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SECURITY OF TERMINAL OPERATIONS AT U.S. PORTS

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

FEBRUARY 28, 2006

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ONE HUNDRED NINTH CONGRESS

SECOND SESSION

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SECURITY OF TERMINAL OPERATIONS AT U.S. PORTS

TUESDAY, FEBRUARY 28, 2006

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 2:45 p.m. in room SD–106, Dirksen Senate Office Building, Hon. Ted Stevens, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. TED STEVENS, U.S. SENATOR FROM ALASKA

The CHAIRMAN. The Co-Chairman has been detained, so we'll start the hearing at this time. And we do thank you for responding to our request to appear here today.

Much has been reported over the past few weeks concerning the proposed port terminal operations transaction between Dubai Ports World, a Dubai-owned company, and P&O Ports, a British company. Many of the reports have contained incorrect or misleading information. Today's hearing is intended to learn the facts directly from the companies involved and to have a more global discussion concerning what is being done to secure United States ports.

While I agree with many of my colleagues that we need to scrutinize any transaction that involves foreign investment in the United States, particularly when the transaction has even a peripheral effect on national security, there are a few points which need to be made here at today's hearing.

First, this transaction would be one between two foreign-owned companies subject to Federal Government approval through the Committee on Foreign Investment in the United States. This is not an agreement between the Dubai company and our Federal Government. The current terminal operator, P&O Ports, formerly the Peninsular and Oriental Steam Navigation Company, is a company based in the United Kingdom.

Second, neither the British nor the Dubai terminal operator would own any U.S. ports. State and local port authorities own our ports. These companies are terminal operators and manage American longshoremen in the loading or unloading of cargo from ships, subject to the Coast Guard and Customs inspection and security procedures.

Third, terminal operators such as these companies are not responsible for securing U.S. ports. The Coast Guard, TSA, Customs and Border Protection, the FBI, and local law enforcement secure our ports. Cargo arriving at U.S. ports is assessed for risk, and

screened accordingly. In many cases, the cargo is screened at foreign ports before being loaded on a shipping vessel.

Fourth, the document released yesterday regarding the Coast Guard's analysis about this acquisition is somewhat misleading, because it's only a portion of the overall analysis. After completing its review, the Coast Guard concluded publicly that DPW's acquisition of P&O does not pose a significant threat to U.S. assets.

Fifth, the United Arab Emirates, within which Dubai is located, is a strategic ally of the United States not only in the war on terror, but also generally in that region of the world. I've been to Dubai, and I'd remind my colleagues that the UAE allows our U.S. military to dock 56 warships, 590 military sealift command ships, and 75 allied warships at their ports.

Finally, a significant number of terminal operators at U.S. ports are actually foreign-owned or -leased. In fact, in Los Angeles, one of our largest airports, which a portion of the Committee reviewed last year, flew over it, examined it very carefully, Chinese, Taiwanese, and Singapore government-owned companies operate terminals. It's interesting to note that another Singaporean Government-owned company lost out to Dubai ports in its bid for P&O Ports in the transaction at issue.

As Americans, we do need to look at this deal closely to ensure that our national security remains unaffected, but we must also recognize the benefits of a global economy and avoid unwarranted discrimination among our allies.

Is there any Senator that wishes to make an opening statement?

Senator Rockefeller? We should follow the early bird rule. I'm sorry,

Senator Kerry?

STATEMENT OF HON. JOHN F. KERRY,
U.S. SENATOR FROM MASSACHUSETTS

Senator KERRY. Thank you, Mr. Chairman, for holding this hearing.

This Dubai Ports deal, I think, has raised a lot of questions in the minds of Americans, obviously, and particularly in the minds of the Members of Congress. I think, most importantly, it underscores the public's very legitimate concern, and our legitimate concern, about the overall state of our port security, which is something a number of us have been talking about for a number of years. We all understand that the bottom line is, those containers that come in are not adequately accountable from wherever they're coming. And so, there's an enormous issue, beyond Dubai, and there's been a lack of willingness to invest in either the technology or the local accountability necessary to achieve that.

But there's also a larger question, or a similarly significant question, about the judgment and the competence and the manner in which this was approved. This much is clear. A secretive government committee hastily approved the transaction without conducting the 45-day national security investigation mandated by law. The Department of Homeland Security, a member of the Committee on Foreign Investment in the United States, CFIUS, initially raised security concerns, but then signed off on the deal de-

spite intelligence gaps cited by a newly released Coast Guard document.

So, apart from what the Chairman says, which is legitimate, that there are alliances and there are these cooperative efforts, there was a process that was not followed and that raises questions. And, amazingly, the Secretary of Homeland Security didn't even know about the transaction until it was reported in the press. The Secretary of the Treasury says he wasn't involved. The President says he didn't know, yet he's prepared to use his veto pen, for the first time in his Presidency, over a deal he apparently didn't bother to pay attention to until there was some backlash.

The Administration's response to criticism has been to say, "Well, take our word for it that the deal has been vetted and the security considerations have been addressed." And yet, most recently, a Coast Guard document appears which states that it lacked the most basic intelligence information about DP, and that flatly contradicts that assertion and is further evidence of a hands-off attitude taken with respect to our ports.

And, finally, this morning the *Jerusalem Post* reports that, "DP Government-Controlled Parent Company Participates in the Arab Boycott of Israel," which is inconsistent with everything that we believe in America. So, that casts even more doubt on the judgment of the Administration Officials who claim to have thoroughly investigated DP, and it clearly calls for further congressional review, which is taking place.

The fact is, the Administration did not conduct an exhaustive review of this transaction. It took a pre-9/11 business-as-usual approach to approve a deal with Dubai without adequately ensuring it wouldn't compromise national security, in a number of different ways, which I'm confident my colleagues will raise in the course of this hearing.

So, it's appropriate for Americans to be concerned, and it's appropriate for us to be having these hearings.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Vitter?

STATEMENT OF HON. DAVID VITTER, U.S. SENATOR FROM LOUISIANA

Senator VITTER. Thank you, Mr. Chairman. I want to thank you for holding these hearings, as well, and thank all the witnesses. This is important to me, as it is to all the members of the Committee and, indeed, of Congress. It's particularly important to me, because one of the ports directly involved would be the Port of New Orleans.

Certainly since September 11, we've all come to realize we can't be too careful when it comes to national security. This has certainly highlighted those concerns. And that's why I strongly support the more extensive review of the DPW acquisition of P&O Ports, which now will, thankfully, happen.

U.S. ports and waterways handle more than 2.5 billion tons of trade annually. U.S. also imports 3.3 billion tons of oil and services 134 million passengers by ferry annually. It's only getting bigger. Within the next 15 years, it's predicted that the amount of cargo

that our ports will handle will double. At that rate, our port facilities would account for as much as one-third of GDP.

In Louisiana, we have a lot of that activity, which we're very happy about. Our river system connects to the largest port system in the Nation, 5 of the 15 busiest single ports. Fifty percent of Ag exports and imports come through Louisiana's ports and the Mississippi River there. Thirty-six States depend on the lower Mississippi and our port system in Louisiana for maritime commerce. All of that is important for the economy. All of that also underscores vulnerabilities and possibilities, in terms of homeland security. So, that's why we need to be particularly vigilant about this.

I've expressed real and strong concerns about this deal, and a clear need to get more information about it. The good news is that we're now on the road to having that deeper 45-day review. And I want to applaud Dubai Ports World for agreeing to this so that all of us can be involved and the CFIUS process can take that deeper 45-day review.

As we do that, I do think we need to get to the real facts, and understand them, and communicate them clearly. Mr. Chairman, you underscored one of those facts that is not yet fully understood, and that is that the sale of terminal operations to a foreign entity would mean direct foreign control of, or ownership of, U.S. ports or security operations. And that's not true. As you said, our domestic ports are owned and operated by port authorities, which are typically state or local government units. Now, these port authorities typically lease terminal operations to private companies, and that's where this deal comes into play. So, it's different from owning a port, controlling a port, but it is still a very important role at a port that merits the more in-depth review we are now having.

As we take a look at this specific deal, I also hope we take a look at two broader issues. One is the CFIUS process, and the second is port security issues, which I've been focused on with you, Mr. Chairman and many other members, and I hope we are very focused on the needs to reform those two areas, the CFIUS process and port security. And I'll be having, specifically, a budget resolution, same one I had last year, about port security. I think it's very important, within our budget, that we maintain a separate port security grant program to keep a focus on port security, specifically, and to make sure the unique nature and needs of port security are addressed. And I'll be following up on that, particularly, in our budget resolution debate.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Senator Nelson, would you mind if we yield to Senator McCain? He has another appointment.

Senator BEN NELSON. That would be fine.

The CHAIRMAN. Senator McCain?

STATEMENT OF HON. JOHN MCCAIN,
U.S. SENATOR FROM ARIZONA

Senator MCCAIN. I thank you, Mr. Chairman. I'll be very brief. I thank you for holding this hearing. And I think we should address a lot of our concerns today about the overall issue of port security. And I appreciate our witnesses being here on that issue.

But since the issue of the day seems to be the issue of UAE, Mr. Chairman, let me just briefly remind my colleagues that foreign operators will continue to manage about 80 percent of port terminals in the United States, companies from the United Kingdom, Denmark, Hong Kong, Japan, South Korea, Singapore, China, and Taiwan, just as U.S. companies will continue to manage terminals in foreign countries.

And, Mr. Chairman, I just want to briefly point out, since 9/11, the UAE had provided U.S. and coalition forces unprecedented access to its ports and security, and overflight clearances. The UAE has played host to over 700 U.S. Navy ships at its ports, including the Port of Jebel Ali, which is managed by DP World and the United States Air Force at al Dhafra Air Base. They host the UAE Air Warfare Center, Fighter Training Center in the Middle East, and has worked with us to stop terrorist financing and money-laundering.

Mr. Chairman, after 9/11, the President of the United States asked Middle Eastern countries to be with us or against us. The UAE has been with us. And I would refer my colleagues to General Tommy Franks, General Abizaid, General Powell, and the Chairman of the Joint Chiefs of Staff as to how this country has cooperated with us on the war on terror. And that doesn't mean we shouldn't have the review, the 45 days and all that, but I think it's important to have it be part of the record that we are dealing with a friend and an ally on this issue.

And I thank you, Mr. Chairman, for your courtesy.

The CHAIRMAN. Thank you.

And thank you for your courtesy, Senator Nelson.

STATEMENT OF HON. E. BENJAMIN NELSON, U.S. SENATOR FROM NEBRASKA

Senator BEN NELSON. Thank you, Mr. Chairman.

I appreciate your holding this hearing today. I suppose it might surprise people that when I was back in Nebraska, which is not known for its port, except for Port Omaha and the Nebraska Navy, that that was one of the first questions I got asked almost everywhere I went, is, What's going on with this port outsourcing?

As we all recognize, it's not simply the acquisition of P&O by DP World, it's the perception, real or not, that this deal, in some way, might jeopardize national security. There's already a series of incidents that have raised questions and caused jitters about national security. So, anything that raises questions needs to be addressed. And that's why I think it's important to be sure that this acquisition is understood and examined.

There are two questions. Of course, the one that we're talking about today is about DP World and what we can do to satisfy ourselves that this is not going to in any way compromise our security at the ports. The second one, I think, probably catches most people by surprise, and that was that we are outsourcing the ports in any event. When I've driven by or ridden by the building that says New York Port Authority, I thought that was the New York Port Authority, probably run by the City of New York. But I find now that that may not be the case.

So, most Americans have questions about this situation. I believe taking 45 days to review it, it's appropriate. It's also an opportunity to hold hearings and determine questions about the broader issue regarding port and cargo security. Many people were very, very surprised, although I've not been surprised, because I've known the number, that only maybe 5 percent of the cargos are actually checked for security purposes. Maybe there is a point where beyond you can't go, but I think 5 percent seems to be a pretty small percentage for something that is so sensitive with materials coming in. I think the instincts of the Nebraskans I talked to last week were right, it's an issue we all need to be paying attention to and we need to know more about.

I think they're also of the opinion that we ought not to overreact, but, if we fail to take careful review of this, then we'd be very guilty of underacting in a very obvious way.

And so, I appreciate this opportunity, look forward to the testimony of the witnesses, and as we work toward assuring the American people that what has been done here will not be a national security matter.

Thank you.

The CHAIRMAN. Yes, sir.

Senator Pryor? Gone.

Senator Hutchison?

STATEMENT OF HON. KAY BAILEY HUTCHISON, U.S. SENATOR FROM TEXAS

Senator HUTCHISON. Thank you, Mr. Chairman.

Mr. Chairman, I also have a major port in my state, and it is a port that has the second-largest chemical complex in the world adjacent to it. So, port security has been a priority of mine. And I was very pleased when we passed the Maritime Transportation Security Act, in 2002. But this was just a first step.

Since that time, this committee has passed a bill that has port security, as well as rail, aviation, and pipeline security. I think it is essential for us to bring that bill forward if we possibly can. And I realize that there may be other parts of the bill that still need work. But I think port security, in general, has not kept up to the pace that many of us think is the right pace.

The bill that I introduced, and which is incorporated in Senate bill 1052, does address some of the gaps. It directs the Department of Homeland Security to require all foreign countries shipping goods into the United States to grant access to additional U.S. inspectors so that containers heading to our shores are able to be inspected at their port of origin.

Now, we have a few that are doing this today, but not nearly enough. We need to have better coverage, and we also need to have the technology that allows us to put seals on and know that, when something leaves, it hasn't been tampered with when it arrives.

I want to say that I think the UAE has been among the very, very best cooperators in port security. I don't think this is a UAE issue, although I certainly understand the comments that are being made about the process. And I think we need to address the process. I think that is the role of the U.S. Senate.

But I think, regardless of that particular situation, we need to have a port security plan for our country that requires, at a minimum, that we have more inspectors and that every inspector is allowed to inspect at the point of origin and throughout the process and when it arrives into our country. As many of us know, there are many foreign companies—countries that own the foreign terminal, the ship itself, and the terminal in the United States. So, that means there is a foreign country or a foreign company that is going to control this cargo from the beginning to the end.

So, we must be aware of that, not close our shores, but make sure that we are in charge of the port security, that we have the facilities to do it, not just that we have the ability, but that we have the capability with enough people designated in the foreign country to look at any piece of cargo that we choose to look at. And we need to have a plan that tracks from the embarkation all the way through to destination in the United States. And that's what is in Senate bill 1052. It is in my Senate bill that is separate.

And, Mr. Chairman, I would just ask you to work through this, as the Committee of jurisdiction, to assure that we pass either the full Senate bill with all of the modes of transportation included, or my bill, that is the separate bill for port security, that will assure us that, regardless of who the foreign owner is, or the foreign country, that we will be protecting ourselves with our own resources.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Lautenberg, my apologies. I did not see you there. You, obviously, are invisible, right? Thank you.

STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM NEW JERSEY

Senator LAUTENBERG. Yes, I didn't mean to be obscure. That's not good for our business.

[Laughter.]

Senator LAUTENBERG. Mr. Chairman, I've been concerned about port security for a long time. And while it has been suggested that Dubai is a country that has some friendly moments with us, there is also contact that the United Arab Emirates has with some countries that are very worrisome. And we're reminded by the FBI that the Port of Newark (and I say to my colleague from Nebraska: it's Port of New York and New Jersey) like all of our ports, is vital to our economy, but still vulnerable to terrorist attack. The FBI has said that a 2-mile stretch of land that goes from Newark Airport down to the Newark Harbor is the most dangerous place in the country for a terrorist attack, that millions could be killed because of the presence of chemical companies that transport, manufacture, and store chemical materials. And an attack would be a disaster in that highly and densely populated area.

What I'm worried about is that the Dubai Ports deal would put sensitive information about our port operations in the hands of a foreign government with a dubious record on terrorism. Most disturbing is the fact that the Bush Administration didn't even bother to thoroughly investigate this deal. Treasury Secretary Snow was in charge of this process, but he wasn't even aware of the sale. Secretary of Defense Rumsfeld also claimed ignorance of the event.

Given the Administration's inaction in this matter, I just don't trust them to look out for the security of New Jerseyans. And that's why I've supported efforts in Congress to slow down or stop this deal so we in Congress can review it.

We all know that Dubai Ports World themselves were the ones to request the 45-day investigation of this sale to try to calm the waters.

But let's be clear about what's actually happening here. The deal is still going through, as scheduled. Dubai Ports World will take over the P&O company in 2 days, this Thursday. Investigating this deal after it becomes final may be too little too late.

Since the Administration has dropped the ball, we need to empower our local ports to protect themselves. And that's why I've introduced a bill that will allow the U.S. port management to terminate or condition any lease when it's transferred to a new, foreign owner or operator. Passing my bill is a step that Congress can take to shore up port security by adding another checkpoint so that we don't permit any lapses to take place.

Mr. Chairman, if there is a silver lining to the outrageous Dubai Ports World deal, it's an increased awareness of the issue of port security. And I hope that the Senate will consider my bill, as well as Senate bill 1052, and begin the process of making our ports and our communities more secure.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

I've asked the staff to have reproduced and delivered to every Senator and to the press the list of international activity in U.S. ports prepared by the staff.

Senator Cantwell?

STATEMENT OF HON. MARIA CANTWELL, U.S. SENATOR FROM WASHINGTON

Senator CANTWELL. Thank you, Mr. Chairman. And thank you and Senator Inouye for holding this important hearing, because I know we all care about the security of our Nation and making sure that U.S. ports are secure.

And these elements that everyone is talking about, I think, give us a chance today to talk and reflect about where we've been. Certainly, Senator Hutchison's comments about the Maritime Security Transportation Act, and how much money originally was authorized, and the Coast Guard's recommendation that, to implement the Maritime Security Act, that it would take about $7 billion over a 10 year period of time that would be needed. And yet, I don't think that we have come anywhere close to appropriating those kinds of funds. And certainly we should take a look at that.

For the West Coast, and particularly for us in Washington State, every day 50,000 containers enter the Port of Seattle and Tacoma, and nearly 6 million containers enter our Nation's ports each year. These Washington ports generate over 700 million annually for the Washington economy, and more than 100,00 workers in the Puget Sound, including longshoremen, freight forwarders, are dependent upon these trade jobs. Now, that's nothing to say the other ports in our state, Vancouver, Everett, Grays Harbor, Bellingham, and Anacortes, and some of the others that I'll forget and will be re-

minded later. So, Washington's economy definitely depends on the movement of cargo, container, and traffic.

And this weekend I had a chance to meet with both officials from the Port of Seattle and Port of Tacoma to discuss exactly how our operations are working there, and to review a pilot program that had been part of the Secure Container Program on electronic seals, and was very impressed with the progress that the Port of Seattle and Tacoma have made with the Thailand port on security measures that, as Senator Hutchison said, do definitely start at the point of origin.

Like my colleagues, I am very concerned about how we take this issue and have a larger debate about security issues. Besides looking at where we need to go on infrastructure funding, to look at the TWIC program, which is about employee background checks, and where we are in having that implemented on a worldwide basis. Besides electronic seals, the deployment of radiation and scanner technology and the security background checks of facility security officers, who are those individuals that own the manifest responsibilities for any port activity—my understanding is, we don't have as deep of background checks on them—and, obviously, a review of these larger ownership issues.

Mr. Chairman, on February 22, Senator Snowe and I, as the Chair and Ranking Member of the Subcommittee for Fisheries and Coast Guard, sent a letter to the Coast Guard asking them for a briefing on their analysis of this Dubai deal, in the sense we knew that it was part of their responsibility.

The CHAIRMAN. What did that have to do with fisheries?

Senator CANTWELL. The Coast Guard, sir. The Fisheries and Coast Guard Subcommittee, which Senator Snowe and I are—Senator Snowe is the Chair, and I'm the Ranking Member on, asked for a briefing. And, I know, since then there has been quite a bit of discussion in the last 24 hours about that information. And we have access to some of it. So, I hope that today at the hearing we will get more, and if, perhaps, Mr. Chairman, that isn't sufficient, that the Committee will consider a classified briefing to get access to that information.

I thank the Chairman.

The CHAIRMAN. Senator Rockefeller?

STATEMENT OF HON. JOHN D. ROCKEFELLER IV, U.S. SENATOR FROM WEST VIRGINIA

Senator ROCKEFELLER. Thank you, Mr. Chairman.

To me, this is an issue about government accountability, government process, congressional oversight of what might be deemed by some in the Administration not to be that important. It's also an issue of security and all the aspects that lead to it, as well as ownership, or maybe more than ownership. There's a list here of the top 25 ports in the country, and only two of them are involved, as far as I can see, with U.S. ownership; in one case, a minority.

I am profoundly worried about the fact, as Senator Hutchison implied, not only in port security, where you're dealing with containers with 5 percent checking, but also in air cargo security, where you are, lo and behold, also involved with about 5 percent checking. In other words, no matter who we're dealing with, if

we're all doing it ourselves or if we're doing it with somebody else, we're only doing a very small part of the job. And our responsibility is to get the intelligence that leads up to how this decision was made and why it wasn't taken to a higher level earlier, but, most importantly, that we do something about the problem, that the 5 percent is a—is the biggest security risk of all. If they were just being done by the most perfect company you could think about, 5 percent is not secure. Ninety-five percent unchecked, 5 percent checked, that is ridiculous. That is embarrassing. Homeland security, from the vantage point of West Virginia, which is without any ports or large lakes that I can think of, is the home of many, many, many chemical companies. And they back up to the Ohio River and the Kanawha River. And I think there are only three or four Coast Guard boats that patrol all the way up from Pittsburgh all the way down to Louisville. I may be wrong on that, but that's an embarrassment. We are not taking our own homeland security seriously. An issue like this comes along, people jump on it. They may be right to do so. It would be best to jump on it when one best knows what the facts are. But, we have a custom that we like to jump on things, sometimes because we're not doing the job ourselves. I would suggest this is one of those cases. The Dubai ownership has to be looked at closely. But, to me, the most scary issue of all is the 95 percent, which is available to anybody to misuse and to damage us.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Boxer?

STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR FROM CALIFORNIA

Senator BOXER. Mr. Chairman, thank you.

Our ports are a soft target. Al Qaeda told us that when we found that out through the documents. And now, Dubai Ports World has been approved by this Administration to take over operations, not at just 6 ports, but 20 U.S. ports. And those ports are in Maine, Massachusetts, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, Norfolk, Virginia, Florida, Mississippi, 3 in Louisiana, and 6 in Texas.

Mr. Chairman, we need to correct the record about the role of terminal operators in port security. Those who say these companies have nothing to do with security are wrong. The Department of Homeland Security hands out security grants to terminal operators because they are involved in security.

Here's how the *Washington Post* describes the terminal operator's responsibilities, "In the process, they must maintain security at their facility. These port operators are intricately involved with security and"—here's an important point—"even have access to the port's entire security plan."

Experts tell me that the Committee on Foreign Investment in the United States should have conducted an automatic 45-day review of the acquisition by DP World, because it's owned by a foreign government. But we all know that didn't happen until there was a public outcry.

There are many troubling aspects, to me, of this swift approval by the Administration. I speak for myself here.

First, the Committee that approved this is headed by Treasury Secretary John Snow. Secretary Snow's former employer, CSX, sold CSX World Terminals, which is its international port operations, to Dubai Ports World. This, in and of itself, raises serious ethical questions regarding Secretary Snow's participation in this decision, since he still has a financial connection to CSX.

Second, the President's nominee to head the Maritime Administration, whose job it is to, "meet the economic and security needs of the Nation," comes straight from Dubai Ports. That was his former employer.

Third, the President's family has very strong financial ties to the UAE.

Next we have the question of UAE's ties to 9/11. Two of the hijackers were from there. Money that supported the operation was funneled through there. Terrorism experts today say, "There is still an al Qaeda presence at the UAE."

And perhaps most troubling to me is that nuclear weapon components were shipped through the Dubai Port to Iran, North Korea, and Libya. That port was run by Dubai.

Now, I have to say, that, in itself, is a disqualifier. But what makes this deal even more fraught with danger is our dismal record in securing our ports. And I know my time is running out, so I would ask unanimous consent that the rest of my statement be placed in the record.

[The prepared statement of Senator Boxer follows:]

PREPARED STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR FROM CALIFORNIA

Mr. Chairman, thank you for holding this hearing today.

This issue involving Dubai Ports World is the latest example in a string of policy decisions by the Bush Administration that have failed to protect our ports in this post-9/11 world.

Our ports are a soft target. We've known this since September 12, 2001, when we examined our vulnerabilities. Al Qaeda told us as much in the documents we have seized from them.

Now, Dubai Ports World has been approved by this Administration to take over some operations not just at 6 ports but at 20 U.S. ports. These ports are:

Portland, ME
Boston, MA
Davisville, RI
New York/New Jersey
Philadelphia, PA
Camden, NJ
Wilmington, DE
Baltimore, MD
Norfolk, VA
Miami, FL
Gulfport, MS
New Orleans, LA
Baton Rouge, LA
Lake Charles, LA
Beaumont, TX
Port Arthur, TX
Galveston, TX
Houston, TX
Freeport, TX
Corpus Christi, TX

Mr. Chairman, we need to correct the record about the role of terminal operators in port security. Those who say these companies have nothing to do with security are wrong.

The Department of Homeland Security hands out security grants to terminal operators.

And here is how the *Washington Post* describes their responsibilities: "Terminal operators typically lease facilities from a local port authority . . . where their main task is to move the thousands of containers . . . In the process, they must maintain security at the facility . . . "

Let's not deceive the American people. These port operators are intricately involved with security.

Experts on the Exon-Florio law tell me that the Committee on Foreign Investment in the United States should have conducted an automatic 45-day review of the acquisition by Dubai Ports World because it is owned by a foreign government. But, we all know this 45-day review did not happen until public opinion forced it.

There are many troubling aspects of this swift approval by the Administration.

First, the Committee on Foreign Investment in the United States is headed by Treasury Secretary John Snow. Secretary Snow's former employer, CSX, sold CSX World Terminals—which is its international port operations—to Dubai Ports World.

This in and of itself raises serious ethical questions regarding Secretary Snow's participation in this decision.

Second, the President's nominee to head the Maritime Administration, whose job it is to "strengthen the U.S. maritime transportation system—including infrastructure, industry and labor—to meet the economic and *security* needs of the Nation," comes straight from Dubai Ports World as the Director of Operations for Europe and Latin America.

Third, the President's family has very strong financial connections to the UAE, which include investments in The Carlyle Group and the financing of the President's brother's business.

Next we have the question of UAE's ties to 9/11. Two of the hijackers were from the UAE. Money that supported the operation was funneled through Dubai and even now terrorism experts tell me there is still an al Qaeda presence in UAE.

Perhaps most troubling to me is that nuclear weapon components were shipped through the Dubai port to Iran, North Korea, and Libya. That port was run by Dubai.

But what makes this deal even more fraught with danger is America's dismal record since 9/11 in securing our ports.

If our ports were secure . . .

If we were screening all of our containers;
If we had made the necessary physical improvements;
If we had blast resistant containers;
If we had taken advantage of all the technologies available to us;
If we had a system to adequately credential all the workers;
If we had stringent standards for cargo seals and locks;
If we had followed the advice of the 9/11 Commission to protect our infrastructure in this country . . .

. . . then this Dubai deal—although still unacceptable—would not carry the heavy risks that it does.

Mr. Chairman, let's take a quick look at this record of inaction.

I have a chart that shows four pieces of legislation that the Commerce Committee passed but never became law. This committee is trying to do its job, but we have moved nowhere with this Congress and this President.

And I have another chart with examples of amendments to increase port security funding that failed in the 107th and 108th Congresses.

Mr. Chairman, thank you for holding this hearing. We have a long way to go in securing our Nation's port system. In my opinion, we should not allow our ports to be operated by a foreign government.

In my own state, Senator Feinstein and I raised security concerns when China applied to run one terminal at the port of Long Beach in 1997.

We received letters from then-Secretary of Defense Cohen and National Security Advisor Sandy Berger assuring us that there was no national security threat.

That was pre-9/11. I now believe past deals involving foreign government-owned companies should be reviewed again. And, in the future, they should not be allowed to go through—starting with this Dubai Ports World deal.

Thank you, Mr. Chairman.

Senator BOXER. And if I just could have 10 additional seconds to sum it up.

We're not screening all our containers. We haven't made the necessary physical improvements. We don't have blast-resistant containers. We don't have a system to adequately credential all the workers. We don't have stringent standards for cargo seals and locks. We haven't followed the advice of the 9/11 Commission.

So, you take the Dubai situation, plus our lack of action on security, and I think this whole deal is fraught with danger. And I'm going to oppose this deal.

The CHAIRMAN. I'm sorry that the podium is not open to debate. I would like to debate with you on that one.

Senator BOXER. I would love to.

The CHAIRMAN. Senator Dorgan?

STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

Senator DORGAN. Mr. Chairman, thank you very much.

The right answer to this issue, I don't think requires 45 days. In fact, I don't think it requires 45 minutes. We have terrorist threats in this country, at our airports, in our seaports, we are told constantly. Go to board an airplane, and you're asked to take off your belt and take off your shoes to get on the airplane at the airport. At the same time, you get on the airplane and read the *USA Today* article about our seaports are going to be different because we're going to turn the management of our seaports over to a foreign-controlled United Arab Emirates company.

Mr. Chairman, we will have disagreements about that, but it seems to me that everybody says, "Well, we don't want to offend anybody." What about offending common sense here? I think this proposal is nuts. The question is—yes, national security—I think there are real serious national security issues. The July 2005 GAO report, it says, "Industrial security: The Department of Defense cannot ensure its oversight of contractors under foreign influence is sufficient." The Department of Defense can't assure that its influence or oversight is sufficient, but the Department of Homeland Security can? I don't think so. The evidence is right in front of us.

A larger question for me, in addition to the security issues, is, why is America, particularly in an era of terrorist threats, not able to manage its own port facilities? Have we become so numb on this notion of outsourcing and offshoring and the orgy of globalism that we can't understand our responsibility for our own national security interests, our own national economic interests?

Well, it is a global economy, but that doesn't mean you have to stop thinking or you're allowed to stop thinking clearly. I just don't understand this at all.

One of the Administration officials said, "Well, this is about—it's about commerce and trade." That's all this is about? Money? Just commerce and trade, dollars and cents? I don't think so.

What about the national interest here? Are we, in a global economy, selfish when we think about the interests of the United States of America for a change? I think that our own economic interests, our own security interests ought to persuade us, in this circumstance, to just say no. The sooner we say it, the better. It doesn't take 45 days. It shouldn't take 45 minutes, Mr. Chairman.

The CHAIRMAN. I'd like to remind the members that we do have a series of witnesses, two different panels, and we're into an hour, already, of opening statements.

Senator Ensign?

STATEMENT OF HON. JOHN ENSIGN,
U.S. SENATOR FROM NEVADA

Senator ENSIGN. Thank you, Mr. Chairman. I'll be very brief.

I think that Senator McCain raised some very legitimate points, and I think that those kinds of points have to be taken into account. We are in a global war on terrorism, and the UAE appears to be a good friend in the global war on terrorism. We must look at all the implications of this deal. National security certainly has to be put right up at the top of the priority list, but that same national security also includes our relationship with the UAE. And so, we have to look at the pros and cons of a deal like this. There's no question that we have to look at our ports and every aspect of homeland security. We also have to look at the competitive nature of ports. The more that we screen, or the more processes that we put into place—are we putting lines so long at our ports that then they want to offload in Canada, in Mexico?

I heard the Governor from California, this Sunday on one of the talk shows, talking about that, that when he was meeting with the prime minister of Japan, one of the complaints with the California ports is that they are too slow in offloading. Well, the more security we put on that, the more it slows things down. Delays could make us less competitive.

And so, we have to look at a lot of these issues. They are not as simple as some are making them out to be. It's very easy to get out there and call a press conference and make this look like a black-and-white simple issue about national security, when it is, in reality, a very complex issue. We need to act like adults and make sure that we are doing what is the right thing in the interests of the United States and its security, as well as its economic interests.

So, I thank you, Mr. Chairman. These are important hearings to have.

The CHAIRMAN. Senator Burns?

STATEMENT OF HON. CONRAD BURNS,
U.S. SENATOR FROM MONTANA

Senator BURNS. Mr. Chairman, I have a—just a short statement, but I would ask unanimous consent that it be made part of the record. I came to listen to these fellows down here.

[The prepared statement of Senator Burns follows:]

PREPARED STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR FROM MONTANA

Chairman Stevens, Senator Inouye, thank you for calling this timely and significant hearing today on the security of operations at our Nation's ports.

While my state is far from any seaports, I have heard from hundreds of Montana constituents expressing their concern with the transaction that we have come here today to discuss. I, too, am very concerned. In this post-9/11 era, we must be absolutely vigilant in ensuring national security when it comes to foreign management of any sector or industry within the United States.

When there is *any* question regarding national security, we as a Congress and as members of Committee have a responsibility to examine it as thoroughly as possible. As the attacks of September 11 have taught us, we cannot afford to be wrong even once. When the Chinese Government's pursuit of energy assets in the United States last year threatened to negatively impact our national security, I worked with my colleagues, some of whom are members of this committee, to make sure that a thorough national security review was conducted on any future transactions of that nature. I plan to do the same in this case, and I think we need to have a level-headed and clear discussion about these issues, to make absolutely sure that we are doing what is best for the safety and security of this country.

It has come to my attention that the Administration and Dubai Ports World have agreed to conduct a 45-day national security review of this transaction. While I have been informed that the proper procedures were initially followed by those involved with the Dubai Ports World/P&O acquisition, I think we all can agree that a second look will be in the best interest of national security, and the citizens of this country.

There also appears to be some disparity over what exactly the law says when it comes to reviewing foreign acquisitions with potential impacts on U.S. national security. It is my hope that we can find some answers to those questions today. The process may very well need to be clarified, and all parties involved—the Administration, Congress, and industry alike—need to work together.

We must also look beyond this transaction to the future of port security. Port security is just as important to landlocked states as it is to those with coastal waters. What comes into our ports reaches every part of the country, making this a national issue with national implications. On the issue of port security, after the attacks of September 11, we in this committee and later in the full Senate worked to pass the Maritime Transportation Security Act of 2002, which set out to improve security at our Nation's ports, enhance cargo security requirements, and strengthen overall port and maritime security.

As a long-time member of this committee, I am proud of the work we have done to enhance security, whether it is by land, sea or air. Since September 11, 2001, we have made great progress in recognizing the threats we face and being prepared for the future. Our job, however, is far from over. We, as members of this committee and this Congress, have a responsibility to ensure security at our Nation's ports, on our borders, and in every other aspect of our daily lives. I take this responsibility seriously, and I will continue these efforts throughout my time on this committee.

Again, thank you for calling this important hearing. I welcome and look forward to the testimony of our witnesses. I believe it is time that we have an open discussion on this issue.

The CHAIRMAN. Thank you very much.

Senator Allen?

STATEMENT OF HON. GEORGE ALLEN, U.S. SENATOR FROM VIRGINIA

Senator ALLEN. Thank you, Mr. Chairman. And I appreciate your holding this hearing. Unlike some of my colleagues, who have made a determination on this, I actually want to listen and learn, gather evidence, determine what sort of added security, scrutiny, and transparency would be occasioned here. There are several issues, and I think they are all legitimate concerns. National security is number one, at our border, at our seaports and our airports.

You have a difference here because it's a government-owned terminal operation versus a private one. I'd like to find out what sort of differences in security or transparency one would have when it's a government, especially if it's emirs, a monarchy of sorts, versus a private company that has to file reports. There's a certain disclosure there that you don't necessarily get out of governments.

We also need to understand why there are so few American companies doing this work. In our ports of Virginia, which are big ports, if West Virginia wanted to rejoin us, they'd have a port, a major port. And we'd have a Jefferson County back in Virginia. But, at any rate, we have Denmark, for example, in Maersk Ma-

rine, just an absolutely wonderful privately owned company. They're the only foreign-flag steamship line that's involved in our sealift for our military. In fact, they sunk their ships rather than allow Hitler's Germany to get their ships in Denmark. So, just because it's a foreign-owned company doesn't mean it's bad. In fact, it may make it just fine.

I just hope that as we go forward here, we'll ask questions, try to discern the evidence. The American people deserve it. It's not just the Congress. And I'm glad there's an extra 45 days, because I think there needs to be a lot of comfort, whether people are in Montana or Virginia or California. They ought to have a comfort that this has been scrutinized, that there are proper precautions in place, because, number one, as far as I'm concerned, is national security. And I am hopeful that all of these various Federal agencies—Customs, Coast Guard, Department of Homeland Security—are going to put in some added precautions, because this is a facility or an operation owned by a foreign government. I'm one who just generally doesn't like the government competing with the private sector, but if they are, in these sort of situations, there should be adequate security, transparency, scrutiny, and conditions to assure the American people that these operations will be safe.

And I thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator DeMint?

STATEMENT OF HON. JIM DEMINT,
U.S. SENATOR FROM SOUTH CAROLINA

Senator DEMINT. Thank you, Mr. Chairman.

Just a few comments. Like most Members of Congress, the first I heard of this was from a reporter that told me some Arab countries were taking over American ports. That was the extent of the information I got. And I think, like most Members of Congress, I expressed reservations. But, as we learn more about the facts, I think we can see some more of the justification here.

As someone said before, there is silver lining to all of this. I think we've learned, as a Senate and as a Congress, how sensitive Americans are to the security of their ports. And it's something we need to respect and take care of. I think we also learned that Americans and most Members of Congress are not fully informed about how our ports work. It's difficult to look at just one component, Mr. Chairman, as you've talked about, but we're usually dealing with foreign products coming to this country, loaded in foreign ports, riding on foreign ships. And for us to take one piece of this giant puzzle and pretend that we're going to solve the problem by beginning what is, in effect, racial profiling of different countries, we know that's not going to fix the problem.

We've also known as a Congress, for years, that what was mentioned before, that the Transportation Worker Identification Credentials, that has been very poorly implemented, is probably our biggest Achilles' heel, as far as security of our ports. And we've done nothing about it.

I do hope, as a committee, we can work in good faith and be honest about our representations. I am somewhat discouraged, what I heard Senator Boxer say. She was—tried to block the President's

commonsense requirements that our airport security workers be citizens of this country. She was one of four Democrats to actually sponsor a bill that noncitizens can do that. And I think to come back today and say foreign governments can't be involved in the management of our ports suggests to me that we might not have as good a faith of debate as I had hoped.

But I hope we can take a comprehensive look at our port security. Americans deserve it. But they deserve better than a racial profiling debate, which we appear to be starting.

I yield back.

The CHAIRMAN. Senator Lott?

Senator LOTT. I'll pass, Mr. Chairman.

The CHAIRMAN. Senator Snowe?

STATEMENT OF HON. OLYMPIA J. SNOWE, U.S. SENATOR FROM MAINE

Senator SNOWE. Thank you, Mr. Chairman. I want to thank you for holding this hearing on this vital question of national security.

And this decision has, rightly, produced a public firestorm. Like most Americans and many of my colleagues, I'm deeply disturbed by the potential of adding an additional risk at a time when security at our 361 ports around America are extremely vulnerable.

And what has become unquestionably clear is that we're still unclear exactly how this decision was reached, how it was justified, who essentially justified it, in the final analysis, given the threat environment in which we find ourselves, and given that this issue does represent and underscore our greatest terrorist vulnerability, and that is our ports.

If there's one thing that we've heard time and time again, and most certainly in my position as Chair of the Subcommittee on Fisheries and Coast Guard, it's that our ports remain extremely porous. To quote the National Plan to Achieve Maritime Domain Awareness, released in response to the National Security Presidential Directive, "The vastness of the maritime domain provides great opportunities for exploitation by terrorists. Terrorists can use large merchant ships to move powerful conventional explosives or WMD for detonation in a port."

Moreover, even with the implementation of the Maritime Transportation Security Act, back in 2002, that established a legal framework for providing for our port security, according to the 9/11 Commission's December report, a litany of vulnerabilities at our port remains unaddressed. For critical infrastructure, we get a D. For national strategy for transportation security, we're given a C-minus. For cargo screening, they assigned a D. This is not the kind of grades we should be satisfied with as a Nation.

So, this is exactly the wrong time to be introducing an additional risk; and all the more so, given the fact that the Coast Guard had at once been presented with the tremendous responsibilities of providing security at our ports while receiving paltry funds and resources with which to execute these responsibilities.

While the service requires $7 billion to fully implement these port security plans and initiatives, to date they have received a mere $825 million. And just as astonishing, the Administration is

not requesting any port security grants for Fiscal Year 2007. That was a subject of a committee hearing here last July.

Concerned about the fact that the Coast Guard, which is responsible for port security, assembled an intelligence report for the DHS that expressed objections about the sale due to the breadth of the intelligence gap, DHS also initially expressed concerns about the sale, and yet, at the end, a purchase was still approved without the 45-day review mandated by law for any sale that has national security implications.

What is troubling, Mr. Chairman, is the way in which this decision was arrived at, that both the Department of Homeland Security, as well as the Director of National Intelligence undertook threat assessments simultaneously, including a Coast Guard report that was part of the DHS report, but it never rose to the highest levels of decisionmaking and leadership, whether it was the Secretary of Homeland Security, whether it was the Secretary of Defense, whether it was the Secretary of the Treasury, whether it was the Director of National Intelligence. That, I think, illustrates the problem with reaching these types of decisions that have profound implications and obviously are grave decisions for the future about national security.

Toward that end, Senator Cantwell, as she mentioned, we have sent a letter to the Coast Guard. We want to know exactly what types of decisions were included in that memo, what kinds of issues were considered, and to what level did they—were they raised within the Department of Homeland Security.

Similarly, Senator Schumer and I have sent a letter to Secretary Chertoff expressing our strong concerns about the system that's obviously broken. We want to know if the Secretary became aware of the concerns raised by the Coast Guard and the concerns raised by any of the other component branches within the Department of Homeland Security. Did Members of the Committee on Foreign Investment see the Coast Guard memo or any of the final reports that were issued within the Department of Homeland Security on this final transaction?

The bottom line is, Mr. Chairman, there are unanswered questions that demand answers to this very grave situation. I think we all should be concerned about the fact that national security decisions should reach the highest levels of decision-making leadership within the departments, as well as the President of the United States.

The CHAIRMAN. Senator Smith?

STATEMENT OF HON. GORDON H. SMITH,
U.S. SENATOR FROM OREGON

Senator SMITH. Thank you, Mr. Chairman. I don't believe we would be having this hearing if this company in question were still owned by the British. And I think that that exposes an unfortunate aspect to all of this.

We need friends in the Middle East. We certainly need them in the war on terror. And the UAE has been a friend. But setting all that aside, I think the American people would be shocked to find just how internationalized shipping is, that roughly only 3 percent

of ships bear American flags now, that carry American goods in and out of all of our ports.

Only a South Korean company, and soon a Taiwanese company, will be delivering things into Portland. If you travel to Oakland, Los Angeles, Seattle, you'll find their port terminals are operated by many different nationalities, including Singapore, one of the largest.

I think my question, Mr. Chairman and colleagues, is simply that we must focus on, was the law followed? Was security adequately provided for? And do we need to change the law? And I think the focus on the Arab peoples in this is unfortunate and unworthy of us.

So, I am anxious to find out the facts and make sure that the security of the American people is provided for without regard to the ethnicity of the owners of these companies.

Thank you.

The CHAIRMAN. Senator Sununu?

STATEMENT OF HON. JOHN E. SUNUNU, U.S. SENATOR FROM NEW HAMPSHIRE

Senator SUNUNU. Thank you, Mr. Chairman.

I couldn't agree more with the sentiments of Senator Smith with regard to looking at this process, and whether the law was followed, and whether security interests are being dealt with, regardless of the ethnic background of the particular firm. We're talking about a process for reviewing the leases that are signed for operating certain terminals at certain ports in the United States. And before and after September 11th, we had, across America, port authorities signing agreements with many foreign-owned firms, for just the reason Senator Smith described. This is an international business. These are international ports.

And the questions, in all cases, should be whether those firms can be counted on to work cooperatively with the port authorities with whom they sign the leasing arrangements, who are the port owners, and with the Coast Guard or Department of Homeland Security or others that are providing for the fundamental security considerations at the port, whether they have good personnel and auditing systems in place that will enable them to be a good corporate tenant at the particular firm. Those are the operating questions. Those are the essential questions.

I think we ought to be able to look at them in a direct way, in an honest way, and make sure that, as Senator Smith said, the law was followed. I don't think anyone in this room—certainly none of the Members of the Senate—I don't think anyone in Congress feels that we were given as much time as would have been ideal to look at the process, to look at information that was put together during the review. And I think that's why we have been provided with a delay, if you will, to make sure that the committees of jurisdiction have time to take a look at this process.

But it should be done without focusing on ethnic background certainly, and respecting the fact that firms from North America and Europe and Asia have all had good working relationships with all of the major ports around the country. And I expect that if we do

our job here, and the panelists do their job, that will continue to be the case.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Bill Nelson?

STATEMENT OF HON. BILL NELSON, U.S. SENATOR FROM FLORIDA

Senator Bill NELSON. Thank you, Mr. Chairman.

I think it has already been mentioned here that this morning's *Jerusalem Post* had a story that, "Dubai Ports World Examines Their Certificates of Origin to Make Sure that Products Entering Dubai Do Not Originate in Israel." And that is something that clearly ought to be examined.

The other thing, Mr. Chairman, that I would hope, in the course—maybe not this hearing, but that this committee would examine—on February 7, a nominee came through this committee, named David Sanborn, to be the head of the U.S. Maritime Administration. At the time of that hearing, nothing was said about him being a high official in this particular company. And so, in light of what has happened over the course of the last week and a half, clearly I would hope that we will bring him back to this committee to re-examine this fact that was omitted, to see if there is any potential conflict of interest, since he's named as the head of the U.S. Maritime Administration.

Thank you, Mr. Chairman.

The CHAIRMAN. I'm going to exercise the prerogative of the Chair and ask Mr. Jackson, Admiral Gilmour, and Mr. Ahern to leave the witness table and call the second panel first. I feel that there's—if we go through one complete round of questioning of the Administration witnesses, we'll never get to those we've asked to come explain this deal. So, let's take the explanation first.

Mr. Jackson, I apologize.

Senator KERRY. Mr. Chairman, we also have some key questions of the Administration themselves.

The CHAIRMAN. They will testify, but first we'll hear from the facts of the Dubai people, the people we've asked come to testify.

Senator KERRY. Mr. Chairman, schedule-wise, that may present some problems. Could we keep the record open for submission of questions in writing?

The CHAIRMAN. You certainly may. It's my intention that the Senators who are here will hear the facts from the proponents of this process. I think if we hear the Administration witnesses, too many will leave by the time we get to 5 o'clock, 5:30.

Senator KERRY. No, I respect what the Chairman is trying to do. I just want to make certain that we can—because we have some other——

The CHAIRMAN. Oh, they will—they're not leaving us. They're going to testify——

Senator KERRY. But——

The CHAIRMAN.—this afternoon.

Senator KERRY. Right, but some of us have conflicts. We expected this panel to be first and we have other things. So, I'm just asking the record be left open so we can submit questions in writing.

The CHAIRMAN. That would be——

Senator KERRY. Thank you.

The CHAIRMAN.—agreeable.

Mr. Bilkey is Chief Operating Officer of Dubai Ports World. Could we call on you first? We'll expect to go right through the witness table and then go through a series of questions, or, if the Committee would agree, listen to the Administration witnesses before we ask any questions. We'll determine that at the end of your testimony.

Mr. Bilkey, thank you for coming.

STATEMENT OF H. EDWARD BILKEY,
CHIEF OPERATING OFFICER, DP WORLD

Mr. BILKEY. Thank you, Mr. Chairman.

The CHAIRMAN. Pull that toward you and push the button, please.

Mr. BILKEY. This is my first time.

I have some handouts, Mr. Chairman, that I'd like to be——

The CHAIRMAN. The staff will come get them, yes, sir.

Mr. BILKEY.—in the appropriate time.

The CHAIRMAN. Someone go get those. OK.

Mr. BILKEY. Mr. Chairman and members of the Committee, my name is Ted Bilkey, and I'm the Chief Operating Officer of DP World. And I've worked in the Middle East for many years.

I commend you for holding this hearing, and DP World welcomes the opportunity to get the truth out so that Congress and the public can better understand the facts surrounding our acquisition of P&O Ports North America, Inc.

By way of personal background, I grew up in New Jersey and New York. I served as an officer in the U.S. Navy, and I have worked in the ports and shipping business for over 45 years, and started on the docks of Brooklyn and Newark.

Also, as a personal note, it's an honor for me to appear before this committee of the U.S. Senate. My grandfather, Joseph S. Frelinghuysen, served as a Senator from New Jersey early in the 20th century and as a Chairman of the Senate Committee on Coast Defense.

Indeed, every generation from the founding of the United States to today——

Senator KERRY. Mr. Chairman?

Mr. BILKEY.—members of my family——

Senator KERRY. Can the witness pull the mike closer?

Mr. BILKEY.—have served in the Senate, House of Representatives——

The CHAIRMAN. Mr. Bilkey, could you pull the mike up closer to you, please?

Mr. BILKEY. Yes, sir.

The CHAIRMAN. All of you, they are very, very sensitive, distance sensitive. Thank you.

Mr. BILKEY. Let me start by giving a little background on DP World.

DP World is the seventh-largest port terminal operator in the world, before this acquisition. We manage 19 terminals, 4 free-trade zones, 3 logistics centers, one of which is the largest in the

world—the building is even bigger than the Pentagon—and operations in some 14 countries, where we're all welcome.

Our Jebel Ali facility in Dubai handles more container freight than all the ports on the East Coast of the United States combined. We support the U.S. military in Germany, Djibouti, and Dubai.

Our facilities in Dubai have hosted the U.S. Navy on a continual basis for nearly 2 decades. I was involved in initiating the first carrier coming into Jebel Ali in the first Gulf War. Our harbor master control center in Dubai is manned 24/7 by U.S. Navy personnel.

And, if I may, Mr. Chairman, I'd like to show the Committee some pictures, which I've handed around.

We operate as a strictly commercial entity, but are owned by the Government of Dubai. And our management is truly international, and we have 3 Americans on our 11-man top management team.

Last week, Lloyd's List voted DP World as the Best Port Operator of the Year in 2005, and we're very proud of our record.

Now, as a general trend, the shipping and port business is becoming increasingly globalized and consolidated. DP World determined to acquire P&O for commercial reasons, based on its strong management team and a complimentary geographic fit. It is important to understand that this is a $6.8 billion transaction involving assets all over the globe. The U.S. operations of P&O, P&O Ports North America, constitute approximately 10 percent of the overall value of the transaction.

It is also important to understand that it has always been our intent to operate P&O Ports North America as a separately incorporated U.S. legal entity using its longstanding reputation in management structure and personnel to the maximum extent possible.

As a smaller entity acquiring a larger entity, DP World needs the existing talent and expertise of the P&O Ports North American team to run these operations. And I am joined here by Rob Scavone, the General Counsel of P&O Ports North America.

I would now like to dispel a couple of myths and try to establish fact from fiction.

First, we are not acquiring or taking over U.S. ports, as some people have claimed. It's been said here earlier, U.S. ports are owned by local governments or port authorities, which is a fundamental fact that has been totally distorted. Rather, we act as an operator, who has a lease to operate a particular terminal within a port. The terminal operator is responsible for the area within the port that serves as a loading, unloading, or transfer point of origin.

Second, this transaction does not involve an outsourcing of U.S. security, as some have alleged. And I would defer to the Department of Homeland Security or my colleague from P&O Ports in charge of security to describe in detail how port security operates in the U.S. Suffice it to say that security is a layered approach, with the U.S. Customs and Border Protection and Coast Guard taking leading roles, followed by local police and harbor police. A terminal operator is one piece of a complex picture.

DP World and P&O Ports North America actively participate in various U.S. Government-sponsored initiatives. These programs include the Customs Trade Partnership Against Terrorism, so-called C–TPAT, the Container Security Initiative—in fact, the United Arab Emirates was the first country in the Middle East to join that

initiative—the Business Alliance in Smuggling and Counterfeiting, and the International Maritime Organization, International Ships and Port Security, ISPS, as it is known, and, finally, the Megaports Initiative with the Department of Energy. DP World has expressly committed to continuing, and, as appropriate, expanding, its commitment to all these programs.

Third, DP World did not obtain U.S. Government approval of its acquisition of P&O Ports North America, as some people have stated, secretly, in the dead of the night, or without adequate review. This is a total misrepresentation. There is an explicit process administered by the Committee on Foreign Investment in the United States, CFIUS, mandated by Congress in the Defense Protection Act and by the Department of the Treasury regulations. In point of fact, CFIUS actively reviewed the transaction for almost 3 months, and we complied with the process, and we complied with the law.

DP World actually first met with the CFIUS staff on October 17, 2005. Two weeks later, we held a face-to-face meeting with certain key CFIUS member agencies, including the Department of Homeland Security, Customs and Border Protection, Coast Guard, Department of Justice, and the Department of Commerce. We provided detailed information on the proposed transaction to CFIUS, which had already commenced its review and analysis of the transaction.

We subsequently met, on a voluntary basis, on December 6, 2005, with all member agencies of CFIUS. I, myself, flew in from Dubai to participate in that meeting with our senior vice president for operations for Europe and the Americas and our senior officer responsible for overseeing global security.

Further, during this period, the transaction received considerable coverage in the press in the United States and Europe.

We filed our CFIUS notification on December 15. CFIUS commenced a 30-day review, as required by statute. During the course of that review, CFIUS asked us to memorialize certain undertakings we had voluntarily made in our notification, as well as others, at their request. These took the form of a letter of assurances, dated January 6, 2006. And among these undertakings were seven additional express and legally binding commitments unique to the transaction.

Based on this review and the letter of assurances, on January 17, 2006, CFIUS issued a formal letter of no objection, completing the CFIUS review and allowing the transaction to proceed. In reliance on the U.S. Government's clearance, DP World took the legal steps necessary to complete its purchase of P&O on a global basis.

In conclusion, I respectfully submit that DP World is a company that, in good faith, sought to comply with applicable U.S. legal requirements. And having been told by the U.S. Government that we met those requirements, now finds itself in the position of being told that that was not good enough.

Nonetheless, we recognize that there are concerns in Congress and among the public about DP World's acquisition of P&O's terminal operations. DP World has, therefore, voluntarily acted to assure people that the security of the United States will remain strong. Specifically, on February 26, we voluntarily issued a legally

binding Hold Separate Commitment under which the management and control of P&O North America's operation will be held in suspension without direction or control from DP World until May 1, 2006, in order to allow additional review of DP World's acquisition of P&O Ports North America.

In addition, at the same time, we requested CFIUS to conduct a review, including a full 45-day investigation of the acquisition. We stated that we would abide by the outcome of that review. The Hold Separate Commitment contains a number of specific obligations, including maintaining P&O Ports North America's current management, having a U.S. citizen serve as the chief security officer for P&O Ports North America, as it actually exists today.

We are confident that further review by CFIUS will confirm that DP World's acquisition of P&O's U.S. operation does not pose any threat to America's safety and security.

If there is good to come out of this experience, perhaps it is that both Congress and the Executive Branch will take a closer look at ways to upgrade port security, and increase funding for those efforts. DP World strongly encourages such efforts and look forward to working with you to achieve them.

Finally, I'd like to conclude by making a couple of observations as an American with a long family history in America. The U.S. Government, through successive administrations, had pursued a policy of encouraging investment in the United States. The assumptions underlying this policy are that the United States is a land governed by the rule of law, but it also is a country that treats fairly and on an even playing field. It is a nation whose economic well-being and national security are enhanced by engaging with the world.

I firmly believe that the security of our country, the United States, is well served, and, in fact, enhanced on numerous levels, by allowing this transaction to go forward and by working with DP World's global 51-terminal network, which no other company has, as a responsible partner in securing additional security. At home and abroad, security is everybody's business, and it's particularly our business.

And I'd end by saying, on Sunday—I'm kind of an American historian, and I went to the Lincoln Memorial to relax and consider all that's happened. And I saw the words of our 16th President on his second Inaugural Address, "And with malice toward none, with charity for all, with firmness in the right." And it's my personal prayer that all our actions will be guided by these principles.

Thank you all very much.

[The prepared statement of Mr. Bilkey follows:]

PREPARED STATEMENT OF H. EDWARD BILKEY,
CHIEF OPERATING OFFICER, DP WORLD

Mr. Chairman, Mr. Co-Chairman and members of the Committee,

My name is Ted Bilkey. I am the Chief Operating Officer of DP World. I commend you for holding this hearing. DP World welcomes the opportunity to get the truth out so that Congress and the public can better understand the facts surrounding our acquisition of P&O Ports North America, Inc.

By way of personal background, I grew up in New Jersey and New York. I graduated from Yale and the Fletcher School of Law and Diplomacy and served as an officer in the U.S. Navy. I have worked in the ports and shipping business for over 45 years, starting on the docks of Brooklyn and Newark. Also, on a personal note,

it is a pleasure and an honor for me to appear before this Committee of the U.S. Senate. My grandfather, Joseph S. Frelinghuysen, served as Senator from New Jersey earlier in the 20th century and as Chairman of the Senate Committee on Coast Defenses. Indeed, in every generation from the founding of the United States to today members of my family have served in the Senate, House of Representatives or as Secretary of State.

Let me start my presentation by giving you a little background on DP World and its acquisition of The Peninsular & Oriental Steam Navigation Company, which is headquartered in the United Kingdom. Prior to the acquisition, DP World was the seventh largest port terminal operator in the world. We manage 19 container terminals, 4 free trade zones, 3 logistics centers and operations in some 14 countries, which incorporated the operations of the U.S. company CSX World Terminals about one year ago. These include operations in support of the U.S. military in Germany, Djibouti and Dubai. Our Jebel Ali facility in Dubai handles more container freight than all the ports on the East Coast of the United States combined. We operate as a strictly commercial entity but are owned by the Government of Dubai. Our management is truly international. Of the 11 members of DP World senior management, three are Americans, one is British, two are Indian, one is Dutch and four are citizens of Dubai. Our Board Chairman, a citizen of Dubai, went to Temple University. Our Chief Executive Officer, also a citizen of Dubai, is a graduate of the University of Arizona. Last week Lloyds List voted DP World as the Port Operator of the Year 2005. Our facilities in Dubai have hosted the U.S. Navy on a continual basis for nearly two decades. Our Harbor Master control center in Dubai is manned 24×7 by U.S. Navy personnel. Additionally, U.S. Customs has a constant presence. If I may, Mr. Chairman, I'd like to show the Committee some pictures which may be helpful in understanding what we do.

Now, as a general trend, the shipping and ports business is becoming increasingly globalized, and, as a result, consolidated. DP World determined to acquire P&O for commercial reasons, based on its strong management team and global and complementary geographic fit as the shipping world becomes more consolidated. It is important to understand that this is a $6.8 billion transaction involving assets all over the globe. The U.S. operations of P&O—P&O Ports North America—constitute approximately 6 to 10 percent of the overall value of the transaction, depending on calculation methods. As a smaller entity acquiring a larger entity, DP World wants and needs the existing talent and expertise of the P&O Ports North America team to run those operations. It is important to understand that it has always been DP World's express intent, from the start, to operate P&O Ports North America as a separately incorporated U.S. legal entity, using its longstanding reputation and maintaining the current management structure and personnel to the maximum extent possible but reporting to the senior management in Dubai. As part of our voluntary cooperation and offer, we have agreed to disengage any reporting to Dubai management for the present.

I would now like to try to dispel a couple of myths which have been played up.

First, we are not "acquiring," "controlling" or "taking over" U.S. ports, as some people have claimed. U.S. ports are owned by local governments or port authorities, which is a fundamental fact that has been totally distorted. Rather, we act as an "operator" who has a lease or license to operate a particular terminal within a port. The terminal operator is responsible for the area within the port that serves as a loading, unloading or transfer point of the cargo. To be exact, DP World would acquire the following terminal leases or concessions that handle containers operated by P&O Ports North America:

- Baltimore
- Philadelphia—in a 50–50 joint venture with Stevedoring Services of America
- Miami—50 percent of Port of Miami Terminal Operating Company
- New Orleans
- Newark—through a 50–50 joint venture in the Port of Newark Container Terminal (PNCT) with Maersk terminals

P&O is involved in general stevedoring and other cargo handling operations in a number of other locations in the United States and a passenger terminal in New York in close cooperation with the U.S. Coast Guard. Stevedoring is lifting containers on or off vessels and depositing them in an area operated by the port authority.

Second, this transaction does not involve an "outsourcing of U.S. security," as some have alleged. I will defer to the Department of Homeland Security and others to describe in detail how port security operates or to my colleague from P&O Ports North America in charge of security, Rob Scavone. Suffice it to say that security is

a layered approach, with the U.S. Customs and Border Protection and Coast Guard taking leading roles to "push out the borders" of the United States. A terminal operator is one piece of a complex picture.

Within the context of the terminal operator's responsibilities, both DP World and P&O Ports North America are active participants in various U.S. Government-sponsored and international initiatives. These programs include:

- The Customs-Trade Partnership Against Terrorism;
- The Container Security Initiative—in fact the United Arab Emirates was the first country in the Middle East to join that initiative;
- The Business Alliance on Smuggling and Counterfeiting;
- The International Maritime Organization International Ships and Port Security; and
- The Megaports Initiative with the Department of Energy.

DP World has expressly committed to continuing and, as appropriate, expanding its commitment to these programs.

Third, DP World did not seek to obtain U.S. Government approval of its acquisition of P&O Ports North America, as some people have stated, "secretly," "in the dead of the night" or "without adequate review." This is a total misrepresentation. There is an explicit process administered by the Committee on Foreign Investment in the United States (CFIUS) mandated by Congress in the Defense Production Act and by Department of the Treasury regulations. In point of fact, CFIUS actively reviewed the transaction for almost 3 months. We believed we were doing the right thing as we were following the law and the process, as we have in other countries.

DP World first met with CFIUS staff on October 17, 2005 to discuss the acquisition. We then held a face-to-face meeting with certain key CFIUS member agencies—including the Department of Homeland Security, Customs and Border Protection, Coast Guard, Department of Justice and Department of Commerce—on October 31, 2005. As a result of those meetings, DP World provided additional detailed information on the proposed transaction to CFIUS, which had already commenced its review and analysis of the transaction. DP World and P&O Ports North America held a subsequent meeting on December 6, 2005 with all member agencies of CFIUS. I myself flew in from Dubai to participate in that meeting with our Senior Vice President for Operations for Europe and the Americas and our senior officer responsible for overseeing security.

Further, during this period, the transaction received considerable coverage in the press in the United States and Europe. For example, on October 31, 2005 *The Wall Street Journal* carried an article reporting on the transaction and on November 14, 2005 the *Journal of Commerce* ran a lengthy article reporting on the U.S. aspects of it. Also, the *Financial Times* reported extensively on the transaction from the start. Copies of some of these articles are attached as exhibits to my written testimony.

We filed our CFIUS notification on December 15, 2005. It should be noted that CFIUS has previous filings from P&O from its acquisition of International Terminal Operating Company, DP World from its acquisition of CSXWT and, most importantly, from P&O's security filings with the Coast Guard for its U.S. facilities.

CFIUS commenced a 30-day review as required by statute. During the course of that review, CFIUS asked us to memorialize certain undertakings we had voluntarily made in our notification, as well as others at their request. These took the form of a "Letter of Assurances" dated January 6, 2006. Among these undertakings were 7 additional express and legally binding commitments:

- To maintain "no less than" the current levels of membership and cooperation in various security arrangements;
- To provide DHS with at least 30 days advance notice of any proposed material change to our levels of membership or cooperation in these security arrangements;
- To operate all U.S. facilities to the extent possible with current U.S. management;
- To designate a responsible corporate officer to serve as point of contact with the Department of Homeland Security on security matters;
- To provide relevant information promptly to DHS upon request;
- To assist and support law enforcement agencies (including disclosing information on the design, manufacture and operation of the U.S. facilities); and
- To provide records relating to foreign operational direction, if any, of the U.S. facilities.

A copy of that Letter of Assurances is attached as an exhibit to my written testimony submitted to the Committee.

Based on this review and the Letter of Assurances, on January 17, 2006 CFIUS issued a formal letter of "no objection" completing the CFIUS review and allowing the transaction to proceed. In express reliance on the U.S. Government's clearance, DP World took the legal steps necessary to complete its purchase of P&O on a global basis, which included advising P&O that our offer was unconditional because all necessary permissions had been received.

In conclusion, I respectfully submit that DP World is a company that in good faith sought to comply with applicable U.S. legal requirements, and, having been told by the U.S. Government that we met those requirements, now finds itself in the position of being told that that was not good enough.

Nonetheless, we recognize that there are concerns in Congress and among the public about DP World's acquisition of P&O's terminal operations. Despite having obtained approval by the Federal Government and relied on that approval, DP World has moved voluntarily to take steps to assure people that the security of the United States will remain strong. Specifically, on February 26, 2006, DP World and P&O Ports North America voluntarily entered into a legally binding "Hold Separate Commitment" under which the management and control of P&O's North American operations will be held in suspension—without direction or control from DP World—until May 1, 2006 or completion of the CFIUS process in order to allow additional review of DP World's acquisition of P&O Ports North America. In addition, at the same time the two companies requested CFIUS to conduct a review, including a full 45-day investigation of the acquisition. Both companies expressly stated that they will abide by the outcome of that review. The "Hold Separate Commitment" contains a number of specific obligations, including maintaining P&O Ports North America's current management and having a U.S. citizen serve as Chief Security Officer for P&O Ports North America. We are confident that further review by CFIUS will confirm that DP World's acquisition of P&O's U.S. operations does not pose any threat to America's safety and security. We hope that voluntarily agreeing to further scrutiny demonstrates our commitment to security and to operating as a responsible corporate citizen of the United States.

If there is good to come out of this experience, perhaps it is that both Congress and the Executive Branch will take a closer look at port security and find ways to upgrade it further and increase funding for these efforts. DP World strongly encourages such efforts and looks forward to working with you to achieve them.

Finally, I would like to conclude by making a couple of observations as an American. The U.S. Government, through successive administrations, has pursued a policy of encouraging investment in the United States. The assumptions underlying this policy are that the United States is a land governed by the rule of law, is a country that treats people fairly and on an even playing field and is a nation whose economic well being and national security are enhanced by engaging with the world. It is my firm belief that the security of our country—the United States—is well served and in fact enhanced on numerous levels by allowing this transaction to go forward and working with DP World's global 51-terminal network as a responsible partner in ensuring security. At home and abroad, security is everybody's business.

On Sunday I went to the Lincoln Memorial to relax and consider all that has happened. I saw the words in our sixteenth President's Second Inaugural Address: "With malice toward none, with charity for all, with firmness in the right." It is my personal prayer that all our actions will be guided by these principles.

Thank you.

The Wall Street Journal—October 31, 2005

P&O Attracts Buyout Overture Amid Shipping-Industry Boom

by Jason Singer

LONDON—Peninsular & Oriental Steam Navigation Co. has received a buyout overture from a port operator in Dubai, according to a person familiar with the matter, in a potential deal that could be valued at nearly GBP 3 billion, or about $5 billion.

The United Arab Emirates company, Dubai Ports World, owned by the emirate of Dubai, sought a meeting for early this week with the British ports and ferries company, although the two sides haven't yet talked. There can be no assurances a deal will emerge, this person said. The offer was previously reported by London's Sunday Times.

P&O said in a statement yesterday it has been contacted by a third party but there have been no negotiations. A P&O spokesman declined to elaborate. A person at Dubai Ports World said nobody was available to comment.

If a deal emerges, it would be the latest in the rapidly consolidating industry of ports and container shipping, which remains the most popular mode of transportation for moving goods world-wide.

In May, A.P. Moeller-Maersk of Denmark, a large container-shipping firm, bought Royal P&O Nedlloyd NV of the Netherlands—a smaller shipping company in which P&O held a 25 percent stake—for 2.3 billion euros ($2.78 billion). Shipping firms are finding they need greater economies of scale as business amid a boom in the business fueled in large part by the transport of Chinese exports world-wide.

Earlier this month German tourism and transportation conglomerate TUI AG received the necessary backing from shareholders in CP Ships Ltd. to buy the U.K. shipping company for about 1.74 billion euros, making TUI the fifth-largest marine shipper by volume.

Port operators around the world have been consolidating. PD Ports PLC of the U.K. said earlier this month it had received a takeover approach from an unidentified suitor, and British ports operator Mersey Docks & Harbour Co. was purchased by rival Peel Ports in September for GBP 771 million.

P&O has been considered a potential takeover target since Maersk purchased Royal P&O Nedlloyd. That sale slimmed the U.K. company into a focused port operator with terminals world-wide. P&O has a market value of about GBP 2.3 billion.

Last week, the company reduced its 2005 profit expectations because lower consumer-spending in the U.K. had damped business at its two British terminals. Should Dubai Ports pursue a deal for P&O, it is expected several other global port operators in Hong Kong, Singapore and elsewhere may also consider a bid for P&O.

Founded in 1837, P&O is considered one of the world's top port operators after hiving off its container-shipping unit. The company has 27 container terminals around the world and also runs logistics services in more than 100 ports in 18 countries. In the U.K., P&O is also one of the top ferry operators.

Dubai Ports World has grown through acquisitions. It bought the international-terminals business of CSX Corp. for $1.15 billion in 2004, which launched it to the top leagues of global port operators.

Journal of Commerce—November 14, 2005

P&O Ports in Play; Unsolicited Offer for Port Operator Could Be Followed by Other Bids

by Peter T. Leach

Whoever wins the nascent bidding war for the assets of Britain's venerable Peninsula and Oriental Steam Navigation Co., the outcome will clearly spell a victory for P&O management's efforts to unlock the value in those assets. The outcome also will underscore the high premium that investors place on the consistent earning power of container ports and terminals, in contrast to the much more cyclical earnings of ocean carriers.

"In the same way that CP Ships and P&O Nedlloyd attracted quite a premium because of their scarcity value as listed companies, I would assume that P&O Ports would attract quite a premium as well," said Mark Page, director of Drewry Shipping Consultants in London. "When you buy P&O, primarily it's the ports you're getting, because it doesn't come with too much additional baggage."

P&O Ports, the world's fourth-largest port operator, represents the value in P&O's assets, because it generates 80 percent of the group's profit. P&O operates 27 terminals and logistics centers in 100 ports in 18 countries, with 2004 throughput of 22 million TEUs.

P&O's ferries division is losing money and has been a drag on company earnings, and hence its share price. P&O's management has been considering ways of spinning off the ferries division, but Dubai Ports International, which made a surprise offer for the entire company at the beginning of November, apparently was unwilling to wait for that eventuality.

"What I always thought would happen was that everyone was waiting for the ferries to be sold, so that you would have a pure port company," Page said. "But what is happening is that because of the scarcity value of these listed companies, Dubai Ports said, 'We can't wait for the ferries to be sold, so we'd better get it now and we'll get rid of the ferries.' "

Dubai Ports, which became the world's fifth-largest port operator last year through its acquisition of CSX World Terminals, approached P&O's management in

late October with an unsolicited offer. The bid could value the company at nearly $7 billion, compared with its market value of $4.1 billion before the offer. The bid, which was not clearly defined, was quickly leaked to the press, put P&O in play, and drove P&O's stock price up 40 percent.

In the wake of the news, an array of global port operators and carriers are said to have contacted their investment bankers and to be preparing counteroffers. Potential bidders whose names have been mentioned include Temasek Holdings, the investment arm of the Singapore government, which already owns PSA Ports, the world's second-largest container terminal operator; APM Terminals, the port-operating division of A.P. Moller-Maersk; and Hutchison Port Holdings, the port division of Hong Kong's Hutchison Whampoa and the world's largest port operator.

Mediterranean Shipping and CMA CGM are reported to be watching the fray closely in the hopes of picking up some of the ports and terminals that the winning bidder will inevitably have to sell off. "In any portfolio of ports, there are bound to be certain ports that don't necessarily make sense for the acquiring company either because the regulators frown on them or because it may already have a terminal in that harbor," Page said.

European regulators would certainly frown on the potential antitrust issues that would be raised by a successful counteroffer by Hutchison Port Holdings. Concerns over competitive issues could force Hutchison to sell some of the British and North European ports that it might acquire.

In the U.K., P&O Ports has stakes in terminals in the ports of Tilbury and Southampton and has received approval to build a new port and logistics center at London Gateway in Thurrock, Essex. Hutchison's interests in the U.K. include terminals it owns and operates in the ports of Thamesport, Harwich and Felixstowe.

P&O's port interests in Europe include facilities in Antwerp and Le Havre on the Atlantic and Marseilles-Fos on the Mediterranean. Hutchison operates and/or owns terminals in Rotterdam, Willebroeck (near Antwerp), Gdynia in Poland, and at Germany's inland port of Duisburg.

There apparently would be no antitrust problems in the United States, but U.S. politicians might make noise over Hutchison's acquisition of P&O Ports, which operates in the Port of New York and New Jersey, Philadelphia, Baltimore, Miami, New Orleans and Houston. A few conservative Members of Congress have complained that the Hong Kong-based company's operation of ports at Balboa and Cristobal at either end of the Panama Canal gives China control of the strategic waterway.

Whatever the outcome, P&O's shareholders stand to benefit from its management's efforts of the last few years to clean up the company's portfolio of holdings. The effort began in 1994, when it sold P&O Cruises to Carnival Cruise Lines. In 1996 it spun off its container division into a joint venture with Royal Nedlloyd, which became P&O Nedlloyd, in which it retained a 25 percent stake until it was sold to A.P. Moller-Maersk this year. P&O subsequently divested or sold off real estate holdings in ports around the world. Most recently, it sold off P&O Cold Logistics, the third-largest cold storage and distribution operator in the world, to Versacold Holding of Canada for 183 million pounds ($320 million).

Whether P&O's management had ever intended to prepare the company for sale as a result of these beautification efforts, that is the almost inevitable outcome now. "It has resulted in realization of shareholder value," Page said. "Before this, no one would have been interested in taking it over."

Financial Times (London, England)—November 29, 2005 Tuesday—London Edition 2

DUBAI'S DP WORLD SEALS POUNDS 3.2BN PURCHASE OF P&O

by Robert Wright

Dubai's DP World is to buy P&O, the UK container ports and ferries group, for Pounds 3.19bn.

After the deal—to be announced today—DP World, the container terminal operator owned by Dubai's ports and freezones authority, will be nearly as big as the world's third biggest container terminal operator, Denmark's APM Terminals.

The price offered for P&O—which announced pre-tax profits before exceptional items of Pounds 170m on Pounds 3.06bn sales for 2004—could make a counterbid from a rival large container port operator unlikely, analysts said.

The bid is thought likely to come at about 440p a share—just above last night's closing share price of 435p.

P&O announced it had received an approach—without revealing from whom—on October 31, after a newspaper story linked the company to DP World.

DP World's concerns about P&O's pension liabilities and projections on the cost and likely revenues of P&O's planned London Gateway port development have been resolved.

The deal will bring to an end the independent existence of a company that was founded in 1837—the year Queen Victoria came to the throne—and was once one of the key institutions of the British empire, taking civil servants, soldiers and mail between the UK and India.

Robert Woods, chief executive, is set to make more than Pounds 2.7m from selling his shares and exercising his share options after the deal. Lord Sterling, former chairman, will make about Pounds 10m.

The pair were instrumental in restructuring P&O, turning it from an unfocused conglomerate with a range of shipping businesses into the present operation, which has only container ports, ferries and a few residual property interests.

Neil Davidson, container ports analyst for London-based Drewry Shipping Consultants, said it was hard to see anyone else coming up with a bid to defeat DP World's. Mr Davidson said there would now be four heavyweight worldwide container terminal operators—Hong Kong's Hutchison Ports, Singapore's PSA, APM, part of the Maersk Group and DP World.

DP World became the world's sixth largest container terminal operator this year when it bought CSX World Terminals, the terminals business formerly owned by the U.S. Railroad.

P&O had long been seen as a bid target because of its excellent assets across the globe, but particularly in China and India.

Financial Times (London, England)—November 17, 2005 Thursday—London Edition 1

DP World Moves Closer to P&O Bid

by Robert Wright

DP World has started due diligence work on P&O, the ports and ferries operator, in a move that suggests the two are moving closer to a takeover deal.

P&O has allowed DP World access to data on the company's operations as part of the process, the *Financial Times* has learnt.

The development suggested DP World is the only active bidder for P&O, despite widespread expectations that other large container port operators would try to trump its bid—thought likely to be for about Pounds 3bn.

DP World's main concerns are thought to surround the likely cost and potential profitability of P&O's planned London Gateway container port on the Thames, expected to cost Pounds 800m.

The port—which will be the UK's largest container port when completed—is due to start operations in 2008.

Neil Davidson, container ports analyst at London-based Drewry Shipping Consultants, said DP World would want to be sure that London Gateway could be built for the amounts P&O had suggested before deciding what to pay for the com-pany.

The London Gateway project is regarded as a key asset for P&O, which is the only port operator to have planning per-mission for a sizable container port development in south-east England, the area where large container carriers prefer to call.

The main container ports—at Felixstowe and Southampton—are reaching the limits of their capacity.

After it was announced in July, analysts estimated that the project added between 13p and 23p per share—at least Pounds 100m in total—to the company's present value.

DP World is likely to bring up widespread industry queries about the extent of the dredging work needed to allow large container ships to reach the port. It is also likely to raise questions about the transport connections to the site, details of which still have to be agreed to win planning approval.

The start of due diligence is the most definite step toward a deal since a short meeting between the parties on October 31, the day after news of DP World's intentions became public.

Singapore's state-owned Temasek Holdings—owner of PSA, the world's second-largest container terminal operator—has retained UBS, the merchant bank, to examine the possibility of bidding for P&O, the world's fourth-largest container terminal operator, which has a portfolio of assets in key areas around the world.

However, it appeared to have made no further move.

Mr Davidson said other potential bidders—including Hong Kong-based Hutchison Ports, the world's largest container port operator and Denmark's AP Moller-Maersk,

third-largest operator—had been demoralised by DP World's apparent ability to outbid any rival to buy P&O.

Financial Times (London, England)—October 31, 2005 Monday—Asia Edition 1

DUBAI STATE PORTS OPERATOR APPROACHES P&O

by James Mackintosh

LONDON—DP World, Dubai's state-owned ports operator, has approached P&O about buying all or part of the British ports and ferries group, according to people close to the companies.

The approach, made last week, remains tentative but meetings are understood to be likely to take place between the two sides soon. One person familiar with the approach said it was unclear whether DP World wanted to take over the whole of P&O, or just buy its freight business, on which it has been refocusing. At Friday's closing price P&O was worth Pounds 2.3bn (Dollars 4bn).

However, the approach could spark a multi-billion pound bidding war for P&O, once the flagship of Britain's merchant navy. P&O is the only listed global ports operator and both Denmark's AP Moller-Maersk and Hong Kong's Hutchison conglomerate, which have biggercontainer port businesses, are considered likely counterbidders.

Singapore's state holding company, Temasek, is understood to have built a small stake in P&O as an investment but could also take part in any auction to bolster its NOL container business.

DP World has been expanding rapidly as part of the strategy of Dubai to become a transport hub. The purchase of P&O would seal its position in the top league of operators.

It would also confirm the strategy of spending the emirate's petro-dollars from the record oil price on foreign assets, which this year have included a Dollars 1bn stake in DaimlerChrysler, the German carmaker, and the Pounds 800m purchase of the Tussauds waxworks museums.

P&O yesterday refused to say to whom it was talking. "P&O confirms that it has received a very preliminary contact from a third party, which may or may not lead to an offer for the company," it said in a statement. DP World declined to comment.

The sale of P&O, officially the Peninsular and Oriental Steam Navigation Company, would end 165 years of flying the flag for Britain.

P&O has already slimmed down significantly in the past 6 years, demerging the Princess cruise line, selling Bovis, the construction company, its stake in Royal P&O Nedlloyd container shipping, bulk shipping and property including golf courses, shopping centres and London's Chelsea Harbour development. It now concentrates on its container ports busi-ness, while also being Britain's biggest ferry operator.

DP World spent Dollars 1.15bn this year to buy the container terminal business of CSX, the Florida-based railway company, widely regarded as a hefty premium. The company plans to more than triple its volumes within the next 10 years, and has been growing more than 20 per cent annually for the past 3 years.

DP World has hired Deutsche Bank to advise it on the bid. P&O has retained Citigroup.

Confidential Pursuant to Sections 552(b)(3) and (4) of the Freedom of Information Act, 5 U.S.C. Sections 552(b)(3) and (4), and Section 721(b) of the Defense Production Act, 50 U.S.C. App. Section 721(b)

January 6, 2006

STEWART A. BAKER,
Assistant Secretary for Policy, Planning, and International Affairs,
United States Department of Homeland Security,
Washington, DC.

Dear Mr. Baker:

This letter outlines the joint representations and commitments of Ports, Customs and Free Zone Corporation, a Dubai public corporation established by Dubai Royal Decree under Law No. (1) of 2001 ("PCFC"), Peninsular & Oriental Steam Navigation Company, a company incorporated by Royal Charter in the United Kingdom and listed on the London Stock Exchange ("P&O"), and P&O's wholly owned U.S. subsidiary, P&O Ports North America, Inc. ("P&O North America"), with respect to the proposed acquisition by PCFC of P&O through its wholly owned subsidiary

Thunder FZE, a Dubai corporation, which will also result in the acquisition by PCFC of P&O North America. The commitments of PCFC, P&O and P&O North America contained herein shall only be effective if and when the proposed acquisition by PCFC of P&O closes.

This letter reflects the joint representations and commitments by these Companies ("the Companies") to the U.S. Department of Homeland Security (DHS) in connection with a joint voluntary Notice filed on December 15, 2005, with the Committee on Foreign Investment in the United States ("CFIUS") by the special purpose vehicle subsidiary of PCFC, Thunder FZE, and P&O North America, with respect to the foregoing described proposed acquisition. These joint representations and commitments are being provided for the purpose of providing assurances requested by DHS with regard to law enforcement, public safety and national security issues within the jurisdiction of DHS. These joint representations and commitments have been discussed with DHS and other CFIUS agencies in a series of briefings and follow up communications both before and after the aforementioned CFIUS Notice was filed for the purpose of providing supplemental information for those agencies to consider in exercising their role on CFIUS.

These Companies hereby confirm their joint representations and commitments to the following:

Maintenance of Membership, Cooperation, and Support in Security Arrangements

As was noted by the Companies in a briefing for CFIUS at the U.S. Treasury Department on December 6, 2005, the Companies represent and commit to maintain no less than their current level of membership in, cooperation with, and support for those Security Arrangements they currently participate in, as outlined in section 7(D) of the December 15 CFIUS Notice. Specifically, those Security Arrangements include the Customs-Trade Partnership Against Terrorism ("C–TPAT"), the Business Anti-Smuggling Coalition ("BASC"), and the Container Security Initiative ("CSI").[1] In addition, PCFC will continue to maintain their level of membership in, cooperation with, and support for the March 2005 Memorandum of Understanding with the U.S. Department of Energy to support CSI by cooperating and restricting the trafficking in nuclear and radioactive materials, in particular using the specialized equipment at Dubai's seaports terminals and training of personnel to inspect material and share information with respect to such material, as outlined in paragraph 5.6 of the November 17, 2005, "Project Thunder Background Briefing Paper for the [CFIUS]," ("Project Thunder Background Briefing") as amended December 15, 2005.[2]

The Companies further assure that, should they propose material changes with respect to maintenance of their level of membership in, cooperation with, or support for these Security Arrangements, the Companies will provide at least thirty (30) days advance written notice of such proposal to the Assistant Secretary of DHS for Policy, Planning, and International Affairs, detailing the reasons, timing, and plans for such proposed change. The companies further agree to meet and confer with any DHS designated U.S. Government officials prior to implementing such proposed change, to provide any relevant information requested with respect to such proposed change, and to reasonably address any security concerns raised with respect to such proposed change.

Management of U.S. Facilities

The Companies hereby represent and commit that their current intent and plan is to operate any U.S. facilities they own or control to the extent possible with the current U.S. management structure. These facilities include the U.S. persons being acquired as outlined in section 3 of the above-referenced CFIUS Notice.

Security Policies and Procedures, Officers, and Points of Contact for U.S. Facilities

The Companies represent and commit that they will maintain security policies and procedures at the U.S. facilities, under the direction of a responsible corporate officer, who will serve as a point of contact for DHS in any U.S. facilities owned

[1] The Companies will also continue to comply with all international and domestic Security Arrangements which are required by law and with which they have represented in the above-referenced CFIUS Notice they currently comply, such as the International Ship and Port Facility Security Code ("ISPS") and 33 CFR Subchapter H.

[2] PCFC will also maintain no less than the current level of membership, cooperation, and support for Security Arrangements pursuant to the terms of those Security Arrangements with the U.S. Armed Forces, including, in particular, the provision of services to U.S. Navy vessels and personnel at Jebel Ali Port, as noted in paragraph 5.7 of the Project Thunder Background Briefing, although these arrangements are outside the purview of DHS.

or controlled by the Companies, including the U.S. persons being acquired as outlined in section 3 of the above-referenced CFIUS Notice. The companies further represent and commit that they will make any relevant information concerning those policies and procedures promptly available to DHS upon written request and will meet and confer with any U.S. Government official designated by DHS to address any concern.

Assistance to Law Enforcement

The Companies represent and commit that they will take all reasonable steps to assist and support Federal, state and local law enforcement agencies, including but not limited to DHS agencies such as U.S. Customs and Border Protection, U.S. Coast Guard, and U.S. Immigration and Customs Enforcement ("CBP, Coast Guard, and ICE"), in conducting any lawful law enforcement activity related to any service provided in the U.S. by the Companies or their subsidiaries. Such assistance shall include, but not be limited to, disclosure, if necessary, of information relating to the design, maintenance or operation of the Companies' U.S. facilities, equipment or services. In particular, the Companies also agree to promptly provide, upon written request, any relevant records that may exist in the U.S., involving matters relating to foreign operational direction, if any, of U.S. facilities owned or controlled by the Companies. The companies will maintain such records according to record retention policies adopted in the normal course of business of those facilities.

Non-Objection in CFIUS

The Companies understand that, promptly following execution of this letter by an authorized representative or attorney for the Companies and delivery thereof to DHS that DHS shall notify CFIUS that DHS has no objection to the proposed transaction described in the aforementioned CFIUS Notice.

The Companies further understand that, in the event that their joint representations and commitments as set forth in this letter are materially false or misleading, or the parties have omitted material information, DHS may (in addition to any other remedy available at law or equity) request that the CFIUS initiate a review of the Companies' activities to determine whether such misstatement or omission threatens to impair U.S. national security and, if it does, to determine an appropriate response to protect U.S. national security. In addition, in the event that these representations are otherwise materially nullified or breached, DOS may seek any other remedy available at law or equity.

Sincerely,

ROBERT SCAVONE,
Executive VP.
Ports, Customs and Free Zone Corporation,
P&O Ports North America.

ADDENDUM FROM H. EDWARD BILKEY TO HON. TED STEVENS, MARCH 8, 2006

Dear Mr. Chairman:

I am writing regarding my written testimony of February 28, 2006 before the Senate Commerce, Science and Transportation Committee. I have been advised that I was incorrect in one statement in my written testimony. I am writing to correct the record with regard to that statement.

Specifically, I stated on page 6 of my prepared remarks that the Committee on Foreign Investment in the United States (CFIUS) had a previous filing from DP World's acquisition of CSXWT. Although I previously understood this to be the case, upon further research and consultation with our attorneys, I have been advised that CFIUS did not review that acquisition.

I respectfully request that this letter be added to my testimony so that the record is corrected.

The CHAIRMAN. Well, thank you very much. I did not put a time limit on you, Mr. Bilkey, I had seen your statement, and I think, under the circumstances, with all the charges that are made, you deserved the right to have a full statement.

Mr. BILKEY. Thank you.

The CHAIRMAN. We'll go back, gentlemen, though, to our normal limit, for the rest of you. I hope you'll understand.

Mr. Scavone, do you have a statement?

STATEMENT OF ROBERT SCAVONE, EXECUTIVE VICE PRESIDENT, STRATEGIC PLANNING AND DEVELOPMENT, P&O PORTS NORTH AMERICA, INC.

Mr. SCAVONE. I don't have any prepared statement, Mr. Chairman.

Just by way of introduction, I am Rob Scavone. I am the Executive Vice President for P&O Ports North America. Included in my responsibilities is our security measures in all of our terminals. I also happen to be a Member of the Board of Directors of the National Association of Waterfront Employers. Mr. Yoshitani is speaking on behalf of our group today.

I also serve as a Co-Chairman of an advisory group to the International Standards Organization on matters of container security, which group includes all major international terminal operators in the world.

I look forward to contributing to the discussion with any questions anybody may have about how our security works on the ground in our terminals in the United States.

The CHAIRMAN. Thank you, Mr. Scavone.

Our next witness is Mr. Tay Yoshitani, Senior Policy Advisor for the National Association of Waterfront Employers of Washington.

STATEMENT OF TAY YOSHITANI, SENIOR POLICY ADVISOR, NATIONAL ASSOCIATION OF WATERFRONT EMPLOYERS (NAWE)

Mr. YOSHITANI. Yes, sir.

The CHAIRMAN. Yes, sir. All the statements will appear in the record in full. We hope you will summarize them within 5 minutes.

Thank you, Mr. Yoshitani.

Mr. YOSHITANI. Yes, sir.

Good afternoon. I'm Tay Yoshitani, the Senior Policy Advisor for the National Association of Waterfront Employers. We call ourselves NAWE. We're a national trade association which includes most of the large private sector marine terminals—terminal operators in the U.S.

And, just briefly, by background, prior to this role with NAWE, I served as the Executive Director at both the Port of Oakland and Baltimore, and was the Deputy at the Port of Los Angeles.

And on behalf of NAWE, I want to thank the members of this committee for giving us the opportunity to comment on maritime cargo security and S. 1052.

It's estimated that the maritime industry handles about 15 percent of the U.S. GDP. Our membership reflects the international scope of the maritime industry and terminal operations. Many of the members of—many of the members are U.S. company-owned, but many are foreign-company-owned, as well. And, Senator Cantwell and Lautenberg, I'd like to point out that SSA Marine and Maher Terminals, who are respectively headquartered in your states, are active members of NAWE. And, as Mr. Scavone has already stated, P&O is an active member of NAWE, as well.

Recent events have brought attention on the typical structure of U.S. ports and what role terminal operators play.

Terminal operators typically lease property from ports and load and unload cargo between ships and marine terminals. Now, this

sounds a bit simplistic, but it's really not. On any given day, there may be several ships at berth, with thousands of containers being loaded and unloaded, while a comparable number of trucks are entering and exiting our terminal to pick up and drop off a load. To do this on a day-in and day-out basis in a safe manner while keeping track of where the container is and where it's supposed to go is a daunting task. Furthermore, we conduct our business in compliance with numerous Federal statutes, regulations, policies, many of which are obviously security-related.

I want to clarify how we view our role with respect to security. There are basically two security issues. Somewhat of an oversimplification, I grant. The first is the facility security, which includes the port and the individual marine terminals. The MTSA clearly designates the Coast Guard as the lead authority on facility security. And, of course, under these regulations, our terminal operators are required to submit a comprehensive facility security plan, as you know.

The second area of security is what we will refer to as the "cargo chain." This refers to understanding what's inside the box, and ensuring that that box is not breached during the transit. This is the area that most experts have concerns about. The terminal operator actually has very little to do with this aspect of security, other than a supporting role of moving containers around the terminal, under the direction of CBP.

When CBP wishes to inspect a container, they notify the terminal operator of the box number, and the box number only. When CBP wishes to—they do not reveal the name of the shipper, the content, the origin, or the destination of that box. And for our purposes, we don't have a business interest in knowing the content of the container. We are not given this information, and we do not track this information. The one exception is hazardous cargo, and there is special handling for that, which I can go into in detail, if you'd like.

We recognize that security is everyone's business and requires a public/private partnership. NAWE and all of its members have been working closely with our partners at the Coast Guard, TSA, and CBP. We are active members of the MTSA Subcommittee on COAC. We're currently involved in the ISO RFID electronic seals discussion. And it's worthy to note that each of our members are currently C–TPAT-compliant.

NAWE is in full support and agreement with the approach that the private and public partnership has taken with respect to port security. And I'll go over this very, very briefly.

Layered approach, we've talked about that already. Risk mitigation, by narrowing the focus into—narrowing the focus is also a critical element of the approach. Pushing the borders out. Controlling access to our terminals using the TWIC program. International standards that must be agreed upon before various security programs can be implemented. And, last, leveraging technology.

Terminal operators are already employing various technologies, such as OCR and RFID, not only to improve operations, but to enhance security, as well.

And, in conclusion, members of this committee, we fully support Senate bill 1052. We believe that it's on the right track.

[The prepared statement of Mr. Yoshitani follows:]

PREPARED STATEMENT OF TAY YOSHITANI, SENIOR POLICY ADVISOR, NATIONAL ASSOCIATION OF WATERFRONT EMPLOYERS (NAWE)

Introduction . . . Who is NAWE?

Good afternoon, I'm Tay Yoshitani, the Senior Policy Advisor to the National Association of Waterfront Employers (NAWE), a national trade association which includes most of the large private sector marine terminal operators in the U.S. Briefly by way of background, prior to this role with NAWE, I served as Executive Director at both the Port of Oakland and Baltimore, and was the Deputy at the Port of Los Angeles (bio attached). On behalf of NAWE, I want to thank the members of the Senate Committee on Commerce, Science, and Transportation for giving us the opportunity to comment on maritime cargo security and S. 1052.

NAWE members work closely with port authorities, ocean carriers, railroad and trucking companies, organized labor and shippers to ensure the smooth flow of international commerce that keeps our country's economy strong. It is estimated that the maritime industry handles about 15 percent of the U.S. GDP. Our membership reflects the international scope of the maritime industry and terminal operations. Many of the members are U.S. company-owned, but many are foreign-company owned as well. In fact, P&O Ports has long been an active member of NAWE and holds a seat on the Board of Directors.

NAWE has been involved with port security since concerns were first raised almost 10 years ago. This Association testified before this committee on the initial Maritime Transportation Security Act (MTSA) several months before 9/11, and, since its passage, we have been involved with the Coast Guard, TSA, CBP, and other elements of DHS as MTSA-based security regulations, C–TPAT, and cargo inspection programs have been developed and implemented.

What Do Terminal Operators Do?

Recent events have brought much attention on the typical structure of most U.S. ports and what role terminal operators play. As you know, the vast majority of ports in the U.S. are publicly owned by a state or municipal authority. Typically, the port authority, as land and fixed asset owner, leases out marine terminals to terminal operators but retains a multitude of important responsibilities. As terminal operators, our members typically lease property from ports and essentially conduct the business of loading and unloading cargo between ships and marine terminals. This sounds a bit simplistic, but it's not. On any given day, there may be several ships at berth with thousands of containers being loaded and unloaded, while a comparable number of trucks are entering and exiting our terminal to pick up or drop off a load. To do this day-in and day-out in a safe manner, while keeping track of where each container is and where it is supposed to go, is a daunting task.

It is worth noting that some terminal operators provide a service that is more limited in scope than what I have just described. For example, in some cases, private operators are pure stevedores, servicing terminals run by operating port authorities. Regardless of scope, we conduct our business in compliance with numerous Federal statutes, regulations and policies. In this post 9/11 world, many of these are, of course, security related. In fact, we are perhaps one of the most federally regulated industries in the country.

What is a Terminal Operator's Role in Port and Cargo Chain Security?

Given recent interest in the role of marine terminal operators, I want to take a moment to clarify how we view our role, specifically with respect to port and cargo security. To do this, it's helpful to separate security issues into basically two categories. The first is "facility security" which includes the port in general and individual marine terminals. The MTSA clearly designates the Coast Guard as the lead authority on port facility security. Under Coast Guard regulations, terminal operators are required to submit a comprehensive Facility Security Plan (FSP) for approval. Subsequent to initial submission, the Coast Guard conducts regular audits as well as annual exercises. Terminal operators are well aware that failure to comply with this approved plan may be cause for closure of the facility. Needless to say, terminal operators take these plans, audits, and exercises very seriously.

In conjunction with the Coast Guard, the Port Authorities are also actively engaged in facility security matters. Many Port Authorities have their own Port Police Force while others have a contractual relationship with their respective municipal police authority. A typical lease between the port and terminal operator may include security requirements that are borne by the lessee. But ultimately, the terminal operator is responsible directly to the Coast Guard on terminal security matters.

One key aspect of facilities security is access control of people and equipment. NAWE is in strong support of the upcoming TWIC program. We have reached out on a number of occasions to both the Coast Guard and TSA regarding this program including a recent submission of a "white paper" (see Attachment A) that includes recommendations with respect to truck gates at marine terminals.

The second area of security is what we refer to as the "cargo chain." Essentially, this refers to understanding "what is inside the container." Much has been written about this aspect of security, and it is the area of risk that most concerns those who understand maritime industry. The terminal operator actually has very little to do with this aspect of security other than a supporting role of moving containers around under the direction of CBP/DHS. When CBP wishes to inspect a container, they notify the terminal operator of the box number only. They do not reveal the name of the shipper, content, origin, or destination.

The "business service" that terminal operators provide is measured in terms of the "container unit." We need to know from the customer what the disposition of the container should be. Is it for pick-up by a local business by a trucking company? Is it to go to a nearby rail yard for transport to some inland destination? For our purposes, we don't have a business interest in knowing the content of the container. We are not given this information and we do not track this information. The one exception is if there is hazardous cargo in a container. We would know this because it is included in the ocean carrier's stowage plan, and these containers require special handling by the terminal operator. Of course, we are well aware that regulations are being drafted for "cargo chain security" as we speak. Although terminal operators will have no responsibility for cargo within containers, these impending regulations may call for the terminal operator to play some role in making sure that container seals have not been breached. But here again, we anticipate that our role would be limited to reporting the breach to the proper authority and taking action only under that authority's direction.

We recognize that security is everyone's business and requires a public-private partnership. NAWE and all of its members have been working closely with our partners at the Coast Guard, Transportation Security Administration, and Customs and Border Protection. We were active members of the MTSA Subcommittee of the Commercial Operations Advisory Committee. We are currently involved in the ISO RFID electronic seals discussion that may ultimately establish the much needed standard for the industry. And, it is worthy to note that all of our members are C–TPAT compliant.

NAWE Perspective on Maritime Security Concept/Approach

NAWE is in full support and agreement with the approach that the public-private partnership is taking to address maritime facilities and cargo chain security.

1. The "layered approach" is rational and makes good sense. No system by itself will ever be perfect. It makes sense that the initial layers begin well before the container reaches our terminals. After screening and targeting, the 24-hour rule permits CBP to get manifest data before loading at the foreign port. CSI allows comprehensive vetting before vessel loading. And, finally, before reaching our terminals, the Coast Guard has the option to board a vessel before it enters our harbors. The layered approach minimizes the chance of a breach of the system.

2. "Risk mitigation" is also a critical element of the approach. This starts with risk assessment one container at a time. CBP must be able to narrow their focus and direct their attention to a manageable percentage of containers in order to physically inspect them.

3. "Pushing the borders out" is also an excellent approach for inbound cargo and goes hand-in-hand with the "layered approach." The CSI program and RPMs at foreign ports are examples of pushing the borders out. There are other developments such as the Integrated Container Inspection System (ICIS), though not yet fully tested, that holds promise of further strengthening this approach. The detection of problem containers needs to be well before they reach our terminals. The focus must be at the point of stuffing the container and loading it onto a ship.

4. Controlling access to marine terminals using the impending TWIC program is also a good approach. However, at this point, it is our understanding that technology problems still exist with scanning of cards and biometric indicators. The accuracy rate of the TWIC system must be very high for the system to be effective. Subject to resolution of these problems, we are in strong support of this program and continue to urge early implementation.

5. We all recognize that this is an international business and security issues transcend international borders. Therefore, our solutions must be implemented

with international cooperation. International standards must be agreed upon before various security programs can be implemented on a global basis.

6. And last, leveraging appropriate technology makes a lot of sense. Terminal operators are already employing various technologies such as OCR and RFID to not only improve operations but enhance security as well. We support the use of technologies as long as they are appropriate and fully tested.

We support all of these concepts/approaches. If all of these approaches could be fully implemented, overall security at the facilities and the cargo chain would be greatly enhanced.

Comments on S. 1052

We have reviewed the "Transportation Security Act" (S. 1052) using the six approaches and concepts that I just mentioned and find them to be consistent. Therefore, NAWE fully supports this Senate bill as currently written. In the interest of time, I wish to limit my comments to three key points. However, we would be happy to submit, in writing, responses to any questions you might have on any of the specific provisions of this bill.

1. Provisions indicate clear recognition that DHS must obtain more and better information about what is being loaded inside the container at the point of "stuffing." This is followed by the upgrading of our Automated Targeting System. We believe this represents the most significant opportunity to improve cargo chain security. We are encouraged that this bill would do much to improve upon this critical area.

2. The CSI program is perhaps the most important effort to "push the borders out." This bill includes provisions to continue and enhance this program. This program needs to be adequately funded and expanded as quickly as possible.

3. And, last, I'll just mention that we are encouraged that leveraging technology is an important element of this bill. The number of containers entering and leaving the U.S. is expected to grow rapidly over the next couple of decades. There is no way that facility and cargo chain security can be significantly enhanced without advances in technology.

What Else Should DHS and Their Agencies Be Doing?

In conclusion, NAWE is in support of the overall approach that is being taken to improve maritime facilities and cargo chain security. We also support S. 1052. We understand and recognize that terminal operators do have an important role in this public-private partnership. We stand ready to do our part.

We are concerned about the pace at which progress is being made on the various fronts. Cargo chain security regulations and the TWIC program are two that come to mind. Both of these are complex, but they are vital to upgrading facility and cargo chain security. Proposed regulations should be issued as soon as possible. And we urge this committee to continue to provide the resources and oversight to bring these programs to completion. Along with all our colleagues in this industry, members of NAWE have a direct and vested interest in overall maritime security. In this regard, NAWE has, in the past, offered to provide a "loaned executive" to both the Coast Guard and the TSA to provide industry expertise. We are respectful of the established rulemaking procedures but continue to stand by this offer.

My last note is to invite all members of this Senate Committee and members of your staff to visit one or more of our members' terminals. I can promise you that it will be interesting and well worth the investment of your time. Please feel free to contact me or any of my colleagues at NAWE to coordinate a tour at a terminal that is convenient to you. I can assure you that our members would be delighted and honored to host a tour.

Again, thank you for the opportunity to address this committee. I'd be happy to answer any questions you might have at the appropriate time.

ATTACHMENT A—IMPLEMENTING THE TRANSPORTATION WORKER IDENTIFICATION CREDENTIAL (TWIC) AT DOMESTIC MARINE CARGO HANDLING FACILITIES: ISSUES RAISED CONCERNING FACILITY TRUCK GATE OPERATIONS

Executive Summary

The members of the National Association of Waterfront Employers (NAWE), Pacific Maritime Association (PMA), and United States Maritime Association, Limited (USMX) have long supported the expeditious implementation of the TWIC program. On February 4, 2005, these entities sent a letter to the Transportation Security Ad-

ministration summarizing their position on several key policy issues regarding the TWIC which were as follows:

1. The expeditious implementation of the TWIC program is an essential component of port security:

2. Employers of maritime labor must not be involved in the application, vetting, or issuing process of employees seeking to obtain a TWIC. TWICs must be issued by a government authority or its trusted agent;

3. Acts that disqualify an individual from obtaining a TWIC should be related to terrorist acts or crimes against national security; and

4. The TWIC program must have a meaningful appeals process to permit workers at risk of being denied a TWIC card the ability to correct errors, explain mitigating circumstances, or otherwise present evidence of rehabilitation.

Those issues previously raised were broad policy matters: the issue we are currently addressing relates to the potential direct impact of the TWIC program on marine cargo handling facility truck gate operations.[1] These gate operations process outside port truck drivers who are entering a facility to deliver or receive cargo. Efficient truck gate operations are as important to a facility as efficient vessel operations and have broader impact on the entire port area. Policy makers implementing the TWIC program must consider the impact on the port drayage community and ensure that obtaining a TWIC is easy and accessible. The TWIC itself must be reliable and durable with a reasonable procedure for loss or damage. TWIC reader hardware must also be durable and weather resistant and able to accommodate different terminal configurations. It is imperative that the data systems supporting the TWIC be able to accommodate limited integration into the systems being deployed to process cargo and truck drivers at marine facilities. Key to the success of the program will be in implementing a system that provides a timely and clear indication of the validity of the TWIC. This paper will provide recommendations to ensure that the eagerly-anticipated TWIC program does not negatively impact facility truck gate operations.

Background

There are a few "guiding principles" that frame our perspective on the TWIC program and they are as follows:

- We acknowledge that strong cooperation between the Federal Government and the private sector is critical for security programs such as TWIC to be effective.
- Fast and smooth flow of cargo through marine terminals is not only important to terminal operators, it is critical to our national economy.
- Improving velocity of goods flowing through ports and marine terminals reduces environmental impacts to surrounding regions.
- The port drayage industry is a vital but challenged link in the marine transportation system and must not be negatively impacted.
- Inherent differences among terminal configurations and operations suggest that some degree of flexibility in implementing the TWIC program at truck gates will be important.
- The TWIC check at the truck gate must be simple and provide timely and clear indication of the validity of the TWIC.
- TWIC regulations must not conflict with existing Coast Guard regulations that provide terminal operators with discretion regarding access to the terminal by any one including drayage drivers.

A. The Port Drayage Industry—Needs Special Consideration

The typical port drayman operating at a major U.S. port is an independent owner/operator. As owner of one truck, he or she generally has no administrative support for his or her operation. The port drayman is typically affiliated with one or more "trucking companies" that broker business between the cargo interest and the ocean carrier. Port draymen are generally compensated by the trip. As an independent operator, financial success is predicated on how many trips can be made during a given day. Delays at truck gates and inside marine terminals can devastate their

[1] Many of the issues identified in this paper as relevant to truck gate operations are also relevant to the gates where longshore and other workers gain access to the facility. While this paper solely focuses on truck gate operations, it is imperative that longshore workers and other individuals needing access to a marine terminal facility are also able to utilize a TWIC system that is secure and efficient and does not unduly delay these individuals at the gates they use for facility access.

operations. This can be arduous work with lots of pressure and low profit margins. Accordingly. the availability of port draymen is at risk at many port areas. Every effort must be made to ensure that the application process for obtaining a TWIC is convenient and efficient for these drivers.

In past discussions about TWIC, the concept of "sponsors" has been mentioned. Sponsors may help identify persons who need to obtain TWIC cards for a legitimate business purpose. The term "sponsor" implies some responsibility and possibility even liability resulting from a process the potential sponsor has little or no control over and is an inappropriate designation for this function. While we support the concept of "sponsors," we suggest using the term "nominating party" which more accurately reflects the business relationship. In the case of port draymen, due to their independent status, there are no companies or associations that can readily identify those who need TWICs. However, more than any other group of transportation workers, these drivers need an administrative entity to help them obtain TWICs and remain compliant with the program. The following suggestions may be of assistance in addressing the challenge of port draymen.

1. Utilize Third Party Contractors

Many port areas are served by third party contractors in the business of facilitating information flow between trucking companies and terminal operators. This information flow allows terminal operators to notify trucking companies of the status of certain containers to improve efficiency for the trucking company and the terminal operator. This third party model could serve as a possible "infrastructure" for truck drivers servicing many ports. This model could also easily be expanded to other ports that do not currently have this service. These contractors could be the nominating party and provide an expeditious way of identifying port truck drivers who need a TWIC and provide certain administrative support. TWIC regulations must allow for the Federal Government to delegate this function to a responsible third party contractor.

2. Keep Enrollment Convenient But Not Located at Terminal Facilities

The enrollment centers for the TWIC program should be accessible to port draymen as well as other port workers. In addition, it is likely that TWICs will be lost and damaged necessitating replacement. The location of facilities to handle such activities should be convenient and accessible but also a sufficient distance away from terminal facilities in order to avoid congestion at critical areas. Administrative TWIC issues should not be handled at the terminal and particularly at the terminal gate.

3. Timely Notification of Upcoming Renewals

The TWIC should be valid only for a defined period of time after which it expires unless duly renewed according to regulations. It will be important to have an efficient easily understood procedure to notify drivers of impending expiration as well as procedure to renew the TWIC.

B. The TWIC Card—Must be Durable

Port drivers spend most of the day in an industrial environment. They will make multiple calls at facilities which will require a TWIC card for entry. With typical usage, the card will be subjected to rough handling. It is also anticipated that TWICs will get damaged or lost.

1. TWIC cards must be designed to withstand the environment and the handling that will be typical with truck drivers.
2. Regulations must address procedures for obtaining replacement cards if lost or damaged. Because of the importance of having a valid TWIC card, we suggest that regulations require re-issuance of TWIC within 24 hours of report of loss or damage.

C. TWIC Reader/Hardware

Each marine terminal is designed differently to accommodate unique features of the property and nearby infrastructure. While the function of a truck gate at the various terminals is similar, the truck queuing lanes are often differently configured and the location of certain functions will vary from terminal to terminal. Design and configuration differences often dictate differences in operations. Therefore, while regulations should define performance specifications for the TWIC reader/hardware equipment, how they are incorporated into existing terminal gates should be a matter for the facility to determine.

Truckers with a rig and cargo at a terminal truck gate present unique challenges to the system. Truckers denied access must have an easy way of getting out of the

truck lanes and getting out of the way of other trucks. Equipment failure will quickly lead to hundreds of trucks backed up in grid lock in front of a marine terminal.

TWIC reader equipment will also be exposed to harsh environment and rough handling. It must be robust, durable and reliable. Repairs and regular maintenance will be a critical issue.

1. Regulations must make allowance for differences in terminal configuration and operations. An optimal configuration of TWIC equipment at one terminal may not be possible at another terminal. Terminal operators must be given sufficient flexibility, while working closely with TSA and Coast Guard, to install equipment and operate in compliance with these regulations.

2. The reader equipment must be durable and reliable. Because the terminal operator is the party closest to the equipment as well as the party most impacted by equipment failure, the terminal operator should be responsible for procurement, installation, operation and maintenance of this equipment consistent with specifications defined by TSA and Coast Guard. To the extent TWIC regulations address program cost and funding, we recommend that a portion of the application fee be dedicated to reimbursing the private sector for the purchase and operations of TWIC equipment.

3. While allowances for differences in terminal configuration must be considered, the prototype TWIC system pointed out the need for similarity in the operation of the readers. Truckers will need to be trained as to where to insert the TWIC and how to respond to system prompts. The reader operability should be similar from reader to reader and terminal to terminal so the truckers will not have to learn different systems. Moreover, if there are visual indicators, they should be clear enough to be seen in all lighting conditions found at the gates. If there is an audio element, it should be loud enough to be heard and yet isolated enough so that it does not carry over to an adjacent reader.

D. The TWIC System

Beyond keeping our terminals secure of unauthorized truckers, the issue of greatest concern to terminal operators is how the TWIC might impact the speed at which truckers can get through the gates. This is also important in ensuring that shifts of longshore workers are not unduly delayed at their gates. As mentioned above, the overall efficiency of a given marine terminal is significantly determined by this function. Over the years, terminal operators have worked hard and invested millions of dollars to improve and refine this activity. In addition, within the past few years, there has been mounting pressure to speed trucker's gate transactions ever faster with the goal of reducing long lines of idling trucks and reducing diesel emissions. The result is that today, terminal operators have very efficient gates to process trucks quickly. It is possible that new technologies may enable terminal operators to further increase velocity through the gates.

It is feared that the TWIC program may cause operators to give up the gains in efficiency that the terminal operators have worked so hard to secure. The TWIC validation at the facility gate must be incorporated in a way that does not impact speed and efficiency of the gates.

1. If each entry by a TWIC holder is checked through a central data base, there could be millions of checks being conducted at any single moment. It is doubtful that this approach can provide the service level necessary to support our needs. The trucker check must be almost instantaneous to avoid congestion and delays at the gates. Therefore, instead of checking a TWIC card against a large data base for each entry, it may be more efficient to use an "exception approach" where each card is checked against a problem list only. Furthermore, if this problem list is frequently updated and made available to the terminal operator. the trucker check can be expedited and the TWIC system can be greatly simplified.

2. Decisions concerning who is eligible for and who is denied a TWIC are matters for the Federal Government. To ensure security, it is imperative that the Federal Government or its trusted agent have the ability to routinely and periodically update data bases as necessary. Fifteen minute intervals would be appropriate.

3. The system may experience failure from time to time. There might be a power outage that brings down the entire system. There must be a protocol established for such an incident. While the system may have built in redundancy and terminals have alternative power, there needs to be a fail safe backup system of conducting the transaction by hand.

E. Flexibility in Use of Terminal Operating Systems (TOS) to Meet requirements

It is our understanding that the terminal operators may be asked to maintain and furnish records of who is on the terminal at any given time. Because terminal operators use terminal operating systems that encompass a wide range of alternative methodologies, regulations in regard to this provision must accord the terminal operator flexibility and discretion in order to comply with the intent of this requirement.

F. Appropriate Phase-In

In certain areas of the country, depending on the final set of criteria established for qualification, it is possible that a significant number of port draymen may not be able to obtain a TWIC. As mentioned above, port drivers are a critical link in the Nation's marine transportation system and there is already a shortage in certain regions. Additional shortages of drivers will be devastating. We must make sure that this does not happen.

There are numerous ways to phase in the program so that a sudden shortage does not occur. Our recommendation would be to mandate that all individuals apply for TWICs well in advance of the implementation date. The burden would be on the government to ensure that they are received. A significant penalty fee for late applications might be considered to create incentive for drivers to submit applications as soon as possible. This approach would give industry indication of a possible shortage of drivers as well as some time to mitigate. In addition, this would provide a window of opportunity to review appeals by drivers whose application for TWIC have been denied.

This is a sensitive issue. Because their livelihood is at stake, those denied a TWIC are likely to seek an appeal. Such appeals must be handled judiciously and expeditiously or to ensure fairness and avoid driver shortages.

Conclusion

The TWIC program must be implemented as soon as possible. It will be a significant enhancement to maritime security. There are numerous issues that need to be addressed as TWIC regulations are finalized, the marine terminal truck gate issue as addressed in this paper presents a significant issue that should be addressed prior to the issuance of regulations that might negatively affect the efficiency of port facility operations.

The CHAIRMAN. Thank you very much. We've reviewed your statement, and we thank you for the comments about that pending legislation, and pleased that you agree with it. We're trying to move it as quickly as possible, as you heard.

Our next witness is Christopher Koch, President and Chief Executive Officer of the World Shipping Council, in Washington.

Mr. Koch?

STATEMENT OF CHRISTOPHER KOCH, PRESIDENT/CEO, WORLD SHIPPING COUNCIL

Mr. KOCH. Thank you, Mr. Chairman.

World Shipping Council's members are the international liner shipping companies that call at U.S. ports. Many of our members also have terminal operator subsidiaries or affiliates that operate at U.S. ports as terminal operators.

Prior to my present position, I served at Sea-Land Service for 7 years, and prior to that, I was Federal Maritime Commission Chairman for a number of years. Presently, I serve as Chairman of the National Maritime Security Advisory Committee.

The perspective I'd like to bring today is to try to put in broadbrush the fact that the United States has, this past year, imported 11 million containers. We will import 12 million this coming year. It's an immense amount of cargo that we're handling, and it requires an immense amount of investment to handle that well. We are keeping up with it, but it's a big job.

We recognize, in the post-9/11 world, that we have to deal with the vulnerability that terrorism presents to this industry. So, the government has created a multilayered strategy to try to deal with that. We think the fundamental strategy is a good one.

There's a ship security strategy, which is overseen by the Coast Guard, very professionally. There is a personnel security strategy put in place. There is a port security strategy overseen by Coast Guard, as well. That is the general issue of concern, certainly today. Obviously, the majority of U.S. terminal operators today are operated by private firms, and the majority of those private firms are foreign companies, affiliates or subsidiaries.

The stevedoring marine terminal operations are a service industry that is open to foreign investment. Billions of dollars of foreign investment have been made in the U.S., in many of the ports represented by Senators on this panel, and that investment has contributed substantially to a transportation infrastructure that's critical to moving America's commerce efficiently and reliably. That investment has come from Japan, South Korea, Denmark, Britain, Chinese, French, Taiwanese, and Singaporean businesses, just as American companies have been allowed to invest in marine terminal and stevedoring businesses in foreign countries.

I would note that I'm sure P&O Ports, in selling its present assets, would have been very happy to receive a higher bid from a U.S. interest. I don't think it received one.

The substantial majority of American containerized commerce is handled by marine terminal operators that, as I said before, are subsidiaries or affiliates of foreign enterprises. This is an international, highly competitive industry providing hundreds of thousands of American jobs. The United States depends on it, and it, in turn, has served the needs of American commerce well, adding capacity and service as the needs of American exporters and importers have grown.

Port facilities, such as those discussed today, must, and do, comply with all the Government's applicable security requirements. There is no evidence that terminal facilities operations conducted by foreign-controlled companies are any less secure, or in any way less compliant with security regulations, or in any way less cooperative with U.S. Government security authorities than U.S.-controlled companies. In fact, these companies work closely and cooperatively with the Coast Guard, Customs and Border Protection, the military, and other U.S. law enforcement agencies.

The other part of the cargo security—or the Maritime security strategy—that the Administration has established is to deal with cargo. It's been discussed by some of the Senators already. The strategy here is not to just inspect 5 percent of the box. A hundred percent of all containers are screened by Customs and Border Protection before they are loaded on the ship in the foreign port. The ocean carriers give Customs all the information they have about those shipments. Customs screens it at the National Targeting Center in Northern Virginia, and they can issue any carrier a "Do Not Load" message before it's even put on a ship in a foreign port. The fact is that the strategy is to call for 100 percent inspection of any container CBP considers to be high risk. Whether that num-

ber is 5 percent or 6 percent is really not the issue, it's that they're trying to inspect 100 percent of everything that is a high-risk box.

They also have other layers of the strategy, because they're not just waiting for these things to get to the U.S. There's a Container Security Initiative, where they have agreements with 42 different nations at their ports to cooperate with their customs authorities. There's a C–TPAT program, where they're working with major U.S. importers to improve supply-chain security. And they're also looking at other ways to improve inspection.

I would like to commend Deputy Secretary Jackson and Assistant Commissioner Ahern, because they're in the process of looking at new technology being piloted in Hong Kong that could allow for expedited and fast inspection of containers at foreign ports before they ever get here, without disrupting trade. There's many difficult issues involved with that, but they're looking at it, they're focusing on it, and our industry is fully supportive.

If there is good that can come out of this inquiry, we agree with a number of the statements of Senators to look at port security generally and figure out where our priority attentions ought to be from this point on, building on a successful strategy that has been established.

Our recommendation would be, first, to improve the data that is presently being used to do risk assessment on containers. Presently, they're only using the ocean carriers' bill of lading in these foreign port assessments. That was a very good start, a very good rule. We don't think it's adequate. And it should be improved.

Second, continue to expand CSI. We need a network of government-to-government agreements around the world, so that when we have questions about containers, they can be inspected in a cooperative manner.

Third, continue to do what Customs is doing in strengthening the C–TPAT program.

Fourth, DHS ought to establish the TWIC program which is a Transportation Worker Identification Card for U.S. ports. Congress mandated it in 2002. It hasn't been implemented. We know they're working on it, and that it's difficult, but it ought to proceed.

And, finally, again, they ought to proceed with what they're doing on looking at the expanded ability to inspect containers at foreign ports with the ICIS type of expedited radiation gamma-ray inspection technology.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Koch follows:]

PREPARED STATEMENT OF CHRISTOPHER KOCH, PRESIDENT/CEO, WORLD SHIPPING COUNCIL

Introduction

Mr. Chairman and members of the Committee, thank you for the opportunity to testify before you today. My name is Christopher Koch. I am President and CEO of the World Shipping Council, a non-profit trade association representing international ocean carriers, established to address public policy issues of interest and importance to the international liner shipping industry. The Council's members include the full spectrum of ocean common carriers, from large global operators to trade-specific niche carriers, offering container, roll-on roll-off, car carrier and other international transportation services. They carry roughly 93 percent of the United

States' imports and exports transported by the international liner shipping industry, or more than $500 billion worth of American foreign commerce per year. [1]

I also serve as Chairman of the Department of Homeland Security's National Maritime Security Advisory Committee, as a member of the Departments of Homeland Security's and Treasury's Advisory Committee on Commercial Operations of Customs and Border Protection (COAC), and on the Department of Transportation's Marine Transportation System National Advisory Council. It is a pleasure to be here today.

In 2005, American businesses imported roughly 11 million loaded cargo containers into the United States. The liner shipping industry transports on average about $1.5 billion worth of containerized goods through U.S. ports each day. In 2006, at projected trade growth rates, the industry will handle roughly 12 million U.S. import container loads. And these trade growth trends are expected to continue after 2006.

The demands on all parties in the transportation sector to handle these large cargo volumes efficiently is both a major challenge and very important to the American economy.

At the same time that the industry is addressing the issues involved in efficiently moving over 11 million U.S. import containers this year, we also must continue to enhance maritime security, and do so in a way that doesn't unreasonably hamper commerce.

The Department of Homeland Security (DHS) has stated that there are no known credible threats that indicate terrorists are planning to infiltrate or attack the United States via maritime shipping containers. At the same time, America's supply chains extend to tens of thousands of different points around the world, and the potential vulnerability of containerized transportation requires the development and implementation of prudent security measures. Like many parts of our society, we thus confront an unknown threat, but a known vulnerability.

What is the appropriate collection of measures to address this challenge?

The Department of Homeland Security's maritime security strategy involves many different, but complementary, pieces.

It includes the establishment of *vessel security* plans for all arriving vessels pursuant to the International Ship & Port Facility Security Code (ISPS Code) and the Maritime Transportation Security Act (MTSA).

It includes the establishment of U.S. *port facility security* plans and area maritime security plans pursuant to the ISPS Code and MTSA, and the establishment by the Coast Guard of the International Port Security Program (IPSP) pursuant to which the Coast Guard visits foreign ports and terminals to share and align security practices and assess compliance with the ISPS Code.

It includes the Maritime Domain Awareness program, under which DHS acquires enhanced information about vessel movements and deploys various technologies for better maritime surveillance. The challenge of effectively patrolling all the coasts and waters of the United States is obviously a large one.

The MTSA directives and DHS efforts also include enhanced security for *personnel* working in the maritime area.

And last, but certainly not least, these directives and efforts include an array of initiatives to enhance *cargo security,* including:

- Cargo Security Risk Assessment Screening
- The Container Security Initiative
- The C–TPAT Program
- Container Inspection Technology Deployment

The liner shipping industry and the members of the World Shipping Council have fully supported these various initiatives. Ocean carriers' business depends upon the government having a security regime that provides adequate levels of security confidence, while continuing to allow for the efficient and reliable transportation of America's exports and imports.

The government's multi-layer security strategy is a fundamentally sound one, and seeks to address cargo and maritime security on an international basis as early as is practicable. It does not wait to address security questions for the first time when a ship and its cargo arrives at a U.S. port. The strategy can be further developed and strengthened, however, and we appreciate the Committee's continued interest in these issues. The following is a brief description of the strategy's various layers.

[1] A list of the Council's members can be found on the Council's website at *www.worldshipping.org.*

1. Vessel Security

Every vessel entering a U.S. port, whether of U.S. or foreign registry, has a ship security plan that is in accordance with the ISPS Code—a binding international convention developed under the leadership of the U.S. Coast Guard. The Coast Guard also ensures through its port state enforcement programs that vessels entering U.S. ports are in compliance with the Code. Vessels that are not in compliance are denied entry into a U.S. port by the Coast Guard.

Under MTSA, the Coast Guard requires vessels to file advance Notice of Arrivals 96 hours before arrival in a U.S. port, providing relevant advance information about the vessel, its itinerary, its crew and its cargo. The Coast Guard and Customs and Border Protection (CBP) use this information for risk profiling.

2. Port Security

Port facilities must also comply with the ISPS Code, and, in the U.S., the Coast Guard's MTSA regulations—the regulatory regime used to implement the ISPS Code domestically. All major U.S. ports are in compliance with the ISPS Code.[2]

These port facilities or marine terminals may be operated by the state or local government public port authority, or they may be leased from the port authority by terminal operating service providers, with the port authority maintaining ownership and oversight of the port. The majority of U.S. marine terminals are operated by private marine terminal firms, who have leased the property from the port authority. Major ports generally have multiple terminals and terminal operators.

Stevedoring and marine terminal operations are a service industry that is open to foreign investment. Billions of dollars of foreign investment has been made in the U.S. over recent years in this sector, and that investment has contributed substantially to a transportation infrastructure that is critical to moving America's commerce efficiently and reliably. The investment has come from Japanese, Korean, Danish, British, Chinese, French, Taiwanese, and Singaporean businesses, just as American companies have been allowed to invest in marine terminal and stevedoring businesses in foreign countries.

The substantial majority of American containerized commerce is handled in U.S. ports by marine terminal operators that are subsidiaries or affiliates of foreign enterprises. This is an international, highly competitive industry, providing hundreds of thousands of American jobs. The United States depends on it, and it in turn has served the needs of American commerce well, adding capacity and service as the needs of American exporters and importers have grown.

An important element of the U.S. Government's position in international trade negotiations for many years, under both Democrat and Republican administrations, has been the importance of securing the ability of international investment to flow into various international service industries. It is a principle of substantial importance to many sectors of the American economy.

Port facilities, such as the ones operated by P&O Ports and to be purchased by DP World ports, must and do comply with all the government's applicable security requirements. There is no evidence that terminal facilities' operations conducted by foreign controlled companies are any less secure, or in any way less compliant with security regulations, or in any way less cooperative with U.S. Government security authorities than U.S. controlled companies. In fact, these companies work closely and cooperatively with the Coast Guard, Customs and Border Protection, the U.S. military, and other U.S. law enforcement agencies.

The World Shipping Council and its member carriers are committed to the effective implementation of port security requirements around the world. In this regard, the Council and its member lines are in the final stages of establishing a cooperative program with the U.S. Coast Guard pursuant to which the industry's member lines may report port facility security status issues to the Coast Guard in order to assist with that agency's global maritime security efforts.

3. Personnel Security

Maritime personnel security is addressed in various ways. Vessels must provide CBP and the Coast Guard with advance notice of all crew on the vessel 96 hours before the vessel arrives in a U.S. port for screening. U.S. seafarers are issued credentials by the U.S. Coast Guard and must go through a security vetting process. All foreign seafarers must have valid, individual U.S. visas if they are to go ashore while in the U.S.

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[2] The Coast Guard's MTSA regulations estimated that the industry's compliance with the Code would cost more than $8 billion over 10 years, and that figure did not include foreign port or foreign vessel compliance costs.

Regarding personnel working in U.S. ports, the Department of Homeland Security has indicated that it intends to promulgate proposed rules on the Transportation Worker Identification Credential (TWIC) in the near future, as required by MTSA. At the request of DHS, the National Maritime Security Advisory Committee, after intensive, open and constructive dialogue amongst diverse industry and government officials, approved a detailed set of recommendations to the Department for their consideration in the development of this initiative. The establishment of the TWIC should help meet one of the unaddressed U.S. port security imperatives identified by Congress and DHS as an essential element of the Nation's maritime security. The Council and its member lines strongly support DHS promulgating a regulation on this issue.

4. Cargo Security

Particularly with respect to containerized cargo, the issues surrounding cargo security are challenges that require a multi-faceted strategy, which begins long before the cargo arrives at a U.S. port. It involves advance Customs security screening of all containers before vessel loading in the foreign port, cooperation with foreign customs authorities through the Container Security Initiative, use of container inspection technology, and the Customs Trade Partnership Against Terrorism initiative.

a. Risk Assessment and the National Targeting Center

The stated and statutorily mandated strategy of the U.S. Government is to conduct a security screening of containerized cargo shipments *before* they are loaded on a U.S. bound vessel in a foreign port. The World Shipping Council fully supports this strategy. The correct time and place for the cargo security screening is before the containers are loaded on a ship. Most cargo interests also appreciate the importance of this strategy, because they don't want their shipments aboard a vessel put at risk or delayed because of a security concern that could arise regarding another cargo shipment aboard the ship.

In order to be able to perform this advance security screening, CBP implemented the "24 Hour Rule" in early 2003, under which ocean carriers are required to provide CBP with their cargo manifest information regarding all containerized cargo shipments at least 24 hours before those containers are loaded onto the vessel in a foreign port. The Council supports this rule. CBP, at its National Targeting Center in Northern Virginia, then screens every shipment using its Automated Targeting System (ATS), which also uses various sources of intelligence information, to determine which containers should not be loaded aboard the vessel at the foreign port, which containers need to be inspected at either the foreign port or the U.S. discharge port, and which containers are considered low-risk and able to be transported expeditiously and without further review. Every container shipment loaded on a vessel bound for the U.S. is screened through this system before vessel loading at the foreign port. Customs may issue the carrier a "Do Not Load" message on any container that is so screened if it has security concerns that need to be addressed.

The Department of Homeland Security's strategy is thus based on its performance of a security *screening* of relevant cargo shipment data for 100 percent of all containerized cargo shipments before vessel loading, and subsequent *inspections* of 100 percent of those containers that raise security issues after initial screening. Today, we understand that CBP inspects roughly 5.5–6 percent of all inbound containers (over 500,000 containers/year), using either X-ray or gamma ray technology (or both) or by physical devanning of the container.

We all have a strong interest in the government performing as effective a security screening as possible before vessel loading. Experience also shows that substantial disruptions to commerce can be avoided if security questions relating to a cargo shipment have been addressed prior to a vessel being loaded and sailing. Not only is credible advance cargo security screening necessary to the effort to try to prevent a cargo security incident, but it is necessary for any reasonable contingency planning or incident recovery strategy.

Today, while the ATS uses various sources of data, the only data that the commercial sector is required to provide to CBP for each shipment for the before-vessel-loading security screening is the ocean carrier's bill of lading/manifest data filed under the 24 Hour Rule. This was a good start, but carriers' manifest data has limitations.

Cargo manifest data should be supplemented in order to provide better security risk assessment capabilities.[3] *Currently, there is no data that is required to be filed into ATS by the U.S. importer or the foreign exporter that can be used in the pre-vessel loading security screening process.* This occurs, even though these parties possess shipment data that government officials believe would have security risk assessment relevance that is not available in the carriers' manifest filings, and notwithstanding the fact that the law requires the cargo security screening and evaluation system to be conducted "prior to loading in a foreign port."[4] Today, cargo entry data is required to be filed with CBP by the importer, *but* is not required to be filed until *after* the cargo shipment is in the United States, often at its inland destination—too late to be used for security screening purposes.

In September 2004, the COAC Maritime Transportation Security Act Advisory Subcommittee submitted to DHS a recommendation that importers should provide CBP with the following data before vessel loading:

1. Better cargo description (carriers' manifest data is not always specific or precise)
2. Party that is selling the goods to the importer
3. Party that is purchasing the goods
4. Point of origin of the goods
5. Country from which the goods are exported
6. Ultimate consignee
7. Exporter representative
8. Name of broker (would seem relevant for security check), and
9. Origin of container shipment—the name and address of the business where the container was stuffed, which is often not available from an ocean carrier's bill of lading

The Council agrees with this recommendation. The government's strategy today is to inspect containerized cargo on a risk-assessment basis. Accordingly, the government should improve the cargo shipment data it currently uses for its risk assessment. An ocean carrier's bill of lading by itself is not sufficient for cargo security screening. Earlier filing of these shipment data elements would improve CBP's cargo security screening capabilities. If a risk assessment strategy is to remain the core of the government's cargo security system, the government needs to decide what additional advance cargo shipment information it needs to do the job well, and it must require cargo interests, and not just carriers, to provide the relevant data in time to do the advance security screening. While this is not a simple task, a next step forward requiring shipper interests to provide more data on their cargo shipments before vessel loading is appropriate.

I would like to note and commend the Committee Chairman, Senator Stevens, and the eleven other Senators cosponsoring S. 1052, for their inclusion in that bill of a requirement that importers provide CBP with such advance customs entry information for security screening purposes before vessel loading, just as carriers provide the information they have before vessel loading.

CBP and DHS officials are currently reviewing this issue.

b. Container Security Initiative

No nation by itself can protect international trade. International cooperation is essential. For ships and port facilities, the International Maritime Organization (IMO), a U.N. regulatory agency with international requirement setting authority, has responded to U.S. leadership and created the International Ship and Port Security Code (ISPS). These IMO rules are internationally applicable and are strictly enforced by the U.S. Coast Guard. There is no comparable international regulatory institution with rule writing authority for international supply chain security. For a variety of reasons, the World Customs Organization (WCO) has not acquired such an authority.

At the WCO, CBP continues to work diligently with other governments on a supply chain security framework that can be used by all trading nations. This framework will be useful, but will remain at a fairly high level and will be implemented on a voluntary basis by interested governments. Consequently, U.S. and foreign cus-

[3] *See also,* "Homeland Security: Summary of Challenges Faced in Targeting Oceangoing Cargo Containers for Inspection," General Accounting Office Report and Testimony. March 31, 2004 (GAO–04–557T).

[4] 46 U.S.C. section 70116(b)(1). Section 343(a) of the Trade Act also requires that cargo information be provided by the party with the most direct knowledge of the information.

toms authorities must also create a network of bilateral cooperative relationships to share information and to enhance trade security. This is the Container Security Initiative. The Council fully supports this program and the strategy behind it.

Today, 72 percent of U.S. containerized imports passes through 42 operational CSI ports (including Dubai, which became a CSI participant in March 2005), with further program growth expected. CBP hopes to expand the CSI program to 50 ports by the end of this year, which could cover roughly 85 percent of U.S. containerized imports.

The liner shipping industry is fully supportive of these efforts by CBP authorities and hopes the program will continue to expand as expeditiously as possible. A listing of operational CSI ports follows:

Port Name	2004 U.S. Imports TEUs (000)
Yantian (Shenzhen)	1,982.79
Hong Kong	1,866.32
Shanghai	1,278.50
Kaohsiung	1,127.27
Busan	971.49
Singapore	494.30
Rotterdam	427.75
Bremerhaven	392.18
Antwerp	304.60
Tokyo	267.53
Laem Chabang	201.06
Nagoya	174.94
Le Spezia	159.67
Hamburg	150.01
Santos	146.26
Genoa	144.57
Le Havre	139.67
Kobe	119.97
Colombo	117.08
Yokohama	109.02
Gioia Tauro	104.48
Livorno (Leghorn)	92.33
Algeciras	81.75
Felixstowe	69.51
Buenos Aires	52.40
Tanjung Pelepas	45.96
Durban	43.94
Liverpool	39.37
Port Kelang	39.26
Southampton	38.62
Thamesport	32.34
Naples	29.88
Lisbon	26.91
Halifax	24.38
Gothenberg	18.81
Vancouver	13.59
Piraeus	11.58
Tilbury	2.56
Dubai	1.11
Marseille	1.07
Montreal	0.72
Zeebrugge	0.02
Total CSI Ports	11,344.55
Non-CSI Ports	4,460.93
Total All Ports	15,805.48

c. C–TPAT

Customs' Trade Partnership Against Terrorism (C–TPAT) is an initiative intended to increase supply chain security through voluntary, non-regulatory agreements with various industry sectors. Its primary focus is on the participation of U.S. importers, who are in turn urged to have their suppliers implement security measures

all the way down their supply chains to the origin of the goods. This approach has an obvious attraction in the fact that the importer's suppliers in foreign countries are beyond the reach of U.S. regulatory jurisdiction. In return for participating in the program, importers are given a benefit of reduced cargo inspection. The C–TPAT program invites participation from other parties involved in the supply chain as well, including carriers, customs brokers, freight forwarders, U.S. port facilities, and a limited application to foreign manufacturers.

CBP has been working to strengthen the C–TPAT program and to increase validations of participants' performance. C–TPAT is not a regulatory program, and it is not a guarantee of security. It does, however, provide for a creative partnership approach between government and industry as one element of a multi-layered strategy to improve security. It clearly has value, even though it can't be easily measured or quantified; and, because its principal purpose is to try to affect the conduct of parties outside U.S. regulatory jurisdiction, it has a reach that regulations alone could not have.

Many maritime and supply chains security issues can be, should be, and are addressed through regulatory requirements, not C–TPAT. For example, vessel security plans and port security plans are regulated by Coast Guard regulations implementing the ISPS Code and MTSA. The data that must be filed with CBP to facilitate cargo security screening must be addressed through uniformly applied regulations. Seafarer credentials and the Transportation Worker Identification Card must be addressed through uniformly applied requirements.

C–TPAT, however, is a program that can try to address matters that are not or cannot be addressed by regulations, such as supply chain enhancements beyond U.S. regulatory jurisdiction, or matters that aren't covered by regulations.

d. Container Inspection Technologies

Technology clearly has a role in increasing both the efficiency of inspecting containerized cargo shipments and the number of containers that could be inspected. Container inspection technology is of substantial interest because—unlike so many other technologies—it helps address the container security question of paramount importance, namely: "What's in the box?"

X-ray and gamma ray non-intrusive container inspection (NII) equipment is being deployed at U.S. and foreign ports. At U.S. ports, CBP has deployed 170 large scale non-intrusive inspection devices. NII inspection equipment allows Customs authorities to have a visual image of a container's contents, is a relatively easy way to review a container's contents in contrast to physically devanning the container, and is usually adequate for inspecting a container considered to be of security interest.

A particular security concern is the potential use of a container to transport a nuclear or radiological device. While there is no evidence that terrorists have nuclear weapons or devices, or that a shipping container would be a likely means to deliver such a device, the consequences of the potential threat—including those from a low-tech "dirty bomb"—are sufficiently great that, in addition to the targeted inspection of containers discussed above, CBP is deploying radiation scanning equipment at all major U.S. container ports. CBP has deployed between 180–190 radiation portal monitors at U.S. ports and we understand that these presently cover approximately 37 percent of the imported containers. CBP has also deployed thousands of hand-held radiation detection devices. CBP and the Department of Energy are also working with foreign ports to install radiation scanning technology abroad as well. Availability of such technology is one of the criteria that a foreign port must meet to become a CSI port, for example.

Container inspection technology may be evolving to the point that it may be deployed in the foreseeable future to allow radiation and NII inspection of all containers entering a port facility without significant delay to commerce. If this were to prove true, and if the radiation and image readings are of sufficient quality for security screening purposes, this capability would allow a new and significantly more effective supply chain security strategy to be deployed. Such capability could enable governments to "flex" their security screening capabilities, to inspect more containers, even from a remote location, without having to inconvenience terminal operators or other customs authorities, and to more effectively handle a response to a transportation security initiative, including the NII inspection of every container being loaded at a particular port, if needed. Such a capability would also have the advantage of being able to inspect more containers before vessel loading, rather than waiting until they arrive in the United States discharge port.

CBP and DHS officials are presently reviewing this technology and the pilot application of radiation-NII inspection technology to all containers entering two different Hong Kong port facilities. The technology is conceptually attractive, but a real world evaluation of the technology, its effect on operations, and its integration into and

use by the government is clearly needed. For example, numerous nuisance alarms are likely to occur on a daily basis, and there will need to be clear protocols for how such situations will be addressed and resolved in the foreign ports. Other operational issues need to be clearly understood and addressed, including how such technology might be applied at transshipment ports, where cargo does not arrive through a terminal gate. While it is true that under this pilot program containers entering the truck gates of two Hong Kong container terminals have passed through these scanning and radiation detection devices, no one is actually using the Hong Kong pilot container inspection readings or images, or transmitting them to Customs, or applying the results of the technology in the operating environment. We are at the beginning stages of working through the issues involved, including determining whether and how CBP would like to embrace this technology.

If the government determines that the technology works satisfactorily, it will be necessary to determine how the information produced by this technology would be transferred to the government and used and analyzed, and by whom and when. In addition, the technology obviously must be physically sited on marine terminals around the world. This would be a challenge, but may be possible if the proper foundation is negotiated and laid with foreign governments and terminal operators and provided the correct incentives are established. This will require addressing roles and responsibilities, substantial data transfer protocols, and issues of liability.

It is also relevant to note that this kind of system would be impossible to deploy without the full cooperation and agreement of foreign terminal operating companies and their governments. It is also relevant to note that global application of this technology would almost certainly involve its installation and application at U.S. ports to U.S. export cargo, and sharing the resultant data with other interested foreign governments.

There are significant and legitimate issues that need to be addressed in considering this technology and its possible deployment; however, the capability for governments to call up and review radiation and NII images of any container before vessel loading without delaying commerce could potentially provide a significant improvement in security capabilities. Furthermore, it could allow governments the flexibility to change their container security strategies in a way that would provide increased security assurance for all legitimate commerce, including the capacity to provide sufficient assurance of security to keep commerce flowing in the event of a container security incident.

Summary

When addressing the issue of international maritime security, we find ourselves dealing with the consequences of two of the more profound dynamics affecting the world today. One is the internationalization of the world economy, the remarkable growth of world trade, and the U.S. economy's appetite for imports—a demand that fills our ships, our ports, and our inland transportation infrastructure, a demand that produced more than 11 million U.S. import containers in 2005, and will produce roughly 12 million this year, and a demand that will increasingly test our ability to move America's commerce as efficiently as we have in the past.

The other dynamic is the threat to our way of life from terrorists and the challenge of addressing the vulnerabilities that exist in the free flow of international trade, even when the specific risk is elusive or impossible to identify.

Finding the correct, reasonable balance between prudent security measures and overreacting in a way that impairs commerce is a tough challenge.

Foreign equity in the international maritime transportation business is not the security challenge. It has been and continues to be a major, long-standing and positive contributor to an infrastructure that is essential to the American economy and to U.S. national security, and its interest in ensuring the safety and security of maritime commerce is very strong. After all, without a reliable, secure and efficient maritime transportation system, these companies' businesses are in jeopardy.

The maritime security challenge is to build on the fundamentally sound strategic framework that DHS has developed and to continue to make improvements on what has been started. Specifically, we believe that priority DHS consideration should be given to:

1. Improving the cargo shipment data collected and analyzed by CBP's National Targeting Center before vessel loading. If cargo risk assessment is to be a cornerstone of DHS policy—which we believe is a correct approach, and cargo security screening is to be performed before the cargo is loaded onto a ship destined for the U.S.—which we also believe is a correct approach, it should be using more complete cargo shipment data to perform the risk assessment than only the ocean carriers' bills of lading;

2. Expanding international cooperation through the Container Security Initiative network;

3. Continuing to improve and strengthen the C–TPAT program;

4. Promulgating regulations to implement the MTSA mandate of maritime Transportation Worker Identification Cards; and

5. Undertake a close examination of the merits and feasibility of widespread application of ICIS-type X-ray inspection and radiation screening equipment and the interface and use of such equipment by Customs authorities. While not a simple issue, this might hold the potential to significantly improve governments' confidence in the security of importers' and exporters' cargo shipments.

Mr. Chairman, the World Shipping Council and its member companies believe that there is no task more important than helping the government develop effective maritime and cargo security initiatives that do not unduly impair the flow of commerce. We are pleased to offer the Committee our views and assistance in this effort.

The CHAIRMAN. Thank you, Mr. Koch.

Our next witness is Mr. Michael Mitre. Is that right?

Mr. MITRE. Mitre.

The CHAIRMAN. Port Security Director of the International Longshore and Warehouse Union, ILWU, in Los Angeles. The Committee enjoyed a visit to Los Angeles. However, as I said, it's a monstrous place. We're pleased to have your testimony.

STATEMENT OF MICHAEL MITRE, DIRECTOR, PORT SECURITY, INTERNATIONAL LONGSHORE AND WAREHOUSE UNION (ILWU)

Mr. MITRE. Thank you very much.

Mr. Chairman, I'd like to thank you for holding this hearing and inviting me to testify here.

I'm Director for Port Security for the International Longshore and Warehouse Union. I am also a full-time worker. I drive one of the cranes that takes the containers off the ships and puts it on the dock. I was a dock and vessel foreman, and I have worked for 30 years in the port.

I work inside the terminals, and have firsthand knowledge regarding the security situation on these terminals. We represent almost 20,000 longshoremen in Los Angeles, alone, full-time and casual workers.

In 2004, terrorists hiding in a cargo container entered the Israeli Port in Ashdod, Israel, and 26 people were killed and wounded. All of them were port workers, like myself and my co-workers. As that incident made very clear, port security equates to worker safety in the most fundamental sense. Our lives, and those in the port communities, are on the line. We're the closest to the action. We'll be the first ones impacted.

The controversy over Federal approval to permit Dubai Ports World, owned by a foreign government, to operate within the United States is of the utmost importance. The ILWU fully supports the 45 days to fully consider this. But we also urge that the Federal Government, including Congress, focus its attention beyond this controversy and recognize and correct immediate major deficiencies in port security. They exist today in our ports and within our port terminals. It is the lack of effective port security, especially since 9/11, that is the real concern of dockworkers and,

I'm sure, millions of Americans who live in close proximity to our ports, as well as all over the United States.

The MTSA was initiated by this committee, and passed in 2002. The Coast Guard was designated as the lead enforcement agency under the MTSA. They issued comprehensive, detailed, and, we believe, effective port security regulations.

Unfortunately, as the MTSA security regulations have been implemented, many terminal operators, both foreign and domestic, continue to ignore many of the required measures designed to improve port security.

As the current case over the Dubai contract has shown, the problem of systemwide noncompliance with existing port security regulations arises from allowing commercial interests many times, to override security interests.

The ongoing port security crisis in this country stems from the lack of adequate Coast Guard funding and training necessary to meet the obligations that were imposed by the MTSA. The overarching problem is creating an effective enforcement mechanism capable of ensuring that essential port security measures that were mandated by Congress are fully implemented.

The real question is, What's going to be the U.S. Coast Guard's defined enforcement role, and how is it going to differ from what's happened in the past, especially since 2002? How is the U.S. Coast Guard going to force terminal operators to conform, when budgetary constraints limit USCG landside manpower training initiatives? What is going to be the compliance trigger? And, most important, who is going to create the procedures and the protocols to instruct the Coast Guard in the basics of terminal operations? To me, and to my co-workers, this is critical.

The Coast Guard today does not have an effective landside enforcement capability. It's almost like telling them, "Hey, we want you to do this job, but we're going to tie your hands behind your back, and not going to give you the money, funding, and training to do it."

I work within the ports, and I work every day. I see how much Coast Guard presence there isn't. And it's not because of the lack of them wanting to do it, it's because of a lack of them having the manpower and the budget to do it.

In the Port of L.A./Long Beach, in the last 4 years, almost every case where there's been a security incident, it's been longshoremen that have found it, whether it be people that are smuggled inside containers, or a container that has explosive mixtures in it. We had one case where a longshoreman was driving a container that exploded. It was allowed through a gate without placards, and even after we asked to be able to open it, and the terminal operator refused (to allow us to open it). In the past, our marine clerks at the gate would see something wrong, they'd say, "Wait a minute, let's sidetrack that, or it doesn't have a seal, let's open it up." We don't do that anymore. We've been told, "That's not our job anymore. We're not going to do that." Because of this, the container was allowed to come in, was loaded onto a truck, and was on its way to the ship when it blew up. It was loaded in Arizona, had no placards, and contained HAZMAT. It had butane and a car with a leaky gas tank inside.

These are just some of the problems that we're facing when working within the ports, and I really hope that this case will create the environment necessary to either give the Coast Guard the ability to enforce MTSA or, to create a joint Customs/Coast Guard mechanism for compliance.

Like I said, I really thank you for inviting me here today, and I'd be really glad to answer any questions you might have.

Thank you very much.

[The prepared statement of Mr. Mitre follows:]

PREPARED STATEMENT OF MICHAEL MITRE, DIRECTOR, PORT SECURITY, INTERNATIONAL LONGSHORE AND WAREHOUSE UNION (ILWU)

Chairman Stevens, Ranking Member Inouye and members of the Committee, my name is Mike Mitre. I am the Director of Port Security for the International Longshore and Warehouse Union (ILWU). In this capacity, I have had the privilege to provide testimony to committees of the U.S. Senate and the House of Representatives, and advice to the U.S. Coast Guard and other Federal agencies concerning port security matters for the West Coast. I also live and work in the Ports of Los Angeles and Long Beach, and so know first hand the security situation in the busiest seaport in America. Together the Ports of Los Angeles and Long Beach constitute the 3rd largest port in the world. My Union, the ILWU, represents about 60,000 working Americans, not just in the longshore and maritime industry, but also in warehouse, hotel-restaurant, health care, mining, office clerical and a variety of other industries in California, Oregon, Washington, Alaska, Hawaii and Canada.

Mr. Chairman, thank you for holding this important hearing. We are at a critical time in the history of our country. The threat of a terrorist attack against the marine transportation system is the new reality. On March 14, 2004, suicide bombers, hiding in a metal cargo container, entered the Israeli port of Ashdod to commit terrorism. They killed 10 people and wounded another 16. All the victims were port workers like myself and other ILWU members.

As the tragedy in the Port of Ashdod has made chillingly clear, port security equates to worker safety in its most fundamental sense. Our lives and those in our port communities are literally on the line. In the event of a terrorist incident in an American port, the dockworker is the first one who is going to be killed or injured. Most dockworkers live within close proximity of the port and certainly within the impact-radius of any incident or explosion, be it chemical, biological or radioactive. We are talking about our families here, our children and our homes. It is in our own best interest to make sure American ports are secure; our family's lives and our livelihoods are at stake. Our commitment to port security is real, and it is not watered down or diluted by cost or commercial concern. This, Mr. Chairman, brings me to the immediate issue at hand.

I. Summary of Comments

The controversy over Federal approval to permit Dubai Ports World, which is owned by a foreign government, to operate marine terminals at six East Coast ports is of the utmost importance for our country. The ILWU fully supports bipartisan calls in Congress for the Bush Administration to direct the Committee on Foreign Investment in the United States (CFIUS) to conduct a full 45-day investigation of the Dubai contract. Although our seaports are part of the global economy, the ILWU believes that we should not rush to open the doors of such national assets to companies owned and operated by foreign governments where serious concerns exist regarding terrorist activities and funding. We, therefore, urge that the decision for approval be based on the national security interests of the United States rather than the commercial interests of any one company or country.

But we also urge the Federal Government, including Congress, to focus its attention beyond the controversy over one future, commercial contract and to recognize and correct the immediate, major deficiencies of security that exist today in America's ports. It is the current lack of effective port security since the terrorist attacks of 9/11 that is the real concern of dockworkers and millions of Americans who live in close proximity to our Nation's ports.

The Maritime Transportation Security Act (MTSA), initiated by this committee and passed in 2002, provides the foundation for the Nation's port and cargo security. In 2004, the Coast Guard—designated as the lead enforcement agency under MTSA—issued comprehensive, detailed and—we believe—effective port security regulations for marine terminal and vessel operators to follow. Unfortunately, the

MTSA security regulations have been implemented and honored in the breach, with both foreign and domestic companies ignoring most of the required measures designed to improve port security. Just like the current case over the Dubai contract, the problem of system-wide noncompliance with existing port security regulations arises from allowing commercial interests to override security interests.

MTSA regulations allow terminal operators to write their own facility security plans. This is a mistake and yet another example of commercial interests overriding security concerns. We allow terminal operators to create their own security rather than having one model and enforcement mechanism for all terminals at all ports.

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

In conclusion, the ILWU believes that the debate over Dubai will do little to protect America's seaports unless the Federal Government takes this opportunity to recognize and correct the glaring, major defects in port security that exist today.

In our written testimony, we have laid out specific security protocols at marine terminals that must be followed to ensure real port security. I look forward to answering questions about these recommendations.

Thank you.

ATTACHMENT

ILWU Recommendations for Marine Terminal Security

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

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

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

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

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

Most of the deficiencies in port security can be corrected through continuous and rigorous enforcement of and adequate funding for the Coast Guard regulations. In this regard, we applaud the introduction of Senate Bill 1052, the Transportation Security Improvement Act (TSIA), which would improve the examination of cargo shipments overseas before they reach U.S. shores, provide procedures for the speedy resumption of commerce in the event of a seaport attack, and expanded the use of interagency operations centers (IOCs).

However, there are at least two additional security measures, not specifically covered in the existing or proposed regulations that should be immediately implemented in order to protect our ports.

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

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

1. Once the cargo within the container has been unloaded at its eventual destination, there is no system, protocol, or requirement in place making the last shipper responsible for closing and sealing the doors. As a result, this empty container will travel over-the-roads of the U.S. unlocked and open. It may serve as a platform or vehicle for anything or anyone who may desire to do harm to our country. It may lie unattended on city streets or even within the port for days or even weeks until it is returned to the terminal for shipment (usually back to Asia.) Who knows what has been stored or smuggled inside? Who knows what kind of plan someone may come up with utilizing this empty container?

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

The CHAIRMAN. Thank you very much.

We're dwindling in numbers. I'm inclined to think it would be a better part of valor to hear from Mr. Jackson and the Admiral be-

fore we ask any questions. What's the feeling of the Committee? Any of you wish to ask questions now?

Gentlemen, could we ask you just to slide over to the left, and we'll bring Mr. Jackson and Admiral and Mr. Ahern back, if they will join us.

Senator BURNS. Could I ask just one question?

The CHAIRMAN. Yes, sir.

Senator BURNS. Mr.—is it Mitre?

Mr. MITRE. Mitre.

Senator BURNS. Mitre? Since that incidence of this one automobile and you had that explosion, do you see us making any progress yet on port security, both from the workers on the docks and other folks around, watching for such, I guess, inappropriate actions or inappropriate shipping? Do you—have we made any progress in that respect?

Mr. MITRE. I don't want to be——

Senator BURNS. I know you do it for—I know why you do it. You do it for self-preservation. And I don't blame you.

Mr. MITRE. And we have a vested interest here.

Senator BURNS. Yes, you have a vested interest. But do you see us making any progress in that respect?

Mr. MITRE. To be honest, not a lot. Because this is what happens at the Port of L.A./Long Beach, which is—the two, by far, biggest in the country. The Coast Guard simply doesn't have the assets. So, what happens is, many times we'll call the Coast Guard. The captain of the port—we have a direct hotline. And, by God, he responds. The Coast Guard's really good about that. They're our primary waterside enforcer. But they were not, and never have been, a landside enforcement team. If we're not going to provide the budget that they need to do this, it's like fighting the battle with your hands behind your back. You don't see teams of Coast Guardsmen on the terminal looking for compliance. And I think that's what the problem is.

Senator BURNS. OK, thank you very much. I appreciate that.

The CHAIRMAN. Now, if you all would move down a little bit to the left, we'll put Mr. Jackson—I meant your—pardon.

Senator BOXER. Mr. Chairman, could I just ask you what your plan——

The CHAIRMAN. It's your right, my left.

Senator BOXER. Mr. Chairman, could I just ask you what your plan is? Will we each have a chance to do two rounds, then, when we get to the questions, since you're doing two panels? Will we each have a chance to do two rounds of questioning?

The CHAIRMAN. We will have as many rounds as you want. Each member will——

Senator BOXER. Oh, excellent.

The CHAIRMAN.—have 5 minutes as we go around.

Senator BOXER. Thank you.

The CHAIRMAN. Sorry about this, gentlemen. I appreciate your courtesy. There's meaning in my madness. There's several people here who wouldn't have been here if we had gone the other way.

Mr. Jackson, you're the one to testify for this group. As I understand it, Admiral Ahern was here—there's Admiral—pardon me,

Admiral Gilmour and Mr. Ahern is your support, right? Is that correct?

Mr. JACKSON. Yes, sir.

The CHAIRMAN. We'd like to have your statement, please.

STATEMENT OF HON. MICHAEL P. JACKSON, DEPUTY SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY; ACCOMPANIED BY REAR ADMIRAL THOMAS H. GILMOUR, U.S. COAST GUARD, AND JAYSON AHERN, ASSISTANT COMMISSIONER FOR FIELD OPERATIONS, CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY

Mr. JACKSON. Thank you, Mr. Chairman.

I'm grateful to be back before this committee. And thank you for your consideration in bringing us here.

In the interest of time and because some of my colleagues have already covered material that I had planned to discuss in my opening statement, I'll try to be brief and then be happy to answer any questions.

I'll talk about, just briefly, two things. First, I'm going to try to summarize a little bit of the transaction regarding Dubai Ports World from the point of view of the process that CFIUS went through. And, second, I would like to just say a few words about the context for maritime security and global supply-chain security, which is part of this hearing, but also something that's very importantly raised in the context of this acquisition.

First, I would say that my colleague from DP World was absolutely right in talking about the discipline, the rigor, the completeness, and the systematic nature in which this transaction was reviewed. We spent more time on this, if you start from the initial prefiling discussions, than we would have under many other CFIUS transactions, even if we had gone through the full 45-day period that's allowed under the law. So, we had ample opportunity to discuss these issues, and to work with the firm, and to work within the 12 agencies of the government that did the CFIUS review. We added Transportation and Energy to that review to get their views on this process, as well.

I'm going to just say that DHS is the newest formal member of CFIUS. We are not at all bashful about raising issues related to these transactions. We're not at all bashful about asking for a 45-day review period, if we think that we need the additional time. But I would say just a word about this process.

There, I think, is a misunderstanding about what happens during these transactions and the review of them. This period of time is not unlike what would happen in a corporate merger and acquisition. You don't start from stating objections, you start by learning and listening about the nature of the transaction. The nature of the firm, the nature of the business they're engaged in, an assessment of the security of all of the transaction is the goal and the objective here. So, we try to learn as much as we can, and, as you begin to learn and unfold the contours of the particular deal, we either get more comfortable or less comfortable.

In this case, the entire CFIUS participation roster got quite comfortable, but after we had gone through, listened, talked, learned,

and then had an opportunity to ask for some specific assurances, which have been described, in general, by the gentlemen who have spoken earlier. And we received the company's voluntary assent to those assurances. We have more visibility into the operations of DP World, if this transaction is consummated, than we do in any other terminal operating company. We have the capacity to bring their records to the table quickly and comprehensively to assess the operations. And, in fact, the Coast Guard, subsequent to the approval in January, has begun to do reviews of the assets that are in P&O's inventory, prior to the transaction being completed.

So, I would say that—did we have enough time? Absolutely. Do we have enough resources? Yes. What happened? I've described it. It was a systematic review. Did we consult adequately and fully with this Congress? No. I think we needed to have done a better job of that. We will do a better job of that. We're eager to talk to the Congress about these types of transactions and about how we can better inform you of the details of this work.

Let me switch, then, to say just a word about where we've been since 9/11. Again, much has already been noticed about the nature of a terminal operator. This is not a transaction that is purchasing a port. It's not a transaction that is gaining control over a port. A terminal operator is an important and valued partner in the process of managing the flow of international supply chains. But we believe that this deal is appropriately bounded and constrained by a tremendous amount of work that's been done since 9/11. There has been a transformation in what we've done in port security since 9/11. This committee played a vital role in instituting just that. I had the pleasure of working with you, in my previous appointment at the Department of Transportation, as you set out on that course.

I would tell you that this job of transformation is not over. I'm not here to tell you we've done everything we can. I'm not here to tell you we've done everything that needs to happen. I'm not here to tell you anything other than port security has to be a commitment to continuous innovation. But not to acknowledge what has been instituted since 9/11 is to lose control of some important facts about what we've done to improve security.

So, I don't want to leave anyone with the impression that we are simply, willy nilly, ignoring security. There is a layered system of controls that we have instituted since 9/11 that is growing in depth and complexity. You heard, from the World Shipping Council, a discussion of many of those components, and they begin in the foreign ports, they begin with the C–TPAT program, with the shippers, some 8,000 strong now, partners who help move the supply chain goods globally.

So, we have new rules. The advance manifest 24-hour rule, the Container Security Initiative, the advance notice of arrival in which we receive 96 hours notice, the importer bill of lading 24 hours before, the automated targeting system, the shipside inspection routine that Coast Guard has put in place, the radiation portal monitors that have been put in place so that we, today, have 37 percent of containers screened in this fashion, the CSI ports are screening 80 percent of inbound containers. There is nonintrusive X-ray inspection, security measures that are comprehensive as a result of C–TPAT.

So, there are these broad measures in place. I'm happy to answer questions about it, also happy to talk a little bit about the future of how we've proposed to grow, deepen, and strengthen our security measures in place in the maritime domain.

The CHAIRMAN. Well, thank you very much.

For the information of members that are still here, any member who comes back, other than Senator Ben Nelson, who told me he's right outside the door, will take their turn after those of us who have stayed. All right? The limit is 5 minutes per Senator.

Let me start off with you, Mr. Jackson. There are at least 20 foreign-owned companies from 11 different nations, including those owned by governments such as China, Singapore, Taiwan, and perhaps others, who are operating in 25 states, 11 of them in States represented by Senators on this committee. Can you tell us, is there some special security threat that DP World poses that these other companies, foreign-owned companies, do not pose?

Mr. JACKSON. No, sir. Our judgment is that DP World does not pose a unique security threat.

The CHAIRMAN. We're told that the Coast Guard had a classified document that was going through the Department of Homeland Security concerning DP World. Were you aware of that?

Mr. JACKSON. The Coast Guard did an internal assessment of this transaction. The document that they created was for their internal review, so that they could render a judgment about——

The CHAIRMAN. That's not the question I asked you. Were you aware of it?

Mr. JACKSON. At the time it was written, I was not. No, sir.

The CHAIRMAN. Were you aware of it at the time you passed on the approval of DP World?

Mr. JACKSON. No, sir, I was not.

The CHAIRMAN. Do you think you should have been?

Mr. JACKSON. In this transaction, in retrospect, I wish I had learned more.

The CHAIRMAN. Were you cleared for that access?

Mr. JACKSON. Yes, sir.

The CHAIRMAN. Do you think Congress needs to legislate further in any way regarding these terminal operators who are foreign-owned, in terms of the operations within our ports?

Mr. JACKSON. No, sir. I believe the general security regime that Congress has established will adequately allow us to work with foreign-owned operators, as well as domestically-owned operators.

The CHAIRMAN. Mr. Mitre, you know, I go back a long way, and I have a union card, myself, as a matter of fact, from a long time ago. But can you tell me, What effect does this really have on your people who own this company?

Mr. MITRE. It's very interesting. And, as Mr. Yoshitani said, it looks simple, but it's a little more complex than that. There's a couple of things going on. One, you have contract stevedores that run terminals. Then you have foreign vessel owners that run terminals. Contract stevedores are American stevedores—MTC and SSA on the West Coast, basically, with Pasha, a small company. The rest are the Singaporean-owned APL, Maersk, many. But they own ships. It's in their vested interest to make sure that their terminals

are ideal terminals, because they need to make sure those ships turn as fast as possible.

If you don't own ships and you're a contract stevedore, you don't have the same interest as a terminal operator that does own ships. And I think, in this case—and this is just in my own opinion, you asking me—you've got a foreign company coming in that's a contract stevedore, and it's a little bit different than ones that own ships and have a vested interest.

The CHAIRMAN. Well, it was foreign-owned at the time. It's foreign-owned today, by a British company. What difference does it make if it's owned by Dubai?

Mr. MITRE. To me, Dubai doesn't matter. And I'm just talking about a foreign-owned, it doesn't matter.

The CHAIRMAN. OK. Thank you.

Mr. Koch, if we're to bar all foreign ownership in U.S. port terminals, as some have suggested, would we possess the maritime-related assets to continue to accommodate the needs of our waterborne trade?

Mr. KOCH. Absolutely not. Roughly—our guess is somewhere around 75 percent or more of U.S. trade is handled by terminal operators that are foreign-owned.

The CHAIRMAN. Mr. Yoshitani, what would be the effect of Congress precluding foreign investment in terminal operations in U.S. ports?

Mr. YOSHITANI. Well, there's quite a bit of foreign investment in terminal operators already. I'm not sure that additional——

The CHAIRMAN. I think the suggestion is, is government-owned foreign operations. I take it that would include China, Singapore, Taiwan, as well as the Emirates, if it passed. That has been suggested, as I understand it.

Mr. YOSHITANI. Yes, sir. I'd like to answer that in two parts, if I may. Number one, from a commercial aspect, I don't think there would be any problems with it. Now, we, as terminal operators or the association, feel that it's totally inappropriate for us to be making any judgments as to the security profile of Dubai, or any other company, for that matter. So, we'd like to take a pass on that.

The CHAIRMAN. Thank you.

Senator Vitter, you're the first up, the people that are here. He's not here, all right. I'm sorry. I'm looking down there, can't quite see down there. Sorry about that.

Senator BOXER. They look alike, though.

The CHAIRMAN. No.

The first person that's here, then, is Senator Pryor.

STATEMENT OF HON. MARK PRYOR,
U.S. SENATOR FROM ARKANSAS

Senator PRYOR. Thank you, Mr. Chairman.

If I may——

The CHAIRMAN. I just see the back of his head. I didn't know which one——

Senator PRYOR. If I may, Mr. Jackson, I'd like to start with you—that is, my understanding, is that DP World has volunteered to undergo, I guess, a voluntary additional review of the port terminal acquisition. But, as I understand, the way that would work is, the

review would take place after the transaction is completed. Is that right?

Mr. JACKSON. That's my understanding.

Senator PRYOR. And what purpose does that additional review serve if the port has already changed hands?

Mr. JACKSON. Well, I would defer to the owners and the potential owners to talk about the structure of that transaction, but they have made representations that they are insulating any change during this period of 45 days.

Senator PRYOR. Does anybody want to take a stab at answering that? Because when you do a review after the transaction is done, I'm not sure if you can undo the transaction.

Mr. BILKEY. Senator, I'd be glad to explain. There have been some questions about why we said we had to continue the acquisition. This acquisition was governed by the takeover laws of the United Kingdom. And in that process we are not in a position now to stop this. As actual fact, by September of—March 15th, we have to mail checks worth $6.8-plus-million to the present shareholders—billion dollars—that's a slight change, thank you, Rob—to the shareholders. And in view of that, we voluntarily tried to make a scheme that would put us in a "hold separate" situation. We will have no influence, take no action, give no directions whatever to the present P&O North American assets. And, frankly, it's a rather interesting thing, because in our acquisition we had a merger plan, and we were actually planning to merge with the U.S. assets—as we said before, we're going to keep it as a separate company—we were going to merge our Caribbean assets, where we have two terminals. But in view of what is happening in this 45-day period and our proposal, we are obviously going to keep those out of the system. But it would be our intent, actually, to put our Caribbean assets within the North American company in the future.

Senator PRYOR. OK. Well, I may want to follow up on that in a moment.

Mr. Jackson, let me ask you, if I may—again, I have a list here of at least four deadlines that the Administration has missed in regards to complying with port security laws. And—I can read them if you'd like. But I'm wondering if you have an explanation on why these deadlines were not met. And it seems to me there might be a pattern with this Administration, on not meeting port security deadlines.

Mr. JACKSON. Well, without knowledge of the four that you have in mind——

Senator PRYOR. Well, let me tell you what they are, just very quickly, so you can answer: National Maritime Transportation Security Act, that was April 1, 2005; Comprehensive Strategic Management Plan, March 17, 2005; Establishment of the Performance Standards for Cargo Seals and Locks, March 17, 2005; and Section 70116 in the Secure System of Transportation Program.

Mr. JACKSON. Well, I'd be happy to look into each of those specific ones and provide for the record an explanation, as best as possible. But let me just tell you that there is absolutely no lack of focus, or lack of interest in these marine security activities. There is a lot on the plate of a very new department. We have had literally thousands of deadlines that were allocated to us for work as

a result of the creation of the Department. We are working very hard through this, and I can just tell you that Secretary Chertoff makes this an extraordinarily high priority.

This is an area very close to my heart. I told you I believe that marine security is a very, very vital thing for us to focus on at the Department. And we're committed to doing that. If we're behind on things, we'll try to get ahead.

Senator PRYOR. Thank you, Mr. Chairman. That's all I have.

The CHAIRMAN. Thank you.

The next person that's here would be Senator Cantwell.

Senator CANTWELL. The Senator from New Jersey, because of his age—and only because of his age—can——

The CHAIRMAN. I thought that might appeal to you, Senator.

[Laughter.]

The CHAIRMAN. Senator Lautenberg?

Senator LAUTENBERG. Thanks very much, Mr. Chairman. I am still just a freshman—or sophomore, at most—Senator, after having been here 21 years.

Thank all of you. And thanks, Mr. Chairman and my colleagues, for their tolerance here.

Mr. Chairman, we have quite a corps of witnesses here: people who have knowledge and experience. That doesn't mean that we should avoid doing what comes naturally. And Mr. Bilkey and our colleague Mr. Scavone—forgive me for the lack of pronunciation, but I don't have it quite in front of me——

Mr. SCAVONE. Mr. Scavone. Rob Scavone, Senator.

Senator LAUTENBERG. Mr. Scavone, I recognize you, and also Mr. Yoshitani. I worked with the longshoremen and the port folks for many years before I came to the U.S. Senate. I was a member, as I mentioned, a Commissioner of the Port Authority of New York and New Jersey. I lived in the port area all my life. And I just want to say this. If there's an error in semantics, it's not, Mr. Bilkey, that people don't understand that it's not the port. Even if this transaction goes through exactly as it will after Thursday's closing, I know very well, and I think my colleagues do, in all due respect, understand that you're not buying the port, you're buying access to important facilities. In this case, it's a giant container terminal, as you very well know. And there is no accusation here that the United Arab Emirates, particularly Dubai, is an avowed enemy of the United States.

And I've got to tell you, it touches a little bit of a nerve in me when we get a lesson in morality or character coming from people who may have a disagreement with them. And I happen to be very concerned. I don't know whether you live in New Jersey anymore. I know your family has very proud roots, very long roots, in this country. Mine have not been here quite that long, but there's 100 years behind that. And the memory of 9/11—I worked in the World Trade Center as Commissioner of the Port Authority—is seared so deeply in my mind, because they were friends and neighbors, young and middle-aged people, and fathers and mothers, and sisters and brothers. We're just not going to give up our vigilance as easily as the Administration.

And I don't care what our colleagues say on any side of this discussion about racial profiling. I know this, that if you're Jewish,

you can't get in the countries. My own passport was denied access by Saudi Arabia when I went there. I was the first legislator to go there during Gulf War I, because there were people from our airbase in New Jersey who were ferrying cargo and people to that country. Saudi Arabia wanted to deny my passport entry—me, a United States Senator and former soldier. So, I want to clear the record of these things when our colleagues bring up the term "racial profiling."

Now, I want to ask a couple more serious questions.

The CHAIRMAN. I just wanted it quiet——

Senator LAUTENBERG. OK.

The CHAIRMAN.—so you can be heard.

Senator LAUTENBERG. All right. Anyway, the fact is that much of the complaints that I have are against the lack of recognition by our own government, in that more had to be done. As of Thursday, the transaction between World Port and the United States—and the British company—P&O—will have been executed. The contract is done. Is that the way any of you recommend doing business? You first sign a contract, and then you get all of the understandings that follow? Absolutely not. I wouldn't do it, and I ran a big company. And I don't think any of you would do it. So, why, here, are we taking that kind of risk?

You may feel very comfortable, Mr. Bilkey, about the fact that there is no risk, but I don't care what you say about that, I'm going to act to protect my family, my constituents, my country, and my state as much as I can. And your assurances are nice to hear, but that's not enough for me, or for them.

President Reagan said, "Trust, verify." And that's what my bill does. I support Senate bill 1052. I think it's a good start. But I also want to have another layer of scrutiny, and I want the ports themselves, the port management, to have to do a little bit of vetting on their own.

Mr. Chairman, thanks for permitting me this recasting of time.

The CHAIRMAN. Senator Cantwell?

Senator CANTWELL. Thank you, Mr. Chairman.

Mr. Bilkey, in my understanding, you have about 30 percent of the marketplace, and if this deal goes through, you'll end up being the world leader in this area. So, I have a question about—at what point in the process, if any, were you made aware of the Coast Guard's concerns to the Department of Homeland Security in regards to intelligence and security gaps?

Mr. BILKEY. Senator, first—I'm learning about this—first of all, we're not going to be the largest, by far. Hutchison Whampoa, with their large Chinese operations, are the first, and a very fine operator. We will have, actually, the most terminals, individual terminals in the world in this portfolio, when this goes through.

The answer to your question is, I found out about it last night.

Senator CANTWELL. Do you think there are any documents that were given by the company to the Committee for review that you don't know about? Do you think that, in asking these questions, in this process of review, and the Coast Guard raising these questions—do you think that the company responded in any way, or was asked to respond in any way?

Mr. BILKEY. I know they were. But I don't know every single document that they were given, that's for sure.

Senator CANTWELL. Is it possible for us to get a copy of the documents that were provided, to prove to the Committee that this should be approved?

Mr. BILKEY. If Homeland Security and the Treasury agrees, it's fine by us.

Senator CANTWELL. OK, thank you.

Mr. Jackson, who actually made this decision at Homeland Security? I saw in the press that Secretary Chertoff said that he did not know his agency had signed off on this proposal. Who within Homeland Security is responsible for making the decision?

Mr. JACKSON. Assistant Secretary Stewart Baker was the senior official involved in this transaction.

Senator CANTWELL. And do you know the specific response that was asked by Dubai Ports World in response to the concerns that the Coast Guard brought up?

Mr. JACKSON. Let me try to frame this a little bit. And partially we're talking about a classified document, so I'll talk about it as much as I can. And I'd be happy to talk about it in another fora, if that's helpful to you, ma'am.

The portion of the text that has become public was an unclassified portion of a classified document. And this is a standard section in reviews of this sort that assesses any gaps in available information. When you start a transaction of this sort, there are a multiplicity of gaps that you then go seek to fill. And, at the end of the day, what I can say about the conclusion of this intelligence assessment is that the Coast Guard found no reason not to approve the transaction, based upon the totality of its work. And they, therefore, recommended the same to DHS.

Senator CANTWELL. Can you—you or Admiral Gilmour, tell me exactly when, on that timeline of this process, those issues were resolved? Was that the final days of this decision, very early on, in the middle?

Admiral GILMOUR. Yes, Senator, the classified document was done very early on in the CFIUS process.

Senator CANTWELL. And the questions were raised and answered in the same very early timeframe?

Admiral GILMOUR. In our interagency—or, I should say, interdepartmental working group that we had, we raised certain questions that would certainly address those concerns, yes.

Senator CANTWELL. Well, I know that we have a standing request from Senator Snowe and myself to go further on that question, so I'm sure we'll have an opportunity to do that.

Mr. Jackson, are you aware that the President's FY 2007 budget recently submitted to Congress proposes a 45 percent cut in funding for the Megaports Initiative?

Mr. JACKSON. I'm familiar with the general contours of the Energy Department program, but I don't know the details of it.

Senator CANTWELL. Do you agree with that? I mean, I know it's probably hard for you, at your level, to answer that, but, given what everybody has said about how important the Megaport Initiative is, and how we want to move forward on more port security,

do you think it's time to have a cut in funding for that Megaport Initiative?

Mr. JACKSON. I would have to review the specific details of the proposal and understand what the laydown in the procurement cycle looks like for that particular initiative. That's a Department of Energy program, and I have not had a chance to review the details of it.

Senator CANTWELL. Do you think we're——

Mr. JACKSON. I'd be happy to do so.

Senator CANTWELL. Do you think we're spending enough on port security, just yes or no?

Mr. JACKSON. I think we are spending a tremendous amount and——

Senator CANTWELL. Are we spending enough?

Mr. JACKSON.—an appropriate amount for the many things that we are balancing. We're spending about $2.5 billion at DHS alone on port-security/maritime-security-related things. This is the whole—the whole mix of Coast Guard operations that are specific to port security. It's CBP operations specific to port security. It's a grant program, which this year will be——

Senator CANTWELL. So, you think it's appropriate——

Mr. JACKSON.—160 million.

Senator CANTWELL.—you think it's appropriate level.

Mr. JACKSON. I think it's a fair balance, given the many competing priorities that we have to manage in the homeland security world.

Senator CANTWELL. Well, I know my time is expired, so we'll go to the next round and come back on this question. But I'd just—I'll tell you where my constituents are. They want to know why we spent billions of dollars on Star Wars defense and yet we don't have the security to guarantee that there's not going to be a nuclear device in a cargo container that comes to the Port of Seattle.

So, when you talk about balance, I think that's where the American public is concerned, when they think it's going to come right through to their city waterfront, which is where it is in Seattle, and could impact millions of people.

Now—so, maybe in the second round, we can——

Mr. JACKSON. There are many——

Senator CANTWELL.—go into that in more detail.

Mr. JACKSON.—many risks that we're trying to manage within the Department of Homeland Security, but if you take the budgets from 2004 to the proposed budgets of 2007, we, at DHS, will have spent $10 billion on maritime security investments. This is not a paltry sum. It's a very considerable investment in securing our Nation's maritime system.

Senator CANTWELL. I'll look forward to the details on that.

Mr. JACKSON. I'm happy to give them to you.

The CHAIRMAN. The next person is, I believe, Senator Boxer.

Senator BOXER. Thank you.

Let me first say I'm sorry that Senator DeMint isn't here, because he said there was a vote, and I was one of four people to vote on something. There was no such vote. He was talking about a Feinstein-Hollings bill, and, at the end of the day, there was no vote on it, and it would have said that, for San Francisco Airport,

if you're in the process of becoming naturalized, and the Attorney General says you're OK, you could continue in that work. So, I wanted to—but it was a very bizarre attack.

But, anyhow, let me get to the case at point here.

I want to go, Mr. Bilkey, to you, because you were very eloquent, and you said, "with malice toward none and charity for all," and we all carry that in our hearts. Except I wonder, do—your company doesn't seem to have any charity toward Israel. What do you do at the Port of Dubai if there's some package going there, a container going there? You don't take it, do you?

Mr. BILKEY. Well, we don't know what—excuse me—we actually don't know what's in a container.

Senator BOXER. No, if it's headed toward Israel, what do you do about it?

Mr. BILKEY. We wouldn't know about it.

Senator BOXER. Isn't your policy to respect the boycott of Israel? That's what we've been told, via a Jerusalem Post article. You talk about "malice toward none and charity toward all." We have it—in today's Jerusalem Post, an admission that the company respects the Israeli boycott. Is that true?

Mr. BILKEY. DP World is not involved in state-to-state matters.

Senator BOXER. Who owns you? Who owns DP World?

Mr. BILKEY. The Government of Dubai.

Senator BOXER. And what about them? Is it their policy to respect the boycott, the Israeli boycott?

Mr. BILKEY. I do not have influence on——

Senator BOXER. I didn't ask——

Mr. BILKEY.—the Government——

Senator BOXER.—you if you——

Mr. BILKEY.—of Dubai.

Senator BOXER.—have influence. I wish you did. But I asked you if they respect the boycott, yes or no.

Mr. BILKEY. I would imagine——

Senator BOXER. Do they support——

Mr. BILKEY.—they would.

Senator BOXER.—and respect the boycott? Say it again?

Mr. BILKEY. I would imagine they would.

Senator BOXER. OK. Well, the point is, I think getting speeches about "malice toward none and charity for all" ought to be tempered with a little bit of reality here.

Now, I looked through all of your company's chief, top positions. I don't see any women in there. Who is the—do you have any women in top positions here in your company?

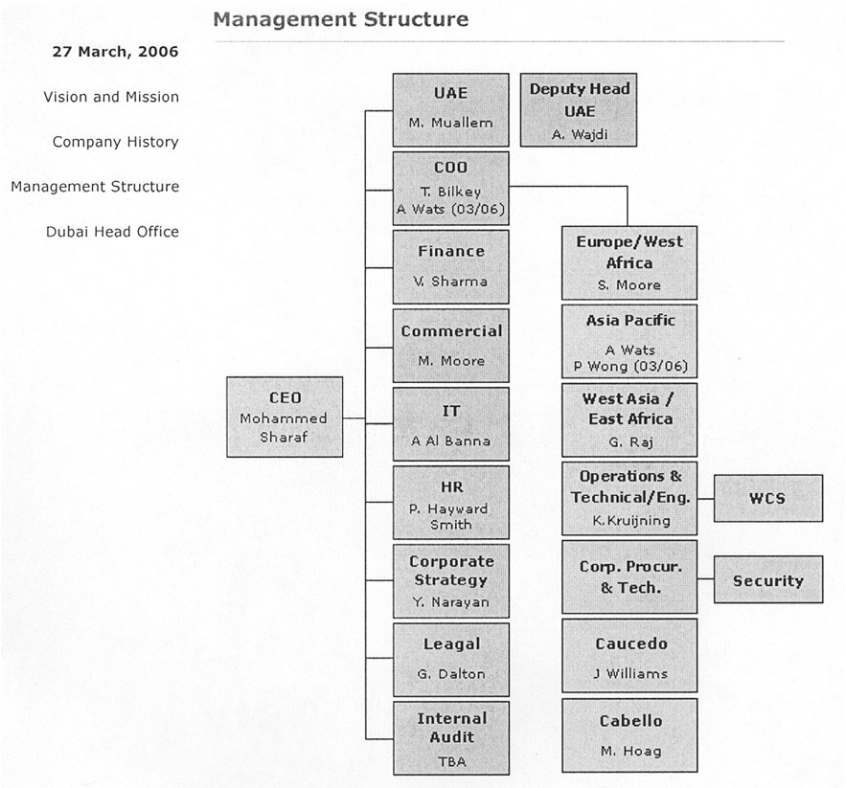
Mr. BILKEY. Yes. Selma Harab is the CEO of the Jebel Ali Free Zone, which is a—one of—the largest free zone in the world.

Senator BOXER. Well, she's——

Mr. BILKEY. And also——

Senator BOXER.—not listed on your top list, which I have here, and I ask unanimous consent to place into the record.

[The information referred to follows:]



Senator BOXER. I'm glad you have a woman at a high level, but she's not one of the top executives listed in—off your website. So, when we talk about "malice toward none and charity to all," let's just try to be honest here about the way we live our lives. None of us are perfect. I'm not. You're not. And I just think being lectured when you have a country where women don't have very many rights and there's—they boycott a country, for whatever reason I can't fathom, I think it's a little bit dangerous for you to do that, because I think that you open yourself up to criticism there.

Is it your understanding that, as part of this deal of running these ports, that you get to see the security plan for the various ports in which you are operating?

Mr. BILKEY. We don't get involved in the security plans in ports, other than America, and we would not get there—and I'd turn to my colleague Rob Scavone.

Senator BOXER. Well, let me just——

Mr. BILKEY. They are involved in working with the Coast Guard and Homeland Security——

Senator BOXER. Yes, they are. And——

Mr. BILKEY.—to develop a facility security plan. But I am not an expert on U.S.——

Senator BOXER. OK, let's——

Mr. BILKEY.—security——

Senator BOXER.—let's move on. Did your company buy out CSX's port business?

Mr. BILKEY. Yes, that's correct.

Senator BOXER. And for how much was that?

Mr. BILKEY. $1.1 billion.

Senator BOXER. And when did you start negotiating that buyout?

Mr. BILKEY. Uh——

Senator BOXER. To the best of your memory. I can't——

Mr. BILKEY. It was a very quick operation. I believe we started the investigation in early November.

Senator BOXER. OK.

Mr. BILKEY. Early November of 2004.

Senator BOXER. Of 2004. Were you aware that Dave Sanborn had been named by George Bush to be the Maritime Administrator—he worked for your company? Were you aware of that?

Mr. BILKEY. Well, that—the CSX World Terminal was 2004. Dave didn't join our——

Senator BOXER. No, no, I'm not asking that—that's—because my time is a-wasting, I'm shifting to another subject, which is, were you aware of Mr. Sanborn's being nominated by George Bush?

Mr. BILKEY. I was made aware that he was approached, I believe, in October, and he declined the job, at that time. And I would like to go on record about Mr. Sanborn.

Senator BOXER. Please. Please.

Mr. BILKEY. He is one of the finest knowledgeable operations, terminal, and shipping people that I've known. I've known him for years. He worked for Sea-Land for many, many, many years.

Senator BOXER. I know, but he—he worked for you. Did you encourage him to take this job?

Mr. BILKEY. No, I knew nothing about it. And he called me one day and said he had been called again—I believe it was in January 15th—and said, "I have been asked, and I am going to accept."

Senator BOXER. OK.

Mr. BILKEY. As a matter of fact, it was very disappointing for us, because we were about to move him into the highest position in Hong Kong.

Senator BOXER. But I'm sure that having one of your own people as the Maritime Administrator here in America has to be considered a plus by you. Is that correct?

Mr. BILKEY. No, it doesn't make——

Senator BOXER. Well, you——

Mr. BILKEY.—any difference.

Senator BOXER.—certainly——

Mr. BILKEY. I've known the—I've known the man——

Senator BOXER. Well, you certainly——

Mr. BILKEY.—for 25 years.

Senator BOXER.—said it in your website. You bragged about how wonderful it was.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Burns?

Senator BURNS. Mr. Bilkey, I just have, along those same lines—and not—not this. I get very nervous about state-owned corporations. I've served on this committee for the last 17 years, and we've looked at a lot of state-owned corporations that I've had—I really

have a problem with that. If they were investor-owned and away from the government, I don't—no red flags go up, as far as I'm concerned. And I'll be real quick.

What matters is does DP World consult with the Dubai Government?

Mr. BILKEY. Absolutely not, sir.

Senator BURNS. And—in other words, it has no impact on the day-to-day operations on these ports that they operate?

Mr. BILKEY. Not at all. And all our investments are all done on our own balance sheet. We don't even turn to the government.

Senator BURNS. And it has no role in the overall terms of the overall operations of these terminals. Is that correct?

Mr. BILKEY. Absolutely none. I wouldn't be——

Senator BURNS. OK.

Mr. BILKEY.—there if they did.

Senator BURNS. Thank you very much, and I appreciate the time.

Mr. Chairman, I yield back what I have left.

The CHAIRMAN. Yes, sir.

Senator Allen?

Senator ALLEN. Thank you for answering a question that I had. Mr. Bilkey, DP World is owned by the UAE Government, is that correct?

Mr. BILKEY. No, by the Dubai Government, sir.

Senator ALLEN. All right. What percentage by the Dubai Government?

Mr. BILKEY. Excuse me?

Senator ALLEN. What percentage?

Mr. BILKEY. A hundred percent.

Senator ALLEN. And they have absolutely no impact on the operations or any of the decision-making of the company?

Mr. BILKEY. Absolutely none. Never—I've never discussed a single word with them on any of—issue to do with anything about our company.

Senator ALLEN. Mr. Sanborn, by the way, lives in southeastern Virginia, and I introduced him to the Committee, oh, gosh, a few weeks ago, and he is a man of outstanding reputation, character, and competence.

Let me ask this. Can you, Mr. Bilkey—or maybe it'll come from the Department of Homeland Security. Are there any conditions that DP World has agreed to, in terms of enhanced security or information-sharing?

Mr. JACKSON. I can answer that, Senator Allen. There are several.

First, they have agreed to participate, and continue to participate, in ongoing cargo inspection and security programs principally here, the Customs Trade Partnership Against Terrorism, and our Container Security Initiative, two key programs of the Department. Second—and they've also, by the way, agreed to participate in the Megaports Initiative at the Energy Department. We have extensive experience with this firm in their—in the UAE—and we are absolutely persuaded that they are excellent security partners.

Senator ALLEN. Could you share with the Committee and the American people, any added conditions, security transparencies, and so forth——

Mr. JACKSON. There are a couple of extra details that enhance the security.

Senator ALLEN. All right.

Mr. JACKSON. They have made a specific assurance to assist the U.S. with any law enforcement agency—Federal, State, and local—to disclose information concerning the operation of the company's facilities, equipment, or services, and to provide any relevant records that may exist of foreign efforts to control U.S. facilities. So, they have opened their books.

In addition, they agreed to maintain the—P&O's existing security policies and procedures at the facilities, as they would be obliged to do by Coast Guard and CBP regulations. And they have agreed to have a great deal of transparency into the recordkeeping of who's employed and what their operations are inside these terminals in the United States.

Senator ALLEN. In the event that this transaction's consummated, they're keeping certain management and U.S. citizens and so forth. How do you see the governance of it after it's turned over to DP World?

Mr. JACKSON. We see it looking very similar to what we're working with today under the P&O ownership.

Senator ALLEN. Do you find a difference in dealing with an entity in such operations that is owned by a government, as compared to one that is owned by a private concern?

Mr. JACKSON. I think, as a general matter, you'd have to ask the specifics about the nature of the organization and the transaction. In this case, we did not at all have difficulty with this particular transaction, and we are very grateful for the partnership that the UAE has shared with the United States in counterterrorism efforts. So, there's a very substantial layer of familiarity with operations in Dubai, and also with the counterterrorism work of the UAE.

Senator ALLEN. In the event that the UAE or Dubai was not as friendly and supportive as they have been in the last 3 years, do you have assurances that insofar as these operations, security would be maintained?

Mr. JACKSON. Yes. The agreement requires them, and multiple U.S. statutes require them, to maintain security plans, security protocols, the continued access to the information that was provided in the assurances letter and this transaction.

Senator ALLEN. All right.

Mr. Koch, since you were once with Sea-Land and they sold it off for some reason, why are there not so many—these companies are from Denmark, from Taiwan, Korea—South Korea, China, which is government-owned, Japan, privately owned—but, regardless, why are there so few American companies interested in this? Somebody's making a profit. They're paying Americans to do this work. Give us a business perspective why there are so few American companies interested.

Mr. KOCH. I think experience has shown it's a very capital-intensive business, as you know. Maersk, investing the hundreds of millions in this new facility in Portsmouth, it's a very expensive——

Senator ALLEN. Portsmouth, Virginia.

Mr. KOCH. Portsmouth, I'm sorry. Very expensive business. It's a very cyclical business.

CSX was punished on Wall Street for holding Sea-Land. It was a discount on the stock, and they had to constantly explain the liner shipping industry to the market. APL found some of the same situations. And our tax laws are higher. And so, it is an industry that American enterprise has simply found very difficult to compete in, and has chosen to—those companies that were pioneers have chosen to sell to others who have a longer-term view of the business.

Those companies, I would add, have made billions of dollars of investment in the U.S. in our transportation infrastructure, without which we would have a very difficult time moving the goods of American importers and exporters as efficiently as move today.

Senator ALLEN. Are they not subject to the same U.S. tax laws as U.S. companies?

Mr. KOCH. It depends on what part of the operation is concerned. If it's a terminal operating company based in the U.S., it would be subject to the same tax laws. If it's a carrier operating international commerce, it'll be subject to the tax laws of that nation.

Senator ALLEN. Which are lower.

Mr. KOCH. Which are lower.

Senator ALLEN. Thank you, Mr. Chairman.

Thank you for your testimony.

The CHAIRMAN. Yes, sir.

Senator Sununu would be next.

Senator SUNUNU. Thank you.

Mr. Bilkey, you're COO, Chief of Operations, for DP World. You have operating responsibility for all of their international terminals? Is that—30—how many was it, 35, 40?

Mr. BILKEY. Well, we're 19 today, and when we make this acquisition, we'll be 50 or 51, depending on if you start to decide on greenfield sites.

Senator SUNUNU. So, your operating responsibility, it's owned by the Emirates, but you are the chief operating officer.

Mr. BILKEY. Yes, sir. And it's a big daytime job.

Senator SUNUNU. I imagine. It's a—you're a U.S. citizen, is that correct?

Mr. BILKEY. Yes, sir.

Senator SUNUNU. You're not a citizen of—of any other country.

Mr. BILKEY. No, sir.

Senator SUNUNU. If I get your family tree right, am I correct in assuming you are a cousin to Congressman Rodney Frelinghuysen?

Mr. BILKEY. Yes, sir.

Senator SUNUNU. Excellent. How many employees—if—once the acquisition is completed, how many employees will the company have in the United States?

Mr. BILKEY. Now, I'm not an expert on that, but I've been reading up on it, so it's 402, I believe, but——

Senator SUNUNU. Roughly 400. That's fine. You don't—I'm——

Mr. BILKEY. And, of that, I can tell you I believe they're all U.S. citizens, but about seven or eight. Three British, and there's some Australians and one or two others.

Senator SUNUNU. So, all but seven or eight are U.S. citizens.

Mr. BILKEY. Correct.

Senator SUNUNU. And seven or eight hold citizenship from Britain, Australia——

Mr. BILKEY. Yes. It's——

Senator SUNUNU. OK.

Mr. BILKEY.—a handful, about seven. But they—you know, we employ hundreds and hundreds of people, but they're longshoremen.

Senator SUNUNU. I understand. Will that change? Will that makeup of the workforce, 400 employees, 98 percent U.S. citizens——

Mr. BILKEY. We have——

Senator SUNUNU.—2 percent——

Mr. BILKEY.—no plans to—we're very glad to have a very able management and systems in place. And that's one of the reasons why we're acquiring the company.

Senator SUNUNU. You mentioned Ms. Harab. And I know some members of the Committee asked about her. This is a picture of her here, the head of the Free Zone, is that correct, that you handed out?

Mr. BILKEY. Oh, yes.

Senator SUNUNU. And——

Mr. BILKEY. Yes, sir.

Senator SUNUNU.—is this chairman of your company, sort of following her——

Mr. BILKEY. He's——

Senator SUNUNU.—off to the——

Mr. BILKEY.—in the——

Senator SUNUNU.—gangplank?

Mr. BILKEY.—background, way in back.

Senator SUNUNU. Thank you. There's also a picture here of a Navy officer in the tower. And, granted, one Navy officer looking—holding—or being present in the control tower isn't the be-all and end-all, but I'm curious to know, are Navy officers located in the control towers of any U.S. ports, to the best of your knowledge?

Mr. BILKEY. I don't know. And that's actually a very privileged place, because that was built especially for Sheikh Rashid, who actually built the port. And they coordinate with our harbor master and his crew in the movement of the vessels.

Senator SUNUNU. Earlier, someone asked about access to documents. And I know there are some agreements we have here. Will access to relevant documents be provided to law enforcement officers? I think this is a very important area, personnel records, manifests, and the like. Is that material made readily available to Homeland Security, should the need arise?

Mr. BILKEY. Yes, sir. And we made formal undertakings in that regard.

Senator SUNUNU. Are subpoenas or warrants or advance notice required to get access to that material?

Mr. BILKEY. No. To the best of my ability, I don't know.

Senator SUNUNU. OK. And is that the gist of the letters that were provided to us? In other words, you referenced a number of agreements and assurances that were made.

Mr. BILKEY. Correct.

Senator SUNUNU. This documentation references those agreements. In your experience—well, could you talk generally about the level of sophistication of the port operation in Dubai? And I know it's a larger port. Singapore was mentioned, Hong Kong, these are very large ports—I suppose along the lines of Long Beach, in California. I'm curious to know their relative sophistication in terms of technology that's employed and how that compares to the ports in the U.S. in which you will have some lease arrangements.

Mr. BILKEY. Well, we have the ten largest container cranes in the world. Someone will catch up to us, I'm sure. And they also have the highest productivity in the world and can pick up four 20-foot containers at a time. We talk in 20-foot equivalent units in our business. And they can do over 600 20-foot equivalent units an hour on a large ship with seven cranes over it.

We work on a number of things, and technology is one, and security is another. I was very serious, and the company is serious, when we said, OK, this has come up. But isn't this an opportunity? We have—going to have 51 ports. We can engage in all those 51 ports in any way the U.S. would like to. And we have a very big incentive to do that.

Now, I'm looking at something. And I'm glad the date is on it, because it's September 19th. And that's before any of—we even approached the U.S. for permissions or anything like that. And we are taking the initiative ourselves to go forward with NII—excuse me, nonintrusive inspection gear, which exists—the technology exists today, and this is equipment that I believe that some Congressmen and Senators have looked at. And we're taking the initiative. CSI actually is supposed to take the initiative and actually put this type of equipment into place. We're taking the initiative on our own. I'm looking at the—at a response to an RFP in September that—and these are not inexpensive machines, they're $2.6 million apiece, the whole setup with it, which allows gamma rays and radiation detection and optical scanning and all the bells and whistles all at once. So—I mean, the big problem in the ports today is—and I would like to see something like this in all the CSI ports, and there were more CSI ports—that's what's really needed, to push the borders out of the U.S. I would check them again here and have a second layer.

But this is the type of equipment—and I don't want to tout anyone's particular equipment, because we haven't made our decision yet—but this is the type of thing that is commercially practical. The problem today is speed. And the present type of equipment that you have, it actually runs like a car wash, and, takes minutes to run over a container. You can only do 20 containers an hour. These can do up to 400-and-more containers an hour. They store the image. And the image can actually be transported to the Customs center here in the U.S.

So, this is the type of thing—to me, if, out of these hearings, that something like this is pushed forward and mandated, it's going to increase the security tremendously. And security is big business for us. It's a marketing tool for us. We couldn't afford, spending the money we do, to have anything go wrong with our operations. It would be catastrophic. And that's why it's not just words when we

say "security is everybody's business." It's all—and all shipping companies and everybody is interested it.

Senator SUNUNU. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Ben Nelson?

Senator BEN NELSON. Thank you, Mr. Chairman.

Mr. Jackson, you were asked by my colleague if enough was being spent. You didn't quite—I heard you answer, but I didn't find an answer in it. Is enough being spent on port security, period?

Mr. JACKSON. Yes, I think we're spending the balance that we can afford to spend——

Senator BEN NELSON. Not——

Mr. JACKSON.—in a prudent way.

Senator BEN NELSON. Well, no, you're—I understand balancing, if you have enough—if you have a—if you have a piece of pie, you cut it into five pieces. And I understand trying to balance that. But do you need a bigger pie? I guess that's the question. I'd like to know that answer.

Mr. JACKSON. I think that we have got an adequate-sized pie for the mission that we have right now.

Senator BEN NELSON. And is enough of it going to the ports? Because you're only——

Mr. JACKSON. Two and a half——

Senator BEN NELSON.—getting five——

Mr. JACKSON.—billion dollars out of DHS this year.

Senator BEN NELSON. No, my question is, Are we spending enough money if we're only looking at 5 percent of the containers? And is that enough? And if it isn't enough, why isn't it enough?

Mr. JACKSON. Senator, it's an excellent question. Let me answer it for you this way. There's a widespread distinction that is not being made routinely, and I'd like to make it this way. We screen 100 percent of all containers inbound into the United States. We inspect 5 percent of the containers, roughly. We inspect all the ones that we identify as high-risk or high-concern containers. This is a smart way to make an investment. What we're trying to do is aggregate data from up and down the supply chain and over historical time of who's touched this container, what's in this container, where it's going, who shipped it, and all of the history that we can. And, on the basis of a very sophisticated system of risk analysis, we are identifying the ones that need physical inspection.

This is the wave of the future. This is the next generation. This is how we need to do this. And if it means that we inspect 12 percent or 3 percent or 6 percent, we'll inspect what we need to, and the investment here on screening is really the key to the security.

Senator BEN NELSON. Well, I guess I'm still a little bit confused, but perhaps we'll go on, except to say I believe in risk assessment and cost-benefit analysis. No question about it. But if you had more money, would you inspect more—actually physically inspect more containers?

Mr. JACKSON. If I had more money to spend right now, I would spend it on the algorithms and the work up and down the supply chain to gather information. That is the place where you can go to get greater depth. And that's exactly what Secretary Chertoff has

proposed as part of our Secure Freight Initiative, to go to the next generation of tool which creates an intermediary institution that can aggregate data from up and down the supply chain, do more than just scrape the weigh bill, gather information about the shipper and all of the people who have touched the thing for——

Senator BEN NELSON. Well, more risk——

Mr. JACKSON.—purposes of——

Senator BEN NELSON.—assessment—more risk assessment, in other words.

Mr. JACKSON. Yes, sir.

Senator BEN NELSON. OK. We have Union Pacific and Burlington Northern Railroads—the rail lines passing through the state. And, of course, I–80 is a major corridor for trucking cargo cross-country. Can you talk a little bit about the security process for cargo coming off ships and onto rail trucks—rail cars and trucks? For example, do security measures differ at ports than at border crossings at the Mexican and Canadian borders? Is it easier to screen a train crossing the border, which I understand they do, versus cargo being loaded on a train at a port?

Mr. JACKSON. Senator, I've asked Mr. Ahern to answer that question, if he could. This is his specific area of expertise at CBP.

Senator BEN NELSON. Uh-huh.

Mr. AHERN. Thank you very much. I am the Assistant Commissioner for Customs and Border Protection.

The CHAIRMAN. Pull that up to you, will you, Mr. Ahern? Pull it up. Put the mike——

Mr. AHERN. Is that better, sir?

And, as part of our responsibility, not only do we have the overseas responsibility under the Container Security Initiative, putting assets there, and the technology deployment, but also at our land border ports of entry. One of the key features that we have along the borders—and when we made our first radiation portal monitor deployment, we made the conscious decision to go ahead and deploy those along the Canadian border, because we felt as though, given the lack of information that we have through the prescreening process under the maritime model, and given the fact that we did not have Container Security Initiative assets to place overseas, so we have to put our radiation portal monitors on the northern border with Canada. We have many of those that actually are in our rail facilities. In fact, one of them actually is on the other side of the border, where we have our officers screening it for—radiation portal detection before it actually——

Senator BEN NELSON. When it comes——

Mr. AHERN.—enters in——

Senator BEN NELSON. When it comes in.

Mr. AHERN. Yes, sir. Yes, sir, that's correct. And we also have them deployed along the northern border. I think that the total right now for radiation portal monitor screening trucks coming into the United States from the northern border is actually around the 90 percent rate. And on the southern border, we're about the 85 percent rate from trucks coming into the United States from Mexico.

We also have large-scale imaging devices, because certainly we have the knowledge that we need to make the ability to look at a container and also to screen for radiation capabilities, as well.

Senator BEN NELSON. Thank you.

Before I go, Mr. Chairman, I want to compliment Admiral Gilmour personally for an outstanding job in—with the Coast Guard in Katrina. I think we all saw the heroic efforts and great successes of your troops in New Orleans, and I want to personally thank you.

I want to also ask you if you have enough money to do the kind of security that needs to be done.

Admiral GILMOUR. Well, again, as the Deputy Secretary said, we need to live within our budget. And certainly we have some—many of the same risk-based systems that we use, not only to look at vessels, but also it's based on the crew members of the vessels and the record of vessels. So, I think we have adequate funding to do the job that we need.

Senator BEN NELSON. Well, Mr. Mitre doesn't seem to think so, so maybe you can work that out between you.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Bill Nelson?

Senator BILL NELSON. Thank you, Mr. Chairman.

Mr. Bilkey, good afternoon. Dubai Ports World is owned by a holding corporation owned by the Government of Dubai, named Ports Customs and Free-Zone Corporation, PCZC, is that correct?

Mr. BILKEY. PCFC, we call it, sir.

Senator BILL NELSON. OK, a Free Zone Corporation.

Mr. BILKEY. Yes.

Senator BILL NELSON. That's correct. Are you aware that that same holding company also owns a company that is called the Dubai Customs Department?

Mr. BILKEY. Yes, sir.

Senator BILL NELSON. Are you aware that the Dubai Customs Department—that there is an office in that department called the Office for the Boycott of Israel?

Mr. BILKEY. No, sir.

Senator BILL NELSON. Well, there is. The sole job of that office is to enforce a boycott against Israel. That office, as a matter of fact, in the year 2003 had 100 incidents where it engaged American corporations that—on the containers that they were shipping, that there could be no products with any element that was made in Israel. And again, in the year 2004 there was another hundred incidents with American corporations, and you're not aware of that. Are you aware—well, let me ask you, first, is the Jebel Ali Free Zone area—is that also owned by the PCFC?

Mr. BILKEY. Yes, sir.

Senator BILL NELSON. Are you aware that they have advised all importers that they must comply with the terms of the boycott that is enforced by the Dubai Customs Department?

Mr. BILKEY. No, sir.

Senator BILL NELSON. Well, therein lies a problem. Both of you are—all three—are owned by the holding company PCFC, and

that's owned by the Government of Dubai, and it's enforcing that boycott.

And that is just something that as a matter of policy, we need to have that out here on the record, Mr. Chairman, in the consideration of this whole issue that has come to our attention.

Let me ask you one other question. In the interest of time, I'll stop. Your company obviously is a very good one, and does a good job, and you do a lot of business in U.S. ports. Is that correct?

Mr. BILKEY. No, sir. I mean, P&O does. The business we're acquiring, yes.

Senator BILL NELSON. Yes.

Mr. BILKEY. But, at the present time, we do not.

Senator BILL NELSON. So, with the acquisition of the P&O company, you would be operating the ports in those six ports that have been listed——

Mr. BILKEY. Yes, and the other—and the other general stevedoring services and general cargo that was brought up during the meeting.

Senator BILL NELSON. And Mr. David Sanborn is an executive with your company.

Mr. BILKEY. Yes, and an excellent one, too, sir.

Senator BILL NELSON. Yes, I understand. And I'm sure he must be. What is your personal opinion? Do you think that an officer of your company should be the head of the U.S. Maritime Administration?

Mr. BILKEY. Sir, I think this individual—an individual in such a position should be based on his experience, knowledge, and integrity, and I couldn't speak any higher for Dave Sanborn's integrity. I've known this man a long time, and he's had positions of responsibility all over the world. He brings a great deal of cross-section and ability to the job, of an international nature, which is the type of things that I think probably is needed in the Maritime Administration.

Senator BILL NELSON. Yes, sir. And you indicated that you were going to promote him as the head of Hong Kong. And obviously you do think a lot about him. My question is more in terms of the perception of a potential conflict of interest. Do you have an opinion on a perception of that conflict of interest, were he to be the head of the Maritime Administration?

Mr. BILKEY. No, sir, I don't. But I can tell you, it would have been the second Maritime Administrator that came under my jurisdiction, because one, a number of years ago, worked for another company, Norton Lilly before he became a Maritime Administrator, and it wasn't felt that it was a conflict then.

Mr. JACKSON. Senator, I might just add to this one that standard government recusal regulations would require this individual, if confirmed, to be recused from this particular firm for at least a year.

Senator BILL NELSON. I understand. I'm trying to get all of the information out here for this committee to evaluate, because this was not an issue that came up when his hearing was held, February 7.

With regard, Mr. Bilkey, of the gentleman that you had referred to that you knew before, that was the head of the Maritime Admin-

istration, was he an employee of a company that was owned by a foreign country?

Mr. BILKEY. No, sir.

Senator BILL NELSON. Thank you, Mr. Chairman.

The CHAIRMAN. Well, it's up to Senator Cantwell whether you're recognized.

Senator Lautenberg?

Senator LAUTENBERG. Thanks very much, Mr. Chairman. I'll try to be brief.

Mr. Koch, when you talked about the knowledge of what is in the containers, did I understand you to say that 100 percent of the cargo in those containers is known?

Mr. KOCH. A hundred percent of the information about the containers that the carriers have in their bill of lading data is transmitted to Customs before vessel loading.

Senator LAUTENBERG. OK. So, we know only what they said was in there.

Mr. KOCH. The carrier knows——

Senator LAUTENBERG. Yes, OK.

Mr. KOCH.—what the shipper says was in there, that's correct.

Senator LAUTENBERG. OK. So, it might pay to take a peek along the way, if we can do that. Thanks.

Anyway, the——

Mr. AHERN. Senator, could I add to that answer, please?

Senator LAUTENBERG. Sure.

Mr. AHERN. Because that is part of my area of responsibility, as well. And the Trade Act of 2002 did require the carrier to electronically transmit the information to United States Customs and Border Protection. We think that's a good thing for us to have 24 hours in advance of lading, so that we have the ability to screen 100 percent of that manifest information prior to lading overseas——

Senator LAUTENBERG. Would that——

Mr. AHERN.—take that information——

Senator LAUTENBERG. Would that include parts for nuclear weapons, do you think——

Mr. AHERN. Well, sir——

Senator LAUTENBERG.—if they were—if somebody was going to put it in a container?

Mr. AHERN. I think what is important, sir, is for me to be able to lay the entire strategy out so that we have the ability to introduce the technology layers, the screening layers, and also the personnel that we deploy as part of this protocol, as well. No single solution is going to be acceptable to the potential threat we face.

Senator LAUTENBERG. I thank you for that add-on, because that's important. I come out of the computer business. I was there before the computers, and I left there since the computers, but I just wanted to be sure that there are no illusions created here, because we don't really know for sure what is in all of these containers. And we do inspect very few of these things, just 5 percent. I'm not saying it's an easy job, it's a very complicated job. We can't do something which will bring commerce to a standstill. On the other hand, we have to do whatever we can to protect ourselves and our families.

Secretary Jackson, did any other agencies in your Department, beside the Coast Guard, raise concerns about the deal before or during the CFIUS review?

Mr. JACKSON. The Coast Guard did not raise, ultimately, an objection to the transaction. They were part of the review process that we undertook at the Department of Homeland Security. There were other parts of the Department that engaged in the same.

Senator LAUTENBERG. But there was—you say they were part of the information-gathering, but there—did anyone raise any concerns about taking a second look here? Because the contract is going to go into place on Thursday, and I'm not even sure what the remainder of 45 days—or the remaining 45 days will do for us. What can happen, would you think, in those 45 days? Where does this go? This was at the request, I believe, of Dubai Ports World, who said that they would submit for another review.

Mr. BILKEY. Yes, Senator, that's correct.

Senator LAUTENBERG. Yes. Mr. Jackson, what——

Mr. JACKSON. Well, in part it gives us a chance to do what we're doing here today, which I welcome very much and think is absolutely appropriate and necessary to help the Congress understand, the American people understand, this transaction. It is not easy to get your arms around the entire set of issues here, and we think it's very important to spend the time with you and to work through this and help the Congress understand better, and to be able to execute your absolutely appropriate oversight functions in this area.

Senator LAUTENBERG. Yes. Well, do you think that giving the ports, or the ports authorities—port authorities some responsibility here to try to determine, as closely as they can, whether there is anything of suspicion or concern that's in those containers, in particular?

Mr. JACKSON. The port authorities are an important partner in this security equation. Through our captain of the port at the Coast Guard, we work very, very closely with them. And, as I know from your history, you know well in the Port Authority of New York and New Jersey——

Senator LAUTENBERG. Yes, I have great——

Mr. JACKSON.—and——

Senator LAUTENBERG.—respect for that Coast Guard group.

Mr. JACKSON. Yes, he's good—there's—it's an important partnership, and we are absolutely in agreement that it's important for the port authority to be engaged with the terminal operators in helping us manage security. They do that in many-layered ways, not only just in the planning, but in the execution of these plans and using assets on the marine side and on the land side, and pulling together law enforcement authorities to help that system of systems work.

Senator LAUTENBERG. Thanks, Mr. Chairman. And thanks, Senator Cantwell. I appreciate it.

The CHAIRMAN. Yes, thank you.

For the information of the Committee, I'm going to adjourn this hearing at 5:45.

Senator Cantwell?

Senator CANTWELL. Thank you, Mr. Chairman.

Mr. Yoshitani, could you—you represent the port—National Port Workers Association. Could you just concisely give me a review point on why U.S. companies are a smaller percentage of the marketplace today?

Mr. YOSHITANI. In terms of terminal operators——

Senator CANTWELL. Yes.

Mr. YOSHITANI.—Senator? Well, I would concur 100 percent with what Mr. Koch said, but I would add just one element to that, and that is that a large percentage of the ocean carrier business is foreign-owned. And so, for them to get into the stevedore—or the terminal operations business is actually a natural integration, if you will, vertical integration of what they already do. So, I think that plays into it, largely. But, other than that, I think Mr. Koch did a great job of outlining why it's happening.

Senator CANTWELL. Do you think U.S. companies who want to be a world player ever get asked by governments or ports—international port structures to do certain things to get the deal?

Mr. YOSHITANI. I can't comment on that. I don't know what foreign governments would ask of our companies. So——

Senator CANTWELL. Mr. Koch, do you have any comments on that?

Mr. KOCH. I'm not sure, Senator, I understand the——

Senator CANTWELL. Well, part of the challenge is, obviously—sure, vertical integration, which is a question, and big players, but part of the challenge is, U.S. companies have to go to foreign ports in foreign countries and get business, as well, right?

Mr. KOCH. Correct.

Senator CANTWELL. And I just wondered if you thought, in that process that there were times in which the government ever put conditions on, or the government ever asked, or the port structure, itself, asked for certain accommodations.

Mr. KOCH. The foreign government?

Senator CANTWELL. Yes, uh-huh, or foreign port.

Mr. KOCH. I'm sure it's a case-by-case example. I know Maher Terminals, based in New York, is investing in an enterprise in British Columbia, at Prince Rupert. SSA has invested in Panama and other places. I believe Crowley Maritime has got a venture going now in Russia.

Senator CANTWELL. Don't you think the governments asked them to do certain things? Or, no? Wouldn't you think that's part of standard practice, or——

Mr. KOCH. I don't know what specifically it is that might be asked for. I'm sure governments often approve permits for expansion or facilities, just as the U.S. Government does.

Senator CANTWELL. Mr. Bilkey, what about the worker identification program, the TWIC program, and the International Maritime Organization, and the shipping and facilities ISPS organization? Would you make, as part of, you know, being part of the world leadership, an agreement to implement some of those recommendations, the worker background check and security clearance and electronic seals?

Mr. BILKEY. Yes, I'm not aware of the details, though. In principle, you know, the answer is yes.

Senator CANTWELL. What if somebody asked you to do this as part of this requirement of getting in this secure—getting this for the United States? I know there's a process here that the Administration's going through, but what if somebody said, "Let's make these security improvements for worker background check, for electronic seals"——

Mr. BILKEY. You know, in the—for the people in the U.S.? I would——

Senator CANTWELL. Or even for your 41 ports. I mean, obviously, I'm a big believer in point of origin. When you wait until something gets to the United States, whether it's a cargo container or a person who wants to do ill will, it's a little late. So——

Mr. BILKEY. I agree with you.

Senator CANTWELL. So, would you put, at your 41 ports around the globe, the radiation detection, the state-of-the-art devices that would help us? And would you do the background checks on the workforce that would give people much more certainty and security about what was happening to a cargo container once it leaves those various international ports?

Mr. BILKEY. Yes. Actually, containers today that come to the U.S. have a special security seal. It gives much greater protection than the normal security seal. And, therefore, people actually don't access a container, and they actually don't know what's in the container. But as far as the business of putting in nonintrusive inspection equipment, we're actively involved in that right now. As a matter of fact, we have a port in the Dominican Republic, it's a brand-new port, it's got every piece of bell and security whistle you could think of——

Senator CANTWELL. And so, if somebody said, "Why don't you do this as a part of a requirement to"——

Mr. BILKEY. Well, actually, we initiated—we'd like to have it CSI regulated, and that's a matter between governments. The governments sign the agreement. The Dominican Republic and the U.S. Government sign the agreement, and——

Senator CANTWELL. So, if our Government required that, you would comply with it.

Mr. BILKEY. Absolutely.

Senator CANTWELL. Thank you.

And if just—Mr. Jackson, if I could get an outline of where you think this $10 billion is being spent, we can do this——

Mr. JACKSON. Sure I'd be happy to submit——

Senator CANTWELL.—for the record.

Mr. JACKSON.—it for the record.

Senator CANTWELL. Thank you.

The CHAIRMAN. Senator Boxer?

Senator BOXER. Thanks, Mr. Chairman, again.

Mr. Jackson, I'm going to say a string of things here that aren't going to make you happy. This is not personal to you.

I want to tell you what my people think of the Department of Homeland Security when I go home. They think you don't know what you're doing. They don't understand, in this deal, why you didn't ask for a 45-day review, even though the former inspector general of Homeland Security wrote a clear op-ed piece and said it triggered when you have a state-owned company. They don't under-

stand, if this was such an important thing, and so important to commerce, which you say it is, and it was so great, why you didn't tell—not you, personally—why the bureaucrats didn't tell Mr. Chertoff about it, why Mr. Snow didn't know about it, why Mr. Rumsfeld didn't know about it.

I mean, how much of a tin ear can you have over there? You have a country that is written up, in article after article, as being a place—and I'll read you just this one. This is from the Gary Milhollin, director of Wisconsin Project on Nuclear Arms Control, who says, "Dubai's involvement"—and this was in a Mr.—"Dr. Khan's atomic bazaar," he called it—he said it's no surprise—Dubai's involvement is no surprise to those who follow the murky world of nuclear technology sales."

What kind of tin ear do you have? Forty-five days. That should have been a no-brainer beyond no-brainers.

They see the face of Katrina, and they'll never forget that as long as they live. And now we're being told, in California, there's no plan, at the Federal level, if we have an earthquake. They actually put that in writing. I give them credit for admitting it. No plan. You haven't met your port security deadlines. You sit here and tell us how important it is, bless your heart, and try to cover up for a budget that isn't big enough, at least the Coast Guard—bless the Coast Guard every day—they say, "Well, we're working within the budget." That's another way of saying, "We'll live with what we get."

And a lot of this is the Congress's fault, that we haven't done more. I'm the first one to admit it. I have a chart here. Would you hold up the chart? Do we still have it? It shows the bills, Mr. Chairman, that passed this committee which never made it through the Congress. Let's look at that. We had important bills that never made it through, because they were either stopped in the House or they were stopped in the Senate, Mr. Chairman. This Committee has done its work.

We had a series of amendments on port security, another chart. "No. No." This Congress, "No, no, no." And you sit here and say how terrific everything is going. Well, I guess what I'm saying is, it's not going well. And this particular deal, which some of my friends on the other side think is good for America—and I bless their heart; I mean, it's their right—just symbolizes the incompetence, the tin ear, the putting commerce before security after we use security as a threat every other day.

So, it's a problem here that your Department has, and I hope I can help you, in further days, work on these issues, because it doesn't make me feel any better.

Now, I just want to go back to this whole thing of—that we talked about, "with malice toward none and charity to all." And I want to ask you, Mr. Bilkey, Isn't it true that DP World is 100 percent owned by the Emirate of Dubai?

Mr. BILKEY. Yes, Senator.

Senator BOXER. Who does the CEO report to?

Mr. BILKEY. My CEO reports to our Executive Chairman, Sultan Ahmed bin Sulayem.

Senator BOXER. Sultan and——

Mr. BILKEY. Ahmed bin Sulayem.

Senator BOXER.—who represents the—I assume, the Emirate of Dubai. It's his person that he's——

Mr. BILKEY. No. No, he's——

Senator BOXER. Are there shareholders, or is this the only shareholder? The——

Mr. BILKEY. No, the—he's not the shareholder.

Senator BOXER.—Emirates——

Mr. BILKEY. The Government of Dubai is the shareholder. The ruler of Dubai is the shareholder.

Senator BOXER. The ruler of Dubai. OK. I'm an old stockbroker, so I—when you sit here and say, "Oh, we don't have to ever talk to anyone, and—blah, blah," first of all, of course you—you may not, personally, sir—and I'm sure—I like you. I think you try to do the right and just thing. But you can't just sit here and divorce yourself from the fact that there is someone at the top here, and that they set up a holding company in which I think—I really thank Senator Nelson for doing due diligence on this—that has a subsidiary, just as you're a subsidiary of the holding company, that does nothing but move forward the boycott of Israel, our greatest ally and friend in the world—one of our greatest, for sure, among some wonderful others.

Now, I want to ask you—and I only have 9 seconds. Let me quickly ask you this. On the issue of Dr. Khan, how many years was Dr. Khan smuggling nuclear weapons components through the Port of Dubai?

Mr. BILKEY. I would have no idea, because we don't—as a port operator, we just don't know what's in a container. The only people who know——

Senator BOXER. You don't——

Mr. BILKEY.—what's in——

Senator BOXER.—what's in a container, as a port operator? You've got to be kidding.

Mr. BILKEY. Absolutely not.

Senator BOXER. Well, then you ought to read what our people expect of you, because they definitely expect that you will know—you will be involved in security, sir. So, you—you have no answers on this. Well, I will tell you. All through the 1990s, Dr. Khan was smuggling nuclear components. And, Mr. Chairman, they wound up in Iran, and they wound up in North Korea. And you think—and you're—and you think, Mr. Jackson, you didn't need a 45-day review? I don't know if I'm in "Barbara in Wonderland," but sometimes I feel that way.

Mr. Chairman, thank you.

Mr. BILKEY. Senator—could I respond to that, Mr. Chairman?

The CHAIRMAN. Yes. I was supposed to have 5 minutes, myself. You can use part of it. There's not much left.

Mr. BILKEY. No, sir, I defer to the Chairman, sir.

The CHAIRMAN. After you, sir.

Mr. BILKEY. Thank you, Mr. Chairman.

Senator one of the things that's happening today, which I think is important, as we've known—and, frankly, this situation that's happened is bringing security to the forefront, which—we're very glad that it's happening, because when we get into business about being too secure, some of our clients complain that we're slowing

the process down. But in Dubai today we have U.S. Customs on the ground. And—under the CSI program—and we do something that practically no other country that I know of is doing today. We also have a transshipment hub, we have transshipment hubs in other places of the world. But we actually, today, apply and provide the manifest of the ship—I mean, the shipowner does—to the Customs and—to U.S. Customs. And if U.S. Customs wants to look at any box, any box from anyplace, we have the legal right, and they will tell us, "Go and get that box," and U.S. Customs will look at what it is.

Now, this is something unique. I would like to see it in many places of the world. But we actually are there and doing it in almost a voluntary basis. So, we are very concerned with the security of the U.S., and actually are a great partner with them.

Senator BOXER. But you don't check any containers.

The CHAIRMAN. Madam——

Senator BOXER. I'm done.

The CHAIRMAN. I'm sorry about that——

Senator BOXER. I'm done.

The CHAIRMAN.—but there comes a time when——

Senator BOXER. I'm done.

The CHAIRMAN.—other people should have a chance to talk.

I would commend to you the *Wall Street Journal* commentary from former Senator Cohen and former Admiral—well, Admiral James Loy, about the situation today, entitled, "Fact, Not Fear," Mr. Bilkey. I do think that there are some things that we can do to calm these waters. I hope we can.

I, for one, really deplore the position of the UAE on Israel. I don't know of any Senator that doesn't. But, on the other hand, I do greatly admire what this country has done to assist us following the great difficulty that we had in finding a secure port in that region. So, I do hope that we can find a way to let this process go through a further review, and recognize the fact that, after all, it is a purchase of a contract from a British company by the Government of Dubai. And I hope that the processes we're pursuing now will strengthen our American laws, as both Senator Cohen and Admiral Loy have suggested. But they make some suggestions to you, as your company, and I would commend them to you, because they seem to be very reasonable suggestions that could be made, could be pursued, particularly with regard to some kind of transparency with regard to DP World's running of their systems that they use in the ports, and helping us understand how they affect hiring practices and security procedures. Both of those suggestions really merit, I think, your consideration.

Now, let me thank all of you. Admiral Gilmour, we're sorry to keep you all afternoon, but we know your agency was involved. I appreciate your courtesies, Secretary Jackson, Mr. Ahern. And I look forward to seeing you sometime when out in Los Angeles again Mr. Mitre. The rest of you, thank you very much for your contribution.

The statements that have been submitted will be in the record. As Senator Kerry indicated, he might have some questions. I have no request from any other Senator. But I do hope that you'll respond.

Yes, sir?

Mr. BILKEY. Mr. Chairman, I just wanted to make one point, since it's been brought up on a number of occasions. We serve everyone. The largest Israeli shipping company is one of our largest customers.

The CHAIRMAN. I didn't hear, what did you say?

Mr. BILKEY. The largest Israeli shipping company is one of our largest clients.

The CHAIRMAN. Where?

Mr. BILKEY. We serve everyone.

The CHAIRMAN. Where?

Mr. BILKEY. In many of our terminals around the world.

The CHAIRMAN. That's interesting. Do you have any Jewish members of your board?

Mr. BILKEY. No, sir.

The CHAIRMAN. I didn't expect any.

Thank you all very much for your patience. Thank you.

[Whereupon, at 5:50 p.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII

Dubai Ports World's pending acquisition of U.S. port assets has, in 1 week, achieved something that Congress has not been able to do over the past 5 years. It made America's port security a topic of household conversation. And it is a conversation this country must have.

My concerns about this deal are too numerous to list right here.

But I find it amazing that an agency like the Department of Homeland Security, which once was so intensely sensitive about having the smallest of items—such as forks and spoons—go through airport metal detectors, is now most enthusiastically supporting this deal to have a state-run United Arab Emirates company, Dubai Ports World, operate some of our Nation's most valuable ports and become embedded in our infrastructure.

Given this Administration's poor record on port security and its poor judgment on this deal, I am left wondering what it will take for this Administration to take port security seriously.

Our national economy depends on port security, yet amazingly, the Administration has not made it the priority that it needs to be. It has consistently submitted inadequate funding requests and has routinely missed critical security deadlines that were required by law. In fact, the Department of Homeland Security has yet to submit its National Maritime Transportation Security Plan, which was due in April 2005.

If there is one silver lining to this sorry episode, it is that the country is now paying close attention to port and cargo security. The American public knows that more needs to be done, and this committee has given Congress an opportunity to improve the situation.

In November, our Committee unanimously approved the Transportation Security Improvement Act, which addresses a litany of security shortcomings across all modes of transportation. Title V of our bill specifically tackles port and cargo security.

It improves the examination of cargo before it reaches our shores, ensures the resumption of commerce in the event of an attack, and takes greater advantage of coordinated, interagency port security efforts.

I am hopeful that the Senate will take up Title V of our bill and pass it as soon as possible. Our approach has broad bipartisan support, and it will improve security while maintaining the jurisdiction and transportation expertise of this committee. The time is right to pass these needed security improvements, and I am hopeful that, with the help of the members of this committee, we can make it happen.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO H. EDWARD BILKEY

Question 1. Even though there was an announcement of a "45-day review," will the deal still go through this week?

Answer. Yes, in reliance upon CFIUS's final and legally binding approval granted on January 17, 2006, the condition in the purchase agreement regarding CFIUS no objection was lifted, which caused the sale to proceed. The transaction is a global one, with only approximately 10 percent of the assets located in the United States. The purchase received court approval on March 8, 2006 with payment of about $6.8 billion made to selling shareholders on or about March 16, 2006.

Question 2. Does DP World own P&O's U.S. facilities and operations as of Tuesday March 7, 2006?

Answer. DP World owns P&O's U.S. facilities as of Wednesday March 8, 2006. However, those facilities are subject to a Hold Separate Commitment by DP World and P&O Ports North America, Inc. under which DP World will exercise no management or control over the U.S. assets so acquired until they are sold to a U.S. buyer.

Question 3. Do you consider your deal "approved" by CFIUS? If so, then what significance do you ascribe to this new 45-day CFIUS review?

Answer. DP World complied with all applicable U.S. legal requirements in obtaining review by CFIUS of the transaction. CFIUS issued a letter of no objection to the transaction on January 17, 2006. DP World is confident that any further CFIUS review would have a similar result.

Question 4. What will your companies do if the President rejects the takeover because of security concerns after this 45-day investigation?

Answer. DP World would address that situation if it occurs but is confident that valid grounds do not exist for such a rejection. DP World has publicly stated that it is in the process of selling the U.S. assets of P&O Ports North America, Inc. to a U.S. buyer.

Question 5. Do you feel the President has the authority to somehow undo the deal after Thursday?

Answer. No. The deal took place under U.K. law and regulations and DP World must abide by such laws as it would any other laws applicable to it. That is the reason DP World gave the Hold Separate Commitment so it could assist the U.S. Government in addressing its concerns yet remain in compliance with U.K. law.

Question 6. Does your parent company—the Ports, Customs and Free Zone Corporation (PCFC)—participate in the Arab boycott against Israel?

Answer. PCFC complies with laws of the jurisdiction to which it is subject.

Question 7. What law will prevent you from hiring stevedores who are not longshoremen? How will you ensure that background checks are performed on any new employees?

Answer. P&O Ports North America, Inc. is party to the ILA Master Contract, which requires longshore labor for all container and roll-on/roll-off cargo operations in all U.S. locations in which P&O Ports operates. For other types of cargo, P&O Ports uses its same longshore workers. Nothing about this is going to change, because the contractual obligations of P&O will survive under the labor law doctrine of "successor employer," even if the business should be transferred to a different owner.

Question 8. What background checks are conducted when new employees are hired, and who conducts those checks?

Answer. In New York and New Jersey, the Waterfront Commission conducts background investigations on all harbor workers and management. This practice varies at other ports, and many ports are awaiting the issuance of the proposed Transport Worker Identification Credential, or "TWIC," regulations, expected mid-2006, which will standardize this practice throughout the country. However, in the interim, security for P&O Ports terminals is typically outsourced to private firms who conduct their own background checks.

Question 9. Will DP World make a binding commitment to keep copies of all its business records on U.S. soil so that they are subject to U.S. court orders? How enforceable is DP World's commitment to cooperate with investigations?

Answer. DP World gave a commitment regarding maintenance and availability of books and records in the January 6, 2006 Letter of Assurances that it and P&O Ports North America, Inc. entered into with the Department of Homeland Security as part of CFIUS's approval of the acquisition. That letter has been publicly released, and the Committee should have a copy of it. However, the question is now overtaken by events because DP World is in the process of selling the assets.

Question 10. Will DP World commit not to discriminate against any Israeli company or product?

Answer. DP World will comply with all laws and regulations applicable to it including those applicable to Israeli companies and products.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUYE TO ROBERT SCAVONE

Question 1. We learned that DP World has agreed to a "Hold Separate Commitment" regarding management and operations of U.S. ports, and, so, the current P&O personnel will remain intact during a requested 45-day investigation by the Committee on Foreign Investments in the United States. What happens after the 45-day investigation?

Answer. In the "Hold Separate Commitment," dated February 26, 2006, DP World made a unilateral commitment to "Hold Separate" all U.S. ports operations as an independent business unit, entirely separate, distinct, and apart from all its other

operations, and not to exercise control over or otherwise to influence the management of the U.S. operations.

Subsequent to the announcement of the Hold Separate Commitment, on March 15, DP World and P&O Ports issued a press release (attached) outlining in detail the process and the parties that will be involved in the planned sale of the U.S. operations of P&O Ports to a U.S. buyer that will be unrelated to DP World. In the press release, the following statement was made:

"Until the sale is completed, P&O Ports North America will be operated independently from DP World in accordance with the Hold Separate Commitment announced on February 26, 2006."

The intent, therefore, is that the "Hold Separate Commitment" will remain in place beyond the current 45-day investigation period, up to and including the date that the ownership of the U.S. operations is sold. In fact DP World has made no attempt to control or influence the manner in which I or, to my knowledge, any of the officers or directors of P&O Ports North America conduct the U.S. business.

The professional bankers and lawyers identified in the press release announcing the sale expect that it may require 4 to 6 months to reach agreement with a buyer. This is due in large part to the fact that the U.S. operations are varied and complex, and a considerable effort is underway to assemble the information that any buyer logically would expect to see before making a responsible offer for the business. Among other things, a buyer would of course expect to see audited financial statements for Fiscal Year 2005, which P&O Ports has commissioned to be done on an expedited basis. (The annual audit of the global P&O group did not explore the level of audit detail that will be required for the U.S. operations standing alone.) After this information is made available, time will be required for a shorter list of qualified buyers to obtain access to more detailed financial records, leases, contracts, joint venture agreements, and the like. Thereafter, a purchase agreement will have to be negotiated with the winning bidder. All of these activities have been scheduled, and considerable resources have been dedicated to complete this process in a reasonable time frame, consistent with normal commercial practices for a deal of this nature.

Question 2. Are there provisions in the contract that address what happens to P&O personnel if, after the 45-day investigation, the transaction is declined?

Answer. While there are no provisions that explicitly address the disposition of P&O's U.S. personnel, the logical and practical result of the written commitments of DP World will be that, if DP World is permitted to complete the sales process that it has now begun, then until such time as a new U.S. buyer is found, the U.S. personnel will remain employed under the direction of the U.S. management that was already in place before the sale to DP World occurred. (See Chronology, attached.)

On the other hand, if DP World were required simply to cease the U.S. operations until a buyer can be found, thousands of U.S. staff and labor will experience both short and long-term negative effects. P&O Ports employs approximately 6,000 union workers, and moves thousand of containers, automobiles, passengers, and tons of break-bulk cargo, every day. Not only would those workers and P&O staff become unemployed, but thousands of vessel operators, cargo owners, vendors, merchants, wholesalers, distributors, and consumers would suffer undue disruption.

There would be no easy means to handle the cargo that thereby would become stranded, because the mere fact that P&O would not be able to operate the facilities that it leases would not lead to the result that some other operator immediately takes over. While those kinds of details were being addressed, a number of ports will not have the capacity in neighboring terminals to handle the overflow that would otherwise be destined for the P&O terminals. In the case where those activities are actually joint ventures with other partners, such as Philadelphia (Stevedoring Services of America), Miami (Eller & Co. and Florida Stevedoring, Inc., both American companies), or Newark (Maersk Line), the termination of the facility lease will negatively impact those companies equally.

Moreover, the value of the U.S. operations in such a scenario would diminish so rapidly that it would be questionable whether, in the end, there would be any business to sell.

It should be borne in mind that DP World unilaterally requested the additional CFIUS review and stated in writing that it would abide by the outcome of that review. Since that time, DP World has retained an investment banking firm in New York to manage a sale as quickly as is reasonably practical. It has undertaken to maintain the current staff and labor force with no influence or control over the U.S. operations, which continue to be managed in the same way that they were before the acquisition.

Therefore it is respectfully submitted that the interests of the U.S. staff and labor would best be served by allowing a reasonable time for the announced sale of the U.S. operations to take place.

Question 3. Are there employment assurances for P&O personnel currently employed at U.S. ports?

Answer. Under the Hold Separate Commitment of DP World, existing U.S. Management retains the exclusive right to hire or fire personnel at the U.S. operations. Therefore, until such time as the U.S. operations are sold, DP World will exert no control over those decisions. However, as stated above, should the operations be discontinued before the operations are sold, obviously there will be no employment, because there will be no business.

Question 4. Will they retain their jobs if DP World has to divest the U.S. ports from the acquisition?

Answer. Not necessarily, in the case of non-union workers. After the sale of the global P&O group to DP World was announced in 2005, DP World also announced its intention to retain the management of P&O Ports around the world. When the transaction became an issue in the U.S. in February, DP World executed the Hold Separate Commitment that formalized this obligation as it related to the U.S. Ironically, after DP World sells the U.S. operations, the continued employment of the current managers and staff of P&O in the U.S. will be entirely up to the discretion of the new owner. The situation is different for our longshore union workers. Any buyer of P&O Ports will become subject to the existing collective bargaining agreements to which P&O Ports is a party, and will continue to be obligated to use our longshore workers, just as, indeed, DP World is obligated to do by virtue of its ownership of P&O.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO ROBERT SCAVONE

Question 1. What is your understanding of the significance of the new 45-day review called for in March by DP World?

Answer. The original mention of a 45-day investigation occurred when a number of Members of Congress stated that the supplemental 45-day investigation period that is contemplated in the CFIUS process should have been utilized. There was a practical problem, however, in that, after the original 30-day review period elapsed and DP World was legally authorized by CFIUS to proceed, it obligated itself under the laws of the United Kingdom to proceed with the purchase of the global P&O group for $6.85 billion. (See Chronology, attached.)

Nevertheless, in view of the high level of concern that had been expressed in Congress, DP World and P&O Ports North America unilaterally volunteered to undergo an additional 45-day investigation period, and to abide by its outcome.

It was originally anticipated that, during that 45-day investigation period, some realistic possibility existed to demonstrate what both DP World and P&O Ports knew to be true: that no U.S. security issue is raised by the purchase of P&O Steam Navigation Company, the UK owner of P&O Ports North America, by DP World. However, it was always understood that the new CFIUS process might reach a different conclusion, and that some alternative arrangement relative to the U.S. operations would have to be worked out with DP World. However, the details of any such arrangement were never clearly known, since, to my knowledge, this is a process that has never occurred before, where a deal goes forward on the basis of a formal, legally binding CFIUS approval, and only thereafter is the approval rescinded in an ex post facto manner, for reasons having nothing to do with the representations or behavior of the acquiring company.

As indicated in the attached Chronology, both of these theoretical possibilities were superseded by events, and DP World subsequently unilaterally undertook to divest itself of the U.S. operations, regardless of the outcome of the 45-day investigation.

Question 2. What will your companies do if the President rejects the takeover because of security concerns after this 45-day investigation?

Answer. Since the sale of the U.S. operations is currently underway, both companies would hope to be able to complete that process in a reasonable and orderly manner, in order to preserve the value of the business and to maintain some semblance of stability for our workers, our vessel operating customers, cargo owners, vendors, port officials, and the consumers of America. (See also response to QFR #2 of Senator Inouye, submitted jointly with this response.) Since DP World is exercising no influence or control over the U.S. operations, which continue to be man-

aged in the same manner and with the same personnel that managed them before the DP World purchase, and since the end result will be a complete divestiture by DP World of the U.S. assets, we believe this is a reasonable expectation.

Question 3. Do you feel the President has the authority to somehow undo the deal at this point?

Answer. The global sale of the P&O group in the U.K. is, of course, now completed and I am aware of no practical or legal way to reverse it. With respect to the U.S. portion, I myself am not an expert on the legal authority the President may have, but in view of the fact that the U.S. operations are actively being sold, and in the interim the previous managers continue to run those operations with no external influence by DP World, it would seem to me that this would become an issue only if the process of selling the U.S. company should extend well beyond the period in which most experts reasonably believe the orderly sale of a business of this nature can be consummated.

PRESS RELEASE (FOR RELEASE 10 A.M., WEDNESDAY MARCH 15TH)—SALE OF P&O PORTS NORTH AMERICA

Further to DP World's announcement last week, DP World and P&O Ports North America have announced further details of the process by which all of its business will be sold to an unrelated U.S. buyer.

The sale process will be supervised by executives from P&O's group head office in London. The New York office of Deutsche Bank Securities, Inc. has been mandated as financial adviser for the sale of the whole of P&O Ports North America. New York law firm Sullivan & Cromwell LLP has been appointed as legal advisers for the sale, with the Washington, D.C. office of Alston & Bird LLP assisting on regulatory matters.

Preparation of financial, corporate and legal information required for the sale has commenced. Interested parties will be furnished with information on the business and invited to make offers. Offers will be assessed by reference to value, deliverability and the continuity of management, employees and customers. In parallel with this sale process, discussions will take place with port authorities, joint venture partners and labor representatives to facilitate a smooth transition of the business to a new owner.

An expedited sale process is underway and with the cooperation of the port authorities and joint venture partners, it is expected that a sale can be agreed within 4 to 6 months. Until the sale is completed, P&O Ports North America will be operated independently from DP World in accordance with the Hold Separate Commitment announced on February 26, 2006.

Notes to Editors

(1) DP World completed the acquisition of the UK based P&O Group last week. This followed an offer process governed by the UK Takeover Code and approval by the UK's High Court.

(2) P&O owns 100 percent of P&O Ports North America which has operations in a number of U.S. east coast ports including New York/New Jersey, Baltimore, Philadelphia, Miami and New Orleans.

(3) Deutsche Bank Securities Inc. member NYSE, NASD and SIPC is the investment banking and securities arm of Deutsche Bank AG in the United States.

ACQUISITION OF PENINSULAR & ORIENTAL STEAM NAVIGATION COMPANY BY DP WORLD: CHRONOLOGY OF KEY DATES AS THEY RELATE TO THE U.S. SUBSIDIARY OF P&O AND THE CFIUS PROCESS

October 17, 2005: Representatives of DP World meet with representatives of CFIUS to advise of the intent of DP World to acquire the global P&O group, and to inquire as to the requirements of CFIUS to obtain the requisite approvals for the indirect acquisition of P&O Ports North America, Inc., a subsidiary of Peninsular & Oriental Steam Navigation Company in the U.K.

November 29, 2005: DP World and Peninsular & Oriental Steam Navigation Company announce in London the planned purchase of the global P&O group by DP World, pending regulatory approvals in various countries, including CFIUS approval in the U.S. DP World also announced its intention to retain the management of P&O Ports around the world. Both companies issue press releases, and the story receives wide coverage, including the Wall Street Journal and the New York Times.

December 6, 2005: Senior DP World officials and senior officials of P&O Ports North America, Inc. meet with numerous representatives in Washington, D.C. to further outline the proposed acquisition, to answer specific questions, and to clarify the requirements for the anticipated CFIUS process, which had not yet formally commenced.

December 15, 2005: Formal CFIUS application submitted by DP World.

January 17, 2006: Formal CFIUS approval issued to DP World.

January 26, 2006 (AM): PSA Venture (UK) Limited, a wholly owned subsidiary of PSA International Pte Ltd, announces a competing offer for the global P&O group.

January 26, 2006 (PM): DP World announces a new, higher offer for the global P&O group.

February 13, 2006: Having met the preconditions to the DP World offer, including the approval of the transaction by CFIUS, the offer is put to the private shareholders of Peninsular & Oriental Steam Navigation Company at a shareholders meeting, at which more than 95 percent of the shareholders vote to accept the offer, at which point DP World is contractually and legally obligated to go forward with the purchase of the company for $6.85 billion.

February 26, 2006: In view of the concerns of the Congress with respect to the transaction and the CFIUS process, DP World unilaterally undertakes a "Hold Separate Commitment" to leave the U.S. port operations of P&O as an independent business unit, entirely separate, distinct, and apart from all its other operations, and not to exercise control over or otherwise to influence the management of the U.S. operations. Simultaneously, DP World and P&O Ports North America unilaterally request that the CFIUS process be reopened for an additional 45-day period, and agree to abide by the outcome of that review.

March 8, 2006: Pursuant to the requirements of English law, ownership of the publicly traded shares of Peninsular & Oriental Steam Navigation Company is transferred to DP World. P&O Ports North America continues in existence, as had always been contemplated. In keeping with its commitment, DP World exercises no control or influence over U.S. management of P&O Ports, and this arrangement remains in place today.

March 8, 2006: Despite the re-commencement of the CFIUS review process, and the implementation of the Hold Separate Commitment, the House Appropriations Subcommittee passes 62–2 an amendment to Supplemental Appropriations Bill, 2006, prohibiting the acquisition of any leases, contracts, rights, or other obligations of P&O Ports North America, Inc. by DP World.

March 9, 2006: DP World elects to discontinue its attempts to obtain Congressional approval of its acquisition of P&O Ports North America, Inc., and announces that it will divest itself of the U.S. port operations of the global P&O group.

March 15, 2006: Having retained the requisite team of investment bankers and lawyers in a period of three business days, DP World issues a press release (attached) outlining in detail the process and the parties that will be involved in the planned sale of the U.S. operations of P&O Ports to a U.S. buyer that will be unrelated to DP World. In the press release, the following statement was made:

> "Until the sale is completed, P&O Ports North America will be operated independently from DP World in accordance with the Hold Separate Commitment announced on February 26, 2006."

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUYE TO TAY YOSHITANI

Question 1. The national economy is dependent upon maritime commerce, and no state is more dependent on it than Hawaii. Strong security must be balanced with operational efficiency. What do you feel are appropriate goals for the Federal Government to set regarding the screening and inspection of ocean cargo?

Answer. There has been public debate about the current 5–6 percent inspection versus increasing that to 100 percent inspection. The direction we go on this critical issue may well define whether we move forward with an effective cargo security regimen or not. No doubt, 100 percent inspection will have a huge adverse impact on operational efficiency. But the more compelling impact will be that 100 percent inspection will ultimately *degrade* our overall security program. We cannot dissipate our efforts across 100 percent of containers entering and exiting our ports without relegating each inspection into a cursory look. We must be able to screen all containers and do an effective job of identifying those containers that warrant an intensive inspection. At the very heart of this approach is the practical recognition of the difficulty in conducting an effective inspection. It requires extensive training and

constant 110 percent attention to details. This attention must be directed not at all containers but only those that represent some risk.

No question that the Federal Government should set the goal of 100 percent of containers to be screened. The percentage to be inspected should not be arbitrarily set. It should be a floating percentage that reflects the percentage of containers that are found to warrant an inspection upon being carefully screened. As a practical matter, the Federal Government will find that most of the containers follow a very secure routing from well established shippers and warrant only random inspections.

Question 2. What can we do to improve cargo screening in the immediate future?

Answer. Currently, the screening is done using a commercial ocean carrier's manifest that has much information about the cargo. However, we believe there is additional information that should be made available by the importers such as advanced shipment information based on recommendations made by the Commercial Operations Advisory Committee. This additional information would improve the screening process and enable better targeting.

Because of sensitivity to security, our members are not privy to the ultimate effectiveness of the current automated targeting system. However, it is our understanding that the system could use substantial upgrades. We note that S. 1052 includes a provision to not only improve data as I note above, but also "address deficiencies in its automated targeting system strategy identified in a GAO report." This is a important element of our layered security approach and should be improved and enhanced as soon as possible.

Question 3. What is your organization's opinion of the Transportation Worker Identification Card (TWIC) program?

Answer. The National Association of Waterfront Employers (NAWE) has always been in full support of the concept and early implementation of the TWIC program. However, at this point, draft regulations have not been published by the CG/TSA. We recognize that this is a complex program that may incorporate some technologies that have yet to be commercially proven. We have expressed concerns about how certain aspects of the program will be implemented. We reserve specific comments on TWIC until we have an opportunity to review the draft regulations. But subject to specific concerns we may have, NAWE is a strong supporter of the TWIC program.

Question 4. What steps need to be taken to ensure that the program is viable and as effective as possible?

Answer. There are several areas of concern that will impact the overall effectiveness of the TWIC program:

a. Enrollment must be phased so that we do not inadvertently but suddenly lose a significant percentage of workers in a given sector such as truckers.

b. Technologies to be incorporated must be commercially proven. We are particularly concerned about the biometric scan technology.

c. Data base for TWIC must be structured in a way that allows for secure facility owners to access easily and quickly.

d. Protocol for various situations must be clearly defined and established.

e. This program will need constant monitoring and updating to retain credibility. Once a number of cards cannot be accounted for, the entire program will lose credibility.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO TAY YOSHITANI

Question 1. Do your member terminals have local security concerns? For instance, does a terminal in Port Newark have the same security concerns as a terminal in Memphis?

Answer. Marine terminals could logically be grouped into several categories. Terminals within each of these categories would have similar security concerns. However, terminals from different categories would have different security concerns. For example, a terminal at the Port of Newark would deal almost exclusively with foreign cargo in containers. Other marine terminals with similar profiles would have similar security concerns. A terminal in Memphis likely handles mostly domestic cargo that is not containerized. But they would share similar security concerns with other terminals that have the same operating profile.

With the above as background, each of our member terminals share common security concerns that are very broad in nature but also have specific concerns that may be unique to their location and surrounding area. For example, broader concerns

would include such issues as cargo chain security and secure facilities access. These two issues are correctly under the purview of the CBP and TSA/Coast Guard respectively. On the other hand, port authorities typically have a port police or contract with a local police force or private security firm to provide port specific security. These arrangements may reflect specific security issues for that port area. For example, in the Los Angeles/Long Beach area, containers with high value cargo were being hijacked and the contents sold at various flea markets. To address this specific issue, the two ports formed a joint task force that included the police, highway patrol, Coast Guard, and CBP.

In conclusion, while there are similarities, not all marine terminals are alike. One size does not fit all. However, with respect to terminal operators of these facilities, the constant is that they do not have a significant role in terminal security. But because it is absolutely in their best interest, they have in the past and will continue to in the future to cooperate with all Federal, state, and local municipalities on matters of security. But to achieve maximum security at each terminal level, there must be a combination of implementing broad Federal programs as well as specific programs that are local in nature.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. DANIEL K. INOUYE TO CHRISTOPHER KOCH

Question. Your testimony implies that the needs of cargo security are larger than the nationality of a terminal operator. What are the most urgent cargo security issues that need to be addressed?

Answer. Stevedoring and marine terminal operations are a service industry that is open to foreign investment. Billions of dollars of foreign investment has been made in the U.S. over recent years in this sector, and that investment has contributed substantially to a transportation infrastructure that is critical to moving America's commerce efficiently and reliably. The investment has come from Japanese, Korean, Danish, British, Chinese, French, Taiwanese, and Singaporean businesses, just as American companies have been allowed to invest in marine terminal and stevedoring businesses in foreign countries.

The substantial majority of American containerized commerce is handled in U.S. ports by marine terminal operators that are subsidiaries or affiliates of foreign enterprises. This is an international, highly competitive industry, providing hundreds of thousands of American jobs. The United States depends on it, and it in turn has served the needs of American commerce well, adding capacity and service as the needs of American exporters and importers have grown.

Port facilities must and do comply with all the government's applicable security requirements. There is no evidence that terminal facilities' operations conducted by foreign controlled companies are any less secure. or in any way less compliant with security regulations, or in any way less cooperative with U.S. Government security authorities than U.S. controlled companies. In fact, these companies work closely and cooperatively with the Coast Guard, Customs and Border Protection, the U.S. military, and other U.S. law enforcement agencies.

Rather than focusing on the nationality of the terminal operator, the challenge is to build on the cargo security framework that the Department of Homeland Security has put in place and to continue to make improvements on what has been started.

Specifically, the World Shipping Council believes that priority consideration should be given to:

1. Improving the cargo shipment data collected and analyzed before vessel loading by CBP's National Targeting Center. Cargo security risk assessment is a cornerstone of DHS strategy. In order to enhance the effectiveness and value of the risk assessment system, CBP should obtain and use more complete cargo shipment data than ocean carriers' bills of lading, which today provide the only required commercial shipment data used by the government for cargo risk assessment;

2. Expanding international cooperation through the Container Security Initiative;

3. Continuing to improve and strengthen the C–TPAT program;

4. Promulgating regulations to implement the Maritime Transportation Security Act mandate of maritime Transportation Worker Identification Cards; and

5. Giving priority attention to the merits and feasibility of possible widespread application of ICIS-type X-ray inspection and radiation screening equipment and the interface and use of such equipment by Customs authorities. While ad-

mittedly not a simple issue, this concept holds the potential to significantly improve governments' confidence in the security of American importers' and exporters' cargo.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUYE TO MICHAEL MITRE

Question 1. As you know, the Maritime and Transportation Act of 2002 was developed by this committee. How have the security requirements for terminal operators changed since the passage of the Maritime Transportation Security Act?

Answer. Since the MTSA implementation, security on marine terminals has changed in several areas including access control and cargo handling methodology, but security loopholes have been inadvertently created within both.

As terminal operators have increased security at their in-gates for automobiles and walk-in longshoremen, vigilance of truckers has remained weak. Large trucker queue lines have caused some terminals to admit them without Identification or truck inspection. In some cases, automated in-gates allow "non-placard" HAZMAT loads to enter unseen and unknown. Additionally, personal padlocks on containers that once automatically sparked a "set aside" inspection now are allowed to enter with no inspection or other action.

HAZMAT

Special requirements calling for HAZMAT containers to be parked away from standard loads are not being followed. Many operators are not keeping daily updated records concerning the hazardous loads.

Empty Containers

The largest volumes of all cargo units being shipped to Asia are empty containers. As they are returned to terminals, these empties are often never opened; with no way of verifying that they are indeed empty. Considering that the 9/11 terrorists began their terrible act from within the United States, why would we ever allow supposedly empty containers back into our terminals without verifying whether an explosive, dirty bomb or dangerous chemical or radioactive material has been concealed inside? Considering it takes less than 1 minute to open the doors of a container, it is inconceivable and irresponsible that terminal operators continue to refuse to inspect empty containers.

Question 2. What do you feel is the best option for improved security at our ports?

Answer. The best option for improving security at our Nation's ports is to ensure that truckers (the largest occupational group at our ports) are carefully and completely identified and their trucks and truck cabs inspected. This option is a common sense approach to security that is not occurring now. The ILWU is concerned that while basic approaches to security are not taking place, while Congress and the Department of Homeland Security are relying on technology to solve all our security problems.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. FRANK R. LAUTENBERG TO MICHAEL MITRE

Question. What background checks are conducted when new employees are hired, and who conducts those checks?

Answer. I am not aware of any background checks performed on new workers when hired. However, the Graham Commission that preceded 9/11 (looking at the issue of crime at our Nation's ports), could not find one instance where ILWU workers in the United States had participated in internal conspiracies to commit serious crimes at our ports.

In the case of truck drivers, most are owner-operators who will not show up on any master employer list.

WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUYE TO MICHAEL P. JACKSON*

Question 1. To make the public feel better about this deal, the Administration was forced to contend that regardless of who operates the ports, security will be handled

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*Responses to these questions were not available at the time this hearing went to press.

by the Federal Government. Essentially, the Administration finally had to admit, on no uncertain terms, that the Federal Government is responsible for port security. However, based on the Administration's budget requests over the past several years and the long list of security deadlines it has ignored, the Administration does not appear to take port security very seriously. Can you give me specific examples to prove to this committee why you believe any of the 6 ports in question are secure? Which of the 6 ports have their requisite security plans in place? Do they have cargo screening infrastructure that works?

Question 2. Fifteen of this committee's 22 members have ports in their states. We know first hand how important port security is to the Nation's physical and economic security. This committee unanimously approved our transportation security bill, S. 1052, last November. While we would like to see the entire bill considered by the Senate, many of us believe the time is right to consider, at a minimum, the port and cargo security title. Our legislation would help to alleviate concerns about foreign operations at U.S. ports, because it provides for a better process and enhanced infrastructure. Specifically, S. 1052 improves the process for examining cargo before it reaches our ports. It expedites the resumption of commerce in the event of an attack, and it expands the collaborative approach to port security currently used at the ports of San Diego and Charleston. Do you support these improvements to your existing authorities?

Question 3. The Maritime Transportation Security Act required the Coast Guard to develop a National Maritime Transportation Security Plan. In the Plan, the Coast Guard is to assign duties and responsibilities among Federal agencies, establish procedures to prevent an incident from occurring, and plan for the speedy resumption of commerce in the event of an attack. This plan was due in April last year. When will the National Plan be completed and submitted to Congress?

Question 4. In response to concerns about the Department of Homeland Security (DHS) review of the DP World transaction, the Department has distributed information indicating that it has taken steps to "dramatically strengthen port security since 9/11." However, the Department has missed several deadlines for congressionally mandated port and cargo security requirements including the issuance of container seals and locks standards, and submission of the National Maritime Transportation Security Plan, to name a few.

Given the lack of attention to fundamental programs such as the Transportation Worker Identification Credentialing Program (TWIC), the Secure Systems of Transportation Program and Port Security Grant Program, how can we be assured that this Administration is prioritizing port and cargo security?

Question 5. We recently learned that the Coast Guard found "serious intelligence gaps" in the information it had about the DP World transaction. Given this information and the security assurances requested of the parties, how is it that the Department of Homeland Security gave its approval to this transaction? Specifically when in the process were the concerns of the Coast Guard resolved?

Question 6. Was the Coast Guard's risk assessment based on current concerns and risks? The public document mentions concerns over personnel, operations, and foreign influence. How are potential future concerns addressed in the report?

Question 7. On one of the Sunday morning shows this past weekend, participants noted that while we would like to treat all of our allies equally, we do not necessarily do so. Senator Biden cited weapon sales, noting that we sell certain products to NATO allies that we would not sell to other allies. The proposed deal replaces one foreign owner, the British, for another, the U.A.E. Do you believe the risks associated with British ownership are the same as the risks associated with U.A.E. ownership?

Question 8. The Department of Treasury press release on the CFIUS history of the DP transaction indicates that CFIUS requested an intelligence assessment of DP World on November 2, 2005 and was provided a threat assessment 30 days later. What was the result of the intelligence assessment? Did the U.S. Coast Guard raise any concerns about security vulnerabilities regarding the transactions or the Coast Guard's ability to adequately make a threat assessment of DP World and the merger?

If so, how was this concern resolved?

WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO MICHAEL P. JACKSON*

Question 1. In your testimony before the Commerce Committee on February 28, you stated "if you take the budgets from 2004 to the proposed budgets of 2007, we, at DHS, will have spent $10 billion on maritime security investments." Can you please provide a breakdown and itemized account for the $10 billion figure you referenced?

Question 2. How many cargo containers entered the U.S. through a seaport last year? How many containers entered the U.S. through a seaport each year, over the last 5 years?

Question 3. How many containers of the total that entered the U.S. through a seaport last year were scanned for nuclear materials using non-intrusive scanning technology at the port of origin? Was this scanning done by Customs and Border Protection? What role does CBP play in screening containers that are destined for the U.S. at foreign ports for nuclear and radiological materials?

Question 4. What are the different non-intrusive technologies that DHS uses to screen containers entering and leaving our domestic ports? Please describe each separate monitoring technology and its screening capabilities. What threats are these respective technologies positioned to identify?

Question 5. How many containers entering the U.S. at a seaport were scanned using radiation portal monitors (RPM's)? How many foreign ports have 100 percent of its outbound cargo containers screened using RPM's?

Question 6. Who conducts the scanning of containers destined for a U.S. seaport, at foreign ports? Are background checks conducted on individuals involved in the scanning of containers at foreign seaports? If background checks are conducted, does DHS have access to the names of these individuals and the results of their respective background checks?

Question 7. Who physically inspects a container and its contents if an alarm is raised by non-intrusive scanning at foreign ports? At domestic ports? What role does CBP play?

Question 8. What information is DHS provided on individuals who are scanning and inspecting cargo and containers destined for U.S. seaports at foreign ports?

Question 9. Does an international standard exist for conducting background checks on individuals scanning containers at our foreign and domestic ports?

Question 10. How many foreign ports are currently participating in the Container Security Initiative? Please identify these ports and the countries in which they are located.

Question 11. Is CBP currently working to negotiate participation of any additional ports in the CSI program?

Question 12. How many ports are slated to receive RPM's through the Megaports Initiative in 2006?

Question 13. How many U.S. ports currently have RPM's?

Question 14. When will all U.S. ports be equipped with RPM's to scan cargo flowing through their terminals?

Question 15. What is the current standard for performing background checks on individuals with access to our ports, port terminals, docks and holding facilities? Can DHS insure that individuals on a terrorist watch list are not able to gain access to our ports, port terminals, docks, or holding areas? Why or why not?

Question 16. What is the current standard for performing background checks on truck drivers delivering containers to our ports? What is the process for screening containers arriving at our seaports by truck? Are non-intrusive technologies to screen the contents of a cargo container arriving to a seaport by truck used? If so, what technologies are used?

Question 17. Does CBP screen containers arriving at seaports by rail? If so, what percentage of containers delivered to seaports by rail are scanned? What technologies are used? Is DHS/CBP actively working to increase the level of screening of containers delivered by rail?

Question 18. What is the current standard for checking locks on containers leaving foreign ports?

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*Responses to these questions were not available at the time this hearing went to press.

Question 19. What percentage of cargo containers leaving a foreign port destined for a U.S. seaport is secured using a locking mechanism? What is the current standard for checking locks on containers leaving foreign ports destined for a U.S. seaport? Who checks the locks? What role does DHS play? What are the protocols to ensure that tampering does not occur during transit?

Question 20. What technologies are used to ensure the integrity of container locks through transit? What is the protocol when there is a discovery of a lock that has been tampered with during transit? Who physically inspects the contents of containers if has been discovered that the container has been tampered with during transit? Do the terminal operators play any role in this process?

Question 21. What is the current standard for checking locks on containers at U.S. seaports? Who checks the locks? What role does DHS play in checking container locks? Do terminal operators play a role in checking container locks?

Question 22. How does the Department of Homeland Security ensure that standards for checking container seals and locks are being met?

Question 23. How many foreign companies conduct terminal operations in the U.S.? Please list the companies and the port and terminal in which they operate. If the foreign company has an American subsidiary which conducts the terminal operations, please provide the name of the subsidiary and the port and terminal in which it operates.

Question 24. How many of the foreign companies that operate terminals at U.S. ports, have U.S. subsidiaries that operate at foreign ports or contract with U.S. companies to conduct port operations, are owned wholly, or partially by a foreign government? Please list the companies and the foreign governments that own, have investments, or other substantive interest in a company involved in port operations in the U.S.

Question 25. Does DHS conduct screening of container ship crews? Are background checks conducted on foreign container ship crews? What is the protocol for screening crews and their belongings and luggage?

WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO MICHAEL P. JACKSON *

Question 1. Why didn't anyone in your Department contact any of the port authority directors, port terminal operator executives, or port security personnel at the ports operated by P&O regarding this deal?

Question 2. Do you think local port authorities should have a say in any situation where the security of their port is at stake?

Question 3. When it comes to CFIUS review, how does your Department define "national security"?

Question 4. Does it use the same definition as the rest of the Committee members?

Question 5. Did you, anyone in your Department, or anyone under your direction, visit any of the 22 ports in which P&O currently operates for purposes of the CFIUS review? If so, which ones, and when?

Question 6. Exactly what assurances were you given by the ownership of DP World that they would continue to use the same employees?

Question 7. Who at the Department of Homeland Security rejected the Coast Guard's concerns about the DP World deal?

Question 8. DP World promised DHS to take certain security measures, like participate in voluntary security programs, but what if they don't follow through? You've already approved their transaction. Just how enforceable are these commitments they made to your Department?

Question 9. Why so many missed congressional deadlines for important port security actions? How can we believe that this Administration gives port security any kind of priority whatsoever?

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* Responses to these questions were not available at the time this hearing went to press.

WRITTEN QUESTION SUBMITTED BY HON. MARK PRYOR TO MICHAEL P. JACKSON*

Question. Mr. Secretary, I wanted to follow up with you on your response to my earlier question on deadlines. You said that the Department has many important priorities, and I don't disagree. Would one of those priorities include removing scissors from the prohibited items list for airline passengers? In your opinion, what is more important, protecting our ports or prohibiting scissors from getting on an airplane?

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* Responses to these questions were not available at the time this hearing went to press.