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United States Senate

COMMITTEE ON
GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

October 28, 2003

The Honorable Asa Hutchinson
Under Secretary for Border and Transportation Security
Border and Transportation Security Directorate
Department of Homeland Security
Washington, DC 20528

Dear Secretary Hutchinson:

The security of this nation's ports and container transportation network is critically important for the safety and security of every person living in the United States as well as our national economic well-being. We know you are aware of these daunting and sobering statistics:

- There are more than 300 commercial ports of entry in the United States;
- Approximately six million cargo containers arrive in U. S. ports each year; 17 million move throughout all North American ports annually;
- Shipping containers account for more than 90% of U.S. import-export cargo tonnage;
- The Department inspects a small percentage of the shipments destined for the United States, and rates of inspection vary from port to port due to the availability of technology and staffing resources.

There is another statistic we also find alarming. According to a port security war game sponsored by the global consulting firm Booz Allen Hamilton, a single terrorist attack utilizing cargo containers could cost the U.S. economy approximately \$60 billion, on top of what is likely to be a tragic loss of human life. Clearly we must continue to improve security in this vital sector of the economy.

We have known about the vulnerabilities in the system for some time. In February 2001, seven months before September 11th, former Senators Gary Hart and Warren Rudman issued the report *Road Map for National Security: Imperative for Change*, warning that the "volume and velocities" of people and goods crossing U.S. borders created a gaping hole in our national defense. Almost two years later they issued another report, *America: Still Unprepared - Still In Danger*, which observed that trade security was still "ripe for exploitation and vulnerable." Many other experts have testified before Congress or issued reports drawing similar conclusions, some as recently as last month. Seven months ago, you testified before our Committee on the

Bureau of Customs and Border Protection's (CBP) strategies and initiatives to deal with the vulnerabilities within the system. Today, we seek an update on progress CBP has made to protect the cargo container system from attack, as well as responses to concerns we have heard regarding the current state of CBP initiatives.

CBP is in the process of implementing several programs which will help address a number of the vulnerabilities that have been identified. The Container Security Initiative (CSI) embodies a policy we and many others began advocating more than two years ago - - pushing our borders back in order to inspect containers before they present the greatest risk to our country. Another program, Operation Safe Commerce, has begun to demonstrate the advantages that tracking cargo containers from their point of origin to their final destination provides; namely that more information and visibility within the global transportation systems allow us to identify specific vulnerabilities and address them. It is critical that these and other programs be fortified, improved and adequately funded to address the areas of vulnerability in our ports.

We are concerned that the limitations of the current risk analysis program for cargo containers diminishes the effectiveness of the container security programs. The National Targeting Center is supposed to provide target-specific information to CBP agents so that "high-risk" containers can be inspected. The Center utilizes the Automated Targeting System (ATS) to do this, and ATS scores containers and determines risk based on internal and external information, including manifest data provided according to the 24-hour rule. Several experts have identified three potentially serious vulnerabilities with the risk analysis program:

- CBP collects data primarily from cargo manifests, historically unreliable documents. The implementation of the 24-hour rule improved the delivery, and to a lesser extent, the specificity of the data. However, experts have stated the 14 data points required by the 24-hour rule are insufficient for identifying anomalies, and should be combined with data collected at a purchase order level.
- CBP's strict reliance on manifest data provided by the shipper creates an enormous hole in our port security system because the manifest data may not provide accurate, detailed information on containers that have moved through multiple transshipment points prior to the port of loading, nor does CBP have a comprehensive program in place to track containers through multiple transshipment points. As a result, some experts believe that terrorists can hide the true contents of a container by moving that container through numerous ports and transportation modes, thereby disguising its point of origin and providing opportunities to alter the manifest to disguise the contents.

- CBP does not have a credible process in place to validate “low risk” containers. Random checks are necessary for providing a benchmark, and assessing the effectiveness of ATS, allowing the system to develop and improve.

Data Collection

The recent implementation of the 24-hour rule has eliminated such generic descriptions as “FAK” (“freight all kind”), “general cargo,” and “STC” (“said to contain”) that were commonly used on manifests for the millions of consolidated containers. However, manifest data remains among the least reliable and least specific data available to shippers, importers, exporters, or other interested parties. In earlier communications with the Committee, CBP stated that although “manifest data continues to improve,” it still needs to “monitor manifest data for specific data element compliance.” Several experts have noted that ATS might better target containers if CBP required purchase order data be submitted in addition to manifest data. Purchase order data is historically more accurate and more detailed, often the only legal contract between two or more parties. Import specialists and auditors already collect purchase order data to perform entry audits. If the information is already available to CBP when necessary, why should that data not be included earlier in the process to ensure a more accurate profile by ATS? The RAND report, *Seacurity: Improving the Security of the Global Sea-Container Shipping System*, recently concluded that many risk analysis programs, including ATS, “do not incorporate sufficient data” and that “an expansion of criteria” and “more information exchange” would increase the effectiveness of the program.

Multiple Transshipment Points

Shippers and Non-Vessel Operating Common Carriers (NVOCC) are required to transmit the necessary data to CBP prior to loading. This data includes the last port of a vessel before it departs for the U.S., the port where any cargo was loaded onto the vessel, container numbers, and the name and address of the owner of the cargo, among other things. The failure to require data which would track a container throughout the entire process creates a hole in the port security system which allows criminal organizations or terrorists to hide cargo in a container at any of its earlier stages. As a result, CBP may not be receiving a true description of the contents of a container. This means that ATS likely can not accurately score a container and determine if it may be, in fact, high-risk. The European Commission currently has a program in place, called Contraffic, which is similar to ATS but also tracks all of the ports-of-call of both the container(s) and the ship(s), thereby minimizing the vulnerability that shipping through multiple ports creates. CBP could similarly minimize the vulnerability by requiring data detailing all ports-of-call for both the ship and all containers on it, as well as by expanding programs like Operation Safe Commerce, which physically track containers throughout the global transportation system.

Validation of "Low Risk" Containers

Several experts have noted that ATS would be a more effective system if it had a process in place to constantly "learn." This can be accomplished by randomly checking a small percentage of the containers *not* deemed "high risk" by ATS. Such random checks would provide a benchmark for assessing the effectiveness of the system, as well as allow the system to evolve and learn, thereby providing more accurate assessments later. In previous communications with the Committee, CBP stated that although inspectors have the ability to conduct random inspections of a container, this is done based on the experience and instincts of a particular inspector and not with the purpose of assessing the effectiveness of ATS. The RAND report on port security, as well as testimony by retired Coast Guard Commander Stephen Flynn, now a Senior Fellow for National Security Studies at the Council on Foreign Relations, have called this validation step absolutely necessary to addressing the vulnerabilities of container security.

Similarly, the Customs Trade Partnership Against Terrorism (C-TPAT), a program designed to encourage higher standards and best practices within the trade community in return for expedited processing by CBP and a lower score by ATS, requires that CBP validate the processes of each member of the trade community who voluntarily participates. We understand that more than 4,000 companies have volunteered, and that CBP is working to validate all of these volunteers. However, we are concerned that CBP does not have a workable plan in place to audit the standards and practices of participating companies once they receive an initial validation. As a result, companies could take advantage of the program by not making the kinds of investments to sustain these security practices once they have been accepted into the program, while still being confident that they will receive a lower score and expedited processing even though it is no longer merited.

We request a detailed description from you of what CBP has done, and plans to do, to address the aforementioned issues, so we can understand where additional work is needed. We appreciate your prompt response to the following questions.

1. Why does CBP not require purchase order data to be submitted along with the manifest data according to the 24-hour rule?
2. According to CBP's historical records, how accurate are manifest data?
3. Has CBP examined the European program Contraffice, or worked with any of its European counterparts to develop any similar programs?
4. Does CBP have any plans to require data tracking all ports-of-call for both containers and ships? If not, please explain why.

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5. Does CBP intend to make Operation Safe Commerce, and/or any other program designed to track containers throughout the global transportation system, permanent and systemwide?
6. Why has CBP not implemented a program to randomly inspect containers specifically to assess the effectiveness of the Automated Targeting System?
7. Does CBP have any program in place to assess the effectiveness of the Automated Targeting System? If not, please explain why.
8. Of the more than 4,000 participants in C-TPAT, how many have already been validated? How many still need to be validated? Do participants realize any benefits before they are validated?
9. What process and schedule does CBP have in place to review the standards and practices implemented by participants in C-TPAT after their initial validation? How often will CBP conduct such reviews or validations?

Please respond by November 28, 2003 to the questions above. If you need additional information or clarification of any of these requests, please feel free to have your staff contact Claudia Gelzer at (202) 224-2523 or Jason Yanussi at (202) 224-2627 of our Governmental Affairs Committee staffs. We look forward to your response, and to working with you and your staff at the Bureau of Customs and Border Protection to systematically improve the security of our homeland.

Sincerely,



Susan M. Collins
Chairman



Joseph I. Lieberman
Ranking Member