

June 2, 2014

The Honorable Jeh Johnson  
Secretary of Homeland Security  
Washington, D.C. 20528

Dear Mr. Secretary:

On behalf of the undersigned organizations representing United States manufacturers, farmers, wholesalers, retailers, importers, distributors, and transportation and logistics providers, we are writing in strong support of your May 5 letter to Congress renewing, for another two years, the extension of the deadline for implementation of 100% scanning of U.S. bound maritime cargo containers. The current risk-based strategy employed by the Department is the right approach to enhance global supply chain security. We also strongly believe that Congress needs to repeal the mandate and focus on practical supply chain security solutions.

The statutory provision calling for 100% container scanning has always been, and remains, impractical and does not actually improve security. If implemented, this provision would have a significantly negative impact on global commerce and cause significant conflict with the governments of our foreign trading partners, many of which have stated their opposition to the requirement previously.

U.S. Customs and Border Protection (CBP), working with the support of U.S. importers, exporters, and ocean carriers, has developed an impressive and effective risk-based strategy to screen all containerized cargo shipments bound for the United States and inspect those that are found to be high risk. Unlike the 100% scanning mandate, this strategy does not impair the efficiency of the global supply chain. The risk-based strategy enables CBP to use state of the art screening systems and scanning technology to identify and thoroughly inspect any and all containers that it finds to be high risk or that warrant a closer examination. This strategy is fully embraced by industry as well as our foreign trading partners and has proven to be highly effective.

The statutory provisions mandating 100% container scanning fail to address a host of questions, including:

1. The statute does not define what “scanned” means. For example, does scan mean simply taking a reading or image of a given container, or does it also require an analysis of the reading or image to determine if the container may be released or held for further inspection?
2. Without such analysis, the “scan” would be pointless, yet the statute is silent on this point, as well as the key question of who is to perform such analysis. What resources would CBP’s National Targeting Center require to analyze scans taken of the 10-plus million maritime cargo containers that are bound for the United States each year?
3. What are the standards for the applicable scanning technology?
4. Who is to pay for the capital cost of the scanning equipment?
5. Who is to operate, maintain and monitor the equipment? Who is to pay for the operation and maintenance of the equipment?
6. What protocols are to be used in the foreign ports when a container is scanned?

7. What is the role of the Customs and other relevant governmental authorities in all those nations around the world that ship goods to the United States?
8. Does DHS have the consent of these foreign governments to such a mandatory regime?
9. What would the United States' response be if and when foreign governments insist on a reciprocal or "mirror image" requirement that all U.S. containerized exports be scanned?

Congress was made aware of all these questions when it considered this statute, and it did not answer them. It passed a statute that it knew was wholly impractical, which is why it included the provisions allowing the Secretary of the Department to waive the 100% scanning requirement every two years. As required by the SAFE Port Act, CBP conducted a series of pilot programs in an attempt to address these and other questions. The results of the pilot programs showed the impracticality of achieving 100% scanning in the maritime environment.

Your waiver was sound as a matter of policy and is, in fact, the only action you could take without imperiling international commerce and the U.S. economy. We fully support your waiver; however, instead of going through this exercise every two years, we urge you and the Administration to recommend to the Congress that the statutory 100% container scanning requirement be repealed. That would be the most appropriate way to address this flawed provision and allow the Department, industry and our trading partners to focus on real solutions to address any security gaps that remain in the global supply chain. You would have our full support for such a proposal.

Sincerely,

Agricultural Retailers Association  
Agriculture Transportation Coalition - AgTC  
Airforwarders Association  
Airlines for America  
American Apparel & Footwear Association (AAFA)  
American Association of Exporters and Importers  
American Association of Port Authorities  
American Import Shippers Association  
American Meat Institute  
American Pyrotechnics Association  
American Trucking Associations  
ASIS International  
Association of Global Automakers, Inc.  
Auto Care Association  
Border Trade Alliance  
Business Alliance for Customs Modernization  
CAWA - Representing the Automotive Parts Industry  
Coalition of New England Companies for Trade - CONECT  
Columbia River Customs Brokers and Forwarders Association  
Cookware Manufacturers Association  
Craft and Hobby Association  
Customs Brokers and Forwarders Association of Northern California  
Customs Brokers and International Freight Forwarders of Washington State  
Distilled Spirits Council of the United States, Inc.  
Express Association of America

Fashion Accessories Shippers Association (FASA)  
Footwear Distributors & Retailers of America (FDRA)  
Halloween Industry Association  
Institute of Makers of Explosives  
Intermodal Association of North America  
International Wood Products Association  
Juvenile Product Manufacturers Association  
Los Angeles Customs Brokers and Freight Forwarders Association  
Meat Importers Council of America, Inc.  
Motor & Equipment Manufacturers Association  
NASSTRAC, Inc.  
National Association of Beverage Importers  
National Association of Chemical Distributors  
National Association of Manufacturers  
National Association of Waterfront Employers  
National Chicken Council  
National Customs Brokers and Forwarders Association of America (NCBFAA)  
National Grain and Feed Association  
National Oilseed Processors Association  
National Retail Federation  
National Turkey Federation  
National Wooden Pallet & Container Association  
North American Export Grain Association  
North American Meat Association  
North American Shippers Association, Inc.  
Outdoor Industry Association  
Pacific Coast Council of Customs Brokers and Freight Forwarders Associations, Inc. – The PCC  
Pacific Northwest Asia Shippers Association  
Retail Industry Leaders Association  
San Diego Customs Brokers Association  
Society of Chemical Manufacturers and Affiliates (SOCMA)  
Sports & Fitness Industry Association  
TechAmerica  
The Bicycle Product Suppliers Association  
The National Industrial Transportation League  
Toy Industry Association  
Transportation Intermediaries Association  
Travel Goods Association (TGA)  
U.S. Chamber of Commerce  
U.S. Hide, Skin and Leather Association  
US Council for International Business  
US Fashion Industry Association  
USA Poultry & Egg Export Council  
Wine & Spirits Wholesalers of America  
World Shipping Council

CC: The Honorable Gil Kerlikowske, Commissioner, U.S. Customs and Border Protection  
The Honorable Tom Carper, Chairman, Senate Committee on Homeland Security and  
Governmental Affairs

The Honorable Tom Coburn, Ranking Member, Senate Committee on Homeland Security  
and Governmental Affairs

The Honorable Michael McCaul, Chairman, House Committee on Homeland Security

The Honorable Bennie Thompson, Ranking Member, House Committee on Homeland  
Security

The Honorable Ron Wyden, Chairman, Senate Finance Committee

The Honorable Orrin Hatch, Ranking Member, Senate Finance Committee

The Honorable David Camp, Chairman, House Ways & Means Committee

The Honorable Sander Levin, Ranking Member, House Ways & Means Committee