



Homeland
Security

May 2, 2012

The Honorable Peter T. King
Chairman
House Committee on Homeland Security
U.S. House of Representatives
Washington, DC 20515

Dear Chairman King:

The Department of Homeland Security (DHS) is committed to ensuring that all goods coming into the United States are secure and do not pose a threat to our citizens or national interests. Through robust partnerships with law enforcement, foreign governments, and industry, we are developing innovative solutions that will help maintain the efficient flow of legitimate commerce upon which our Nation's economy depends. We believe an effective, layered, risk-based approach will best ensure we achieve these goals and align with the President's *National Strategy for Global Supply Chain Security (Strategy)*.

DHS has focused substantial attention and resources over the last several years on securing goods being transported within maritime containers. As a result, we have strengthened our multi-layered security measures, more effectively securing and facilitating the large volume of goods arriving in the United States each year. By leveraging programs such as the Container Security Initiative (CSI) for the integrated scanning of high-risk containers,¹ the Customs-Trade Partnership Against Terrorism (C-TPAT),² and the Importer Security Filing (often called "10+2") for the advance collection of manifest and import data to enhance targeting, we are more secure than ever before. Our layered and risk-based approach provides that, at a minimum, 100 percent of high risk containers are examined through a number of measures, including screening, scanning, physical inspection, or resolution by foreign authorities. In addition, we have strengthened our automated targeting systems and enhanced the quality and timeliness of

¹ CSI is a risk-based program located at 58 ports abroad that focuses on working with foreign governments to establish security criteria for identifying high-risk containers based on advance information. U.S. and foreign government personnel pre-screen containers at the earliest possible point and use technology to quickly pre-scan high-risk containers destined to the United States. The benefits of CSI include: the ability to conduct more accurate risk assessment through increased access to information; and expedited clearance in the United States for cargo which has been screened and scanned overseas. CSI is operational in 58 ports and covers more than 80 percent of the maritime containerized cargo shipped to the United States.

² C-TPAT is a partnership program with over 10,000 members that establishes clear supply chain security criteria for members to meet and in return provides incentives and benefits like expedited processing. Members agree to work with CBP to protect the supply chain, identify security gaps, and implement specific security measures and best practices. Additionally, partners provide CBP with a security profile outlining the specific security measures the company has in place. Applicants must address a broad range of security topics and present security profiles that list action plans to align security throughout the supply chain.

the commercial data upon which those systems rely. DHS continues to work collaboratively with industry, our federal partners, and the international community to expand these programs and our capability to detect, analyze, and report on nuclear and radiological materials that are outside of regulatory control.

Pursuant to 6 U.S.C. 982(b) (the so-called “100 percent scanning mandate”), no container, regardless of risk, may enter the United States unless it has been scanned by non-intrusive imaging equipment and radiation detection equipment at a foreign port prior to lading. This mandate is to take effect as of July 1, 2012, unless otherwise extended pursuant to 6 U.S.C. 982(b)(4). Additionally, 6 U.S.C. 981 required DHS to conduct pilots in at least three foreign ports to evaluate a program for scanning maritime containers prior to arrival in the United States.

Through efforts such as the six Secure Freight Initiative pilots conducted by DHS and the Department of Energy between 2007-2010, we have experienced first-hand the array of diplomatic, financial, and logistical challenges associated with even a limited scanning regime.³ Based on these experiences, and the estimated costs of \$16 billion⁴ to the United States to fully implement scanning measures at the nearly 700 ports that ship to the United States, we conclude that the specific approach established under current legislation is neither the most efficient nor a cost-effective way to secure our Nation and global supply chains against nuclear terrorism.⁵

Consistent with the conference report language accompanying the DHS FY 2010 Appropriations bill, which said “it has become increasingly clear that, at least for now, a 100 percent scanning goal is not feasible, and even if it were, would come at an unacceptably high cost monetarily and in the displacement of other efforts.”⁶ I am notifying you of the decision to extend the deadline for the 100 percent scanning mandate established in Section 232 of the *Security and Accountability for Every Port Act of 2006* (SAFE Port Act), P.L. 109-347, as amended by the *Implementing the Recommendations of the 9/11 Commission Act of 2007*,

³ Secure Freight Initiative pilot locations included the use of NII and RPM scanning operations at the following locations: Southampton, United Kingdom; Port Qasim, Pakistan; Puerto Cortés, Honduras; Busan, Korea; Singapore, Singapore; and Hong Kong, SAR, China.

⁴ In the February 7, 2012 hearing before the Subcommittee Hearing: Balancing Maritime Security and Trade Facilitation: Protecting our Ports, Increasing Commerce and Securing the Supply Chain, CBP Acting Assistant Commissioner Kevin McAleenan indicated that CBP arrived at the total implementation cost of \$16.8 billion by extrapolating the equipment and staffing costs associated with the CSI locations to the more than 700 ports (2100 lanes) that shipped maritime containers to the United States.

⁵ Estimates for potential costs incurred outside of the United States to implement the scanning regime as envisioned by the SAFE Port Act legislation can vary because of the number of variables involved in the calculation and the lack of a single perspective on who would bear costs associated with equipment procurement, maintenance and operations; upfront expenditures for potential redesigns of ports and facilities; and data analysis and alarm resolution. The costs associated with delayed shipments must also be considered. Interest costs on the value of the goods in transit, high depreciation rates of certain cargoes, and production lines that depend upon timely arrival of components can all make delays expensive. A European Commission study on the potential economic impact of 100 percent scanning provides sound insight into non-U.S. costs that might be incurred through full implementation of the provision. The report indicates that 100 percent scanning would add approximately 10 percent to the direct transport costs per shipments from the EU to the United States and would result in an aggregate welfare loss of approximately \$25 billion annually.

⁶ Conference Report 111-298: DHS Appropriations Act, 2010.

P.L. 110-53, for an additional two years. Further, I certify that two of the conditions set out in Section 232(b)(4) of the SAFE Port Act (as amended) exist and serve as a basis to extend the statutorily imposed July 1, 2012 deadline.

I find two critical conditions exist which necessitate an extension of the July 1, 2012 deadline:

- ***Use of systems that are available to scan containers will have a significant and negative impact on trade capacity and the flow of cargo.***
DHS has provided seven reports to Congress that detail the significant diplomatic, financial, technological, and operational barriers encountered throughout the deployment of integrated scanning systems to six foreign ports between 2007-2010, as part of the SFI pilots.⁷ Based on our own operational experiences, and on substantial input from many industry partners and foreign government stakeholders, we conclude that utilization of current available, state of the art, integrated radiation detection systems and imaging equipment would be cost prohibitive and significantly impact trade capacity and the flow of cargo at this time.
- ***Systems to scan containers cannot be purchased, deployed, or operated at ports overseas because ports do not have the physical characteristics to install such a system.***
The space within the confines of most ports is exceedingly scarce and expensive, complicating the installation of scanning technologies. Additionally, integrated systems to scan transshipped cargo efficiently have yet to be developed. No integrated solution exists that can be seamlessly incorporated into the precise operations of moving cargo from barges-to-ships, from ships-to-ships, and from rail-to-ships without adversely impacting port operations and creating delays. While scanning systems for outbound cargo can be and have been integrated into busy port environments on a case-by-case basis, this has to-date, proven to be the exception rather than the rule and is often the result of complex and protracted negotiations.

In addition to the costs and range of challenges associated with implementing 100 percent scanning, another key consideration is how to best address risk reduction across all domains (air, land, sea) and pathways by which the threat may be transported to and within the United States. Consequently, DHS has adopted a risk-based approach, which focuses on enhancing existing layers of defense and expanding security across all potential pathways to ensure that its efforts and finite resources are allocated effectively. In short, the proposed approach concentrates on increasing the likelihood of detection and prevention of illicit nuclear smuggling through an

⁷*Update on Integrated Scanning System Operations*, (May 29, 2008; June 12, 2008; January 4, 2010; July 15, 2010; January 24, 2011; May 20, 2011; and February 29, 2012). These challenges include: 1) operational costs associated with equipment, construction, communications and information technology, personnel, and resolution of alarms that occur; 2) diplomatic challenges related to obtaining critical host nation support; 3) severe space constraints within ports where land is limited and costly; 4) logistical and operational obstacles associated with deploying multiple systems or re-routing containers through the systems without causing bottlenecks that would trigger delays; 4) limitations on currently available technologies to adequately handle transshipped cargo and provide adequate automated alarm capabilities; 6) perceptions of health and safety concerns; and 7) varying degrees of terminal operator cooperation.

The Honorable Peter T. King

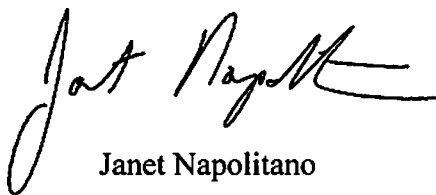
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enhancement of security within each layer of defense and an extension of these efforts comprehensively across all vectors (air, land, and sea).

DHS recognizes the need to proceed with container security programs in a responsible, practical manner that maximizes the security of maritime cargo, facilitates trade, and enhances global supply chain resilience. DHS plans to work within and across the U.S. Government to effectively develop technology, enhance risk management processes, and implement a robust layered enforcement strategy for screening cargo. Through the Department's Science and Technology Directorate, DHS continues to monitor technology advancement in the private sector, academia, and the interagency to address the challenges of scanning maritime cargo. Through existing and new efforts on domestic and international fronts, DHS—along with the World Customs Organization, the International Maritime Organization, the International Civil Aviation Organization, and other partners—is striving to improve the security of operations, raise international standards, and foster systems that secure the global supply chain.

DHS looks forward to continuing to work with Congress on this issue. A report, as required by 6 U.S.C. 982(b)(6), accompanies this letter. Inquiries about this letter may be directed to Assistant Secretary for Legislative Affairs Nelson Peacock at (202) 447-5890.

Yours very truly,

A handwritten signature in black ink, appearing to read "Janet Napolitano". The signature is fluid and cursive, with a long horizontal stroke at the end.

Janet Napolitano