. It would seem that again, a staying requirement to work with whatever the process that our Customs Service wants to do overseas should be a point of entry in order to participate with trade.

As the government with a $3 billion trade deficit to the folks overseas to sustain their own economic well-being, they are going to be very anxious to sustain the current relationships that they have with us. In effect, it takes the port security plans in the aggregate, develop the standards that we want to have implemented, that would otherwise be able to, if you will, project to the forward point, and put it as an integral whole. So we have a consistent message and implementation, if you will.

Mr. OSE. Yes, sir. Then set that as the U.S. standard. If you want to trade with the United States, you will comply with this standard.

Mr. Keller, would that present complications relative to the operation of the port?

Mr. KELLER. I don't really think so, Mr. Chairman. I think this is a matter of getting people's attention when it's best had. Self-interest after all is important, and the United States is probably the world's largest consumer of goods from other countries. I think that would be the perfect time to make those agreements.

Mr. OSE. How do you deal with the need for flexibility as you go into the future? Because, I mean, the means of defending against such attack necessarily evolve as the means of delivering such an attack evolve. Do you have any feedback as to how you would provide the flexibility under an international agreement?

Mr. KELLER. That is difficult to say. Once the doors were opened, though, in Hong Kong and in Singapore, we found a great deal of flexibility in the ability to have our consultants work with their authorities and the like to come up with technologies and procedures, on-the-ground procedures that would work.

Those will have to be worked out with the U.S. Customs officers who are stationed there, but one of the comments that came out of one of the ports that we were working with was, "My God, maybe now we ought to be pushing back the borders to the people who send us goods for transshipment to the United States." I think awareness builds as well.

Mr. OSE. I want to go back to a couple of things we have talked about, and I have read about in the last couple of days. First of all, I am unclear on the issue of the unsealed container. That is, the empty container if you will, the empty container. I don't quite grasp, Dr. Miretti, your point about needing to inspect an outgoing empty container. Can you explain that?

Dr. MIRETTI. Yes. Let us start first with a container that might be coming into a particular facility. Often times, and in most cases, that container is not opened. It is not inspected. It doesn't have a seal on it. There could be something in there. It is then parked into the yard, and it's left there until it is loaded on the ship. When that empty container comes off the ship the same thing happens. It is just waiting until someone comes to pick it up. It has not been opened.

In the ground report, they indicate that the containers that would be coming into a particular facility should be opened and should be inspected. Any empty container that comes off the ship should be opened and looked at then stacked in the yard. They should be stacked door-to-door. That is pretty stringent stuff. In a sense, we are not asking for that, but that is in the ground report.

So what they are saying is that an empty container is a good hiding place.

Mr. OSE. When I see the vessels dockside, and I look at large stacks of containers, generally speaking, what percentage of those containers on the vessels, dockside, unloaded are empty?

Dr. MIRETTI. Many of the vessels, as they come into port, discharging containers, are full. It is when a vessel is going out.

Mr. OSE. Taking empty containers back.

Dr. MIRETTI. Taking a lot of empties back.

Mr. OSE. OK.

Dr. MIRETTI. So a larger percentage of empties are going out on the outbound ships. A large percentage of the containers that are coming in are basically fully loaded containers.

Mr. OSE. So the empty containers will be basically warehoused until a vessel comes in, off loads their existing containers, then the cranes would load the empty containers back on that ship, and then leave?

Dr. MIRETTI. That is correct. They would be staged out in the yard until the vessel comes in, and then from that staging point on the dock, it would be brought up to the ship.

Mr. OSE. So, if I understand your point, it is when those empty containers come back into the dock itself, that is the concern, that something more being placed in there at that point, and then they'd get dockside, and then we have a problem because we haven't inspected it.

Dr. MIRETTI. Well, it could very well be that if a container is sitting there in the yard, and it is empty——

Mr. OSE. Let us say somebody walks up and puts something in it——

Dr. MIRETTI. Yes, somebody could put something in it, and if it goes up to Los Angeles to get loaded, it might explode in Los Angeles.

Mr. OSE. From an operational standpoint, the suggestion that Dr. Miretti said, the point about door to door. How difficult is that to implement?

Mr. OCHS. It is tough. It would certainly be an added chore, and depending on the type of container, it may need to be physically spun around.

Mr. OSE. It would seem from a logistics standpoint the containers are stacked on the ships in a particular area—you know, in a

particular mode, so it structurally can be loaded up high. And then, the cranes themselves off load them in an appropriate manner so they get loaded on the chassis appropriately.

Dr. MIRETTI. Right. When you are loading on the ship, it is actually a fairly complicated matrix on the actual weight, the weight of that stack of containers in the ship, and then, when the ship arrives, the final destination of that box. All of the boxes in a certain stack are probably going to the same city.

Mr. OSE. The same cranes that unload the ships, are they the same cranes that move the empty containers into the warehouse area for, if you will, sending them back out?

Dr. MIRETTI. No. The cranes that load and off load the ship are fixed pierside, and then we have smaller mobile cranes inside the terminal that stack them up for short-term storage.

Mr. OSE. So the point that those empty containers are in-loaded on the ship for departure, you've got a piece of equipment that brings the container dockside. The crane lifts that box up, puts it on the ship, and picks up another one, and so on and so forth.

Dr. MIRETTI. Yes, sir.

Mr. OSE. And, that has to occur in a particular manner, in terms of how the container itself goes on the ship.

Dr. MIRETTI. Right. There is a very set and logical order to the way they are loaded and off loaded.

I think the more general topic is we are making the assumption that there is a threat to our terminal from inside the United States and the way that a weapon would be brought into our terminal is in an empty container. I think theoretically that is possible. As we look at the current threats and the risks to our terminals and our ports, I think most of those threats and risks are deemed from coming from overseas.

And, therefore, we need to focus on that threat first more than we need to focus on the potential threat of someone already here in America who has a weapon and is going to choose to use that weapon at one of the terminals.

Mr. OSE. Dr. Miretti, thank you. I was unclear on what you were trying to get at. I appreciate your clarification.

Dr. MIRETTI. It's my pleasure.

Mr. OSE. The other issue that I have heard is that we passed in the act standards or direction to the Homeland Security Department to develop performance standards for these containers, including the types and standards of seals, and locks. And, implicit in that was a concern of ours about the structural integrity of the container itself.

I heard some people talking lately that we now need to add that into the law that we need to have bomb-proof or blast-proof containers, and the like. As far as I am concerned, that is already in the law. What should the container performance standards include? I mean, obviously, we have structural necessity, because you stack them on top of each other. Then, you have to seal them satisfactorily, so that when they get here you know the seals haven't been broken and it is, if you will, secure. What should those performance standards be? Mr. Keller.

Mr. KELLER. Well, you have already addressed the idea of the strength of the container needed to do its primary task. In terms

of securing the container itself, frankly, I think the idea that we would build a blast-proof container that could contain a small thermonuclear device is——

Mr. OSE. No, that is not going to happen.

Mr. KELLER [continuing]. Probably not going to happen. Right. The hinges have always been an issue, tampering with the hinges on the container, which prevent the doors from being lifted off, with or without a seal on them, has always been an issue. Any structure of the type of a container or a trailer, I mean, could be breached is similar to doing it an obvious way—cut a hole in the side, rip up one of the aluminum sheets. But, that in itself is probably not what somebody would do if they were wishing to smuggle.

So, again, the means of entry and egress in the container, focus on the doors. So its hinges, its hardware, it will remain secure with a lock or seal in place in such a way that you will know that the lock or seal, in fact, has been locked for the duration of its voyage. That there was not some other point of entry. And, typically speaking, that is a concentration on the doors and the hardware.

Mr. OSE. Mr. Marshall-Johns, you guys bring a lot of fresh vegetables, and the like, into the country. It seems to me from a tort exposure standpoint, you have done quite a bit of work to ensure the sanctity, if you will, of the cargo. Is it possible for us to come up with a system, as Mr. Keller says, for egress and ingress into these containers, so that it is absolutely 100 percent secure?

Mr. MARSHALL-JOHNS. I think it is, but at the same time you've also got to look at the cost of that system. I agree entirely with Mr. Keller's comments about the one source of entry into the container is the doors, the hinges, and the locking mechanisms. Whether the existing seal units are the right way to go, whether it's an electronic seal unit, or whether there's some other control system in place, that was to be decided, as far as looking at the cost of it.

Mr. OSE. Mr. Ochs, do you agree with this? Are you in agreement with Mr. Marshall-Johns?

Mr. OCHS. Yes, sir. Maersk owns 1 million of these boxes. They are rigid shipping boxes. They have a lifespan of about 7 years. When you start to look at a Kevlar box or extra locks on the box, at some point you are going to start to build bank vaults. At some point, the value of the box may exceed the value of the cargo.

The thicker the box gets, the harder it is to use any type of technology to x-ray or sniff or scan what might be inside of that box.

So, I think, from our standpoint, under the general concept of Operation Safe Commerce, which is to maintain the integrity of the container from the time it starts overseas to the time it is opened, somewhere once it arrives here, is a standard, smart, high-security seal that may have the capability to transmit some type of signal that can be tracked through the entire transit of that box, both when it is loaded overseas, on the ship, on the rail, or on the local truck, until it finally arrives at the warehouse or the store.

So, yes, we think that the solution is a smarter and better seal and not necessarily a bank vault-type box.

Mr. OSE. All right. Congressman Janklow for 5 minutes.

Mr. JANKLOW. Thank you very much.

If I could, Ms. Williams, let me ask you a question. In your testimony under No. 11, you say, "Government, with the assistance of

industry, must make every effort to effectively build sufficient security infrastructure without being so costly or cumbersome as to destroy the economy it seeks to protect," which goes to the heart of what the chairman was just asking you and what you were responding about, Mr. Ochs, and all of you have.

"Since September 11th, thousands of government agencies and private businesses have been waiting for Congress and the agencies it controls to provide leadership to specified local architecture and protocols necessary to further investment."

Now, you make that statement within the framework that talks about mandated versus performance-based systems. I mean, it is a statement that could almost be applied to all of this. With respect to mandated versus performance-based systems, is there any indication as to which direction the administration is headed with respect to that very issue of mandated versus performance-based system?

Ms. WILLIAMS. No, there isn't. I think it is important to note these were part of the comments, and this particular section was written by ATA. They have been working on the Federal level, and we have been working on the State level. California has a pattern of moving ahead quickly. There is a bill this year specifically introduced by Senator Feinstein, Assembly Chair Detra, that requires trucks to use these GIS devices.

It is really expensive. The manufacturer is promoting the bill. So, they have put over the first week, because it started to slow down. But, these things keep happening in California. In our legislature, people are moving ahead, people want to pass this bill, get their name in the paper, and a picture, and——

Mr. JANKLOW. Which creates, as you know, a tremendous problem, because then they amended something out here that you have implemented, they had costs, to find out the national standards going to be something different. So, that is what you are getting at?

Ms. WILLIAMS. It's the second bill that could possibly pass since this has happened, and there hasn't been one assembly.

Mr. JANKLOW. Is this something that has really been very clearly expressed to the administration?

Ms. WILLIAMS. No, it hasn't. We here in California, with our limited resources, try and carry these bills ourselves. But, if you could preempt it, that would help us a great deal, of course. There needs to be some action; there needs to be a public dialog. I don't understand the congressional manner. When you say "intramurals," to me that sounds like going and getting public input and affecting taxes. I have a problem with that.

It doesn't seem like you have the right people at the table to make the decisions, and I appreciate you disagreeing like this. There's people with their pencils in the back of the room, and they are going to stay until the end. But it is important that everybody is on the same page and we don't have manufacturers lobbying for devices that get adopted.

Mr. JANKLOW. If I move to you, Mr. Parker, for a moment. In your testimony you say, "State and local governments are also imposing more military conditions of port operations. Some events may actually divert resources from port security." You don't have

to come up with it right now, but can you give me a list of those kinds of specific things that you could submit in your supplemental testimony? Because that would be of a lot of assistance.

Mr. PARKER. I would be happy to. But one of them would be actually this bill, and I think in terms of what we are looking at, the CTA and the steamship association, at times have been at different sides of it. But in this particular case, we both I think agree that perhaps this bill is ill-timed at best.

[NOTE.—No information provided.]

Mr. JANKLOW. When you say "this bill," are you referencing the bill that——

Mr. PARKER. 575. Yes.

Mr. JANKLOW. OK. And then, you also say a proposed $1 billion bond issue would secure $200 million for port security for southern California. I'm sorry I haven't given this to you earlier, but specifically, is this a State bonding proposal? Is that what it is?

Mr. PARKER. Yes, it is. But, it would not be funded until the State solves its own set of funding——

Mr. JANKLOW. Its own problems?

Mr. PARKER [continuing]. Problems, yes.

Mr. JANKLOW. OK.

Mr. PARKER. So, it could be a significant period of time.

Mr. JANKLOW. Would this be an authorization for a bonding, but not the authorization to issue the bonds?

Mr. PARKER. Yes, sir.

Mr. JANKLOW. OK. Mr. Ochs, if I could go to for a second, as I saw in your testimony. In a couple of spots you say, again, I can't remember the text, the pending regulations imply a mandate to randomly inspect and search individuals and vehicles into waterfront facilities. And then, you talk about contracting law enforcement officers or watchmen.

Is this or isn't this in the regs? I don't understand what that "simply" means. I understand the word, obviously, but is there something that you have asked them, is it in or out of the regs? I will jump to the next one. I will hit them all at one time.

Then, in the next paragraph, "The pending regulations suggest that each waterfront facility deploy their own security boats." Then, you talk about how to police them out in the waters. Then, you say the regulations discuss the use of divers to inspect pier structures. Then you say, in summary, "The regulations imply each terminal hire a trained and fully equipped posse to search personnel vehicles, crew boats, patrolling offshore from our docks, in search for underwater ordnance." That is incredible.

You have contacted the administration about that, haven't you? What is their response? Where do you think this is going to be required in the regs?

Mr. OCHS. It is our current interpretation of the language in those regs that requirement could be mandated on us. The language is written fairly wishy-washy, but you can interpret it that all of those functions could be transferred to each terminal.

Mr. JANKLOW. Do you agree with that, Mr. Keller?

Mr. KELLER. I haven't studied that.

Mr. JANKLOW. I am not actually arguing with you, but I am just saying this is new to me, this is a big deal.

Mr. KELLER. I haven't studied the reg or read it the same way that John has, Congressman.

Mr. JANKLOW. What about any of the rest of you? Yes, ma'am.

Ms. WILLIAMS. This goes to the point of when we bring the chassis in the terminal, who's in there, what's in the empty chassis, and begs the point, why are you letting 4,000 truckers with empty containers in there at all?

Mr. JANKLOW. What you are saying is, Mr. Ochs, at this point, you are not able to tell whether or not it is going to be your company's job, or the terminal's job, the port of Los Angeles or Long Beach or Miami, their job to inspect all vehicle passenger spaces and trucks, to deploy security boats, to be in the underwater explosive detection business, to patrol offshore, etc.

Mr. OCHS. The short answer is yes. We have 13 terminals in the United States. Most of our terminals are on smaller ports where the local port authority and/or the Coast Guard doesn't have the same resources that we have here where, for example, the local port does, in fact, have a dive team.

So, at those ports where the government resources may not be available, if it is a requirement under these interim final rules that, for example, a pier be searched for underwater bombs, then does that put the burden on us as the terminal to make sure that search is done, if there is no local group working under the protection of the government sovereign immunity to actually conduct that function?

Mr. JANKLOW. I think it was your testimony is it not, it was Mr. Parker's, that expresses a concern that in the event you do have these responsibilities, you are going to be self-insured.

Mr. OCHS. We are going to be self-insured, because as the tenant of that leased property, we probably will not be able to obtain liability insurance.

Mr. JANKLOW. Mr. Marshall-Johns, if I could go to you for just a second, you say Oppenheimer contends it is the responsibility of the country of export to establish a system that satisfies U.S. requirements. What you are saying there, then, I assume is that, if we set the standards in this country, people exporting to the United States have to meet them?

Mr. MARSHALL-JOHNS. Yes, exactly. That is what I discussed in Congressman Ose's request before, about extending the borders. Again, setting the minimum standards and then allowing the party responsible to adhere to them.

Mr. JANKLOW. At their expense?

Mr. MARSHALL-JOHNS. Yes, at their expense.

Mr. JANKLOW. In your written testimony you talk about the 24-Hour Rule, and how Oppenheimer would prefer if it was modified to the point where it would be 24 hours post-departure that would be allowed to be reported, correct?

Mr. MARSHALL-JOHNS. Correct.

Mr. JANKLOW. What do you think, Mr. Ochs, Mr. Parker, all of the rest of you?

Mr. PARKER. Well, there are an awful lot of companies that are really struggling with this rule. Just from the standpoint of they have multiple containers, they have hot cargo that is arriving at the——

Mr. JANKLOW. Do you think post 24 hours would be OK?

Mr. PARKER. I think post would be a great improvement.

Mr. JANKLOW. Mr. Ochs.

Mr. OCHS. Speaking very selfishly, just for Maersk, once the box is on our ship, the 24-Hour Rule is useless, because the ship has sailed. So, we would prefer that the inspection is done on the dock overseas for the safety of the ship.

Mr. JANKLOW. OK.

Mr. OCHS. But for the safety of our country, the post-24 Hour rule would be an improvement.

Mr. JANKLOW. I was being a little facetious, but I just want to make sure I understand what you are saying.

Mr. OCHS. Yes, sir.

Mr. JANKLOW. I think from a practical standpoint, if the ship has 4,000 boxes on it, and we do the electronic inventory of the manifest after it has sailed, and there is some type of red flag that pops up, are we going to turn that ship around because of the one box?

Mr. OCHS. Sure.

Mr. JANKLOW. Dr. Miretti, do you have a problem with post-24-hour?

Dr. MIRETTI. Yes, I think so. For worker security, I think we would certainly like the 24-Hour Rule to apply.

Mr. JANKLOW. What about you, Mr. Keller?

Mr. KELLER. I think you have already heard our comments about CSI and pushing back the borders. I don't think there is any way to do that without the 24-Hour Rule being in place.

Mr. JANKLOW. It has to be in place.

Mr. KELLER. I think it has to be in place.

Mr. JANKLOW. Mr. Marshall-Johns, in your testimony you talk about the identification card and the issue of the identification card, and you previously discussed, we all basically agree. On the way out here yesterday, I read it and left it in the airplane, I read an article in the U.S. News and World Report where on the new Florida statutes that have been imposed on the trucking industry.

Four of the state employees just in the last week have been indicted for selling the cards to people that weren't eligible to get them. So that problem could happen with any system. But, that's a system that would probably make a lot more sense under these circumstances with Federal preemption.

Mr. Chairman, that is all the questions I have. Thank you very much for giving me this extra time.

Mr. OSE. You are welcome.

I want to go back to something Mr. Ochs and I were discussing on these containers and making them bomb-proof. Now, I want to try and understand your comment. If I understand your comment correctly, it was that the type of bomb that we need to be worried about would not be contained under any circumstances by a container whose structural integrity is such as to contain the explosive power of that bomb. In other words, if it's a thermonuclear bomb, it doesn't matter.

Mr. OCHS. It doesn't matter.

Mr. OSE. You also have problems in terms of screening containers, as we get a heavier and heavier and heavier container. In other words, our technology is diminished. Our technology, our

means of detection of something within that container, as that container gets heavier and heavier structurally, is our ability to detect something we want to prevent from happening, is that diminished?

Mr. OCHS. Yes. I think with the current technology that is on the street with the MRU and the back-scatter type x-rays, and the types of gadgets that are out there that can detect radioactivity, the thicker the box is, the less chance that you have to detect something that's bad inside.

Mr. OSE. So, if the Federal Government mandated a structural integrity requirement, such as to contain an explosive force of X, we may very well undermine the effectiveness of our CSI systems, and the like, to detect what we are trying to keep out of the country in the first place?

Mr. OCHS. Absolutely. In fact, it has been suggested that, if anything, the boxes should be made out of plexiglass, so you can actually see what is inside. So this would go against a bank vault or Kevlar box.

Mr. OSE. Mr. Marshall-Johns, do you agree with that analysis?

Mr. MARSHALL-JOHNS. Yes, I do. I think this is pretty straightforward, that as you build strength, the integral structure of a container, your ability to scan or view anything inside is going to be greatly diminished.

Mr. OSE. So your advice to elected officials, who might otherwise put that forward, would be very careful?

Mr. MARSHALL-JOHNS. Yes, I think so. I think it certainly adds some huge costs into the container industry.

Mr. OSE. Dr. Miretti, do you concur?

Dr. MIRETTI. Yes. I think, if you are going to build a box that is like a bank vault, it is not only going to cost a tremendous amount of money, but then, you are also going to have to consider the fact that you are not going to be able to put as much cargo into that box, because now you are looking at a load weight that has to pass over the street. So that would be a factor that would have to be taken into consideration.

Mr. OSE. Wouldn't it also diminish the ability of vessels that are bringing cargo to or from the United States in terms of the weight that they would have to carry?

Dr. MIRETTI. Yes, it would diminish the number of containers that it could carry.

Mr. OSE. Yes. The displacement tonnage would be reduced in terms of the number of containers.

Dr. MIRETTI. Right, right.

Mr. OSE. Mr. Keller, do you concur?

Mr. KELLER. I do. Transportation is a practical business, when you talk about container weight, it is called tare weight as opposed to cargo weight for a reason. And, that is because it is basically non-productive in terms of the customer's needs.

Mr. OSE. All right. Mr. Parker.

Mr. PARKER. If you are concerned about that, and then every container in the world was a bank vault, you could just do it in a cargo ship that was non-containerized. So it wouldn't solve anything.

Mr. OSE. So the technology, at least the logistical systems, would have to be thrown out the window. Ms. Williams.

Ms. WILLIAMS. I would just say something about the transparency, to be able to look inside these. Is that clearly——

Mr. OSE. The issue is, if your wall is this thick, and you have a gamma-ray system that is in place, you can see through that, and you double or triple the thickness of the wall, then your gamma-ray system can't get through. My question is, logically, it seems to me what we want to have is a minimum protective shield, if you will, on these containers in many cases, so we can, in fact, see what is inside them.

Ms. WILLIAMS. We don't really have any great problem in this industry at the port, so it seems good.

Mr. OSE. In terms of the containers being bank vaults, if you will, putting them on the truck, then putting them on the road, and then we have all sorts of maintenance problems on the roadways.

Ms. WILLIAMS. Caltrans just did a study that showed there are, on California roads, 13 percent of the trucks are over 80,000 pounds. I don't know how valid. I haven't seen the background, but we already have a problem. Increasing the container weight would be problematic.

Mr. OSE. All right. I don't have any other questions. I do have a statement. Do you want to add anything? All right. I do want to express my appreciation to all of the witnesses here.

Again, Ms. Williams, I understand your skepticism about the manner in which we are doing this in the interim final rules. But trust me, it works.

Ms. WILLIAMS. OK. Great.

Mr. OSE. It does work. The system forced upon us is kind of upside-down, but this does help those who are writing these interim final rules the concerns that they need to account for.

Ms. WILLIAMS. Great.

Mr. OSE. Or, at least it did the one time we've done it before.

Today's hearing did show how much we still have to do, but it is as a Federal Government and in partnership with the people who are in the day-to-day business of maritime transportation, to ensure effective implementation of this law and port security.

I encourage my colleagues to reflect upon the combined wisdom of today's witnesses and those implementing the regulations. I mean, you are the experts. We are not the experts. You are the experts, and we need to access your wisdom, and we are talking about security of our citizens and the potentially serious effects on commerce, so we really have very little room, if any, for error.

This is an important step in the whole process. We are trying to make sure our ports are safe. As we have evidenced in the record, these facilities here are enormous economic engines for California and for the country as a whole. They are crucial to our well-being. We need to protect them.

I will tell you, it has not been missed by me, but given the excess revenue over cost generated from these facilities in terms of Customs duties, I will be going back to Washington next Tuesday, and shortly thereafter we will be putting in a bill that at least starts the debate about committing those revenues for reinvestment in ports from which they come from.

That process is long, and it might take some time, but we are going to start that today and attempt to force the issue. So, that

these economic engines and the jobs that are so dependent upon their success, and the States that depend upon them have the opportunity to have the funds and the resources to meet the mandates that the Federal Government is going to lay on them.

I appreciate the time you all have taken to come down here and educate Ms. Harman, Mr. Rohrabacher, Mr. Janklow, and me. It is a positive experience. We thank you.

We are adjourned.

[Whereupon, at 1:05 p.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]

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INDEPENDENT

May 2, 2003

BY FACSIMILE
Mr. Larry Keller
Executive Director
Port of Los Angeles
Port of Los Angeles Administrative Building
125 South Palos Verdes Street
San Pedro, CA 90731

Dear Mr. Keller:

This letter follows up on the April 24, 2003 hearing of the Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs, entitled "What Regulations are Needed to Ensure Port Security?" First, let me thank you for your extremely helpful written and oral testimony, including your thoughtful recommendations for how the Federal government can better ensure port security. Second, as discussed during the hearing, I am enclosing followup questions for the hearing record.

Please send your response to the Subcommittee majority staff in B-377 Rayburn House Office Building and the minority staff in B-350A Rayburn House Office Building by May 26, 2003. If you have any questions about this request, please call Subcommittee Deputy Staff Director Barbara Kahlow on 226-3058. Thank you for your attention to this request.

Sincerely,

Doug Ose
Chairman
Subcommittee on Energy Policy, Natural
Resources and Regulatory Affairs

Enclosure

cc The Honorable Tom Davis
The Honorable John Tierney

Questions for Port Security Witnesses

Q1. Identification of Workers & Others with Port Access. Various Federal agencies – including the Transportation Department's Research and Special Programs Administration (RSPA), the Homeland Security Department's Transportation Security Administration (TSA), and the General Services Administration (GSA) – are jointly developing a standardized "smart" common Transportation Worker Identification Credential (TWIC) for all transportation workers and others requiring access to secure areas and functions of the transportation system. This smart card would include biometric information to ensure a person's identity.

The new Maritime Transportation Security Act requires the Homeland Security Department to issue regulations governing transportation security cards and a waiver process for individuals ineligible for such a card. Maersk's written statement called for TSA to accelerate development of TWIC (p. 2).

a. Concerns. What, if any, concerns do you have with such a standardized smart card?

b. Biometrics. Are you concerned with use of a biometric? Do you object to any specific kind of biometric? If so, which and why?

c. Background Checks. In his written statement, Dr. Miretti stated, "As a general matter of policy, the ILWU membership opposes background checks on any workers" (p. 3). In her written statement, Ms. Williams supported background checks, with periodic renewals, which should be used across transportation modes, should be made quickly (i.e., within 4-7 days), and "must preempt all other state and local requirements" (p. 2).

- Do you have any concerns about background checks before issuance of a transportation security card?
- Who should be subject to a background check and who should be exempt? For example, what about gatekeepers? Guards? Computer operators? Truckers?
- What are your views on Federal preemption in this area?

d. Access to Background Information. In her written statement, Ms. Williams expressed concern about the "protection of confidential personal and corporate information" (p. 4). Do you have any concerns about employer access to background information obtained during a background check? For example, its use in employee wage setting.

e. Data Sharing. In his written statement, Dr. Miretti stated, "We recommend that regulations require … that the TWIC card be used for positive identification security purposes only" (p. 3). Do you have any concerns about

the interface of the TWIC system with other databases for a "watch list" and intelligence information?

f. Coverage.
   - Should all contractors, vendors and truckers servicing a port be required to receive a transportation security card?
   - Who should be excluded and why?

g. Rules. What provisions should be included in the Homeland Security's forthcoming regulations governing TWIC?

Q2. Federal vs Private Sector Roles. Maersk's written testimony stated, "As commercial enterprises we do not enjoy the Government's sovereign immunity, and therefore cannot be expected to conduct either **law enforcement or military operations**" (emphasis added, p. 4). Maersk opposed a Federal regulatory requirement for private parties to "randomly inspect and search individuals and vehicles entering waterfront facilities," "deploy their own security boats," and use divers "to inspect pier structures prior to the arrival of a vessel" (p. 3). Mr. Parker's written testimony stated, "while shipping companies are ready, willing and able to support and assist the government to protect our ports, we cannot act as government functionaries. We cannot, for example, perform law enforcement activities, such as patrolling the waters around the port" (p. 2) and "inspecting cargo or checking the identification of seafarers" (p. 3). Lastly, Ms. Williams's written testimony stated, "it does not make sense to require a land-based facility like a motor carrier to have maritime/IMO security expertise" (p. 3).

In air transportation, the new air security law required the Federal government to takeover the screening of all passengers and baggage. What maritime security functions do you believe should be the responsibility of the Federal government?

Q3. Minimum or Prescriptive Rules. Should the Homeland Security's forthcoming interim final regulations - which are targeted for issuance by June 30th - set a core, minimum, baseline standard set of requirements for every port, facility and vessel or should they include more prescriptive requirements? And, should the Department allow self-certification of compliance by non-Federal private parties?

Q4. Content of Port, Facility & Vessel Rules. The new law requires each facility and vessel to submit - 6 months after issuance of the interim final rules - its security plan for Federal review and approval. The law requires that these plans shall include provisions for: establishing and maintaining physical security, passenger and cargo security, and personnel security; establishing and controlling access to secure areas; procedural security policies; communications systems; and other security systems.

Which of these subjects should be addressed in the interim final rules as **minimum** requirements?:

for Ports – perimeter security zones, barriers, patrol requirements, police, armed guards, alarm/surveillance system control, lighting, fencing, training, drills, exercises, firearms, advance scheduling of vendors/contractors/visitors, search/inspection of persons/packages/vehicles, verification by a 3rd party?

for Facilities (e.g., waterfront facilities, cruise ship passenger terminals, oil or bulk hazardous material facilities, waterfront facilities handling liquefied natural gas or liquefied hazardous gases)

– personnel screening, lighting, fencing, gates, other equipment, locked doors/windows, armed guards, manned TV monitoring systems, security alert systems, alarms, communications systems, training, drills, exercises, advance scheduling of vendors/contractors/visitors, search/inspection of persons/deliveries/packages, verification by a 3rd party, recordkeeping?

for Vessels – regular inspections by the vessel security officer, security guards, locked or secured restricted areas, lighting, security doors, motion detection equipment, surveillance equipment, training, drills, exercises, inspections by the U.S. Coast Guard, recordkeeping?

Q5. Training. In the Subcommittee's November 2001 hearing on air security regulations, we heard testimony about the need for training for screeners, pilots, flight attendants, and others. How many hours of classroom and on-the-job training do you think should be required for port security personnel? Who should be trained? And, what subject areas should be required to be covered in the training?

Q6. Security Performance Standards. In the Subcommittee's hearing on air security regulations, we heard testimony about Transportation Secretary Mineta's "zero tolerance policy" for failures in a training test or in an on-the-job performance situation.

Should the Homeland Security Department establish performance standards for port security, facility security, and vessel security? If so, what should be included? And, should there be a "zero tolerance policy" for failure in a training test or an on-the-job performance situation?

Q7. Advance Scheduling. In February 2003, the Coast Guard's Captain of the Port Los Angeles – Long Beach issued a "Security Advisory" which stated his "expectation" that vendors, contractors, and pilots visits "shall be scheduled in advance." Should the forthcoming interim final rules require advance scheduling of all vendors and contractors, including the truckers who move in and out of a port?

Q8. Vessel Information - Advance Notice of Arrival (NOA). In October 2001, the U.S. Coast Guard issued a temporary rule (and then a final rule in February 2003), which changed the 24-hour advance Notice of Arrival (NOA) of a vessel to a 96-hour NOA, and suspended some exemptions (33 CFR §160). The NOA now includes detailed information on the cargo, crew, passengers, and the vessel.

Do you have any objections to this revised Coast Guard regulation? If so, how would you like it to be changed?

Q9. Cargo Information - Advance Manifests. In October 2002, the U.S. Customs Service issued a final rule requiring 24-hour advance information before cargo is loaded at a foreign port onto a U.S.-bound vessel; previously, cargo declaration information was not available until the ship arrived at the U.S. port (19 CFR §4, 113 & 178).

In his written statement, Mr. Marshall-Johns of Oppenheimer stated, "The U.S. Customs 24-hour rule ... presents some challenges for fresh produce" (p. 5). Do you have any objections to this revised Customs Service regulation? If so, how would you like it to be changed?

Q10. Container Security. The U.S. Customs Service has a two-part Operation Safe Commerce initiative. In January 2002, Customs initiated a Container Security Initiative (CSI), where U.S. Customs inspectors identify "**high-risk**" containers and pre-screen U.S.-bound high-risk containers at major foreign ports, using technology (radiation detectors and large-scale x-ray-type machines) so that it can be done rapidly. Another aspect of CSI is the development of smarter, "tamper-evident" containers (e.g., with electronic seals, sensors, or tracking devices).

In April 2002, Customs initiated the Customs-Trade Partnership Against Terrorism (C-TPAT), which offers importers **expedited** processing of cargo if they secure their entire supply chain (not just at foreign seaports) and are certified by the Customs Service. Currently, only a small percentage of cargo is screened by Customs after a risk assessment is made.

a. Random Screening. In his written statement, Mr. Marshall-Johns of Oppenheimer stated, "Cargo screening on a **random** basis at time of arrival in the U.S. is imperative" (emphasis added, p. 5).

What changes in container screening, if any, do you recommend for U.S. or foreign ports to better reduce risk to U.S. port workers and the American public? For example, besides screening of high-risk containers, should a random sample of non-high-risk containers be screened?

b. Supply Chain. What requirements, if any, should be included in the forthcoming interim final rules regarding containers themselves? For

example, what requirements, if any, should be included to ensure security along the entire supply chain (i.e., procedural security, physical security, personnel security, education and training, access control, manifest procedures, and conveyance security)?

Q11. Container Performance Standards. The new law requires the Homeland Security Department to develop performance standards to "enhance the physical security of shipping containers, including standards for seals and locks" (Sec. 102 § 70116 & Sec. 111).

What do you recommend should be included in these container performance standards?

Q12. Unsealed Empty Containers. In his written statement for the ILWU, Dr. Miretti recommended that the U.S. follow the "common sense, affordable procedure" used by other countries to inspect empty containers (p. 2). Do you think that unsealed empty containers, which U.S. transportation workers have to handle, should be screened? If so, how?

Q13. Screening Fresh Produce. The Oppenheimer Group and the Dole Food Company have worked with the U.S. Customs Bureau to ensure that certain fresh produce is prescreened abroad before loading. Should all fresh produce or certain kinds of fresh produce or fresh produce from certain countries be required to be prescreened abroad?

Q14. Improving Port Security Abroad. The Ports of Los Angeles and Long Beach have taken the initiative to work with certain ports abroad to ensure adequate prescreening before cargo is loaded on a vessel coming to the U.S. Currently, many but not all ports abroad have radiation detection equipment (some designed by the Energy Department's Sandia National Laboratories) to screen for weapons of mass destruction.

Should the U.S. government buy and place such equipment at all key ports abroad? Should the U.S. government require prescreening abroad of certain kinds of containers? If so, which kinds? What about "consolidated" cargo (with more than one kind of good) containers that account for over one-fourth of all containers? And, should the U.S. offer other financial support to developing countries to improve their port security?

Q15. International Trade Agreements. To raise international port security, should the U.S. require compliance with certain port security standards in its international trade agreements?

Q16. Passenger and Crew Manifests. In January 2003, the Immigration and Naturalization Service (INS) published a proposed rule requiring all passengers

and crews departing from or arriving at U.S. ports to submit additional information (8 CFR §217, 231 & 251).

Did your organization submit a comment on this proposed rule? And, do you have any objections to it? If so, what changes would you like INS to make?

Q17. Passenger Interviews & Searches. In the Subcommittee's hearing on air security regulations, we heard testimony about the need for interviews of all or selective passengers, screening baggage, and possibly matching passengers and baggage.

Should cruise passengers be interviewed? Should their baggage be searched? Should there be matching of passengers and baggage? What Federal rules, if any, should govern this process?

Q18. Drug and Alcohol Testing. Currently, various Federal agencies use drug and alcohol testing for employees engaged in national security sensitive or health and safety sensitive functions. Should any port employees (e.g., guards and crew members) or others requiring access to secure areas and functions of a port be subject to random drug and alcohol testing?

Q19. Enforcement and Penalties. In her written testimony, Ms. Williams stated, "Laws must severely punish criminals unlawfully obtaining or using [driver's personal data, and business' proprietary and confidential] information, and include far-reaching financial sanctions and lengthy incarceration" (p. 5). In its December 30, 2002 notice of seven public meetings to discuss maritime security, the Coast Guard stated that the public previously "stressed the importance of uniformity in the application and enforcement of requirements" (67 FR 79743).

The new law requires the Federal government to issue an interim final rule governing civil penalties up to $25,000 for each violation of the new law or any implementing regulation. What provisions do you think should be included in Federal rules for statutory or regulatory violations by a facility or vessel owner or operator or other persons?

Q20. Federal Preemption of State/Local Requirements. Mr. Parker's written testimony stated, "State and local government are also imposing more regulatory conditions on Port operations – some of which may actually divert resources from port security" (p. 2). He recommended that the Federal government "should ensure – by federal preemption where necessary – that operating requirements and restrictions imposed by state and local government are consistent with the goals of overall port security" (p. 3). What are your views on Federal preemption of State and local requirements?

Q21. Distribution of Federal Grant Dollars. In his written statement, Mr. Keller outlined the Port of Los Angeles's applications for and receipt to date of insufficient Federal grant dollars, especially concerning that the Ports of Los

Angeles and Long Beach handle more than 42 percent of the nation's containerized commerce. He believes that the Port of LA "need[s] to receive a reasonable and appropriate share of the federal port security funding" (p. 3). Should Federal grant dollars be distributed proportionately to a port's size and contribution to the Nation's commerce?

Q22. Financing Improved Port Security. Currently, there is insufficient Federal funding to fully ensure port security. Some in Congress advocate a new user fee on vessels, sea containers, bulk cargo, and cruise passengers. Others suggest that, instead of being deposited in the Federal government's general fund, customs revenues be used to fund improved port security. In Fiscal Year 2001, the U.S. Customs Bureau collected $15.6 billion in duties on commodities entering the U.S. through the marine transportation.

In his written testimony, Mr. Keller stated, that the Port of LA opposes additional "user fees" to shippers and truckers and "strongly believe[s] that Customs revenues can provide the appropriate source for funding the additional security required at our nation's ports" (p. 4).

What financing mechanism or source do you recommend to fund port security upgrades?

Supplemental Responses by Larry Keller, Executive Director, Port of Los Angeles as Requested by Chairman Doug Ose for the Record of the April 24, 2003 House Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs Hearing

Q1. Identification of Workers & Others with Port Access. Various Federal agencies – including the Transportation Department's Research and Special Programs Administration (RSPA), the Homeland Security Department's Transportation Security Administration (TSA), and the General Services Administration (GSA) – are jointly developing a standardized "smart" common Transportation Worker Identification Credential (TWIC) for all transportation workers and others requiring access to secure areas and functions of the transportation system. This smart card would include biometric information to ensure a person's identity.

The new Maritime Transportation Security Act requires the Homeland Security Department to issue regulations governing transportation security cards and a waiver process for individuals ineligible for such a card. Maersk's written statement called for TSA to accelerate development of TWIC (p. 2).

a. Concerns. What, if any, concerns do you have with such a standardized smart card?

Response: The port complex of Los Angeles and Long Beach is one of three venues in the nation chosen to test the Transportation Worker Identification Credential (TWIC) prototype. We believe there should only be one standard for an identification card set by the federal government that preempts all and any other state or local requirements. There should only be one national standard for card issuance. There should be flexibility within the standard that accounts for local conditions, but federal preemption is absolutely necessary.

There is a natural concern for having anybody's personal data reside within a database. Our greatest concern, however, is the maintaining of the system once it is started as workers move from workplace to workplace or geographic location, or from one transport profession to another. The updating of the system is crucial and therein lies a possible weakness for things that may have not been thoroughly investigated. The level of security and how that is assured is our greatest concern.

b. Biometrics. Are you concerned with use of a biometric? Do you object to any specific kind of biometric? If so, which and why?

Response: We believe that biometrics should be part of the TWIC Smart Card. Biometrics is a failsafe method of identifying the possessor of the card. Without biometrics you really don't know if someone is using someone's borrowed card. The biometric verifies that the person presenting the card to gain entry is the actual identified person. Absent that, anybody can use the card just as they can use someone else's driver's license. Driver's licenses are sold on the streets all the time. Although they have a biometric electronic strip with a person's information on the

card, it doesn't test that person against the driver's license card. We don't want a TWIC Smart Card that can be easily purchased on the blackmarket.

The biometric method would also be the most efficient. We are in the business of moving people and cargo and we don't want to waste a lot of time. However, we do not have a preferred biometric method. We would only request that the biometric technology utilized whether thumbprint, retina or facial recognition, be 99.9% accurate. This methodology must identify the person who is presenting the card without a possibility of security being breached.

c. Background Checks. In his written statement, Dr. Miretti stated, "As a general matter of policy, the ILWU membership opposes background checks on any workers" (p. 3). In her written statement, Ms. Williams supported background checks, with periodic renewals, which should be used across transportation modes, should be made quickly (i.e., within 4-7 days), and "must preempt all other state and local requirements" (p. 2).

- Do you have any concerns about background checks before issuance of a transportation security card?
- Who should be subject to a background check and who should be exempt? For example, what about gatekeepers? Guards? Computer operators? Truckers?
- What are your views on Federal preemption in this area?

Response: We support background checks for issuance of the TWIC Smart Card, but this background should be separate from an employer who requires a background check for employment. We do not wish to comingle the two. We don't want labor issues to become involved in security issues.

All persons issued a TWIC Smart Card should undergo a basic background check. Increased levels of background checks should be administered based on an increased level of security to gain access to security-sensitive areas. Those in the security/law enforcement field should receive a full background check.

We support federal preemption in this area to set the standard of what is required and allow a federal agency to perform the background checks to ensure no irregularities between employers and their work force.

d. Access to Background Information. In her written statement, Ms. Williams expressed concern about the "protection of confidential personal and corporate information" (p. 4). Do you have any concerns about employer access to background information obtained during a background check? For example, its use in employee wage setting.

Response: Employers should have no access to the TWIC Smart Card background check. Background checks for employee hiring by the employer should be separate and apart from background checks for issuance of the TWIC Smart Card for security purposes.

e. Data Sharing. In his written statement, Dr. Miretti stated, "We recommend that regulations require ... that the TWIC card be used for positive identification security purposes only" (p. 3). Do you have any concerns about the interface of the TWIC system with other databases for a "watch list" and intelligence information?

Response: One of the goals of confirming background checks is to identify persons who would be a threat to national security. Data sharing is needed for federal, state and local law enforcement agencies to work collectively against a threat to our nation.

f. Coverage.
- Should all contractors, vendors and truckers servicing a port be required to receive a transportation security card?
- Who should be excluded and why?

Response: All workers requiring access to any port facility should receive a TWIC Smart Card. Visitors and tourists to the ports should be excluded from background checks.

g. Rules. What provisions should be included in the Homeland Security's forthcoming regulations governing TWIC?

Response: The provisions need to clearly state that it is a federal regulation that will set the standard to ensure uniformity and consistency throughout the nation. Thus, truck drivers and dockworkers nationwide will have the same rules apply. The Department of Homeland Security should direct the appropriate federal agency to perform the background checks for the issuance of the TWIC Smart Card.

Q2. Federal vs Private Sector Roles. Maersk's written testimony stated, "As commercial enterprises we do not enjoy the Government's sovereign immunity, and therefore cannot be expected to conduct either **law enforcement or military operations**" (emphasis added, p. 4). Maersk opposed a Federal regulatory requirement for private parties to "randomly inspect and search individuals and vehicles entering waterfront facilities," "deploy their own security boats," and use divers "to inspect pier structures prior to the arrival of a vessel" (p. 3). Mr. Parker's written testimony stated, "while shipping companies are ready, willing and able to support and assist the government to protect our ports, we cannot act as government functionaries. We cannot, for example, perform law enforcement activities, such as patrolling the waters around the port" (p. 2) and "inspecting cargo or checking the identification of seafarers" (p. 3). Lastly, Ms. Williams's written testimony stated, "it does not make sense to require a land-based facility like a motor carrier to have maritime/IMO security expertise" (p. 3).

In air transportation, the new air security law required the Federal government to takeover the screening of all passengers and baggage. What maritime security functions do you believe should be the responsibility of the Federal government?

Response: We certainly think that access control through the use of I.D. Cards, the TWIC Smart Card, is probably the number one issue in terms of securing the facilities. It allows control of the access. It allows identification of people. It allows us to know who is in and who is out, and the facility operators to know at any given time who is in and who is out. This is exceedingly important and a huge role for our federal government.

The roles and the missions of the U.S. Coast Guard and U.S. Customs Service are very clear. Their challenge is what they are mandated to do, including many duties for which resources have not been fully funded since they inherited these extra responsibilities to improve security since 9/11.

If, in fact, we are going to have a continuing threat against this country, we want to let those of bad intent know that this is not the place to do it. If they do it here, they are going to get caught, or their efforts are going to be frustrated. That's the best we can do. This is a huge business; we are part of a global network. Now we couldn't shut that down, even if we wanted to. Such is our interdependence. We think best measures, best practices, and cost effective measures are the best we can do.

We have asked for certain enhancements for U.S. Customs after 9/11, and happily enough, the appropriators saw their way to fully fund the ACE Customs computer. Whether it's pushing back the borders or doing the work here, we think that ACE is absolutely necessary in determining which containers should be looked at and how frequently. We have had splendid relations with our federal partners and look forward to the federal government taking the lead.

Response: We agree with the concern that the private sector expressed, specifically Maersk in their written testimony, that the federal government should not impose demands on the private sector that they are unable to meet in patrolling the waters and the areas surrounding the terminal operations.

Ultimately, the responsibility is with the federal government, U.S. Coast Guard, U.S. Customs and Immigration and Naturalization Service. However, we do believe that we need to set a security benchmark for the private sector to meet. There has to be some benchmarking where the terminal operators need to be told what the minimum standards are.

If necessary, these security standards could be written into future lease agreements, and existing leases could be amended to identify minimum security standards.

Q3. Minimum or Prescriptive Rules. Should the Homeland Security's forthcoming interim final regulations - which are targeted for issuance by June 30th - set a core, minimum, baseline standard set of requirements for every port, facility and vessel or should they include more prescriptive requirements? And, should the Department allow self-certification of compliance by non-Federal private parties?

Response: The interim final regulations should set a core minimum standard for all ports, facilities and vessels. Again, we think the TWIC Smart Card is part of that minimum standard.

Currently, on the vessel side, the Coast Guard and U.S. Customs regulations now adequately define what's on a vessel and gives some indication on the condition of the vessel as it approaches the port. We have the 96-hour rule, the 72-hour rule, and the 24-hour rule notification, which have served well on personnel, on possible intrusion on board the vessel, as well as any indication that there might be cargo difficulty.

On the trucking or the railroad side, the idea that you know who is coming to the terminal and that the person who represents themselves is in fact the person who is designated to come to the terminal, is exceedingly important.

In terms of physical security, which is subject to some of the grant funding that we have applied for, we think that such things as fence heights, lock security, video surveillance, and physical barriers should have minimum standards that are observed and as you so rightly said, enhancements can come as necessary for adaptation. Our Captain of the Port, Captain Homes, in fact, has done a fine job of taking a first cut at defining these minimum requirements, which we have to some extent in place.

If you do not have that minimum standard baseline, you will find, for example, ports like the Port of Los Angeles being very proactive by expending a huge amount of money to meet that minimum standard, and other ports that have not spent money and will not unless mandated to do so. This lack of consistency allows for easy access to unsecured areas and a clear breach in security. We need to make it clear that there should be a minimum standard uniformity applied to.

Terminal operators must also be mandated to meet a benchmark, or else the more proactive terminal operators, like APL and Maersk, will find themselves funding security needs and their competitors will not. It is very important to set established minimum security standards.

To meet this minimum standard, self-certification does not work. That will not serve the interest of security. It is very subjective and those firms that don't want to spend money on security will certify themselves. Therefore, self-certification is not appropriate, and the responsibility has to be certification by the appropriate federal agency like U.S. Coast Guard or U.S. Customs.

Q4. Content of Port, Facility & Vessel Rules. The new law requires each facility and vessel to submit - 6 months after issuance of the interim final rules - its security plan for Federal review and approval. The law requires that these plans shall include provisions for: establishing and maintaining physical security, passenger and cargo security, and personnel security; establishing and controlling access to secure areas; procedural security policies; communications systems; and other security systems.

Which of these subjects should be addressed in the interim final rules as **minimum** requirements?:

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for Vessels – regular inspections by the vessel security officer, security guards, locked or secured restricted areas, lighting, security doors, motion detection equipment, surveillance equipment, training, drills, exercises, inspections by the U.S. Coast Guard, recordkeeping?

Response: The interim final regulations should set a core minimum standard for all ports, facilities and vessels. Again, we think the TWIC Smart Card is part of that minimum standard.

Our Port Police are working with the federal, the state, and the local authorities, and frankly, a lot of what is being done is putting up a credible defense.

Improved fencing, TV monitoring and uniformed guards must be used. It would help to have people know that the equipment is overseas as we talk about pushing back the borders and that as containers come off ships from Indonesia, Pakistan, Manila and other places, through Singapore, that they are going through radiation detectors. So we neutralize that threat at origin.

Basically what we are suggesting is that a system that addresses a variety of threats makes people turn their eyes elsewhere. If, in fact, we are going to have a continuing threat against this country, we want to let our enemies know that the port is not the place to do it.

Also an important issue that needs to be considered is to mandate monthly or quarterly meetings between the federal, state and local agencies to exchange intelligence and share information to secure the ports, and act as a conduit to convey information to the port authorities. This panel or committee could also act to help private terminal operators in establishing their security standards.

Q5. Training. In the Subcommittee's November 2001 hearing on air security regulations, we heard testimony about the need for training for screeners, pilots, flight attendants, and others. How many hours of classroom and on-the-job training do you think should be required for port security personnel? Who should be trained? And, what subject areas should be required to be covered in the training?

Response: The Port of Los Angeles supports the development of training classes that would be applied throughout the country to establish the minimum standards. Training is critical to a successful security program and presently there are no training requirements for security personnel that work for the private terminals.

The training that is currently conducted is specifically for seaport police officers through the American Association of Port Authorities, and perhaps other groups that may be organized at a regional level. However, these classes are only for public officers and not for private security personnel. There should be a set program established for private security personnel that would include integrating the public police officers in this training.

Los Angeles Port Police is an organization, one of a very few, that has established some training standards. However, our counterparts around the country have not. Bonafide training is lacking throughout the seaport securities programs and there is no mandate that training be at a minimum level.

Forty to 80 hours of training would be appropriate. The training should consist of arrests, rules of arrest, port operations, collection of data, documentation procedures, methodologies for patrolling, up-to-date training on technology, and recognition of how tourists operate within a port community.

The Port of Los Angeles has recognized the importance of training and its contract with Sandia National Laboratories includes for Operation Safe Commerce dealt with training and establishing training for the overseas ports as well as for those trade lanes and personnel that handle security within the Port of Los Angeles. We do see the value of training and have directed Sandia National Laboratory in this effort.

Q6. Security Performance Standards. In the Subcommittee's hearing on air security regulations, we heard testimony about Transportation Secretary Mineta's "zero tolerance policy" for failures in a training test or in an on-the-job performance situation.

Should the Homeland Security Department establish performance standards for port security, facility security, and vessel security? If so, what should be included? And, should there be a "zero tolerance policy" for failure in a training test or an on-the-job performance situation?

Response: Yes, we should have security based standards. The Department of Homeland Security should establish those minimum performance standards for port security, facility security and vessel security. These standards should be part of a required auditing process and a refresher training process that addresses state-of-the-art security issues.

We would support a "zero tolerance policy" regarding training. Those not meeting the minimum training performance standards should not be allowed, permitted or licensed to operate a port terminal.

Q7. Advance Scheduling. In February 2003, the Coast Guard's Captain of the Port Los Angeles – Long Beach issued a "Security Advisory" which stated his "expectation" that vendors, contractors, and pilots visits "shall be scheduled in advance." Should the forthcoming interim final rules require advance scheduling of all vendors and contractors, including the truckers who move in and out of a port?

Response: Advance scheduling could act as a deterrent to prevent the infiltration of terrorists through port vendors and contractors who are needed by port operators. However, this is a very complicated process due to the fact that about 11,000 truckers are registered in the Southern California region. Many of these truckers change from company to company and many are independent operators. These differences complicate the issue of advanced scheduling for truckers. There should be an effort to establish some type of minimum advance scheduling. Vendors should also be credentialed and scheduled.

Q8. Vessel Information - Advance Notice of Arrival (NOA). In October 2001, the U.S. Coast Guard issued a temporary rule (and then a final rule in February 2003), which changed the 24-hour advance Notice of Arrival (NOA) of a vessel to a 96-hour NOA, and suspended some exemptions (33 CFR §160). The NOA now includes detailed information on the cargo, crew, passengers, and the vessel.

Do you have any objections to this revised Coast Guard regulation? If so, how would you like it to be changed?

Response: We agree with and support the 96-hour Notice of Arrival.

Q9. Cargo Information - Advance Manifests. In October 2002, the U.S. Customs Service issued a final rule requiring 24-hour advance information before cargo is loaded at a foreign port onto a U.S.-bound vessel; previously, cargo declaration information was not available until the ship arrived at the U.S. port (19 CFR §4, 113 & 178).

In his written statement, Mr. Marshall-Johns of Oppenheimer stated, "The U.S. Customs 24-hour rule ... presents some challenges for fresh produce" (p. 5). Do you have any objections to this revised Customs Service regulation? If so, how would you like it to be changed?

Response: The advance manifest notification is an important instrument that U.S. Customs has required to prevent last minute cargo loading. This makes it more difficult for a terrorist to wait for the very last minute to put something undesirable like a weapon or other contraband in a container. The 24-rule does act as a deterrent and we support that effort. The Container Security Initiative depends on the 24-hour rule for its effectiveness.

Q10. Container Security. The U.S. Customs Service has a two-part Operation Safe Commerce initiative. In January 2002, Customs initiated a Container Security Initiative (CSI), where U.S. Customs inspectors identify "**high-risk**" containers and pre-screen U.S.-bound high-risk containers at major foreign ports, using technology (radiation detectors and large-scale x-ray-type machines) so that it can be done rapidly. Another aspect of CSI is the development of smarter, "tamper-evident" containers (e.g., with electronic seals, sensors, or tracking devices).

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a. Random Screening. In his written statement, Mr. Marshall-Johns of Oppenheimer stated, "Cargo screening on a **random** basis at time of arrival in the U.S. is imperative" (emphasis added, p. 5).

What changes in container screening, if any, do you recommend for U.S. or foreign ports to better reduce risk to U.S. port workers and the American public? For example, besides screening of high-risk containers, should a random sample of non-high-risk containers be screened?

b. Supply Chain. What requirements, if any, should be included in the forthcoming interim final rules regarding containers themselves? For example, what requirements, if any, should be included to ensure security along the entire supply chain (i.e., procedural security, physical security, personnel security, education and training, access control, manifest procedures, and conveyance security)?

Response: The Port of Los Angeles believes that the 24-rule, the 72-hour rule and 96-hour rule need to be in place as part of the process of detecting the anomalies as well as pushing back the borders. As we stated earlier, the Container Security Initiative, as part of Operation Safe Commerce, is the vehicle currently being utilized to review the supply of containerized cargo. The inspection of containers performed by the U.S. Customs Officers overseas ensures the safety of our nation and of the ships sailing to our ports.

We do support inspection of containers upon arrival but believe that random inspections might not be truly effective unless U.S. Customs uses screening criteria that enhance "random" selection in order to produce a better result. Inspection is too costly and time consuming but U.S. Customs should be the final authority on the issue.

Supply chain security must, as previously, stated begin at cargo origination points and at the load ports. Containers must be made secured against intrusion after inspection with secure door hardware and with high security locks or seals. Seal and container security must be checked upon arrival in U.S. ports and prior to handing off to truckers or rail carriers. Beyond that, it would seem that concerns would shift to cargo security (theft prevention) and not national security, as the container is now within the U.S.

While we support the use of tamperproof seals, we do not believe that protocols for their use have been sufficiently developed that ensures a container can truly be certified as "safe."

Q11. Container Performance Standards. The new law requires the Homeland Security Department to develop performance standards to "enhance the physical security of shipping containers, including standards for seals and locks" (Sec. 102 § 70116 & Sec. 111).

What do you recommend should be included in these container performance standards?

Response: We would recommend to the Department of Homeland Security to set performance standards for containers that addresses tamperproof hinges and seals. Hinges have always been an issue. Tamperproof hinges on the container that would prevent the doors from being lifted off with or without a seal on them would be ideal.

Any structure of the type of a container or trailer could be breached if someone were to do it in an obvious way, cut a hole on the side or rip open one of the aluminum sheets. However, such breaches are probably not what somebody would do if they were wishing to smuggle. Again, the means of entry and egress in the container focuses on the doors. So the critical issue is hardware that will remain secure with a lock or seal in place in such a way that you'll know that the lock or seal in fact has secured the container for the duration of its voyage. It is necessary to know that there was not some other point of entry and typically speaking, that's a concentration on the doors and the hardware.

The issue of establishing container performance standards is a very complicated issue, and one of the problems with this issue, of course, is establishing the minimum requirements for what is a security device. There has been a lot of research conducted by the Cargo Handling Cooperative and this research should be provided to the policy makers and applied to establishing what standards may by acceptable.

Q12. Unsealed Empty Containers. In his written statement for the ILWU, Dr. Miretti recommended that the U.S. follow the "common sense, affordable procedure" used by other countries to inspect empty containers (p. 2). Do you think that unsealed empty containers, which U.S. transportation workers have to handle, should be screened? If so, how?

Response: We believe in considering this question, it is important to determine, what it is that you are trying to accomplish. If federal authorities believe that there is a chance that someone would send a device of some type back into the port from within the United States, then perhaps this needs to be seriously looked at.

Q13. Screening Fresh Produce. The Oppenheimer Group and the Dole Food Company have worked with the U.S. Customs Bureau to ensure that certain fresh produce is prescreened abroad before loading. Should all fresh produce or certain kinds of fresh produce or fresh produce from certain countries be required to be prescreened abroad?

Response: Fresh produce should be prescreened abroad.

Q14. Improving Port Security Abroad. The Ports of Los Angeles and Long Beach have taken the initiative to work with certain ports abroad to ensure adequate prescreening before cargo is loaded on a vessel coming to the U.S. Currently, many but not all ports abroad have radiation detection equipment (some designed by the Energy Department's Sandia National Laboratories) to screen for weapons of mass destruction.

Should the U.S. government buy and place such equipment at all key ports abroad? Should the U.S. government require prescreening abroad of certain kinds of containers? If so, which kinds? What about "consolidated" cargo (with more than one kind of good) containers that account for over one-fourth of all containers? And, should the U.S. offer other financial support to developing countries to improve their port security?

Response: We agree that pushing back our borders will make our nation, the ships calling at our ports, and most importantly, our workers safe. Prescreening of specific containers abroad is an excellent concept. How to go about doing that is best left to our law enforcement agencies to develop the best practices and procedures about which containers should be screened and what constitutes a "red flag." Local intelligence, computer profiles and physical screening should all play a role.

With respect to how this will be funded can be a shared partnership with the federal government and our trading partners overseas. This concept of prescreening is for the safety of all concerned in the transshipment of goods since we are an interdependent global market.

Radiation detection devices placed in key overseas load and transshipment points can be very effective in lessening the threat of a radiological weapon of mass destruction being loaded to a vessel bound for a U.S. port. Some can screen without slowing the speed of commerce and should be considered at a minimum.

A determination should be made that all containers originating from specific countries that are known to be hostile or have terrorists cells must pass chemical, radiation and biological screening. This mandate may encourage those countries' authorities to crackdown on such behavior and be less tolerant. Additionally, they should share in the costs of prescreening containers if they wish to continue trading with the United States.

Q15. International Trade Agreements. To raise international port security, should the U.S. require compliance with certain port security standards in its international trade agreements?

Response: International Trade Agreements would be the right opportunity to require compliance with specific U.S. port security standards implementation of inspections at the ports of origin. This is a matter of getting attention when it is best had. Self-interest, after all, is important and the United States is the world's largest consumer of goods from other countries.

In our experience, once the doors were open in Hong Kong and Singapore, we found a great deal of flexibility and the ability to have our consultants work with their authorities to come up with technologies and on the ground procedures that would work. Those were worked out with the U.S. Customs officers who are stationed there. The concept of pushing back the borders to the people who send goods for transshipment to the United States was from such a relationship.

I continue to believe that cargo inspection overseas is our best means of ensuring safe cargo arrivals in the U.S. We need to make certain that foreign countries and points of embarkation do what they are supposed to do to make sure that the cargo going into containers is safe, and that those containers are inspected, and sealed in some fashion so we know what is coming our way. We then don't have to worry about it offshore or on-shore, on trucks or on rail.

It is imperative that terrorists know that every container, whether it's under international agreement or not, or whether it's coming from a small non-descript port, is going to meet minimum standards and prescreening under certain conditions. No container will have am immediate seal of approval simply because it's under an international trade agreement.

Q16. Passenger and Crew Manifests. In January 2003, the Immigration and Naturalization Service (INS) published a proposed rule requiring all passengers and crews departing from or arriving at U.S. ports to submit additional information (8 CFR §217, 231 & 251).

Did your organization submit a comment on this proposed rule? And, do you have any objections to it? If so, what changes would you like INS to make?

Response: The Port of Los Angeles did not submit a comment on this proposed rule. However, we support the Immigration and Naturalization Services proposed rule requiring all passengers and crews departing from or arriving at U.S. ports to submit additional information.

Q17. Passenger Interviews & Searches. In the Subcommittee's hearing on air security regulations, we heard testimony about the need for interviews of all or selective passengers, screening baggage, and possibly matching passengers and baggage.

Should cruise passengers be interviewed? Should their baggage be searched? Should there be matching of passengers and baggage? What Federal rules, if any,

should govern this process?

Response: Yes, cruise passengers should be interviewed, and their baggage searched both on a random basis or by selective process if questionable. Every piece of baggage should be matched up to an existing ticketed passenger.

Q18. Drug and Alcohol Testing. Currently, various Federal agencies use drug and alcohol testing for employees engaged in national security sensitive or health and safety sensitive functions. Should any port employees (e.g., guards and crew members) or others requiring access to secure areas and functions of a port be subject to random drug and alcohol testing?

Response: Port employees, sworn officers, civilians and private security personnel that have access to critical terminal operations, data and information should be at a minimum randomly tested for illegal drugs. We would be concerned with tests for all drugs and alcohol due to the obvious problems that could result if a person having consumed legally, and then is unfortunately tested positive. Illegal drugs should be the focal point.

Q19. Enforcement and Penalties. In her written testimony, Ms. Williams stated, "Laws must severely punish criminals unlawfully obtaining or using [driver's personal data, and business' proprietary and confidential] information, and include far-reaching financial sanctions and lengthy incarceration" (p. 5). In its December 30, 2002 notice of seven public meetings to discuss maritime security, the Coast Guard stated that the public previously "stressed the importance of uniformity in the application and enforcement of requirements" (67 FR 79743).

The new law requires the Federal government to issue an interim final rule governing civil penalties up to $25,000 for each violation of the new law or any implementing regulation. What provisions do you think should be included in Federal rules for statutory or regulatory violations by a facility or vessel owner or operator or other persons?

Response: Appropriate penalties should be established by those in position to know the impact for deterring terrorists and violators of the rules. Possible penalties could be giving U.S. Coast Guard and/or U.S. Customs the authority to shutdown a terminal operator or to refuse entry to a vessel for flagrant violations.

Q20. Federal Preemption of State/Local Requirements. Mr. Parker's written testimony stated, "State and local government are also imposing more regulatory conditions on Port operations – some of which may actually divert resources from port security" (p. 2). He recommended that the Federal government "should ensure – by federal preemption where necessary – that operating requirements and restrictions imposed by state and local government are consistent with the goals of

overall port security" (p. 3). What are your views on Federal preemption of State and local requirements?

Response: We believe that the federal government must take the lead in national security issues and security procedures. The failure to do so opens the door to local and state procedures, which will prove costly, duplicative and possibly counter productive.

We've found that federal preemption works best in addressing the concerns of overall port security because it creates one standard for all to follow without contradiction or confusion.

However, it is also important that local authorities, especially security authorities, are provided a method for providing input to the federal structure prior to implementing federal rules. For example, federal rules that apply to the Port of Los Angeles may not be appropriate at the Port of San Diego or some other venue. The Port of Los Angeles has a working force of some 25,000 people including dockworkers and truckers. There needs to be some flexibility and understanding as to the problems at hand and to application of those rules in such a diverse workforce. There needs to be a vehicle for allowing some local interpretation on methods to deal with rules that apply to unique local situations.

Q21. Distribution of Federal Grant Dollars. In his written statement, Mr. Keller outlined the Port of Los Angeles's applications for and receipt to date of insufficient Federal grant dollars, especially concerning that the Ports of Los Angeles and Long Beach that handle more than 42 percent of the nation's containerized commerce. He believes that the Port of LA "need[s] to receive a reasonable and appropriate share of the federal port security funding" (p. 3). Should Federal grant dollars be distributed proportionately to a port's size and contribution to the Nation's commerce?

Response: Absolutely. We think sources and uses are the perfect answer to this. The San Pedro Bay port complex comprised of the Ports of Los Angeles and Long Beach should receive federal grant dollars based on its size and its contribution to the nation's commerce.

When the nation's largest port complex was shutdown during the International Longshore and Warehouse Union lockout, our nation felt the tremendous ripple effects of halted goods movement and the stoppage of work that occurred as a result. This was a lesson which provided us an example of our nation's dependence on an efficient and safe transportation network to distribute cargo efficiently along our trade corridors. The ability to move cargo seamlessly through the Port of Los Angeles is crucial to the overall economic vitality of the nation. We cannot do this if our security is hampered or breached. A terrorist attack at the Port would not only cause havoc in our region, but also seriously affects the maritime trading system, thereby further disrupting U.S. and international commerce.

As part of the nation's largest port complex, we need to receive a reasonable and appropriate share of the federal port security funding. Security funding needs to be based on the potential consequences of terrorist activities and the sheer volume of cargo requiring security. Prototypes developed here can be implemented rationally, for example, the 12 million containers coming through the Ports of Los Angeles and Long Beach obviously have a high risk of intrusion.

Therefore, it requires a lot more expense to secure 12 million containers than it would a lesser amount of cargo at another port.

Q22. Financing Improved Port Security. Currently, there is insufficient Federal funding to fully ensure port security. Some in Congress advocate a new user fee on vessels, sea containers, bulk cargo, and cruise passengers. Others suggest that, instead of being deposited in the Federal government's general fund, customs revenues be used to fund improved port security. In Fiscal Year 2001, the U.S. Customs Bureau collected $15.6 billion in duties on commodities entering the U.S. through the marine transportation.

In his written testimony, Mr. Keller stated, that the Port of LA opposes additional "user fees" to shippers and truckers and "strongly believe[s] that Customs revenues can provide the appropriate source for funding the additional security required at our nation's ports" (p. 4).

Response: There has been discussion on a number of fronts regarding the proposal of adding additional "user fees" to shippers and truckers to fund security enhancements at our nation's ports. We do not believe such proposals to be warranted. The economics of such proposals should be carefully analyzed, even with regard to seemingly "minimal" fee assessments.

In an already weak economy, adding these "user fees" to shippers and truckers will result in higher overall costs to consumers and ultimately cause additional inflation. The ripple effect will be felt in the imported goods lining the shelves of stores across the U.S., and will also further impact the markets of U.S. manufactured products exported to overseas markets, many of which incorporate some imported content. Exporters might, in fact, end up paying twice, thus disadvantaging U.S. manufacturers and exporters.

If these costs are too high, other nations will get their goods from someplace other than the U.S. The highest overall benefit to the American consumer can only be achieved through unhampered access to reasonably priced, high quality goods, and the American exporter must have the ability to compete without costly fees.

The Port of Los Angeles believes that U.S. Customs revenues, collected from imported commodities using maritime transportation, can be applied to security infrastructure and security improvements. According to U.S. Customs, Port of Los Angeles users pay approximately $12 million each day in Customs duties, with the Los Angeles Customs District leading the nation in total duties collected for maritime.

We know that most of U.S. Customs duties collected are deposited into the general fund in support of federal activities, with the exception of approximately 30% of the gross Customs receipts specifically designated for agricultural and food programs which is appropriate given the fact that much of those products are ultimately exported.

This is a growth industry. We have previously submitted in our written testimony that growth in U.S. Customs revenues increases from year to year, and that it grows almost $1 billion a year.

We are suggesting taking a single year's increment, not just for the Port of Los Angeles but for all the ports in the United States, as a set aside to allow us to have the security materials that we need in the ports. It is key that the funds should be distributed based on a port's size and overall contribution to the nation's commerce. We, therefore, continue to strongly believe that Customs revenues can provide the appropriate source for funding the additional security required at our nation's ports.

TOM DAVIS, VIRGINIA,
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BERNARD SANDERS, VERMONT,
INDEPENDENT

May 2, 2003

BY FACSIMILE
Mr. Timothy Parker
Executive Secretary
Steamship Association of Southern California
900 Wilshire Blvd – Suite 1434
Los Angeles, CA 90017

Dear Mr. Parker:

This letter follows up on the April 24, 2003 hearing of the Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs, entitled "What Regulations are Needed to Ensure Port Security?" First, let me thank you for your extremely helpful written and oral testimony, including your thoughtful recommendations for how the Federal government can better ensure port security. Second, as discussed during the hearing, I am enclosing followup questions for the hearing record.

Please send your response to the Subcommittee majority staff in B-377 Rayburn House Office Building and the minority staff in B-350A Rayburn House Office Building by May 26, 2003. If you have any questions about this request, please call Subcommittee Deputy Staff Director Barbara Kahlow on 226-3058. Thank you for your attention to this request.

Sincerely,

Doug Ose
Chairman
Subcommittee on Energy Policy, Natural
Resources and Regulatory Affairs

Enclosure

cc The Honorable Tom Davis
The Honorable John Tierney

Questions the same as those sent to
Larry Keller
Executive Director
Port of Los Angeles

(see previous pages)

Answers to Chairman Ose's Questions from Tim Parker
Executive Secretary
Steamship Association of Southern California
May 27, 2003

Q2. Federal vs Private Sector Roles. Maersk's written testimony stated, "As commercial enterprises we do not enjoy the Government's sovereign immunity, and therefore cannot be expected to conduct either **law enforcement or military operations**" (emphasis added, p. 4). Maersk opposed a Federal regulatory requirement for private parties to "randomly inspect and search individuals and vehicles entering waterfront facilities," "deploy their own security boats," and use divers "to inspect pier structures prior to the arrival of a vessel" (p. 3). Mr. Parker's written testimony stated, "while shipping companies are ready, willing and able to support and assist the government to protect our ports, we cannot act as government functionaries. We cannot, for example, perform law enforcement activities, such as patrolling the waters around the port" (p. 2) and "inspecting cargo or checking the identification of seafarers" (p. 3). Lastly, Ms. Williams's written testimony stated, "it does not make sense to require a land-based facility like a motor carrier to have maritime/IMO security expertise" (p. 3).

In air transportation, the new air security law required the Federal government to takeover the screening of all passengers and baggage. What maritime security functions do you believe should be the responsibility of the Federal government?

The Federal government should have the primary role for port security that is mandated by the Federal government. All security screening and identification cards (TWIC) should be Federal not only to protect the database but to assure consistency.

Q20. Federal Preemption of State/Local Requirements. Mr. Parker's written testimony stated, "State and local government are also imposing more regulatory conditions on Port operations – some of which may actually divert resources from port security" (p. 2). He recommended that the Federal government "should ensure – by federal preemption where necessary – that operating requirements and restrictions imposed by state and local government are consistent with the goals of overall port security" (p. 3). What are your views on Federal preemption of State and local requirements?

Recent California State law passed in 2002 require significant investment by ports and terminal operators to meet needs other than terminal security.

AB2650 affects Oakland, Los Angeles and Long Beach and will take investment in software for scheduling systems as well as changes in gate positioning to meet this bill's requirements. For those terminals that do not invest in scheduling systems, longer operating hours, at increased costs, will result. The final costs for these changes will not be known until July 1, 2003 when the full effect of this law takes effect.

AB2769 affects the Port of Los Angeles and requires that funds generated by Port activities be spent in the 15th Council District. The Steamship Association of Southern California along with the Los Angeles Chamber of Commerce, numerous civic groups opposed this measure when it was submitted to the Los Angeles City Council for certification as a charter amendment. When this amendment was originally approved it was delayed for placement on the city ballot for approval by the electorate. The economic effect of this measure would be to take available port funds from projects such as security measurers and transfer them to civic improvement project having nothing to do with port security.

I believe there are others who can respond to the balance of the questions. Should you have any further questions, please advise.

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May 2, 2003

BY FACSIMILE
Mr. John Ochs
Security Manager
APM Terminals, Maersk Sealand, Ltd.
2500 Navy Way
Terminal Island, CA 90731-7554

Dear Mr. Ochs:

This letter follows up on the April 24, 2003 hearing of the Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs, entitled "What Regulations are Needed to Ensure Port Security?" First, let me thank you for your extremely helpful written and oral testimony, including your thoughtful recommendations for how the Federal government can better ensure port security. Second, as discussed during the hearing, I am enclosing followup questions for the hearing record.

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Sincerely,

Doug Ose
Chairman
Subcommittee on Energy Policy, Natural
Resources and Regulatory Affairs

Enclosure

cc The Honorable Tom Davis
The Honorable John Tierney

Questions the same as those sent to Larry Keller Executive Director Port of Los Angeles

(see previous pages)

APM TERMINALS

May 21, 2003

The Honorable Doug Ose
Chairman
Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs
Committee on Government Reform
House of Representatives
Congress of the United States
B-377 Rayburn House Office Building
Washington, D.C. 20515-6143

Dear Chairman Ose:

Thank you for allowing Maersk Pacific Ltd. to participate with your Subcommittee's hearing held in Los Angeles on April 24, 2003.

Please find enclosed our responses to your questions regarding port security.

John R. Ochs
Security Manager – Los Angeles
APM Terminals Pacific Limited

Enclosure: Port security responses

Maersk Pacific Ltd.
2500 Navy Way, Terminal Island, CA 90731-7554
Telephone: 310-221-4000. Fax: 310-221-4434.
Internet: http://www.pier400.net

Q1. Identification:

a. We favorably anticipate the implementation of a standardized Federal TWIC program, and for the cards to be issued by the designated responsible parties at the earliest opportunity.

b. We recommend fingerprint validation because the FBI's NCIC database also uses fingerprints. Using this common procedure should expedite any criminal investigations.

c. Background checks should be a condition of employment for anyone, including management, applying for a TWIC. Federal preemption should be established before the program is initiated to prevent local agencies from convoluting and complicating the standardized Federal TWIC concept. A recognized law enforcement agency, not a private contractor, should conduct the background checks.

d. Employers should be advised which of their employees have been "approved" for a TWIC. Employers will use this information to determine who should be granted access to "restricted areas" within their terminals. Employers do not require the actual data the law enforcement agency used to grant or deny the TWIC application.

e. This matter should be deferred to the T.S.A. However, our opinion is that data from the TWIC system, including the results of background checks, should be available to any law enforcement agency.

f. Any individual, including contractors and truck drivers, desiring routine access to a marine terminal should be required to obtain a TWIC.

Q2: Roles:

The Federal government should:

- Establish standard policy guidelines for the TWIC.
- Ensure that commercial terminal operators are not required to conduct law enforcement or military operations, such as detection of explosives, inside their facilities.
- Ensure that commercial terminal operators are not accountable for any security operations outside of their property line, including the land and the waterway adjacent to their facility.

Q3: Minimum rules:

Requirements should establish a common baseline applicable at every facility. Implementation of minimum rules requires flexibility, and consideration of variable factors such as the current threat assessment for a particular waterfront facility.

Federal certification will ensure a level playing field among commercial peers and competitors. However, self-assessments remain a valuable tool if they are validated by an appropriate law enforcement agency.

Q4: Content of Rules:

The current version of the USCG's draft NVIC discusses all of the general and specific topics which should be addressed in a facility security plan.

Q5: Training:

Facility watchmen are tasked to "observe and report". They are not first responders, or law enforcement officers with the power to search, detain, or arrest. There are not any fitness or strength minimum standards for watchman. They are unarmed. Therefore, assuming a watchman successfully completes a background check and is granted a TWIC, only generalized training is required.

Required training should not exceed 16 hours. Alternatives to traditional classroom instruction should be accepted, such as web-based training classes and courses.

General topics may include alerting local law enforcement and emergency agencies, preparing logs and reports, facility evacuations, crisis response procedures and basic awareness/observation best practices.

Q6: Standards:

The USCG's draft NVIC establishes a baseline of performance criteria. These guidelines are flexible and may be adjusted to conform to the needs and requirements at each facility. Zero Tolerance policies are typically not effective; the local USCG Captain of the Port is in the best position to determine if a facility security plan is adequate to comply with the MTSA.

Q7: Scheduling:

Advance scheduling is a useful tool to regulate access. However, the nature of business sometimes requires a vendor to respond on short notice to complete unscheduled and emergency onboard repairs required to allow a vessel to sail on time. Facilities should establish procedures to validate unscheduled vendor visits.

Q8: NOA:

No objections.

Q9: Manifests:

No objections.

Q10: Containers:

a. The imperative procedural change is to screen containers overseas, before they are loaded aboard ship for export to the U.S. It is a common perception that random checks are typically inefficient when compared to the Customs Service's AIS and AMS processes. These systems offer a proven methodology to target specific containers for inspection.

b. An international standard for electronic security seals must be established. These passive seals can be electronically interrogated to validate a serial number and verify that the seal has not been tampered with and remains intact.

   As you know, the DOT is still evaluating container security standards in conjunction with Operation Safe Commerce.

   Maersk has developed our own innovations to prevent tampering, including the secure cam lock device installed on all of our new containers.

Q11: Standards:

As discussed, international standards for electronic seals need to be established.

A common process should also be mandated regarding seals. Seals should be applied at the origin of the transit when the container is "stuffed" at the shipper's facility.

Q12: Empty containers:

Empty containers being shipped from the U.S. should not require inspection – we are not exporting terrorism.

Empty containers being imported into the U.S. may require an inspection (performed overseas prior to loading). The Government's threat assessment regarding the overseas port may justify applying a security seal as an additional measure.

Q13: Produce:

All prescreening should be conducted overseas.

Q14: Port security abroad:

The key to the successful implementation of OSC is to "extend our borders overseas". Inspections of U.S. bound containers should be conducted overseas.

Q15: Agreements:

Compliance should be a requirement for the privilege of trading with the U.S.

Q16: Crew manifests.

No objections.

Q17: Passengers:

N/A

Q18: Drug and Alcohol Testing:

We would comply with any Federal requirement regarding random testing of personal granted access to restricted areas.

Q19: Penalties:

The USCG should conduct a courtesy visit to a waterfront facility to assess MTSA compliance prior to any formal inspection process that carries provisions for penalties. A consistent assessment of the MTSA standards is desired.

Q20: Preemption:

Federal preemption is mandatory: local agencies should not be allowed to convolute or complicate the Federal standards established in the MTSA and the NVIC.

Q21: Grants:

Grants should be distributed proportionately to a port's comparative size and volume. However, smaller ports should not be excluded from competing for anti-terrorism funds.

Q22: Funding:

The actual cost of securing the inter-modal chain of commerce remains undetermined at this time. The entire maritime industry is still calculating the expense projections associated with MTSA and ISPS compliance.

Attempting to forecast potential future security requirements is an exercise in budget speculation. Two examples of possible mandates are the required use of electronic seals and increased inspections on containers shipped from load ports deemed as "high risk".

It is difficult to address the generic issue of "funding" before understanding the total costs associated with securing both the sea ports and the actual supply chain.

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May 2, 2003

BY FACSIMILE
Mr. Rob Marshall-Johns
Director of Operations & Quality Control
The Oppenheimer Group
11 Burbridge Street – Suite 101
Coquitlam, B.C. V3K 7B2

Dear Mr. Marshall-Johns:

This letter follows up on the April 24, 2003 hearing of the Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs, entitled "What Regulations are Needed to Ensure Port Security?" First, let me thank you for your extremely helpful written and oral testimony, including your thoughtful recommendations for how the Federal government can better ensure port security. Second, as discussed during the hearing, I am enclosing followup questions for the hearing record.

Please send your response to the Subcommittee majority staff in B-377 Rayburn House Office Building and the minority staff in B-350A Rayburn House Office Building by May 26, 2003. If you have any questions about this request, please call Subcommittee Deputy Staff Director Barbara Kahlow on 226-3058. Thank you for your attention to this request.

Sincerely,

Doug Ose
Chairman
Subcommittee on Energy Policy, Natural
Resources and Regulatory Affairs

Enclosure

cc The Honorable Tom Davis
The Honorable John Tierney

Questions the same as those sent to
Larry Keller
Executive Director
Port of Los Angeles

(see previous pages)

Answers to Chairman Ose's Questions from Rob Marshall-Johns
Director of Operations & Quality Control
The Oppenheimer Group
May 26, 2003

Q1. Identification of Workers & Others with Port Access. Various Federal agencies – including the Transportation Department's Research and Special Programs Administration (RSPA), the Homeland Security Department's Transportation Security Administration (TSA), and the General Services Administration (GSA) – are jointly developing a standardized "smart" common Transportation Worker Identification Credential (TWIC) for all transportation workers and others requiring access to secure areas and functions of the transportation system. This smart card would include biometric information to ensure a person's identity.

The new Maritime Transportation Security Act requires the Homeland Security Department to issue regulations governing transportation security cards and a waiver process for individuals ineligible for such a card. Maersk's written statement called for TSA to accelerate development of TWIC (p. 2).

a. Concerns. What, if any, concerns do you have with such a standardized smart card?

Standardization is the key for consistency of implementation, screening, and confidence in the TWIC system.

b. Biometrics. Are you concerned with use of a biometric? Do you object to any specific kind of biometric? If so, which and why?

We do not have any concerns with the use of biometrics in any form

c. Background Checks. In his written statement, Dr. Miretti stated, "As a general matter of policy, the ILWU membership opposes background checks on any workers" (p. 3). In her written statement, Ms. Williams supported background checks, with periodic renewals, which should be used across transportation modes, should be made quickly (i.e., within 4-7 days), and "must preempt all other state and local requirements" (p. 2).

- Do you have any concerns about background checks before issuance of a transportation security card?

No concerns as long as the background checks are focused on the potential for security risks and not on less impacting offenses (DUI, etc.).

- Who should be subject to a background check and who should be exempt? For example, what about gatekeepers? Guards? Computer operators? Truckers?

Any person that enters (or is required to) on a regular or semi-regular basis should be required to have a background check undertaken.

- What are your views on Federal preemption in this area?
Such background checks MUST preempt all other state and local requirements.

d. Access to Background Information. In her written statement, Ms. Williams expressed concern about the "protection of confidential personal and corporate information" (p. 4). Do you have any concerns about employer access to background information obtained during a background check? For example, its use in employee wage setting.

Background checks on such a scale should only be used for the checking of potential security risks and should not be used for any other purpose – especially in employee wage setting.

e. Data Sharing. In his written statement, Dr. Miretti stated, "We recommend that regulations require … that the TWIC card be used for positive identification security purposes only" (p. 3). Do you have any concerns about the interface of the TWIC system with other databases for a "watch list" and intelligence information?

In this day and age data sharing is commonplace, and there must be some ability afforded to those undertaking the background checks to use the information in any manner that they see fit. The information gathering process requires the co-sharing of information through other databases of information, so the development of the TWIC card appears to be a consolidation of the information already available – just not consolidated.

f. Coverage.
- Should all contractors, vendors and truckers servicing a port be required to receive a transportation security card?
- Who should be excluded and why?

There should not be any exclusions – any person required to undertake any role of employment within the ports of the US should be required to receive a TWIC card. A true definition of a "visitor" would need to be developed for those that enter the port facilities on an occasional basis.

g. Rules. What provisions should be included in the Homeland Security's forthcoming regulations governing TWIC?

Homeland Security should be the vehicle to drive the TWIC process, so that the databases of information gathered could be utilized across all the US government departments.

Q2. Federal vs Private Sector Roles. Maersk's written testimony stated, "As

commercial enterprises we do not enjoy the Government's sovereign immunity, and therefore cannot be expected to conduct either **law enforcement or military operations**" (emphasis added, p. 4). Maersk opposed a Federal regulatory requirement for private parties to "randomly inspect and search individuals and vehicles entering waterfront facilities," "deploy their own security boats," and use divers "to inspect pier structures prior to the arrival of a vessel" (p. 3). Mr. Parker's written testimony stated, "while shipping companies are ready, willing and able to support and assist the government to protect our ports, we cannot act as government functionaries. We cannot, for example, perform law enforcement activities, such as patrolling the waters around the port" (p. 2) and "inspecting cargo or checking the identification of seafarers" (p. 3). Lastly, Ms. Williams's written testimony stated, "it does not make sense to require a land-based facility like a motor carrier to have maritime/IMO security expertise" (p. 3).

In air transportation, the new air security law required the Federal government to takeover the screening of all passengers and baggage. What maritime security functions do you believe should be the responsibility of the Federal government?

Monitoring and control of all security services – I feel that as an absolute minimum, the role of the Federal Government in Port security, is that of ensuring the requirements are being adhered to, and security systems are being enforced – this can only be achieved by having government operated personnel controlling ingress and egress.

Q3. Minimum or Prescriptive Rules. Should the Homeland Security's forthcoming interim final regulations - which are targeted for issuance by June 30th - set a core, minimum, baseline standard set of requirements for every port, facility and vessel or should they include more prescriptive requirements? And, should the Department allow self-certification of compliance by non-Federal private parties?

Homeland Security (HS) should set a minimum set of requirements for Port Security (the foundation) and it is then the responsibility of the Port Facility to develop a full "Security Plan" which is audited and monitored by HS. This does not detract from the HS responsibility for ingress and egress onto the Port grounds.

The option for auditing and monitoring can be relinquished to either independent third party companies (which have been screened and certified by HS) or to HS itself – the latter would mean more consistent implementation as per the current TSA standards as operated at the airports.

Q4. Content of Port, Facility & Vessel Rules. The new law requires each facility and vessel to submit - 6 months after issuance of the interim final rules - its security plan for Federal review and approval. The law requires that these plans shall include provisions for: establishing and maintaining physical security, passenger and cargo security, and personnel security; establishing and controlling access to

secure areas; procedural security policies; communications systems; and other security systems.

Which of these subjects should be addressed in the interim final rules as **minimum** requirements?:

for Ports – perimeter security zones, barriers, patrol requirements, police, armed guards, alarm/surveillance system control, lighting, fencing, training, drills, exercises, firearms, advance scheduling of vendors/contractors/visitors, search/inspection of persons/packages/vehicles, verification by a 3rd party?

for Facilities (e.g., waterfront facilities, cruise ship passenger terminals, oil or bulk hazardous material facilities, waterfront facilities handling liquefied natural gas or liquefied hazardous gases)

– personnel screening, lighting, fencing, gates, other equipment, locked doors/windows, armed guards, manned TV monitoring systems, security alert systems, alarms, communications systems, training, drills, exercises, advance scheduling of vendors/contractors/visitors, search/inspection of persons/deliveries/packages, verification by a 3rd party, recordkeeping?

for Vessels – regular inspections by the vessel security officer, security guards, locked or secured restricted areas, lighting, security doors, motion detection equipment, surveillance equipment, training, drills, exercises, inspections by the U.S. Coast Guard, recordkeeping?

All of the above should be minimum requirements – it is not feasible to highlight one or more specific areas of focus – Port Security covers all of the above and the minimum requirements should be focused on these.

Q5. Training. In the Subcommittee's November 2001 hearing on air security regulations, we heard testimony about the need for training for screeners, pilots, flight attendants, and others. How many hours of classroom and on-the-job training do you think should be required for port security personnel? Who should be trained? And, what subject areas should be required to be covered in the training?

Hours of training – this is totally dependant on the Port facility – size, volumes, cargoes, etc. It could not be determined until minimum requirements have been developed, but it could be estimated that 40-80 hours of training are required based on the specific needs (as to their area of responsibility) of the person being trained.

Who should be trained – those responsible for the control port ingress and egress, as well as all Port Personnel responsible for Port security as per the individual port facilities "Security Plan".
Subject areas – all of those as indicated in Q4 under the headings of ***for Ports for Facilities,*** *and* ***for Vessels*** *– there should be no exceptions.*

Q6. Security Performance Standards. In the Subcommittee's hearing on air security regulations, we heard testimony about Transportation Secretary Mineta's "zero tolerance policy" for failures in a training test or in an on-the-job performance situation.

Should the Homeland Security Department establish performance standards for port security, facility security, and vessel security? If so, what should be included? And, should there be a "zero tolerance policy" for failure in a training test or an on-the-job performance situation?

Performance standards must be included for all areas of security especially in areas controlled by individuals – e.g. gate security. The port's Security Plan should highlight it's own Performance Standards based on the HS Minimum requirements.

Zero Tolerance is a very difficult standard to achieve and accordingly it may be necessary to have "Critical Control" points, in addition to other control points which are not so critical in nature. Critical Control points could have a zero tolerance whereas the others may have a small allowable tolerance.

Q7. Advance Scheduling. In February 2003, the Coast Guard's Captain of the Port Los Angeles – Long Beach issued a "Security Advisory" which stated his "expectation" that vendors, contractors, and pilots visits "shall be scheduled in advance." Should the forthcoming interim final rules require advance scheduling of all vendors and contractors, including the truckers who move in and out of a port?

A standard rule would be impossible to implement due to the nature of some of the products handled, and due to the nature of vessel discharge, road transport delays, and delays due to inclement weather, etc. which will impact on the on port logistics. However, there should be a system in place whereby port companies should be advised on personnel expected to enter the port grounds – a hard and fast rule would negatively impact the efficiencies of the ports and associated industries.

Q8. Vessel Information - Advance Notice of Arrival (NOA). In October 2001, the U.S. Coast Guard issued a temporary rule (and then a final rule in February 2003), which changed the 24-hour advance Notice of Arrival (NOA) of a vessel to a 96-hour NOA, and suspended some exemptions (33 CFR §160). The NOA now includes detailed information on the cargo, crew, passengers, and the vessel.

Do you have any objections to this revised Coast Guard regulation? If so, how would you like it to be changed?

We have no objections to the existing regulations as they now stand – it is workable and has created efficiencies for port companies.

Q9. Cargo Information - Advance Manifests. In October 2002, the U.S. Customs Service issued a final rule requiring 24-hour advance information before cargo is loaded at a foreign port onto a U.S.-bound vessel; previously, cargo declaration information was not available until the ship arrived at the U.S. port (19 CFR §4, 113 & 178).

In his written statement, Mr. Marshall-Johns of Oppenheimer stated, "The U.S. Customs 24-hour rule ... presents some challenges for fresh produce" (p. 5). Do you have any objections to this revised Customs Service regulation? If so, how would you like it to be changed?

In addition to my presentation, perhaps there could be room for an "intended cargo" manifest 24 hours prior to loading, with a requirement for a "manifested cargo" requirement 24 hours after loading – this in particular would apply to perishable items, which could potentially not have the same risk as manufactured goods.

Q10. Container Security. The U.S. Customs Service has a two-part Operation Safe Commerce initiative. In January 2002, Customs initiated a Container Security Initiative (CSI), where U.S. Customs inspectors identify "**high-risk**" containers and pre-screen U.S.-bound high-risk containers at major foreign ports, using technology (radiation detectors and large-scale x-ray-type machines) so that it can be done rapidly. Another aspect of CSI is the development of smarter, "tamper-evident" containers (e.g., with electronic seals, sensors, or tracking devices).

In April 2002, Customs initiated the Customs-Trade Partnership Against Terrorism (C-TPAT), which offers importers **expedited** processing of cargo if they secure their entire supply chain (not just at foreign seaports) and are certified by the Customs Service. Currently, only a small percentage of cargo is screened by Customs after a risk assessment is made.

a. Random Screening. In his written statement, Mr. Marshall-Johns of Oppenheimer stated, "Cargo screening on a **random** basis at time of arrival in the U.S. is imperative" (emphasis added, p. 5).

   What changes in container screening, if any, do you recommend for U.S. or foreign ports to better reduce risk to U.S. port workers and the American public? For example, besides screening of high-risk containers, should a random sample of non-high-risk containers be screened?

No further comment to be added – random screening of containers (both high and low risk) should be undertaken at the ports of loading and unloading.

b. Supply Chain. What requirements, if any, should be included in the forthcoming interim final rules regarding containers themselves? For example, what requirements, if any, should be included to ensure security along the entire supply chain (i.e., procedural security, physical security, personnel security, education and training, access control, manifest procedures, and conveyance security)?

Tamper proof security is required – there should be a system in place in the COE as well as the Country of Receipt where tamper proof security measures (electronic seals, etc.) should be monitored prior to any movement and at the time of receipt. All other measures should be covered under the port's "Security Plan" – the plan needs to be all encompassing.

Q11. Container Performance Standards. The new law requires the Homeland Security Department to develop performance standards to "enhance the physical security of shipping containers, including standards for seals and locks" (Sec. 102 § 70116 & Sec. 111).

What do you recommend should be included in these container performance standards?

As per Q10 b. – electronic sealing systems should be implemented for all sea going containers, (and possibly trailer units taken on US roads) which can be checked at any time by any enforcement agency as required by HS.

Q12. Unsealed Empty Containers. In his written statement for the ILWU, Dr. Miretti recommended that the U.S. follow the "common sense, affordable procedure" used by other countries to inspect empty containers (p. 2). Do you think that unsealed empty containers, which U.S. transportation workers have to handle, should be screened? If so, how?

Physical inspections by trained HS personnel – all containers entering port grounds should be checked (internally and externally) prior to ingress.

Q13. Screening Fresh Produce. The Oppenheimer Group and the Dole Food Company have worked with the U.S. Customs Bureau to ensure that certain fresh produce is prescreened abroad before loading. Should all fresh produce or certain kinds of fresh produce or fresh produce from certain countries be required to be prescreened abroad?

As per Q10 a. and b. – these containers should be pre-screened randomly at the point of shipping and the point of receipt – there shouldn't be any different

requirements for perishable and non-perishable products except those that hold up the flow of perishable product to the consumers.

Q14. Improving Port Security Abroad. The Ports of Los Angeles and Long Beach have taken the initiative to work with certain ports abroad to ensure adequate prescreening before cargo is loaded on a vessel coming to the U.S. Currently, many but not all ports abroad have radiation detection equipment (some designed by the Energy Department's Sandia National Laboratories) to screen for weapons of mass destruction.

Should the U.S. government buy and place such equipment at all key ports abroad? Should the U.S. government require prescreening abroad of certain kinds of containers? If so, which kinds? What about "consolidated" cargo (with more than one kind of good) containers that account for over one-fourth of all containers? And, should the U.S. offer other financial support to developing countries to improve their port security?

Port Security is a global issue and screening is one way to assist in securing the free world. Pre-screening could include detailed security inspections by trained personnel in the country of export. The purchase and placement of such equipment in other countries would assist in developing confidence in security in the shipping industry – financial support should be given to those countries requiring assistance – unfortunately being a leader has some costs associated with it – especially when you are the leader of a developing programme.

Consolidated cargo could require physical inspection at the time of loading – one of the requirements for those that want to utilize shipping space for small volumes of products.

Q15. International Trade Agreements. To raise international port security, should the U.S. require compliance with certain port security standards in its international trade agreements?

Negotiations at the time of international trade agreements for port security should be required – this is a two way street where we are trying to assure all parties that whatever can be done to maximize security is of benefit to all parties.

Q16. Passenger and Crew Manifests. In January 2003, the Immigration and Naturalization Service (INS) published a proposed rule requiring all passengers

and crews departing from or arriving at U.S. ports to submit additional information (8 CFR §217, 231 & 251).

Did your organization submit a comment on this proposed rule? And, do you have any objections to it? If so, what changes would you like INS to make?

No further comments (or changes) required

Q17. Passenger Interviews & Searches. In the Subcommittee's hearing on air security regulations, we heard testimony about the need for interviews of all or selective passengers, screening baggage, and possibly matching passengers and baggage.

Should cruise passengers be interviewed? Should their baggage be searched? Should there be matching of passengers and baggage? What Federal rules, if any, should govern this process?

The same goes for any international travel – planes and sea going passenger vessels should adhere to the same rules.

Q18. Drug and Alcohol Testing. Currently, various Federal agencies use drug and alcohol testing for employees engaged in national security sensitive or health and safety sensitive functions. Should any port employees (e.g., guards and crew members) or others requiring access to secure areas and functions of a port be subject to random drug and alcohol testing?

Yes – this is part of the process in many industries today, and the security of the key points on ingress and egress into the US (and any other country in the free world) is paramount.

Q19. Enforcement and Penalties. In her written testimony, Ms. Williams stated, "Laws must severely punish criminals unlawfully obtaining or using [driver's personal data, and business' proprietary and confidential] information, and include far-reaching financial sanctions and lengthy incarceration" (p. 5). In its December 30, 2002 notice of seven public meetings to discuss maritime security, the Coast Guard stated that the public previously "stressed the importance of uniformity in the application and enforcement of requirements" (67 FR 79743).

The new law requires the Federal government to issue an interim final rule governing civil penalties up to $25,000 for each violation of the new law or any implementing regulation. What provisions do you think should be included in Federal rules for statutory or regulatory violations by a facility or vessel owner or operator or other persons?

Consistency in the application and enforcement of regulations is essential – these rules must apply to all those involved in Port Security.

Q20. Federal Preemption of State/Local Requirements. Mr. Parker's written testimony stated, "State and local government are also imposing more regulatory conditions on Port operations – some of which may actually divert resources from port security" (p. 2). He recommended that the Federal government "should ensure – by federal preemption where necessary – that operating requirements and restrictions imposed by state and local government are consistent with the goals of overall port security" (p. 3). What are your views on Federal preemption of State and local requirements?

Federal preemption of state and local requirements is essential – one easy way to loose consistency in the uniformity and application of rules and requirements, is to have state and local requirements undermine them. The Federal government must develop the requirements and ensure that they are controlled, monitored, and audited by one body – HS.

Q21. Distribution of Federal Grant Dollars. In his written statement, Mr. Keller outlined the Port of Los Angeles's applications for and receipt to date of insufficient Federal grant dollars, especially concerning that the Ports of Los Angeles and Long Beach handle more than 42 percent of the nation's containerized commerce. He believes that the Port of LA "need[s] to receive a reasonable and appropriate share of the federal port security funding" (p. 3). Should Federal grant dollars be distributed proportionately to a port's size and contribution to the Nation's commerce?

Port size and contribution to the nation's commerce are the key factors that must be taken into account – there may be some flexibility given in terms of current level of security and that need to reach the minimum requirements, but that should be a separate negotiation based on special circumstances.

Q22. Financing Improved Port Security. Currently, there is insufficient Federal funding to fully ensure port security. Some in Congress advocate a new user fee on vessels, sea containers, bulk cargo, and cruise passengers. Others suggest that, instead of being deposited in the Federal government's general fund, customs revenues be used to fund improved port security. In Fiscal Year 2001, the U.S. Customs Bureau collected $15.6 billion in duties on commodities entering the U.S. through the marine transportation.

In his written testimony, Mr. Keller stated, that the Port of LA opposes additional "user fees" to shippers and truckers and "strongly believe[s] that Customs revenues can provide the appropriate source for funding the additional security required at our nation's ports" (p. 4).

What financing mechanism or source do you recommend to fund port security upgrades?

Customs revenues should be used for funding port security – as indicated in my presentation, individual importers (and exporters) are currently required to pay for security screening on containers within US ports – eventually the costs for all security requirements is going to come out of the consumers wallet.

TOM DAVIS, VIRGINIA,
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May 2, 2003

BY FACSIMILE
Ms. Stephanie Williams
Vice President
California Trucking Association
3251 Beacon Blvd.
West Sacramento, CA 95691

Dear Ms. Williams:

This letter follows up on the April 24, 2003 hearing of the Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs, entitled "What Regulations are Needed to Ensure Port Security?" First, let me thank you for your extremely helpful written and oral testimony, including your thoughtful recommendations for how the Federal government can better ensure port security. Second, as discussed during the hearing, I am enclosing followup questions for the hearing record.

Please send your response to the Subcommittee majority staff in B-377 Rayburn House Office Building and the minority staff in B-350A Rayburn House Office Building by May 26, 2003. If you have any questions about this request, please call Subcommittee Deputy Staff Director Barbara Kahlow on 226-3058. Thank you for your attention to this request.

Sincerely,

Doug Ose
Chairman
Subcommittee on Energy Policy, Natural
Resources and Regulatory Affairs

Enclosure

cc The Honorable Tom Davis
The Honorable John Tierney

Questions the same as those sent to Larry Keller Executive Director Port of Los Angeles

(see previous pages)

Answers to Chairman Ose's Questions from Stephanie Williams
Vice President
California Trucking Association
June 10, 2003

Q1. Identification of Workers & Others with Port Access.

a. Concerns. What, if any, concerns do you have with such a standardized smart card?

While we support the Transportation Workers' Identification Credential (TWIC) in principal, we are concerned with possible delays in issuing new cards, general interface between the TWIC and data collected internally by trucking companies, systems compatibility, and misuse through theft.

b. Biometrics. Are you concerned with use of a biometric? Do you object to any specific kind of biometric? If so, which and why?

Biometrics is not a real concern although we prefer the use of a thumb print. CTA prefers a biometric that can be collected easily through the use of scanners attached to our PC network and without expensive hardware or software. This simple type of biometric would allow us to permit our contractors to access files.

c. Background Checks. In his written statement, Dr. Miretti stated, "As a general matter of policy, the ILWU membership opposes background checks on any workers" (p. 3). In her written statement, Ms. Williams supported background checks, with periodic renewals, which should be used across transportation modes, should be made quickly (i.e., within 4-7 days), and "must preempt all other state and local requirements" (p. 2).

- Do you have any concerns about background checks before issuance of a transportation security card?

The most important issue is cost. We presently do background checks at our expense through a web available service and the cost is acceptable. Accuracy is a concern as we find many commercial services do not have comprehensive multi-state data.

Preemption is very important with regard to background checks. California's legislature is consistently adopting more stringent standards that often confuse interstate/intrastate trucking companies upon enforcement. SB 1257 (Murray), which passed California's legislature last year, is a perfect example. The California Highway Patrol is enforcing provisions of SB 1257 with regard to locking trailers and the new requirement for communication devices. Preemption is needed to avoid conflicting standards.

The background check should be tied to the TWIC to minimize costs and maximize efficiency.

- Who should be subject to a background check and who should be exempt? For example, what about gatekeepers? Guards? Computer operators? Truckers?

See above.

- What are your views on Federal preemption in this area?

The single most important issue is Federal preemption. It is too easy for a state elected official to jump on the terrorism bandwagon. As states can enforce California only regulations on only intrastate-based trucks, it is difficult for interstate trucks to sort through a myriad of state rules that individual states attempt to hold them accountable for and enforce. More costly intrastate regulations create difficulties for intrastate-based trucks.

d. Access to Background Information. In her written statement, Ms. Williams expressed concern about the "protection of confidential personal and corporate information" (p. 4). Do you have any concerns about employer access to background information obtained during a background check? For example, its use in employee wage setting.

See above.

e. Data Sharing. In his written statement, Dr. Miretti stated, "We recommend that regulations require … that the TWIC card be used for positive identification security purposes only" (p. 3). Do you have any concerns about the interface of the TWIC system with other databases for a "watch list" and intelligence information?

By allowing the interface of the TWIC system with other databases, current issues with false driver's licenses could be resolved. Expanding the system would allow for increased security monitoring capabilities, which would be in the best interests of port security.

f. Coverage.
   - Should all contractors, vendors and truckers servicing a port be required to receive a transportation security card?

It is important that the TWIC card be required for anyone servicing the ports. If any industry or group of contractors were to be exempt, it would

leave holes in the security at ports and thus opportunities for terrorist actions.

- Who should be excluded and why?

See above.

g. Rules. What provisions should be included in the Homeland Security's forthcoming regulations governing TWIC?

Q2. Federal vs Private Sector Roles. Maersk's written testimony stated, "As commercial enterprises we do not enjoy the Government's sovereign immunity, and therefore cannot be expected to conduct either **law enforcement or military operations**" (emphasis added, p. 4). Maersk opposed a Federal regulatory requirement for private parties to "randomly inspect and search individuals and vehicles entering waterfront facilities," "deploy their own security boats," and use divers "to inspect pier structures prior to the arrival of a vessel" (p. 3). Mr. Parker's written testimony stated, "while shipping companies are ready, willing and able to support and assist the government to protect our ports, we cannot act as government functionaries. We cannot, for example, perform law enforcement activities, such as patrolling the waters around the port" (p. 2) and "inspecting cargo or checking the identification of seafarers" (p. 3). Lastly, Ms. Williams's written testimony stated, "it does not make sense to require a land-based facility like a motor carrier to have maritime/IMO security expertise" (p. 3).

In air transportation, the new air security law required the Federal government to takeover the screening of all passengers and baggage. What maritime security functions do you believe should be the responsibility of the Federal government?

Trucking companies and their drivers should not enter the ports. Containers should be provided to us on wheels ready to move limiting the number of people who are authorized to be in secure areas. The current practice of using drivers as equipment hostlers within the port gates to take damaged chassis to maintenance facilities etc is conducted without compensation to the driver and without concern for driver safety. When truckers aren't inside the gates, fewer safety concerns present themselves at a very low cost.

Q3. Minimum or Prescriptive Rules. Should the Homeland Security's forthcoming interim final regulations - which are targeted for issuance by June 30th - set a core, minimum, baseline standard set of requirements for every port, facility and vessel or should they include more prescriptive requirements? And, should the Department allow self-certification of compliance by non-Federal private parties?

The Department of Homeland Security should prescribe the minimum security criteria and performance objectives for all U.S. port, organized according to port

type. The captain of each port should be allowed to adapt security criteria within reason to achieve performance objectives.

Q4. Content of Port, Facility & Vessel Rules. The new law requires each facility and vessel to submit - 6 months after issuance of the interim final rules - its security plan for Federal review and approval. The law requires that these plans shall include provisions for: establishing and maintaining physical security, passenger and cargo security, and personnel security; establishing and controlling access to secure areas; procedural security policies; communications systems; and other security systems.

Which of these subjects should be addressed in the interim final rules as **minimum** requirements?:

for Ports – perimeter security zones, barriers, patrol requirements, police, armed guards, alarm/surveillance system control, lighting, fencing, training, drills, exercises, firearms, advance scheduling of vendors/contractors/visitors, search/inspection of persons/packages/vehicles, verification by a 3rd party?

These items should be at the discretion of the port captain.

for Facilities (e.g., waterfront facilities, cruise ship passenger terminals, oil or bulk hazardous material facilities, waterfront facilities handling liquefied natural gas or liquefied hazardous gases)

– personnel screening, lighting, fencing, gates, other equipment, locked doors/windows, armed guards, manned TV monitoring systems, security alert systems, alarms, communications systems, training, drills, exercises, advance scheduling of vendors/contractors/visitors, search/inspection of persons/deliveries/packages, verification by a 3rd party, recordkeeping?

The hiring of armed guards would prove costly for the ports and thus should not be considered a requirement. The rest should be at the discretion of the port captain.

for Vessels – regular inspections by the vessel security officer, security guards, locked or secured restricted areas, lighting, security doors, motion detection equipment, surveillance equipment, training, drills, exercises, inspections by the U.S. Coast Guard, recordkeeping?

Q5. Training. In the Subcommittee's November 2001 hearing on air security regulations, we heard testimony about the need for training for screeners, pilots, flight attendants, and others. How many hours of classroom and on-the-job training do you think should be required for port security personnel? Who should

be trained? And, what subject areas should be required to be covered in the training?

Training should be left to the appropriate security enforcement agencies, such as the FBI and TSA.

Q6. Security Performance Standards. In the Subcommittee's hearing on air security regulations, we heard testimony about Transportation Secretary Mineta's "zero tolerance policy" for failures in a training test or in an on-the-job performance situation.

Should the Homeland Security Department establish performance standards for port security, facility security, and vessel security? If so, what should be included? And, should there be a "zero tolerance policy" for failure in a training test or an on-the-job performance situation?

See Q5.

Q7. Advance Scheduling. In February 2003, the Coast Guard's Captain of the Port Los Angeles – Long Beach issued a "Security Advisory" which stated his "expectation" that vendors, contractors, and pilots visits "shall be scheduled in advance." Should the forthcoming interim final rules require advance scheduling of all vendors and contractors, including the truckers who move in and out of a port?

Scheduling systems for trucks to enter the port have not yet proven to be feasible. Many terminal operators at California's largest ports are working on scheduling systems to aid them in complying with the idling law prescribed by AB 2650 (California, Lowenthal), but the systems have yet to be put in place and thus have not been proven successful.

Q8. Vessel Information - Advance Notice of Arrival (NOA). In October 2001, the U.S. Coast Guard issued a temporary rule (and then a final rule in February 2003), which changed the 24-hour advance Notice of Arrival (NOA) of a vessel to a 96-hour NOA, and suspended some exemptions (33 CFR §160). The NOA now includes detailed information on the cargo, crew, passengers, and the vessel.

Do you have any objections to this revised Coast Guard regulation? If so, how would you like it to be changed?

CTA has no objections to this rule, and in fact believes that it will aid port security and possibly make general port operations run more smoothly.

Q9. Cargo Information - Advance Manifests. In October 2002, the U.S. Customs Service issued a final rule requiring 24-hour advance information before cargo is loaded at a foreign port onto a U.S.-bound vessel; previously, cargo declaration

information was not available until the ship arrived at the U.S. port (19 CFR §4, 113 & 178).

In his written statement, Mr. Marshall-Johns of Oppenheimer stated, "The U.S. Customs 24-hour rule ... presents some challenges for fresh produce" (p. 5). Do you have any objections to this revised Customs Service regulation? If so, how would you like it to be changed?

Such advanced manifests are acceptable as long as Customs and other security authorities feel they are appropriate.

Q10. Container Security. The U.S. Customs Service has a two-part Operation Safe Commerce initiative. In January 2002, Customs initiated a Container Security Initiative (CSI), where U.S. Customs inspectors identify "**high-risk**" containers and pre-screen U.S.-bound high-risk containers at major foreign ports, using technology (radiation detectors and large-scale x-ray-type machines) so that it can be done rapidly. Another aspect of CSI is the development of smarter, "tamper-evident" containers (e.g., with electronic seals, sensors, or tracking devices).

In April 2002, Customs initiated the Customs-Trade Partnership Against Terrorism (C-TPAT), which offers importers **expedited** processing of cargo if they secure their entire supply chain (not just at foreign seaports) and are certified by the Customs Service. Currently, only a small percentage of cargo is screened by Customs after a risk assessment is made.

a. Random Screening. In his written statement, Mr. Marshall-Johns of Oppenheimer stated, "Cargo screening on a **random** basis at time of arrival in the U.S. is imperative" (emphasis added, p. 5).

   What changes in container screening, if any, do you recommend for U.S. or foreign ports to better reduce risk to U.S. port workers and the American public? For example, besides screening of high-risk containers, should a random sample of non-high-risk containers be screened?

b. Supply Chain. What requirements, if any, should be included in the forthcoming interim final rules regarding containers themselves? For example, what requirements, if any, should be included to ensure security along the entire supply chain (i.e., procedural security, physical security, personnel security, education and training, access control, manifest procedures, and conveyance security)?

Q11. Container Performance Standards. The new law requires the Homeland Security Department to develop performance standards to "enhance the physical security of shipping containers, including standards for seals and locks" (Sec. 102 § 70116 & Sec. 111).

What do you recommend should be included in these container performance standards?

The focus should be on who is transporting the container and what is in them rather than the container itself.

Q12. Unsealed Empty Containers. In his written statement for the ILWU, Dr. Miretti recommended that the U.S. follow the "common sense, affordable procedure" used by other countries to inspect empty containers (p. 2). Do you think that unsealed empty containers, which U.S. transportation workers have to handle, should be screened? If so, how?

Q13. Screening Fresh Produce. The Oppenheimer Group and the Dole Food Company have worked with the U.S. Customs Bureau to ensure that certain fresh produce is prescreened abroad before loading. Should all fresh produce or certain kinds of fresh produce or fresh produce from certain countries be required to be prescreened abroad?

Q14. Improving Port Security Abroad. The Ports of Los Angeles and Long Beach have taken the initiative to work with certain ports abroad to ensure adequate prescreening before cargo is loaded on a vessel coming to the U.S. Currently, many but not all ports abroad have radiation detection equipment (some designed by the Energy Department's Sandia National Laboratories) to screen for weapons of mass destruction.

Should the U.S. government buy and place such equipment at all key ports abroad? Should the U.S. government require prescreening abroad of certain kinds of containers? If so, which kinds? What about "consolidated" cargo (with more than one kind of good) containers that account for over one-fourth of all containers? And, should the U.S. offer other financial support to developing countries to improve their port security?

Q15. International Trade Agreements. To raise international port security, should the U.S. require compliance with certain port security standards in its international trade agreements?

Q16. Passenger and Crew Manifests. In January 2003, the Immigration and Naturalization Service (INS) published a proposed rule requiring all passengers

and crews departing from or arriving at U.S. ports to submit additional information (8 CFR §217, 231 & 251).

Did your organization submit a comment on this proposed rule? And, do you have any objections to it? If so, what changes would you like INS to make?

Q17. Passenger Interviews & Searches. In the Subcommittee's hearing on air security regulations, we heard testimony about the need for interviews of all or selective passengers, screening baggage, and possibly matching passengers and baggage.

Should cruise passengers be interviewed? Should their baggage be searched? Should there be matching of passengers and baggage? What Federal rules, if any, should govern this process?

Q18. Drug and Alcohol Testing. Currently, various Federal agencies use drug and alcohol testing for employees engaged in national security sensitive or health and safety sensitive functions. Should any port employees (e.g., guards and crew members) or others requiring access to secure areas and functions of a port be subject to random drug and alcohol testing?

All personnel authorized to enter security sensitive areas should be drug and alcohol tested. Licensed truck drivers are subject to random drug and alcohol testing as described in CFR Part 40 and CFR Part 382. Heavy equipment usage at ports is substantial, which is reason enough for a drug and alcohol testing requirement. Port employees who are under the influence of alcohol or illegal drugs will compromise security at the ports by being more susceptible to terrorist efforts. All classes of port employees should be subject to drug and alcohol testing.

Q19. Enforcement and Penalties. In her written testimony, Ms. Williams stated, "Laws must severely punish criminals unlawfully obtaining or using [driver's personal data, and business' proprietary and confidential] information, and include far-reaching financial sanctions and lengthy incarceration" (p. 5). In its December 30, 2002 notice of seven public meetings to discuss maritime security, the Coast Guard stated that the public previously "stressed the importance of uniformity in the application and enforcement of requirements" (67 FR 79743).

The new law requires the Federal government to issue an interim final rule governing civil penalties up to $25,000 for each violation of the new law or any implementing regulation. What provisions do you think should be included in Federal rules for statutory or regulatory violations by a facility or vessel owner or operator or other persons?

CTA's previous comments on this issue still stand. It is vital that strict penalties be issued for anyone who unlawfully obtains and/or uses confidential data and

information. CTA also agrees that uniformity in the application of enforcement is necessary to ensure consistency throughout all ports. Since rules and regulations are not yet specific, we have no recommendations on specific penalties at this time.

Q20. Federal Preemption of State/Local Requirements. Mr. Parker's written testimony stated, "State and local government are also imposing more regulatory conditions on Port operations – some of which may actually divert resources from port security" (p. 2). He recommended that the Federal government "should ensure – by federal preemption where necessary – that operating requirements and restrictions imposed by state and local government are consistent with the goals of overall port security" (p. 3). What are your views on Federal preemption of State and local requirements?

Successful port security will only occur if the relevant agencies, stakeholders, and law enforcement work together. Federal rules and security requirements should preempt local security requirements, but should include exemptions where appropriate for certain ports. Personnel background checks should not contain exemptions for any groups of employees, however.

Q21. Distribution of Federal Grant Dollars. In his written statement, Mr. Keller outlined the Port of Los Angeles's applications for and receipt to date of insufficient Federal grant dollars, especially concerning that the Ports of Los Angeles and Long Beach handle more than 42 percent of the nation's containerized commerce. He believes that the Port of LA "need[s] to receive a reasonable and appropriate share of the federal port security funding" (p. 3). Should Federal grant dollars be distributed proportionately to a port's size and contribution to the Nation's commerce?

CTA is not opposed to disbursing Federal grant dollars according to port size and throughput, but the use of the funds should be overseen by the appropriate Federal agencies.

Q22. Financing Improved Port Security. Currently, there is insufficient Federal funding to fully ensure port security. Some in Congress advocate a new user fee on vessels, sea containers, bulk cargo, and cruise passengers. Others suggest that, instead of being deposited in the Federal government's general fund, customs revenues be used to fund improved port security. In Fiscal Year 2001, the U.S. Customs Bureau collected $15.6 billion in duties on commodities entering the U.S. through the marine transportation.

In his written testimony, Mr. Keller stated, that the Port of LA opposes additional "user fees" to shippers and truckers and "strongly believe[s] that Customs revenues can provide the appropriate source for funding the additional security required at our nation's ports" (p. 4).

What financing mechanism or source do you recommend to fund port security upgrades?

CTA supports funding port security from existing revenue streams generated by port infrastructure. However, this approach may prove insufficient for security purposes. Any additional new fees should be assessed against the shippers rather than the carrier of the freight.

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May 2, 2003

BY FACSIMILE
Dr. Domenick L. Miretti
Professor
East Los Angeles College
1301 Avenida Cesar Chavez
Monterey Park, CA 91754

Dear Dr. Miretti:

This letter follows up on the April 24, 2003 hearing of the Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs, entitled "What Regulations are Needed to Ensure Port Security?" First, let me thank you for your extremely helpful written and oral testimony, including your thoughtful recommendations for how the Federal government can better ensure port security. Second, as discussed during the hearing, I am enclosing followup questions for the hearing record.

Please send your response to the Subcommittee majority staff in B-377 Rayburn House Office Building and the minority staff in B-350A Rayburn House Office Building by May 26, 2003. If you have any questions about this request, please call Subcommittee Deputy Staff Director Barbara Kahlow on 226-3058. Thank you for your attention to this request.

Sincerely,

Doug Ose
Chairman
Subcommittee on Energy Policy, Natural
Resources and Regulatory Affairs

Enclosure

cc The Honorable Tom Davis
The Honorable John Tierney

Questions the same as those sent to
Larry Keller
Executive Director
Port of Los Angeles

(see previous pages)

Rec. 5/20/03

May 22, 2003

Congressman Doug Ose – Chairman
Sub-Committee on Energy, Policy,
Natural Resources and Regulatory Affairs

Re: Federal Regulations Needed To Ensure Port Security

Submitted by Domenick Miretti, Phd, ILWU
In Response To Committee Questions for Port Security Witnesses

Q1. Identification of Workers and Others with Port Access

a. The Smart Card TWIC can be utilized as a form of identification with the understanding that the Smart Card will be biometric in character, which technology is at present time an art and not a science and therefore subject to technical and human error. My concern is who will develop the criteria for its development. In my opinion all industry stake-holders especially the affected unions should have an equal say in its planning, development and implementation.

b. Biometrics can be a device for purposes of identification. Cost, form, application, due process and invasion of privacy are of many separate concerns. Worker finger prints are required by most states for a driver's licenses. Transfer of this information to the Smart Card would be the cheapest biometric technique and would not expand the amount of any personal information held by any agency. In doing so, it is also important to recognize due process, because finger prints as a form of positive identification is vulnerable to error, criteria, technology and technicians skills which are variable, as studies have shown.

c. In my opinion there should be no background checks before issuance of a transportation security card.

   Truckers should be subject to background checks. Because longshore workers have never been a port security risk they should be excluded from background check. The ILWU has a long history of supporting our troops in time of war and peace. However, the ILWU has submitted a comprehensive proposal on port security and credentialing which is attached.

   There should be no Federal preemption in background checks. ILWU guards in Los Angeles/Long Beach currently undergo a periodic state required background check.

d. Background checks should be used for security risk assessment only. Use of the information as a wage setting device or any other reason is unacceptable. Background checks must be exclusively limited to relevant, identified criteria

(see ILWU Proposal). There must be firewalls. Neither employers nor any individuals or agency shall have access.

e. The TWIC card should be used for positive identification only dealing with port security. There should be no interfacing with other database materials or agendas.

f. Managers, CEO's, miscellaneous personnel, associates, contactors, vendors and especially truckers servicing a port should have a transportation security card. No one should be exempt if this is to be a security system. If there are exemptions it is political, not security.

g. One important provision that should be included in the Homeland Security's forthcoming regulations governing TWIC should be that the TWIC card be used for identification purposes only. Due process shall be an integral part of any credentialing system. Please refer to the ILWU Proposal (attached).

Q2. Federal VS Private Sector Rules

The responsibility of the Federal government in supporting maritime security should include but not be limited to funding badly needed port security projects, and providing Coast Guard and Customs with needed Federal monetary support. However, current practices of security personnel employed at Maersk (APM) Terminals and many other facilities include searching people and vehicles as required by the Coast Guard, including inspecting packages and the identification of seafarers and others patrolling the terminals. These are regular duties of current security employees in the Port of Los Angeles/Long Beach and else where.

Q3. Minimum or Prescriptive Rules

In terms of setting its interim final regulations Homeland Security should set core minimum baseline standard requirements, but allow flexibility for each port.

What is self-certification?

Q4. Content of Port Facility and Vessel Rules

All subjects should be addressed in the interim final rules. Minimum requirements for Ports, Facilities and Vessels should include: perimeter and access security, U.S. Coast Guard patrols, fencing and lighting controls, alarm and surveillance system controls and regular vessel inspection by the U.S. Coast Guard. Voluntary compliance is often not reliable after reliable and therefore unacceptable.

Q5. Training

Currently ILWU Local 26 Security Guard Contracts require annual training which includes terrorism, crowd control, awareness, cpr, first aid, hazardous materials protocol procedures etc. There should be a minimum of 80 hours of classroom

and on the job training for port security personnel. Those who hope to make port security a career should also be trained. They must be provided with economic incentives.

This training should include crime and terrorist prevention and detection, terminal evacuation procedures and basic first aid techniques, crowd control awareness, C.P.R., first aid, hazardous materials protocol, etc.

Q6. Security Performance Standards

The ports in conjunction with security agencies and terminal operators should establish performance standards for container terminals and vessel security. A "Tolerance" policy should be determined by the respective parties.

Q7. Advance Scheduling

At the present time it would be impossible to schedule an appointment for each trucker who visits the port. Much easier to set a schedule with vendors and contractors.

Q8. Vessel Information – Advance Notice of Arrival (NOA)

I have no objection to the Coast Guards revision of the 24 hour Advance Notice of Arrival (NOA) to a 96 hour NOA.

Q9. Cargo Information – Advance Manifests

The U.S. Customs 24 hour rule presents some challenges for fresh produce shipments. These challenges should be further explored to meet individual shipper needs.

Q10. Random Screening

I believe in an effort to make our ports more secure a random sample of non-high-risk containers be screened. Procedure could take place on or off dock with dedicated technology and personnel who will be protected by safety apparel and devices.

Q11. Container Performance Standards

Containers should be constructed of high quality steel (reefers excepted) and should be sealed with the very visible high security seal. (see ILWU proposal)

Q12. Unsealed Empty Container

It is the position of the ILWU that all empty containers, sealed or unsealed be inspected as they are received at terminals or before being loaded or unloaded from a vessel.

Q13. Screening Fresh Produce

Fresh produce should be prescreened abroad, as well as in our ports, to insure the safety of the produce and our ports. However, the screening process must not use radiation or other means detrimental to the produce or consumer or screener.

Q14. Improving Port Security Abroad

Foreign governments in conjunction with their marine carriers should stand the cost of installing and using port security devices abroad.

Some help could be given to developing countries in an effort to bring them up to our standards of port security and related goods movement depending on cost.

Q15. International Trade Agreements

I believe the U.S. should require compliance with certain port security standards in its international trade agreements with foreign countries.

Q16. Passenger and Crew Manifests

Although he ILWU did not submit a comment for this proposed rule, due process must by expeditious and an integral part of procedures.

Q17. Passenger Interviews and Searches

All bags should be screened and searched if necessary. Passenger interviews are permissible when deemed appropriate. The matching of passengers and their luggage is important. ILWU security currently screens baggage in various locations when directed.

Q18. Drug and Alcohol Testing

The Longshore contract does not provide for random drug and alcohol testing. The ILWU is apposed to such a practice. The ILWU has testing for probable cause and pre-employment screening.

Q19. Enforcement and Penalties

There must be criminal enforcement and penalties for those individuals who unlawfully obtain and or use personnel information for their own personal gain or for any breach of security. I would stress the importance of uniformity in the application and enforcement of such laws. There must also be fundamental privacy protection built into the process.

Q20. Federal Preemption of State/Local Requirements

I concur in Mr. Parkers written testimony. He recommended that the Federal government should ensure – by federal preemption where necessary – that operating requirements and restrictions imposed by state and local government are consistent with the goals of overall port security.

Q21. Distribution of Federal Grant Dollars

I believe that Federal grant dollars be distributed proportionately to a ports size and contribution to the nations commence. Large ports have a far greater need for more Federal dollars than smaller ports.

Q22. Financing improved Port Security

I am opposed to user fees and believe that Customs revenues coupled with better allocation of Federal funds can provide the appropriate source for funding the additional security at our nations ports.

February 4, 2002

ILWU PROPOSAL

The sub committee agreed that some type of credentialing would be applicable to the individuals that work on and do business with Marine Terminals located within the Ports of Los Angeles and Long Beach.

It is clear that the issue of terminal security must be addressed separately from port security, since terminals can be specifically identified and in most cases are defined by fences.

The Ports of Los Angeles and Long Beach have physical characteristics that are liquid, as are the ports' infrastructure. In order to apply a credentialing process, the applicability and scope must first be defined.

The proposed Hollings Bill provides for local credentialing solutions.

At this time various elements of the Hollings Bill, as is relates to both ports, their "infrastructure", areas "adjacent" to ports, as well as "security sensitive" areas on marine terminals have not been clarified.

In addition, "security sensitive" jobs on marine terminals have not been clarified causing a delay in the credentialing development process

A third area that must be acknowledged is the mobile elements that periodically and often unpredictably work on the terminals and in the territory of the ports, the nature of which range from contractors in the construction trades to the taxi cab driver and pizza man, to delivery services, public officials and executives of a wide variety.

For the purpose of identifying certain facilities and structures for which entry would be subject to credentialing of some type, for example, and not by limitation, port buildings or marine terminals. Neither the "port" nor it's infrastructure are a definable area at this time.

The proposed Hollings Bill, S-1214 requires that each individual seeking employment in a "security sensitive" position undergo a criminal history check.

This Bill also requires that each existing individual employed in a "security sensitive" position for 7 years or less undergo a criminal history check.

In this regard, "security sensitive" positions must be defined and identified prior to the establishment of criteria utilized for criminal background checks, and ultimate. potential for disqualification from such positions only, not all waterfront jobs.

Further, the disqualifying offenses listed in the proposed Bill, Section 107, are too broad and not necessarily relevant to the security issues of the ports or terminals, and assumes without the establishment of fact or due process, that because an individual that has served time in prison is automatically and continually suspect in national security circumstances, with the potential for black listing such individuals, who would not otherwise be suspect without probable cause and due process.

It is absolutely contrary to the facts and to the goal of maintaining secure seaports to treat Longshore workers as security risks. Longshore workers are not the problem but rather are a critical part of the solution for keeping our ports safe and secure from crime and terrorism. It is the well- established Longshore workforce that knows how things work best in the ports and, perhaps most importantly, know who belongs where in the marine terminals. It is ILWU members who are best able to detect and report suspicious and unusual activity in the ports and terminals. The government should, therefore, enlist these dedicated workers as partners rather than suspects in the efforts to secure our nations ports.

Not withstanding the above, and after defining "security sensitive" positions and scope, a credentialing procedure is possible for all terminal personnel and all port personnel that does not require criminal history checks.

Such broad based credentialing shall be limited in function so that the verifiable identification of an individual is for entry and security purposes.

Marine terminals and port office and building personnel shall carry a picture ID and a secondary ID to be produced upon request of security personnel prior to gaining access. The picture ID shall identify the nature of the holder's purpose, i.e. terminal employee, port employee, contractor, vendor, etc. The scope shall include all persons entering a terminal. Persons not in possession of a formalized credential must not be permitted on such facilities until their identity and purpose is authenticated and authorized by facility security or other authority.

The formalized photo credentials shall be color coded for security level utilization, and be issued by the ports administrative offices during regular, evening and weekend hours, so that the issuing of the cards will be expedited to all persons needing them.

Individuals not qualifying for "security sensitive" positions, once defined, shall be transferred to non-sensitive positions within the company on the terminal immediately so that no wages are lost.

State and national immigration concerns shall be satisfied by I-9 requirements. Truck drivers shall be verified by DOT and D.M.V magnetic strips on the reverse side of the individual's color coded photo ID including each truck driver entering a marine terminal or port facility from Canada or Mexico.

Security shall be posted and stationary at the waterside access at all times to require compliance with credentialing requirements in addition to Terminal entrance and exits.

Rail personnel shall be required to be in possession of and produce upon demand verifiable photo ID's and secondary ID's.

An appeals procedure shall be provided for individuals who are challenged and transferred from once defined "security sensitive" positions.

The appeals process shall take place within a thirty (30) calendar day period effective upon the individuals actual transfer, during which time the individual shall pursue the appeal before a Board consisting of three (3) union officials, (a minimum of two I.L.W.U. representatives), one (1) port official, two (2) employers and one (1) other individual who shall be the area arbitrator or commissioner of the Federal Mediation and Concilliation Service, who shall issue within the 30 day time limit, their decision in writing, including restitution and other remedies that may apply.

Criteria or security sensitive position background checks shall be discussed in a manner that shall exempt union activity at all levels and indemnify union members engaging in concerted activities relating to the principals of their organization.

Such criteria when established, shall first be discussed with the union of which such security sensitive positions are incorporated into their jurisdiction and / or collective bargaining agreements.

In the event there is dispute as to the sensitive nature of the position or the individual's qualifications for the job, the Union has the right to arbitrate or submit the matter to the proposed adjustment board for resolution.

During the adjudication process, such affected individual (s) shall remain employed in the industry for the employer at full wages in a position not classified as "security sensitive".

Security guards who possess active guard cards have received these cards through the State of California following criminal history screen and shall not be required to undergo another such background check. Guard cards must be renewed every two years.

For the purpose of separating the jobs and work areas that can be classified as "security sensitive", we may rely on section 125.15 of 33 CFR-chapter 1, which provides the following categories:

(1) Those vital to the military Defense Assistance Program.
(2) Those pertaining to the support of U.S. military operations.
(3) Those pertaining to loading and unloading explosives.
(4) Those accessing information /data regarding passenger or cargo manifests.

All individuals working in the above (4) categories shall wear verifiable Red I.D. cards reflecting their photo and other required data, identifying their category of work as "security sensitive", or just a color code, (to be determined). All other terminal workers, including management shall wear verifiable Blue I.D. cards with photos and required data.

Truckers - Yellow
Service providers -- White
Federal agencies – Purple
Local agencies – Green / State officials – Orange
Union officials – Clear or White

For the purposes contained herein, background searches shall be conducted by an independent group whose records shall be secured and confidential and not subject to review without the express permission of the individual who is under investigation by such agency. Such records shall not be subject to the United States Freedom of Information Act, or any State or Local disclosure laws or provisions.

Background searches shall be limited to and defined as follows:

1. Espionage – Practice of spying to obtain information about the activities or plans of the Unites States Government.
2. Treason – The offense of committing overt acts to overthrow the United States Government.
3. Sabotage – The offense of committing an overt act designed to hinder or subvert a war act by the United States Government.
4. Deliberate disclosure of classified defense information to a declared enemy of the United States Government.
5. Unlawful storage and sale of large quantities of drugs.

To facilitate the credentialing process, we propose the following considerations in regard to cost and scope.

Although some Federal subsidies are available through the Hollings Bill for this purpose, the burden of the credentialing costs have neither been assigned nor been adopted by the Federal Government, State, City, Ports or other stakeholders.

The availability of existing credentialing methods currently utilized by employers doing business through the Pacific Maritime Association on Marine Terminals, are shared, as are the costs. As a result, all workers, whether Management or Labor, can be positively identified at the point of entry, Terminal or Building.

Positive identification is verified by Security Guards.

For example, the Pacific Maritme association requires and provides a photo identification card with a magnetic strip on the back side which reflects categories of work skills of the card owner, and registration number.

The PMA card is required for all registered Longshoremen, Marine Clerks, Foremen, Clerical Employees, Mechanics, Security Guards and others.

The PMA card is functional on the West Coast only, in the States of California, Oregon and Washington where PMA represents the Steveadores and Marine Terminal employers.

Other employers on Marine Terminals or Port facilities also utilize photo I.D. credentialing procedures that similarly provide and limit access to their Marine facility. Security Guards at the entrance of each facility verify the individual's identity, credential and purpose, i.e. employee, vendor etc.

The incorporation of these existing credentialing systems is prudent and will offset the overall cost to the taxpayer. There will be no need to substitute or duplicate effective systems now in place for positive access control with new, more costly systems.

The Port Administrators have maintained strict security policies for the positive identification of individuals doing business with the Port as well as their own employee identification, coupled with access controls which, include Local Police representatives and effective Security Procedures.

Vendors and others shall be required to obtain identification through the ports to gain access for verifiable cause.

Accompanying this statement is a detailed proposal designed to pinpoint critical security-sensitive areas with specific delineations between landside and waterside operations. The proposals are designed to increase and improve port security protections in an economically feasible way.

Waterside Security Issues

Match personnel with provided documents – Legislation should require crew and passenger list including names, addresses, passports, and mariner documents be matched up in person with the documents submitted. When the Immigration and Naturalization Service (INS is given the documentation, they merely go through the documents without requiring the individual's presence to insure he or she is who the documents say they are.

Implementation of integrated systems - Implementation of integrated systems allowing Customs to inspect and / or review manifests containing identification of shipper, port of origin, and cargo shipper prior to vessel entering American waters.

Advance security clearances of vessels – The legislation should require advance security clearance requirements for all vessels, their owners, operators and crew before entering a U.S. Port.

Presently, these vessels operate under secrecy and without regulations by the scheme of flying the flag of a country (flag of convenience) that lacks any meaningful regulations and scrutiny. The London Times reported that the terrorist group Al Queda presently operates flags of convenience vessels. .

Landside Security Issues

Container Security Seals – Like luggage on airplanes, the containers on vessels and in port facilities need to be subjected to security screening to protect U.S. seaports and international maritime commerce. Obviously, it is both impractical and cost-prohibitive to inspect every one of the tens of thousands of containers that flow in and out of our ports each day.

Proposed legislation should at least mandate that port workers who receive containers inspect the integrity of the outside seal on each container. Seal inspection

must be done to insure that the seal number matches up with the consignee who was the last person who sealed the container up and is responsible for the cargo therein.

To insure port security, this is one of the "primary" actions that must be undertaken. This act must mandate that the integrity of the seals be checked and rechecked against terminal documentation to insure the origins of that cargo.

A broken seal would alert the port facility that the container has been tampered with and that it needs to be carefully inspected before entering a facility or being placed on a vessel, and should be immediately earmarked to Customs for inspection.

A systematic check of container seals provides authorities with a record as to the parties responsible for placing the seal on any container that may be the means of a terrorist act.

Empty Containers – One of the most overlooked of potential security risks to terminals, ships, and port infrastructures in the proper handling of empty containers. On any given day as much as forty percent of cargo delivered into any facility is comprised of empty containers. A physical inspection of these containers is vital for a number of reasons.

1) Terminal Safety – knowing that in almost all port facilities empty containers are very rarely inspected, the potential for placement of some kind of explosive device is something that must be considered and planned for.
2) Vessel Safety or remote site endangerment – The concept where an un-inspected empty container containing an explosive device would be loaded onto a vessel for detonation.

In many ports throughout the world the inspection of empty containers is a requirement, for exactly many of the reasons that were outlined! What would happen if a terrorist cell in a foreign country for example were to take an empty container, place an explosive device inside, then load it up and ship it for detonation elsewhere?

For years, inspections of empty containers was regularly done in America's largest seaports; however this procedure was abandoned some years ago. Once again, if we truly are desirous of creating safe and secure seaports then the return to these inspections is a must.

Non Inspection of Truckers – The primary threat to American seaports is the ability of truckers to gain access to dockside marine container terminals with "carte blanche" accessibility. The majority of all truckers entering marine facilities in America's largest ports do so without having to exhibit any kind of identification whatsoever.

Prior to the terrorist attacks in New York and Washington, D.C., there was no requirement for truckers to produce any identification upon entrance to marine terminal facilities.

However, even following the attack, only two marine container facilities now demand identification upon entrance through marine terminal gates, but there still is no match-up of photo I.D. with the truckers themselves, because they only have to produce the California drivers license number for entrance.

The truckers entering these marine facilities have virtually unobstructed access to the entire facility, enabling then to place anything, anywhere, at any time.

The failure to provide secure cargo holding areas – In many ports throughout the world, the local work forces take the cargo (now in steel cargo shipping containers almost all the time) and place them in secured "holding" areas, many times located next to marine facility entrance gates, awaiting truckers who are allowed only in these secured areas to pick up containers, usually on an appointment basis.

This is an excellent concept that has resulted from many years of experience realizing that the best way to secure your facility is to only allow those on the terminal that have immediate business needs.

They then realize that to allow trucker's unlimited "carte blanche" access to all areas of the facilities was a dramatic error as it compounded the problems of security and congestion. What followed was the establishment of secure "holding" for cargo retrieval.

Section 110 Maritime Security and Professional Training

Local Port and Marine Terminal Security consists of Local Police, Port Police, Port and Terminal Security Guards.

Utilization of existing security personnel – Minimum manning standards and uniform training procedures must be adopted for the existing professional security personnel to meet the growing security needs of our ports and Marine Terminals.

Initial Security Evaluations and Port Vulnerability Assessments
(Marine Terminal Plans)

Essential to and consistent with the Hollings bill, Section 104, which provides for the "Establishment of Local Port Security Committees", are the contributions of the various work forces whose daily lives and future is dependent on the "Port Vulnerability Assessment" and Security Evaluations of each terminal.

The various work forces consist of ILWU Longshoremen, Marine Clerks, Planners, Clerical Workers, Bosses on the Marine facilities, Pilots, and others, represented by ILWU Locals in the West Coast Ports.

Section 104 (f) recognizes the value of these work forces in making "recommendations concerning initial security evaluations and port vulnerability assessments by identifying the unique characteristics of each port," "review of port vulnerability assessments,"implementing guidelines" and "to assist the Captain of the Port...."to verify the effectiveness of one or more security plans for a local port authority, waterfront facility operator...."

This Bill recognizes that the security of each port depends on the contribution of the individuals who know the terminals, ports, and the uniqueness of their own daily surroundings, and processes, and are able to evaluate and communicate vital observations in preparation of the forthcoming Security Evaluations and Port Vulnerability Assessments.

In conjunction with the forgoing, ILWU Local Presidents/ or the Locals designated representatives, shall be an integral component of the Local Committees whose tasks are to develop the Initial Security Evaluation and Port Vulnerability Assessment in each Port.

The Finalized Evaluation shall set forth specific guidelines to be incorporated into the Ports Administrative requirements for tenants with penalties for non compliance.

The Security Evaluation and Port Vulnerability Assessment shall not be available to the public. Nor accessible under Federal or State "Right to Know" laws, and shall be maintained in a secure and confidential environment.

in Portland, Oregon captured first place in the 2003 Unisys Corporation Prize in the Online Science Education competition, administered by the American Association for the Advancement of Science (AAAS).

Working with the Oregon Museum of Science and Industry (OMSI), the Franklin High School team placed above nine other entries, all of which were charged with conducting scientific inquiry on flight and presenting their findings on the Internet.

This contest is part of a national science project sponsored by AAAS, the Franklin Institute Science Museum, and Unisys Corporation in affiliation with the Science Learning Network. The competition allows students to learn about science and technology while raising public awareness of the need for improved science education while fostering relationships between community museums and local students. Each group of students entering the competition is partnered with a local museum to conduct scientific experiments and create a Web site.

The team from Franklin High School explored flight through several projects—from participating in a teleconference with NASA's Johnson Space Center to conducting a glider design competition. The gliders were built with the help of software which allowed the students to adjust wing length, angle, nose weight, and a variety of other factors on a "virtual glider" to see which designs would fly. Their efforts were shared via the Internet with students and teachers from across the country.

Fifty-one students from Franklin High School participated in this competition: Alisa Bayona, Camille Buckles, Ryan Buckmier, Carlos Camargo-Ciriaco, Trisha Cates, Dara Chan, Sarah Combs, Dustin Conant, Miguel Couto, Itzia De Anda, David Galloni, Suzanne Hansen, Brandon Harris, Jack Healy, Yadira Herrera, Kenneth Hughes, Josh Kizaway, Melissa Larkin, Brandon Lewis, Jesse Mckenzie, Joshua Pangelinan, Ben Pharis, Kendall Stout, Jessica Strom, Ryan Waltz, Jason Yu, Tim Crowell, Angelina Dudley, Donald Fitzjarrell, Candyce Harris, Sean Johnson, Kashius Lewis, Ryan Nate Lewis, Kandie Madden, Ryan Manansala, Britni Mccomb, Will Mullen, Jackie Myers, Mike Owens, Ben Pharis, Lynea Price, Whitney Ramirez, Jessica Reitan, Sara Ruecker, Oleg Shcherbina, Austin Stoner, Efrain Tapia, Lisa Trump, Chris Wiseman, Jasmine Woodfork-Moore, Liliya Zaytseva.

TRIENNIAL REVIEW

HON. BOBBY L. RUSH

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 21, 2003

Mr. RUSH. Mr. Speaker, yesterday marked the third month anniversary since the Federal communications Commission, FCC, voted to approve its controversial Triennial Review decision and still no written order has been issued by the Commission. I think many of us in this Chamber find it incredible that our troops invaded Iraq and ousted Saddam Hussein in less time than it takes for the FCC to write an order on which it has already agreed. This delay leaves an important segment of our economy and its employees in legal and economic limbo.

Mr. Speaker, the Triennial Review offered the FCC the unique opportunity to boost the nation's economy and not only save jobs—but create jobs as well. The Commission, however, responded to the challenge by issuing a ruling that is contradictory—largely deregulating broadband on one hand while, on the other, continuing the enormous regulatory burden of requiring large local phone companies to lease their lines at below cost rates to competitors.

In conclusion, the FCC has succeeded in creating uncertainty in the marketplace, and uncertainty on Wall Street typically converts to financial disaster. The order that is now being written at the FCC will consist of several hundred pages of regulatory detail. And as we know when dealing with the Federal bureaucracy, the devil is most definitely in the detail. I urge the Commission and its staff to finish its work on the Triennial Review order as quickly as possible so we can begin the tedious legal process of examining these details. Let us not forget that the jobs of thousands of hard working men and women, and the renewed health of our Nation's economy, are at stake.

PORT SECURITY IMPROVEMENTS ACT OF 2003

HON. DOUG OSE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 21, 2003

Mr. OSE. Mr. Speaker, today, I rise to introduce a bill entitled the "Port Security Improvements Act of 2003." I am pleased to have five other original co-sponsors of this bi-partisan legislation, including: JOHN TIERNEY, who is the Ranking Member of the Government Reform Subcommittee which I chair; BILL JANKLOW, who is the Vice Chairman of my Subcommittee; and JANE HARMAN, who ably represents the Port of Los Angeles.

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. This law established "emergency procedures" for the Federal Government to issue interim final regulations without the usual opportunity for public notice and comment, as provided in the Administrative Procedure Act. To ensure Congressional and public input into the regulatory decisionmaking process, the Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs, which I chair, held a November 27th hearing entitled "What Regulations are Needed to Ensure Air Security?"

Congress then turned its attention to port security. On November 25, 2002, the President signed the Maritime Transportation Security Act. This law similarly provided for some interim final regulations without any public notice and comment but did not establish deadlines for their issuance. To provide Congressional and public input into the regulatory decisonmaking process, my Subcommittee held an April 24, 2003, hearing entitled "What Regulations are Needed to Ensure Port Security?"

The U.S. maritime system includes more than 300 ports with more than 3,700 cargo and passenger terminals. 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. And, 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.

To date, Congress has provided extensive Federal funding to fully ensure air security. In contrast, Congress has not provided sufficient Federal funding to fully ensure port security.

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. Currently, the U.S. Customs Bureau collects $15.6 billion in duties on commodities entering the U.S. through marine transportation. My bill directs a portion of these duties toward port security enhancements. In addition, my bill 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.

To understand the logic for 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. It encompasses 7,500 acres. In 2002, Custom duties collected in this port accounted for 32 percent of all Customs duties collected in all U.S. seaports. However, since passage of the Maritime Transportation Security Act, this port has only received a small fraction of what it needs for port security enhancements and a substantially inadequate share of the funding distributed to date relative to its importance in the commerce of this country.

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. As a Republican, I am sensitive to the costs of excessive government regulation. But, 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.

The Port Security Improvements Act 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. All of us recognize the tremendous importance that international trade plays in our economy.

RECENT COURT DECISIONS IN GUATEMALA SERIOUSLY UNDERMINE HUMAN RIGHTS

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 21, 2003

Mr. LANTOS. Mr. Speaker, I was deeply disturbed to learn that an appeals court in

I

108TH CONGRESS
1ST SESSION

H. R. 2193

To provide funding for port security enhancements, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 21, 2003

Mr. OSE (for himself, Mr. TIERNEY, Mr. JANKLOW, Ms. HARMAN, Mr. LEWIS of California, and Mr. SCHROCK) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To provide funding for port security enhancements, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Port Security Improvements Act of 2003".

SEC. 2. FINDINGS.

The Congress finds the following:

(1) After the tragic terrorist events of September 11, 2001, the Congress initially focused on

1 improving aviation security and, in November 2001,
2 passed the Aviation and Transportation Security Act
3 (Public Law 107–71). That Act provided deadlines
4 for specific enhancements in aviation security, in-
5 cluding for issuance of certain rules governing the
6 conduct of non-Federal parties.

7 (2) The Congress then turned its focus to im-
8 proving port security and, in November 2002,
9 passed the Maritime Transportation Security Act of
10 2002 (Public Law 107–295). That Act did not es-
11 tablish deadlines for specific enhancements in port
12 security. For example, there are no statutory dead-
13 lines for interim final rules on facility and vessel se-
14 curity and on civil penalties, nor for the rules on
15 transportation security cards.

16 (3) The United States maritime transportation
17 system includes more than 300 ports with more than
18 3,700 cargo and passenger terminals. The top 25
19 ports account for 98 percent of the more than
20 6,000,000 container shipments entering United
21 States ports yearly.

22 (4) The vast maritime transportation system is
23 particularly susceptible to terrorist attempts to
24 smuggle personnel, weapons of mass destruction, or
25 other dangerous materials into the United States. A

large-scale terrorist attack at a United States port could not only cause widespread damage but also seriously affect the United States economy.

(5) The General Accounting Office found that, during fiscal years 1999, 2000, and 2001, expenditures by 13 Federal agencies for the maritime transportation system averaged about $3,900,000,000 per year. Three agencies accounted for 93 percent of these expenditures: the Corps of Engineers, the Coast Guard, and the Customs Service. The cost of Customs Service operations for fiscal years 1999, 2000, and 2001 was $484,200,000, $538,400,000, and $577,200,000, respectively.

(6) During that same period, 11 Federal agencies collected approximately $1,000,000,000 each year from maritime transportation system users. In addition, customs duties levied on commodities imported through the maritime transportation system averaged approximately $15,200,000,000 each year. In comparison, custom duties levied on commodities imported through the aviation transportation system and highway transportation system averaged approximately $3,700,000,000 and $900,000,000 each year, respectively.

(7) Many of the needed maritime transportation security improvements will require costly outlays for infrastructure, technology, and personnel. Before September 11, 2001, the Interagency Commission on Crime and Security in United States Seaports estimated that the cost of upgrading security infrastructure at United States ports ranged from $10,000,000 to $50,000,000 per port. These estimates could increase dramatically due to new post-September 11 security requirements. For example, for the first $93,300,000 of Federal grant funds for port security made available in a supplemental appropriations Act, the Federal Government received grant applications for almost $700,000,000. For the second round of an expected $105,000,000 of Federal grants with funds made available in such Act, the Federal Government received applications for $997,000,000.

(8) In December 2002, the Coast Guard published its "Cost analysis report for vessel, facility, and port security" (Appendix C to the notice published December 30, 2002 (67 Fed. Reg. 79742), which included its estimates of first-year costs for maritime transportation security improvements of

1 $1,300,000,000, and 10-year costs for such improve-
2 ments of $6,000,000,000.

3 **SEC. 3. FINANCING PORT SECURITY ENHANCEMENTS.**

4 (a) PORTION OF DUTIES COLLECTED AT PORTS.—
5 For each fiscal year, there shall be available to the Sec-
6 retary of Homeland Security for port security enhance-
7 ments at each port through which articles transported by
8 vessel are unladen for purposes of entering the customs
9 territory of the United States, 30 percent of the amount
10 by which duties collected during the preceding fiscal year
11 on such articles that so entered through that port exceed
12 port security costs incurred at that port during the pre-
13 ceding fiscal year.

14 (b) DEFINITIONS.—In this section—

15 (1) the term "port security enhancements"
16 means—

17 (A) administrative processing and associ-
18 ated services for increasing port security, in-
19 cluding administering the transportation secu-
20 rity cards (also known as the Transportation
21 Worker Identification Credential) issued under
22 section 70105 of title 46, United States Code,
23 including background checks and training;

1 (B) physical services (including inspections
2 of cruise passengers, cargo, and empty con-
3 tainers) and certifications;
4 (C) construction and maintenance, includ-
5 ing upgrades to security infrastructure; and
6 (D) miscellaneous services;
7 (2) the term "port security costs" means costs
8 incurred by the Federal Government for the mari-
9 time transportation system, including—
10 (A) administrative processing and associ-
11 ated services;
12 (B) physical services, including inspections
13 and certifications;
14 (C) construction and maintenance; and
15 (D) miscellaneous services; and
16 (3) the term "vessel" has the meaning given
17 that term in section 401 of the Tariff Act of 1930
18 (19 U.S.C. 1401).
19 (c) PERIOD OF APPLICATION.—Amounts shall be
20 available under subsection (a) only for the first five fiscal
21 years beginning after the date of the enactment of this
22 Act.

1 **SEC. 4. DEADLINE FOR TRANSPORTATION SECURITY CARD**
2 **REGULATIONS.**

3 Notwithstanding section 102 of the Maritime Trans-
4 portation Security Act of 2002 (Public Law 107–295; 116
5 Stat. 2085; 46 U.S.C. 70101 note), the Secretary of the
6 department in which the Coast Guard is operating—

7 (1) shall issue interim final regulations under
8 section 70105 of title 46, United States Code, by
9 not later than 6 months after the date of the enact-
10 ment of this Act; and

11 (2) shall issue final regulations under that sec-
12 tion by not later than 12 months after the date of
13 the enactment of this Act.

14 **SEC. 5. STANDARDIZATION OF SECURITY REQUIREMENTS**
15 **FOR PORTS, VESSELS AND FACILITIES.**

16 The Secretary of the department in which the Coast
17 Guard is operating shall issue regulations under section
18 70103 of title 46, United States Code, that establish a
19 national minimum set of standard security requirements
20 for—

21 (1) each port in the United States;

22 (2) each facility in a port in the United States;
23 and

24 (3) each vessel entering a United States port.

○