[H.A.S.C. No. 109–100]

NATIONAL SECURITY IMPLICATIONS OF THE DUBAI PORTS WORLD DEAL TO TAKE OVER MANAGEMENT OF U.S. PORTS

HEARING

BEFORE THE

COMMITTEE ON ARMED SERVICES
HOUSE OF REPRESENTATIVES
ONE HUNDRED NINTH CONGRESS
SECOND SESSION

HEARING HELD
MARCH 2, 2006

U.S. GOVERNMENT PRINTING OFFICE
32–987 WASHINGTON : 2008

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

HOUSE COMMITTEE ON ARMED SERVICES

ONE HUNDRED NINTH CONGRESS

DUNCAN HUNTER, California, *Chairman*

CURT WELDON, Pennsylvania
JOEL HEFLEY, Colorado
JIM SAXTON, New Jersey
JOHN M. MCHUGH, New York
TERRY EVERETT, Alabama
ROSCOE G. BARTLETT, Maryland
HOWARD P. "BUCK" MCKEON, California
MAC THORNBERRY, Texas
JOHN N. HOSTETTLER, Indiana
WALTER B. JONES, North Carolina
JIM RYUN, Kansas
JIM GIBBONS, Nevada
ROBIN HAYES, North Carolina
KEN CALVERT, California
ROB SIMMONS, Connecticut
JO ANN DAVIS, Virginia
W. TODD AKIN, Missouri
J. RANDY FORBES, Virginia
JEFF MILLER, Florida
JOE WILSON, South Carolina
FRANK A. LOBIONDO, New Jersey
JEB BRADLEY, New Hampshire
MICHAEL TURNER, Ohio
JOHN KLINE, Minnesota
CANDICE S. MILLER, Michigan
MIKE ROGERS, Alabama
TRENT FRANKS, Arizona
BILL SHUSTER, Pennsylvania
THELMA DRAKE, Virginia
JOE SCHWARZ, Michigan
CATHY MCMORRIS, Washington
MICHAEL CONAWAY, Texas
GEOFF DAVIS, Kentucky

IKE SKELTON, Missouri
JOHN SPRATT, South Carolina
SOLOMON P. ORTIZ, Texas
LANE EVANS, Illinois
GENE TAYLOR, Mississippi
NEIL ABERCROMBIE, Hawaii
MARTY MEEHAN, Massachusetts
SILVESTRE REYES, Texas
VIC SNYDER, Arkansas
ADAM SMITH, Washington
LORETTA SANCHEZ, California
MIKE MCINTYRE, North Carolina
ELLEN O. TAUSCHER, California
ROBERT A. BRADY, Pennsylvania
ROBERT ANDREWS, New Jersey
SUSAN A. DAVIS, California
JAMES R. LANGEVIN, Rhode Island
STEVE ISRAEL, New York
RICK LARSEN, Washington
JIM COOPER, Tennessee
JIM MARSHALL, Georgia
KENDRICK B. MEEK, Florida
MADELEINE Z. BORDALLO, Guam
TIM RYAN, Ohio
MARK E. UDALL, Colorado
G.K. BUTTERFIELD, North Carolina
CYNTHIA MCKINNEY, Georgia
DAN BOREN, Oklahoma

ROBERT L. SIMMONS, *Staff Director*
ROGER ZAKHEIM, *Professional Staff Member*
JULIE UNMACHT, *Counsel*
BRIAN ANDERSON, *Staff Assistant*

CONTENTS

CHRONOLOGICAL LIST OF HEARINGS

2006

Page

HEARING:

Thursday, March 2, 2006, National Security Implications of the Dubai Ports World Deal to Take Over Management of U.S. Ports 1

APPENDIX:

Thursday, March 2, 2006 121

THURSDAY, MARCH 2, 2006

NATIONAL SECURITY IMPLICATIONS OF THE DUBAI PORTS WORLD DEAL TO TAKE OVER MANAGEMENT OF U.S. PORTS

STATEMENTS PRESENTED BY MEMBERS OF CONGRESS

Hunter, Hon. Duncan, a Representative from California, Chairman, Committee on Armed Services 1

Skelton, Hon. Ike, a Representative from Missouri, Ranking Member, Committee on Armed Services 3

WITNESSES

Bilkey, H. Edward, Chief Operating Officer, Dubai Ports World; George Dalton, General Counsel, Dubai Ports World; Michael Moore, Senior Vice President, Commercial, Dubai Ports World; and Robert Scavone, Executive Vice President, Security Peninsular and Oriental Steam Navigation Company (P&O) beginning on 41

Carafano, Dr. James Jay, Senior Research Fellow for National Security and Homeland Security, The Heritage Foundation 7

Edelman, Eric S., Under Secretary of Defense for Policy, Department of Defense; Stewart Baker, Assistant Secretary, Policy, Planning and International Affairs, Department of Homeland Security; Clay Lowery, Assistant Secretary, International Affairs, U.S. Department of the Treasury; Alan Misenheimer, Director, Office of Arabian Peninsular and Iran Affairs, Department of State; and Rear Adm. Thomas Gilmour, USCG, Assistant Commandant for Marine Safety, Security and Environmental Protection beginning on 77

Flynn, Stephen E., Commander, U.S. Coast Guard (Ret.), Jeane J. Kirkpatrick Senior Fellow, in National Security Studies 10

Gaffney, Frank J., Jr., President and CEO, Center for Security Policy 14

APPENDIX

PREPARED STATEMENTS:

Baker, Stewart 160

Bilkey, H. Edward 146

Carafano, Dr. James Jay 125

Flynn, Stephen E. 133

Gaffney, Frank J., Jr. 140

Gilmour, Rear Adm. Thomas 177

Page

PREPARED STATEMENTS—CONTINUED
Lowery, Clay 171
Misenheimer, Alan 170
Scavone, Robert 156

DOCUMENTS SUBMITTED FOR THE RECORD:
Copyright 2000 Council on Foreign Relations, Inc. Foreign Affairs, November 2000/December 2000, Beyond Border Control 183
Testimony of the Department of Defense, Regarding the Dubai Ports World CFIUS Case 193
In the Name of Allah the Most Compassionate and Merciful, 14 May/June/2002 200
Responses to al Qaeda's Initial Assaults 190

QUESTIONS AND ANSWERS SUBMITTED FOR THE RECORD:
Mr. Andrews 205
Mr. LoBiondo 205
Mr. Skelton 205
Mr. Spratt 205

NATIONAL SECURITY IMPLICATIONS OF THE DUBAI PORTS WORLD DEAL TO TAKE OVER MANAGEMENT OF U.S. PORTS

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
Washington, DC, Thursday, March 2, 2006.

The committee met, pursuant to call, at 1 p.m., in room 2118, Rayburn House Office Building, Hon. Duncan Hunter (chairman of the committee) presiding.

OPENING STATEMENT OF HON. DUNCAN HUNTER, A REPRESENTATIVE FROM CALIFORNIA, CHAIRMAN, COMMITTEE ON ARMED SERVICES

The CHAIRMAN. The committee will come to order. The committee meets this afternoon to examine the national security implications of the Dubai Ports World, DP World, deal, to take over port terminal operations in ports in six American cities. Like many Americans and Members of Congress, I am deeply distressed by the national security implications of this deal.

The controversy surrounding Dubai Ports World's acquisition has exposed the vulnerability of United States ports to security threats, the inadequacy of the so-called Committee on Foreign Investments in the United States (CFIUS) review process, that is, foreign investment process to address these threats, and it also raises a broader issue of whether the United States is taking adequate steps to protect our entire national critical infrastructure.

It is my opinion that the U.S. Government needs to conduct wholesale reform as to how we protect the homeland and our critical infrastructure. This problem runs deeper than ports. Vulnerability to our maritime interests is only one example of many sectors that require increased protection and security.

The post 9/11 world demands that in the realm of national security, we take nothing for granted.

Voluntary compliance schemes, the method we currently employ to protect our key arteries of national and economic security, is necessary but not sufficient.

Our government must take steps to enhance our security, not to run the risk of creating greater vulnerabilities. We seem to be our own worst enemies.

We should require critical U.S. infrastructure to remain in U.S. hands.

To those who say my views smack of protectionism, I say America is worth protecting.

Yet today's hearing is also about a failed process.

In my experience, a CFIUS scheme for reviewing national security implications of foreign investments in the United States consistently comes out on the wrong side of the issue. Not too long ago, this committee sat together to discuss a Chinese national oil offshore corporations' bid to merge with Unocal. In that instance, a CFIUS review did not belive that the merger deal warranted a 45-day investigation known as a Byrd Amendment.

Once again, today we find ourselves in a similar situation where none of the participants in CFIUS believe that the DP World acquisition warranted a 45-day investigation.

Well, I think everyone on this committee recognizes that government is imperfect and is prone to making mistakes. The Congress and the citizens of this country do not have to tolerate a process that repeatedly makes the same mistake.

I might just say that I just reviewed the findings of Garry Milhollin, who has advised this committee for many years. And his recounting of the weapons of mass destruction materiel and machinery that has been routinely moved through Dubai, with the acquiescence of the Dubai government, including 66 triggers that can be used for nuclear detonators, heavy water coming out of Russia and China for Pakistan and India, nerve gas precursors bound for Iran—no problem there. And the idea that those things happened and were documented, in fact, some of them involved American protests, and that didn't perk up the ears of CFIUS, was quite remarkable.

In fact, I think it is only the huge public outcry and the pressure from Congress that ultimately has lead to the this increased scrutiny of the DP World deal.

Recently, the officers of DP World requested that CFIUS conduct a 45-day investigation. And while we all welcome this development, I am concerned it is too little and too late. It is my understanding that the $6.79 billion deal becomes final today.

Moreover, the details of the DP World requested 45-day investigation is murky.

Unanswered to date is how this investigation will be more comprehensive, more robust than the CFIUS 30-day review. Some have dismissed this review as a public relations scheme to pass it by the Congress. I hope this is not the case. And I look forward to hearing from our witnesses on this matter.

The problem isn't going away. Today, The Washington Post reports how another Dubai-owned company, Dubai International Capital, is planning a $1.2 billion acquisition of a British company that owns U.S. subsidiaries that are part of our defense industrial base.

And I might say to my colleagues, we have these repeated incursions by our British friends who, in fact, are allies with us in Iraq and other operations around the world to buy critical pieces of the military defense, or military industrial base, and we always looked, examined our relationship with the British, and concluded that the deal is a fine one.

The problem is involved when the second step is taken, and that is when a Dubai-owned corporation, now, simply based on the fact that it has got lots of cash, ends up acquiring the British company

and settles into the position that we never would have released to another country beyond Great Britain, and perhaps, Australia.

So we all understand that that the United Arab Emirates (UAE) has been our ally. But we also know that they have been a point of transshipment, obviously, with their government's acquiescence, either their acquiescence, their informed involvement, or one of the greatest systematic cases of negligence that the world has ever seen, to become the transshipment point for all of these nuclear components to the point where their trademark, their advertising trademark is, we can move whatever you have got with very little hassle.

So if you are a German company or a former Nazi who moved lots of heavy water out of China and Russia to various nuclear companies with nuclear ambitions, you want to move it through a transshipment point that is easy going, you move it through Dubai.

And interestingly, also, the Malaysian company that was involved in one of the last transshipment scandals I think reflected well the Dubai government's policy of creating an environment of deniability. They said, we can't find any—we have no paper. This is the Malaysian Government. And I am paraphrasing. They said we have no paper that indicates anything about where this company moved its—moved this particular material.

That is the nature of Dubai. It is a bazaar for terrorist nations to receive prohibited components from sources from the free world and from the nonfree world.

And apparently—and it appears to me that the same government leaders who countenance that trans-shipment, in fact, probably have designed that transshipment because it makes them money—would be the same people overseeing America's ports.

And the idea that CFIUS seemed to think that was okay or didn't look at it very closely is quite a remarkable thing.

So the purpose of today's hearing is to examine this question of whether we should have this particular company or any foreign-owned company controlling or owning American critical infrastructure.

And with us this afternoon to discuss these issues are policy experts, officers of DP World, and administration officials from the Department of Defense, Department of Treasury, Department of State and the Department of Homeland Security.

So let's get to it, and before we go to our witnesses, I would like to turn to the ranking member, the gentleman from Missouri, Mr. Skelton, for any remark he would like to make.

STATEMENT OF HON. IKE SKELTON, A REPRESENTATIVE FROM MISSOURI, RANKING MEMBER, COMMITTEE ON ARMED SERVICES

Mr. SKELTON. Mr. Chairman, thank you, and I welcome our witnesses, and I also thank you for calling this very important hearing. It is on the minds of—this issue is on the minds of so many people across the country.

Today, we are to address the recently announced deal to hand over operations at six major American ports to Dubai Ports World, which is a company owned by the United Arab Emirates, or UAE.

This is a significant deal that requires careful scrutiny.

In addition, Mr. Chairman, today's press reports indicate a second deal by a Dubai firm under investigation by the Committee on Foreign Investment in the United States. This deal involves a proposed purchase of a British firm with U.S. subsidiaries that make military components. This second deal as much as the Dubai Ports World must be questioned to ensure that our national security is protected.

Like many of my colleagues on both sides of the aisle, and a majority of the American people, I have some very, very serious concerns about the DPW deal. It would give ownership of some of our major national security assets to an agent of a foreign country with past connections to terrorist activity, at a time when security in airports is woefully inadequate.

People back home understand this issue. Their family's safety is their first concern. They understand that our Nation's ports are vulnerable today as our airlines were before 9/11. Our seaports handle more than 95 percent of our nation's foreign trade including trade insensitive technologies and the movement of critical materials for our military.

Yet the bipartisan 9/11 Commission identified America's ports as particularly vulnerable to attacks because only 6 percent of the cargo containers entering our country are screened.

Experts have warned the most likely way a terrorist could get a nuclear weapon into the United States is in a cargo container ship.

In 2003, the Coast Guard asked for $5.4 billion over the next 10 years to comply fully with the port security requirements, and yet, despite the efforts of many of our colleagues, the Congress has approved only $883 million, and the Administration, in this year's budget, is eliminating funding that goes directly for port security.

People back home also have questions about Dubai Ports World and our relationship with the United Arab Emirates. We know that the UAE has been a recognized partner in the war against terror. At the same time, two of the hijackers of the 9/11 attacks were from the UAE. The 9/11 Commission concluded that the vast majority for the financing for the attacks flowed through the United Arab Emirates. The UAE was one of three countries to recognize the Taliban as the legitimate government of Afghanistan, and it has also pledged support to Hamas. The UAE was a key transfer point for illegal shipments of nuclear components to Iran, North Korea and Libya.

These are not cut and dried issues for our national security.

It is then not surprising that the Coast Guard and the Department of Homeland Security raised red flags during the review process for the Dubai Ports World port deal which is conducted by CFIUS, the Committee on Foreign Investment in the United States.

The Coast Guard's intelligence assessment found gaps in the intelligence by DPW's operations, personnel and foreign influence, all relating to the potential for the DPW assets to support terrorists' operations. This level of concern should have triggered full use of the CFIUS process.

The law provides for an additional 45-day investigation to resolve these types of issues when American security is at stake. That was not done here.

After little review, and without consultation with Congress, or input from the affected communities, the President approved the deal and threatened to veto any legislation that would oppose it. Only when Congress and the American people got involved is that process now being followed.

For me, this situation comes down to three things: First, we have to take a careful honest assessment of this particular deal. Congress must be involved. That begins today with this hearing. What is the potential for the UAE's government to exert any influence over the company? What possible risks did our government agencies find that this company could pose to our national security? How are those risks being addressed?

And although DPW has now voluntarily agreed to a 45-day investigation, the parties involved have already closed the deal. So what is the purpose of the investigation? What can be done under the party's agreement at this late stage? I hope the witnesses will be able to answer these questions.

The bottom line is that we must make sure that this deal is right for American national security.

Second, we must reform the CFIUS process for all transactions that affect national security.

We must be able to reassure the American people in every case that we will not allow the fox to guard the chicken house. We need a CFIUS process for a post 9/11 world with national security at its center.

The review should also include input from the affected communities at the local level.

Third, and most important, we must take this opportunity to invest more money and to institute better policies to protect our ports. We must screen more cargo. We must know who is working in our ports, and who is working on the ships that enter them. And we must think creatively about how to stop a weapon of mass destruction from ever entering this Nation.

We have been extremely deficient in the area of security. We are very lucky we have not had to face disastrous results to our failings. Our security shortfalls are being demonstrated as a result of a corporate sale, and not because of a terrorist attack. We still have time to get it right, Mr. Chairman, and we must. We must get it right. Thank you.

The CHAIRMAN. Thank you, Mr. Skelton. I appreciate it. And I might just let you know, because you have mentioned these three major things that we have got to do, reforming CFIUS, blocking foreign ownership of critical U.S. Infrastructure and, requiring full inspection of cargo.

And we have been drafting, for the last couple of days, a bill that does that, that I hoped to introduce on Tuesday. And I would hope that you would join with me and any interested members of the committee, and I remind my fellow members of this committee that it was this committee that blocked the acquisition of the U.S. naval base at Long Beach during the days of the Clinton administration from being purchased by KOSCO, which is the maritime arm of the People's Liberation Army.

We did that, even though the deal had been approved and this particular legislation, even if this deal is approved, would roll it

back and would also cause upon the identification of critical U.S. infrastructure by the Department of Defense and the Department of Homeland Security would require then that that infrastructure be owned by Americans, and that if it was not owned by Americans, would be divested in as painless a way as possible, but would be divested of foreign ownership, and a U.S. ownership would be established.

So I say to my colleagues, I think this is an issue that we have worked on over the years. And we are the one committee that has actually been able to block foreign ownership of what we consider to be critical U.S. infrastructure. I think now is the time to address this problem in a fulsome way.

Having said that, I think Mr. Saxton wanted to say a word or two. Let the gentleman say a word before our——

Mr. SAXTON. Mr. Chairman, thank you for the unusual recognition at this point. I think there is something here that needs to be made part of the record and part of this conversation. The administration is always proud of the United States policy of providing for fair play in trade matters.

And there are some unusual restrictions that are pertinent to this issue as part of United Arab Emirates policy. And let me just say what they are for the purpose of beginning this discussion, because these are issues that go beyond the important matters that have been discussed by the chairman and the ranking member.

The following foreign investment restrictions are listed in the United Arab Emirates chapter from the 2005 national trade estimate report on foreign trade barriers issued by the United States trade representative. First, a business engaged in importing and distributing a product in the UAE must be either a 100 percent UAE owned agency or distributorship or a 51 percent UAE, 49 percent foreign limited liability company.

Two, subsidies for manufacturing firms are only available to those with at least 51 percent local ownership.

Three, non-Gulf Corporation Council (GCC) states nationals cannot own land, but the Emirate of Dubai, currently is offering a so-called freehold estate ownership for the limited non-GCC nationals within certain priorities. And these countries, the GCC countries are the UAE, Bahrain, Saudi Arabia, Oman, Qatar and Kuwait.

Four, only 22 out of 53 stocks on the UAE stock market are open to foreign investment.

Five, Ministry of Economy and Planning rules restrict foreign investors' ownership to no more than 49 percent of companies on the stock market, however, company bylaws in many cases prohibit foreign ownership.

Finally, except for companies located in one of the limited free zones, at least 51 percent of a business establishment must be owned by the UAE national.

These are matters which I think should be of economic concern to us in terms of the fair play that our government goes out of its way to provide for others. And so, as part of the record, and part of the conversation, I think these are important considerations for us, along with security matters that you both mentioned.

The CHAIRMAN. Well, I thank the gentleman. And let me turn to our panel. We have with us Dr. James Carafano, Senior Fellow for

National Security and Homeland Security the Heritage Foundation. Mr. Stephen Flynn, Senior Fellow Counsel on Foreign Relations, and Mr. Frank Gaffney, President Center for Security Policy.

So, Mr. Carafano, good afternoon. Thanks for being with us and the floor is your, sir.

STATEMENT OF DR. JAMES JAY CARAFANO, SENIOR RESEARCH FELLOW FOR NATIONAL SECURITY AND HOMELAND SECURITY, THE HERITAGE FOUNDATION

Dr. CARAFANO. Thank you, sir. I submitted a formal statement for the record.

The CHAIRMAN. Without objection, all written statements will be taken into the record.

Dr. CARAFANO. First of all, I would like to commend this committee and the Congress for focusing on something which is an absolutely incredibly vital issue to this Nation, which is maritime security. A third of our economy approximately of trade is—a third of our economy is in trade.

95 percent of our trade goes by sea. This is absolutely important. Our ports are vital. This is exactly the right issue.

And I think the Congress's concerns are legitimate.

And I think it is appropriate that Congress relook the CFIUS process. Congress has not done that since 9/11. We live in a different world than we did then. And I think it is very appropriately that Congress relooks at the process that is established to make sure that national security interests were appropriated vetted in foreign investments and commercial transactions. You know, I will say a fundamental to my approach to this is: How we do look at all these issues, I think, should be the same.

And I think it is fundamental to do with the nature of the conflict we are in. And I think the President was correct in his State of the Union address when he called it a long war. I think the Department of Defense was accurate in their Quadrennial Defense Review when they talked about this. I think Franks book warfighting is laced around here. And you fight long wars differently because what is important in a long protracted conflict, whether it is a war on terrorism or the Cold War, is that it is essential to maintain the competitiveness and robustness of the society as it is to defeating the enemy and you have to do both simultaneously. And I have always talked about four essential requirements in fighting a long war.

One is security. And the more and more I have looked at this, the more and more I look at how you get the best buck out of your security dollar, the more and more I am convinced is that is an offense, and taking out the word of the enemy, taking out the leadership, taking out the infrastructure, taking out the sources of recruiting, taking out sources of funding, that this is simply the biggest bang for the buck.

Now having said that, we all know that you have to have an element of defense, because we live in a world that is united by networks that carry the free flow of goods, services, people and ideas, and that some day it is going to carry bad things to your shore. And you have to have some way to defend against that.

Equally as important is protecting the privacy and liberty of our citizens and equally important is winning the war of ideas and our argument is simply that you need security solutions that do all four of these things. And if you don't, you have the wrong answer and you need to go back and start over.

And I think that counts just as much in this issue of maritime security perhaps more than any other issue.

Now, I will say with regard to security concerns about the Dubai Ports World deal, I don't find any compelling security concerns here. And I think it has to do with the nature of the way we do maritime security in the maritime domain. Most of the infrastructure in maritime domain upon which U.S. trade is dependent is foreign-owned, whether it is ships or port facilities. And that ownership changes quite frequently. Very frequently you go into a port and you can ask a union worker and say, who owns your company today and he doesn't know. Maybe a different guy owned it last year. But things at the port go on the same way as they did before, and that is because the maritime security architecture is not designed based on ownership. The security requirements are the same for whoever owns the companies.

If we are concerned about Dubai Ports World specifically as a company, then we have got real serious issues. And it is irrelevant—the U.S. ownings are a small piece of that. Dubai as a port is the probably the most strategically vital port to the United States in the Middle East, it is what allowed us to do power projection in the Middle East, and it is owned by World Ports. Likewise, this company is now the third largest owner of port facilities around the world. Likely, it is anywhere U.S. interests are involved, anywhere U.S. goods are moved, anywhere the U.S. military deploys this company is going to be involved.

So even if we disapprove this deal and don't let them own these U.S. facilities, the security relationship between the United States and Dubai Ports World is going to be inclusive and ongoing.

And I think it is critically important that they have the things like Customs-Trade Partnership Against Terrorism (C–TPAT), that they are involved in things like Container Security Initiative (CSI), that they are open to Coast Guard auditing. So I am not actually sure that excluding them from owning U.S. port facilities makes our ability to affect how they execute security around the world better or worse.

I do think that while our ports are vulnerable, we miss the point if we think that we can make ports safe by somehow turning them into little Fort Knoxes or little Maginot Lines.

You make ports safe by keeping terrorists out of the ports. And it is about making the maritime system safe. And it is the system that is the critical infrastructure, not the port. It is the system. And so we have to look at solutions that make the system overall better.

And I will just end on this, since I have three areas I think that are particularly relevant to this committee, and if they are deeply interested in moving forward on improving maritime security and on making our ports safer, these are three I would commend to you.

The first one is investing in the Coast Guard. The Coast Guard touches on every single aspect of maritime security. This committee has a vested interest in Coast Guard investments because the relationship between the Coast Guard and the Navy is essential. The national fleet is something we do in name only. There is very little real cooperation and collaboration to determining our future requirements and harmonizing what the Navy and Coast Guard does.

And this committee could play a leadership role in making sure we have the Coast Guard we need for the 21st century, and it dovetails well with the Navy we need for the 21st century.

Another issue I think you could look at is there was a very good initiative in Charleston called Sea Hawk, which is an intel fusion center. It was a model intel fusion center. It was absolutely the best thing we did in port security in terms of coordinating the assets at the port and making them effective. It was funded through the Department of Justice. I understand that funding is now dried up. It was a pilot project. It is not owned by Department of Homeland Security (DHS). It is going to die. I think this committee and the Department of Defense should have a vested interest in seeing that things this Sea Hawk are sustained and revitalized because quite frankly, any port in the United States that has a major U.S. defense outlook facility, there ought to be a Sea Hawk asset at that port doing intelligence and operations integration, because it is simply the best thing we have done in our ports to make them safer.

And the third one has to do with fundamental science. There is one thing about the maritime world in that this is a true system of systems, and I think this committee understands that from all the work that you have done in terms of defense. This makes some of the military systems look pretty simple. This is a complex system of operators and conveyors. Nobody owns the system. It is a very rich complex environment. And it has kinds of second and third order effects.

The irony is that though the United States is probably the world leader in systems integration, we fundamentally understand almost nothing about the underlying science of how complex systems works. And we really don't have quality science and knowledge in forming our decision makers. There is an argument for something called network science, which pulls together various disciplines, including network biology, infomatics, mathematics, physics pulling these disciplines together to give us understanding of how complex systems work, how we can make them more redundant, how we can make them more robust, how we can make decisions, how we can design them to be better, how we can reconstruct them after they are hit.

And I think the Department of Defense and this committee should have a vested interest in seeing network science move forward because many of the problems that the military is trying to address in the battle field is how to create the military systems and the systems of the 21st century. The underlying science that we need to understand that and make good policy and build good systems and develop good requirements is much the same.

So I think this committee should be a strong proponent of the—having the Department of Defense establish network science insti-

tutions, partnering with the Department of Homeland Security. I would commend to you an excellent report by the National Research Council on this issue I think outlines fundamental things we can do which in the long run is going to both make the United States more competitive and more safe. Thank you, Mr. Chairman.

[The prepared statement of Dr. Carafano can be found in the Appendix on page 125.]

Mr. HEFLEY [presiding]. Thank you, very much.

Mr. Flynn.

STATEMENT OF STEPHEN E. FLYNN, U.S. COAST GUARD (RET.), JEANE J. KIRKPATRICK SENIOR FELLOW IN NATIONAL SECURITY STUDIES

Mr. FLYNN. Thank you, Mr. Chairman. I am delighted to be here today and thank you, distinguished members of the House Armed Services Committee, for inviting me to discuss this DP World controversy and my assessment of where we are and where we need to be with regard to port security. And let me say, I will talk more to port security than CFIUS process where I think there are other experts who could do that far more justice than I.

The controversy surrounding the takeover to buy the American container terminals by Dubai Ports World has had certainly the salutary benefit of engaging Washington and the American people in a national conversation on the state of port security. This is long overdue, given the enormous national security and economic security stakes should the next catastrophic terrorist attack on U.S. soil involve the global maritime transportation system and America's waterfronts.

My long-standing deep concern about this persistent vulnerability of America's homeland generally and the global supply chain and ports specifically is a matter of public record. This is my 16th time testifying before a House and Senate committee on these issues. And I am sorry to say that 4 years and 4 months later from my first opportunity to do this, my assessment is that the security measures that are currently in place do not provide an effective deterrent for determined terrorist organizations intent on exploiting or targeting our maritime transportation system to strike the United States.

At the Federal level, the primary front line agencies, the Coast Guard and Customs Border Protection Agency are grossly underfunded for what has become essentially a brand new mission.

Let's be clear. The Coast Guard stopped doing port security after the Second World War. And then we give them this new mission and the resources simply are not there in the ports. The same is true with Customs in terms of we pulled them out of the ports for 20 years, and now we said do more for our national security and there are just not the numbers. There are not physically Customs agents and Customs officials in the terminals. And we rely heavily on terminal operators.

Should terrorists strike in a major U.S. seaport today, Americans will experience a post Katrina sense of dismay and frustration at how little the Federal Government has been investing to effectively safeguard this critical national security and economic security asset.

While it leaves a sobering assessment of where we are today, it may come has a bit of a surprise that my assessment of national security implications of the DP World purchase of Peninsular and Orient Steam Navigation System and the leases to its five container terminals on the east coast and New Orleans is that this commercial transaction will not qualitatively effect the overall state of global and maritime transportation security.

The primary reason is the stage is so bad it isn't going to make a whole lot of difference. This is because the problem is less about who owns and operates U.S. container terminals than it is that we simply have not addressed far more serious supply chain maritime and port security issues that would dramatically reduce the terrorist risk to our homeland.

To put this current controversy into a broader security context, let me share with you a terrorist scenario that most keeps me up at night and why I spend most of my days trying to convey a greater sense of urgency and have been working to try to design and help promote meaningful measures to address this issue.

Based on my experience and research of this issue for nearly 15 years, I believe that the greatest vulnerability that will involve the maritime sector in our sea ports is overseas within the transportation system before a container reaches a loading port. Specifically, the biggest security gap is in the transportation system once the container leaves the factory. This has been for three reasons. First of all, local truck drivers are typically poorly paid and often belong to very small firms operating on very thin profit margin.

Second there are no mandated standards for seals of locks on containers, typical one used is a 50 cent lead seal with a number on it.

Third, the issue is the containers travel through often remote, and at times, dangerous jurisdictions before they get there. So here is the kind of scenario I am worried about, informed by Gary Gilbert, the Chairman of the Corporate Security Council and Senior Vice-President for the world's biggest container terminal operator, Hutchison Port Holdings.

A container of athletic footwear for a name brand company is loaded in the manufacturing plant in Surabuya, Indonesia. The container doors are shut. In this case they go the extra mile to put the one dollar mechanical seal on it and into the door's pad eyes. These designer sneakers are destined for retail stores in malls across the America. The container and a seal number is recorded at the factory. Local driver turns out to be sympathetic to al Qaeda, picks up the container. But on the way to the port, he gets a bit lost. He pulls down an alley to a warehouse. There is a group of operatives inside. They pop the hinge on the door to not even mess with the seal. They open it up, take some sneakers out, put a dirty bomb in wrapped in lead so that it will defeat our radiation detection equipment.

Then the dirty bomb is delivered to the port of Surabaya where it is loaded on a coaster feeder ship, which typically carry about 300 containers where it is dropped off in the port of Jakarta. Jakarta, in turn, will load it onto a inter Asia ship, where it goes on a container ship carrying 1,200 to 1,500 containers destined for Singapore or Hong Kong. To make the journey across the Pacific

Ocean, it will then go on a super container ship carrying 5,000 to 8,000 containers.

In this case, it is going to Vancouver. And it is going to drop it off there. Now, the good news, we now have a Container Security Initiative team in Canada so we can expect an inbound container destined for the United States by a Canada Pacific railway. The bad news is the CSI team identifies this as a trusted shipper from a reliable company of designer sneakers who is a member of the Customs Trade Partnership Against Terrorism, and therefore is not screened or inspected. It is simply loaded on a rail chassis and sent to Chicago, where it moves from the rail yard to a distribution center.

In the distribution center, a hapless warehouse employee opens the container setting off the triggering mechanism and exploding the dirty bomb.

Now, what are the consequences of this? There are four and quite immediate. Obviously, the local deaths and injuries associated with the conventional explosive. Second, there is the environmental damage done as the radioactive material is spread over a vast area.

Third, there will be no way to determine where the compromise in security took place. Did it take place in Chicago yard? Did it take place on the Pacific rail? Did it take place in Vancouver? Did it take place in Hong Kong or Singapore or Jakarta? We don't know. So we assume the whole thing is at risk. And worse in the port case here, all the current container and port security initiatives that we have currently in place are compromised as a result. Because this turns out to be a CT pack container going through an International Ship and Port Facility Security (ISPS) compliant port with ISPS compliant vessels through a CSI port on its way into the mainland and defeats our radiation portals because they are simply wrapped in lead. So not only the incident, but the entire regime crashes.

And what happens? Well, immediately, of course, we are going to have to close our borders until we sort this out. Within two weeks, the global trade system essentially grinds to a halt. In the words of John Meredith, who runs Hutchison Port Holdings has moved over 50 million containers last year in a letter he wrote to Robert Barter, former Commissioner of Border Protection on January 20, 2004, I think the economic consequences could well spawn a global recession, or worse.

That is what we are talking about. Enormous stakes. National security stakes.

And what do we have? We have essentially an honor system. If you are a good company, and shipping terrorist-free, we basically delegate to you to figure out what minimum standards you think are basically appropriate and we provide virtually no oversight.

The Coast Guard, by law, by the Maritime Transportation Security Act, for instance, has been charged by Congress to go assess whether or not these ports around the world are actually living up to international standards, to which you have allocated resources, 20, count them, 20 Coast Guard, 13 for Europe, Africa, Middle East, Latin America and Caribbean, and then seven for all of Asia.

I saw more coming through La Guardia at the Transportation Security Administration (TSA) security check in point than the total number of inspectors we have assigned to oversee whether or not we have a regime.

The important lessons to pull from the scenario I just laid out here today are, I think fourfold.

First, the threat is not so much tied to seaports as it is to global supply chains that now operate on the honor system, the point I just made.

Second, no container terminal operator within the United States or abroad really knows what is in the box. That is the problem. They are in the business of receiving and discharging these containers from ships to trucks to trains that converge on the terminals quickly efficiently at low cost.

Third, as the engagement of John Meredith and Gary Gilbert on these issues—by the way, Hudson portals had no ports in the U.S. but had been working actively with the US Government, global terminal operators are deeply concerned about the terrorist threat that would essentially implode their enterprise with billions of dollars of capital investment.

Basically, they are potential allies in this process.

Fourth, the scenario I just laid out essentially involved Vancouver. It didn't involve any U.S. ports. This is a global network challenge.

So where do go from here? I think the case that I just tried to make with my former boss, Admiral Jim Loy, who is the Commandant of the Coast Guard and former Deputy Secretary for Homeland Security, wrote for the Times on February 28, is let's think about using this opportunity with DP World to raise the bar on security.

The way American people would truly benefit from what has become essentially a political food fight is that we actually improve security for this system.

And the way to do that is to work with the terminal operators and go to a trust but verify system.

Every container, before it is loaded and arrives in the terminal, goes through a screen of a radiation portal, an image of what is inside, and takes a picture of the container number that is successful and near realtime to an inspector here in the U.S.A.

It is over there where we are worried about the problem in a place like Dubai with the kind of material that Chairman Hunter raises here.

Now is this possible? The answer is yes. In Hong Kong today, one of world's busiest terminals, this demonstration of 300 trucks an hour coming into the terminal, collecting this data has been done.

Now, this isn't an inspection because nobody is looking at it. The pilot was showing it is possible. You don't have to rely on 5 percent. We could go to 100 percent, if we are willing to make the resources available to do this.

And guess what? The terminal operators will put this equipment down and pay for it if they can do it because there is a standard back here for the use of that. There is an opportunity here, an opportunity to make a real difference in the American people to con-

tinue to stay engaged in the global economy and recognize this is a global network.

Today, 90 percent of all the terminals in the West Coast go to foreign-owned companies, and they are the least of them. Also, the East Coast is a little less above the majority.

Why is this happening? It is happening because we gave away our Merchant Marine about 30 years ago, and we are not going to get it back any time soon.

Companies that ship want terminals on both sides, just like British Airways wants to have a jetway, they want to have some connection to it. Ships lose money unless they are at sea. They want to control the operations. The challenge here is can we set standards that assures, given this is not private hands and foreign-owned private hands that are high enough, according to our national security interests with sufficient oversight.

And can we put in place smart technologies and processes throughout this global network to continue the benefit being a part of the global society but without putting us unnecessarily at risk.

So thank you very much for the opportunity to speak with you about this critical issue. I commend the Congress for focusing on port security. Please don't accept that the current system in place is adequate for the threat that we are dealing with. Thank you.

Mr. HEFLEY. Thank you, Mr. Flynn. And now Mr. Gaffney.

[The prepared statement of Mr. Flynn can be found in the Appendix on page 133.]

STATEMENT OF FRANK J. GAFFNEY, JR., PRESIDENT AND CEO, CENTER FOR SECURITY POLICY

Mr. GAFFNEY. Mr. Chairman, members of the committee, it is a pleasure to be back with you. The last time I had a chance to talk to you was July of last year, when, you may remember, we were discussing another impending fire sale of an important American asset to a government-owned company from a country that we had some reason to believe might not have our best interest at stake.

I am delighted to be here in the company of people who know a great detail more about port security than I do. And I think they have given you very good advice up to a point.

It seems to me that much of what you have just been treated to by both of my colleagues is a pretty compelling argument for not making matters worse in our port facilities.

And I think it is hard to argue that an arrangement that entrusts to a government-owned entity from a country that could not prevent acts of terror from being operationally organized and planned and financed from its soil, will not make matters worse, at least marginally and possibly quite a bit.

And Steve Flynn has powerfully described how bad things are already, how easily those deficiencies could be exploited today. And I think it is simply begs the question, do you, do your colleagues, do the American people, do members of our executive branch, feel confident that we can take any further risk at all?

And I would like to talk about two things with you here quickly this afternoon. One is that you cannot rely on the existing process as the chairman and ranking member have made clear. You cannot rely upon the Committee on Foreign Investment in the United

States as it is presently constituted and as it has operated for approximately 18 years to evaluate those sorts of risks adequately and to come up with a conclusion that I think we can all say meets the common sense test.

And I will explain that for a moment by and by.

But I would also argue that there are very practical reasons why this deal should not only be everything my colleagues have argued, it is an opportunity, an opportunity, yes, to reform CFIUS, but also to focus the sort of attention that both Steve and James have been calling for for years, to a yawning vulnerability in this country and take corrective action. But I think starting with corrective action requires doing the common-sense thing with respect to the Dubai Ports World deal as well.

The question that I have about CFIUS is you have, as has been noted, an interagency mechanism, that is, has lead and for those of you who follow closely the affairs of the executive branch, you know that means largely dominated by, the entity the United States Government relies upon to raise foreign investment in the United States.

This is, to my way of thinking, the very definition of a conflict of interest.

It is not to assign anybody impure motives, but it is to say that when people see it as their job to promote foreign investment, to ask them to interpose objections to it is to expect too much.

And in this case, I think it is clear that the national security agencies who participate at some level in the CFIUS process, also had other considerations in mind. Yes, to be sure, they take seriously their national security or homeland security responsibilities. But let's be clear.

This is a friendly government, a strategic valuable partner, at least at the moment, in a war we call the war for the free world.

It is not likely to be given a front or to be alienated from us. And unfortunately that is precisely what this process has done, I think, unnecessarily so.

There are certain issues here that specifically raise questions in my mind. One for starters is, how many ports are we talking about? We keep hearing that it is six, ports of New York, both in New Jersey and New York, Port of Philadelphia, Port of Baltimore, Port of Miami and the Port of New Orleans.

And yet there are at least 2 others that the United States Army has contracted with P&O to move material through the Ports of Corpus Christi in Beaumont in Texas, and by at least the accounting of the P&O Web site, there are a total of some 22 ports in this country ranging from Maine to Texas, that will have some relationship, some management functions performed if this deal does, in fact, go through. That is a lot of ports, ladies and gentlemen, including many of our most strategically important ones.

I fear that as before, in fact, in every case but one, in the over 1,500 that the CFIUS process has formally vetted, that is to say, that somebody has formally submitted to the CFIUS process, only one has been formally rejected by this process.

I think it is—I think the technical term is a lead pipe cinch that the 45-day review will be just another in that litany.

Not only if you have the President of the United States affirm that it is the right answer, before the 45-day process begins again, but as best I can tell, all of the same people, all of whom have publicly said they came to the right answer the first time are going to be asked to revisit their earlier decision.

In short, if you don't want exactly the same rigged game played on this deal again, I think the Congress is going to have to insist upon some changes.

I have made some in my formal testimony. Some of the more obvious ones are to ensure that senior level people at the cabinet level for instance, are actively personally involved and responsible for this decision. You may still get the same outcome but it is clear that a number of them were not during the previous process.

I would also suggest with great respect that the Secretary of Treasury should recuse himself from the deal.

He, after all, in the previous incarnation, sold to DP World, ports that were owned by his company, CSX. That would seem to me, again, to be something of a conflict.

I believe, in addition, that we need to have in this process a rigorous security assessment performed.

And that is not simply one that factors most heavily, weights most heavily the idea that the UAE is a very important country to us. It has to take into account the sorts of considerations that Steve and James have just been talking about.

What are some of those considerations? I would argue at least about three. That again, just, I think, trigger the common sense bewilderment factor for most Americans. The first is clearly, DP World is going to be responsible for hiring and vetting of some personnel.

Now, Newsweek has said that "the company has promised to leave the British appointed U.S. port managers in place for a time in a bid to ease the immediate political pressure."

Well clearly, there is no guarantee that once you or your constituents aren't applying political pressure that that process, that representation, on the docks or in the supervisory offices will remain. At the very least you are going to have attrition, people are going to have to be hired. They may be foreign nationals on which we may or may not have a good handle on who they are. They may be Americans. In Britain in July of last year, we discovered that citizenship is no impediment in people engaging in acts of terror against their own country.

So personnel is one problem.

Cargo is another. Steve has just provided expert testimony that we will rely heavily under the circumstances we find ourselves in on the cargo management firms to account for what is in these holds. We use certain rational but easily circumvented procedures to assign risk to certain cargo.

Can a company that is responsible for the cargo management, even if it is at the end zone, as some people like to call it, be relied upon, if, in fact, it has, or its country at least, has been penetrated by terrorists in the past?

And third, it does seem to me that at the very minimum, even if the personnel problem is not there, even if the cargo management problem is not there, you have to appreciate that this com-

pany is going to be read in on the security plans of the port. They are going to have to implement something.

That gives rise, I believe, to yet another potential liability and opportunity for penetration. I take all these together, many of you are lawyers, I am not, but I think the term is attractive nuisance. It is like having a swimming pool without a fence. You are creating an opportunity for people to get into and make mischief. And that doesn't seem to be wise, especially since, as I would stipulate, things are as problematic already as these gentlemen have described.

Finally, Mr. Chairman, let me just say, in addition to saluting your efforts to reform CFIUS, I hope this is the last of these processes. I hope that this one, that The Washington Post is reporting about today that several of you have made note of, in which American defense contractors, equipment precision, equipment is supposed to be supplied in the future by not a British-owned company, but by a UAE-owned company, will not be just the next of this litany of failed dysfunctional vetting of foreign investments with clear national security implications.

I would also urge that the point that Congressman Saxton be given very serious consideration. Even if everything else were unexceptionable in these deals, it does seem to me outrageous that we as a country keep finding ourselves in a position where we play by one set of rules and other people play by a different set of rules, sometimes even in violation of our trade agreements with them. But this idea that you can have a company that wouldn't dream, or a country that owns it that wouldn't dream of having an American company own any of its critical infrastructure to say nothing of the U.S. Government operating it.

And I am not speaking here about monitoring stations and that sort of thing. I am talking about owning physical plants, critical, physical plants, nonetheless should be given carte blanche to do the same here.

I don't know where this ends. Does it include nuclear power plants and other instances of critical infrastructure? I should hope not.

Finally, there are two other things. In addition, I hope to getting an independent second opinion, I don't think you have to rely on CFIUS. You are holding hearings, of course, but Congress has been known to do commissions. Normally, you can't appoint a commission, let alone get it going in 45 days. But I think given the consensus that exists in the Congress today about the saliency of these questions you might be able to pull one together and get something back before the CFIUS does whatever it is going to do this time around.

But the last two points, Mr. Chairman, are one, we have got to find a way that allows, without undue politicization, Congress to provide adult supervision to the CFIUS process, however you perform it, it has to be made more accountable, somewhat more transparent so that you don't continue to find yourself presented with faits accompli which is, of course, what has happened in this instance.

And second, I would just urge you and we had a conversation when I was last here, Mr. Chairman, and you were, as always,

right on the money, we have to come to grips with the fact that as a nation, we are becoming essentially dependent for most things, most finished products, most raw materials, most services even now, on foreign suppliers.

This is a matter of the utmost importance, I think, not only for our national security, the immediate objective and responsibility of this committee, but also think for all of us, as it such as touches upon not only our security, but our economic well being for the future.

And so, Mr. Chairman, the last time we talked, you indicated a willingness to pick up the cudgel once again to hold hearings on this question of foreign dependency and its bearing on our national security, and I would urge that it be part of a larger effort by the Congress to address what is perhaps the inevitable outcome of the sorts of trade practices we have been engaged in for so long, and the failure of a process to provide real supervision within the executive branch, and arguably even within the Congress that will not only address some of these maritime security issues which are so important, but also the larger national economic and security considerations that attend them.

Mr. GAFFNEY. I appreciate your giving me this opportunity to contribute to your deliberations, Mr. Chairman. Thank you.

[The prepared statement of Mr. Gaffney can be found in the Appendix on page 140.]

The CHAIRMAN [presiding]. Thank you, Mr. Gaffney, and thanks to all of you for laying out I think a very good foundation for discussion here.

Mr. Gaffney, we did as a committee pass in our bill several years ago a requirement that all critical military components be built in the United States. We didn't get that one past the Senate, but perhaps we got their attention this year.

Let me go to one of the statements that was made early on by Mr. Carafano and I think has been to some degree echoed by all of our witnesses. You have all described the UAE as being allies, and we can point to military operations where they accommodated us. We can point to accommodations to our security interests, but at the same point, at the same time, we can point to times when they absolutely stood against our security interests and took actions that hurt American security interests, and that implies to me that they are accommodators. They accommodate people that come to them with large amounts of cash, and they don't have a great deal of concern as to who it is, whether it is this former Nazi who was moving lots of heavy water from China and Russia through Dubai, and I am looking particularly at the 2003 incident in which the UAE, even after we protested, insisted on moving those 66 high speed electrical switches used for nuclear detonations to a Pakistani businessman with close ties to the Pakistani military, even against a backdrop in which we indicted the people that exported those switches. That is not the action of an ally. It sounds to me like the action of an international player, which can't be ignored because of its size and its money and the fact that it is strategically located and sometimes accommodates you but certainly the idea that the people in the UAE government who sat in a room and decided upon getting a communication from the United States, please

don't turn over those nuclear switches to these people who may use it adversely, and they decided to go through with the deal despite America's protest; those are not people, I think, that you want to have anywhere close to the security apparatus of your own ports. Because it indicates not that they can't be accommodating to our interests if in fact it is their interest to accommodate us, but that they don't consistently accommodate our interests, and at times other people with money and influence overwhelm the American interests. If that translates into a cargo container that has a chem-bio weapon in it that is accompanied by large amounts of cash, then this history of accommodation of American interest doesn't mean anything.

And we have this history that is laid out fairly clearly by Mr. Milholland. He goes back to the precursor for nerve gas which was being shipped to Iran, which was only stopped because the United States had a sting operation, but certainly not because Dubai wanted to stop it.

You have got the heavy water situation. You have got the two containers of gas centrifuge parts from the doctor's labs that were shipped through Dubai from Iran for about $3 million worth of UAE currency. These people have a nightmare history. This is not a question of whether somebody has been tested or not. They have been tested, and they have gone the wrong way on this stuff.

I guess, Mr. Carafano, to you, my question would be, how can you possibly say that you didn't see in this particular case, in this particular deal, a security problem?

Dr. CARAFANO. That is an excellent question, and I certainly share your concerns. And I think that is something that the Congress should discuss and should take on and discuss with the Administration. I do think we need two separate debates here, however. We need to have a policy debate on how the United States wants to engage with the UAE. And all the issues about UAE's past behavior, foreign policies, strategic vision for the future should all be on the table. But I think that is separate from the security debate because, again, most of the infrastructure that the U.S. is dependent upon the maritime domain is foreign-owned. That is why our security systems are designed to be ownership independent. It doesn't matter who owns them, if it is a U.S. Company or a foreign company.

The CHAIRMAN. Let me stop you on that. If you had—let's say you had the British ownership of this particular port, and you had people who had been strong allies of the United States and were people whom you felt you could trust, isn't that different from having an ownership which reflects basically the desire to do whatever it takes to acquire money, which I think is a good description of Dubai's foreign policy? Their foreign policy is, they will sell Winchesters to the good guys or the bad guys. They are not too interested who it is as long as they get to be the bazaar and they get to have the money. So are you sure you can say, from a security standpoint, that the ownership is irrelevant?

Dr. CARAFANO. Congressman, I am with Ronald Reagan; I trust everybody, but I would verify. I don't trust anybody in the system. That is why the system is really ownership irrelevant. Dubai Ports World might turn around tomorrow and sell that company to some-

body else. The point is the maritime security system can't be dependent on ownership as the guarantor of security. Security has to be the guarantor of security.

The CHAIRMAN. Wait. You said ownership. I would ask you to address its relevancy. That means, if the information on the security plan for a particular port is elicited by the people that own the port operation, their employees will probably deliver it to them. I think you can be assured of that. That could be used to our detriment. Is that not true?

Dr. CARAFANO. I would go back to Steve's scenario, which is plausible. I wouldn't argue it is the most likely, but it is plausible. And it is exactly how terrorists operate. You don't need to buy a $7 billion company to penetrate maritime security. As a matter of fact, it works to your disadvantage because, first of all, there is an audit trail as to who you are; and second of all, it is an enormous investment because all you are actually gaining access to is the vulnerabilities of your own company. It is much more likely if a terrorist attack occurs in the maritime domain, that terrorists are going to do what smugglers do. The Mafia doesn't buy FedEx to smuggle. They make low-level penetrations. If you look at the operations in the port, the management groups are relatively small. It is a small community; people know who each other are. The penetrations are most likely going to happen as janitors, short haul truck drivers, people that aren't highly checked, and they have access to the kind of information that they do. To do Steve's kinds of attack, you don't need to own the company.

The CHAIRMAN. Mr. Flynn.

Mr. FLYNN. Well, there is little question that any time a foreign government is involved with buying critical assets, it deserves a thorough scrub. I hope that is what will happen as a result of this 45-day period. The people who are paid to worry about our security and access to intelligence do a thorough scrub. If, at the end of the road, the determination is, with your oversight, the company does not pose a threat in a way that other global companies do, I am still going to come back to, I want a verification system of how they operate. It is precisely because this is critical infrastructure and largely privately owned, and increasingly foreign privately owned, that we have to make sure the bar is high and the oversight is high.

My concern is that while we have a framework for oversight, there is very little behind the curtain. So as I look at it from a security perspective, I don't see this place softer than anywhere else. The whole system is way too soft. It is a global network, and here are some of the complexities we are going to get into even pushing back this particular arrangement.

Currently, P&O owns half the operations in Karachi. The other is by Hutchinson. You can't get a container out of Karachi to Dubai or Iran unless you go through one of those two terminals. Even if this deal is killed here in the U.S. side, this player will own that terminal. From a counter proliferation standpoint, we will want to have the ability to put in place a verification regime not just for stuff coming here, and you will have to work with the members of this community. So I think the challenge here is oversight, high standards and making sure when you pull back the curtain of

where the money is and who is involved with it here, that you are not giving away the store. It is just, the bottom line is: This is a network. It is global. It is dominated by four players, and they are all foreign-owned. We need to bring them on board with our solution.

The CHAIRMAN. Let me just say, if you look at the technology transfers, they were done, some of them, over the protest of the American Government. Involving things like nuclear weapons triggers, we didn't bring them on board. I would say the idea that having non-trustworthy people at the top, the people who have been tested and gone in the wrong direction, the idea that that is not relevant to me is not logical. It is true that the so-called privates in the operation, the taxicab driver, the guy who works as a stevedore, could be the bad player, as Mr. Carafano said. On the other hand, we had an incident not too long ago where we discovered millions of dollars in the bank account of the general in Mexico who was in charge of antinarcotics operations. In that case, the people that needed the buyoff didn't go to the bottom. They didn't go to a private, a sergeant who could avoid a marijuana field; they went to the top of the operation. So the point is, this is a system of opportunities, and the idea that having a government in control of our ports which has demonstrated that it will allow components for nuclear weapons to be transshipped, in fact, really the operation that they have in Dubai I think could be best described as a genius for masking the transshipment of illicit goods. That is their trademark. That is how they make their money. And the idea that that is irrelevant to the operation of the port to me is not a sensible judgment.

Mr. Gaffney.

Mr. GAFFNEY. Mr. Chairman, I think that James is right; you don't have to own the company. But I think what we are wrestling with here, does it help or does it at least help somebody who wants to exploit the fact that the company is not in U.S. control. Just so we are clear about this, I have exactly the same concerns about having communist China having this kind of control as I do about the United Arab Emirates. I think the track record is probably every bit as deplorable if you ask about what China has been allowing to move through.

The CHAIRMAN. So would you agree with a new law that states that critical infrastructure that is identified by the Department of Defense and the Department of Homeland Security as critical infrastructure should be owned by Americans?

Mr. GAFFNEY. That is my personal view, Mr. Chairman. I haven't a clue what the full implications of that are. But I will tell you, it does seem to me that the power that you are hearing in terms of the vocalized outrage of your constituents is practically none of them are aware that that isn't the case today. It is like Congressman Weldon and so many of you have been working on missile defense all these years. It was always the case the public thought we had one. This is the same sort of thing. It has been an epiphany, and I agree with my colleagues that it is very salutary that we are having this debate. I tend to agree that is where this debate should take us, but we are going to need to follow this debate through

starting with, I hope, minimizing further damage with this relationship with the UAE.

Going to your point, Mr. Chairman, there is no question, and I think it trumped all further considerations in the final analysis, there are things the United Arab Emirates are doing we are probably not all privy to but nonetheless that are very helpful in this war for the free world. It is just that they are doing things, and they are certainly capable of doing things or people are able to do things from their territory that could be very dangerous to this country.

The CHAIRMAN. I thank the gentleman.

The gentleman from South Carolina, Mr. Spratt.

Mr. SPRATT. Thank you all for your excellent testimony. Let me cut straight to the chase. CFIUS, we had Secretary England before the Budget Committee yesterday, and I asked him what national security concerns were raised in the review process. He freely couldn't cite any. He basically said these were homeland security and not national security concerns.

I learned from reading the committee memo that the person in DOD who made this review is a Deputy Assistant Secretary for Defense, Technology and Security Administration, and we have an Assistant Secretary of DOD for Homeland Defense, but he was not consulted on the DP issue. Is it the opinion of your panel, all three of you, that CFIUS simply did not exercise due diligence to start with?

Mr. GAFFNEY. That is my view. I think the point—it is very helpful that you have been able to extract from the system who did participate because, as you know, nominally it is supposed to be at the level of Cabinet officers. As I said in my testimony, they weren't read into it. The President didn't know anything about this. You are talking about Deputy Assistant Secretaries. It may even be there are career people who do this thing day in and day out, and it is no knock on them. But clearly there are aspects to this that transcend the perspective that somebody who may be an office director or at best a Deputy Assistant Secretary is going to have. And unfortunately, the process chronically sort of defaults to this kind of setting, especially when, as no fault of this committee, but your counterpart on the other side is responsible, I think, in some small measure for this. There are so many vacancies in senior level positions where I think this sort of broader perspective would properly reside and be brought to bear.

Mr. SPRATT. I hate to cut you off.

Mr. Flynn.

Mr. FLYNN. I have not had access because of the lack of transparency to know whether there was an adequate review or not. I think it is worth asking the questions. I can say, the maritime transportation community is a pretty small world, and most people know each other by reputation. The DP World Company, the senior executives in that company are very well regarded international players in the shipping community. Many of them are Americans. The top nine managers of DP World, there is only one United Arab Emirates member and——

Mr. SPRATT. Are you suggesting it didn't get the depth of analysis it warranted?

Mr. FLYNN. Seems clear it has not; otherwise, we wouldn't be where we are—here—today. There is no question that something as critical as this deserves full scrutiny. The law for CFIUS was written in 1988. The thinking was not geared toward the kind of world we are in.

Dr. CARAFANO. I don't think the CFIUS process gets to the national maritime security interests in the maritime domain. The CFIUS process looks at ownership. And what Steve and I have argued is that ownership does nothing for you. Only security provides security, and it is a global network, and most of it is foreign-owned. So just verifying ownership doesn't address security issues and threats.

Mr. SPRATT. What we see here is typical of immigration, other customs issues. I have followed this for years. I can tell you story after story of containers that weren't opened. I see here, I believe it is Dr. Flynn's testimony, that for all of the 58,000 exporters, shippers to be monitored, the Coast Guard has 80 inspectors.

Mr. FLYNN. The Coast Guard has 20 inspectors to verify all ports around the world are compliant with the International Ship Port Facilities Bill. The good news, Customs has four times as many to take on the CT path. By the way, there are over 11,000 companies in queue to get into that program. There is not staffing to do that job.

Mr. SPRATT. What would it take in your estimation?

Mr. FLYNN. One is, we should be moving to third party audits, and then you audit the auditors. We are talking about having to send Customs agents around the world; that is complicated. Just as in the maritime area, we often use professional classification societies like American Bureau of Shipping to check to see if things are compliant, and the Coast Guard oversees that.

You have got to insist not purely voluntary and hope for the best. If you said, as a company, you are securing your supply chain, show us, have the certification for that and then we spot check it. No question we are talking about five-fold. We should be talking an office about 500 people for oversight for a program as complex as this one.

Mr. SPRATT. One final question, are you testifying, all of you, that the technology is there for far greater if not much better surveillance than we have got now that could be done in foreign ports? It will require a big commitment, but nevertheless, we could do this with much greater security than we are now achieving.

Mr. FLYNN. It is there, sir, and the global operators would be willing to put it in. They can get a cost recovery system through a fee; we don't have to pay for it if we have a system of how to use it. The problem is the Department of Homeland Security can't figure out how to integrate its operations. So we can go to 100 percent screening, non-intrusive, at loading ports with the cooperation of the terminals. We don't have to rely on a five percent, hope for the best intelligence-driven system when we all know our intelligence apparatus is broken. How is it Customs has gotten so good in the intelligence arena that it can spot 100 percent of the right 5 percent when we can't find the weapons of mass destruction and other problems we found out, which is a real problem with our intelligence community? You need to go to 100 percent.

Dr. CARAFANO. I am less optimistic that there is a simple technological fix, that you can make a solid business case that will do this. I think screening is a nice measure, but you don't rely on screening to save your life. I think if we are relying on the people screening people on planes, then we are all going to die. Screening is good, but any screening system can be defeated. Steve's scenario is great, and the fact is, with all the technology in the world, a smart terrorist, smart smuggler can find a way around that. One guy can find a $5 solution on a multibillion dollar system and kill you.

I think it is a question of where you put the balance of your investments. I think you put them, your investments, on the offensive capabilities. That is why I agree the Coast Guard is an enormous investment, grossly underfunded; kids running around in ships that are eligible for Social Security. They have missions that span the entire maritime domain. Not just the auditing issue but also on the proliferation security initiative, maritime domain, which looks in the commercial and noncommercial system, and we have grossly underfunded them. So if you have got a couple million dollars to throw at something, throw it at the Coast Guard first.

I would agree with Steve, if there is a global business case for a technological security solution that somebody can produce, then that is fine; I would accept that. I am a little skeptical that it is out there.

Mr. FLYNN. It is right now in Hong Kong. It is not perfect in lots of ways, but one of the things it does, it gives you a forensic capability. Just like those closed circuit TV's in London didn't stop the attack but allowed us to pull back and find who the operators are. As we build greater visibility, we raise the deterrent level. It could take them 2 to 3 years to acquire a weapon of mass destruction. You put it in the system where everything is being screened, and if you find out the problem, you can isolate where the problem came from so you don't have a wholesale shut down of the system. It is not just technology; it is layers of security. We don't have to rely solely on trying to find all the bad guys and leaving the system wide open.

Mr. GAFFNEY. Mr. Spratt, I think technology is part of the answer. It is like a fence along our southern border. Seems to me that is part of the answer to the immigration problem, too. But you have to appreciate that you are up against determined adversaries. They are going to try to end run it, find new openings and opportunities, and it is one of the reasons why I come down differently than my colleagues by saying, shut down other opportunities where you see them possibly being opened up, including the case of this port acquisition.

Mr. SPRATT. Can't this be paid for by levying fees. There are huge flows of commerce. Can't small fees produce substantial funds to buy much better technology?

Mr. FLYNN. The pilot in Hong Kong will come in at $6 to $8 a container. We can move a 40-foot container with up to 32 tons of material from Asia to the West Coast about average rates, $1,850, which makes a postage stamp seem a little overpriced. They carry about $66,000 dollars of retail goods on average for Target and Wal-Mart. You are not going to see that. Those rates go up and

down based upon availability. You want to layer it throughout the system. I want it in Singapore, Jakarta, so I can spot things along the way. They need to put the system in place, the terminal operator, if they do it altogether and come up with a common fee structure and make the data accessible to Customs agents, not just us but to the British. There are export control issues.

So there is a lot of promise here without solely relying on a system either focused on ownership or hoping and praying our intelligence is so good we can narrow down the universe and check the right thing.

Dr. CARAFANO. I am skeptical. This to me is the TSA solution. We spent $6 billion a year on a system which was defeated by $20 dollars worth of razor blades. The global security screening solution, I think, there may be a business case for some measures, and I am all for that. And I agree with Steve, the global movers of systems have a vested interest in making sure that this system keeps going. They realize if there is a 9/11 in the maritime domain, the consequences will be as catastrophic as Steve says.

I talked to all the people in Homeland Security, and they say we are not going to shut down the ports, just the affected ones, and we all know what is really going to happen, on the day of the Katrina-style port act, they are going to shut down all the ports, and we are going to have consequences that are global. But the notion that this is going to prevent that, I am just very, very skeptical. The business community can do some things because they have a vested interest in preventing that, but I don't think the TSA solution of, let's just screen everything and rely on technology, is going to get us there.

Mr. SPRATT. Thank you, Mr. Chairman.

The CHAIRMAN. The gentleman from Pennsylvania, Mr. Weldon.

Mr. WELDON. Thank you all for your testimony. The tragedy of this situation is not just the fact that we have to look at the substance, and we will raise them in other parts of the hearing with the Administration, but it is the damage that we have done in our relationship with a country that seems to be becoming our ally. This reminds me of the Clinton administration when President Clinton told the leadership of the mainland in Beijing that they would not allow a visa to be provided to President Lee Teng-hui of Taiwan to go back to his alma mater to speak. The Congress found out the next day because the White House didn't talk to the Congress, and the Congress was livid. And so in a bipartisan manner, we overruled the President. That so embarrassed the Chinese administration. They thought we deliberately embarrassed them. So they started lobbing missiles across the Straits of Taiwan.

What did President Clinton have to do? He sent a carrier battle group in the Straits of Taiwan that almost caused a war between China and the U.S. over the administration not talking to Congress. That is what is happening in this case.

What absolutely offends me the most is this White House had to know that there would be significant concerns raised by the American people and the Congress. Now maybe they would have been dealt within a structured process that we would have felt was okay, but they didn't give us that opportunity. Now they are telling us well, if you object, you are going to hurt our relationship with the

Emirates. Too bad. Where were you? Why didn't you bring the leadership of the Congress in? Why didn't you ask for us to understand what was being proposed? That unfortunately is a dilemma we now find ourselves in.

So we are damned either way in this case. Whatever we do, we are going to cause problems and concerns. Many say we are just posturing. We are not posturing. I come from Philadelphia. I walked those ports. I would have liked to have had some inclination that a pending deal was on the horizon that was being talked about for months within the process of the agency, the Administration, but that wasn't done. In fact, none of the people at the Tioga Terminal that will be taken over by this process were even consulted. They didn't have a clue. And all of a sudden, through the media, this is sprung upon us.

What do they expect we and the American people to do? It is a tragedy that should have been avoided. It wasn't, and now we are left to try in the best way possible to understand what are the threats, and I won't pose some very specific questions that I have relative to al Qaeda's involvement in a very direct way with the Emirates. I will talk about a camp that mysteriously disappeared because the Emirates government tipped off the al Qaeda leaders when we were about to strike it a week before that camp was attacked.

I will bring up an internal document from West Point and their terrorism efforts up there of a document that al Qaeda sent to the Emirates saying we have infiltrated your security, your censorship, along with other agencies that should not be mentioned. This is al Qaeda talking to the Emirates. This is an official document of al Qaeda.

I want to know whether or not that has all been considered. I have no idea whether this process went through that. What really bothers me by the Administration is also their interpretation of the Exon-Florio language as amended.

So the question I have for each of you is whether or not you agree with the Administration in their interpretation of the Byrd amendment, which is contradictory to how Byrd interprets his own amendment, when they say that even in the case where the two conditions of the Byrd amendment are met, the committee may determine that the 40-day investigation is not required.

I am of the feeling, as a Member of Congress who worked on this language, that it is required, but the Administration has seen fit to interpret it that it is not required.

So I would ask you all to respond to that, and also, Mr. Chairman, I would like to ask these witnesses if they think that there needs to be a role for selected leadership of the Congress to play. There is no role in that process today. Maybe there needs to be, either through the Intelligence Committee or the leadership of the Congress, a very elite group of members of both parties who are at least made aware of what the CFIUS process is considering when it comes to foreign investment.

Mr. GAFFNEY. I think, like you, the commonsense interpretation of this language suggests that the trigger should have kicked in. It is just one of the things that is broken with the CFIUS process,

maybe not even the most important but certainly one of the things that I think you need to revisit as you think about reforming it.

I guess my feeling about it is, members of this committee, members of the leadership, members of the Intelligence Committee, for that matter the entire Congress, will be saddled with the consequences of a defective process. It is incumbent upon you I think, in the old adage, to be in on the take-off if they want you in on the landing. There are concerns—and I understand they are legitimate—about undue political influence, the compromising of proprietary information and so on, but I think what we can take away from this fiasco, and it is a fiasco for the reasons you mentioned, is the need to try to improve it so that it doesn't happen again.

I believe people of good will on both sides of the aisle, on both sides of the Hill are going to be able to find ways to ensure that there is oversight in an appropriate way and there is a degree of transparency that is incumbent upon the need for audit supervision that this system clearly cries out for.

Mr. FLYNN. I am not a constitutional lawyer, but what I have heard from port communities, with which I can empathize, is the Federal Government can't have it both ways. The fact is that it has been to the charge of States and localities to provide for the security of their ports, working through the private sectors, and they are to split the bill. The Administration didn't ask for any port security funds until 2004 despite three budgets going by because they said quite clearly these fall in your jurisdictions; you are responsible for security.

I can appreciate there is legitimate frustration at the local level when decisions about who their tenants are going to be, that that would lead to significant aggravation which they are likely to express to their members. There is little question as we evolve to a point in recognizing this new adversary is increasingly focused on disrupting economic targets, that the old matrix that was used in the CFIUS process is not going to apply. It is a more all-encompassing, more civil, and I think it is going to, by necessity, need to involve a broader engagement. The more we engage our civil society, and through our elected representatives, what is critical and where resources need to be applied, the more likely we will make those investments. When everybody is ignorant, we don't make investments; we think it is all honky-dory. This process, if there is any positive thing, has focused the Nation's attention on the gross vulnerabilities of a critical infrastructure that supports our way of life, and I hope the opportunity, while I can certainly understand the frustration here, that we move from that to saying let's really fix for the American people what we know—well-documented—is well broken.

Dr. CARAFANO. I sympathize with your remarks, and until the Congress has an opportunity to get through all the facts of how this process was executed, I think I would reserve judgment. I do think it is self-evident the process needs to be revised so these kinds of fiascos don't happen.

I do believe one message I want to be crystal clear on, that is dispelling any notion that revising and reforming the process will address the kinds of maritime concerns that Steve and I raised today. And while I am thrilled along with Steve, I see this as an

enormous opportunity to get Americans excited about something they ought to be excited about because a third of their economy is dependent that this global system work, but I would hate to have Americans walk away to think, because Congress devised this process, we are safer at sea, because that simply won't be true.

Mr. WELDON. How about a simple response to the interpretation of the Byrd amendment which required a mandatory 45-day review? Do you believe that they had the power to ignore that?

Dr. CARAFANO. Without having seen all the facts of how the process was executed that I think will only be available after the Congress has an opportunity to gain those facts, I really don't feel qualified to answer that.

The CHAIRMAN. I thank the gentleman.

Let me ask my colleagues something. We have got two more panels to go, and I know there are no more votes today, and I know people are going to have planes to catch. Let me ask my colleagues who haven't had a chance to ask a question yet if you would be willing to forego a question on this panel to move to the next panel which includes Dubai ownership representatives and pick up immediately where we took off. Everybody who would like—thinks that is okay, could you raise your hand if you want me to do that?

I think—Dr. Snyder, if—Mr. Taylor, would you be willing to do that if we end with Dr. Snyder? Okay. I tell you what we will do, let's do Dr. Snyder, Mr. Larsen, Mr. Taylor, and move to the next panel—and Mr. Turner.

The gentleman from Arkansas, Dr. Snyder.

Dr. SNYDER. I think this panel is really, really important because you are the forest-for-the-trees guys. The next two panels we are going to get focused on one contract, and I am afraid if we leave you alone, we are going to miss a point.

Mr. Flynn, you are not a Johnny-come-lately to this event. I would like, Mr. Chairman, if I might, to put in the record an article that Mr. Steven Flynn wrote in November, December 2000, that was in Foreign Affairs Magazine called, "Beyond Border Control," in which you discuss this issue.

[The information referred to can be found in the Appendix on page 183.]

Dr. SNYDER. You specifically talk about what you referred to as your hope it is not going to be a future Tom Clancy novel scenario, in which you gave an example of something unfortunately came to in a different way when we had the September 11th but that was written obviously a year before September 11th. I don't know if you recall, but in October of 2000, you came to my office and met, and I don't know if it had anything to do with it, Dr. Carafano, but somebody from Heritage came by and said, we want to get to know you. I said, if you want to do something, have business get involved with security, go talk to Steve Flynn. Maybe they hired you after that.

About port security, let me get into some of my points. One concern that I have with the approach that the Chairman and Mr. Gaffney are taking, if you, in Mr. Gaffney's words, if we go along with this current contract, it will possibly open another risk. Once you accept that principle, seems to me you don't have any basis for allowing any ship to come in from any Arab nation. How do you

draw the line when you are talking about a small package? Can you let any ship come in that has any crew members on it that could ever go off the ship? Where do you draw the line if you start saying, in your words, Dr. Carafano, that ownership is the key rather than security? That is one of the concerns I have with the direction we are going with some of this legislation.

Mr. Flynn, in your article, you talk about, your words, grossly underfunded port security. I am glad to hear that, grossly underfunded; something that we think is key to an ugly scenario that could occur. You talked about the fact that we only have token police presence in our ports, your words, token police presence, again, probably a question of resources. You talk about the disorganized nature of the U.S. Government response in our ports.

We have a lot of work to do. Well, it comes down to priorities and how we spend our money. In the view of a lot of us, we have not done our priorities correctly in this Congress and in this Government in terms of how we spend money, and we get down to discussions of, who gets tax cuts versus who doesn't, and how do you spend money?

I hope that you all are sending a strong signal in the work you have been trying to do, Mr. Flynn, that we have tremendous work to do. As I understand, one option, going back to Mr. Weldon and how are we going to find something good to come out of this, there is a scenario out there that if this company makes it through this process, that they have stated that they are willing to negotiate to do enhanced security measures. I think you suggested, Mr. Flynn, that the Hong Kong model perhaps could be adopted by this company, and you would have a much broader study. Is that a fair description?

Mr. FLYNN. It is. I think that you will see a commitment by the players that join in that, so with these four companies, you would account for eight out of every ten containers coming into the United States. What you would be able to find is big dense objects. That is what we are really worried about. Once we put in a process of cost recovery and private players in it, you can upgrade; it, the new technologies come along, but the critical movement is move from a database analysis of what risk is, is something going on in the physical movement of the supply chain to validate low risk is low risk, and have processes in place to manage it. That doesn't exist today. We are in a situation analogous like airplanes never had black boxes in them, so when they fell out of the sky in the aviation industry, the Government said, well, happens one in a million times. We need better tools to know where the problem happened, where the breach has happened, so we can manage these incidents without losing not only the whole industry but the critical underpinnings that go with that.

Dr. SNYDER. I think another theme of your article is, I know I talk to my constituents back home, they want me to build a wall at the Port of New York. What you all are saying is the places to start looking are the trucks driving into the loading points in countries all over the world. We don't think like that. We still want to put up a wall. But if we put a wall, we haven't done ourselves any good. I hope that is another thing that comes out of your presence today, is we have got to start thinking about what is going on at

the point that containers are packed and sealed and transported and loaded onto the ships. That is the crucial point in all this. Obviously, the unloading is a part of it, but we don't think that way. We still think we can put up this tremendous barrier.

Mr. FLYNN. As a practical matter, we have been deploying radiation portals at the exit gate of our marine terminals in the United States, and they have real limitations in terms of technology. The box is in the yard for 2 or 3 days, so if I wanted to set it off remotely and take out the port infrastructure, I could. So we want to get it before it gets loaded, before it is in the ship. We are going to have to do it with the cooperation of foreign private companies and our trade partners in the busiest places of the world. So I think we have to be careful in trying to close one potential loophole down, and there are potential loopholes. I would rather work from a security perspective with U.S. companies, with U.S.-owned infrastructures. I like that because I have law on my side and some assumptions of patriotism. But in the global world, we are in, given it is not that way, that is all the more reason to not have no minimum standards and no oversight but go in the other direction. We can't own all this global transportation infrastructure. We don't have the resources nor the willingness. But we do have the leverage of our market to get folks to raise the bar in the oversight process. We have a long ways to go, and this presents an opportunity to go in that direction.

Dr. CARAFANO. He made a great point. In the 21st Century, nationality and geography don't guarantee you security. Only security guarantees security. I don't object to some of his solution, but the easiest way to smuggle something into the United States is to drive it across the Mexican border or put it on a noncommercial ship and land between a port. If some terrorist has something valuable he wants to get inside the United States, he is most likely to choose those venues which are cheaper and probably a lot safer than putting something on a container and getting it out of his control. And I think this is the criteria. If there is a business case for adding on a security measure, and I think that would be pretty apparent, then I think that is great because it is value added in lots of way, in terms of inventory, security against terrorism, security against theft. So if there is a business case for security measures, I think that is great, and I am all for it.

But let us not—that ain't going to buy security from the terrorists. The best thing for security from the terrorists is going out and getting the terrorists.

Mr. FLYNN. There is a key point. We push it out so it is coming across the border, but we don't shut down the trade system. So identifying what part of these networks are most critical in finding safeguards is not a bad thing.

Mr. GAFFNEY. That wasn't a rhetorical question to me, Congressman. I would like to address it quickly. I would argue that where you draw the line or think about drawing the line is what you do after an attack. Because my colleagues may be right that this is a very serious likelihood of somebody penetrating our ports and blowing them up. You have got a two-fer in most parts because not only a critical part of our economic infrastructure but a lot of population which surrounds it.

The other part of this is, of course, you are going, I think, to find us throwing money at this problem after it happens, much as we have done about airports. I am simply saying, I don't think we have got all the money in the world to do all the things we want to do, so the sorts of suggestions we have made, there seems to be triage, applying sensible precautionary measures overseas and at home to try to make this particular avenue of attack harder for people who we know are trying to hurt us.

The CHAIRMAN. I thank the gentleman.

The gentleman from New Jersey, Mr. Saxton.

Mr. SAXTON. I would like to yield my time to Mr. Turner from Ohio.

Mr. TURNER. Thank you, Mr. Chairman.

Thank you, Mr. Saxton.

I appreciate you yielding time to me, and also, I appreciate your opening comments concerning the restriction of foreign investment and foreign ownership of assets in the United Arab Emirates.

In your discussion, as you were talking about this, seems we have several different issues: We have the issue of security, and security can be both, what are we doing to protect ourselves at the port, and can we also then include the issue of, who owns them, who are they, what do they do there and how are they implementing security procedures? Issues of trust which we hear that also dissolve into the issues of relationship.

When you go to the issue of relationships and ascertaining security and trust, you go to the issue of fairness and wanting a relationship with someone who has a relationship with you and not wanting to offend and wanting to strengthen partnerships in the future.

One of the things I find interesting in the issue of the concept of fairness is that I asked my staff to pull information on the ownership interests, the foreign investment rules of the United Arab Emirates because I think that goes to a basic interest of fairness because I believe that we should not allow someone to buy something here that they won't let us buy it there.

What Chairman Saxton listed were the ownership rules published in our National Trade Estimate Report on Foreign Trade Barriers by the United States Trade Representative which clearly lay out that not only could we not buy ports in UAE or American citizens not buy the ports in UAE, but we couldn't even own McDonald's. In fact, the McDonald's in UAE on its website proudly exclaims UAE-owned, operated and proud to serve you. It says: In the Arab nations, all McDonald's Restaurants are locally owned and operated by Arab entrepreneurs.

When you look at these rules that require that if you are going to have an ownership interest, if you are a foreigner and have an ownership interest, an investment in the country of UAE, except for some minor exceptions, it requires that that asset, business enterprise, et cetera, be owned 51 percent by someone from the UAE, which means that if we were to apply their rules to their purchase of our ports, it wouldn't be happening. I have a bill that I am working on in conjunction with Mr. Hunter's bill on critical infrastructure that would require that especially government-owned entities, when they go to purchase and invest in things in our country,

would be held to the same standards of their rules. We are not just talking about a UAE citizen or business entity, we are talking about the UAE government interest attempting to make an investment in a country where their own rules, the government's rules, prohibit it.

I would like, if you would, to talk for a moment about that issue, because it seems that goes to the issue of fairness, an element that should be considered. It certainly distinguishes some countries from other countries. If we can't invest in their country in the manner in which they want to invest here, perhaps we should reconsider it.

Dr. Carafano.

Dr. CARAFANO. I think that is a fine debate for the Congress to have. If you want to debate our strategic interests in the UAE and our future trade and economic and foreign policy relationships, it is a great debate. It should be separate from the security debate because I don't think they are intertwined.

I will just say this on the economic issue. Fundamentally, what you have here, not just with Dubai Ports World but all the foreign-owned maritime assets, you have foreign-owned companies coming in and investing in dilapidated infrastructure in the United States, hiring our citizens, increasing employment in the United States and building one of the marvels of the world, which is one of the fastest global maritime networks which makes imports cheaper because they move faster and makes our ability to expert things more competitive.

Mr. FLYNN. There is a lot of irony because the Port of Dubai was built by an American company and run by Americans for the first 10 years. They had a heavy military troop put on there. Sort of the nature and complexity of globalization, but I merely need to accentuate his point here about the investment. The most foreign-owned port in this country, in terms of leases, is the port of Los Angeles, which is about 90 percent. It happened because when you turned to the citizens of the City of Los Angeles and said, are you ready to put in a $50 billion bond to upgrade your waterfront so you can be a gateway to Asia, the answer was, I would rather put it in schools, roads, other things. So the option here for those folks were, okay, we won't have a gateway to Asia or we find somebody to bring capital to do that. To make that happen, you have to give them a 30-year lease. They dredge the channel, put the cranes in and make that possible for us to trade.

So we are playing a bit with fire here. We would have to find the capital ourselves. Today, in China, a new port of New York and New Jersey is being built every year. And we are building virtually no new capacity. Trade is supposed to double in the next 15 years in terms of container traffic. Where is it going to go? Maybe through Canada or Mexico. That might be where we end up going with this.

We need the infrastructure. What all this leads me to is, because it is private owned, we better have a damn high security bar and promoting it internationally to get us to a point where the critical system is secure. The ownership issue is certainly one that is worthy in the policy and leveraging this with the UAE as a foreign policy point is there, but if we are really focused, we should be using

what we have got, the best security thinking about getting to where we want to go.

Mr. GAFFNEY. Mr. Turner, I think the question is sufficiently important that I mentioned it earlier and complimented Congressman Saxton for raising it. I think it is a fundamental equity issue that we ought to have part of this larger debate, but I would just ask one other thing related to financing. I am bemused, to be honest with you, how CFIUS could have concluded its judgment about the national security implications of this deal when its deliberations were completed before the international financing of it was even started; $6.5 billion of this $6.8 billion deal had been raised on international capital markets. How that exactly works in with the ownership limitations, I don't know, but I don't think CFIUS knows either.

I would ask a classical question, follow the money: Have there been undertakings made that might give rise to still other questions here about ownership, about the rights that attend investment that bear upon questions like the ones you are asking but also questions like the ones I am asking? What about the security of these facilities? Could they be compromised if the security plans, for example, have to be shared with owners whose identity wasn't known, let alone disclosed before the CFIUS, first CFIUS process completed to the satisfaction of the executive branch?

So I would encourage this to be part of the debate. I think the questions, as we have all talked about here, actually introduce a very far-reaching and perhaps possible debate in this country about whether we are comfortable with the level of globalization and what it has translated into in terms of lack of control and foreign presence in even critical infrastructure. But I think that is the debate we have got to be having, too, in addition to resolving the question of this particular deal.

The CHAIRMAN. I thank the gentleman.

The gentleman from Washington, Mr. Larsen.

Mr. LARSEN. Thank you, Mr. Chairman.

I think what I am hearing in some respect today on the security side is that our currently layered approach to port security and supply-chain security is full of holes and gaps, and that security at our ports ought to be frankly as thick as flies at a picnic on a hot day, and what we have is a picnic and very few flies when it comes to security. I am talking about the ports in Washington State, a large focus ought to be on the port security and the supply chain security. I will give you some examples: GAO found less than 13 percent of our CT patent checks have actually been performed. They found, due to staffing imbalances within the Container Security Initiative of foreign seaports 35 percent of the high-risk containers are not even inspected overseas.

So there are definite gaps, and I guess the headline here is inadequate; we have inadequate funding to assure adequate screening. As an example, the American Association of Port Authorities requested, their members requested, $3.7 billion in port security money from 2002 to 2005; $708 million was granted, leaving a gap of about $3 billion. I am not going to argue every $3 billion was necessary, but it is an 81 percent difference, and surely the funding

is not there for port security or supply chain security for containers coming into the country.

Mr. Flynn, I want to ask you a question. I went to Hong Kong International Terminals (HIT) in January and talked with the general manager, who is an American, a Washingtonian, in fact from Washington State, managing the HIT Terminal there in Hong Kong, about their pilot project. It is basically three steps: Check to be sure it is the right container; has got the right stuff in it; and there is no rad stuff, no radiation stuff in it. Basically those three steps.

It is a pilot program. And in your writings, you have talked about perhaps Dubai Ports World adopting this program. You have also talked about the GreenLane maritime security act and what that put forward. Can you talk about the GreenLane act a little bit for this committee to help us understand the kind of actions that perhaps separate from talking about the CFIUS process, what we can do on the maritime security side of things to move the ball forward here?

Mr. FLYNN. I think the biggest thing is the market needs incentives for moving ahead, and they have to have confidence there is buy-in by all of the players, that what they invest in is going to be used in an appropriate way for security. What stalled out the investment of moving further on the Hutchinson Project is, legitimately talking with the group manager and director, he said why would I put in place a system that would cost me a half a billion dollars if Congress after the next incident is going to change the rules and tell me I need a different system? I need to buy in upfront; then I will make the investment, and the other players are likely to go along.

The first thing is to have DHS respond to the initiative and say, this is how we could use it, and for Congress to say, this is a good step forward. We are not going to change the rules overall.

Mr. LARSEN. When we see DHS in a few hours, we should push this issue on them.

Mr. FLYNN. They are evaluating it now. A little slow to the take, but they are evaluating it, and I am very pleased the Deputy Secretary of Homeland Security is very much focused on getting an assessment here, and Jay Ahern, the field operations assistant commissioner, has been very engaged. So we are getting some positive movement here.

The other is the importers want a level playing field. For most main players, it is nothing different than before 9/11, so it is hard to dangle a carrot when there is not much more capability or stick out there. So we need to make sure Customs is whole. If we move forward with this, we need Customs capacity. They don't want to be embarrassed to have a brand new capability, and they can't integrate a response. We have to create incentives for customers, and I think that is the essence of the legislation. And I know there are other ways we can talk about how to continue to improve it, but I hope it is about seizing opportunities here. We have got this in our crosshairs; this is a vulnerable system. What we should look for is the capacity at the Federal level and what the private sector can do and recognize it is going to be a global effort to get us where we need to go.

Mr. CARAFANO. I would just say I think I agree with everything Steve just said. I will say I don't know if it is inadequate funding on the part of the Federal Government. I will say it is incredibly wrongheaded funding. We have thrown money at the things that have the loudest and strongest stakeholders and not at the things that are most important.

So we grossly underfunded the Coast Guard. We haven't funded the chemical biological defense (CBD) infrastructure and human capital to make CSI and C–TPAT programs really effective. On the other hand, we have thrown millions and millions and millions of dollars in port security grants which by and large I don't think are the best bang for the security buck. If you look at the Department of Homeland Security Inspector General (DHS–IG) report on some of the things, even at the end of the day, okay, you would find is not a really big help in terms of making the domain safer. We need to spend money on the things that make the domain safer.

Some of the initiatives Steve mentioned, absolutely, that is fine; Coast Guard, absolutely, that is fine; having the DHS people do its job. But just giving out money to people to be cool, that is not helping.

Mr. LARSEN. Thank you.

I just want to make a final point on the Container Security Initiative. As an example, if we don't fund the CSI, which is the Container Security Initiative, which is our worst nightmare, that we will have another CSI, that is crime scene investigations of the worst kind at all our ports. So we really need to step forward on all these issues by CSI and C–TPAT and make these work.

The CHAIRMAN. I thank the gentleman.

And the gentleman from New Jersey, Mr. LoBiondo.

Mr. LOBIONDO. Thank you, Mr. Chairman.

I really want to thank our panelists here today.

I have a couple of comments at the end, but, first, Dr. Carafano, I know how you feel about port security grants. But, Mr. Flynn and Mr. Gaffney, how do you feel about port security grants?

Mr. FLYNN. I think clearly there needs to be a debate here when you have some real equity issues. Particularly I will speak to L.A. Long Beach but certainly also Port Newark or Port Elizabeth. L.A. Long Beach brings in about 40 percent of all the containers that come into the country. Asking Los Angeles County property tax owners to be responsible for the physical security and access control and so forth seems to be legitimate equity issues.

The other challenges here are that, in the absence of national standards, when a port sets a higher bar they have to take out all their capital investment fund or try to pass it of off to the lessees, which raises the costs, which pushes the business to another port.

So one of the problems here is we have not agreed upon minimal national standards, and then we haven't really had the conversation of who should ante up what. We essentially have gone through an approach that says, states and locals, you know best. Well, the State of Maryland knows that putting up cardboard boxes as a closed circuit TV as a deterrent may work for a 13-year-old, but it is unlikely to be a good counterterrorism device.

So they are in a dilemma. Do they use their capital improvement in order to keep pace with Norfolk or do they hoist the cost on?

We need to set national standards, and we need to have a conversation about who pays. And we shouldn't do by just by, well, you guys come up with it and compete and some decision is made. People, frankly, at DHS don't know much about ports making decisions. Well, this sounds kind of cool. That is not a way to do things, and that is how we have been doing it.

Mr. GAFFNEY. Congressman, I don't have a whole lot to add to that, though it does seem to me this is part of a larger problem we have been talking about this afternoon and really for the past two weeks; and that is, oh, my gosh, you mean the ports aren't secure? And you are seeing people suddenly, I think, focusing on the kind of constructive attention that is needed, whether it is in terms of national standards or in terms of new technologies, whether it is in terms of the overseas component being kicked up to a higher priority, whether it is better fences, whether it is better surveillance, whether it is whatever.

It seems to me that this is really the moment now, for all of you, in particular to capitalize on this intense energy and engage the public in the sort of debate, as I said in response to Congressman Snyder, that you will be having after an attack, except before attack, and maybe thereby prevent it from happening.

I think this is the way to address this, as a matter of that kind of opportunity and urgency; and whether it is local grants or whether it is going to be a national standard, I don't—I am sure there is something to be said for both, but there is a moment here where we still have, I believe, the opportunity to do it better than we have been doing it. I hope that the upside of the trauma that we have clearly created with the debate about the UAE ports is going to catalyze that kind of constructive outcome.

Dr. CARAFANO. I don't want to be on the record for arguing that it is zero money for port security, because that is not what I am saying. I think that there should be a Federal port security program. Because there is a captain of the port. He comes to the table. He is trying to get people in this port to cooperate. He has to have some carrot to come to bring to the table to facilitate cooperation. So I think there should be some port grant security money.

I do think it should be targeted on the most critical avenues to keeping the maritime security system robust. So I think I would be spending a lot more money in places like L.A. and New Jersey and Long Beach than I would in small ports in some other States.

And the third thing which I think—Steve's point is absolutely essential. What we need most of all is a predictable business case. Because I talk to people, and they say, well, we are not going to do anything because we will wait until next year because maybe there will be some port security money. What I found is that for most of these guys if there is something that really needs to be done in a port and it is a real vulnerability, they are not sitting around waiting for the Federal Government to pay for it; and the other stuff is, let's sit around and see if we get something.

So whatever we do, we need to have a national program that allows—because these guys are making 30-year infrastructure investments where they can credibly see what the Federal Government is going to kick in and what it is going to kick it in for and what they can do, so they can make sound business decisions.

Mr. LOBIONDO. Thank you, Mr. Chairman.

What we are hearing today is really good information, but the Coast Guard Committee has been talking about these things. Mr. Flynn came before us. We have had testimony from everybody. Office of Management and Budget (OMB) acts like they are our enemy when it comes to funding the Coast Guard. We fight with Appropriations on Operation Deep Water when we have got cutters that are disabled every day and aircraft that can't fly. This Congress will not put its money where its mouth is about port security.

Gene Taylor and a number of members have joined with us to do something. We have spent $25 billion on the aviation side, with less than a billion dollars on the port side; and with the current funding structure that is proposed, it will take us more than 60 years to make that up, to get to the minimum that DHS and Coast Guard has recommended of $7 billion dollars. What is really disheartening is if this attack takes place you will see that money appropriated tomorrow, after how many lives are lost and how much destruction is wreaked and how much of the global economy is wrecked. What do we have to do to get the attention, to get some action?

So our panelist is spot on. I thank you.

I hope somehow, Mr. Chairman, you will join other members of this committee that have the power of persuasion, because, obviously, we have not found the right combination to get the word out that the Coast Guard is terribly underfunded; and if we can fund them, we can fund port security. Thank you.

The CHAIRMAN. I thank the gentleman, and I thank him for his leadership in this important area.

I would just say that, in my view, we should and we could have 100 percent cargo scan. I think it is achievable, and I think one way to achieve is it is to charge the guys that are bringing the stuff in. I know that is an anathema to the commercial free trade community, but that makes sense, and user pays is a fairly accepted custom.

I agree with the gentleman that we have got to increase that capability. So let's work together and try to get it done.

We have got one more. Mr. Taylor had a question of this panel. We are going to go to Mr. Taylor. Then we are going to go to the next panel, and we will take up with people that haven't had a chance for a question with the next panel.

Gentleman from Mississippi.

Mr. TAYLOR. I would like to thank you gentlemen for being here. I think all of you raised a valid point. Mr. Gaffney, I am with you.

I deeply regret to say I think it is going to take a 9/11 type maritime industry based disaster for our country to do what we should be doing right now.

I am going to get on a plane tonight. Now the Nation is not going to pay for my ticket, but the Nation is going to pay about 5 bucks to pay for that screener for me to get on the plane. If we are willing to do that to individuals every time they buy a ticket, why can't we ask corporate America to pony up just a little bit to see to it that those approximately 20,000 CEUs that come into this country—I am sorry—20 million CEUs, container equivalent units, come to the country that there is some safety to them?

I am pleased to hear that all of you are showing these concerns. But, you know, if you think about it, this is the tip of the iceberg. I mean, can't we as a Nation get upset that we owe the Communist Chinese $300 billion, $256 to Communist China, another $150 or so to Hong Kong?

Today in New Orleans, in Pascagoula, Mississippi, foreign flag cruise ships with sailors from who knows where are taking care of our FEMA folk. Our Government is paying them to take care of folks that lost their houses in hurricanes instead of an American flag vessel.

On a daily basis, the people ask for Jones Act waivers. The law that is going all the way back to the earliest days of our republic that we are supposed to provide for the safe coast-wide commerce and security of our ports, that they be American-owned, American-crewed, American-manufactured, on a daily basis they get waivers.

Right now there is a French firm called Verbone that, through a clever manipulation of the banking process, owns supply boats that operate in the Gulf of Mexico. Now when someone sees they have done it, what is to keep the Koreans from doing it or the Iranians or whoever?

So, again, I think you have raised some very, very valid points.

One thing I think you missed, and it is just piling on with how scary this is, when I was a kid, I was a stevedore on the docks in New Orleans, miles and miles of wharves, each of them offloading ships that, by and large, could load and unload themselves. Now most of those docks sit idle because all of that has been consolidated to a few container cranes. So if you own the container crane and you choose not to load a military sea lift command vessel—remember, we have not declared war since 1941. We are relying on the good will of those ports to load our vessels or unload vessels, as the case may be. So if you are a foreign operator and you choose not to make your facility available, you can certainly throw a heck of a monkey wrench into any operation that the American military chooses to carry out around the world.

So, again, I welcome your thoughts on that. I am sure there are places where the President can step in, but I have noticed that, particularly in the aftermath of the storm, our Nation has stepped in and made tough decisions that involved the lives of people not very often and not very well.

Mr. FLYNN. I might say on the last point here, particularly in prosecuting the war in Iraq, the Department of Defense has been extremely dependent upon foreign flag vessel container ships and foreign terminal operators to move material. When Turkey basically closed out its base, it was a company, Hutchison Port Holdings, in Rotterdam that made available the real estate for the free deployment of it. So you are dealing with relationships here with private actors and foreign actors; and, like anything, trust has got to be built up.

But I want the verification because it is private owned, because we lost this capability. We are 30 years behind now. It is a bit like trying to resurrect JC Penney and say go take on Wal-Mart by saying let's try to recapture America's Merchant Marine and put it back. I wish that weren't the case. I love ships and love that heritage. When I came into the service in the Coast Guard in 1978, you

know, I thought there would be something to go into, and it is not there anymore.

But, that being said, as a security and going on global we want to build this capacity into the system.

I point out on the fee thing here the good news about doing this and loading ports is the nature of the beast is a terminal operator can't just select U.S.-bound goods. It is just too complicated. He has to do it for everybody.

So instead of being 40 bucks a box for U.S.-bound goods it would have impact on our competitiveness. Everybody has to pay the same fee, and that also is very useful for counterproliferation purposes. You can't get from North Korea to Iran by saying, Scotty, beam me up. You move to the system. You don't come to our borders. Visibility in the system would have a huge asset. But you not only have to cooperate with the people who own it, but trust, but verify.

And that is what we need is a system to do that. We have just the trust part right now, and there is reason to be squeamish if that is all we have.

Dr. CARAFANO. I agree with Steve. Trust but verify is absolutely the way to go. And the good news is, although a lot of this infrastructure is foreign owned, it is a very, very competitive environment. There is lots of people doing this, and everybody wants your business. And if you do find a partner one day that violates your trust, it is not hard to switch to another guy. So it is a different kind of foreign dependency than, for example, if somebody is making a tiny transistor that without that transistor you can't have cruise missiles. Somebody is operating a facility in a port in the United States today and you don't like how they do business, there are other people that would love to have that business and can do it just as effectively, if not better. So it is, in a sense, a buyer's market.

Mr. GAFFNEY. I had the privilege of working with President Reagan at the time when he was talking about trust but verify; and with the greatest respect to a President I loved, I always thought that was a little bit cockamamie. I think you have to be skeptical, healthfully skeptical about people that you have no reason to trust or who you in fact in some cases have reason to distrust. Verification is important, but skepticism first, and then prove that indeed your trust is warranted.

I mentioned in my remarks Beaumont and Corpus Christi has two ports that somehow simply never get thrown into the mix of the six that we are told are going to be affected by this. I believe it is a matter of record that the United States Army has contracted with P&O to move materiel through those two ports. There is an example of a place where you might or might not have cooperation. Those are ports, as this committee knows better than anybody, where we are moving heavy armor and helicopters and other equipment to places like the Persian Gulf.

It also is a question—again, just going back to I think why we are here, perhaps a minority of you on this panel, but I sense a majority of you within the committee—is that a set of facilities that you most especially want to take risks with, the personnel, cargo information, and security planning? And my suggestion to you, sir,

is not in those two ports, not in the other six ports, and not in the remaining whatever it is, 10 or 12, that I think are also in play here.

Without in any way, shape or form disregarding or disagreeing with my colleagues about the other parts of the system and the other mechanisms we need to bring to bear and the idea of a multi-faceted approach, those are all, it seems to me, eminently sensible and part and parcel of what I am sure this committee and its counterparts are going to come up with.

It is just, to leave you with a final thought, I guess that I think this is a hard problem right now; and we should not voluntarily take steps that I think will—predictably will make it harder, maybe marginally and maybe dramatically.

The CHAIRMAN. Thank the gentleman.

We are going now—we are going to move to the next panel, but let me ask this panel if you can stick around if you have a chance and have the opportunity to maybe listen to the next two panels, we might have a couple of questions at the end.

Mr. Langevin had a statement, not a question, he wanted to simply address before you folks move off the dais. Gentleman is recognized.

Mr. LANGEVIN. Thank you, Mr. Chairman. I will be brief. I think we have covered a lot of ground here today, and I am going to forgo asking questions so we can get to our next panel.

This discussion today has been exceptionally helpful, and I really want to thank you all for your contributing here today. I just will end with this, that I, for one, am not a fan in support of this sale going through, for a variety of reasons. But I will say that we can perhaps look at and evaluate such sales primarily from a financial standpoint, and I think that is really what happened here. Yet, in a post–9/11 world, that is just simply no longer possible, that we have to evaluate these types of sales primarily from a security perspective.

And you know if people had confidence that we were doing everything we could to do to secure our ports, perhaps this wouldn't be such an inflammatory issue. But we are not. And we have to do a better job, obviously, of giving both the Coast Guard and Customs and Border Patrol the resources that they need.

Mr. Carafano, you said in your testimony that ownership really isn't the issue, that irrespective of who owns the ports that individuals who want to target us can and will infiltrate at very low levels. That may very well be true. But security, as you recognized and you have acknowledged, requires a multi-level approach, and we ought not be giving our playbook to those that might wish us harm.

Mr. Gaffney, you got it right in your third point, your opening statement, that if this sale happens, Dubai or any company who owns this port will know about our security procedures. We cannot let that happen.

So I hope this serves as a wake-up call to all of us that we better redouble our efforts to do a better job of securing our ports and our borders. This discussion was helpful today, and I want to thank you for your testimony.

The CHAIRMAN. I thank the gentleman.

Mr. Marshall wants to make a brief statement here and would ask a question before we go to the next panel.

Mr. MARSHALL. I appreciate, Mr. Chairman.

I found your comments to be immensely helpful to me. I think all of us did as well. It would be even more helpful to me if you did as the chairman requested, and that is stick around, listen to what is said by the next panel and following panel, and then I would like to hear your comments about what has been said.

I would specifically like to hear, after you have heard what others have to say about the subject, hear things that we might ask you be done by DP, by the Federal Government, in this instance, as a condition to approving this deal, those sorts of things that you think are practical and would be helpful in light of the current circumstances.

You are the experts. You have great ideas concerning how we can improve our security, which I think, frankly, is what we ought to be about with regard to this particular inquiry. It seems to me we have a real opportunity here that we ought not to let pass by. We ought to take your guidance. So if you can give us your guidance after listening to all these folks that would be real helpful. Thank you.

The CHAIRMAN. I thank the gentleman, and we have only got three people who haven't had a chance to ask a question of this panel. Does anybody else have a feeling they want to make a statement to the panel before this panel exits? Okay.

Gentlemen, thank you. We have had an interesting and very instructive discussion here. Hang tough, if you can; and we will invite the next panel, the second panel to come on up.

We are going to hear from—the committee is going to hear from the officers of DP World. We have Mr. Edward H. Bilkey, Chief Operating Officer at DP World; Mr. George Dalton, General Counsel of DP World; Mr. Michael Moore, Senior Vice President, Commercial, DP World; and Mr. Robert Scavone, Executive Vice President For Security, P&O.

STATEMENT OF H. EDWARD BILKEY, CHIEF OPERATING OFFICER, DUBAI PORTS WORLD; GEORGE DALTON, GENERAL COUNSEL, DUBAI PORTS WORLD; MICHAEL MOORE, SENIOR VICE PRESIDENT, COMMERCIAL, DUBAI PORTS WORLD; AND ROBERT SCAVONE, EXECUTIVE VICE PRESIDENT, SECURITY PENINSULAR AND ORIENTAL STEAM NAVIGATION COMPANY (P&O)

The CHAIRMAN. So I understand Mr. Bilkey has a statement and then Mr. Scavone.

Gentlemen, thank you for being here with us. Mr. Bilkey, I understand you are going to make a statement; and then Mr. Scavone is going to make a follow-up.

Mr. BILKEY. Yes, Mr. Chairman, with your permission.

The CHAIRMAN. Can you pull that microphone a little closer and make sure it is turned on there.

Welcome, gentlemen. I think you had an opportunity to listen to our first panel. I think you understand the concern of the committee, and we look forward to your statement.

STATEMENT OF H. EDWARD BILKEY

Mr. BILKEY. Thank you, Mr. Chairman.

My name is Ted Bilkey, and I am the Chief Operating Officer of DP World, and 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.

By way of personal background, I grew up in New Jersey and New York. I 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 an honor for me to appear before this committee of the United States Congress. My grandfather, Joseph S. Frelinghuysen, served as a Senator from New Jersey on the Senate Committee on Coast Defense. Indeed, every generation of my family, from the earliest days, have served in the Senate, House of Representatives, or as Secretary of State.

Let me start by giving a little background on DP World. DP World, before this acquisition, is the seventh largest port terminal operator in the world. We manage 19 container terminals, four free trade zones, three logistics centers, one of which is the biggest in the world. It is bigger than the Pentagon and handles 7,000 truck entries and exits a day in some 14 countries.

Our Jebel Ali facility in Dubai handles more container freight than all the ports of the east coast of the United States combined. We operate on a strictly commercial entity but are owned by the government of Dubai. Our management is truly international; and, last week, Lloyds List voted DP World as the best port operator of the year in 2005.

DP World has a long and rich history of supporting the global operations of the U.S. military. These include operations in support of the U.S. military in Germany, Djibouti and Dubai; and I would like to give some examples.

We have dealt with the U.S. Navy for over 2 decades in Dubai. We have allowed the U.S. Navy to station an officer 24/7 in our control tower, which is highly unusual. He has a panoramic view of the harbor and any potential threats.

We allow the U.S. Navy to provide its own security for having two high-speed gunships that are heavily armed. This is a most unusual arrangement which shows strong commitment and strong trust.

We have given the U.S. Navy a lease of highly secured land to stow its cargo and rework its volume.

We have created a high security bunkering operation that is fueling in Djibouti that hosted its first vessel, the cruiser *USS Vicksburg,* just a week ago. It is a very secure refueling station in the Red Sea which is highly prized; and, frankly, one of the motivations for building it was the knowledge that the U.S. Navy needed a facility in the area.

We have hosted over 500 vessel calls in Dubai of U.S. Navy warships.

In Fujairah today we have the main transshipment points for the U.S. Army's Afghanistan operations. Cargo comes in on roll/roll off vessels, and we provide a high security area blocked off by contain-

ers and patrolled by the U.S. Army. We then containerize the rolling stock for movement to Karachi and on to Afghanistan. Whenever battalions change, we go to work to move the cargo efficiently. We do the same as battalions leave Afghanistan for home.

In the last Gulf War, I personally set in motion the arrangements for the first aircraft carrier to enter the berths of Jebel Ali, and it solved a major logistic problem because all the crews and all the supplies have to be moved on tugs and tugboats off shore.

Mr. Chairman, I believe we have distributed some pictures for the panel and the committee that I have here. I believe they have been distributed earlier.

The CHAIRMAN. We will ensure that those get distributed.

Mr. BILKEY. Thank you, sir.

Just a quick note on the general shipping trend. The shipping and ports business is becoming increasingly globalized and consolidated, and DP World is determined to acquire P&O for commercial reasons based on its strong management team and complementary geographic fit. It is important to understand that this is a $6.8 billion transaction involving assets all over the globe in 51 terminals when they are combined with our own present ones. 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 also been our intent to operate P&O Ports of North America as a separately incorporated U.S. legal entity, using its long-standing reputation and 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 America team to run these operations.

I would now like to try to dispel a couple of myths and try to establish some facts.

First, we are not acquiring 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 seems to have been totally distorted. Rather, we act as an operator who has a license or a lease to operate a particular terminal within a port. The terminal operator is responsible for the area within a port that serves as a loading and unloading transfer point.

Second, the transaction does not involve an outsourcing of U.S. security, as some have alleged; and I will defer to the Department of Homeland Security or my colleague from P&O Ports in charge of security, Rob Scavone on my left here, to describe in detail how port security operates within the U.S. suffice it to say, security is a many layered approach, with the U.S. Customs and Border Protection and Coast Guard taking leading roles; and 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;

The Container Security Initiative, which I believe you have heard about before and to me is one of the ones which should be looked at with great attention. In fact, the United Emirates was the first country in the Middle East to join that initiative, and we actually

operated with some very unique capabilities that are not in all of the CSI locations.

The Business Alliance on Smuggling and Counterfeiting;

The so-called ISPS, International Maritime Organization on Port Security. All our ports are ISPS authorized and regulated.

And the Megaports Initiative with the Department of Energy.

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

Third, some people have charged that DP World enforces the Arab League boycott of Israel. I would like to answer that, as a terminal operator, we do not operate in a capacity that involves us in boycott issues at all. DP World does not discriminate. DP world is a global port management company that facilitates trade with many nations. Our company has long-standing business relationships with all the major shipping companies, including Israeli companies, among our diverse international clients; and actually Zim Lines is one of our larger clients and a highly valued one.

Further, let me assure you that, consistent with our policy of corporate compliance, the U.S. operations of P&O will fully comply with both the letter and spirit of the U.S. anti-boycott regulations to which they are subject. We comply with the laws of all the countries in which we operate.

Fourth, 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 night or without adequate review. This is a total misrepresentation. There is an explicit process administered by the Committee on Foreign Investments in the United States, CFIUS, which we have all been talking about, mandated by Congress and the Defense Production Act and by Department of the Treasury regulations. In point of fact, CFIUS actively reviewed the transaction for almost 3 months.

DP World first met with 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, Custom and Border Protection, Coast Guard, Department of Justice and 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 December 6th, 2005, with all member agencies of CFIUS. This was not required. It was suggested, and we readily said we would like to do that. I personally 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.

We filed CFIUS notification in December 15, 2005; and 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 letters formed the Letter of Assurances dated January 6th.

Among these undertakings were seven additional express and legally binding commitments that were absolutely unique to our

transaction. We did not object. We looked at them. We thought that, well, this is a little excessive, but it didn't make any difference to us. If this is what people wanted, fine, it wasn't going to affect our business.

Based on this review and the Letter of Assurances, on January 17, CFIUS issued a formal letter of no objection, completing its CFIUS review and allowing the transaction to proceed.

I think it is important to understand that in reliance on the U.S. Government's clearance, DP World took the necessary legal steps required under the UK takeover laws 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 all applicable U.S. legal requirements and, having been told by the U.S. Government that we met those requirement, now find itself in the position of being told that was not good enough.

Nonetheless, we fully recognize that there are now 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's North American operation will be held in suspension without direction or control in any way from DP World until May 1st, 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 we 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 its Chief Security Officer for P&O Ports North America, as is the case today with Mr. Rob Scavone on my left.

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 whatsoever to America's safety and security.

I would like to say if there is any good to come out of this experience, perhaps it is that both Congress and the executive branch will take a closer look to upgrade port security and increase funding for these efforts. DP World strongly encourages such efforts and looks forward to working with you to achieve them.

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 working with DP World's global 51-terminal network as a responsible partner in securing security at home and abroad. Especially for us, we could never afford to have a bad security incident. Security is everybody's business.

I thank you, Mr. Chairman and the committee members.

The CHAIRMAN. Thank you, Mr. Bilkey.

[The prepared statement of Mr. Bilkey can be found in the Appendix on page 146.]

The CHAIRMAN. Is it Mr. Scavone? Is that the correct pronunciation.

Mr. SCAVONE. Scavone.

The CHAIRMAN. Thank you, sir. For being with us today. I understand you are the officer in charge of security for the company which is making a transfer.

Mr. SCAVONE. Yes, sir. The company that is being acquired.

The CHAIRMAN. Company being acquired. And pull that mike a little closer there if you could.

STATEMENT OF ROBERT SCAVONE

Mr. SCAVONE. Mr. Chairman and members of the committee, my name is Rob Scavone. I am Executive Vice President of P&O Ports. I will take just 2 minutes to reference the main points in my submitted written remarks.

The CHAIRMAN. Without objection, all your written statements will be taken into the record.

Mr. SCAVONE. As the person responsible for our company's security, of course it is my business to know how it works on the ground inside our terminals. I also know that the way our security works is not going to change if control of our parent company changes hands. I know this not only because DP World has made undertakings to this effect but also because there is no practical way to change it in a way that would erode our security.

You may have seen that when security experts are queried on this question, the overwhelming majority agree with that assessment. Here are some reasons why.

Even after control of our parent company in London changes hands and the current 45-day review period has lapsed, the P&O organization in the U.S. will remain in place. DP World has committed to retaining the existing managerial staff and to involve the U.S. Government in the event any replacements are appointed in the area of security.

Inside a terminal, only longshoremen perform any physical work on containers. We employ approximately 6,000 every day. Therefore, the same people who manage these responsibilities for us now will be the ones who do it next month and the month after that.

These functions are not directed from abroad, nor are they electronically accessible from abroad, and that is not going to change.

The Coast Guard and Customs continue to be responsible for all security measures relating to the entrance of persons or goods into the United States. Those agencies maintain a presence in the ports and work with port and local police. Our terminals work in close corporation with those authorities every day.

The statement that the security of our ports is being outsourced is simply not the case. It is not outsourced now, and nothing will change if our ultimate ownership changes hands.

In conclusion, I would like to add that the continuous improvement of the security of our supply chain across the globe is a goal toward which I personally work with industry colleagues—including such persons as Mr. Flynn, who spoke earlier—every day. In so doing, we wrestle with the means to improve areas we feel be are not yet where we need to be; and I can say with certainty that

none of those areas have anything to do with which port operating company happens to own P&O Ports.

Thank you.

The CHAIRMAN. Mr. Scavone, thank you.

[The prepared statement of Mr. Scavone can be found in the Appendix on page 156.]

The CHAIRMAN. Mr. Bilkey, thank you for your opening statements; and we will go to Mr. Kline, who is next in line, for questions.

Mr. KLINE. Thank you, Mr. Chairman; and thank you, gentlemen, for being here today.

We just had another panel for the last 2 and a half hours that discussed security issues in general, maritime security issues; and some concerns were raised—and, clearly, you wouldn't be here if concerns hadn't been raised—by American people from coast to coast. Specifically, it was suggested that we ought to be concerned with the new ownership about issues revolving around personnel, security planning execution and cargo. In your statements, you have addressed those to some extent. Both you, Mr. Bilkey and you, Mr. Scavone, have talked about those. But let's play a scenario here.

It has been suggested by some of my colleagues that the owners, whoever owns this, the ultimate owner, would have access to all of the security plans and would be involved in the security planning process and that should cause us some concern. Can any one of you address that specific issue, the ultimate ownership, Dubai, UAE, being involved in or having access to the security plans at an American port?

Mr. SCAVONE. I would be glad to, Congressman.

First of all, of course, the ports themselves, which are managed by, in a typical case, port authorities have a port security plan to which we do not have access.

Mr. KLINE. You do not have?

The CHAIRMAN. Can you pull that microphone a little closer? It is worthwhile to go back over that because that is important.

Mr. KLINE. I am coming from essentially no knowledge in how port security works. So P&O now operating these American ports has no access to security plans? Explain how that can be.

Mr. SCAVONE. I will explain in a little more detail. The ports themselves, the port property and the area by the port, is typically owned by a port authority or some typical government authority; and the port itself works with the Coast Guard for an area or port security plan. That would encompass the entire area of the port. We do not operate the port. Any port would typically—that we have a facility in, we have by virtue of a lease or a concession.

So take the port of Newark, New Jersey, as an example. There are five container terminals, any number of break bulk terminals, barge terminals, terminals of all sorts; and one of those is leased by us in a joint venture with another partner which happens to be Maersk Line, the Danish shipping company.

The Coast Guard requires that, as part of our contribution to the layered approach to security, that we develop a plan primarily for access control in and out of that, the perimeter of our terminal. That has to do with access of persons, vehicles or cargo.

We develop the plan. We submit it to the Coast Guard. The Coast Guard reviews it, either comments on it or approves it; and then it is settled. We—our terminal in Newark actually happens to be the very first plan that the Coast Guard ever approved in the Nation.

The plan relates exclusively to measures such as that. They are not actually not unlike the security measures you might expect any common industrial facility to have with access controls, the difference being that the Coast Guard has the right to audit those plans and to enforce your compliance with those plans, up to and including shutting you down if they don't believe you are properly observing these plans.

Mr. KLINE. Thank you. I am going to have a red light here shortly.

Let's talk about personnel for just a minute. The assumption of concern is that we are in a war with radical Islamic fundamentalists and there may be some sympathy somewhere in Dubai or the UAE, two or three or four or five people who could apparently then be transferred to one of these ports and put into a place where they could be—a janitor was suggested or something else—and there would be a leak in the personnel sieve. Could you address that issue for us, please?

Mr. SCAVONE. Yes, sir.

First, as has been mentioned, a commitment has been made to keep the current management in place. Longshoremen are not—we don't hire longshoremen. The union hires longshoremen, and they are sent to us. So we order a complement of workers, and they get sent to us by the longshoremen. So they are not within our influence.

And DP world, as I said, has made a commitment that replacements of any of the existing management would be vetted in cooperation with the U.S. Government, bearing in mind that unless you are the facility security officer of the company you don't have access to the facility's security plan that the Coast Guard has negotiated or approved because that plan is kept under lock and key and the person who has the key is the facility security officer.

Also, you don't have access to the manifest information or the electronic information which would tell you what are the contents of the container. Why? Because we don't have it. We don't need it to do our job. The carrier has it. Customs and Border Protection has it; and both of those agencies, of course, are present on our terminal. But we don't have it because we don't need it. Customs decides what they want to inspect. We give the boxes to them, and they do what they want to do with them.

Mr. KLINE. Thank you.

Yes.

Mr. BILKEY. Mr. Kline, I just wanted to mention what my colleagues didn't mention, that to be a longshoreman—and I started on the docks—you have to be a U.S. citizen.

Mr. KLINE. Thank you; and, Mr. Chairman, thank you. I yield back.

The CHAIRMAN. I thank the gentleman.

The gentleman from Missouri, the Ranking Member, Mr. Skelton.

Mr. SKELTON. Mr. Bilkey, you are the Chief Operating Officer of the corporation?

Mr. BILKEY. Yes, sir.

Mr. SKELTON. Is there a president of the corporation?

Mr. BILKEY. I am Chief Operating Officer.

Mr. SKELTON. You are the number one.

Mr. BILKEY. No, no, he is the number one; and I want to make sure I say this on this panel.

Mr. SKELTON. Let's start over again. You are the Chief Operating Officer.

Mr. BILKEY. Yes, sir.

Mr. SKELTON. You work for whom?

Mr. BILKEY. The Chief Executive Officer.

Mr. SKELTON. Who is the Chief Executive Officer?

Mr. BILKEY. Mohammed Sharaf, who was educated at the University of Arizona.

Mr. SKELTON. And he lives where?

Mr. BILKEY. Excuse me?

Mr. SKELTON. Where does he live?

Mr. BILKEY. He lives in Dubai.

The CHAIRMAN. What is his citizenship?

Mr. BILKEY. UAE national, sir.

Mr. SKELTON. Is there a board of directors of the DP corporation?

Mr. BILKEY. Yes, sir.

Mr. SKELTON. How many are on the board?

Mr. BILKEY. The board is made up of one person, Sultan Amed bin Sulayem.

Mr. SKELTON. And that person lives where?

Mr. BILKEY. He lives in the United Arab Emirates, sir.

Mr. SKELTON. So you have the number one, and then you have one person as the board of directors. Is that it?

Mr. BILKEY. Yes, sir. At the present time.

Mr. SKELTON. There are no other members of the board of directors?

Mr. BILKEY. No, sir, not at the present time. It is planned to have it expanded when this acquisition is over.

Mr. SKELTON. How long has the corporation only had one member of the board of directors?

Mr. BILKEY. Since its incorporation, sir.

Mr. SKELTON. When was that?

Mr. BILKEY. I am not exactly sure of the date. I could ask my general counsel, if I might.

Mr. SKELTON. Please ask him.

Mr. DALTON. We will supply that information for the record. We don't have that precise information.

Mr. SKELTON. Was it 10 years ago, 15 years ago.

Mr. DALTON. Probably within the last two years.

Mr. SKELTON. It is a new corporation?

Mr. DALTON. Approximately two years old.

Mr. SKELTON. Now please explain to me how the United Arab Emirates owns this corporation.

Mr. BILKEY. We have a shareholder who created a decree creating the Ports, Customs and Free Zone Corporation (PCFC) and the two shareholders of that are Sultan Amed bin Sulayem and Sheik

Mohammed of Dubai. Sheik Mohammed bin Rashid al-Maktoum of Dubai.

Mr. DALTON. Congressman, may I clarify?

Mr. SKELTON. That doesn't help me very much.

Tell me how the UAE owns this corporation, please.

Mr. DALTON. May I respond, Congressman?

Mr. SKELTON. Please.

Mr. DALTON. The UAE does not own those companies. It is owned by the government of Dubai.

Mr. SKELTON. Mr. Bilkey, how do we know that the people working for the DP World, both at the management level and the operational level, do not pose a security threat?

Mr. BILKEY. Well, sir, we are an international company with an international management team. We select from the best people around the world, and our team—at the present time, we have three Americans, two Britains and Brits, or British, UK gentlemen, and people from India.

Mr. SKELTON. And what do they do?

Mr. BILKEY. One of them is the general counsel here; and one of the Americans is the commercial—head of the commercial department. And we have a finance head and an IT head, an HR head and a corporate strategy head.

Mr. SKELTON. To what countries do they belong?

Mr. BILKEY. Well, the finance head is from the UK, the HR manager is from the UK, the corporate strategy is from India, and we have a UAE gentleman who actually runs the UAE section of our business. We are separated into regions, and we have the UAE region, and that is run by a UAE national called Mohammed Muallem.

Mr. SKELTON. Would you tell us how does the government of Dubai own the cooperation?

Mr. BILKEY. I am not sure I understand the question. Otherwise, they are—the Dubai government is the shareholder of the company.

Mr. SKELTON. Is it the only shareholder?

Mr. BILKEY. Yes, sir.

Mr. SKELTON. What type of background checks or other investigations have been conducted regarding potential security threats for the corporate—people who work for the corporation?

Mr. BILKEY. We follow normal industrial and commercial checks on all our people; and, in some cases, we put them through separate testing requirements for their capabilities.

Mr. SKELTON. The agreement has been signed, sealed and delivered, is that not correct?

Mr. BILKEY. No, sir.

Mr. SKELTON. It is not a binding contract as we speak?

Mr. BILKEY. Sir, at the present time, we are under the rules of the takeover regulations of the United Kingdom; and we are advised that tomorrow the court will approve the acquisition.

Mr. SKELTON. So, as of tomorrow, you will legally have their work in the American ports, is that correct?

Mr. BILKEY. I am going to turn this over, if I may, to my general counsel, because he has been closest on that.

Mr. SKELTON. That is very simple. Will you legally have the work in the American ports as of tomorrow?

Mr. DALTON. Congressman, may I respond? Because there are some technicalities to this.

Mr. SKELTON. Tell us about the technicalities, please.

Mr. DALTON. The court decision was rendered today in the United Kingdom where there was a challenge made by Ellers, which is a U.S. company. Ellers is a joint venture partner with us in the Miami operation. They own 25 percent. There has been a long-standing dispute in the courts in Miami for approximately 3 years. The court in the UK overruled their objections, however; and they, Ellers, indicated they were going to appeal. The court gave them leave to appeal to a higher court until 3 p.m. Tomorrow.

We have all confidence that their appeal, if they do appeal, will be denied and the deal will go forward. We expect it to conclude some time probably Monday or Tuesday of next week.

Mr. SKELTON. So as of Monday or Tuesday next week, you will have the legal obligation under the contract to operate in the American ports?

Mr. DALTON. Yes, sir. But that is also the reason that we proffered to the U.S. Government the Hold Separate Agreement, which is a binding agreement on our behalf where we have agreed to allow the current P&O Ports North American management to stay in place to report to their headquarters in London without any influence being exercised by any senior management in Dubai or any other management in Dubai.

Mr. SKELTON. Well, lay that aside. The contract will be binding then Tuesday, am I correct?

Mr. DALTON. That is our best estimate, yes, sir.

Mr. SKELTON. So, as I understand it, your corporation will not take over the duties for 45 days, is that correct?

Mr. DALTON. Sir, we have——

Mr. BILKEY. Until May 1st, sir, is what we committed in our offer.

Mr. SKELTON. But, nevertheless, it is a done deal as of Tuesday, am I correct?

Mr. BILKEY. As far as the acquisition, we have to—at that time, we have to mail out $6.8 billion to the various shareholders. That was the commitment that we made when the offer went unconditional.

Mr. SKELTON. What is the purpose then of the 45-day waiting period?

Mr. BILKEY. Well, we agreed not to take any management initiatives whatsoever. In fact, we weren't planning to do them anyway. We are very satisfied with the management that is here. But we have agreed that we will in actual fact have no intercourse whatsoever on any management deals with the present operation in the P&O Ports North America and the Northern American assets.

Mr. SKELTON. For 45 days?

Mr. BILKEY. No, until May 1st, until this 45-day process should go forward.

Mr. SKELTON. What is the purpose of this May 1st date? Legally, it is a done deal, is it not?

Mr. DALTON. Congressman, if I may, what we agreed to and proffered to the U.S. Government, I want to emphasize that we proffered this offer voluntarily.

Mr. SKELTON. I understand that. But the deal is done. As of Tuesday, the deal is done, is that correct?

Mr. DALTON. We hope so. We believe so, unless the appeal goes forward.

Mr. SKELTON. I understand that. If the deal is done, why the May 1 date?

Mr. DALTON. Sir, we are trying to respond as a good corporate citizen to the concerns of Congress and the American public; and we thought that an offer of reviewing this for an additional 45 days, despite the fact that we had already gone through the CFIUS process, would be a worthwhile exercise to enhance the attention to be paid on security.

Mr. SPRATT. Counsel, I don't understand.

Mr. Chairman, thank you.

Mr. WELDON [presiding]. I thank the gentleman.

The gentleman from New Hampshire is recognized for 5 minutes.

Mr. BRADLEY. Thank you, Mr. Chairman. I would like to follow up on Mr. Skelton's questions. If I understand this voluntary arrangement until the 1st of May correctly, there is a second review period by CFIUS. My first question is under the second review are there the potential of more conditions being placed on this deal that you might find acceptable or you might find unacceptable?

Mr. DALTON. Sir, we would be happy to entertain any other conditions that would be reasonable as long as it is applied equally to our competitors in a business environment. I want to emphasize we will abide by the CFIUS decision that comes out of this 45-day review.

Mr. BRADLEY. So you would accept any and all conditions provided they are a level playing field with your competitors?

Mr. BILKEY. Absolutely, sir.

Mr. BRADLEY. What if CFIUS objects on second review to the operational security arrangements that are in this deal? What recourse then does the United States Government have if the second review doesn't recommend final approval?

Mr. DALTON. Sir, it is our firm belief we have complied with all of the United States requirements and have, in fact, gone beyond them. I really don't want to speculate at this time what the reaction would be. We would have to see what comes out of the CFIUS process and then be able to react in an informed fashion.

Mr. BRADLEY. So you have no answer to that question, if there were unacceptable conditions, our objection, of what recourse you might take?

Mr. BILKEY. We are very optimistic and hopeful it will allow us to go forward and explain to everybody that we are not a security risk, and especially we don't plan to make any changes in what exists today, which is now what is in place is fully acceptable. What do I think is the ultimate way that there should be in security? As we heard earlier today, I think security can be improved tremendously if you push the borders out in a way that—the CSI, Container Security Initiative, into the port. That is why we were very serious when I said we are going to operate 51 terminals around

the world. We would like to see those type of initiatives in all our ports.

We actually have been trying to push for one in the Dominican Republic. We have a brand new port down there about 30 miles east of the Dominican Republic where there is transshipment business and import/export business from the U.S., and we want it to be in a CSI place, and there has been long, long delays to it. This is a perfect place.

And one of the reasons that we are interested in this, as are all people in the terminals, is today's security actually is a big marketing tool. All the main and large shipping lines, they want to make sure that they are going to secure places, and if they don't think so, they are not going to come to your terminal.

Mr. BRADLEY. One last question, Mr. Chairman.

What if there were in the second review process disputes over personnel, security procedures, operational procedures that you found unacceptable, and you indicated before in my previous question, anything reasonable that you would accept, and then you went on to say as long as they were applied uniformly to all your competitors. There may not be the opportunity to go back and apply them to some of the other competitors without breaking contracts. What happens in that case?

Mr. DALTON. Congressman, I think we need to emphasize in a number of our locations in the United States we have joint venture agreements with a variety of partners, and there are contracts involved there as well. So we really would have to wait for the review before we can make a firm determination about how that would impact on our business.

Mr. BRADLEY. Thank you, Mr. Chairman.

The CHAIRMAN. I thank the gentleman.

Mr. Marshall is recognized.

Mr. MARSHALL. Thank you, Mr. Chairman.

Sounds to me like you anticipate that the CFIUS process will result in approval once again, the prereview, and that if it doesn't, you will wind up suing the United States Government for the $6.8 billion plus I don't know what else that you are about to spend?

Mr. BILKEY. Congressman, I don't want to speculate. We think—we are good international citizens throughout the world. We have been accepted in the U.K., which has obviously serious security concerns. We are going to operate the second largest container terminal in the United Kingdom.

Mr. MARSHALL. I only have five minutes, if you don't mind. I am just observing that it sounds to me like you are utterly confident of what the results of this—so confident that you are willing to gamble $6.8 billion in the next week.

Mr. BILKEY. The U.S. assets, sir, are only 10 percent of the total, but it is still a large number, about $700 million.

Mr. MARSHALL. But it is a $6.8 billion deal. So you are saying at risk is only $700 million.

Mr. BILKEY. $700 billion. I keep confusing those two numbers.

Mr. MARSHALL. Small difference.

Let me ask you a little bit about your opening testimony. I sure wish that I could go back in the transcript or the videotape. You were reading your prepared remarks, and you got to the point

where you were referencing the additional agreements that you willingly submitted to. You said there were seven of them. At that point you said rather—I can't remember exactly what you said with reference to those seven additional things that you agreed to. How did you characterize them?

Mr. BILKEY. Well, one of them has to have open books on something, which is not normal in a commercial situation.

Mr. MARSHALL. What exactly was that? I have got the seven in front of me. It is page 8. Are these seven bullet points on page 8 intended to summarize the seven things you agreed to?

Mr. BILKEY. Yes, sir.

Mr. MARSHALL. I really had the sense as you were testifying that you not only described it as unusual, but almost felt it was kind of distasteful for us to have even asked for these things.

Mr. BILKEY. We were happy to agree to what they did. We readily agreed, I think, is the simpler way to put it.

Mr. MARSHALL. Again, I wish I could go back, and I guess eventually I will go back and read the testimony itself, and we do have all this on videotape. I am just curious because I did have the sense that you found or were expressing some distaste for those seven, and the seven referred to security issues.

With regard to the management, the bullet point says to operate all U.S. facilities to the extent possible with current U.S. management. To the extent possible. Do you know the actual terms of the deal well enough to describe what that means? Does that mean if the manager wants to leave? Obviously you can't compel the manager to stay. Are those the only instances in which you would change management?

Mr. BILKEY. Yes, except for malfeasance or something like that.

Mr. MARSHALL. Let us assume a manager leaves or is guilty of some malfeasance or something like that. How do you replace management at that point?

Mr. BILKEY. I would actually turn to the executive vice president of P&O Ports North American because I don't know exactly how they handle it today.

Mr. MARSHALL. I understand.

What happens if the executive vice president is the one that needs to get fired here?

Mr. BILKEY. Well, we would have to have good cause to fire him.

Mr. MARSHALL. Let us say you do. How do you replace him?

Mr. BILKEY. We would go out and try to secure someone of equally good qualifications.

Mr. MARSHALL. So the "we" would be your company?

Mr. BILKEY. It would be.

Mr. MARSHALL. You don't have some trustees set up?

Mr. BILKEY. At the present time it would be the management of P&O Ports North America, which we are not going to be involved in.

Mr. MARSHALL. The management would be—is it Mr. Scavone?

Mr. BILKEY. The CEO is Michael Seymour.

Mr. MARSHALL. Say you had to fire him; how do you replace him? Does this only go until May 1st?

Mr. BILKEY. No, sir.

Mr. MARSHALL. It continues indefinitely. You will own but not have control of management.

Mr. BILKEY. I didn't understand the question. We put this out as a gesture, Congressman, and we saw the concern, and we wanted to give a breathing period for people to take other steps if they felt necessary to show that we are good international citizens.

Mr. MARSHALL. Have you been assured by anybody in the Administration that the 45-day review, the second CFIUS review, will result in approval without any additional conditions?

Mr. BILKEY. No, sir.

Mr. MARSHALL. And you are willing to abide by any additional conditions that are imposed?

Mr. BILKEY. As long as it is a level playing field for everybody else on a commercial basis.

Mr. MARSHALL. So everybody has agreed to conditions that you have already agreed to. These seven that you expressed some—your understanding when you agreed to those seven was that everybody doing business in the United States, all your competitors, have to comply with the exact same thing?

Mr. BILKEY. We didn't care. We found them acceptable.

Mr. MARSHALL. So what you are saying is that as long as the conditions imposed by this second CFIUS review is one that you find to be acceptable or one that is imposed on everyone else, you will go along with it?

Mr. BILKEY. Congressman, I can't speculate on that. I am just saying whatever is put forward that is reasonable and commercially acceptable to all people in our type of business, we will go along with it.

Mr. MARSHALL. Thank you, Mr. Bilkey. I wish I had more time, but I don't. You probably don't wish I had more time, I understand that.

Mr. WELDON. The gentleman from Maryland is recognized for 5 minutes.

Mr. BARTLETT. Thank you very much. I would just like to note that my questions will not reflect, or not necessarily reflect, the extent of either my knowledge or my ignorance. Once this deal goes through, you will own the Port of Baltimore?

Mr. BILKEY. No, sir.

Mr. BARTLETT. What will you own?

Mr. BILKEY. We will have leases of two terminals, Seagirt Terminal and Dundalk Terminal, and I am going to have to turn to Mr. Scavone on the details of that, if I may, sir.

Mr. BARTLETT. I am only interested in making the point that you don't—you wouldn't own the Port of Baltimore. You are telling me you wouldn't even own anything, simply be leasing some things; is that correct?

Mr. BILKEY. Yes, sir. I believe one is a management contract, and that is why I was going to refer to Mr. Scavone, and one is a lease.

Mr. BARTLETT. Do you now have leases in any ports in the United States?

Mr. BILKEY. I am going to have to ask Mr. Scavone to respond to that, if I may, sir.

Mr. SCAVONE. P&O Ports North America, the U.S. company, does have a few leases in the United States, some of which are with or through joint ventures with other partners.

Mr. BARTLETT. How many would a few be?

Mr. SCAVONE. We have a lease in Newark, one in Miami, one in New Orleans, and Miami is through a joint venture; and one in Philadelphia, also through a joint venture with Stevedoring Services of America. Everywhere else we are a pure stevedore, or we do manage terminals with something not quite even as extensive as a lease. It would be, for instance, an operating agreement, which is what we have in Baltimore.

Mr. BARTLETT. You stated earlier—would you repeat for us how many countries in the world you have operations somewhat similar to this in?

Mr. BILKEY. At the moment DP World is 14. When we collectively put it together with P&O, it will be 30 countries, sir.

Mr. BARTLETT. You will have facilities similar to this in 30 different countries.

Mr. BILKEY. They run a wide variety from the biggest container terminal in Busan, Korea, to Buenos Aires and Vancouver, throughout China and Indonesia, the Philippines, Australia, the Middle East and Europe. It's a very, very large portfolio of assets and was a strategic move by ourselves in a consolidating shipping business where the shipping lines are becoming more consolidated to be able to offer a better package across the board through these type of clients.

Mr. BARTLETT. Have you had discussions similar to this at any time in any other country?

Mr. BILKEY. No, sir. Whenever we go into any country, new country, we normally make our own independent security assessment on our own. We don't take for granted what anybody says. This is just one of the things that we do, and we also hire ISPS-certified in all the terminals that we operate in.

Mr. BARTLETT. Do you know how many ports in our country have arrangements similar to those you are making with these ports in effect now? Do you have any idea what the rough number is?

Mr. BILKEY. No, sir, I don't, not anymore. I have been away for a long time.

Mr. BARTLETT. We asked Congressional Research Service (CRS) to get this information for us, and there are more than 90 ports in our country that are operated by entities from other countries similar to yours.

If, sir, you could turn back the hands of time, you had this all to do over again, what would you do differently relative to this contract so we wouldn't be sitting here today? It would have been nice to make this public. That wasn't your responsibility, I know, but don't you think if this had been made public and we had these discussions in a calmer environment, it might have been more productive?

Mr. BILKEY. When we went through and started early on in October, I can tell you that I personally and my colleagues—I don't want to start the process that early because one of the important things in this type of acquisition is to try to keep it out of the press and to keep it quiet until you make your official offer. And I was

very nervous about putting information out in Washington because I thought it would become public too quickly, and then we knew we were going to have other people who were going to compete for this very, very attractive portfolio. But I was convinced by others that this was kept confidential.

And we started on October 17th, I believe, and it was our belief, because we took so long, and I came personally here with a team of people to interview the various agencies—frankly, we thought they would take care of any necessary liaisons that were necessary within the government, and we were trying to do everything possible to make this happen because one of the reasons we started early—the two ones that had the most largest requirements, specific requirements, were Australia and the United States. So we started those very early because we wanted very much to be able to go and make our offer unconditional as quickly as possible.

When we finally got our permissions, they all came in about the same time, Europe and Australia and the U.S., we then made our offer unconditional. And when you make it unconditional, your money is sitting in the bank, and it is in escrow. We aren't mailing out the money to the shareholders yet, but we don't have control of it anymore. The takeover procedures do.

That is why we started, and we actually thought that—in hindsight it obviously was an incorrect thought, and some might even say naive—but we were dealing with the U.S. Government, and the U.S. Government said it is okay, and to us, we'd been doing it for 3 months, so we said, wonderful. And actually when we went—we actually publicized the fact that we went forward and went unconditional. It went down the wires. It had to be known throughout the United States also.

Mr. BARTLETT. Mr. Chairman, I would like to close with a quote from Ronald Reagan that our panelists might find instructive. You were talking about working with our Government. He said, when you get in bed with the government, expect more than a good night's sleep.

Mr. WELDON. Thank the gentleman.

We have completed the first round of questioning and will move to a second round. The gentleman from North Carolina is recognized.

Mr. JONES. Mr. Chairman, I will be brief. I came here for the next panel.

I want to say to Mr. Bilkey I am sorry I didn't get here early on, but you said to Mr. Bartlett's question whomever you talked with at the U.S. Government said everything is okay. Who did you speak to that said it is okay? You might have discussed this earlier. I apologize.

Mr. BILKEY. That was done through our counsel here.

Mr. JONES. I am not going to hold you because, again, I came here for the third panel, but I will tell you that I represent an area where this is not your doing or your fault, in my opinion. This is the fault of the Administration, this is the fault of the process. It just has not worked the way I think the American people feel like it should work.

In 2 days I had 127 phone calls. That is not a lot out of my district of people, but, again, it is 127 phone calls that people took the

time to call, and only 6 were in favor of this arrangement. I mean, I had people that professed to be Republican, I am a Republican, and they are just outside of themselves, irate.

And again, I don't fault you, I don't fault your company or the people that you represent, but I will tell you that this is an issue that maybe has galvanized the American people to understand that we are selling America out, and it is time to stop. And again, I am not pointing this to you or to this panel, but I will tell you, Mr. Chairman, I thank God that this happened the way it did because maybe we can save America before we become a second-rate economic Nation.

Thank you.

Mr. WELDON. I will thank the gentleman.

Second round. I yield myself 5 minutes. We thank you for your testimony. You all are aware that you are considered under oath here when you are testifying before the Congress, correct? You are all aware of that.

Let the record note they nodded yes.

If I read, Mr. Bilkey, your statement and comments, the reason why you didn't feel it was necessary to go to the Congress was because, one, there was no requirement of that, and because you felt you were following the instructions of our Government, and that the deal was pretty straightforward; you make the offer, go through the CFIUS process, it is a done deal. Is that correct?

Mr. BILKEY. Yes, sir.

Mr. WELDON. Then I have to ask you a question. Why did you hire lobbying firms? I would like to know for the record who you hired. Would you tell me what firms were hired and who were the principal players that you were involved with? I assume you were involved with that effort.

Mr. BILKEY. In the effort that we did the CFIUS process, I am going to turn this over, if I may, to Mr. Dalton, our general counsel, but we only dealt with the firm Alston & Bird.

Mr. WELDON. That is the only one?

Mr. BILKEY. You are talking about the CFIUS process.

Mr. WELDON. You obviously employed counsel in this city and public affairs firms and lobbyists, and I assume you hired them for a reason. Now, you have just told us——

Mr. BILKEY. Excuse me, sir, do you mean now or when we first started the CFIUS process?

Mr. WELDON. The whole process, now and then. I would like to know who for the record was hired.

Mr. BILKEY. Fine, sir.

Mr. DALTON. We retained the firm of Linkletters, a U.K.-based law firm, very reputable one. Here in the United States we worked with Alston & Bird in their office here in Washington.

Mr. WELDON. Those are legal firms?

Mr. DALTON. Yes, sir. From, as you call it, a lobbying standpoint, the reason we found it to necessary to turn to certain firms, I understand that has been reported fairly widely in the press, because we felt our company, which had followed all the U.S. processes and, in fact, relied upon those processes in lifting our conditions precedent as well as the other regulatory filings that we had done at a

number of locations throughout the world, we had relied on that process, and we found ourselves in a difficult situation.

Mr. WELDON. You just said everything was going well up until this process became public. Why would you have to hire those firms in the past?

Mr. DALTON. Congressman, we hadn't hired them in the past. We did hire firms after our CFIUS process had been approved and the conditions listed.

Mr. WELDON. Who were they?

Mr. DALTON. It was a Downey & McGraff firm. Jonathan Weiner; Chip, I am not sure of the last name, Andrae. I believe his name is spelled A-N-D-R-A-E. I would have to check if there are others.

Mr. WELDON. Was the Albright firm hired?

Mr. BILKEY. I can answer that, sir. The answer is no.

Mr. WELDON. Never any employment with the Albright firm?

Mr. BILKEY. They worked on our behalf in China. We had some China assets that needed some help.

Mr. WELDON. Was there any discussion from former President Clinton with any of you or the leadership back in the Emirates about this potential deal?

Mr. BILKEY. Not with myself.

Mr. WELDON. I said are you aware of any discussion.

Mr. BILKEY. Yes, I am aware of a discussion.

Mr. WELDON. So there was a discussion by the former President. Who was that with?

Mr. BILKEY. It was with our chairman Sultan——

Mr. WELDON. About this particular deal?

Mr. BILKEY. Yes.

Mr. WELDON. Was there a recommendation that you retain a former spokesman by the name of Joe Lockhart?

Mr. BILKEY. Yes, sir. That is my understanding.

Mr. WELDON. Why did that not take place?

Mr. BILKEY. The firm turned it down.

Mr. WELDON. Why would you feel it necessary to hire people of that caliber when you testified to us this was a normal deal, that you were abiding by all the laws, there was no need to tell the Congress, you certainly didn't need to tell us because it wasn't controversial? Why did you need to hire people of that caliber, whether Republican or Democrat? The people you cited here are from both parties.

Mr. BILKEY. Sir, none of those activities started until the last two weeks.

Mr. WELDON. You mean the last two weeks from today?

Mr. BILKEY. Yes, sir. When we suddenly saw that there were concerns being expressed throughout Congress and in the U.S., we saw that we would need some help. We think we are good citizens. We are very, very proud of our record, and we obviously—something had gone wrong, and we didn't understand what had gone wrong, so we went for help. Because we are a firm of high integrity, we try to get the very best we could.

Mr. WELDON. When was the discussion between the Sultan and President Clinton about this deal? Was that in the last two weeks?

Mr. BILKEY. I don't know.

Mr. WELDON. When do you think it was?

Mr. BILKEY. Within the last two weeks.

Mr. WELDON. That discussion just took place in the last two weeks.

Mr. BILKEY. Yes. To the best of my knowledge. All I know was there was a call.

Mr. WELDON. The gentleman is recognized, the Ranking Member Mr.—I am sorry, Mr. Spratt.

Mr. SPRATT. Thank you for your appearance here and for your testimony. Let me just follow it up by saying if I am plowing old ground, it was because I stepped out of the room a minute.

I just wanted to clarify one thing for the record. You heard the testimony of Mr. Flynn, who suggested that this occasion, this opportunity, should be used to be the basis for a comprehensive global container inspection system that scans the contents of every single container destined for America's waterfront before it leaves a loading port. He said that the technology was in hand for doing that, and it might include both scanning radiation detection and maybe some radio frequency electronic identification that would go along with it, and all of this could be done by levying a fee, provided it was done everywhere, levying a fee per container.

You have been in the this business for a long time. You know the ins and outs, what works, what doesn't. In your opinion, is this feasible; is this the basis for some kind of a deal?

Mr. BILKEY. Well, the general question—I am not sure specifically how it applies to us. I mean, I would like to have it apply to us in all our locations, which is this CSI. Yes, the technology is available, and we actually make our own initiatives sometimes.

I would like to see—there are now 42 CSI locations—container security initiatives where U.S. Customs are put on the ground. It actually pushes the borders of the U.S. out into these locations, and this is one of the best ways.

And the technology is there for these high-speed what they call NII, nonintrusive inspections, and that has been the big bottleneck of the present style of inspection equipment, the present inspection equipment that actually can look in a container. And I have sat in these booths and watched it go through, and it is completely reliant on the operator, and we have them in Dubai, but they are very slow. That is why you only get 5 percent that are actually inspected, because it is so slow.

This new equipment, and there is probably going to be better technology coming, but right now it would be a vast improvement. This present equipment can handle 400 trucks an hour in this pilot program in Hong Kong, and not only does it scan the box, it inspects it for radioactive, but it stores the image, and that image can be transmitted to the center, the customs center, here.

Mr. SPRATT. Does it have to have a portal where it can be inserted inside the container?

Mr. BILKEY. No. The container drives through at almost normal truck speed, and it captures the image, and that image can be transmitted. Now, if you have the CSI locations set up as we do in Dubai—and we actually are out on a global request for proposal (RFP) for NII equipment to start installing it, because security stuff like this is good business for us. It is a marketing tool for us, and beside that, it brings safety.

At the present time if I could have a perfect world, I would have these in every port where U.S. goods pass through either directly or indirectly through transshipment. And in Dubai we have a very unique arrangement with Customs. Customs can actually ask for a transshipment box today. Let us say something came from Karachi. We supply them with the whole manifest of the ship, and if they don't like a box that says "garments" and think it might be something else, they can instruct us, and we have the legal right to take that out of the ship, put it on the ground, and U.S. Customs will inspect it. We don't inspect it for them and say it is okay; they inspect it.

With NII equipment in place in places around the world, I would also do it a second time. I would do it here. And there is equipment now in some U.S. locations. Rob Scavone would be able to address that better than I. But there is some of this equipment now coming on stream in U.S. ports, and this, to me, is a no-brainer and should be globally, not just for the U.S., but for all sorts of places, and a lot of people are taking initiatives.

One of our competitors, and they are a very good competitor, has a pilot program going in Hong Kong, and we are looking at them. We live right next to them, we have a very large terminal right next to them in Hong Kong, and we are actually looking at it, and there is a great discussion of how we are going to implement it and who is going to pay for it. But if there is enough initiative and push—most of these international security initiatives have come from the U.S., which is great, and I would like to see more of it pushed. We are in the business of security. If there ever was a company, the responsible large global terminal operators.

Mr. SPRATT. Do you think it is feasible to fund it by levying a fee on each container or each shipper?

Mr. BILKEY. Excuse me for smiling, sir, but this is starting to be tried actually in some places in China, and there has been some resistance to it because you are going to charge the ship, and the ship is going to charge the cargo interest. I think if it comes universally, everybody is going to be in the same playing field and pay it. I think it could be done, and I hope I don't get myself in trouble with a lot of our large customers by suggesting something like this, but I think what we are really interested in is in security and safety, and I think this type of initiative should come and be pushed, and we would not only be a backer, we would like to be a participant.

Mr. SPRATT. That is my last question. You have got 6.8 billion invested in this deal?

Mr. BILKEY. Yes, sir.

Mr. SPRATT. A lot of money even to the Emir of Dubai.

Mr. BILKEY. Sir, we did this on our own balance sheet. So, yes.

Mr. SPRATT. Do you worry about port security, about the security of your assets?

Mr. BILKEY. All the time, sir.

Mr. SPRATT. Under the present circumstances?

Mr. BILKEY. We continually address security issues. We operate in some very tough places, and we are also, as I mentioned earlier, trying to get CSI, which has been in active discussion with the Dominican Republic. We hope that would happen tomorrow, and we

would get the gear installed and get it up, but from the best of all worlds, from the day you say yes, it is a 6-month deal probably.

Mr. WELDON. The gentleman's time has expired.

The gentleman from New Jersey.

Mr. LOBIONDO. Mr. Scavone, when talking about the facility security officer, you said that that is the only person who has access to the port security plans, and not the operator of the terminal.

Mr. SCAVONE. That is correct, sir.

Mr. LOBIONDO. At Port Newark who employs the security facility officer?

Mr. SCAVONE. That would be Port Newark Container Terminal, also know as PNCT, which is the joint venture that we participate in.

Mr. LOBIONDO. So that facility security officer that you partially hire has access to those sensitive port security plans?

Mr. SCAVONE. Yes, sir.

Mr. LOBIONDO. If, in fact, this all were to go through, then the new owner that is buying the operation, that would still be hiring or partially hiring at Port Newark that facility security officer?

Mr. SCAVONE. The understanding is that the current manager will remain in place, and that any replacements to those individuals as in the natural course of things they perhaps leave or get promoted or otherwise are removed from a position would be—would require prior approval from the U.S. Government before a replacement is made.

Mr. LOBIONDO. For the facilities security officer.

Mr. SCAVONE. Yes, sir.

Mr. LOBIONDO. What I was getting at, I don't remember the name of the Member who initiated the questions or how you first got into that, but that basically your corporation or the new owner would not have access to the port security plans, but that in this case would not be true. They would actually have access to those plans because they are your employee or the employee of Dubai Port World.

Mr. SCAVONE. I do believe that as part of the commitment that was made during the CFIUS process, it was agreed that the formal protocols that are in place would remain in place, and that none of that information would leave the country, as indeed happens now. For instance, our London office does not have copies of our facility security plans. They have never asked for them. They make no attempt to get involved in the way we manage security on the ground.

Mr. LOBIONDO. Your company does not, but in the case of New Orleans, it would be 100 percent ownership, Mr. Bilkey—would be 100 percent ownership if this goes through.

Mr. Scavone.

Mr. SCAVONE. Bearing in mind that what is being bought is P&O Ports in the U.K., which, through several corporations, owns P&O Ports North America, which is a U.S. company with U.S. employees that pays U.S. taxes, that is going to remain intact. It is similar to——

Mr. LOBIONDO. I understand. The point I am getting to which we are trying to ascertain when we are talking about the security end of this is that, in fact, those port security plans would be available

to the parent company, in which case they would be available to the Government of Dubai. And somebody is shaking their head behind you. If that is not true——

Mr. SCAVONE. It is not true, sir, and I do think that during the additional 45-day review process, those are exactly the type of details that perhaps can be examined, and indeed if anybody believes that the measures that have been agreed have any vulnerability, perhaps that is something that perhaps we can talk about. But the intention is that that not, in fact, be the case.

Mr. LOBIONDO. That is part of our problem. We are trying to sort through what intentions are, what is been decided and agreed to, and what the Congress has access to, and there is a wide variation.

Mr. Bilkey, I would like to know, I read a report that Dubai has imposed a boycott on Israel. Did I, in fact, understand that accurately, that that is the case?

Mr. BILKEY. The government of Dubai is just for the emirates, sir.

Mr. LOBIONDO. Is there a boycott with dealing with Israel?

Mr. BILKEY. Well, sir, I am not someone who can speak to state matters, and that is a UAE matter, but what I do know that is going on right at this time is that there is a—fair trade negotiations are going on between the UAE and the United States Government, and I am sure this is going to be one of the issues that they will be discussing.

Mr. LOBIONDO. I understand. I thought I read from your Senate testimony though that that boycott is in place or being honored by United Arab Emirates. I read wrong, you didn't say that?

Mr. BILKEY. I didn't quite understand the question, sir.

Mr. LOBIONDO. Sorry, Mr. Chairman, a little frustration here trying to communicate.

I believe that I read in your Senate testimony—you did indeed testify for the Senate, correct?

Mr. BILKEY. Yes.

Mr. LOBIONDO. That there is a boycott in place with Israel?

Mr. BILKEY. For cargo from the United States, the United Arab Emirates puts it in, but it is not something we are involved in, sir. We are involved in the terminal business, and we obey the laws of any country that we are in.

Mr. LOBIONDO. But with government involvement, that is where our—we can't separate some of these issues because with Israel as our most reliable partner in that part of the world, some of us view that if there is, in fact, a boycott, that something like the deal we are talking about is in effect ending up subsidizing a boycott, and that is where we have got a serious problem and where this is coming down. You probably can't answer if it were one of the conditions after the 45 days that there not be anything like a boycott, how you would react to that condition, but that will certainly be one of the questions that we will be asking.

Mr. BILKEY. Yes, sir. I know this is a matter of concern, and with the Chair's permission, I would like to read some excerpts and put this letter in the record, if I may.

Mr. WELDON. Without objection, it will be entered in the record.

[The information referred to can be found in the Appendix beginning on page 205.]

Mr. BILKEY. Thank you, sir.

This is a letter to my CEO and from Idan Ofer, who is the chairman of the board of the largest Israeli shipping company: I wanted to take a moment to express my complete dismay at the way your fine organization is being pilloried in the United States. As you well know, Zimm Israel considers DP World to be one of our closest global allies.

I am going to skip the middle of it where they operate with facilities.

They are one our largest customers in many parts of the globe. I sincerely hope this unnecessary political storm will cease so we can all focus on the business of providing the world safe and efficient shipping services. We truly look forward to working with you in the U.S. where I know we will enjoy the same great relationship we are in the rest of the world. Until then, I would like to extend an offer to help you in DP World any way we can.

Mr. LOBIONDO. I appreciate that letter, and I will look forward to getting my hands on it and seeing it, but that individual still isn't answering the question about the boycott. And if, in fact, it is real, and if it is real, because it is United Arab Emirates and you are a part there, that is what is causing agitation on our part.

Mr. Chairman, I thank you very much.

The CHAIRMAN. The gentleman from Washington Mr. Larsen.

Mr. LARSEN. Thank you for being here.

On your hold separate commitment, the last page before the signature page, it says, this hold separate commitment shall take effect from the date, and so on; remain in effect until May 1st. In other words, your time line is May 1st or when the new review is done. Has the new review started?

Mr. BILKEY. May I give this to my general counsel?

Mr. LARSEN. Absolutely.

Mr. DALTON. No. We had been preparing the CFIUS application that will be going in very shortly, perhaps as early as tomorrow.

Mr. LARSEN. Does the clock start then?

Mr. DALTON. That is my understanding. My understanding is the process has to be accepted by CFIUS first.

Mr. LARSEN. Let me give you the cheapest piece of advice you are going to get. Last week we were out of session, and the announcement came out that the CFIUS review was completed, and you were approved to move forward, and we were in our districts for a full week hearing from our constituents, e-mails, phone calls, letters, getting our dander up. If I count 45 days from tomorrow or even early next week, I think we are out of session again.

The cheapest piece of advice I can give to you is if there is an announcement one way or the other, don't have us be out of Washington, D.C., because we are going to be through this all over again. We have to talk to our counterparts in the Administration when they come through as well to get our point across about this process, about the CFIUS process, and that is not your problem, that is the Administration's problem. But we could be going through this all over again in 45 days.

So I would strongly suggest that it is in everyone's advantage for Congress to be in D.C. when any announcement is made on this new review. Otherwise, we are going to come back to this place if

it comes back in an approval, and we don't feel like we are going to be involved, we are going to be through this all over again. That is free advice. That is why it is so cheap.

I have some questions for you. You mentioned that you had a U.S. Government agency as a point of contact. Which agency is that, and who is that, who within that agency? Perhaps Mr. Scavone mentioned that.

Mr. SCAVONE. Yes, Congressman, I was the one who said that, but, of course, I was reciting what I understand the agreement to be with DP World under the CFIUS process. I do think that that is exactly, again, the type of detail that perhaps should be buttoned down during the next 45-day review process so that it is to the satisfaction of everybody.

Mr. LARSEN. Probably a question we should ask the next panel.

Mr. Bilkey, you talked about your going out with an RFP, may have been RFP or R5 of some sort, about applying some NII technology to your terminals. What is the time line on that?

Mr. BILKEY. Well, I am looking at it here. It actually took place long before any of this happened. The date on this is September 19th. We are now considering three different offers that we have had, and we would hope to make our decision, I am sure—I have a day job, and it is a fairly big one, and I haven't been paying a lot of attention to it, and I hope they keep me employed. But we are hoping to do this—certainly within the next month we would be making decisions, because it is not an immediate process, and it takes from the day we say go—and where we are going to start, we would like to start a pilot program in the Dominican Republic, because that will actually be, frankly, a good marketing tool for us, but it involves U.S. cargo and U.S. transshipments and would be a very strong point in the security cycle.

Mr. LARSEN. My time is growing short.

I was in Hong Kong in January and took a tour with Hong Kong International Terminals on their pilot, and they are putting the dollars in per container. There is an equivalent per container. It is coming out of their pocket to do this. My sincere hope is that we have—perhaps it may take the U.S. to push this, but to push this kind of thing as an international system for our own sake.

Just quickly, Mr. Chairman, if I could, I am from Washington State. Just up the highway is the Port of Vancouver. To what do you contribute the collective yawn in Vancouver and Canada about your takeover of terminal operations in the Port of Vancouver compared to port operations in the U.S., if you dare to answer that question?

Mr. BILKEY. We have had no adverse reactions.

Mr. LARSEN. I know. To what do you contribute the collective yawn in Canada compared to the response here in the United States?

Mr. BILKEY. I don't know, and to be frank, since it hasn't raised its head, I haven't paid much attention to it.

Mr. LARSEN. Fair enough. Thank you.

The CHAIRMAN. Thank the gentleman.

The gentleman from New Jersey Mr. Saxton.

Mr. SAXTON. Thank you, Mr. Chairman.

Mr. Bilkey, I understand my smart staff tells me that Dubai Port World has two divisions, one known as the Port Authority, the other known as Ports International. Is that right?

Mr. BILKEY. I think what maybe had been referred to is Dubai Ports Authority actually ran the whole operation in Dubai, both the port authority side and also the operational side. They had an international division, which I also was in charge of as the executive director of Dubai Ports International. These were merged in September into DB World because we actually all had the same customers. I think that is where that——

Mr. SAXTON. Thank you. So there were two separate functions, and now Dubai Ports World has combined both functions together.

Mr. BILKEY. Yes. But we separated out the regulatory functions of Dubai Port Authority. Dubai Port Authority is now a separate body.

Mr. SAXTON. The port authority formerly—apparently the port authority formerly took part in the Container Security Initiative; is that right?

Mr. BILKEY. Yes, sir. I am not too familiar because I wasn't there when it first happened.

Mr. SAXTON. So today Dubai Port World takes part in the Container Security Initiative.

Mr. BILKEY. Not directly, it is really Customs. And the arrangement is with Customs, and the agreement I know was signed last January.

Mr. SAXTON. Here is my point of interest—thank you for helping me clarify that. Here is my point of interest. The U.S. Customs Service under the Container Security Initiative agreement with Dubai or the UAE sends U.S. Customs agents to Dubai to inspect—to do certain inspections, right?

Mr. BILKEY. Yes. Actually to receive the manifests. There is a 24-hour rule any box anyplace in the world being loaded to the U.S., the shipping line has to supply the manifest or the bill of lading to U.S. Customs before it will be loaded.

Mr. SAXTON. Those inspections are done in cooperation with the Dubai Customs organization?

Mr. BILKEY. Yes. Yes, sir. If they want to inspect something, they will advise us, or they will tell us not to load something, and we don't load it.

Mr. SAXTON. It is a reciprocal agreement which gives Dubai Customs authorities the opportunity or the right to come to this country to inspect containers that are bound for Dubai; is that right?

Mr. BILKEY. No, sir. It is an initiative really pushing out our borders, so to speak.

Mr. SAXTON. We don't have a reciprocal agreement with Dubai that gives them the same authority?

Mr. BILKEY. I don't know about it if there is one, sir.

Mr. SAXTON. Well, the information that we have is that there is one, and under that reciprocal agreement, the Dubai Customs authorities would have the right to come to this country and take part in similar inspections. You have no knowledge of that?

Mr. BILKEY. No, I don't, sir.

Mr. SAXTON. We got that from our annual Customs report from 2005, and so I am asking you because——

Mr. BILKEY. It sounds like it is kind of a normal reciprocal arrangement; if you do it for me——

Mr. SAXTON. So there would be citizens of Dubai potentially to carry it out?

Mr. BILKEY. If it is there. I am totally unaware of it, Congressman.

Mr. SAXTON. You couldn't tell us about the people that take part in this kind of program?

Mr. BILKEY. No, sir, because I am not involved in the Customs procedures.

Mr. SAXTON. It would certainly concern us, or we would at least be concerned enough to want to know who would be hired to come into this country and make those inspections, and so I wonder if it might be an advantage in your deliberations over the next 45 days or so to look into this and make sure our decisionmakers take this program into consideration so that we can make sure that that is not a bone of contention 45 days from now, because obviously we are going to look into it.

Mr. BILKEY. I would imagine in the CFIUS review that U.S. Customs would be bringing something like that question up.

Mr. SAXTON. Thank you, Mr. Chairman.

The CHAIRMAN. Thank the gentleman.

The gentleman from Georgia Mr. Marshall.

Mr. MARSHALL. Thank you, Mr. Chairman.

Mr. Bilkey, I want to kind of continue on the line of questioning I had before with regard to the additional things that you agreed to, the company agreed to, as part of the CFIUS process and clearance. One had to do with management, we talk about that, and various people have asked you questions about this management understanding. And the summary in your testimony is that you undertake to—this is a quote—operate all U.S. facilities to the extent possible with current U.S. management. As we talked about that, that undertaking doesn't end on May 1st, it continues thereafter, and it is your understanding that there would be simply U.S. management?

Mr. BILKEY. No, sir. We put this time period in place so there could be a review.

Mr. MARSHALL. I understand. The undertaking doesn't stop at the end of that time period.

Mr. BILKEY. I understand that this is in the package that we handed out.

Mr. MARSHALL. The actual language, I want to get to that next, but I just want to see what your understanding is. I assume that it was our Homeland Security Department that asked for this concession; it wasn't something that you simply proposed.

Mr. BILKEY. I frankly don't know. I reviewed it. I think the answer can be made here.

Mr. DALTON. Congressman, we did propose it.

Mr. MARSHALL. You proposed it in response to concerns expressed by?

Mr. DALTON. Through the normal CFIUS process.

Mr. MARSHALL. The CFIUS process. It is utterly incredible you would say our management is not competent or—somebody was worried about——

Mr. DALTON. We volunteered at the CFIUS.

Mr. MARSHALL. Why did you volunteer it?

Mr. DALTON. I am sorry. I was conferring with our counsel who helped assist us because we wanted to assure the United States Government and the public that the management team that was currently in place from P&O would in fact remain in place.

Mr. MARSHALL. And I think I understand the spirit behind that and the concerns that you had at the time you made that offer. And this was during that period of time before you hired lobbyists and before we had this big public dispute, you anticipated that there could be some problems associated with this, and one way to mute those problems, to lessen them, lessen the public perception that there is a problem here is to go ahead and agree to this retention of management.

Mr. DALTON. What we were attempting to accomplish was to demonstrate our cooperation with the United States Government and our concerns about security.

Mr. MARSHALL. When you say your concerns, now, you are the guy. And what is your concern that would lead you to say we won't manage?

Mr. DALTON. Sir, we are a company incorporated in Dubai, and we have security concerns in all of our facilities around the world.

Mr. MARSHALL. Why would you be—why would your security concern that is worldwide persuade you to make an offer that you would only have U.S. management for these facilities in the United States? What is the relationship between those two?

Mr. DALTON. Sir, I don't think we committed to only having U.S. management. I think we committed to keeping the current P&O ports management in place. My understanding—my colleague from P&O can address this more specifically, but there is action, approximately 400 direct employees by P&O Ports North America of which approximately seven or eight are non-U.S. citizens. There are several other citizens such as from the UK, I believe Australia, and I am not sure a couple of other places, but clearly, the vast majority of the employees of P&O Ports North America are U.S. citizens. And we wanted to demonstrate our commitment to them as well.

This was a company that is approximately four times larger, depending on how you calculate it, than DP World. And as part of that, we needed their management expertise, and that was part of the reason that we wanted to acquire their firm.

Mr. MARSHALL. I understand, Mr. Bilkey, in his testimony, as I said previously, indicated some discomfort that these were unusual things to have agreed to. And you are telling me now that, at least with regard to the management thing it was your idea; it was your proposal that this be done because you wanted to, I guess, make CFIUS comfortable. I am not sure. We will get more information about that.

I will observe though that page two of the letter that I guess memorializes the agreement, this undertaking, says this, it is page two of the letter that is in the packet, and I assume this is the language of the agreement. I will give you a more precise description.

This is a letter dated January 6, 2006, to Mr. Stewart A Baker, and it is from—I'm sorry but I can't read, Robert Scavone. I guess

it is from you. And I assume that this is the language of the undertaking. And here is what it says about management of U.S. facilities: The companies—companies, plural—I am a little confused about that, I guess it is both companies here—and so the acquiring company, hereby represent——

Mr. BILKEY. I was going to say, it was a joint filing, sir.

Mr. MARSHALL. Good. Okay. So the acquiring company, DP World, is representing—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.

I am a lawyer. Commercial transactions, lawyers happen—I do these kinds of deals. That is language that doesn't bind anybody to anything. It states a current intent and a current plan.

But intent changes; plans change. And one of the things that I thought I clearly heard from Mr. Scavone, I might have heard from Mr. Bilkey, is that you are willing to work with us to take up language, the undertakings that have been made here, if in fact the language isn't ideal, perhaps we can take up that language and perhaps the Congress can help the Administration to address some language that is a little clearer and firmer with regard to that issue, if in fact it is an issue that has something to do with security. That is all I have, sir.

The CHAIRMAN. I thank the gentleman.

The gentleman from Missouri, Mr. Skelton, had a couple more questions.

Mr. SKELTON. I am still, Counsel, what is your name again?

Mr. DALTON. George Dalton, sir.

Mr. SKELTON. Are you in-house counsel?

Mr. DALTON. Yes, sir.

Mr. SKELTON. I am not quite clear. The period of time that is supposed to elapse before DP World takes over operation is between now and May 1; is that correct?

Mr. DALTON. Sir, it is the earliest, I believe—I will find the exact language in just a second—but I believe it is the earliest of the conclusion of the CFIUS process or May 1, if you give me just a moment.

Mr. SKELTON. And again, give us the reason for that.

Mr. DALTON. Sir, we were attempting to address or at least provide an opportunity and an avenue to address the concerns of Congress and the American people that have been raised through the course of this acquisition of the transaction.

Mr. SKELTON. It had no legal binding effect; did it?

Mr. DALTON. No. We believe it will have a binding effect if the United States Government accepts our offer. I think that we have found——

Mr. SKELTON. Accepts your offer to do what?

Mr. DALTON. To hold separate, to honor the commitments that we have given in the agreement, we hope that the United States Government will accept it. I think we have found ourselves very much in unchartered waters here because we had already received the CFIUS approval.

Mr. SKELTON. That's right. The deal was done.

Mr. DALTON. Well, the deal is about to be done, but the CFIUS approval was granted, which was, we followed the specific legislative intent and the letter of the law set out by the United States Government.

To be honest, I don't think that it is our position to comment on whether or not the CFIUS process is correct or right. We simply followed what had to be followed.

Mr. SKELTON. No. No. No. You told me a little while ago that, Tuesday, the deal is in blood; am I correct?

Mr. DALTON. That is correct, under the UK takeover code, and we would find ourselves in violation of UK law, we believe, if we didn't proceed with the deal.

Mr. SKELTON. So, Tuesday, the deal is done.

Mr. DALTON. We believe it should take place on or about Tuesday. Yes, sir.

Mr. SKELTON. Then I still, if the deal is done Tuesday, why the May 1 date?

Mr. DALTON. To give the Congress an opportunity to——

Mr. SKELTON. To do what?

Mr. DALTON. To take a look at the deal. We are voluntarily committing back to the CFIUS process embodied by that process as it relates to the United States' facilities.

Mr. SKELTON. That has no legal binding now other than maybe to let the thing blow over; is that correct?

Mr. DALTON. No, sir, we were trying to demonstrate our commitment to security and to our cooperation to work with Congress. We just found ourselves——

Mr. SKELTON. To do what? How can you work with Congress if the deal is done?

Mr. DALTON. Sir, the deal applies not just to the United States but also to many other countries around the world.

Mr. SKELTON. I understand that. But the deal is already in blood as of Tuesday it will be.

Mr. DALTON. Yes, sir.

Mr. SKELTON. So what, how do you work with Congress if the deal is behind you?

Mr. DALTON. Sir, we found ourselves in a very difficult position.

Mr. SKELTON. I understand that, but it is a public relations thing; isn't it?

Mr. DALTON. I don't believe so no, sir.

Mr. SKELTON. Thanks counsel.

The CHAIRMAN. I thank the gentleman.

The gentleman from Pennsylvania, Mr. Weldon.

Mr. WELDON. I thank the gentleman for yielding, and I want to get back to the point that I was raising only because when this deal was announced by the Administration, I went on national television and blasted the White House publicly.

And I did so because they didn't have the courtesy to bring Members of Congress in from both sides to let us be a help. And I don't want to cause a problem with the Emirates because I think they have, in fact, been helpful to us. But I blasted the White House for what I thought was an inappropriate way of involving Congress in transparency.

And now, what I am finding out is that there have been discussions from the other side of the aisle about helping this deal move forward.

Now, I believe that you testified that your lobbying, one of your lobbying firms was Alston & Bird; is that correct?

Mr. BILKEY. No, sir they are our counsel.

Mr. WELDON. They are your counsel. Is it true that, at Alston & Bird, one of the leading people working with you is in fact a gentleman named Jonathan Winer.

Mr. BILKEY. Yes, sir.

Mr. WELDON. And he is here.

Mr. BILKEY. Yes, sir.

Mr. WELDON. And is it true Jonathan Winer spent 10 years as Senator John Kerry's aid?

Mr. BILKEY. He told me that, sir.

Mr. WELDON. Is one of the other principals in the firm involved with this Kathryn Marks.

Mr. DALTON. May I take that, sir?

Mr. WELDON. Yes.

Mr. DALTON. Yes, she is——

Mr. WELDON. Is it true that Kathryn Marks was policy director for Senator John Edwards?

Mr. DALTON. I saw that in the newspaper for the first time yesterday.

Mr. WELDON. And the reason I say this is, my colleagues and I have all been very critical of this Administration, and I take the lead on that. And I don't apologize for it. But what I see here is leaders of both parties, instead of coming to the Congress and letting the Congress come in and understand, which is what I would have done when I had this deal, knowing it was going to become controversial based on substance or not, after the fact, all of these players, including a former President, are getting involved to push a deal through that the American people, including my constituents, are going bonkers over.

And that bothers me.

Now some on the other side are using this as a cheap shot to trash President Bush and Republicans in Congress. And I have been one of those that has criticized this President in not having access. But now I find out it is not just one party.

I want to get back to when—and now you have told me on the record that the Albright firm does not work for your company, never has, nor any of the principals or others involved; is that correct?

Mr. BILKEY. No, sir. The Albright company helped us in China.

Mr. WELDON. But they have done nothing on this deal?

Mr. BILKEY. No, sir.

Mr. WELDON. They have not talked to any agency heads?

Mr. BILKEY. I understand they gave us some referrals, but that is all.

Mr. WELDON. They have not talked to the State Department?

Mr. BILKEY. To the best of our knowledge, no, sir.

Mr. WELDON. So you have never had contact with anybody in Albright's firm about this particular deal in helping it get through?

Mr. BILKEY. To my knowledge, other than what I have been told, they made some referrals.

Mr. WELDON. Mr. Dalton, can you affirm that same statement, that you are aware of no involvement by Madeleine Albright's firm on this deal?

Mr. DALTON. My understanding is that one of the principals, I am not sure of her name, attended one meeting, and I, the rest of what Mr. Bilkey has stated, yes, I can confirm that the Albright firm has provided information and help to us in China but not in the United States.

Mr. WELDON. But now you just said, one principal of that firm did attend. Would that person have been Carol Browner.

Mr. DALTON. I believe that is her name.

Mr. WELDON. And do you know that she was the former Environmental Protection Agency (EPA) director in the Clinton administration?

Mr. DALTON. I believe I saw something about that in the press as well, sir.

Mr. WELDON. I don't know why you would say that the Albright firm, of which she was a principal, was not involved. I understand they may have helped you with China, but we are not talking just about China here.

The problem here, and believe me, I say this as somebody who took on the White House and made it very uncomfortable for my President and Treasury Secretary Snow and all of the Cabinet members—I was willing to do that.

But I also think the American people have a right to know when the other side of the aisle is pushing the deal for whatever reason, maybe because it is legitimate.

And the only reason I raise these questions is your testimony, both written and what statement you have given, is that there was no need for concern, no need for security concerns; you just felt this was a routine transaction that would, on the merits, go forward.

And so I have to ask the question, why would you hire all these high-priced firms, both Republicans and Democrats, to make it happen if there are no security concerns, if there is no way to grease the skids?

We have got a laundry list of officials here and their former staffers that are now involved in making this deal happen.

If this was such an ordinary routine business deal to make a sale occur, I don't understand why all of this should be necessary.

Can you help me understand that?

Mr. BILKEY. Sir, we started on October 17 and way ahead of any time frame that we thought we would be able to put it in an offer. We also started very early in Australia, because these were two areas that had processes that had to go through that were going to be time-consuming. And we abided by everything that we thought was necessary.

This was all there was. This is what we did throughout the world. And at the end of the time that this happened, and we volunteered because it was suggested that they might like to talk to you personally and ask questions, so we came in December 6, I think, to Washington and met with the 12 agencies.

And from that time on, the process continued. And finally, we received approval. So we thought we had done all the right things, Congressman.

Mr. WELDON. I understand.

Mr. BILKEY. And I mean, within our own situation, we said, this is what is required. We are doing everything that is required. And any process that needed liaison between, you know, the Administration and Congress we thought would be part of the process. We don't know the process.

We just did exactly what we were told to.

Mr. WELDON. I understand and the only reason——

Mr. BILKEY. And we really, we are very, you know, surprised at the reaction.

The CHAIRMAN. I thank the gentleman.

Gentlemen, let me ask you a couple of questions. First, Mr. Bilkey, you stated that President Clinton made a call on the Emir or talked to him on the telephone?

Mr. BILKEY. No, sir, to my chairman, Sultan Ahmed bin Sulayem.

The CHAIRMAN. What is his name?

Mr. BILKEY. Sultan Amid bin Sulayem.

The CHAIRMAN. How did you find out about that?

Mr. BILKEY. He told me.

The CHAIRMAN. Was this a supportive call or was he eliciting advice or what?

Mr. BILKEY. I don't know the details of the call. He just said, he called me.

The CHAIRMAN. About the deal?

Mr. BILKEY. Yes. I mean, I didn't go into it with him at the time.

Mr. WELDON. Will the gentleman yield?

The gentleman wasn't here, but you did testify there was a recommendation to hire Mr.——

Mr. BILKEY. Yes, but, my chairman told me that he made this recommendation.

Mr. WELDON. And I assume the gentleman would yield further that that was for the purpose of supporting the deal.

Mr. BILKEY. Yes, it would be.

The CHAIRMAN. So your understanding is that President Clinton called in to help support the deal or to offer advice on how to get this thing through.

Mr. BILKEY. I don't know what the conversation was about. The only thing I was told was that this had been a recommendation.

The CHAIRMAN. Have you had any conversations with your—this is your president or your Chief Operations Officer (COO)?

Mr. BILKEY. My chairman.

The CHAIRMAN. Your chairman.

Did he make any remarks in the wake of Senator Clinton criticizing this deal?

Mr. BILKEY. I have no knowledge of any of that, sir.

The CHAIRMAN. Did you have an answer there, Mr. Moore.

Mr. MOORE. No, I didn't. I had a different subject, and I leaped again there. I apologize.

The CHAIRMAN. Okay. Have any of you folks had a discussion with President Clinton?

Mr. DALTON. No, sir.

Mr. MOORE. No, sir.

The CHAIRMAN. Do you know if—do you have any—has there been a relationship between your COO and the President before this?

Mr. BILKEY. I don't know. If there has been one, I am not aware of it, sir.

The CHAIRMAN. Were you ever aware of him visiting Dubai?

Mr. BILKEY. I heard he visited Dubai, but I was never involved if he did.

The CHAIRMAN. Did they ever maybe hire him for a speech that you know of?

Mr. BILKEY. I read in the paper that he had a speech, today or yesterday, but that is the only time I was aware of it.

The CHAIRMAN. That President Clinton had a speech in Dubai today or yesterday?

Mr. BILKEY. No. I read recently——

The CHAIRMAN. You read today that he had a speech at some point.

Mr. BILKEY. Recently, I can't remember if it was today. I have been reading a lot of information.

I don't remember when it was, but there was a reference that there was a speech in Dubai, I believe.

The CHAIRMAN. Mr. Bilkey, you heard this litany of transfers of technology that took place in Dubai, transshipments of components of nuclear systems that took place that I read to you or I started out the hearing.

Mr. BILKEY. Yes, I had heard that, sir.

The CHAIRMAN. Now, I understand the Emir, who is the only director, is for practical purposes the leader——

Mr. BILKEY. He is the shareholder, sir.

The CHAIRMAN. He is the shareholder. What is his position in the government of Dubai?

Mr. BILKEY. He is the ruler, sir.

The CHAIRMAN. He is the ruler of Dubai, and isn't he also, he has a place in the United Arab Emirates, does he not?

Mr. BILKEY. Yes, sir. He is the prime minister.

The CHAIRMAN. I am going to go back to this 2003 transfer of these high-speed electrical switches which are utilized for detonating nuclear weapons that were allowed to be transshipped to a Pakistani businessman through Dubai and the information that we have is that Washington protested those transfers. And yet the government of Dubai allowed the transfers to take place over our protests.

Do you know anything about that?

Mr. BILKEY. No. Absolutely not. Only what I read in the paper. But I would say one thing as far as the terminal, people go and our operations go, we don't know what is in containers. The people who know what are in containers are the ship owners, the shipping company and customs.

The CHAIRMAN. But in this case, your only stockholder, the Emir, he is the government of Dubai. We protested to the government of Dubai that these triggers were going to be transshipped, and we wanted to stop them so we wouldn't have an unfortunate nuclear

detonation at some point. So he apparently knew even, though he didn't transfer that information to you. In your opinion, you understand, is that——

Mr. BILKEY. I know nothing about this issue. And I am not even sure I was in Dubai when it took place.

The CHAIRMAN. If he is—he is the ruler of Dubai. Is that a fairly absolute position? Does that mean that the Emir has—is the—has the ability to stop a shipment if he wanted to stop it from going through Dubai, send the police down, send the port authority down? You understand the nature of his government there?

Mr. BILKEY. Yes, sir. But I can't comment on his authority and how he would do that.

The CHAIRMAN. Is there anybody else in Dubai that—who supersedes him?

Mr. BILKEY. No, sir, not in Dubai.

The CHAIRMAN. If you discovered, if you were informed that, in fact, he, through his subordinates, discussed the transshipment of these high-speed switches, that can detonate nuclear devices with the United States officials and told them he was going to allow the transshipment anyway or allow his subordinates to allow the transshipment, would that be relevant, from your perspective, with respect to this deal, this port deal? Or would it be irrelevant?

Mr. BILKEY. Well, I would imagine, sir, it would be a matter between not Dubai but the UAE and the U.S. Government. And it would be the UAE would be taking action.

The CHAIRMAN. Now what is this gentleman's name, say it one more time, the Emir?

Mr. BILKEY. The Emir, Mohammed bin Rashid

al-Maktoum

The CHAIRMAN. Isn't he also the vice president of the UAE?

Mr. BILKEY. Yes, sir, and the prime minister.

The CHAIRMAN. Well, in that case, we are talking about the same guy. I don't care if he moves from one desk to another, and you say you are dealing with the UAE now, and you are not dealing with Dubai. It looks to me like you have got the same power in government behind both of those desks.

So my question to you is—and same guy who is the only shareholder in the corporation.

Would he not be in a position to have stopped those high-speed switches that could be used to detonate nuclear devices? Would he be in a position to stop a shipment? What is your basic take on the way the government is set up? Is there somebody——

Mr. BILKEY. I can't answer that, sir, because I am not a specialist on the government of the UAE. They have a council of ministers, and I don't know how they function exactly.

The CHAIRMAN. Are you aware of any of the, have you heard anything or have you been faintly aware of any of these transshipments that have taken place with respect to either the precursors to nerve gas, a transshipment to Iran, the precursors of nerve gas, the 66 high-speed nuclear weapons switches that I talked about, the heavy water shipments from China and Russia to India, through Dubai, have you ever heard of any of those transfers?

Mr. BILKEY. No, sir.

The CHAIRMAN. And you are the chief operating officer for——

Mr. BILKEY. Yes. And I don't even know when they took place. But what I can tell you is that, since the CSI agreement was signed between the UAE and the United States, that any container that U.S. Customs, transshipment or not, wishes to inspect, they have, in the agreement, they have the right to inspect. And not only that, in most countries, it will be the agency of the country that will make the inspection. In Dubai——

The CHAIRMAN. But they didn't stop the shipment of those triggers.

Mr. BILKEY. I have no idea the years we are talking or when we are talking about. But I do know what the situation is now, and that is what interests me now, is security from now going forward.

And I do know that it is a very unique situation that we have. And I know that we have very strong operations supporting the efforts in Afghanistan, in Iraq, going through Dubai at the present time.

The CHAIRMAN. Okay. Thank you.

Do we have anybody else with questions?

Yes. The gentleman from New Jersey.

Mr. ANDREWS. I will be very brief because I think we have exhausted this. One thing I want to make very clear on the record to is it Mr. Bilkey, I am sorry, correct, is the CEO, thank you for your patience and for your diligence.

The prime minister of Dubai is the sole shareholder of the corporation; correct?

Mr. BILKEY. Yes, sir.

Mr. ANDREWS. Am I correct in assuming that, under Dubai law, that if he chose to dismiss you or any of your subordinates, he has the power to do so?

Mr. BILKEY. That power would be with the board of directors. The board of directors is made up of Sheik Mohammed and Sultan Sulayem.

Mr. ANDREWS. Under the law of—you are a Dubai corporation; is that correct?

Mr. BILKEY. Actually, we are a free—a Jebel Ali Free Zone cooperation.

Mr. ANDREWS. Under the chartering law of your corporation, does the shareholder have a right to elect a new board of directors that would follow his will?

Mr. BILKEY. I am not sure of that, sir.

Mr. ANDREWS. Does your counsel know?

Mr. DALTON. I am not a Dubai lawyer, but I believe the shareholder would have the authority.

Mr. ANDREWS. So isn't the practical answer to that question is, should the sole shareholder wish to change the management, he has the power to do so?

Mr. BILKEY. I would think so. It is true in most companies.

Mr. ANDREWS. I would think so.

Thank you very much, Mr. Chairman.

Mr. WELDON [presiding]. We will move on to the next panel. I want to thank you all for appearing before us. We appreciate your statements, and formal comments will be entered into the record. Thank you.

Our next panel will include five witnesses, four of whom will give testimony.

We would ask them to come to the table, the dais, at this point in time.

STATEMENT OF ERIC S. EDELMAN, UNDER SECRETARY OF DEFENSE FOR POLICY, DEPARTMENT OF DEFENSE; STEWART BAKER, ASSISTANT SECRETARY, POLICY, PLANNING AND INTERNATIONAL AFFAIRS, DEPARTMENT OF HOMELAND SECURITY; CLAY LOWERY, ASSISTANT SECRETARY, INTERNATIONAL AFFAIRS, U.S. DEPARTMENT OF THE TREASURY; ALAN MISENHEIMER, DIRECTOR, OFFICE OF ARABIAN PENINSULA AND IRAN AFFAIRS, DEPARTMENT OF STATE; AND REAR ADM. THOMAS GILMOUR, USCG, ASSISTANT COMMANDANT FOR MARINE SAFETY, SECURITY AND ENVIRONMENTAL PROTECTION

Mr. WELDON. Our second panel today consists of Ambassador Eric Edelman, Under Secretary of Defense for Policy, Department of Defense; Mr. Stewart Baker, Assistant Secretary of Policy, Planning and International Affairs, Department of Homeland Security; Mr. Clay Lowery, Assistant Secretary, International Affairs, Department of Treasury; Mr. Alan Misenheimer, director, Office of Arabian Peninsula and Iran Affairs, Department of State; Rear Admiral Thomas Gilmour, Coast Guard Assistant Commandant for Marine Safety, Security and Environmental Protection.

We welcome each of you here. Your written statements will be entered into the record as you prepared them, without objection. And I understand that only four of you are going to give statements. My understanding is that Mr. Misenheimer is not going to give a statement but is here in case we have questions, and anything you have for the record, we would accept as well.

We thank you all for appearing. We have been in a rather long hearing today, and you have heard probably many of the proceedings, so you know the tone of discussion. Plus you have been on the other side, so you are used to this drill. We do appreciate you being here, and I would like to now—did you want to make any opening on this?

Mr. SKELTON. No.

Mr. WELDON. So we will proceed with Ambassador Edelman.

STATEMENT OF ERIC S. EDELMAN

Mr. EDELMAN. Congress Weldon, thank you very much. Members of the committee, I appreciate the opportunity to appear before you today to discuss the Department of Defense (DOD's) role in the Committee on Foreign Investments in the United States and our review of the Dubai Ports World P&O transaction.

When the Department of Defense participates in the CFIUS process, we weigh a number of factors. I thought it would be useful to walk through them as we consider an acquisition.

First and foremost, of course, our primary objective, as yours is, is to ensure that any transaction does not pose risks to U.S. national security interests. And to do that, we consider several aspects.

First is the importance of the firm to the U.S. defense industrial base, which is to say, is it a sole source supplier? And if so, what security and financial costs would be incurred in finding and/or qualifying a new supplier if required?

A second question is whether the company is involved in proliferation of sensitive technology or weapons of mass destruction.

A third is whether the company to be acquired is part of the critical infrastructure that the Department needs in order to accomplish its mission.

And finally, we look at whether any of the potential national security concerns that might be posed by the transaction can be eliminated by the application of risk-mitigation measures either under our own regulations or through negotiation with parties.

Regarding this specific CFIUS transaction, I thought it would be useful to just walk through the history.

The Departments of Treasury, Commerce and Homeland Security met with the legal representatives of Dubai Ports World and P&O for a CFIUS pre-filing notification consultation on October 31, 2005. On December 6, 2005, the companies held a pre-filing briefing for all of the CFIUS agencies.

The Defense Technology Security Administration (DTSA) attended the meeting for the Department of Defense. On December 16, the Department of Treasury received an official CFIUS filing. And on the same day, Treasury circulated the filing to all of the CFIUS member agencies for review, and DTSA staffed it to 16 other Department of Defense elements or agencies for review and comment.

The review conducted by the Department of Defense on the transaction was not cursory, and it was not casual.

It was in depth. And it was comprehensive.

The transaction was staffed and reviewed within the DOD by 17 of our agencies. In this case, the DOD agencies reviewed the filing for impact on critical technologies, the presence of any classified operations existing with the company being purchased, military transportation and logistics as well as our concerns that the transaction might raise.

During the review process, DOD did not uncover national security concerns that warranted objection to the transaction or requiring the 45-day investigation.

Positions were approved by staff that ranged from subject matter experts up to, in one case, a Deputy Under Secretary of Defense as appropriate to the offices undertaking the review.

All of the offices that were consulted came back with the same position, which was that the transaction did not require further investigation.

The DOD organizations that reviewed this and the other CFIUS transactions that had come before us bring to bear a very diverse set of subject matter expertise, responsibility and perspective. The organizations included, for example, the office of the Under Secretary for Intelligence, the Office of the Under Secretary For Acquisition, Logistics and Technology, the military departments, U.S. Transportation Command, the National Security Agency (NSA) and the Defense Intelligence Agency (DIA).

The Army, for example, reviewed the case in the following manner. The Army Material Command Headquarters and Assistant Secretary of the Army for Acquisition Logistics and technology staff gave a preliminary review immediately upon receiving the case. Army Material Command then staffed the filing to their subordinate readiness command responsible for acquisition and logistics, including the military surface deployment and distribution command. For this case, the Army's review criteria included the question of assured shipping and the army's final position was that it had no objection to the transaction.

The Defense Security Administration, which reviews, coordinates and analyzes the recommendations from all the other DOD components as well as assessing the export control and sensitive technology issues, ultimately signed off on the transaction for the Department.

The comprehensive and in-depth review we had of the transaction did not raise any issues. We remain comfortable with the decision that was made on that review. I would add that, early in my tenure, Deputy Secretary of the Treasury Kimmitt contacted me to talk to me about the Government Accountability Office (GAO) report that was done on the CFIUS process and the importance of making sure that the security agencies, notably the Department of Defense, had their views fully heard and had sufficient time to analyze sometimes complicated technological parts of proposed transactions and, in addition, had time to, if conditions warranted, work out possible mitigation measures with the companies involved.

Some of those steps have been taken. The process continues. And clearly, we, I think, agree that it is a process that can use even more improvement and look forward to working with members of the committee as the process goes forward to try and see what we can do to improve it.

I do also want to take the opportunity to provide a bit of a perspective for the committee from the Department of Defense point-of-view on the role of the government of the United Arab Emirates and their support as a friend and ally in the global war on terror.

In the war on terrorism, the United States needs friends and allies around the world, especially in the Middle East, to win this struggle.

Our recently published Quadrennial Defense Review (QDR) highlighted that, in conducting the fight, it is important to strengthen the bonds of friendship and security with friends and allies around the world.

And the United Arab Emirates is an outstanding example of the kind of partner critical to winning the long war on terror. Dubai was the first Middle Eastern country or entity to join the Container Security Initiative, the multinational program to protect global trade from terrorism.

It was the first Middle Eastern entity to join the Department of Energy's Megaports Initiative, a program aimed at stopping illicit shipments of nuclear and other radioactive material. The UAE has also worked with us to stop terrorist financing and money laundering by freezing accounts, enacting aggressive anti-money-laundering and counterterrorist financing laws and regulations and ex-

changing information on people and entities suspected of being involved in these activities.

As you may know, the UAE provides the U.S. and coalition forces with access to its territory and facilities, and General Pace has summed up our Defense relationship by saying that, quote, "in everything we have asked and worked with them on, they have proven to be very, very solid partners."

We have been provided access to seaports and airfields like al Dhafra Air Base as well as overflight through UAE air space and other logistical assistance. We have more Navy port visits in the UAE than any other port outside of the United States.

And last year, U.S. Navy war ships and U.S. Military Sealift Command ships spent over 1,400 days in the ports of Dubai, Jebel Ali, Abu Dhabi and Fujairah.

By the way, the port at Jebel Ali happens to be managed by Dubai Ports World, which is also the only carrier-capable port in the Gulf.

U.S. Air Force has operated out of al Dhafra since the Gulf War in 1990, and today, it is an important location for air refueling and reconnaissance aircraft supporting operations in Iraq and Afghanistan. And we should note that our most valuable commodity, our military men and women, are frequent visitors to the UAE on liberty or leave while deployed in the region. And we, of course, rely on the government of UAE to protect those folks, and we are grateful for their assistance.

Finally, the United Arab Emirates has been very supportive in our efforts in Iraq and Afghanistan. They have provided military and operational support to Operation Enduring Freedom in Afghanistan and financial and humanitarian aid to Afghanistan and its people.

The UAE has provided monetary and material support to the new Iraqi government, including a pledge of $250 million in economic and reconstruction assistance.

Mr. Chairman, that concludes my formal statement, and I would be happy to answer any further questions you or your colleagues have after my other colleagues have had a chance to make their statements.

Mr. WELDON. Thank you.

Assistant Secretary Baker, the floor is yours.

STATEMENT OF STEWART BAKER

Secretary BAKER. Thank you, Chairman Hunter, and members of the committee. It is a pleasure to be here. I would like to explain the role of the Department of Homeland Security in this transaction. We are the newest member of CFIUS and have been particularly aggressive in raising new issues about particular transactions that we think required further review.

It is a record we are proud of. Notwithstanding our willingness to stand alone on behalf of certain concerns about homeland security, we did approve this transaction. I think the committee's question for us is why we did that.

And I think the answer to that lies in the three questions that we would ordinarily ask ourselves before voting against a transaction. Those are: Do we have any other legal authority to prevent

the national security harms that are of concern here? What do we know about the companies that are carrying out the transaction and their willingness to cooperate in national security concerns? And are there any further assurances that we want to negotiate or obtain from the companies as part of a condition on approving the deal?

We ask those questions. And if we don't get satisfactory answers, we will object to the closing of the transaction.

In this case, it happens that there are significant answers to all three of those questions. Since September 11, we have changed our approach to the security of our ports and to the security of cargo. With the help of Congress, with the Maritime Transportation Security Act, we now have substantial authority for the Coast Guard, which I will let Admiral Gilmour talk about, both to impose regulations on members of, the participants in a port, facilities in a port, and also to inspect foreign ports to make sure that they maintain security.

We also have substantial new authorities with respect to the supply chain, containers. We receive word before the container is put in the ship in a foreign port. We have to receive 24 hours in advance, a list of the contents. We can decide at that point that we would like the containers screened in the foreign port, actually inspected, x-rayed or otherwise run through a radiation monitor or actually physically inspected in order to make sure that there is not a problem. We do that with any high-risk containers that we encounter in foreign ports.

Then, when the cargo is closer to the United States, we have a variety of reporting, including 96-hour report on the manifest and the crew and passengers so that we can do background checks on crew and passengers before they arrive.

When the cargo arrives, we, of course, have full authority over what happens to the contents of the ship. We can meet the ship at dockside. We can meet the ship offshore. We can designate any of the containers that we wish to go to further inspection, radiological or otherwise.

We make those decisions principally based on a variety of intelligence and information we have about anomalies in the supply chain or aspects of the shipment that raise its risk score.

Once we have done that, and only after we have done that, is the cargo free to leave the port.

In the course of that, we do deal with terminal operators. And I think this committee understands better than the press has what the role of a terminal operator is. Terminal operators do not run ports. They are not responsible for the security of the ports.

They have a pier. They have a crane, and they have a parking lot to put the cargo on when they unload it.

That is an important job. It is a job that gives them some insight into the operations of the port. And it gives them a modest insight into our security activities.

They see what containers we send to screening to inspection in the United States. They do not know why. They may not even know what is in those containers. But they have some modest insight into it, and they also have a role in security because they have facilities on the port premises. We require them to have a fa-

cilities security plan. The Coast Guard inspects the facility to make sure it maintains those security standards.

That is the role that they have played.

The next question is, what do we know about the companies?

We, actually, it turned out, had had pretty close relationships with both companies. This is a little unusual because Dubai Ports World is not operating in any significant way in the United States. Nonetheless, because they have a very substantial role in Dubai, we had encountered them in the course of pushing out our borders so that we could do inspections abroad. We negotiated agreements, CSI agreement, with the port, the Dubai Port Authority.

And Dubai Ports World was critical to the implementation of that, and also a Department of Energy screening program that was also set up in Dubai, so that they were, I think Dubai was the first port in the Middle East where we established this kind of screening. And Dubai Ports World was a very cooperative and professional partner in doing that.

We also, of course, knew the facilities in the United States. And in addition to Coast Guard inspections, they belonged to our Customs and Border Protection Best Security Practices Program, the Customs-Trade Partnership Against Terrorism, which requires a wide variety of higher security practices than is normal in the trade and is a voluntary program. P&O, the owner of those facilities, had joined that program and had maintained very strong security standards as part of that program.

So we had a lot of authority already over port and cargo security.

We had good experiences, cooperative professional experiences with all the facilities and with the company that is acquiring them.

We nonetheless decided when we looked at this that we wanted to do something more and something that had no precedent. We had decided to ask the company for a set of assurances about their future behavior after the transaction was consummated.

This is something that we have done in other areas, particularly telecommunications and high technology. We have never done it in the context of a ports deal. But we decided that, given how important port security was to our mission, that we should leave no stone unturned. And so we sat down with the company and negotiated a set of assurances that I think you have talked about today already.

The principal assurances in that letter are, one, that the programs that they had voluntarily entered into, the Dubai Ports World screening in Dubai and the C–TPAT Best Security Practices in the United States would be maintained, that the companies would never allow their level of cooperation and membership to go below their current level.

That is very important because that means that there are probably 5,000 or 6,000 members of C–TPAT; for two of them now, that program is not voluntary. It is mandatory. And those are the two companies that are engaged in this transaction.

Same is true for the Foreign Screening Program where, again, we have locked Dubai Ports World into its current level of cooperation.

It was after we got all those assurances and could look to our existing authority that we decided that we had done an appropriate

amount of protection for port security in this context; that we had gone beyond what anyone else is required to do. And for that reason, we decided not to stand in the way of the transaction.

Thank you.

[The prepared statement of Secretary Baker can be found in the Appendix on page 160.]

Mr. WELDON. Thank you, Mr. Secretary.

Mr. Lowery, the floor is yours.

STATEMENT OF CLAY LOWERY

Secretary LOWERY. Congressman Weldon and members of the committee, thank you very much for allowing me to explain today about CFIUS, the Committee on Foreign Investment in the United States, and a little bit on its role in the DP Worlds' acquisition of P&O.

CFIUS is an interagency group comprised of the Departments of Treasury, State, Justice, Commerce, Defense, and Homeland Security.

It also includes six White House offices, including the National Security Council and the U.S. Trade Representative.

The committee was established by executive order in 1975 to evaluate the impact of foreign investment in the United States. In 1988 and 1992, Congress passed legislation now embodied in the Exon-Florio amendment which empowered the President to suspend or prohibit any foreign acquisition of a U.S. corporation if the acquisition is determined to threaten U.S. national security.

CFIUS has evolved over time to keep pace with changes to the concept of national security.

For example, in 1998, the Intelligence Community Acquisition Risk Center, also known as CARC, was created. This office is now under the Director of National Intelligence and provides CFIUS with a threat assessment of the foreign inquirer.

Further, following September 11, the newly created Department of Homeland Security was added to the committee. And DHS has played a primary role in reviewing many transactions, including the one at hand.

Further, agencies that are not formal members of CFIUS are often called upon to lend their expertise, such as the Department of Energy and the Department of Transportation.

CFIUS operates through a process in which Treasury, as the chair, receives notices of transactions, circulates these and other materials to members of the committee and coordinates interagency process.

Upon receipt of a filing, CFIUS staff conducts a 30-day review during which each CFIUS member examines the national security implications of the transaction, including the CARC threat assessment.

All CFIUS decisions are made by consensus. Any agency that identifies a potential threat to national security has an obligation to raise those concerns within the review process. If any member of CFIUS objects or raises a national security concern that cannot be satisfactorily addressed during the 30-day review period, then the case goes to an extended 45-day investigation period.

The investigation period provides CFIUS and the transaction parties additional time to address security concerns that were identify but not resolved during the review period. It also could provide the time to get a report to the President of the United States.

Under the Exon-Florio amendment, upon completion of the 45-day investigation, the Secretary of Treasury forwards a recommendation on to the President who then has 15 days to take action. Upon making that determination, the President then sends a report to Congress detailing its decision. The most recent such report occurred in 2003 when the President reported to the Congress on its decision not to block the transaction between Singapore Technologies Telemedia and Global Crossing.

Turning now on the DP World transaction, in contrast to some accounts, we would note that this transaction was not rushed through the review process in early February, nor was it casual, nor was it cursory.

On October 17, 2005, lawyers from DP World and P&O informally approached the Treasury Department staff to discuss the preliminary stages of the transaction.

In this case, Treasury staff identified port security as the primary issue and immediately directed the companies to the Department of Homeland Security which, with the Department of Justice and others, met on October 31 with the companies to review the transaction and security issues.

On November 2, Treasury staff requested an intelligence assessment from the Director of National Intelligence. Treasury received this assessment on December 5, and it was circulated to the staff members of CFIUS.

On November 29, DP World issued a press release along with P&O concerning their proposed merger. This announcement was carried in numerous press articles in the weeks that followed.

On December 6, staff from the CFIUS agencies met with company officials to review the transaction to request additional formation. On December 16, after almost 2 months of informal interaction and 45 days after CFIUS requested the intelligence assessment, the companies officially filed their formal 30-day notice with the Treasury Department.

Treasury circulated the filing to all CFIUS departments and agencies and also to the Departments of Energy and Transportation, because of their statutory responsibilities and experience with DP World.

During the 30-day review, the CFIUS departments and agencies continued their internal departmental reviews and were in contact with one another and the companies.

As part of this process, DHS negotiated an assurances letter which Secretary Baker just discussed that addressed port security concerns that have been raised earlier in the process. The letter was circulated to the committee on January 6 for its review and CFIUS concluded its review on January 17.

Far from rushing the review, the members of the CFIUS staff spent nearly 90 days carefully reviewing this transaction.

Last Sunday, February 26th, DP World announced that it would make a new filing with CFIUS and requested a 45-day investigation.

Upon receipt of DP World's new filing, CFIUS will promptly initiate the review process, including DP World's request for an investigation. The 45-day investigation will consider existing materials as well as new information anticipated from the company.

Importantly, the investigation process will also consider very carefully the concerns raised by yourselves, State and local officials, and other interested parties.

We welcome your input during the process, including issues that will be raised in today's hearing.

Mr. Chairman, members of the committee, those of us sitting at this table this afternoon share with you one fundamental principle, our highest responsibility as government officials is protecting the national security of the United States. The work done by our colleagues in the initial review period was guided by this standard as will our further efforts under this new review process that the companies have asked for.

We are sure it will also guide your review and the President's report to you at the end of the investigation. I thank you for your time, and I am happy to answer any questions.

[The prepared statement of Secretary Lowery can be found in the Appendix on page 171.]

Mr. WELDON. I thank you.

And finally, Admiral Gilmour, the floor is yours.

STATEMENT OF REAR ADM. THOMAS GILMOUR

Admiral GILMOUR. Thank you, Congressman Weldon.

Let me begin by stressing that the Coast Guard is the Federal agency in charge of maritime security in our ports and waterways. We regulate facilities and vessel security under the authority of the Marine Transportation Security Act (MTSA) and the International Ship and Port Facility Security Code developed with our efforts at Internatinal Maritime Organization (IMO).

These security rules are complementary in nature and specify detailed requirements for both vessels and for facilities and allow us to inspect the ports of all of our trading partners.

There are over 3,000 marine cargo facilities in the United States. Each has an approved and inspected security plan.

Since July 2004, we have required corrective action to more than 700 violations of the MTSA security regulations. Of those 700 violations, 44 resulted in major control actions, such as terminating cargo operations or closure of a facility until corrective measures were taken.

We also oversee the arrival of foreign vessels 96 hours before they arrive at our ports and enforce security compliance with the ISPS code.

Since July 2004, we have conducted approximately 16,000 foreign flag vessel boardings. They were conducted either offshore or in port depending on the risk assessed prior to each vessel's arrival into U. S. Ports. As a result, we have imposed 143 detentions, expulsions or denial of entry for vessels that fail to comply with international security requirements.

During the CFIUS process, the Coast Guard's intelligence assessment concluded that DPW's acquisition of P&O in and of itself does

not pose a significant threat to U.S. assets in the continental United States ports.

However, it also identified the need for additional information. We have addressed those gaps by obtaining formal assurances from DPW regarding ongoing access of information on personnel and operations.

And during the 45-day review period, the Coast Guard will continue to work diligently with the Department of Homeland Security and the intelligence community to ensure that the port security concerns are fully raised and objectively analyzed. In addition, the Coast Guard will assess DP World's ports in Dubai and also audit all of P&O operations in the United States.

Thank you for the opportunity to testify today, and I am happy to answer any questions.

[The prepared statement of Admiral Gilmour can be found in the Appendix on page 177.]

Mr. WELDON. Thank you very much.

Thank you for each of your testimony and for your service to the country.

First of all, I want to just make a statement. I, like my colleague Mr. Spratt, we were involved in the Cox Committee investigation back in the mid 1990's, authorized by the Congress to look at the transfer of technology to China from the U.S., and we voted nine-to-zero that our security was harmed through the Chinese efforts. And in that investigation, we also saw attempts by the People's Liberation Army (PLA) to use dollars to infiltrate companies in the U.S. through third-party financial operations in European banking institutions.

Unfortunately, one of the things that happened in the 1990's which was not a recommendation of the Cox Committee—in fact, it was quite the contrary—was the abolishment in 2000 of the Pentagon Office of Technology Security Operations.

This office came under—I believe it was DTSA, and did a fantastic job at going out and doing hands-on investigations for exactly this kind of purpose. And so I would say at the outset that, since 2000, in my opinion, we were doomed to failure.

We took away the capability, at least from DOD's part, to do a full assessment. And I say that as both the vice chairman of this committee and the vice chairman of the Homeland Security Committee; we are at dual roles.

I am concerned about this deal, number one, because there was no effort to bring Congress into the process.

Now, you may say, well, that wasn't mandated by the policy. But clearly, Congress has concerns on security. That is nothing new.

The President is constantly talking to us about the need to pass legislation dealing with homeland security and whether it is the Patriot Act or whatever, and we have done it.

Anyone in their right mind had to understand, this kind of a proposal, in this environment, whether it was substantive or not, was going to generate significant concern. You would have to be a turtle with your head in the ground not to be able—now maybe it wasn't you all that should have pointed out, but somebody had to say, hey, wait a minute this deal, because of who is involved and where it

is, we ought to at least have some process to bring Congress in; not all Congress, maybe the leadership of the Congress.

And that is why I was so incensed when this deal was announced by the media, especially with me representing the area right next to Philadelphia ports. And I called the Tioga terminal folks, and they said, we have no idea what's going on, Congressman; nobody has talked to us. And that is the portion of the Philadelphia port that would be affected by this action.

My concerns also now are that, as I mentioned in an earlier session, it reminds me of the Chinese incident several years ago when, again, the White House didn't talk to the Congress, so we almost went to war because President Clinton told the Chinese government in Beijing that he would not issue a visa to the president of Taiwan Lee Teng-hui to come back to his alma mater to give a graduation speech. And he did that without talking to the Congress. When the Congress found out, we overruled the President, and the visa was granted.

Well, the Chinese thought that was a deliberate slap in their face, and they started launching missiles across the Taiwan Straights at Taiwan.

We sent a carrier up the Straits of Taiwan and almost went to war over a lack of communication between the White House and, in this case, China over an issue that could have had us work together.

In this case, there was none of that, and now we learned the company involved has hired lobbying firms from both parties and leaders to make their case today and to try to get us to allay our concerns. Lobbyists should not be the ones to tell us that this deal is okay. The facts and the details that you all should have looked at should be the justification for our decision, to support this which is going to take a long bit of convincing to make me feel comfortable with that, with the decision you ultimately made.

Now, it has been reported that the CFIUS committee—commission—decided that the interpretation of the Byrd language, even though it says, requires a 45-day action, of an investigation, when two criteria are met, then you all interpreted it that that was voluntary. Now my understanding is that only three of you were actually involved in that process.

Mr. WELDON. So is that the opinion of the three of you who were involved. I'll start with you, Mr. Lowery.

Secretary LOWERY. Sir, that has been the opinion of this Administration and the last Administration, it has been the way that it has been conducted for the last 13 or 14 years.

Mr. WELDON. You are aware it is not the opinion of the member who wrote that.

Secretary LOWERY. I think he made that abundantly clear.

Mr. WELDON. You are aware most of us feel the same way.

Secretary LOWERY. You have made that abundantly clear.

Mr. WELDON. So is your position that no one questioned that, in this sensitivity of this case no one thought perhaps we should do a 45-day?

Secretary LOWERY. The mandatory language from the Byrd amendment has been interpreted this way for 13 years. It has been the way that we have conducted our business. We have never tried

to hide that fact. It has always been the way we have done it and I understand the Department of Justice has put in a legal brief about there issue.

Mr. WELDON. But no one involved, and you are one of the three at this table, no one raised that concern, saying perhaps this time we should, based on at least a minimum what the Coast Guard put forward, which I have a statement which I will enter into the record of their concerns in this case. No one said maybe we should, since two of these factors identified by the Byrd amendment, you did not consider that, no one.

Secretary LOWERY. Sir, as I mentioned, if the national security concerns had raised—there was an objection of any of the members of CFIUS, then we would have gone into that 45-day investigative period. None of the members on the CFIUS panel raised an objection on national security based on this transaction that could not be resolved or that were not resolved.

Mr. WELDON. Did you consider recusing yourself as a representative of Treasury Secretary Snow because of his involvement with some of the principles of this firm?

Secretary LOWERY. Sir, I think that if there if there would be a recusal it would be the Secretary himself, however, I believe that the legal counsel has taken an opinion he did not need to recuse himself, but I'm not an expert. Because he had left CSX roughly 2 years prior to the acquisition of CSX overseas assets by DPW, my understanding is legal couple said there was no reason for him to.

Mr. WELDON. Since you were, I understand, chair of this process, were you aware of those connections to the Treasury Secretary, and were you aware there were CSX employees involved in this company that wanted to complete this transaction?

Secretary LOWERY. No, sir.

Mr. WELDON. You were not aware of that?

Secretary LOWERY. No, sir. I was not aware of it because I actually did not know about the transaction myself.

Mr. WELDON. But you were not aware any of the employees making the acquisition attempt had been involved with Treasury Secretary Snow at any previous time at CSX.

Secretary LOWERY. I don't know anything about that, sir.

Mr. WELDON. Who did—the overview, I guess, for defense, would have been done by you, ambassador, and by your staff, is that correct?

Mr. EDELMAN. The process was managed by the DTSA for the Department of Defense, but as I indicated, it is farmed out to a variety of other elements of the Department, sir.

Mr. WELDON. You are aware DTSA no longer has the office that, in fact, used to do that investigative work.

Mr. EDELMAN. I am glad you raised that. I can completely understand the concern that you raised about the DTSA, the defense technology security office. My understanding is that the office was melded into DTSA's policy directorate and renamed the assessments division, which is now responsible for the CFIUS portfolio. Its civilian workforce is still made up of intelligence professionals as it was during the time of Technology Security Operations (TSO), and that division now has more personnel than TSO did and that the mission remains the same as TSO, they review the intelligence

products provided under the CFIUS process. They do end user checks on approximately 30,000 export licenses a year, and they have extensive access to intelligence databases.

Mr. WELDON. Two concerns that I have and again I am not trying to cast any negative light on the Emirates. They have been helpful and I publicly acknowledge that and the way this deal was handled has put us in an extremely difficult if not impossible situation. As I said earlier, we are damned either way this goes. If we stop the deal, we are damned because the Emirates would think we have done this to embarrass them, if the deal goes through then we will be blamed for not having done our homework. So either way we lose.

I will give you a couple of issues you can respond to. One is a memo that was sent on the 14th of May in 2002 by al-Qaeda and I have it in both in Arabic and in English: To the officials of the United Arab Emirates and especially the two emirates of Abu Dhabi and Dubai. Are you aware of such a memo that was sent?

Mr. EDELMAN. I actually became aware of that in the last 24 hours that this memo exists. I believe it is an annex in a document prepared by the counterterrorism center at West Point.

Mr. WELDON. Came from General Downing.

Mr. EDELMAN. I met with him last night and discussed this product, in fact he gave me a copy of it and I have seen the document which I believe is an annex.

Mr. WELDON. Would that have affected your opinion?

Mr. EDELMAN. Obviously that is a data point we will have to include in our review, but I also think as with any other data point, it needs to be looked at in the context of the whole broad array of intelligence and what its providence.

[The information referred to can be found in the Appendix on page 200.]

Mr. WELDON. Without objection, I will enter it into the record. I want to read part. This was sent by al-Qaeda to the officials of the United Arab Emirates, in particular Abu Dhabi and Dubai. I will read two sections. You are well aware that we have infiltrated your security, censorship and monetary agencies along with other agencies that should not be mentioned. Therefore, we warn of the continuation of practicing such policies which do not serve your interest and will only cost you many problems that will place you in an embarrassing state before your citizens.

In addition, it will prove your agencies' immobility and failure. Also, we are confident that you are fully aware your agencies will not get to the same high level of your American lords. Furthermore, your intelligence will not be cleverer than theirs and your censorship capabilities are not worth much against what they have reached. In spite of all this, Allah has granted us success to get even with them and harm them. However, you are an easier target than them. Your homeland is exposed to us. There are many vital interests that will hurt you if we decide to harm them, especially since you rely on shameless tourism in your economical income. Finally our policies are not to operate in your homeland or to tamper with your security because we are occupied with others. If you compel us to do so we are prepared to postpone our program for a short period and allocate time for you.

This was sent to the leadership of the Emirates. The same people that you all said there is no problem with. Now I wonder if they told you if you found that in your process that they had been warned by al-Qaeda that they had fully infiltrated all of the operations of the Emirates government. Were any of you aware of that? Were you, Mr. Lowery?

Secretary LOWERY. No, sir.

Mr. WELDON. Mr. Baker.

Secretary BAKER. No, sir.

Mr. WELDON. Were you, Admiral?

Admiral GILMOUR. No, sir.

Mr. WELDON. Ambassador, you told me you found out about it yesterday.

I have been critical of the 9/11 Commission lately, and I think rightfully so, but I want to refer to a provision last week and page 137 in the 9/11 Commission report, I don't know whether you have had a chance to look at it, it is called the Desert Camp, February of 1999.

[The information referred to can be found in the Appendix on page 190.]

Mr. EDELMAN. I have not looked at it recently, but I am aware of the contents and several references throughout the reports to the Emirates.

Mr. WELDON. I am going to paraphrase. I would, without objection, place this into the record. But what it says: Early in 1999 the CIA received information that Osama bin Laden was one of several camps in the Afghan desert, a desert hunting camp. There, in fact, was an incident where we were going to attack that camp. In fact, our intelligence and our military folks had planned the attack. They were concerned about the strike. This is according to CIA defense officials. Because they might kill an Emirate prince or other senior officials who would have been with bin Laden or close by. So we called the strike off.

So this country, knowing bin Laden was frequenting a camp in Afghanistan called off a strike because of our fear that Emirates officials, in this case, a prince was there because we had seen evidence of an Emirates airplane. It was a lost opportunity to kill bin Laden.

On March 7th of 1999, you know who I am talking about, called a UAE official to express concerns about possible associations between Emirate leadership and bin Laden. A week after that, less than a week, that camp was gone. It was gone.

Now I can't prove that the officials of the Emirates told bin Laden to get rid of your camp because the U.S. is after you but would I assume that is what happened. The United Arab Emirates was a counterterrorism ally but the fact is imagery confirmed that the camp was hurriedly dismantled and the site was deserted. This is the same group of people that we have basically said it is okay that one of these leaders of this family, in fact, owns this site. This is a chance that we had to take out bin Laden, and I think anyone reasonably could assume that because of information provided to the Emirates leadership, that camp was destroyed.

Do you know if that was considered as a part of the defense assessment of this operation of your CFIUS assessment?

Mr. EDELMAN. I can't say, sir, within a certainty what specific information from the 9/11 Commission people may or may not have brought to bear.

Mr. WELDON. How about the person representing you? Was she aware of this? Can I ask her that?

Mr. EDELMAN. You are certainly welcome to do that. Ms. McCormack.

Ms. MCCORMACK. No, I was not aware of that. I am aware of the 9/11 Commission report.

Mr. WELDON. But the tie between the Emirates and the base camp.

Ms. MCCORMACK. We did not, but obviously we have a detailed report that comes from the Defense Intelligence Agency, which was a part of the Defense Department's review.

Mr. EDELMAN. Congressman Weldon, if I might, I think my recollection of the report is, and I think you characterized it correctly, that Dick Clark, at the time, was concerned about having the strike go forward because if my recollection bears me out, I believe in the report he said we were about to have a strike on one of our best counterterrorism allies. I know as well in the report, my former colleague who was ambassador to the United Arab Emirates in the late 1990's characterized it as a complex situation in which the Emirates were both a counterterrorist ally, but also a bit of a counterterrorist problem for the reasons that you mentioned.

Mr. WELDON. A bit? We lost a chance to take out bin Laden.

Mr. EDELMAN. The reasons that are outlined in the 9/11 report. I think as I tried to suggest in my testimony, since September 11th, I think there has been a dramatic change. And for almost the last 5 years, we have had extraordinary cooperation with them on the counterterrorism front.

Mr. WELDON. Mr. Lowery, were you aware of this incident as outlined in the 9/11 Commission report?

Secretary LOWERY. I was not aware of the 9/11 report of this incident. I do know that the intelligence services of the United States did do a review and a threat assessment and said, and I believe Mr. Negroponte testified this week, the threat on this was low.

Mr. WELDON. The threat was low. Do we have a copy of that for the record either classified or unclassified for the hearing?

Mr. Baker, were you aware of this report?

Secretary BAKER. I certainly remember the incident and Dick Clark's reaction about the complexity of it and the risk of attacking someone he viewed as a ally in the hunt for bin Laden.

Mr. WELDON. You didn't know he was at bin Laden's base camp. Admiral, were you aware of this at all. Admiral?

Admiral GILMOUR. I am aware of the incident but not in any detail.

Mr. WELDON. That didn't raise any concerns to you when you were part of the process?

Admiral GILMOUR. Sir, we did a separate intelligence look at the ports, looking specifically at the effect on the ports in the U.S.

Mr. WELDON. I am advised in the unclassified report of the intelligence committee assessment, and I will repeat this for the record, the community acquisition risk assessment center does not assess vulnerabilities. Are you all aware of that?

Secretary LOWERY. Yes, sir, I believe what they do is they assess the threat of the acquirer, in this case it was DP World, which, of course, is owned by the government of Dubai.

Mr. WELDON. You were aware they did not assess vulnerabilities.

Secretary LOWERY. I believe in this case, because it is about port securities issues, that is, Department of Homeland Security and Coast Guard addressed more specifically.

Mr. WELDON. The gentleman from Missouri.

Mr. SKELTON. Mr. Lowery, you were the chairman of the CFIUS group, is that correct?

Secretary LOWERY. The Treasury Department is the chairman, the Chair of the CFIUS group, sir.

Mr. SKELTON. You personally were the chairman, is that correct?

Secretary LOWERY. In this particular case?

Mr. SKELTON. Yes.

Secretary LOWERY. No, I was not.

Mr. SKELTON. Well, who was?

Secretary LOWERY. The way it works, sir, at the top obviously the Secretary of the Treasury. As we go down further, it is the Deputy Secretary then, myself.

Mr. SKELTON. Who had the knowledge and information on this proposal?

Secretary LOWERY. I believe 14 different agencies.

Mr. SKELTON. I know that. Within the Treasury Department.

Secretary LOWERY. At the Treasury Department, I believe the Deputy Assistant Secretary, sir.

Mr. SKELTON. What is that name?

Secretary LOWERY. His name is Mr. Shott.

Mr. SKELTON. Is he the one that approved it for CFIUS as one of the 12 agencies?

Secretary LOWERY. As one of the 14 agencies in this case, I would have to ask Mr. Shott about who——

Mr. SKELTON. Who signed off on it?

Secretary LOWERY. I would have to ask him.

Mr. SKELTON. It was not you?

Secretary LOWERY. No, sir.

Mr. SKELTON. Ms. McCormack, would you take the witness stand, please. Let her sit there, Ambassador.

Your name is Beth McCormack?

Ms. MCCORMACK. That is correct, sir.

Mr. SKELTON. Are you the one that represented the Department of Defense in CFIUS?

Ms. MCCORMACK. In this particular case, sir, the predominant discussions of this transaction were done at the staff level where I have the part of my organization we talked about a few minutes ago, my policy directorate, which is one of the five directorates of my agency. They were the representatives at the level because we had basically one meeting on this transaction.

Mr. SKELTON. Is that below your level?

Ms. MCCORMACK. Yes.

Mr. SKELTON. Can you give me the name of someone within the Department of Defense that signed off on this?

Ms. MCCORMACK. In this particular case, after we got the inputs in from the 16 other agencies other than my own that reviewed the

transaction and none of those agencies had any issue, the transaction was signed off on by the director of my policy directorate, and, again, my agency——

Mr. SKELTON. What is the name of your policy director?

Ms. MCCORMACK. At the particular time, Andrew Reitzel.

Mr. SKELTON. Did the CFIUS 14 ever meet?

Ms. MCCORMACK. My understanding was we had two meetings on this transaction. We had a discussion with the company in December and then there was another meeting at the staff level of the transaction after the review process.

Mr. SKELTON. Were you ever present?

Ms. MCCORMACK. I was not.

Mr. SKELTON. Below your level?

Ms. MCCORMACK. Yes.

Mr. SKELTON. Thank you, Ms. McCormack.

Ms. MCCORMACK. Thank you, sir.

Mr. SKELTON. Mr. Baker, we have talked about these assurances, have we not?

Secretary BAKER. Yes, sir.

Mr. SKELTON. And they were given when?

Secretary BAKER. I think January 6th.

Mr. SKELTON. As a result of what?

Secretary BAKER. As a result of our request to the company that they give us assurances on these topics.

Mr. SKELTON. In going through the list of assurances, it really depends upon the good will of the company, does it not?

Secretary BAKER. To a degree. However——

Mr. SKELTON. Yes or no.

Secretary BAKER. No.

Mr. SKELTON. In other words, some of them are legally enforceable?

Secretary BAKER. Yes.

Mr. SKELTON. Which ones?

Secretary BAKER. All of them are legally enforceable, but I would have to say the ones that have, in my view, the most clear cut content are the requirements that they maintain their level of cooperation and membership in a variety of previous voluntary programs and a requirement that they give us information without a warrant, without a subpoena about all of their U.S. operations.

Mr. SKELTON. Are you alone, Mr. Baker?

Secretary BAKER. I used to be at least, yes.

Mr. SKELTON. I practiced law for 20 years. In reading the language thereof, I don't think they are very enforceable. I think a court would agree with me on that.

Secretary BAKER. May I explain why I believe that they are enforceable. I understand that if this went to litigation, there are parts of these agreements that talk about what is reasonable or what was intended, what the plans of the company are. However, we clearly have expectations about what those mean and we have the ability beyond going to court.

This company is entirely dependent on having a Customs service and the Coast Guard that trusts them. If we don't trust them, we are going to have to inspect far more of their cargo than we do today. And if that happens, their competitors are going to be mov-

ing much more quickly through those ports than they are, and that is a terrible business disadvantage. The one thing you cannot do if you are in this business is have the Customs service and the Coast Guard not believe that you are being candid and honest and straight forward with you.

That is why I believe that we be able to enforce our expectation about the spirit as well as the letter of this agreement.

Mr. SKELTON. That is not a court of law, is it?

Secretary BAKER. That is right. I think it is better than a court of law, frankly.

Mr. SKELTON. Very good. Well, I won't belabor it, but it appears—well, let's ask Mr. Ambassador here; your title is?

Mr. EDELMAN. Under Secretary of Defense for Policy, sir.

Mr. SKELTON. Did you know anything about this?

Mr. EDELMAN. I found out about the transaction after the review had been completed when I was recipient of a phone call from Deputy Secretary Kimmitt.

Mr. SKELTON. This was done at a much lower level. Evidently in all 14 agencies, am I correct?

Mr. EDELMAN. I can't speak for the other agencies, but it certainly was done at a lower level in the Department of Defense.

Mr. SKELTON. Thank you.

The CHAIRMAN. Thank the gentleman.

Gentlemen, I don't know if you watched the earlier part of our hearing when we went over the activities with respect to technology transfer that had been attributed to Dubai in terms of transshipment. I want to go over these and ask you to come back to the committee if you can with a written response either saying these things didn't happen or they did happen, and obviously your response probably would require a classified answer, and if it does, that is fine.

Let me just go over these particular transfers. In 2003, according to the information that we have here and from Mr. Milholland, who has testified to this committee for decades, and who I consider to be one of the experts in the world on technology transfer, in 2003, over Washington protests, 66 high speed triggers or switches that are utilized in nuclear detonations were transferred to a Pakistani businessman transshipped through Dubai. Even though we found out about it and protested, Dubai allowed the transshipment to go through.

There was an indictment of an Israeli national in this case, but the Dubai government allowed the transshipment to take place. So that is one.

2003. In 1996, the German government listed six firms in Dubai as front companies for Iranian efforts to import arms and nuclear technology from Dubai. In 1995, Guide Oil of Dubai ordered American-made material, which can be used for making nerve gas ingredients, a precursor to nerve gas, and tried to pass it along to an Iranian purchasing agent in violation of American expert control laws. That was stopped by an American sting operation, but that was taking place in Dubai.

In 1990, a Greek intermediary offered Iraq an atomic bomb design, probably of Chinese origin, from Doctor Kahn in Pakistan

with a guarantee that, quote, any requirements or materials can be bought from western countries and routed through Dubai.

In 1995 and 1996, Mr. Hampel, who is a German exporter and former Nazi sent 12 tons of Soviet heavy water to India through Dubai. In 1993, Mr. Hampel sent 15 tons of heavy water from Norway and some from—and 6.7 tons from the Soviet Union through Dubai to India.

If you guys could take a look at those instances of transshipment and respond back to us, that would be certainly helpful.

It appears that it is clear from these hearings that the sole stockholder of this company is the Emir, is that your information?

Secretary LOWERY. I know that it is—I am not sure about that. It is controlled definitely by the government of Dubai, and that usually comes under the heading of the Emirs.

The CHAIRMAN. And the Emir's also the vice president of the United Arab Emirates, this particular Emir, and the sole director of the company. I guess the point that I am making is he is in charge of the government which shapes Dubai's transshipment policies and it appears that Dubai specializes in masking transfers. And if you read Milholland's account here, which I think we will make sure we get you a copy of this, this is a place where you go to, if you want to mask the seller and mask the buyer, you take things through Dubai.

It appears that while Dubai may cooperate with the United States with respect to security matters, it appears that they also cooperate with people who aren't on our side, and who, at some point, could bring great harm to millions of Americans and at least in the case of these triggers that they transshipped over our objection. That is their policy. Their policy is sometimes to accommodate America and estimates not to accommodate America.

So my question is was there any consideration for their policy of export control or transshipment control when you looked at this deal, at this ports deal.

Mr. EDELMAN. There was certainly consideration among the various Department of Defense elements and agencies who look at this transaction with regard to the possibility of diversion of sensitive technology.

The CHAIRMAN. Are you sure of that?

Mr. EDELMAN. I can tell you what I understand took place in the process, Chairman Hunter. I was not a part of it myself.

The CHAIRMAN. We had a TRANSCOM hearing this morning, transportation command. Incidental to that hearing we asked the General, who was in charge of the security apparatus in port distribution of American material if he was, in fact, requested to give a report or give his analysis from a defense perspective on this deal. His answer was he didn't look at it from a security standpoint. What he felt he was supposed to look at is whether or not they could load and unload things and basically run an efficient port system.

His experience was around the world, Dubai ports knows how to get stuff on and off ships. So he didn't look at this thing at all from a security standpoint. So maybe they didn't look at technology transfer.

Mr. EDELMAN. Your characterization of TRANSCOM's role in the process, as I understand it, is completely accurate. I think there were a number of other elements including DTSA that do look at this, and I know that DIA looked at the question of potential diversion of technology, but from the point of view not of the UAE as a whole, but of the transaction at hand.

The CHAIRMAN. Gentlemen, thanks for being with us today and discussing this. Let me ask you one other question.

Mr. MISENHEIMER. Would it be possible to comment on the proliferation record? The specific instances that you referred to are obviously very serious, and I am not familiar with them, but I think in the interest of completeness, it would be appropriate to mention also that the record of Dubai familiar to all of us and particularly in the post–9/11 period on nonproliferation has been very strong. Just this past month, we had the first meeting of a joint nonproliferation task force established between Dubai and the United States. The Emirati government was instrumental in cooperating with us in the unraveling the A.Q. Khan network. There are many instances on the positive side that I just would like to put on to the table as well.

The CHAIRMAN. Looks to me like you have a nation which accommodates. Sometimes it accommodates American interests, but sometimes it goes the other way, and it accommodates the interests of those who might do us harm.

I am looking at another piece of information that Mr. Milholland pointed out, and that is next to Dubai's main port in the Jebel Ali free trade zone. He describes it as a haven for freewheeling international companies and states that some 264 firms from Iran and 44 from rogue regimes like Syria and North Korea have located and done business there.

So my point is that I think you clearly can make the case that UAE has cooperated with the Americans on a number of occasions. On the other hand, appears to me they have also cooperated with people who wish us ill and that they have not viewed technology transfer as an area where they need to have discipline.

This place is described as a kind of freewheeling bazaar, and I am reading the statements that are made by people who do business and in some of the communications where they said don't worry, and I am paraphrasing, don't worry, we will ship it through Dubai.

So the question becomes, because that is directly relevant to what port operations are, right. Try to make sure that the cargo container that has got the bad stuff in doesn't end up in your port. And that is one area where the leadership in Dubai has looked the other way and allowed major transshipments of bad stuff to go to bad people. That certainly doesn't place them in the role of a Great Britain, for example. Is that your—would you agree with that or do you want to review this? If you would like to review these instances, and I do request that you come back on the record with us on these instances. But what do you think about that?

Mr. MISENHEIMER. I am sure we can agree undertaking a review of these instances would be appropriate and useful in providing the most complete record that we can. I would come back to the current judgment, sir, that the record of cooperation of Dubai in our

current assessment is positive and is improving. The historical record is certainly of interest, and as Deputy Secretary Kimmitt has made clear in previous briefings by this group, the record of the 9/11 Commission and other sources are certainly relevant, and were familiar to members of the CFIUS review panel.

The CHAIRMAN. But 2003 is not quite historic. That is pretty recent. Okay.

The gentleman from Missouri—or the gentleman from South Carolina, Mr. Spratt, have a few questions.

The gentlemen from Missouri.

Mr. SKELTON. Mr. Lowery, since your department shared the CFIUS operation or the process, I request of you to produce to our committee any documents relating to the deliberation and decision making process for this port deal, and this includes correspondence, minutes of any CFIUS meetings, statements or summaries of fact, and written decisions. All right, Mr. Lowery?

Secretary LOWERY. I will take that back to the Treasury Department, sir.

Mr. SKELTON. Thank you.

[The information referred to can be found in the Appendix beginning on page 205.]

Mr. SPRATT. Thank you all for your testimony and for your forbearance late this afternoon, but this is a highly important matter, and we need to give it due diligence. Let me just get the general opinion of the whole panel. Do all of you agree seaport security is not what it should be, in fact it is significantly below what is an acceptable level of security? The 9/11 Commission, for example, said that the next terrorist catastrophe could be a seaport and they further assessed seaport security at least as vulnerable, if not more than our airports.

When you consider what we have done since 9/11 to our airports, what we have done for our seaports pales by comparison. The Coast Guard came up, Admiral, with an assessment of $5.86 billion, I believe, which was to be spread over a period of about 10 years for just meat and potatoes basic surveillance security at the seaports; lights and surveillance cameras and fences, of this nature.

Of that amount, only $700 million has been appropriated thus far. I think your program was presented some time ago. We have offered amendments on the House floor, which haven't been passed to increase seaport security.

Does the whole panel share concern about the adequacy of seaport security and the vulnerability posed by seaports, particularly considering the fact 9.8 million containers came into our ports last year?

Mr. EDELMAN. Congressman Spratt, I certainly agree that port security is extraordinarily important for the country, it is important for the Department of Defense, with regard to those ports that we use for our own critical missions, and obviously, it deserves a very high level of attention from the Administration and from the Congress.

I am not really in a position to make a judgment about the level. There are other folks on the panel more expert than I who can speak to that.

Mr. SPRATT. Did you regard it as a national security concern?

Mr. EDELMAN. It is clearly a national security concern.

Mr. SPRATT. Admiral.

Admiral GILMOUR. Sir, to answer the question about the 5.8 billion, I believe the 5.8 billion over a 10-year period was the amount required for the facilities or the maritime industry to meet the requirements of MTSA.

Mr. SPRATT. What about radiation detectors? Do we have an adequate number today. It is my understanding these detectors are only available in about 25 percent of our ports?

Admiral GILMOUR. I would have to ask that DHS and Customs and Border Patrol (CBP) answer that. I will explain that we are in charge of the security of the facilities themselves and vessels that come from foreign 96-hour notification into our ports. We also look at the people on the vessels and run them through terrorist watch lists. But the cargo part of the security is really under the jurisdiction of Customs and Border Patrol.

Mr. SPRATT. We had a statistic given to us earlier today that there were 80 Customs inspectors for monitoring the compliance of 5,800 importers, and that there were only 20 Coast Guard inspectors to monitor the international shipping port facilities code. Is that correct, 20 inspectors to monitor the worldwide international code?

Admiral GILMOUR. I can speak to the foreign code inspectors, and the number 20, I can get you the exact number, but that is in the ball park, sir. I will tell you that what they do is under MTSA look at all of our trading partners ports. We started about a year ago. We have done about one-third of our trading partner ports. It is about 44 ports that we have looked at with about 80 percent of the cargo through-put that comes into our Nation, and we will be completed in about another 2–1/2 years.

Mr. SPRATT. When you had your discussion on the committee, I believe it was Mr. Lowery indicated, I will quote, there were national security issues raised during this review process. Could you tell us what those national security issues were specifically?

Secretary LOWERY. I think that the national security concerns were revolving around port security and I believe that is why the people at the Department of Homeland Security and the Coast Guard worked on putting together an agreement with DP World and P&O.

Mr. SPRATT. Can you tell us more specifically what those concerns were?

Secretary LOWERY. I would have to defer to the port security experts. I am not one. That is why we make sure that in CFIUS, because we do bring in 14 different agencies so that we make sure that the national security experts in whichever agency have a chance to look at it because there is different types of technology and different types of things that are being acquired and so we make sure our experts look at it. In this case, the expertise lies in primarily the Coast Guard, the borders and customs patrol, and Department of Homeland Security, though obviously Department of Defense, State, Justice all looked at it, as well as the Treasury Department.

Mr. SPRATT. The Coast Guard raised several concerns itself, which it backed off, apparently. It was more or less satisfied, but it indicated that it did have concerns about personnel, things of this nature.

Secretary LOWERY. Sir, as I mentioned in my testimony, if any agency had raised a concern about national security, we would have gone into a 45-day investigation. Each agency——

Mr. SPRATT. I understand they were raised, but they were resolved. You say there were national security issues raised during this review process.

Secretary LOWERY. I also said they were addressed.

Mr. SPRATT. How were they addressed? Simply information?

Secretary BAKER. May I offer some background on that? Stewart Baker, Assistant Secretary for Policy at DHS, and I was in charge of this policy, this particular case. We are very concerned about port security, and two of our major agencies, Customs and Border Patrol and the Coast Guard, have substantial responsibilities for cargo and port security, so we had a strong interest in this case. We asked each of the components to evaluate this transaction and give us their thoughts on it.

Just to clarify one point with respect to the concerns that have been in the press from the Coast Guard, there was, indeed, a paragraph released from a classified report on Monday that suggested that concerns had been raised by the Court Guard's intelligence center. That very same memo concludes that there is not a substantial or significant increase in risk from this transaction. So it is not as though they raised them and backed off them.

This was the complete memo, which, unfortunately, is classified, and comes to a more balanced conclusion than is suggested by the release of that one paragraph.

The concerns that we had about this led us ultimately to conclude that we wanted additional assurances from the parties to this transaction, and that if we didn't get them, we were prepared to object to the transaction. We got them. Those assurances locked in their level of cooperation in a variety of volunteer programs that substantially raised the level of security above what is required by law.

Mr. SPRATT. Earlier today, we had testimony from the first panel corroborated by testimony from the Dubai Ports World panel to the effect that there is equipment out there, scanners, radiation detectors, radio frequency emitters, all of which could give us far greater security.

The first panel of witnesses said make this an opportunity to impose that requirement on this firm as a condition of approval. The company itself said if you broaden that so we are all there together charging the same fee, and I presume we could charge fees sufficient to defray the cost, then it is feasible. The equipment is there, the process is there. We could inspect 100 percent of all of the containers instead of 5 percent. Did this possibility come up, did you ever discuss this idea?

Secretary BAKER. I am certainly aware of the Hong Kong experiment that is frequently mentioned in this context. It is a pilot project, it is a project to determine whether it is possible to x-ray a large volume of containers. It is not a pilot project that enables

us to actually evaluate by looking at the x-rays. I don't think there is anybody looking at those x-rays today.

So this is still a very limited and preliminary pilot program. It may well turn out to be a very valuable approach to port security, but it is a little early for us to say let's get married to it. So we are not prepared at this point to say this is something we are sure we want to impose. We certainly will be looking at it, because it does have some promise.

The CHAIRMAN. Thank the gentleman.

The gentleman from New Jersey, Mr. Saxton.

Mr. SAXTON. Thank you, and thank you for hanging in here with us so long. We appreciate it.

The panel that was here just before you headed by Mr. Edward Bilkey, chief operating officer of the company, told us quite clearly that they believe that the status of the deal is that while it is on hold for 40 days, that pending the court activity that is underway, that the approval has been granted and that the delay of 45 days for review purposes is just a review and they conveyed to us that it is their conclusion that the deal is done pending the court action. Do you agree with that assessment?

Secretary LOWERY. Sir, I believe that they are trying to close their transaction, their financial transaction. I know that they are going through a U.K. Regulatory issue of some sort. They have said to us in a commitment letter that they will hold the assets of North America in a separate holding—it is not a company because that is not the right legal term—but a separate holding arrangement that basically will take operational and management responsibilities and keep them exactly the way they are currently. They will be the financial beneficiary so they basically serve as a passive investor in certain respects, and they said they are willing to go through a new review process and a new investigation. They have asked for a 45-day investigation opening themselves up to the Exxon-Florio statute. They actually said in their letter that DP World will abide by the outcome of that review.

Mr. SAXTON. So your review, then, will be geared to reapprove or reject the deal? Or I suppose your other option is to impose additional or different conditions?

Secretary LOWERY. Correct. All of those options are available.

Mr. SAXTON. Given the so-called data points which Mr. Weldon and Mr. Hunter and Mr. Skelton mentioned, which appear to have not been considered as part of the process, given that new information, do you think that shines any different light on the situation?

Secretary LOWERY. Well, let me just say that I believe that we felt like we did do our jobs and our agencies did their jobs on the national security review and in terms of an intelligence threat assessment. That said, during this investigation period, we will—we have heard very clearly from Congress, we have heard very clearly from transit authorities and local officials. We want to look at all information, including the information from the questions that have been raised and in other hearings, and we will do a very thorough and robust job over the next 45 days or so.

Mr. SAXTON. We are, as you know, in the process of beginning to consider legislation as the responsibility—as we see the responsibility of Congress to the American people and to this process that

seems pretty obvious that we have a responsibility to be involved. The bill that we have drafted here in this committee thus far requires citizenship or American ownership. It requires 100 percent inspection of material being imported into the country through containers, or perhaps otherwise as well. And it has a section that speaks to the reform of the Committee on Foreign Investment in the U.S. I am specifically interested in your opinion on the last part.

Would you—would you think at this point that, given the fact that we have experienced 9/11 and its aftermath, that the security situation in the country has changed, that a different process might be used through CFIUS or some other named process to more effectively handle security with regard to these matters?

Secretary LOWERY. Let me just say, I guess, that since 9/11 I think that CFIUS actually has changed. We do look at more matters. Very importantly, we have brought the Department of Homeland Security, which obviously did not exist before 9/11, they bring a very different voice to the table and it is a very strong voice. We will be open to any suggestions that Congress has and we can work with you. We obviously know that there is a problem. We have already said that there is clearly a problem with how we are informing Congress about what we are doing. And so we are open to discuss these matters over the next weeks months, what have you.

Mr. SAXTON. Are you satisfied with the level of investigation that was done prior to your conclusion on this matter?

Secretary LOWERY. Yes.

Mr. SAXTON. In spite of the fact that in just a few days Members of Congress have come up with data points that were not considered, that letters from al Qaeda to the leadership of the country involved, and all those things that you did not—that you said you did not consider?

Secretary LOWERY. Sir, I said that I did not personally consider. What I also said was that each agency did its own thorough review based on their knowledge and expertise. And that the intelligence community did an overall threat assessment based on their knowledge of what I would imagine many of the data points that people have brought up.

That said, there have been a lot of questions asked and a lot of points raised and I think that we should—we have been given this opportunity to provide another 45 days and we will investigate to the best of our ability and as robustly as possible all of those issues.

Mr. SAXTON. And I am sure you are also aware of the reality that Congress is likely to do something. And certainly we would rather do it with you than without you. And so I would hope that you would keep an open mind. I know several of you personally, and I know what kind of good people you are, and I hope that we can work together so that we have the benefit of your experience and your points of view.

Thank you very much.

Secretary BAKER. Congressman Saxton, on behalf of the Department of Homeland Security, we share your goal to improve the security of the supply chain and port security. We would be delighted to work with you on these questions.

Mr. SAXTON. Thank you.

The CHAIRMAN. The gentleman from New Jersey, Mr. Andrews.

Mr. ANDREWS. Thank you, Mr. Chairman, I first want to thank you for a very thoroughgoing and comprehensive hearing and giving the members a chance to ask their questions. Thank you. And I thank the witnesses for their patience in what has been a long day.

The first thing I want to be sure the record reflects is that the panel before this, I think, propagated a legal reality that is a substantive fiction, that the Dubais Port Corporation is one entity, and the Government of Dubai and in part the government of the UAE is quite another. Now, this is true as a formalistic legal proposition. But I think that any practical reading of the record indicates that 100 percent of the shares of the Dubai Port Corporation are owned by the ruler of Dubai, as the previous panel testified. So I think we have to start from the proposition that the conduct, the opinions, the track record of the Government of Dubais, and, to some extent, the Government of the UAE, since the ruler of Dubai and the Vice President of the UAE are identical, are synonymous. And I think we have to start from a security assessment from that point of view.

The second thing that I want to ask Mr. Misenheimer is I understand that your conclusion is that the balance of the record favors the conclusion that the UAE has been and Dubai has been a constructive force against proliferation of weapons of mass destruction. But I want to be clear. You acknowledge, do you not, the Chairman's question about 2003 and the transfer of the triggers which could be used in a nuclear weapon? Do you agree with the proposition that such a transaction took place, that it went through the UAE and it went through the UAE over the objections of the United States? Do you acknowledge that?

Mr. MISENHEIMER. Sir, I am not personally familiar with the details of that episode. I have heard the reports. But I could not go beyond that.

Mr. ANDREWS. Well, if you are able to draw a conclusion, which I did, about the balance of the record, are you aware of any of the negative implications in the record, or only the positive ones?

Mr. MISENHEIMER. No, sir. And thank you for that question. I am certainly not here representing the State Department as an advocate of the UAE or of Dubai. If the United States has an ally that has a perfect unblemished record of cooperation with us and everything we cared about, the UAE is certainly not that ally. And I think that has been made very clear in many of the facts and data points that have been brought out.

Mr. ANDREWS. So the State Department acknowledges that on the record there are examples of conduct that we would regard as antithetical to the goal of prohibiting proliferation of weapons of mass destruction; is that correct?

Mr. MISENHEIMER. As has been stated, sir, the full record of Dubai's performance was documented and familiar to the participants in the CFIUS process, including the various intelligence agencies involved. And the conclusions that were reached took those data points into account.

Mr. ANDREWS. And the record included examples of behavior antithetical to the goal of prohibiting proliferation of weapons of mass destruction; correct?

Mr. MISENHEIMER. Again, I can't go to the specific examples, but I did want to represent the conclusions of both my agency and of the intelligence reviews that I have seen that reach a favorable conclusion on their cooperation.

Mr. ANDREWS. But there were examples that were negative examples on the record; correct?

Mr. MISENHEIMER. Sir, I couldn't go into the intelligence, the positive and negative intelligence ledger.

Mr. ANDREWS. Okay. Here is what I am going to ask you to do. I would ask the Department to supplement on the written record whether it acknowledges or disclaims the basis of the Chairman's question about the 2003 transaction of the triggers which could be used in a nuclear weapon; whether the Department acknowledges that, in fact, took place over the protest of the United States or whether it did not. Could you do that for us?

Mr. MISENHEIMER. Yes, we will be glad to look into that.

Mr. ANDREWS. The next issue I want to raise——

The CHAIRMAN. And if the gentleman would yield, let's try to get that information on that and the other ones within 10 days or so. Say by next Friday, we should be able to get—if all activities are fairly well known by the agencies, and they should be able to review it pretty quickly and say yes or no. So if you would get it back in 10 days, we would appreciate that, okay?

Mr. ANDREWS. I thank the Chairman for that and I think it is something more than we would just appreciate. If we are going to make an intelligent decision before or after the expiration of this 45-day review period, I think we need to have that information——

The CHAIRMAN. Let's say then that we agree that you will get that back to us. Will you do that?

Mr. MISENHEIMER. Yes, sir.

The CHAIRMAN. Thank you.

Mr. ANDREWS. Thank you, Mr. Chairman. Nice to have that gavel.

Mr. SKELTON. May I interrupt? Will the gentleman yield?

Mr. ANDREWS. Yes.

Mr. SKELTON. My request Mr. Lowery, if you would comply with my request for the documents and all the items I mentioned thereto that you agreed to furnish, if you would do it within the same time frame, that would be very helpful to us. Is that okay, Mr. Lowery?

Secretary LOWERY. Sir, I will take that back to the Treasury Department.

Mr. ANDREWS. If I may, just to help my Ranking Member, when you take it back, Mr. Secretary, to the Department, we would appreciate an answer as promptly as possible. If the answer is no, we are not going to comply within the time, I think we need to know that. If the answer is yes, we will, I think we need to do that very promptly.

Secretary LOWERY. Sir, the Congressman asked for distributive documents. That is obviously something that I have to talk to my general counsel about.

Mr. ANDREWS. We appreciate that and we think that your general counsel and/or the Secretary needs to tell us his or her response to that promptly so that we can consider what our options are; do you agree with that?

Secretary LOWERY. I hear you, sir.

Mr. ANDREWS. Okay. That means no. I understand.

Admiral Gilmour, I take it that the Coast Guard played—plays a critical role in the port security of the country. That is a given. And some of the defenders of this agreement have taken the position that the Coast Guard's prime position in defending port security means that it is of marginal or limited relevance as to who the terminal operators are as long as the Coast Guard is on the job, that we are okay. And by the way, I have tremendous faith in the Coast Guard and the work that you do and I salute you for it.

Your statement is a very lawyerly one about the role of the Coast Guard's involvement in the CFIUS process. Let me read it to you from page 4 of your statement:

Regarding the Coast Guard's involvement, the Coast Guard's initial review identified potential gaps in available intelligence related to specific Coast Guard interests in the transaction. However, after fully considering all available intelligence, the Coast Guard's assessment was that it did not oppose the transaction.

Have you had a chance to review the intelligence—obviously, without disclosing the specifics of it, have you had a chance to review the intelligence that was unavailable, prior to making your recommendation, since you made your recommendation?

Admiral GILMOUR. Sir, I—I need to explain that I guess a couple of things. I am not a member of the CFIUS Committee and we work, obviously, for the Department of Homeland Security. Second, our intel was done for internal Coast Guard purposes. I am the director of port security. Our intelligence director and his staff made that assessment. So I really couldn't speak to it. However, he is here if you would like him to speak.

Mr. ANDREWS. Oh, I would, with the Chairman's permission. If that gentleman would answer my question, I would like you to step to the microphone and identify yourself for the record.

Mr. SLOAN. I am James Sloan, S-L-O-A-N. I am the Assistant Commandant for Intelligence and Criminal Investigations at the Coast Guard.

Mr. ANDREWS. Mr. Sloan, what is the answer to my question?

Mr. SLOAN. The answer is yes, we did review intelligence subsequent to our report.

Mr. ANDREWS. Can I ask you a question, Mr. Sloan?

Mr. SLOAN. Yes.

Mr. ANDREWS. If there was intelligence that you deemed to be relevant that was available to be reviewed before a decision, why did you make the decision? Why did not you ask that the decision be delayed or kicked over into the 45-day review process?

Mr. SLOAN. I am going to tread lightly, given the fact that we are talking about a classified assessment.

Mr. ANDREWS. I appreciate that.

Mr. SLOAN. We did identify intelligence gaps. That does not necessarily mean that they were potential threats or should sway the assessment, other than they were information that we wanted to

alert our colleagues, for whom we were informing with this product, that we needed more information.

We were assessing the acquisition of these facilities by DPW, and, as a result of that assessment, and the reason I am hesitant—I am just going through my mind with the document—we did come to the conclusion that the DPW acquisition would not create a significant threat.

Mr. ANDREWS. But my question is a little different. By definition, I think implicitly, the use of the word "available intelligence" or the phrase "available intelligence" implies that you concluded that there was relevant intelligence not available to you before you made the decision. You since reviewed that and you have reached a conclusion that it does not change your judgment.

What was the rush?

Mr. SLOAN. Sir, it is important, I think, for this purpose; to point out that that assessment was requested in early November and was delivered for the purposes of informing our colleagues in late November.

Mr. ANDREWS. Really?

Mr. SLOAN. Yes, sir.

Mr. ANDREWS. How many days were put into that assessment?

Mr. SLOAN. Fifteen. It was requested for the purposes of the request, yes.

Mr. ANDREWS. How many ports—how many P&O operations are there in the United States that you looked at?

Mr. SLOAN. We examined—well, I should back up and tell you this. By the end of last year, we reviewed, by virtue of a port threat assessment, every one of the ports that contain P&O operation. We did it to complement Admiral Gilmour's directorate, which is the port security.

Mr. ANDREWS. By the end of last year. But you delivered your recommendation at end of November and it was 15 days' worth of investigation?

Mr. SLOAN. No, sir, it was 15 days of gathering information for an analysis to help inform our personnel who were going to be part of an action officer team in the CFIUS process.

Mr. ANDREWS. Okay. So you took 15 days and the intelligence that was available after that 15 days, the Coast Guard in effect voted its proxy in the committee process; is that right?

Mr. SLOAN. I am not familiar that the Coast Guard voted in that regard. I am not part of the CFIUS process and I think Admiral Gilmour indicated neither is he.

Mr. ANDREWS. May I ask who from the Coast Guard was part of the CFIUS process?

Mr. SLOAN. I might be overstepping my bounds in saying this, but the Coast Guard's role was to help inform the DHS decision.

Mr. ANDREWS. Maybe I could ask Mr. Baker. With whom did you consult from the Coast Guard about the pace of the gathering of this intelligence?

Secretary BAKER. I would have to go back and check the records for the particular names of the people in the Coast Guard, but they were authorized to speak on behalf of the Coast Guard in the CFIUS process.

Mr. ANDREWS. Uh-huh. And did any of them represent to you or anyone in the Department that there was intelligence they deemed relevant that was not yet available when they made their recommendation?

Secretary BAKER. No, they did not. And I would say that that intelligence report itself comes to the conclusion, notwithstanding the gaps, it says DP World's acquisition of P&O in and of itself does not pose a significant threat to U.S. assets.

Mr. ANDREWS. That is correct. And when was that report written?

Secretary BAKER. End of November.

Mr. ANDREWS. And that presumably, according to today's testimony, was based upon the available intelligence that was available then. Why was it so necessary to write that report before all the relevant intelligence was available?

Secretary BAKER. The report comes to a conclusion. It acknowledges, as a good intelligence report would, that it does not have all the available information. There is always some gap in intelligence or we would be all-knowing. It does not say that it knows everything, but it says it knows enough to come to this conclusion.

Mr. ANDREWS. You know, I am not by any means an expert on port operations but when I look at port operations, the scope of the P&O operations, the sensitivity of the places in which they operate, frankly, the issues with respect to the identity between Dubai and the corporation, it strikes me that 15 days is a rather hasty timetable for the evaluation of this. Am I wrong about that?

Admiral GILMOUR. Sir, could I clarify the record?

Mr. ANDREWS. Sure.

Admiral GILMOUR. Mr. Sloan—my staff was involved with the DHS team that looked at the CFIUS review.

Mr. ANDREWS. Uh-huh.

Admiral GILMOUR. And we tasked Mr. Sloan and gave him a deadline so that we would have what available information we had to make a due diligence attempt to look at the intelligence within the DHS.

Mr. ANDREWS. Your staff gave him the late November deadline?

Admiral GILMOUR. Yes, sir.

Mr. ANDREWS. Why? What was the big hurry?

Admiral GILMOUR. I think the point was we wanted the information—we wanted the information to go into the report, and my staff has inspected after P&O port in the United States as well as a number of them overseas.

Mr. ANDREWS. Wasn't that subsequent to the recommendation that you made? Weren't most of those inspections subsequent to the end of November?

Admiral GILMOUR. Which inspections, sir?

Mr. ANDREWS. You just referenced inspections of P&O facilities in Dubai World overseas.

Admiral GILMOUR. Sir, we inspected all of the P&O facilities initially after July 2004 and we looked at them again. We are doing a baseline inspection to look at them to see if they substantially continue to substantially meet the regulations before the turnover.

Mr. ANDREWS. What was the first date that the Coast Guard received notice that it was going to be asked for its input into this process?

Admiral GILMOUR. November 7.

Mr. ANDREWS. What was the date on which the Coast Guard made its recommendation to the CFIUS process?

Admiral GILMOUR. They had a couple of meetings after that. They had a staff-level meeting held at Treasury on the 6th of December, where our concerns on operations and personnel were lodged.

Mr. ANDREWS. I'm sorry, Admiral, did not you just say, or the other gentleman just say, that there was a recommendation made the end of November?

Admiral GILMOUR. No, sir, that was—that was the summary—the Coast Guard intelligence summary on the 29th of November to my staff.

Mr. ANDREWS. So that was not a conclusion? It was a record on which you drew your conclusion?

Admiral GILMOUR. No, it was a conclusion from the intelligence.

Mr. ANDREWS. You made a conclusion by the end of November. That is what you just said, when was the conclusion by?

Admiral GILMOUR. No, sir, we did not make a conclusion. The intelligence community gave us the report that made a conclusion. And it made both of the things that Mr. Sloan talked about.

Mr. ANDREWS. Were any of the inspections that you just made reference to done between the 7th of November and when that conclusion was made?

Admiral GILMOUR. Any of our P&O inspections? I don't know, but I would say I doubt that any were made during that time within the U.S.

Mr. ANDREWS. Do you think that you would ask yourself a different set of questions about the P&O inspections if you knew who the new owner might be?

Admiral GILMOUR. We did know who the prospective owner was going to be.

Mr. ANDREWS. Not until November 7th, did you?

Admiral GILMOUR. Yes, sir.

Mr. ANDREWS. You did? You tell me you made inspections of P&O facilities overseas, knowing that the purpose of the investigation was to assess this new owner from Dubai?

Admiral GILMOUR. No, sir. That was part of our international assessment program.

Mr. ANDREWS. I understand; it was a more generic assessment. Admiral, let me ask you another question that concerned me I think, that the CSI initiative has been a success story and you and the people in Homeland Security deserve great credit for it. I have been privileged to receive some classified briefings as to the basis of your judgments and I think you are very sound, do a good job. But I would obviously state that the record shows—and I am sure you would agree—that the vast majority of containers coming into the country are not inspected; is that correct?

Admiral GILMOUR. Again, sir, CBP is the group in charge of security.

Mr. ANDREWS. Is that correct, Mr. Baker?

Secretary BAKER. That is correct.

Mr. ANDREWS. And that is not an accusation, it is just an observation given the vast scope of trade that comes in. And I would assume, therefore, a vast majority of containers coming into these ports that the Dubai company would operate would not be inspected; is that correct?

Secretary BAKER. That would be correct.

Mr. ANDREWS. Let's posit a circumstance where the containers contain three elements that separately are rather benign but, if combined, could form a weapon or the basis of a weapon. They are in three separate containers, none of them are inspected, they find their way into a warehouse facility run by the new owner, the new operator, the Dubai people. Are all the employees of the Dubai organization subject to a background check?

Secretary BAKER. The Dubai company operating in the United States. Yes.

Mr. ANDREWS. Who does the background check?

Secretary BAKER. There are a variety of background checks because they are a C–TPAT member and can't get out of the program now, they are subject to background checks. I think in Newark the background checks are performed by the Port Authority. We also now have authority to get the names of all their employees and date of birth, Social Security number, and conduct our own review.

Mr. ANDREWS. And for what percentage of employees do you do your own review?

Secretary BAKER. This is a special assurance that we have received from this company as a condition of approving this transaction. And so we can, if we wish, impose that requirement on 100 percent of the employees.

Mr. ANDREWS. I do have some familiarity with this. It has been my understanding that the background check that is done of the terminal employees tends to be a paperback ground check which relies heavily upon the documents that are presented by those employees. Is that generally true in your experience?

Secretary BAKER. I am not sure I can generalize about all of them. I think that is entirely possible, which is one reason why we are pleased to have the additional authority in this case to carry out more extensive background checks using our own records.

Mr. ANDREWS. And it is also my understanding that, for example, a document that indicated that an employee of the terminal had never served in the Armed Forces—in other words, one could falsify a resume rather easily if it was simply a paperback ground check, couldn't one?

Secretary BAKER. There is a risk there. It is better than not having a background check, but there are always possibilities for fraud in these cases.

Mr. ANDREWS. How much time would be—how many man-hours would be involved in doing a background check that goes beyond the papers when you are talking about people who are residents of the UAE? Do you have staff in the UAE?

Secretary BAKER. Yes, sir, we do.

Mr. ANDREWS. Do you have sufficient personnel to perform thorough background checks on all the people who would work for the Dubai Port Corporation?

Secretary BAKER. When we get applications for visas to come to the United States, we perform checks of that sort on the people who want the visas. Certainly if they want to come work in our ports, which is a rare event, we would be able to do that.

Mr. ANDREWS. I assume it might be somewhat less rare if the transaction goes through.

Secretary BAKER. One might think so, but only 10 or 15 percent of the people who work at the Dubai ports are from the Dubai ports because they are a net importer of labor.

Mr. ANDREWS. My last question for Mr. Lowery about the legal standing in which we stand here today. Mr. Saxton's questions really went to this. This afternoon it came across the news wires that the overall deal is going to close on Monday and there is, of course, this set-aside agreement that is a contract between the two private parties that they not close that part of the deal. Is that your understanding?

Secretary LOWERY. My understanding is that what they will do is basically—and I am not a lawyer—set up a holding—again, it is not——

Mr. ANDREWS. Is your lawyer here?

Secretary LOWERY. No.

Mr. ANDREWS. Here is the question I would like your lawyer to answer. Is it the Treasury Department's position that the two private parties, and specifically the Dubai Corporation, has waived any rights that it received under its original approval by signing this standby agreement? Let me tell you the reason I raise that question.

Your testimony relies upon a private contract, frankly, not made in the United States, as I understand it, between two private parties, where they have agreed to suspend the transfer of operations that they contractually agreed to earlier. The question I am asking is what if those two parties agreed to rescind that contract, for whatever reason. They have explicitly stated for the record that they won't do that. Is it the Department's position that they have a legal obligation to the United States of America not to do that?

Secretary LOWERY. I would have to check with an attorney, I can say this, sir. When the parties file a notice under this new transaction with the Treasury Department and with CFIUS, it will be—go through the full Exxon Florio statute and all the powers that are invested in it.

Mr. ANDREWS. That is not quite what I asked.

Secretary LOWERY. I said I was not a lawyer and I couldn't answer the exact specific of that.

Mr. ANDREWS. One thing I will say and I mean no disrespect to any member of the panel. This is obviously a matter of tremendous gravity to the Congress and to this committee. The testimony today has been sincere, it has been thoughtful. It has also been filled with holes, given by people who weren't part of the process, people that don't have the specific facts, people that are not in the position to know the specific facts.

I do not in any way fault any of you as individuals for that. But I would say that if this is the review that we are going to undertake, it needs a lot more work. I have more than extended my time and I thank my friends for giving me the time.

I would say this to you. I came into this discussion very disturbed at the way I found out about this—given the fact that my 600,000 constituents live very proximate to the port of Philadelphia—was from a newspaper reporter. I, frankly, am disturbed for a different set of reasons today. And it has nothing to do with the sincerity or integrity of any of the witnesses, but it does have to do with the unusual feel one gets about this process, that it is simultaneously a process that seems to have been conducted by people not in policymaking positions but it was a process that had, at least as far as I can tell, rather tight deadlines, things had to move very quickly. And my experience has been that the lower down the decision making chain you go, the slower things are, not the faster. And I hear our individuals from the Coast Guard talk about the pace at which their involvement took place and I hear about some of the other things, it concerns me.

And I hope that the Chairman's admonitions about supplying the record will be promptly adhered to so that the committee can draw its conclusion in an expeditious manner.

Thank you, Mr. Chairman, for your indulgence. And I thank the witnesses.

Mr. LOBIONDO [presiding]. Thank you, Mr. Andrews. And I think Mr. Andrews was being very kind with his choice of words about the comfort level that we are all feeling about what we have been hearing in this hearing and some of the other hearings covered.

I am assuming that most of you did not get a chance to hear the first panel. The panel, while they really did not focus so much on this deal itself, really focused on the general area of maritime antiterrorism and port security. And there was almost unanimous agreement that, while this particular issue with Dubai has to be reviewed, the bigger picture has to be addressed.

And I have to tell you, Mr. Baker, that I heard you say how port security is a really top priority of DHS. We have heard it from a number of other people. But your actions, the actions of DHS, do not match your rhetoric.

The Coast Guard has done a magnificent job in everything they have been asked to do. And every year they are being asked to do more with less. And this year, it is my view and the view of some others, that with the budget that has been submitted by the Administration, the increase that is afforded to the Coast Guard in operations and maintenance ends up being an overall reduction because of the factors of the price of fuel and pay raises and things like that.

Yesterday, we had a Coast Guard hearing where Master Chief Welsh outlined the horrific stories of the challenges of the aging assets and the personnel who man them. And we cannot conduct Coast Guard missions with Coast Guard cutters and planes that are falling apart, where literally lives are almost at risk, and the Coast Guard is not given the resources to do the job.

In a couple of areas that I am particularly cranked up about, in the Maritime Transportation Security Act, there were a number of mandates that were issued. The Coast Guard has come through pretty much in compliance with what we have asked; but when it comes to TSA, which I understand you are responsible for, something as simple as the transportation worker identity card, which

was supposed to pretty much be in place by 2004, so the bill was signed by the President maybe a year after the September 11th incident, a little bit more than that, we want to take our time to put it together. There wasn't any indication that there was going to be a major problem. We now find—without explanation from TSA that can give us an idea of why this delay occurred. And we heard from testimony that basically someone shows up at port, a transportation worker shows up at the port with a photo ID and that is what must be accepted.

Now, maybe one port has got something that is a little more involved, but basically that is what is accepted. And that it is my understanding from reports that we have received back that TSA is not going to propose the final rule until sometime later this year. Can you talk about this at all?

Secretary BAKER. I would be glad to. First, I share your admiration for the Coast Guard and their ability to meet the deadlines that the law requires, and appreciate the fact that when they do they make us look good.

We are committed to port security. The budgets that have been proposed, as I am sure you appreciate, are Administration budgets that reflect a host of difficult balancing decisions that have to be made by the Administration as a whole.

As for the transportation worker identity card, you are quite right; we have missed the deadline and we deeply regret that. Our difficulties have arisen from questions about the appropriateness of the design, how we can design as a Department an effective card that goes beyond the kind of flash pass that is so easy to forge and so easy to overlook in the busy port environment.

One of the reasons why we asked for the kind of assurance that we have asked for from this company was so that we could do a background check on the employees that they would have working at their facility so that we would have that kind of assurance with respect to those employees. In the long run, you are absolutely right that the transportation worker identity card will give us greater authority to do that for a wider range of employees.

Mr. LOBIONDO. When do you expect to publish the rule?

Secretary BAKER. I can't say, in part because as a result of the very discussion we are having today and related focus on the question of what is the best way to guarantee appropriate review of who is working in ports, we have begun a process of intensively examining the assumption that underlie the program so that we actually have a program that the Secretary and the Deputy Secretary are confident will work. We are in that process now.

Mr. LOBIONDO. Mr. Baker, with all due respect, the "Bank of Goodwill and Trust Me" is empty. And you are talking about this as not 2 months, 6 months, a year overdue. This is 4 years overdue. It is relatively—I mean, I understand you want to make this right. I don't know who that is involved with looking at this from a committee standpoint on this side can believe it is a top priority if you are taking this long to do it.

And in addition, I understand the budget constraints of the Administration. But our frustration and anger goes to everyone involved on the Administration side—and unfortunately that means you—that on a program this critical and essential to port security,

which I think you just acknowledged, there is not even funding in the budget to implement the program.

Secretary BAKER. And this, of course, is part of the problem with trying to come up with a program that we can—in which we can make the private sector absorb in an appropriate way the costs of this without our having to prime the pump with large appropriations at the start. That is a difficult program design challenge.

Mr. LOBIONDO. We should have been having these discussions 2 years ago, and we are 4 years into it. We are going to be talking a whole lot more about this. But then when we get into the area of port security grants, I think Mr. Spratt had it wrong. In testimony yesterday, Admiral Cross acknowledged that the recommendation of the Coast Guard from their initial review put the price tag on the low end at 7 billion, on the high end at 11 billion, and with the recommendation of 125 million this year. I did not major in math, but that is something like a 60-year time frame to get to where we need to be.

That is not putting port security at a high priority. And somebody, somewhere along the line, has to give us more than lip service. I mean, I will encourage Chairman Hunter, I will encourage everyone I can, that this reservoir of goodwill and what appears to be just patting us on the head, putting us aside, telling us don't worry, we are reviewing it and doing everything we can. Port security is a great priority, we are 4 years behind on the Transportation Worker Identification Credential (TWIC) program. We are constrained by budget requirements and so on and so forth.

What I said in my statement in the first panel is that if we were to have an incident tomorrow, and there would be an actual terrorist incident at one of our ports, besides shutting down all of our ports and our maritime economy, besides whatever damage may be done in terms of lives or property, the day after the check would be blank, that we would get to fill in the numbers as it was with aviation: $25 billion up to this point in time. And something has got to change.

Somewhere along the line, we have been maybe delinquent in just saying "yes" and accepting that tomorrow better news is going to come and tomorrow someone will show a little bit more of a priority. But it is at the point now where the frustration level is so high, and the opportunity for us, because of this Dubai Ports proposal, to actually do something about overall maritime antiterrorism and port security, which is woefully inadequate, is going to be a short window. Something—maybe 2 weeks from now, 3 weeks from now, the Congress is going to focus on something else, and I hope in a very positive sense that the DHS and TSA and all those associated feel tremendous heat to give this more than lip service.

Secretary BAKER. If I might, we certainly do. We would be delighted to work with Congress on ways to improve port security in the short run. I will note that we did not say to Dubai Ports World or P&O, how much money can we give you to make your participation in the C–TPAT permanent and mandatory? We said, will you do it? And they said, Yes, sir. We said—we did not say, We will give you money so that we don't have to come up with a subpoena

when we want to see the list of your employees and do background checks. We said, will you do it? And they said, Yes, sir.

The ability to impose those kinds of restrictions, we may well want to ask the question, What can the private sector do to improve port security along with the government? And we would be delighted to work with you on that.

Mr. LOBIONDO. I appreciate that, but I will just reiterate that a lot of what we do has to pass the kitchen table test. And people sitting around their kitchen table cannot understand if port security and maritime antiterrorism is a priority for this government, this Congress, and this Administration. How we can be four years into this and be so woefully behind? It just seems to be bureaucratic rhetoric about what we are going to do next. It never happens. There is a certain point at which that does not work anymore. I think we are past that point.

I want to thank Admiral Gilmour for the tremendous job that the Coast Guard has been doing. I don't know how you continue to have the men and women excel in the way that they do when you are constantly being stretched and pressed and asked to do more with less. But I have said it before: They really need to be commended.

I asked the question of the last panel and Mr. Misenheimer—I hope I pronounced it correct—can you comment? Does the United Arab Emirates enforce a boycott on Israel?

Mr. MISENHEIMER. The Arab League boycott of Israel is a serious issue and we oppose it. With respect to the UAE, like a number of other states in the region, the UAE supports and enforces the primary boycott. That is to say, they do not do direct commerce with Israel. It does not enforce the secondary and tertiary boycotts which we as a matter of policy have targeted right across the region.

I would add, sir, that we are involved in free trade agreement talks with the UAE, and of course one of the parameters of those talks is the elimination of the boycott. And so that is where we see the process heading.

Mr. LOBIONDO. But the boycott, the primary boycott is in place.

Mr. MISENHEIMER. Yes, sir; that is correct.

Mr. LOBIONDO. What would your reaction be if one of the congressional conclusions was that this boycott could not be in place for this deal to move forward?

Mr. MISENHEIMER. Again, sir, we oppose the boycott. We aim to see it eliminated. The complicating factors that would come into play in the circumstances that you are suggesting are several, including the fact that under international trade rules that apply to all states under the World Trade Organization (WTO), primary boycotts are permissible. The United States has one or two of its own.

And second, with regard to the CFIUS process which looks at security threats to the United States arising from proposed acquisitions of assets here, the fact of whether a potential investor would be involved in the boycott is, as I understand it, currently outside the scope of that process.

Mr. LOBIONDO. You do understand that we have constituents who have contacted us who believe that approval of this is in essence helping to subsidize the boycott?

Mr. MISENHEIMER. Again, there is no one who is in favor of boycott. There are many levels of our interaction with the UAE and the other states in the region. And the investment of those states in the United States, of course, has benefits for our economy which are well documented.

Mr. LOBIONDO. Thank you. Mr. Langevin you are up.

Mr. LANGEVIN. Thank you, Mr. Chairman. And, gentlemen, I want to thank you for your testimony today. The hour is late and we appreciate you being here.

I want to begin with this. I understand clearly, we all understand now, that the Secretaries of Defense, Treasury and Homeland Security are all a part of this, sit on the CFIUS committee, and that this has been designated to others far below their rank who actually made this decision. But I have to ask the question that—in particular for the three secretaries that I mentioned—that they were unaware of the sale until it appeared in the newspapers.

How is it that your bosses did not know what was happening? And is the process broken?

Mr. EDELMAN. Congressman, as I testified earlier, I found out about the transaction after the fact as well. I found out about it from Deputy Secretary Kimmitt, and at the earliest possible opportunity I had, I notified the Secretary of Defense, who had already learned of it from the press, as you said.

It is clear that, although as I mentioned there have been some steps to fix the part of the process that has been problematic from the point of view of some of the security agencies in terms of getting some of their concerns addressed, we have not completely fixed everything in the process. And at least—I can't speak for other agencies—but in the Department of Defense, we have taken some steps to make sure these cases get elevated to higher policy level now as a matter of routine.

Secretary LOWERY. I think that I have a very similar reaction. And I think the one thing I would say is that all the agencies did have their most professional people that deal with CFIUS matters or national security issues look at all this transaction very thoroughly. That said, clearly there were two mistakes that were made. One, there was not good vertical agreement; and second, that we did not do a very good job of explaining this to Congress.

Secretary BAKER. Well, I have to say Representative Skelton did not actually ask me if I knew about this. It turns out that I am the only person on the panel that did know about this. I am in charge of all policy for the Department of Homeland Security. I was deeply involved in the decisions about whether we were going to object to this transaction and what kinds of assurances we were going to insist on from the company in order to decide not to do that.

In our case, while obviously in light of what has happened I should have talked to the Deputy Secretary and the Secretary, I concluded that we had protected the national security interest appropriately by getting the assurances that we received. So in our case, while I am confident that in the future we will be doing more

reporting up, I would not say that this was decided at a low level within the Department.

Mr. LANGEVIN. Let me be clear. Mr. Baker, you are the only person on this panel here today that was directly involved with making the decision to allow the DP World sale to go forward?

Secretary BAKER. Boy, I guess I shouldn't be saying this, but yes, I think that is the case. I have a feeling that means more questions from you.

Mr. LANGEVIN. Well, Mr. Chairman, I would point out that unless we have direct testimony from all those people who were part of the committee, I don't think we are exercising proper oversight, and I would request that the committee consider bringing those individuals before the committee to answer the question of how we got into this point and really what additional information went into them making this decision.

I would ask this. We can start with Mr. Baker and the other departments can answer. The individuals that were involved in making the decision to approve this sale, what national security experience do they have? I am not interested in their experience in foreign policy or the economy. I want to know specifically what experience they had in making national security decisions, what the experience was in national security.

Secretary BAKER. Obviously, a lot of different people participated in the Department of Homeland Security's decision. We asked for extensive review by the Customs and Border Protection Agency as well as the U.S. Coast Guard, which obviously these are people that have a career spent concerned about port and cargo security.

Myself, I was general counsel of the National Security Agency. I have been general counsel and author of the report of the WMD Commission on Iraq Intelligence, and also I am head of policy for the Department of Homeland Security.

Mr. LANGEVIN. And for the Department of Defense and also for the Department of Treasury?

Mr. EDELMAN. Congressman, for the Department of Defense, the main point of entry for the CFIUS process is the DTSA, which is essentially an organization that is devoted to the whole issue of export and technology control.

Mr. LANGEVIN. The individual who represented the Department at the CFIUS committee who was directly—who approved this decision—who is that person and what is their national security background?

Mr. EDELMAN. I think Ms. McCormick testified it was Mr. Reitzel who was the actual participant in the meetings, and we can get back to you with—I don't know his exact CV but we can get back to you with his background. Would you like to hear from Ms. McCormick who is his superior?

Ms. MCCORMICK. I will just mention that Mr. Reitzel is a retired army intelligence officer, so he is by training an intelligence officer, and that is one reason why he runs the assessment part of my policy directorate where we review a variety of intelligence information and user checks, and he has been a civilian in the Department following his Active Duty.

Secretary LOWERY. I am Assistant Secretary for Treasury for International Affairs, and I take responsibility for my Department,

and my Department made a decision that this transaction is okay to go forward. That is why I am here testifying today.

As to the people that were involved, the person who runs the office has been doing CFIUS reviews, which are all related to national security, for the last roughly 10 to 12 years. As far as my own background, I have been involved in national security matters either at the Treasury Department or the National Security Council for 10 of the last 12 years.

Mr. LANGEVIN. I think we all find it astounding that no one seemed to anticipate the firestorm this was going to set off. And it really speaks to how insecure, really, the public is right now in the belief that our ports and our borders are secure. And we clearly have got to do a far better job at securing our ports, because I don't know we are prepared at our ports. I think we are grossly underprepared.

I am going to end with this. It is my understanding that the Director of National Intelligence is not a sitting member right now of the CFIUS committee.

Secretary LOWERY. That is correct, sir.

Mr. LANGEVIN. Do you believe that the Director of National Intelligence should be a member of that committee?

Secretary LOWERY. We think that would be a good suggestion to take up, sir.

Mr. LANGEVIN. I agree.

Secretary BAKER. If I could just add one caveat from my experience with intelligence. One of the difficulties that arises when someone from the intelligence community participates in an interagency process is that there is a question of whether they are participating to provide intelligence or to represent their national security interests. And I think the DNI has very substantial national security interests here.

The risk that is always raised is that once they begin participating from a policy point of view, it becomes harder for the other participants who may be disagreeing with them to rely entirely on their intelligence assessments, which inevitably are seen as tied to their bureaucratic interests.

Secretary BAKER. So we do need to find a way to have the DNI participate, to reflect their strong policy interests here. We just have to find a way to make sure that the intelligence that they gather isn't subject to the objection with respect to their policy interests.

I, for one, believe that the DNI should have a seat on the committee and have a strong voice and role in overseeing these types of sales. I think in the past, CFIUS evaluated its decisions primarily based on a financial and an economic decision or standpoint. In this post 9/11 world, that cannot happen as we go forward. It has to be based on—a decision has to be made from a national security standpoint primarily and not an economic standpoint.

Secretary LOWERY. We agree.

Mr. LANGEVIN. Thank you, Mr. Chairman. I yield back.

Mr. LOBIONDO [presiding]. And now, for the last hour of the hearing, I recognize Mr. Larsen.

Mr. LARSEN. Thank you, Mr. Chairman. I have to warn you, I flew in from Washington State two days ago. I am still on west

coast time. I have three hours, but I am not going to take three hours.

It has been a great hearing, great panel. The two previous panels are very helpful for this committee. You have all been very patient with us. You have done your best to answer questions as you can, and we appreciate it.

I think one of the headlines that you need to take away from this entire day is that we believe the CFIUS process is a legitimate process to conduct. We have serious questions about the legitimacy of the process based on the questions that we have had today, based on information that has come out since, and those are the kinds of questions we have to get answers to.

If we don't, Congress will be a co-shareholder in every company that wants to do foreign investment in the U.S. trying to make those decisions, instead of the shareholders making those decisions, however many shareholders happen to be on the board of any of these companies. This process has to work, and we may be moving forward to change the process to make it work, change the criteria beyond the Exon-Florio criteria as well to make this process work. We have a lot of work to do here in Congress, and I would argue that we cannot spend every week reviewing every foreign investment in the U.S. that will be—it is a dangerous thing for us to get involved in.

So this process has to change in order to work. It has to be seen as legitimate by us, more importantly, by the American people.

I want to—Admiral—I can't even see that far any more; my eyes are so tired—Gilmour, the guy in uniform, you said earlier that with 20 inspectors for the ISPS compliance that you all do worldwide, that number was in the ballpark and it was—so it is about 20, and it would take you another additional 2 years to finish your assessments?

Admiral GILMOUR. Sir, that is an international team that inspects our foreign partners. We have many more people doing the domestic facilities in the United States, and they have already been inspected.

Mr. LARSEN. So the domestic are done, but now you are going international, and we have 20 inspectors about, and it would be another 2 years to complete that, is that what you said?

Admiral GILMOUR. Yes, sir.

Mr. LARSEN. The international.

Admiral GILMOUR. Yes, sir. We have completed about a third of the nations right now, about 80 percent of the traffic that comes to the U.S.

Mr. LARSEN. About 80 percent of the traffic that comes to the U.S., okay. I don't know if it would do any good to include in our discussions deliberations after this to add inspectors or not, given the fact that, where you are in the process. But it just seems to me that, you know, you use a ballpark analogy to sort of describe how many inspectors we have. I would just sort of say it is not a ballpark, it is sort of the size of a little league field in terms of how many we should have had in this process to really get this done, and that is no fault of the Coast Guard at all.

It is just—the port security—and Congressman LoBiondo made the point about port security. I won't go through the numbers

again. But we are clearly, compared to aviation, not putting the kind of investment, public investment, that is necessary to move as quickly as we have, compared to aviation.

In the agreement, the—what do they call this? What do they call this? The——

Mr. BAKER. The assurances letter.

Mr. LARSEN. The hold separate commitment letter. Condition I say, chief security officer for P&O Ports North America (POPNA) will at all times be a U.S. citizen unless U.S. Coast Guard agrees otherwise. So, apparently, U.S. Coast Guard will be responsible for approving through the life of this agreement, which will be at the latest May 1, that the security officer for POPNA will be a U.S. citizen. Is that your understanding of this as well? Or should that be to Mr. Baker?

Admiral GILMOUR. Yes, sir.

Mr. LARSEN. That is your understanding? Is it your understanding that after May 1 or earlier that then you no longer have any say in who they determine as a security officer, their chief security officer?

Admiral GILMOUR. I guess I have to defer to DHS on that. But my interpretation would be that in perpetuity we would be able to do that.

Mr. LARSEN. Mr. Baker, do you have——

Secretary BAKER. I think that this agreement goes beyond the assurances letter. The assurances letter requires that the company maintains security policies under the direction of a responsible corporate officer——

Mr. LARSEN. Right, and I was getting to that as well. But just in terms of the chief security officer of POPNA of as long as it is POPNA, it is going to be the Coast Guard's responsibility and only until that agreement is no longer relevant, which will be made the 1st or earlier?

Mr. BAKER. That is my understanding.

Admiral GILMOUR. Yes, sir. I was thinking of the wrong letter. I am sorry.

Mr. LARSEN. Sure.

Okay, the next question is probably for Mr. Baker. Then the letter—the assurances letter designates a responsible corporate officer to serve as a point of contact with the Department of Homeland Security on security matters.

My question to Mr. Scavone, I think, with the security office, the current executive vice president for security at POPNA who is the—which agency at DHS will be responsible and who will be the contact at DHS—the basic question, who do we hold responsible for ensuring that portion of the assurance letter is implemented?

Mr. BAKER. My office is in charge of the CFIUS process, and along with the general counsel's office, we make sure that people comply with the agreements. But I think it is likely that, with respect to this kind of thing, that we will end up asking one of the components, CBT or Coast Guard, to take responsibility for the details of the implementation of this agreement.

Mr. LARSEN. Should this agreement go forward after the 45 day re-review of it and however the process works out, that Congress

is in with the Administration, can you let us know which agency and which office and which phone number?

Mr. BAKER. Absolutely, yes. We will be glad to do that.

Mr. LARSEN. Assuming it gets that far.

Is there any other agency at this table who is going to be part of any other management decision at the post P&O PNA entity? Or is it all going to be DHS?

Mr. BAKER. The agreement is with DHS. So anything that happens under that agreement would be something that we would be responsible for.

Mr. LARSEN. Mr. Lowery, were you about to give up the ghost?

Secretary LOWERY. I was just going to agree with my colleague.

Mr. LARSEN. Okay, thanks.

Mr. Baker, you mentioned that as well, that you said in two different forms, more detail the second time, about the ability for DHS to subpoena employee records at DP World and conduct their own background checks if you wish, if DHS wishes. My question to you is, will you wish? Is this something you are holding out or you are going to do?

Secretary BAKER. Our current plan is to actually make—we don't even have to get a subpoena. We can just make a written request. We plan to make a written request to test our understanding of the agreement, make sure we get the cooperation that we expect, as part of the 45-day review process is to make sure that everything is working.

Then I expect us to perform some form of background check on the names that we get back. Precisely what checks we will do, whether we are running those names against watchlists or performing other checks, remains to be determined. But we will certainly be exercising our rights here and going beyond what is currently required of other companies.

Mr. LARSEN. Will you be doing those only of direct employees of DP World?

Mr. BAKER. These are employees in the U.S. facilities.

Mr. LARSEN. I am sorry, in U.S. facilities as employees of DP World?

Mr. Baker. That is our current plan.

Mr. LARSEN. Mr. Baker, you mentioned to Mr. Saxton earlier your willingness to work on security issues and you mentioned a few other times as well.

There is legislation—it has been introduced in the Senate—the Greenlane Maritime Cargo Security Act by Senator Murray from my State and Senator Collins from Maine; and at least according to a few commentators, the DHS's initial reaction—I think one commentator used the word "tepid." I would ask you if it is still tepid, if that was accurate. I want to give you a chance here. If it is accurate, why it is tepid; and if it isn't accurate, tell me how excited you are about working to get something like this passed?

Mr. BAKER. I think we are quite prepared to turn up the heat on our efforts in this regard. I am not in a position to give you a response to the details of this legislation, but I think we all recognize that this is a moment in history where we can do something about port security legislatively, and we should look hard at what can be done.

Mr. LARSEN. Just generally some details that would provide incentives for American importers to accept modest fees, to establish minimum security standards, encourage tracking and monitoring of containers through the entire supply chain, create joint operation centers within U.S. ports, to respond to terrorists incidents as well as to allow for flow of commerce to resume when everything is sorted out after incidents; and then it would authorize $835 million a year for the Container Security Initiative. So those are some of the details as reported not only in the press but on the fact sheet on the Greenlane.

Mr. BAKER. I think those are all topics in which we would be quite prepared to work with Congress to see if we can come up with a proposal that the Administration can support as well.

Mr. LARSEN. That makes me excited to hear, I should say.

With that, Mr. Chairman, I have no further questions for the panel. Thank you.

Mr. LOBIONDO. Okay, thank you, Mr. Larsen.

I want to thank our panel very much. I guess no one expected that it would go on to this hour, but this was very helpful for the committee, and we appreciate your cooperation.

[The prepared statement of Mr. Misenheimer can be found in the Appendix on page 170.]

Mr. LOBIONDO. The meeting stands adjourned.

[Whereupon, at 7:58 p.m., the committee was adjourned.]

A P P E N D I X

March 2, 2006

PREPARED STATEMENTS SUBMITTED FOR THE RECORD

MARCH 2, 2006

Statement of Dr. James Jay Carafano
Senior Research Fellow
The Heritage Foundation

Before the House Armed Services Committee

Mr. Chairman and other distinguished Members, I am honored to testify before the House Armed Services Committee today.[1] I commend Congress, and this Committee in particular, for their concern with the critical importance of safeguarding America's ports and recognizing the vital role maritime transport plays in national security. In my testimony today I would like to: (1) emphasize why secure ports are essential to the nation; (2) describe the significant security threats the U.S. faces today and in the future; (3) assess the impact of foreign-owned assets on existing and emerging threats; (4) identify the critical problems that must be addressed to enhance port security, and; (5) propose the next steps that this Committee take to make the seas safer.

Why Do We Care?

The importance of the maritime domain cannot be overestimated. Almost one-third of the U.S. gross domestic product (GDP) is derived from trade. As you know, 95 percent of American overseas trade traffics the maritime domain. According to the American Association of Port Authorities, $1.3 billion worth of U.S. goods move in and out of U.S. ports every day. In addition, many major urban centers (more than half of the U.S. population) and significant critical infrastructure are in proximity to U.S. ports or are accessible by waterways.

---

[1] The Heritage Foundation is a public policy, research, and educational organization operating under Section 501(C)(3). It is privately supported, and receives no funds from any government at any level, nor does it perform any government or other contract work.The Heritage Foundation is the most broadly supported think tank in the United States. During 2005, it had more than 275,000 individual, foundation, and corporate supporters representing every state in the U.S. Its 2005 income came from the following sources:

Individuals	63%
Foundations	21%
Corporations	4%
Investment Income	9%
Publication Sales and Other	3%

The top five corporate givers provided The Heritage Foundation with 2% of its 2005 income. The Heritage Foundation's books are audited annually by the national accounting firm of Deloitte & Touche. A list of major donors is available from The Heritage Foundation upon request.

Members of The Heritage Foundation staff testify as individuals discussing their own independent research. The views expressed are their own, and do not reflect an institutional position for The Heritage Foundation or its board of trustees.

Maritime security also has a critical defense dimension. The vast majority of U.S. military forces and supplies projected overseas transit through U.S. ports. In fiscal year 2003 alone, for example, the U.S. Military Traffic Management Command shipped over 1.6 million tons of cargo in support of Operation Iraqi Freedom.[2]

Ports can also be tempting for terrorists. As points of entry and exit, they are critical nodes that affect terrorist travel and transiting of material support or weapons. They might also be prime targets for terrorist strikes. The economic, physical, and psychological damage that would result from a significant terrorist attack targeting maritime commerce or exploiting America's vulnerability to sea strikes is difficult to estimate. The September 11 terrorist attacks on New York and Washington incurred well over $100 billion in losses to the U.S economy alone.[3] Given the nation's overwhelming dependence on ocean-going commerce, a similar sudden, unexpected attack in the maritime domain might exceed these costs. The stakes are high. A significant breakdown in the maritime transport system would send shockwaves throughout the world economy. In fact, in a worst-case scenario, a large attack could cause the entire global trading system to halt as governments scramble to recover. Drastic and inefficient solutions could also be put in place, such as the complete closure of some ports and duplicative and lengthy cargo checks in both originating and receiving ports.[4]

---

[2] Most military supplies and hardware move through only 17 seaports. Only four of these ports are designated specifically for the shipment of arms, ammunition, and military units through Department of Defense (DOD)-owned facilities. For an overview of the military's reliance on ports and associated security risks, see U.S. General Accounting Office, "Combating Terrorism: Preliminary Observations on Weaknesses in Force Protection for DOD Deployments Through Domestic Seaports," GAO-02-955TNI, July 23, 2002. See also U.S. General Accounting Office, "Combating Terrorism: Actions Needed to Improve Force Protection for DOD Deployments Through Domestic Seaports," GAO-03-15, October 2002, pp. 5–10.

[3] Estimates of the damage wrought by the 9/11 attacks vary depending on the criteria used. Insurance Information Institute set the initial cost at $40 billion. See Insurance Information Institute, "Catastrophes-Insurance Issues-Part 1 of 2," January 9, 2002, np. A study by the Federal Reserve Bank of New York put the cost at $33 to $36 billion. The Federal Reserve Bank's estimate included only immediate earning loses, property damage, and clean-up and restoration costs through June 2002 and did not cover long-term productivity and tax revenue losses. Jason Bram, et al., "Measuring the Effects of the September 11 Attack on New York City," FRBNY Economic Policy Review, Vol. 8, No. 2 (November 2002), p. 5. The City of New York Comptroller set the total economic impact on the city at between $82.8 and $94 billion. Comptroller, City of New York, *One Year Later: The Fiscal Impact of 9/11 on New York City* (New York: City of New York, September 4, 2002), p. 1. The U.S. GAO Office reported that it believed the most accurate assessment places the total direct and indirect costs at $83 billion. U.S. General Accounting Office, "Impact of Terrorist Attacks on the World Trade Center," GAO-02-7000R, May 29, 2002, p. 2. In addition, Wilbur Smith Associates estimated the long-term costs of the 9/11 attacks resulting from reduced commercial aviation range from $68.3 to $90.2 billion. Wilbur Smith Associates, "The Economic Impact of Civil Aviation on the U.S. Economy-Update 2000," (2002). **[Where was this published?]**

[4] A preliminary estimate in 2003 placed this cost at tens of billions of dollars, nearly $60 billion for the U.S. alone. Organisation for Economic Co-operation and Development, "Directorate for Science and Technology and Industry, Maritime Transport Committee, Risk Factors and Economic Impact," July 2003, at *www.oecd.org/dataoecd/19/61/18521672.pdf* (October 29, 2004).

During the next 20 years, maritime commerce likely will become an even larger and more important component of the global economy. The main elements of this transformation probably will include continued growth in the seaborne shipment of energy products, further adoption of containerized shipping, and the continued rise of mega-ports as commercial hubs for trans-shipment and deliveries. Barring substantial and unanticipated reductions in the cost of air transport, this level should persist for the next few decades.

Seaborne transport will remain critical to defense as well. Despite the anticipated development of a new generation of long-range global strike aircraft and rapidly deployable future Army combat forces, it is highly unlikely that the U.S. military will be able to undertake a sustained major campaign in the foreseeable future without the capacity to transport significant assets from the continental United States by ship.

The future maritime system will be robust, yet fragile. Maritime shippers increasingly have concentrated their traffic through major cargo hubs (mega-ports) because of their superior infrastructure. In the United States, 50 ports account for approximately 90 percent of all cargo tonnage.[5] Their specialized equipment is essential for the loading and off-loading of container ships, which constitute a growing segment of maritime commerce. Today, U.S. seaports unload approximately 8 million loaded containers annually.[6] Analysts forecast the volume of global container traffic will double over the next 20 years.[7] Some of this increase could result from the development of still larger ships able to carry 10,000 or more twenty-foot containers or from increased traffic by existing classes of ships.

The rising use of container shipping and mega-ports has lowered the costs and improved the reliability of maritime commerce, leading firms to rely increasingly on rolling inventories and just-in-time deliveries. These trends have produced significant economic benefits for many industries engaged in international commerce, but have also made individual companies in the supply chain more vulnerable to interruptions.[8]

Both the concentration and decentralization of seaborne traffic in the United States are also concerns. Some 42 percent of U.S. imports come through the port of Long Beach/Los Angeles. Similarly, over 50 percent of U.S. tanker imports come through the

---

[5]U.S. Congress, House of Representatives, "Maritime Transportation Security Act of 2002," Conference Report, 107–777, p. 4.

[6]"Marine Insurers Contemplate Increased Security Regulations," *Claims Magazine,* December 2003, p. 12.

[7]William G. Schubert, Maritime Administrator, Department of Transportation, Testimony before the Committee on The Judiciary, Hearings on the Security of our Seaports, February 26, 2002, at *http://usinfo.state.gov/topical/pol/terror/02022701.htm.* (February 27, 2005)

[8]For a comprehensive discussion of these vulnerabilities, see Daniel Y. Coulter, "Globalization of Maritime Commerce: The Rise of Hub Ports," in *Globalization and Maritime Power*, edited by Sam J. Tangredi (Washington, D.C.: Institute for National Strategic Studies, National Defense University, 2002), pp. 133–142.

Lower Mississippi Waterway and the Houston Ship Channel. At the same time, there is an ongoing shift from West Coast ports to East Coast alternatives, driven by the increased cost of surface transportation, congestion at Los Angeles/Long Beach, and strategic business decisions and reduced costs associated with maritime transportation due to containerization. Accordingly, retailers have begun building major distribution centers around smaller ports such as Norfolk, Virginia. Intermodal congestion may potentially make maritime commerce increasingly vulnerable to disruption from terrorism or other hazards.

What Should We Worry About?

A special report prepared by the Maritime Security Working Group (chaired by The Heritage Foundation) was asked to address the long-term security threats to the United States in the maritime domain.[9] The group—consisting of experts from academia, research centers, the private sector, and government—concluded the major trends that will affect U.S. maritime security are:

- *Internal Threats from Rogue Actors.* The greatest vulnerability to maritime infrastructure may be internal threats, i.e., employees who have an intimate knowledge of operations and facilities and access to transportation and port assets.

- *The Growth of Maritime Criminal Activity.* Piracy, human trafficking, and drug smuggling will continue. Terrorists could mimic or partner with criminal enterprises.

- *The Lack of Visibility in Non-Commercial Maritime Activity.* Currently the United States lacks sufficient means to monitor maritime activity. Terrorists could capitalize on this failing in many ways, including mines and other underwater attacks, smuggling by private craft with small payloads delivered outside ports, or attacks by small craft.

- *The Maritime Domain as a Target and Facilitator of Threats against the Environment.* Opportunities for infectious diseases and other environmental threats carried by seaborne traffic will increase with greater maritime commerce.

- *Anti-Access Strategies a Real Possibility.* An enemy might attack vulnerable targets on U.S. territory as a means to coerce, deter, or defeat the United States.

- *Stand-Off Attacks from the Sea.* State and non-state groups will be capable of mounting short-range ballistic missiles and cruise missile attacks—possibly employing weapons of mass destruction—from U.S. waters.

---

[9]James Jay Carafano, Ph.D., and Alane Kochems, eds. "Making the Sea Safer: A National Agenda for Maritime Security and Counterterrorism," Heritage *Special Report* No. 3, February 17, 2005, at *www.heritage.org/Research/HomelandDefense/sr03.cfm.*

Since 9/11, some analysts have hyped the possibility of spectacular maritime attacks with nuclear weapons stowed in shipping containers or liquid natural gas tankers blown-up in U.S. harbors. The Maritime Security Working Group found these scenarios less plausible or felt that post-9/11 security regimes made them less likely.[10] On the other hand, the group found the challenges identified above as enduring, disturbing, and inadequately addressed.

What is the Impact of Foreign Investments on Future Threats?

Nationality and geography do not guarantee security, nor do they assure economic growth. The notion that merely precluding foreign ownership of U.S. assets offers a measure of security or saves American jobs is fundamentally flawed.[11] Applying protectionist policies to homeland security would stifle innovation and increase costs, without making America any safer. The government's role is not to decide how the marketplace operates, but to perform due diligence to ensure that vital national interests are looked after.

In regard to foreign sales of maritime infrastructure, due diligence is conducted under the process established by Congress. The Omnibus Trade and Competitiveness Act of 1988 created the Committee on Foreign Direct Investment in the United States (CFIUS). The Secretary of the Treasury heads CFIUS, and 11 other agencies participate in it, including the Departments of Defense, Justice, Commerce, and Homeland Security. The Committee's task is "to suspend or prohibit any foreign acquisition, merger or takeover of a U.S. corporation that is determined to threaten the national security of the United States." The process is designed to be non-partisan and non-political because these decisions should not be based on political considerations, but solely on the merits of the transfer and appropriate security concerns consistent with U.S. policies.

The sale of facilities at six U.S ports by a British-based company to Dubai World Ports, a government-owned company in the United Arab Emirates has raised concerns among many over whether the Bush Administration exercised adequate due diligence in reviewing the sale. These concerns do reflect the importance of ensuring that the system created by Congress to review the sale of foreign investments in the United States is functioning properly. Congress should take 45 days to review the sale to Dubai World Ports. Because Congress has not closely reviewed this oversight process since 9/11, a brief delay is reasonable and warranted.

A review of the facts that are publicly available do not suggest that the sale would exacerbate risks in the maritime domain.

---

[10]See also Alane Kochems, "Taking a Global Approach to Maritime Security," Heritage *Executive Memorandum* No. 980, September 22, 2005, *www.heritage.org/Research/HomelandDefense/em980.cfm.*

[11]James Jay Carafano, Tim Kane, Dan Mitchell, and Ha Nguyen, "Protectionism Compromises America's Homeland Security," Heritage *Backgrounder* No. 1777, July 9, 2004, at *www.heritage.org/Research/HomelandDefense/bg1777.cfm.*

- *Outsourcing Is Not the Issue.* That the facilities at several U.S. ports will be foreign-owned is not significant. These facilities are already owned by a foreign company, the London-based Peninsular and Oriental Steam Company. Indeed, much of the maritime infrastructure (e.g., ships, containers, and facilitates) that supports U.S. seaborne trade and travel is already foreign-owned, including by some estimates almost 70 percent of terminal facilities in the United States. The globalization of maritime trade began decades ago, and this sale reflects the continuing globalization of a sector long-dominated by transnational firms. Globalization also provides options. The United States is not dependent on any one company or country. U.S. ports are free to contract with those who provides the best services.
- *Security Standards Will Not Change.* Security standards for ports are governed by the International Shipping and Port Security (ISPS) Code, which is based on U.S. maritime laws adopted after 9/11. The same law applies to any company operating in the U.S., regardless of its origin. The U.S. Coast Guard is responsible for overseeing the implementation of ISPS. Every U.S. port has a Coast Guard officer who is the Captain of the Port and is responsible for coordinating all port security. The Customs and Border Protection agency and the Coast Guard, *not* the owner of the port, conduct security screening on individuals and cargo entering the port.
- *Not a Terrorist Gateway.* The UAE government is not a state-sponsor of terrorism, nor has any evidence been presented that Dubai World Ports has ever facilitated terrorist activities. In addition, Dubai World Ports is a holding company, and would have little to do with the day-to-day management of U.S. port facilities. Its ownership alone does not entitle its employees to access classified or sensitive security information, unless, as now, they meet the requirements of ISPS and U.S. law. Moreover, almost all of the employees at these facilities are U.S. citizens. Additionally, with over $6 billion invested, no company would want to see its facilities used by terrorists. Finally, terrorist tradecraft does not involve high-profile purchases of companies. Terrorism infiltration, like criminal smuggling, involves penetration by individuals, often at very low levels. That is a challenge for any company.

Congress certainly has the responsibility to ensure that the CIFUS process is being implemented as it is intended. The country needs confidence in the procedures meant to ensure that foreign investment does not harm national security. Addressing the existing and emerging threats in the maritime domain, however, requires more comprehensive efforts.

What Should We Do?

Port facilities are just one of many aspects that should be considered in developing a comprehensive maritime security regime. The United States should approach cargo and port security from the perspective of a complex global system rather than attempting (and failing) to make ports and containers impervious to terrorist threats. Ports are just part of a system, designed to move people and things quickly in immense volumes. The best way

to secure a port is to keep bad things and bad people out of the port to begin with. And that means securing the system, not the port. That requires a system approach to security. As with much of homeland security, maritime security is a matter of prioritizing and balancing risks.[12]

The Heritage Foundation's Maritime Security Working Group has identified several areas that should be the centerpiece of U.S. efforts to help secure the maritime enterprise. I would like to raise three that have particular relevance for this committee. They are: (1) advancing network science; (2) enhancing the capabilities of the U.S. Coast Guard and harmonizing the U.S. Navy and Coast Guard requirements and missions; and (3) broadening international cooperation.

- *Better Science is Required.* Maritime trade and travel is a complex enterprise, a system of systems that is not controlled by any one country or company. Understanding how complex systems work is essential both to making good public policy and designing the right security. Ironically, while the United States is probably the world's leader in systems integration, the underlying science that should guide how to develop dependable, resilient, and adaptable complex systems is in its infancy.[13] Your committee and the Department of Defense should have a vested interest in advancing network science, as it can also be used to guide developments in network-centric warfare. Congress should require the Departments of Defense and Homeland Security to jointly develop robust network science research.

- *Fix the Coast Guard First.* U.S. Coast Guard operations are central to virtually every aspect of maritime security, from enforcing ISPS to interdicting suspect cargo under the Proliferation Security Initiative. Fully funding the Coast Guard's modernization program, Deepwater, at $1.5 billion per year is essential. Likewise, Congress should establish more effective oversight of the National Fleet initiative and relevant committees should work together to ensure that the missions and the requirements of the Navy and Coast Guard efficiently and effectively support one another.[14] This Committee should play a leadership role in that process.

- *International Cooperation is Essential.* The U.S. National Security Strategy rightly calls for encouraging economic development through free markets and free trade and enhancing the capacity of developing nations to compete in a global economy. Concurrently, however, the United States is also rightly promoting international security regimes designed to prevent terrorists from attacking or exploiting global trade networks. Meeting these requirements is difficult not for

---

[12]Alane Kochems, "Taking a Global Approach to Maritime Security," Heritage *Executive Memorandum* No. 980, September 22, 2005, at *www.heritage.org/Research/HomelandDefense/em980.cfm.*

[13]See, for example, Committee on Network Science for Future Army Applications, *Network Science* (Washington, D.C.: The National Academies, 2005).

[14]Dr. James Jay Carafano,
Statement before the Senate Committee on Commerce, Science, and Transportation, March 24, 2004, at *www.heritage.org/Research/HomelandDefense/tst032404a.cfm#_ftn2.*

> the "Dubais" of the world, but for developing countries that lack mature infrastructure, robust human capital programs, and adequate financing. The Department of Defense and other federal agencies have disparate programs to assist these countries in enhancing their maritime security. These programs are not synchronized with each other or with those of our allies in Europe or Asia. Congress should begin to address this issue by requiring the General Accountability Office to inventory and assess the effectiveness of the various U.S. programs and their international counterparts.[15]

Winning the Long War

President George W. Bush was right to suggest that we are engaged in a long war in his State of the Union Address. It is an important distinction. Protected conflicts like the Cold War or the War on Global Terrorism require different kinds of strategies—strategies that place as much emphasis on sustaining the capacity of the state to compete over the long term as they do on diminishing the enemy.

Good long war strategy requires meets four equally compelling priorities: (1) providing security; (2) promoting economic growth; (3) safeguarding liberties; and (4) winning the war of ideas. Each has relevance to the maritime domain.[16] This Committee and Congress need to insist that the Bush Administration implement measures to meet each of these priorities, not trading one off for another. This criterion should serve in evaluating *any* security issue, including addressing foreign investments in the United States

Thank you again for the opportunity to address this vital question.

---

[15]James Jay Carafano, and Ha Nguyen, "Homeland Security and Emerging Economies," Heritage *Backgrounder* No. 1795, September, 14, 2004,at *www.heritage.org/Research/HomelandDefense/bg1795.cfm.*

[16]James Jay Carafano and Paul Rosenzweig, *Winning the Long War: Lessons from the Cold War for Defeating Terrorism and Preserving Freedom* (Washington, D.C.: The Heritage Foundation, 2005).

COUNCIL ON FOREIGN RELATIONS

58 EAST 68TH STREET • NEW YORK • NEW YORK 10021
Tel 212 434 9400 Fax 212 434 9875

"The DP World Controversy and the Ongoing Vulnerability of U.S. Seaports"

Written Testimony before

a hearing of the

Committee on Armed Services
United States House of Representatives

on

"The National Security Implications of the Dubai Ports World Deal to Take Over Management of U.S. Ports"

by

Stephen E. Flynn, Ph.D.
Commander, U.S. Coast Guard (ret.)
Jeane J. Kirkpatrick Senior Fellow in National Security Studies
sflynn@cfr.org

Room 2118
Rayburn House Office Building
Washington, D.C.

1 p.m.
March 2, 2006

"The DP World Controversy and the Ongoing Vulnerability of U.S. Supports

by
Stephen E. Flynn
Jeane J. Kirkpatrick Senior Fellow
for National Security Studies

Chairman Hunter, Congressman Skelton, and distinguished members of the House Armed Services Committee. Thank you for inviting me this morning to discuss the DP World controversy and my assessment of where we are and where we need to be with regard to port security.

The controversy surrounding the takeover of five American container terminals by Dubai Ports World has had the salutary benefit of engaging Washington and the American people in a national conversation on the state of port security. This is long overdue given the enormous national security and economic security stakes should the next catastrophic terrorist attack on U.S. soil involve the global maritime transportation system and America's waterfront.

My longstanding and deep concern about the persistent vulnerability of America's homeland generally and the global supply chain and ports specifically is a matter of public record. This hearing represents the 16th time I have testified on these issues before the House and the Senate since September 11, 2001. On my first hearing on October 12, 2001 before the Senate Governmental Affairs Committee, I outlined the risk and consequences should a weapon of mass destruction be shipped to the United States in an intermodal container. Four years and four months later, my assessment is that the security measures that are currently in place do not provide an effective deterrent for a determined terrorist organization intent on exploiting or targeting the maritime transportation system to strike at the United States.

At the federal level, the primary frontline agencies—the Coast Guard and Customs and Border Protection Agency—are grossly under-funded for what became essentially a new major mission for them on 9/11. On the local and state levels, the size of port authority police forces remain tiny, providing often only token police presence within most seaports. Further, the U.S. government is still not organized to manage the aftermath of an attack involving our seaports which will translate into unnecessary loss of life, profound economic disruption, and a serious loss of public confidence.

Should terrorists strike in a major U.S. seaport tomorrow, Americans will experience a post-Katrina sense of dismay and frustration at how little the federal government has been investing to effectively safeguard this critical national and economic security asset.

With those sobering words in mind, it may come as a surprise to many that my assessment of the national security implications of the DP World purchase of Peninsular and Orient Navigations systems and the leases to five containers terminals on the East Coast and New Orleans is that this commercial transaction will not *qualitatively* effect the overall state of global and American maritime transportation security. Stated

differently, should a U.S. company assume control of these terminal operations tomorrow, it would not qualitatively improve our security. This is because the problem is less about who owns and operates U.S. container terminals than it is that we simply have not addressed far more serious supply chain, maritime, and port security issues that would dramatically reduce the terrorist risk to our homeland.

This is not to say that it is necessary and appropriate to closely examine the national security implications of this agreement or that of any transaction that involves a foreign government having an ownership interest in critical U.S. assets. Further, based on research I have done on the broader issue of critical infrastructure protection and homeland security, I believe the criteria used in the CFIUS process is sorely in need of reexamination given the transformation in warfare that is elevating the likelihood and consequences of asymmetric attacks on economic targets. However, the nature of confronting the risk to our seaports necessarily requires a global approach and a closely partnering with the largely foreign-owned companies who own and operate the overwhelming majority of the ships, terminals, and logistics companies that connect the U.S. economy to the world. Accordingly, if DP World receives a clean security bill-of-health after the 45-day review process, it is important that we reach out to the company to make it a part of global container security solution.

To put this current controversy into a broader security context, let me share with you the terrorist scenario that most keeps me awake at night, and why I spend most of my days trying to convey a greater sense of urgency and why I have been working to design and promote meaningful measures to address this issue.

Based on my experience and research on this issue for nearly 15 years, I believe that the greatest vulnerability that will involve the maritime sector and our seaports is overseas within the transportation system before a container reaches a loading port. Specifically, the biggest security gap is in the transportation system once a container leave the factory. This is for three reasons. First, the local truck drivers are typically poorly paid and often belong to very small firms operating on very thin profit margins. Second, there are no mandated standards for seals or locks on containers. Most are lead numbered straps that pass through the pad-eye of the doors. Some are mechanical seals that typically cost $1. And as experienced investigators of cargo thieves and smugglers know, criminals have long ago determined how to gain access to a container without even tampering with the seal. Third, these containers travel through often remote and at times dangerous jurisdictions.

So here's a plausible scenario informed by insights provided to me by Gary Gilbert, the Chairman of the Corporate Security Council and Senior Vice President for Hutchison Port Holdings (HPH). HPH is the largest container terminal operator in the world, operating in 42 ports and moving nearly 50 million containers in 2005.

A container of athletic foot wear for a name brand company is loaded at a manufacturing plant in Surabaya, Indonesia. The container doors are shut and a mechanical seal is put into the door pad-eyes. These designer sneakers are destined for retail stores in malls

across America. The container and seal numbers are recorded at the factory. A local truck driver, sympathetic to al Qaeda picks up the container. On the way to the port, he turns into an alleyway and backs up the truck at a nondescript warehouse where a small team of operatives pry loose one of the door hinges to open the container so that they can gain access to the shipment. Some of the sneakers are removed and in their place, the operatives load a dirty bomb wrapped in lead shielding, and they then refasten the door.

The driver takes the container now loaded with a dirty bomb to the port of Surabaya where it is loaded on a coastal feeder ship carrying about 300 containers for the voyage to Jakarta. In Jakarta, the container is transferred to an Inter-Asia ship which typically carry 1200-1500 containers to the port of Singapore or the Port of Hong Kong. In this case, the ships goes to Hong Kong where it is loaded on a super-container ship that carriers 5000-8000 containers for the trans-Pacific voyage. The container is then off-loaded in Vancouver, British Columbia. Because it originates from a trusted-name brand company that has joined the Customs-Trade Partnership Against Terror, the shipment is never identified for inspection by the Container Security Initiative team of U.S. customs inspectors located in Vancouver. Consequently, the container is loaded directly from the ship to a Canadian Pacific railcar where it is shipped to a railyard in Chicago. Because the dirty bomb is shielded in lead, the radiation portals currently deployed along the U.S.-Canadian border do not detect it. When the container reaches a distribution center in the Chicago-area, a triggering device attached to the door sets the bomb off.

There would be four immediate consequence associated with this attack. First, there would be the local deaths and injuries associate with the blast of the conventional explosives. Second, there would be the environmental damage done by the spread of industrial-grade radioactive material. Third, there would be no way to determine where the compromise to security took place so the entire supply chain and all the transportation nodes and providers must be presumed to present a risk of a potential follow-on attack. Fourth—and perhaps most importantly—all the current container and port security initiatives would be compromised by the incident.

In this scenario, the container originated from a one of the 5,800 companies that now belong to the Customs-Trade Partnership Against Terrorism. It would have transited through multiple ports—Surabaya, Jakarta, Hong Kong, and Vancouver—that have been certified by their host nation as compliant with the post-9/11 International Ship and Port Facility Security (ISPS) Code that came into effect on 1 July 2004. Because it came from a trusted shipper, it would not have been identified for special screening by the Container Security Initiative team of inspectors in Hong Kong or Vancouver. Nor would it have been identified by the radiation portal. As a consequence, governors, mayors, and the American people would have no faith in the entire risk-management regime erected by the administration since 9/11. There will be overwhelming political pressure to move from a 5 percent inspection rate to a 100 percent inspection rate, effectively shutting down the flow of commerce at and within our borders. Within two weeks, the reverberations would be global. As John Meredith, the Group Managing Director of Hutchison Port Holdings, warned in a Jan 20, 2004 letter to Robert Bonner, the former

Commissioner of the U.S. Customs and Border Protection: **". . . I think the economic consequences could well spawn a global recession – or worse."**

In short the stakes are enormous. But there are four factors associated with the scenario that I just laid out that usefully informs the focus of this hearing. First, the threat is not so much tied to seaports as it is global supply chains that now large operate largely on an honor system because the standards are so nominal and the capacity for agencies like the Coast Guard and customs is negligible. Second, no container terminal operator within the United States or abroad really know what are in the containers that pass through their facilities. They are in the business of receiving and discharging them from and to ships, trucks, and trains that converge at their terminals as quickly, reliably, and at the lowest cost possible. Third, as the engagement of John Meredith and Gary Gilbert of HPH on this issue reflects (HPH has no terminals inside the United States) global terminal operators are deeply concerned about the terrorist threat involving or directed at the supply chain because their billions of dollars of investment tied up in worldwide infrastructure are at risk. Four, the scenario I just laid out involved Vancouver as the offload port in North America, highlighting that the challenge of managing this threat is far greater than bolstering the physical security measures of U.S. seaports.

This story also highlights that there can be no solution unless U.S. authorities work directly with overseas terminal operators in enlisting their help to manage the problem. This is the case I posited in a February 28, 2006 New York Times op-ed article with Admiral James Loy, the former Deputy Secretary of Homeland Security and former Administrator of the Transportation Security Administration, and the former Commandant of the Coast Guard. We point out that ports are the on- and offramps to global markets, and they belong to a worldwide system operated by many different private and public entities. A major step in that direction would be to construct a comprehensive global container inspection system that scans the contents of every single container destined for America's waterfront before it leaves a loading port — rather than scanning just the tiny percentage we do now, after they have already arrived within a seaport.

The model for this recommendation is a pilot project that has been underway in the Port of Hong Kong since January 2005. There every container entering the truck gates of two of the world's busiest container terminals has passed through scanning and radiation detection devices. Images of the containers' contents are then stored on computers so that they could be scrutinized remotely by American or other customs authorities almost in real time. Customs inspectors can then issue orders not to load a container that worries them. Since this system involves scanning every container and not just those destined for the United States, it would help to support international counter-proliferation efforts as well.

In the view of Admiral Jim Loy and I, the Dubai deal provides an opportunity to adopt a system like the one in Hong Kong globally. The White House and Customs should embrace Dubai Ports World's offer to provide additional guarantees to protect the five American terminals it wants to run. The company should agree to install scanning and

radiation detection equipment at the entry gates of its terminals in the Middle East, Europe, Asia, North America and South America within the next two years.

By making this commitment, the company could address head-on the anxiety about this transaction that has led to this hearing within the Congress that is fueling the uproar around the country. Instead of a 5 percent inspection solution we are currently using, we could move towards a 100 percent solution. The 45-day review period that has recently been agreed upon should provide the breathing room to work out the details. Congress and the White House should appropriate the necessary funds within the FY07 appropriation cycle to insure that the Customs and Border Protection agency has the staffing and information systems upgrades to tap the revolutionary potential of such a comprehensive inspection approach.

Hutchison Port Holdings would probably join Dubai Ports World in putting Hong Kong-style inspection systems in place within its 42 ports around the world. Hutchison's chief executive, John Meredith, is an outspoken advocate for improving container security and has championed the Hong Kong pilot program, which runs in one of its terminals. His enthusiasm for the project is shared by Sean Kelly, a U.S. citizen who is currently the Managing Director of Modern Terminals in Hong Kong where the second pilot has been running.

Hutchison Port Holdings along with PSA Singapore Terminals, Dubai Ports World and Denmark's APM Terminals handle nearly eight out of every 10 containers destined for the United States. If they agreed to impose a common security fee of roughly $20 per container, similar to what passengers are now used to paying when they purchase airline tickets, they could recover the cost of installing and operating this system worldwide. This, in turn, would furnish a powerful deterrent for terrorists who might be tempted to convert the ubiquitous cargo container into a poor man's missile.

This global regime for container security will require oversight. Congress should require that the security plans developed by importers under the Customs-Trade Partnership Against Terrorist (C-TPAT) be independently audited. It should also provide the Department of Homeland Security with adequate Customs and Coast Guard inspectors to audit these auditors. Today Customs has only 80 inspectors to monitor the compliance of the 5,800 importers who have vowed to secure their goods as they travel from factories to ship terminals. To assess worldwide compliance with the International Ship and Port Facility Security Code, the Coast Guard has just 20 inspectors — roughly the size of the average passenger screening team at an airport security checkpoint.

The administration and Congress should also support the development and deployment of technologies that can monitor the position and integrity of shipments as they move through the global supply chain. There are a number of technologies that draw on low-orbit satellites and radio-frequency identification systems that have promise in this regard. The widespread deployment of these technologies can have the ancillary commercial benefits as well by improving global logistics management by bolstering supply chain visibility and accountability.

At the end of the day, America's port security challenge is not about who is operating on our waterfront. The real issue is that we are relying on commercial companies largely to police themselves with nominal standards and very limited oversight. Both Congress and the White House should embrace a framework of "trust but verify," in President Ronald Reagan's phrase, based on real standards and real oversight. When it comes to the flow of goods around the planet, we need to know what's in the box more than we need to know who is moving them around a container yard.

The bottom line is that if at the end of this controversy, the only thing that happens is that the Dubai Port World deal is approved or denied, the American people will have been deprived of a real opportunity to have advanced a qualitative improvement in port and container security. Congress and the White House should work together to convert the current political maelstrom into doing something meaningful to bolster our national security and economic security.

Thank you and I look forward to responding to your questions.

Stephen Flynn is the author of the critically acclaimed and national bestseller, *America the Vulnerable.* He is currently writing a new book to be published by Random House in Fall 2006 entitled, *The Edge of Disaster: Catastrophic Storms, Terror, and American Recklessness.* He is the inaugural occupant of the Jeane J. Kirkpatrick Chair in National Security Studies at the Council on Foreign Relations. Dr. Flynn served as Director and principal author for the task force report "*America: Still Unprepared—Still in Danger*," co-chaired by former Senators Gary Hart and Warren Rudman. Since 9/11 he has provided congressional testimony on homeland security matters on fifteen occasions. He spent twenty years as a commissioned officer in the U.S. Coast Guard including two commands at sea, served in the White House Military Office during the George H.W. Bush administration, and was director for Global Issues on the National Security Council staff during the Clinton administration. He holds a Ph.D. and M.A.L.D. from the Fletcher School of Law and Diplomacy and a B.S. from the U.S. Coast Guard Academy.

.

]

SUBMITTED TESTIMONY OF

FRANK J. GAFFNEY, JR.
President and C.E.O.
Center for Security Policy

"PORT HOLES: THE CASE AGAINST THE OPERATION OF U.S. PORT FACILITIES BY DUBAI PORTS WORLD"

HOUSE ARMED SERVICES COMMITTEE
2 March 2006

Mr. Chairman, it is a privilege to be afforded the opportunity once again to contribute to this Committee's deliberations on a major public policy matter of potentially grave significance for the national security.

A Broken Process for Evaluating the Security Implications of Foreign Investments

The last such occasion was on July 13, 2005 when a foreign government-owned company was poised to acquire an important American strategic asset whose operations could have proven detrimental to our economic and security interests. Sound familiar? In fact, had the American people not become informed about and overwhelmingly opposed to the sale of the U.S. company, Unocal, to the PRC's Chinese National Offshore Oil Company – and had the Congress not registered its strong objection to the deal, I am reasonably sure it would have been approved by the Committee on Foreign Investment in the United States (CFIUS).

This seems a safe bet since virtually every one of the foreign acquisitions that have been voluntarily submitted for review by CFIUS over the past eighteen years have been approved by that panel. I do not believe that is because none were, in fact, harmful to the national security. Rather, I am convinced that the process itself basically amounts to a "rigged game" – one in which the panel's secretive deliberations are little more than a matter of checking the necessary boxes to achieve a foreordained, positive outcome.

Such a track record prompted me during my last appearance before this Committee to urge significant reforms of the CFIUS process. At the time, I testified:

> It is imperative that the United States utilize a far more rigorous, transparent and national security-minded process for evaluating Chinese investments like CNOOC's proposed purchase of Unocal. **The existing Committee on Foreign Investment in the United States (CFIUS) is clearly wholly inadequate to the task.** Having the Treasury Department – whose job it is to promote foreign investment in the United States – charged with evaluating such investments is a formula for precisely what we have seen to date: rubber stamp approval of virtually every transaction, with no

regard for the long-term or cumulative impact they will have on U.S. national security equities.

It does not help that the CFIUS process is a completely unaccountable "black-box" operation. I commend...the U.S.-China Economic and Security Review Commission for [its] leadership in recommending sweeping statutory changes in the configuration and workings of the Committee on Foreign Investment in the United States. It is past time for the United States to have a mechanism that is charged with thinking as strategically as the Chinese do about transactions that could constitute real problems for American security, to say nothing of economic interests.

The Latest CFIUS Debacle

I suggest that CFIUS' past record serves as important background to your evaluation of the facts of the present case, involving a United Arab Emirates-owned company, Dubai Ports World, the security implications of its operations in as many as *twenty-two* American ports and the adequacy of the evaluations (past and ongoing) of those implications by the Committee on Foreign Investment in the United States. (There is some confusion about the number of ports affected with six being the number routinely cited in the press. It would appear that there are actually far more involved, including two in Texas – Beaumont and Corpus Christi – governed by contracts for the movement of materiel *for the U.S. Army*.)

To put it bluntly, if we had an effective CFIUS process, we would probably not be in our present fix. The Committee would have recognized and given appropriate weight to the obvious security concerns attending this transaction. And the company could have been quietly told that its operation of U.S. port facilities would not be approved, allowing DP World to restructure its purchase of the British company, Peninsula and Oriental Steam Navigation Company (P and O), that had those contracts so as to spin-off the U.S. ports, or to reconsider the acquisition altogether.

Instead, we have a situation where – in the face of the dysfunctional CFIUS and its secretive, rubber-stamp approval -- those security concerns have become a matter of intense public scrutiny and debate. I agree with Steve Flynn that some good will come of all this if, as a result, the yawning vulnerabilities of our ports finally start to receive the attention and remediation they have long needed.

Still, it is highly regrettable that the Nation is now confronted with two unpalatable choices:

1) Go forward with an arrangement that can only complicate – perhaps marginally so, perhaps significantly – our already dangerously inadequate port security posture. Or,

2) Give further offense to the UAE, with unknowable consequences to a valuable strategic relationship with a country that has been helpful in what I call the War for the Free World. At least, that is, helpful since *after* 9/11. Unfortunately, as this

committee knows, in the months leading up to the September 11, 2001 attacks, much of the operational planning and financing of those attacks was performed in the United Arab Emirates.

It is, of course, that last fact that prompts me to conclude Congress must do in this instance as it did in connection with the then-pending sale of a strategic energy asset to Communist China: interpose sufficient objections and, if necessary, be prepared to create legal impediments to prevent this transaction. Absent that, you can take it to the bank that the additional 45-day review period will produce the same, skewed results as did the previous go around. As Albert Einstein famously put it, "The definition of insanity is doing the same thing over and over again and expecting a different result."

What is Wrong with this Picture?

Should Dubai Ports World's bid to takeover operations at as many as twenty-two U.S. seaports go forward, there would seem to me to be at least three ways in which our existing port security vulnerabilities could be exacerbated, possibly fatally so:

- The Coast Guard has acknowledged (see an interview conducted by nationally syndicated radio host Hugh Hewitt with Rear Admiral Craig Bone USCG at http://www.radioblogger.com/archives/february06.html#022206) that DP World will be responsible for vetting the people assigned to its U.S. and other operations. While, according to *Newsweek*, the company has reportedly promised to "leave the [P and O-appointed] U.S. port managers in place for a time in a bid to ease the immediate political pressure," there is no guarantee that other people will not be added to the rolls, *even before* simple attrition – if not management preferences after the "political pressure" eases – creates new openings.

  At the risk of being politically incorrect, that reality will complicate the job of assuring that the personnel working in these ports pose no threat to their operations – or to the rest of us. To the extent that we must remain particularly vigilant about young male Arab nationals as potential terrorists, it makes no sense to provide legitimate grounds for such individuals to be in and around some of this country's most important strategic assets.

- Huge quantities of cargo move through our ports every day, much of it of uncertain character and provenance, nearly all of it inadequately monitored. Matters can only be made worse if port management personnel include one or more individuals who might conspire to bring in dangerous containers, or simply look the other way when they arrive. My colleague, Mr. Flynn, has advanced some valuable ideas for improving the surveillance of containers, but we are a long way from having such techniques in place in most DP World-controlled facilities, let alone others that would simply ship cargo to and through such facilities.

- In the days since the DP World takeover became a matter of public knowledge and controversy, much has been made of the fact that primary responsibility for port

security will remain with American authorities. Common sense tells us, however, that managers of U.S. port facilities have to be read in on government-approved plans for securing those assets. After all, they bear some responsibility for implementing such plans.

Familiarity with security procedures inevitably offers insights into both the strengths and weaknesses of our protective measures – insights that are invaluable to those wishing to exploit the latter and avoid detection by the former. A port management arrangement that would allow that sort of information to be entrusted to those how may not be able adequately to safeguard it is what the lawyers call an "attractive nuisance" – like having a swimming pool without a fence securing it: Someone is going to get in and cause trouble. That seems especially likely in a country known to have been penetrated by terrorists.

For these reasons among others, it seems to me not just *irresponsible* to approve the DP World takeover of operations in U.S. ports. It would appear to be recklessly so.

Will the 'Rigged Game' be Allowed to Continue?

Unfortunately, unless Congress takes several steps *now*, just such an outcome must be expected from CFIUS' present 45-day review. Such steps should include the following:

- First, the executive branch should assure that the Committee on Foreign Investment in the United States' *principals* – including Defense Secretary Donald Rumsfeld and Homeland Security Secretary Michael Chertoff – should be required to participate personally in these deliberations, and to sign off on the outcome. There is reason to believe that participation on the part of the Defense Department was limited to relatively low-level staffers and that Mr. Rumsfeld was not made aware of the DP World matter until after CFIUS had approved it.

- Secretary of the Treasury John Snow should recuse himself since, in a previous incarnation, he sold seaport operations of the company he ran, CSX, to DP World. That gives at least the *appearance* of a conflict of interest in this matter. I would suggest that, under such circumstances, protocol should confer on Secretary of Defense Rumsfeld, the longest-serving of the participating principals, the role of chairman – rather than Deputy Treasury Secretary Robert Kimmett, who oversaw the previous, inadequate CFIUS review.

- The re-review should be guided by a *rigorous* security assessment, not one in which concerns about ties with the UAE are allowed to trump practical counterterrorism considerations. The possibility of setting a precedent that might raise questions (appropriately) about having state-owned and state-linked Communist Chinese companies operate facilities in American seaports should also be set aside for the purposes of this exercise.

Instead, the reassessment must thoroughly and demonstrably address, for example, how we can be confident about personnel security if DP World is to be responsible for vetting the people assigned to its U.S. operations. The review must also be able to show that the undermining of port security plans and cargo monitoring activities by insiders can be reliably prevented.

- Finally, a rule of thumb might be included in the mix: In the case of foreign government-owned and -tied companies seeking to operate American seaports or other critical infrastructure here, the unwillingness of the country in question to allow American companies, let alone our government, to perform similar functions in their countries (not to be confused with often-circumvented U.S. monitoring and customs missions in ports like Dubai's) would preclude the deal – even if every other aspect were satisfactory.

Needed: A Second Opinion for Congress

In addition to ensuring that the CFIUS re-review amounts to a bona fide, zero-based fresh look at the national security implications of the DP World deal, Congress should get a second-opinion. As members of this committee know all too well, the legislative branch normally could not even *name* a small group of outside experts – call it a Team B – to conduct such an assessment in forty-five days, let alone get them appointed and equipped with the necessary detailed information about the deal, and then obtain their conclusions.

The concerns that have been expressed across the political spectrum about this deal, however, may just make possible the sort of non-partisan, independent study so clearly required. The House and Senate leaders on both sides of the aisle should agree to designate half-a-dozen or so people who have the expertise, integrity and demonstrated ability to get the job done quickly and with high quality. They should be asked to provide an unvarnished assessment of the DP World transaction within the forty-five day window.

If these steps are taken, we may just be able to find a way to minimize further damage to an important strategic relationship with the United Arab Emirates, without risking potentially vast damage to our ports and people.

Two Final Recommendations

Mr. Chairman, let me conclude by reiterating two, highly relevant points made in my previous appearance before this committee.

First, I entreat you and your colleagues to make a priority of reforming the CFIUS process. The DP World decision should be the last instance in which this rigged game operates to the detriment of our national security. Recommendations like those offered by the U.S.-China Economic and Security Review Commission must be addressed with a view to making this mechanism what it was intended to be – a device

for giving priority to security considerations in the evaluation of foreign investments. It must be made more rigorous, accountable and transparent. And none of those changes are likely to occur without congressional action.

Second, in the course of the hearing last July, we discussed a larger concern of which problematic foreign investments like that of Dubai Ports World are but a part. In my judgment, we are, as a nation, becoming dangerously dependent upon overseas suppliers for industrial products, energy and other strategic resources, services (like port management), even components critical to our military capabilities. I am aware of no systematic effort to evaluate the extent of this dependency – let alone its implications for our economy, to say nothing of our national security.

I was delighted when, in the course of a discussion of this topic last summer, Mr. Chairman, you expressed the intention to make this topic a matter for urgent consideration by the Armed Services Committee. I very much hope that you will take up that task *now*. As this latest proposed transaction makes plain, in the absence of such oversight, we are likely to see the United States continue to allow the perceived imperatives of individual businesses and short-term profit – the driving forces behind "globalization" and much foreign investment – create and exacerbate real national security vulnerabilities.

Thank you again for the opportunity to participate in your deliberations on these and related matters. I look forward to taking your questions.

March 2, 2006

STATEMENT OF H. EDWARD BILKEY,

CHIEF OPERATING OFFICER,

DP WORLD

BEFORE THE HOUSE ARMED SERVICES COMMITTEE

Mr. 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 United States Congress. 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, four free trade zones, three logistics centers and operations in some 14 countries, which incorporated the operations of the U.S. company CSX World Terminals about one year ago. 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.

DP World has a long and rich history of supporting the global operations of the U.S. military. These efforts include operations in support of the U.S. military in Germany, Djibouti and Dubai. For example:

- We have dealt with the U.S. Navy for over two decades in Dubai. We have allowed the U.S. Navy to station an officer 24/7 in our control tower which is highly unusual. He has a panoramic view of the harbor and any potential threats.
- We allow the U.S. Navy to provide its own security by having two high-speed gunships that are heavily armed. This is an unusual arrangement which shows strong commitment and trust.

- We have given the U.S. Navy a lease of highly secured land to stow its cargo and rework its volume.
- We have created a high security "bunkering operation" in Dijibouti that hosted as its first vessel the USS Vicksburg. It is a very secure refueling station in the Red Sea which is highly prized.
- We have hosted over 500 vessel calls in Dubai by U.S. Navy warships.
- In Fujairah we are the main transshipment point for the U.S. Army's Afghanistan operations. Cargo comes in on roll on/roll off vessels, and we provide a high security area blocked off by containers and patrolled by the U.S. Army. We then containerize the rolling stock for movement to Karachi and on to Afghanistan. Whenever battalions change we go to work to move the cargo efficiently. We do the same as battalions leave Afghanistan for home.
- In the last Gulf War, I personally set in motion the arrangements for the first aircraft carrier to enter and birth at Jebel Ali, solving a major logistics problem for the Navy.

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% 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% 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, to describe in detail how port security with us operates. 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, some people have charged that DP World enforces the Arab League boycott of Israel. Let me answer that, as a terminal operator, we do not operate in a capacity that involves us in boycott issues at all. DP World does not discriminate. DP World, as a global port management company, facilitates trade with many nations. Our company has long-standing business relationships with Israeli companies among our diverse international clients. Further, let me assure you that, consistent with our policy of corporate compliance, the U.S. operations of P&O will fully comply with both the letter and spirit of the U.S. antiboycott regulations to which they are subject. We comply with the laws of all countries in which we operate.

Fourth, 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 three 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 seven 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 necessary legal steps required by UK takeover laws 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 United States 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.

March 2, 2006

STATEMENT OF ROBERT SCAVONE,

EXECUTIVE VICE PRESIDENT,

P&O PORTS NORTH AMERICA, INC.

BEFORE THE HOUSE ARMED SERVICES COMMITTEE

Mr. Chairman and Members of the Committee,

My name is Rob Scavone. I am Executive Vice President of P&O Ports North America, Inc. Among my responsibilities is the supervision of our compliance with security requirements in the U.S. I am a member of the Board of Directors of the National Association of Waterfront Employers, an association of marine terminal operators in the U.S., both American and foreign. I also serve as co-chairman of an advisory group to the International Standards Organization on matters of container security, which group includes all major international terminal operators.

Previously I worked for Sea-Land Service, Inc., the pioneer of the container shipping industry dating back to 1956, for 15 years, until it was sold to Maersk Line, the Danish shipping company, in 1999. By that time, Sea-Land, as an American company, had owned or operated terminal operations, directly or in joint ventures, in many foreign countries, such as China, Taiwan, Japan, U.K., Spain, Holland, Germany, Finland, Russia, and Australia, as well as in the Caribbean and the Middle East, including the port of Dubai in the U.A.E., before it was subsequently managed by DP World. We were welcomed in those countries as an investor, an employer, and a qualified operator, just as we here in the U.S. have done, in turn, with numerous foreign companies, some government-owned or controlled, in virtually every major port in the United States.

As an American who has served in the international shipping and terminal business for more than twenty years now, I have been fortunate to make friends in many nations. I am disheartened to witness the recent uninformed pronouncements implying, if not outright declaring, that by allowing the transfer of control of the U.S. subsidiary of P&O Ports to Dubai Ports World, our Government is somehow allowing the security in our ports to erode.

As a resident of Summit, New Jersey, a bedroom community for Wall Street that lost our share of fathers on 9/11, not a day goes by that I do not think about my own daughters,

who attend Summit High School, and the paramount importance of protecting them, my wife, my own extended family, our employees, and of course the community and our country.

As a port operator, I also understand the importance of world economic stability on the fortunes of a global port operating company. Stability supports the normal, healthy growth of international trade. When the world economy slows or stagnates, as can happen following major terrorist activity, trade between the countries of the world suffers, and the port operators that handle such trade, such as P&O Ports, suffer along with it.

As the P&O senior executive with responsibility for security, of course it is my business to know how our security works *on the ground,* inside our terminals. I also know that the manner in which that security function operates *is not going to change* if control of our parent company, four or five levels up the chain of corporate ownership, changes hands in a major international transaction. I know this, not only because DP World have made undertakings to that effect, but because, as a practical matter, *there is no practical way to change it* in a way that would erode our security.

In recent days, I have been gratified to note that, any time a security expert or industry participant has been asked for an opinion on this matter, they are unanimous in this opinion.

Why is this the case? The reasons can be numerated as follows:

1. P&O Ports does not "own" Ports. In some of our locations, the Port has granted to P&O Ports, or sometimes to a joint venture in which P&O Ports participates, a lease or concession to operate individual terminals inside a much larger area of Port property. In all of those cases, both the United States Coast Guard and U. S. Customs and Border Protection continue to be responsible for all security measures relating to the entrance of persons or goods into the United States. Those agencies work with the Port police, state police, and municipal police, as the case may be. And our terminals work in close cooperation with those authorities, who regularly maintain a presence in the Port, every single day. That is not going to change.

2. P&O Ports North America, Inc. is the U.S. company that manages U.S. activities, and that employs all staff in the U.S. It pays taxes to the United States on all of is income. That company will remain in place, even after control of the parent company in London changes hands. Nothing about that is going to change.

3. Our customers are the vessel operators of the world who carry containers. *Their* customers are the shippers. Most of the cargo shipped into the United States is sent by the largest shippers: Wal-Mart, Home Depot, Target, and the like. Before any container shipped by them or any other shipper is loaded onto a vessel in a *foreign country* bound for the U.S., the carrier must provide to the U.S. Customs

all information about the contents, the identity of the shipper, origin and destination of the cargo, and all related information contained on its manifest. Customs screens 100% of the containers bound for the U.S. before they are loaded onto a vessel. If Customs has concerns about any container, it may require that the carrier *not load* that container on its vessel. If that country participates in the Container Security Initiative, or "CSI", U.S. Customs officials will actually be present in that foreign port to request the inspection of any such container. This manifest information is proprietary information of the carrier, and *it is not needed by the terminal operator to perform its services to the carrier.* When the vessel arrives in our U.S. terminals, the carrier is aware of all of the manifest information, and of course U.S. Customs possesses all of that information, but the terminal operator, which is the entity that DP World would be acquiring, does not. The one exception, of course, is when the shipper has identified the cargo as hazardous material, in which case both the carrier and the terminal operator would employ special procedures in handling those boxes. Nothing about that is going to change.

4. If there are any containers that U.S. Customs may wish to inspect, either with non-intrusive equipment or by physically emptying the container, our terminal is notified electronically by Customs, by providing to us the container number. Using our terminal operating system, we can locate the container, and provide it to Customs. The other manifest information is not provided to us, as we do not need it, and there is no way that the terminal operator can access the information unless Customs affirmatively provides it. Customs then performs all such inspections inside the Port area before the cargo is released to the shipper, with Customs officials and bonded warehouse contractors who are not related to P&O Ports. Nothing about that going to change.

5. In all of our terminals, if a box is checked, moved, lifted, counted, or touched, a longshoreman does it. Nobody who is not a longshoreman performs any physical work on a container inside one of our terminals. We employ approximately 6000 longshoremen every day, but we do not *hire* the longshoremen. They join the union, and the union provides them to us each day, assigning workers out to all the employers in the port on a daily basis. Nothing about that is going to change.

6. In addition to our longshore workers, of course there are a number of management staff in each of our terminals. DP World has publicly committed to retaining the existing managerial staff in place. In fact, since P&O Ports as a company is larger than DP World, DP World does not have the ability to replace the P&O managers, because it does not have the personnel. As, in the natural course of events, the existing managers must be replaced, DP World has indicated a willingness to work with our own Government in the approval of any such appointments.

7. The Coast Guard requires us to adopt certain access controls for people, vehicles and cargo entering our terminals, and they regularly audit our practices for doing so. They have the authority to enforce our compliance with those requirements,

up to shutting the terminal down. The Coast Guard makes it presence well known in our ports, and every terminal operator that I know extends itself to cooperate with our Coast Guard officials. Nothing about that is going to change.

8. Our staff and longshore workers are trained, re-trained, and drilled in security practices and procedures, and the Coast Guard regularly monitors our readiness in terms of security, and no doubt will continue to do so. The same people who manage these responsibilities for us now will be the ones who do it next month, and the month after that. They never met any of our old shareholders, and most likely they will never meet our new shareholders. Even today, our London headquarters does not get involved in the management of our security measures in the United States.

I would like to add that the continuous improvement of the security of our supply chain across the globe is a goal toward which I personally work every day. If the outcome of the recent attention that has been paid to this subject is that this effort is accelerated, only good things can come of it. As someone who is aware of the efforts being made in that regard, and the areas where improvement is sought, I can say with absolute certainty that none of those areas have anything to do with which international port operating company manages a terminal.

Mr. Chairman, thank you very much for the opportunity to provide these remarks today.

TESTIMONY OF ASSISTANT SECRETARY STEWART BAKER
BEFORE THE COMMITTEE ON ARMED SERVICES
U.S. HOUSE OF REPRESENTATIVES
MARCH 2, 2006

Mr. Chairman, Ranking Member Skelton, and Members of the Committee, I am pleased to be here today to help discuss the critically important issue of port security and help clarify any questions you have about DHS's role in the Committee on Foreign Investment in the United States (CFIUS) and both DHS's consideration of the Dubai Ports World (DP World) acquisition of the British-owned Peninsula and Oriental Steam Navigation Company (P&O) and P&O's wholly owned U.S. subsidiary, P.O. Ports North America, Inc.

As DHS's Assistant Secretary for Policy, Planning, and International Affairs, I play a key role both in DHS's ongoing efforts to continue to strengthen port security and the CFIUS process. As you know, I oversaw the DHS review of the CFIUS transaction involving DP World and P&O. Based on a thorough review, meetings with the company that began more than six weeks before the company filed for review, and the binding nature of an assurances agreement between DHS and the company to ensure security at U.S. ports, I fully stand behind the decision DHS made in January 2006 not to further investigate this transaction..

Developments in the DP World Case

Nevertheless, DP World has announced that it is requesting an additional review by CFIUS. According to press reports, the company is likely to file a request for CFIUS review this week and seek an additional 45 day review.

DHS, as one of 12 CFIUS agencies, will be a full and active participant in that review, and welcomes the opportunity to review the transaction anew. As I explain in more detail below, DHS will once again consult widely with its experts in the Department, including those at Coast Guard and Customs and Border Protection (CBP) who have primary responsibility for port and cargo security.

Before getting into the specifics of the DP World transaction, I would like to provide a general overview of DHS's participation in the CFIUS process.

Overview of DHS Participation in CFIUS

DHS is the newest member of CFIUS, added by Executive Order in 2003, after DHS was created. DHS has participated in the CFIUS process actively, and has placed a significant focus on nontraditional threats, as DHS has broad responsibility for protecting a wide variety of critical infrastructures. DHS is often joined in raising these concerns by our

partners at the Department of Justice and Department of Defense, and others. DHS is proud to work in close cooperation with these sister Cabinet agencies.

There are dozens of transactions in a year that require CFIUS review. In 2005, for example, CFIUS considered 65 discrete filings. DHS conducts a thorough review of each CFIUS case, and raises its concerns where issues arise.

The three most important questions DHS considers before deciding to seek an investigation are –

(1) Does DHS already have sufficient legal or regulatory authority to eliminate any threat to homeland security that might be raised by the transaction?
(2) Does DHS have homeland security concerns about the parties or nature of the transaction?
(3) If DHS has homeland security concerns, can they be resolved with binding assurances from the parties to the transaction?

Only after answering these questions does DHS decide whether to seek an investigation in CFIUS. DHS examined those questions in the DP World case and, as I will explain in more detail, made the judgment not to object to the transaction. All of the other 11 CFIUS member agencies made a similar decision after conducting their own independent reviews of the transaction.

DHS Legal Authority at the Ports

Congress has granted DHS sufficient legal authority to regulate the security of America's ports and the cargo that passes through each of those ports.

Under the Magnuson Act, the Ports and Waterways Safety Act, and, most recently, the Maritime Transportation Security Act of 2002 (MTSA), the U.S. Coast Guard has great authority to regulate security in all American ports. This includes the security for all facilities within a port, including terminal operators and vessels intending to call at a port or place subject to the jurisdiction of the U.S.

The Role of Terminal Operators like P&O and DP World

Let me first clarify what terminal operators do.

They do not run ports.

They certainly don't provide or oversee security for the entire port complex. That is the responsibility of the government and the local port authority, which is usually a government agency.

Terminal operators also do not obtain a comprehensive window into the breadth and depth of security measures that DHS employs to protect our ports and the cargo that

enters those ports. The public fears that the DP World transaction have generated on this point are misplaced and lack a firm factual foundation, as I will explain later.

Terminal operators ordinarily sign a long-term lease for waterfront property in the port. They build a pier for ships, cranes to unload the ship, a parking lot to store the containers they unload, and perhaps a small management office. They make their money lifting containers out of ships and holding them for shippers.

That's what we're talking about here. Through its acquisition of P&O, DP World is hoping to take over the leases at twenty-four terminals in the U.S. That's a relatively small part of the operations in the six ports where they would operate terminals, including New Orleans, Houston, Miami, Newark, Baltimore, and Philadelphia. Their filings indicate that DP World will also take over the P&O equities at other ports, but these consist of stevedoring and labor operations where P&O is not the designated terminal operator.

I understand from the Coast Guard that there are more than 800 regulated port facilities in the six ports where P&O operates terminals in the U.S. So the twenty-four terminals in question here constitute less than 5% of the facilities in those six ports.

MTSA requires each terminal operator - because they operate inside the port – to file a facilities security plan with the Coast Guard that specifically details their compliance with all of the security measures required by Federal law, including those enforced by the Coast Guard. The Coast Guard inspects the terminal and can check the terminal operator's plan at any time, and require more effective measures if the Coast Guard deems they are necessary.

These MTSA requirements for U.S. port security do not turn on the nationality of the terminal operator. U.S., British, Chinese, and UAE terminal operators are all subject to the same legal requirements, and the Coast Guard Captains of the Port can tailor each security plan to address the particular circumstances of each location.

Coast Guard Actions under MTSA

The Coast Guard has inspected and approved facility security plans for some 3,200 facilities regulated by MTSA. In addition, Coast Guard has completed Port Security Assessments and Port Threat Assessments for all 55 military and/or economically critical ports.

Forty-four Area Maritime Security Committees have been formally chartered and have developed Area Maritime Security Plans for the purpose of detecting, deterring, and preventing terrorist attacks as well as responding in the event of an incident. These committees are chaired by a local Coast Guard official, the designated Federal Maritime Security Coordinator, and include port authority, vessel, facility, labor interest as well as federal, state and local agencies.

The Coast Guard established an International Port Security Program to assess the effectiveness of anti-terrorism measures in place in overseas ports. Thirty-seven of the 44 countries assessed to date have substantially implemented the International Ship and Port Facility Security ("ISPS") Code. These 44 countries are responsible for over 80% of the maritime trade to the United States. The seven countries that are not in substantial compliance have been or will be notified shortly to take corrective actions or risk being placed on a Port Security Advisory and have Conditions of Entry imposed on vessels arriving from their ports.

The Coast Guard has conducted 16,000 foreign flag vessel boardings for security compliance with the ISPS Code since July 2004. These boardings were conducted either offshore or in port, depending on the risk assessment completed prior to each vessel's arrival in a U.S port.

DHS Role in Cargo Security

The Administration recognized after September 11 that more was needed to protect the United States from terrorist attack, and it immediately identified the vulnerability posed by the millions of cargo containers entering our ports each year. DHS plays a primary role in strengthening port and cargo security, and with the support of the Administration, we have made dramatic increases in these areas. Since September 11, funding for port and cargo security has increased by more than 700%, from $259 million in FY 2001 to $1.6 billion in FY 2005. This upward trend continues with $2 billion for DHS port security allocated in FY 2006, and an addition 35% increase to $2.8 billion in the President's Budget request for FY 2007.

This money has of course funding port security grants of more than $870 million. It has also built a layered security strategy that pushes our security measures overseas. The reason is simple. The Federal Government realized after the 9/11 attacks that it would be far better to detect and interdict a threat to the U.S. when that container was thousands of miles away, rather than sitting in a U.S. port. So we pushed our borders out to do much more inspection and screening of cargo before it ever arrives at our shores.

The 24-Hour Rule and CSI

Our authority over shipping containers begins even before the container is loaded in a foreign port – and long before that container arrives in the U.S. We require foreign companies to send us a list of the contents of a container 24 hours before the container is loaded on board the ship *in the foreign country.*

If Customs and Border Protection (CBP) concludes that the contents of a particular container may be high risk, we can have it physically inspected or x-rayed in cooperating foreign ports.

This program, known as the Container Security Initiative (CSI) depends on the voluntary cooperation of foreign governments and foreign companies. We've gotten that

cooperation around the world – including in Dubai, the United Arab Emirates. The CSI currently operates in 42 of the world's largest ports. By the end of this year, the number of cooperating ports is expected to grow to 50, covering approximately 82 percent of maritime containerized cargo shipped to the U.S.

Twenty-four hours before a ship is loaded, and therefore prior to departing the last foreign port for the United States, DHS receives a complete manifest of all the cargo that will be on that ship when it arrives in a U.S. port. This includes all cargo information at the bill of lading level, whether the cargo is destined for the U.S., or will remain on-board while in a U.S. port but destined for a foreign country. This rule applies to all containerized sea cargo whether departing from a CSI port or not.

Mandatory Advance Notice of Crew Members to DHS

Depending upon the length of the voyage, DHS receives additional notice concerning the crew of the vessel 24 to 96 hours before the vessel arrives in the U.S. This is full biographic data identifying the crewmembers and passengers, if any, so that DHS can screen them against risk indicators, the terrorist watch list and other databases.

We also get information from the importer describing the declared value and description of the goods being imported.

Risk Analysis of Cargo and Crew

Thus, long before a cargo ship arrives at any U.S. port, DHS has the shipper's information, the ship's information, and usually the buyer's information about what is in the container. The data is compared to ensure that it matches, and is also compared against historical information to detect anomalous patterns.

This data is all scrutinized and processed through a complex program that runs against hundreds of risk indicators to assign the ship and its cargo a risk score. The crew and passengers are all vetted prior to arrival.

DHS has full information about the vessel, its contents, and the people on-board.

If DHS has a concern about the cargo, the Coast Guard and CBP meet and decide an appropriate course of action, which may include boarding the vessel at sea or at the entrance to the ship channel, or meeting the vessel dockside and immediately inspecting the suspect containers.

Coast Guard has established a process to identify and target High Interest Vessels. This process has resulted in 3,400 at sea security boardings, and 1,500 positive vessel control escorts since 2004 to ensure that these vessels cannot be used as a potential weapon

What the Terminal Operator Knows about U.S. Security Measures

I noted earlier that ownership of a terminal operation does not give the terminal operator – foreign or domestic – a unique insight into the breadth and depth of DHS security measures nor provide a crafty terminal operator with ill intent access to inside information to avoid or evade DHS scrutiny.

The first time a terminal operator at a U.S. facility sees any of the law enforcement and security measures that DHS has in place concerning the vessel and cargo is when the ship arrives in the U.S. Even then, all the terminal operator knows is that CBP has selected certain containers for examination. The operator is simply instructed to unload the containers, under DHS supervision, and deliver them to CBP for inspection. They are not told why.

CBP Examines 100% of Risky Containers

As I have noted already, CBP screens 100% of containers for risk. All containers that DHS determines to be of risk are examined using a variety of technologies. These technologies include: radiation screening, non-intrusive x-ray inspection, and as appropriate, physical examination.

This screening and examination is carried out by DHS employees tasked with the security of our seaports. They are assisted by longshoreman and stevedores in moving the containers, and by local law-enforcement authorities and port police to ensure the security of the port facilities.

All a terminal operator knows is that a container has been selected for examination, but not why the container was selected. The inspections and radiation detections are performed by CBP, not by the operator. Security is provided by a variety of government programs, agencies, and local law enforcement officials, not the terminal operator.

Special Measures to Detect Radioactive Devices

DHS component agencies and the DHS Domestic Nuclear Detection Office have worked closely with the Department of Energy to deploy radiation detection technology at domestic and foreign seaports. The Department of Energy is providing technical support to Dubai Customs to install four Radiation Portal Monitors in their main port in June. Some of this equipment is specifically dedicated to "in-transit cargo" passing through the Dubai port on its way to places like the U.S.

In the United States, we have deployed 181 radiation portal monitors at seaports to date, which allows us to screen 37 percent of arriving international cargo, and that number will continue to grow through the remainder of this year and 2007. CBP also has the ability to use portable devices to detect the presence of radiation at additional facilities, and CBP has issued over 12,000 hand-held devices to its officers. The President's FY 2007 budget requests $157 million to secure next-generation detection equipment at our ports of entry.

Since there is often confusion on this point, I want to restate it. CBP subjects 100% of all containers shipped to the U.S. to a risk assessment analysis and subjects 100% of any container over a certain risk threshold to further inspection.

In short, DHS already has a large number of measures in place relating to port and cargo security that are designed to ensure the security of our ports. These measures, and additional measures taken by local port authorities, greatly reduce the risks presented by the presence of any foreign terminal operator in a U.S. port.

CFIUS Review of the DP World Transaction

DHS always examines the backgrounds of parties to a CFIUS transaction, and we did so in this case. DHS agencies – the Coast Guard and CBP -- had previously worked with both DP World and its management and found them to be cooperative and professional. Demonstrating this is the fact that DP World met with senior officials of DHS and DOJ on October 31 – more than six weeks before they filed on December 16 and our review began on December 17, to provide confidential notice of their plans and begin answering questions. At the conclusion of this thorough review,

DP World

DP World has played an invaluable role in the establishment of the first foreign-port screening program that the U.S. started in the Middle East. That's because Dubai also volunteered to help in this innovative approach to security. DP World has voluntarily agreed to participate in screening of outbound cargo for nuclear material, and it has worked closely with CBP and the Dubai Customs Authority to target high-risk containers destined for the U.S. These screening programs could not have been successfully implemented without the cooperation of Dubai Port World.

P&O's Participation in the Customs-Trade Partnership Against Terrorism (C-TPAT)

British-based P&O, the owner of the U.S. facilities DP World is seeking to acquire, is and was a voluntary participant in CBP's Customs-Trade Partnership Against Terrorism (C-TPAT). C-TPAT establishes voluntary best security practices for all parts of the supply chain, making it more difficult for a terrorist or terrorist sympathizer to introduce a weapon into a container being sent by a legitimate party to the U.S. DP World has committed to maintaining C-TPAT participation for all of the P&O ports subject to this acquisition.

C-TPAT covers a wide variety of security practices, from fences and lighting to requiring that member companies conduct background checks on their employees, maintain current employee lists, and require that employees display proper identification.

C-TPAT's criteria also address physical access controls, facility security, information technology security, container security, security awareness and training, personnel screening, and important business partner requirements. These business partner

requirements oblige C-TPAT members, like P&O, to conduct business with other C-TPAT members who have committed to the same enhanced security requirements established by the C-TPAT program.

In Newark, New Jersey, all eight of the carriers who use P&Os Port Newark Container Terminal are also members of C-TPAT which increases the overall security of the Newark facility.

The DP World CFIUS Transaction

As I noted towards the beginning of my testimony, DHS considers three important questions in any CFIUS transaction: (1) does DHS already have sufficient legal or regulatory authority to eliminate any threat to homeland security that might be raised by the transaction?; (2) does DHS have homeland security concerns about the parties or nature of the transaction?; and (3) if DHS has homeland security concerns, can they be resolved with binding assurances from the parties to the transaction?

I have addressed the first two of those questions, now let me turn to the third.

As part of its CFIUS review, DHS considers whether it should obtain any further commitments from the companies engaging in the transaction to protect homeland security. DHS has been aggressive in seeking such assurances as part of CFIUS reviews. The assurances are carefully tailored to the particular industry and transaction, as well as the national security risks that we have identified.

The Assurances Agreements

DHS had never required an assurances agreement before in the context of a terminal operator or a port. But after analyzing the facts, DHS decided that we should ask for and obtain binding assurances from both companies.

The companies agreed after discussions to provide a number of assurances, two of which are particularly important.

First, both parties agreed that they would maintain their level of participation and cooperation with the voluntary security programs that they had already joined. This means that, for these companies, and these companies alone, what was previously voluntary is now mandatory.

In the U.S., the parties are committed to maintaining the best security practices set out in C-TPAT. In Dubai, the parties are committed to continued cooperation in the screening of containers bound for the U.S., including the radiation screening discussed above.

Second, the parties agreed to an open book policy in the U.S. DHS is entitled to see any records the companies maintain about their operations in the United States -- without a subpoena and without a warrant. All DHS needs to provide to DP World is a written

request and we can see it all. DHS can also see any records in the U.S. of efforts to control operations of the U.S. facilities from abroad.

Because C-TPAT requires a participating company to keep a current record of its employees, including Social Security Number and date of birth, this open-book assurance also allows us to obtain up-to-date lists of employees, including any new employees. DHS will have sufficient information about DP World employees to run the names against terrorist watch lists, to do background checks of our own, or to conduct other investigations as necessary.

These agreements were negotiated and obtained during the 30-day period the transaction was under CFIUS review, and DHS conditioned its non-objection to the transaction on the execution of those agreements.

The Assurances Letters to DHS are Binding and Legally Enforceable

The assurances that DHS obtained from the companies are binding and legally enforceable, so that DHS and the U.S. Government could go into court to enforce them.

The companies also agreed in the assurances letters that DHS could reopen the case, which could lead to divestment by the foreign company if the representations the companies made to DHS turned out to be false or misleading.

DHS believes that DP World will adhere to both the letter and the spirit of the assurances letter, because the worst thing that can happen to a terminal operator's business is to lose the trust of the CBP officials who decide how much of that operator's cargo must be inspected every day. If we lose faith in the security and honesty of these parties, we will have to increase government scrutiny of the cargo they handle. That means more inspections and more delays for their customers.

And that is very bad for business.

That is why DHS is confident that the companies will work hard to continue to earn and retain our trust – and to fulfill their assurances -- every day.

Conclusion

In short, after examining this transaction with care, DHS concluded that: (1) we have legal authority to regulate the U.S. security practices of these parties, including the ability to assess the maritime threat and intervene, at the foreign port of origin or on the high-seas, before potentially problematic cargo arrives at a U.S. port to be serviced by the parties; (2) DP World's track record in cooperating with DHS on security practices is already very good; and (3) DHS obtained assurances that provide additional protection against any possible future change in the cooperative spirit we have seen so far and that allow us to do further checks on our own.

Based on all those factors, DHS concluded that it would not object to the CFIUS transaction or seek an additional 45-day investigation.

I would be pleased to answer any questions that you have.

Statement by Director for the
Office of Arabian Peninsula and Iran Affairs
Bureau for Near Eastern Affairs
Alan Misenheimer

House Armed Services Committee

March 2, 2006

The United Arab Emirates (UAE) is a longstanding friend and ally of the United States, and a key partner in the Global War on Terror. Secretary Rice reiterated this during her February 22 visit to the UAE. The UAE provides U.S. and Coalition forces with critical support for our efforts in Iraq and Afghanistan, including unprecedented access to its ports and territory, overflight clearance, and other critical logistical assistance. As a moderate Arab state, the UAE has long supported the Israeli-Palestinian peace process and shares our goal of a stable economic, political and security environment in the Middle East.

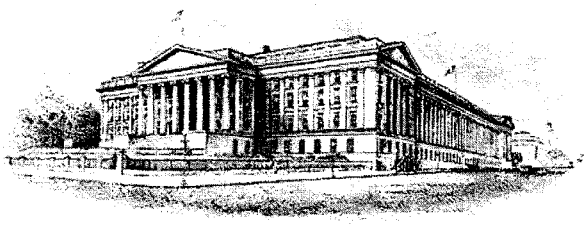
The UAE actively cooperates with us on a host of nonproliferation and law enforcement issues. It has enacted aggressive counter-terrorist financing and antimoney-laundering laws, frozen accounts, and exchanged information with us on people and entities suspected of being involved in terrorist financing and proliferation activities.

The UAE provides substantial assistance to its friends around the world, including military and financial support to the Iraqi government, humanitarian relief for the people of Afghanistan, housing and hospitals for the Palestinian people, and $100 million for victims of the Pakistan earthquake. The UAE was one of the first nations to offer financial aid to the U.S. after Hurricane Katrina struck the Gulf Coast, and provided one of the largest donations ($100 million).

Importantly, the UAE is an established partner in protecting America's ports. Dubai's port was the first in the Middle East to join the Container Security Initiative (CSI). Under CSI, a team of U.S. Customs and Border Protection officers is permanently stationed inside Dubai's ports, where they work closely with Dubai Customs to screen containers bound for the United States. Dubai also was the first Middle Eastern port to join the Department of Energy's Megaports Initiative aimed at detecting and stopping illicit shipments of nuclear and other radioactive materials.

The purpose of the interagency CFIUS review process, in which the Department of State is an active participant, is to establish whether a transaction could affect national security. The fact that the UAE is a friend and ally of the United States did not, and will not, diminish the rigor of that process.

We are confident that the additional time now available will provide an opportunity to review the concerns expressed over this transaction and to confirm that it does not jeopardize in any way the national security of the United States.



U.S. TREASURY DEPARTMENT
OFFICE OF PUBLIC AFFAIRS

EMBARGOED UNTIL: 1:00 pm EST on March 2, 2006
Contact: Tony Fratto (202) 622-2910

Testimony of Clay Lowery, Assistant Secretary
International Affairs
U.S. Department of the Treasury

Before the Committee on Armed Services

Chairman Hunter, Ranking Member Skelton, and distinguished members of the Committee, I appreciate the opportunity to appear before you today to discuss the Committee on Foreign Investment in the United States (CFIUS) and the Committee's review of DP World's acquisition of P&O. I am here speaking on behalf of the Administration, the Treasury Department, and CFIUS.

CFIUS

Exon-Florio

CFIUS was established in 1975 by Executive Order of the President with the Secretary of the Treasury as its chair. Its main responsibility was "monitoring the impact of foreign investment in the United States and coordinating the implementation of United States policy on such investment." It analyzed foreign investment trends and developments in the United States and provided guidance to the President on significant transactions. However, it had no authority to take action with regard to specific foreign investments.

The Omnibus Trade and Competitiveness Act of 1988 added section 721 to the Defense Production Act of 1950 to provide authority to the President to suspend or prohibit any foreign acquisition, merger, or takeover of a U.S. company where the President determines that the foreign acquirer might take action that threatens to impair the national security of the United States. Section 721 is widely known as the Exon-Florio amendment, after its original congressional co-sponsors.

Specifically, the Exon-Florio amendment authorizes the President, or his designee, to investigate foreign acquisitions of U.S. companies to determine their effects on the national security. It also authorizes the President to take such action as he deems appropriate to prohibit or suspend such an acquisition if he finds that:

(1) There is credible evidence that leads him to believe that the foreign investor might take action that threatens to impair the national security; and

(2) Existing laws, other than the International Emergency Economic Powers Act (IEEPA) and the Exon-Florio amendment itself, do not in his judgment provide adequate and appropriate authority to protect the national security.

The President may direct the Attorney General to seek appropriate judicial relief to enforce Exon-Florio, including divestment. The President's findings are not subject to judicial review.

Following the enactment of the Exon-Florio amendment, the President delegated to CFIUS the responsibility to receive notices from companies engaged in transactions that are subject to Exon-Florio, to conduct reviews to identify the effects of such transactions on the national security, and, as appropriate, to undertake investigations. However, the President retained the authority to suspend or prohibit a transaction.

The Secretary of the Treasury is the Chair of CFIUS, and the Treasury's Office of International Investment serves as the Staff Chair of CFIUS. Treasury receives notices of transactions, serves as the contact point for the private sector, establishes a calendar for review of each transaction, and coordinates the interagency process. The other CFIUS member agencies are the Departments of State, Defense, Justice, and Commerce, OMB, CEA, USTR, OSTP, the NSC, the NEC and the newest member, the Department of Homeland Security. Additional agencies, such as the Departments of Energy and Transportation or the Nuclear Regulatory Commission are routinely invited to participate in a review when they have relevant expertise.

The CFIUS process is governed by Treasury regulations that were first issued in 1991 (31 CFR part 800). Under these regulations, parties to a proposed or completed acquisition, merger, or takeover of a U.S. company by a foreign entity may file a voluntary written notice with CFIUS through Treasury. Alternatively, a CFIUS member agency may on its own submit notice of a transaction. If a company fails to file notice, the transaction remains subject to the President's authority to block the deal indefinitely.

The CFIUS process starts upon receipt by Treasury of a complete, written notice. Treasury determines whether a filing is in fact complete, thereby triggering the start of the 30-day review period. CFIUS may reject notices that do not comply with the notice requirements under the regulations. Upon receiving a complete filing, Treasury sends the notice to all CFIUS member agencies and to other agencies that might have an interest in a particular transaction. CFIUS then begins a thorough review of the notified transaction to determine its effect on national security. In some cases, this review prompts CFIUS to undertake an "investigation," which must begin no later than 30 days after receipt of a notice. The Amendment requires CFIUS to

complete any investigation and provide a recommendation to the President within 45 days of the investigation's inception. The President in turn has up to 15 days to make a decision, for a total of up to 90 days for the entire process.

CFIUS Implementation

Although the formal review period commences when CFIUS receives a complete filing, there is often an informal review that begins in advance. Parties to a transaction may contact CFIUS before a filing in order to identify potential issues and seek guidance on information the parties to the transaction could provide to assist CFIUS' review. This type of informal consultation between CFIUS and transaction parties enables both to address potential issues earlier in the review process. The pre-filing consultation allows the parties to answer many of CFIUS' questions in the formal filing and allows for a more comprehensive filing. In some cases, CFIUS members negotiate security agreements before a filing is made. In addition, the pre-filing consultation may lead the parties to conclude that a transaction will not pass CFIUS review, in which case they may restructure their transaction to address national security issues or abandon it entirely.

During the initial 30-day review, each CFIUS member agency conducts its own internal analysis of the national security implications of the notified transaction. In addition, the U. S. Intelligence Community provides input to all CFIUS reviews. The Intelligence Community Acquisition Risk Center (CARC), now under the office of the Director of National Intelligence (DNI), provides threat assessments on the foreign acquirers. CFIUS will request a threat assessment report from CARC as early as possible in the review process. In order to facilitate reviews, CFIUS may request these reports before the parties to the transaction have made their formal filing. Further, additional agencies such as the Departments of Energy and Transportation and the Nuclear Regulatory Commission actively participate in the consideration of transactions that impact the industries under their respective jurisdictions.

During the review period, there are frequent contacts between CFIUS and the parties to the transaction. The transaction parties respond to information requests and provide briefings to CFIUS members in order to clarify issues and supplement filing materials. Although the CFIUS agencies may meet collectively with the parties as an interagency group, meetings also often occur between the parties and the agency or agencies that have a specific interest in the transaction. Typically, certain members of CFIUS will identify a concern early in the review and then assume the lead role in examining the issue and providing views and recommendations on whether the concern can be addressed. For example, if there are military contracts, the Department of Defense would lead the CFIUS review and recommend a course of action.

Depending on the facts of a particular case, CFIUS agencies that have identified specific risks that a transaction could pose to the national security may, separately or through CFIUS auspices, develop appropriate mechanisms to address those risks when other existing laws and regulations alone are not adequate or appropriate to protect the national security. Agreements implementing security measures vary in scope and purpose, and are negotiated on a case by case basis to address the particular concerns raised by an individual transaction. Publicly available examples of some of the general types of agreements that have been negotiated include: Special Security

Agreements, which provide security protection for classified or other sensitive contracts; Board Resolutions, which, for instance, require a U.S. company to certify that the foreign investor will not have access to particular information or influence over particular contracts; Proxy Agreements, which isolate the foreign acquirer from any control or influence over the U.S. company; and Network Security Agreements (NSAs), which are used in telecommunications cases and often are imposed in the context of the Federal Communications Commission's (FCC) licensing process.

CFIUS operates by consensus among its members. A decision not to undertake an investigation is made only if the members agree that the transaction creates no national security concerns, or any identified national security concerns have been addressed to the satisfaction of all CFIUS agencies. The daily operation of CFIUS is conducted by professional staff at each agency. Each agency sends the filing to multiple groups in its agency depending on the issues involved in the filing. CFIUS staff report to the policy level, which is the Assistant Secretary level. A decision can be elevated to the Deputy Secretary level and on to the Cabinet officials, if necessary. If within the initial 30-day period there is consensus that the transaction does not raise national security concerns or any national security concerns have been addressed, Treasury, on behalf of CFIUS, writes to the parties notifying them of that determination. This concludes the CFIUS review of the acquisition.

If one or more members of CFIUS believe that national security concerns remain unresolved, then CFIUS conducts a 45-day investigation. The additional 45 days enables CFIUS and the parties to obtain additional information from the parties, conduct additional internal analysis, and continue addressing outstanding concerns. Upon completion of a 45-day investigation, CFIUS must provide a report to the President stating its recommendation. If CFIUS is unable to reach a unanimous recommendation, the Secretary of the Treasury, as Chairman, must submit a CFIUS report to the President setting forth the differing views and presenting the issues for decision. The President has up to15 days to announce his decision on the case and inform Congress of his determination. The last report sent to Congress occurred in September 2003, when the President sent a classified report detailing his decision to take no action to block the transaction between Singapore Technologies Telemedia and Global Crossing.

The Exon-Florio amendment requires that information furnished to any CFIUS agency by the parties to a transaction shall be held confidential and not made public, except in the case of an administrative or judicial action or proceeding. This confidentiality provision does not prohibit CFIUS from sharing information with Congress. Treasury, as chair of CFIUS, upon request of congressional committees or subcommittees with jurisdiction over Exon-Florio matters, has arranged congressional briefings on transactions reviewed by CFIUS. These briefings are conducted in closed sessions and, when appropriate, at a classified level. CFIUS members with equities in the transaction under discussion are invited to participate in these briefings.

Since the enactment of Exon-Florio in 1988, CFIUS has reviewed 1,604 foreign acquisitions of companies for potential national security concerns. In most of these reviews, CFIUS agencies have either identified no specific risks to national security created by the transactions or risks have been addressed during the review period. However, to date 25 cases have gone through investigation, twelve of which reached the President's desk for decision. In eleven of those, the

President took no action, leaving the parties to the proposed acquisitions free to proceed. In one case, the President ordered the foreign acquirer to divest all its interest in the U.S. company. In another case that did not go to the President, the foreign acquirer undertook a voluntary divestiture. Of those 25 investigations, seven have been undertaken since 2001 with one going to the President for decision. However, these statistics do not reflect the instances where CFIUS agencies implemented security measures that obviated the need for an investigation or where, in response to dialogue with CFIUS agencies, parties to a transaction either voluntarily restructured the transaction to address national security concerns or withdrew from the transaction altogether.

DP World

Contrary to many accounts, the DP World transaction was not rushed through the review process in early February. On October 17, 2005, lawyers for DP World and P&O informally approached Treasury Department staff to discuss the preliminary stages of the transaction. This type of informal contact enables CFIUS staff to identify potential issues before the review process formally begins. In this case, Treasury staff identified port security as the primary issue and directed the companies to DHS. On October 31, DHS and the Department of Justice staff met with the companies to review the transaction and security issues.

On November 2, Treasury staff requested a CARC intelligence assessment from the Office of the DNI. Treasury received this assessment on December 5, and it was circulated to CFIUS staff. On December 6, staff from CFIUS agencies with the addition of staff from the Departments of Transportation and Energy met with company officials to review the transaction and to request additional information. On December 16, after two months of informal interaction, the companies officially filed their formal notice with Treasury, which circulated the filing to all CFIUS departments and agencies and also to the Departments of Energy and Transportation because of their statutory responsibilities and experience with DP World.

During the 30-day review period, members of the CFIUS staff were in contact with one another and the companies. As part of this process, DHS negotiated an assurances letter that addressed port security concerns. The final assurances letter was circulated to the committee on January 6 for its review, and CFIUS concluded its review on January 17. In total, far from rushing their review, members of CFIUS staff spent nearly 90 days reviewing this transaction. There were national security issues raised during this review process, but any and all concerns were addressed to the satisfaction of all members of CFIUS. By the time the transaction was formally approved, there was full agreement among the CFIUS members.

Another misperception is that this transaction was concluded in secret. Although the Exon-Florio amendment prohibits CFIUS from publicly disclosing information provided to it in connection with a filing under Exon-Florio, these transactions often become public through actions taken by the companies. Here, as is often the case, the companies issued a press release announcing the transaction on November 29. In addition, beginning on October 30, dozens of news articles were published regarding this transaction, well before CFIUS officially initiated, much less concluded its review.

On Sunday, February 26, DP World announced that it would make a new filing with CFIUS and request a 45-day investigation. Upon receipt of DP World's new filing, CFIUS will promptly initiate the review process. The additional time and review at the company's request will enable Congress to obtain a better understanding of the facts.

Conclusion

Mr. Chairman, we believe that the review surrounding the DP World transaction was thorough from a substantive standpoint, as reflected by the unanimous approval of the members. Nonetheless, it is clear that improvements are still required. In particular, we must improve the CFIUS process to help ensure the Congress can fulfill its important oversight responsibilities. Although CFIUS operates under legal restrictions on public disclosures regarding pending cases, we have tried to be responsive to inquiries from Congress. We are open to suggestions on how we foster closer communication in the future. We think that we can find the right balance between providing Congress the information it requires to fulfill its oversight role while respecting the deliberative processes of the executive branch and the proprietary information of the parties filing with CFIUS.

Let me stress in closing, Mr. Chairman, that all members of CFIUS understand that their top priority is to protect our national security. As President Bush said earlier this week: "If there was any doubt in my mind, or people in my administration's mind, that our ports would be less secure and the American people endangered, this deal wouldn't go forward."

I thank you for your time this afternoon and am happy to answer to any questions.

-30-

U. S. Department of Homeland Security
United States Coast Guard

Commandant
United States Coast Guard

2100 Second Street, S.W.
Washington, DC 20593-0001
Staff Symbol: G-ICA
Phone: (202) 366-4280
FAX: (202) 366-7124

DEPARTMENT OF HOMELAND SECURITY

U. S. COAST GUARD

STATEMENT OF

REAR ADMIRAL THOMAS GILMOUR
ASSISTANT COMMANDANT FOR PREVENTION

ON THE

NATIONAL SECURITY REVIEW OF THE DP WORLD TRANSACTION

BEFORE THE

ARMED SERVICES COMMITTEE

U. S. HOUSE OF REPRESENTATIVES

MARCH 2, 2006

Good afternoon Mr. Chairman and distinguished Members of the Committee. It is a pleasure to appear before you today to discuss the national security review of the DP World (DPW) transaction.

Let me begin by stressing that the Coast Guard is the federal agency in charge of maritime security in our ports and waterways. Before I describe our security precautions for incoming shipping, let me give you some of the regulatory backdrop and other security aspects to add context to this discussion.

Facility and vessel security rules are found in the Maritime Transportation Security Act (MTSA) and the International Ship and Port Facility Security (ISPS) Code. These security rules are complementary in nature and specify detailed requirements for both vessels and facilities. They require a unique security assessment and a tailored security plan for each facility and vessel. They also identify personal responsibilities for executing the plan, along with drill and exercise requirements, recordkeeping, and coordination with port officials.

Port Security

Under MTSA, the Coast Guard is responsible for regulating security in all American ports, including the security of facility operators.

I should first clarify what facility operators do. They do not run ports, and they do not provide security for the entire port system. Security for the port is the responsibility of the government and the local port authority, which is usually a government agency. However, the facility operators are responsible for ensuring the security operations within their facility are in compliance with Maritime Transportation Security regulations and executing the approved security plans for their individual facilities.

Facility operators ordinarily sign a long term lease for waterfront property in the port. They build a pier for ships, cranes to unload the ship, a parking lot to store the containers they unload, and perhaps a small management office. By and large they make their money lifting containers out of ships and holding them for shippers. DPW is hoping to assume responsibility for the leases for facilities in the United States. That's a relatively small part of the operations in the 6 ports where they would operate facilities. There are about 800 regulated port facilities in those 6 ports, so the 24 operated by DPW here constitute less than 5% of the facilities in those ports. Each operator must file a security plan for their facility with the Coast Guard, detailing how they plan to comply with all of the security measures that the Coast Guard requires. The Coast Guard then inspects the facility and checks the execution of the plan, requiring more effective measures if they are deemed necessary. There are over 3,000 marine cargo facilities in the United States and each has an approved and inspected security plan. Since July 2004, the Coast Guard has required corrective action on more than 700 violations of the MTSA security regulations. Of those 700+ violations, 44 resulted in major control actions, such as the termination of cargo operations or the closure of that facility until corrective measures were taken.

The Coast Guard has taken action on a host of initiatives since the passage of the MTSA related to port security. Included among those initiatives we completed Port Security Assessments and Port Threat Assessments for all 55 military and/or economically critical ports.

In addition, 44 Maritime Security Committees have been formally chartered and have developed Area Maritime Security Plans for the purpose of detecting, deterring, and preventing terrorist attacks as well as responding in the event of an incident. These committees are chaired by the local Coast Guard official, the designated Federal Maritime Security Coordinator, and include port authorities, vessel and facility owner/operators, and labor representatives as well federal, state, and local agency representatives.

Additionally, the Coast Guard established an International Port Security Program to assess the effectiveness of anti-terrorism measures in place in ports overseas. To date, 44 countries have been assessed by the Coast Guard, and 37 have been found to have substantially implemented the ISPS Code. These 44 countries are responsible for over 80 percent of the maritime trade to the United States. The seven countries that are not in substantial compliance have been or will be notified shortly to take corrective actions or risk being placed on a Port Security Advisory and have "Conditions of Entry" imposed on vessels arriving from their ports. As well, we have observed best practices in the ports of these countries and have included them on the Coast Guard website.

Vessel Security

There are approximately 11,000 U.S. vessels that we have required to have approved vessel security plans (6,200 inspected vessels and 4,800 un-inspected vessels). We have received, reviewed, and approved all vessel security plans.

Regarding the substantial foreign vessel trade, the Coast Guard has taken multiple steps to monitor this activity. One major step was the publication of the 96-hour Advanced Notice of Arrival regulations, which require vessel owner/operators to provide detailed information to the Coast Guard 96-hours before a vessel arrives at a U.S. port on a voyage from a foreign port. This regulation provides sufficient time to vet the crew, passengers, cargo, and vessel information for all vessels prior to their entering the United States from foreign ports.

Since July 2004, the Coast Guard has conducted 16,000 foreign flag vessel boardings to enforce security compliance with the ISPS Code. These boardings were conducted either offshore or in port depending on the risk assessment completed prior to each vessel's arrival in a U.S port. From those 16,000 boardings, the Coast Guard has imposed 143 detentions, expulsions or denials of entry for vessels that failed to comply with international security requirements.

In addition, the Coast Guard has established a process to identify and target "high interest" vessels. This process has resulted in 3,400 at sea security boardings and 1,500 positive vessel control escorts since 2004 to ensure that these vessels cannot be used as weapons.

Summary of Actions Taken by the Coast Guard Since 9/11

Since 9/11, the Coast Guard in partnership with many federal, state, local agencies and industry partners has made significant improvements to maritime security. We negotiated at the International Maritime Organization for the ISPS Code, which requires the security plans I have discussed. We wrote implementing regulations for the MTSA, the domestic equivalent of the ISPS Code. We immediately required an increase in the advance notification required to enter port from 24 hours to 96 hours. This allowed for a complete check of the required crew list against U.S. terrorist watch lists, and we added additional reporting requirements for last port of call data, cargo information, and complete passenger information to allow us to further screen for vessel risks.

We have added additional personnel to fill security inspector billets to conduct the vessel and port facility security plan inspections. We established 12 Maritime Safety and Security Teams (MSST), which augment existing Coast Guard forces to perform Port, Waterways and Coastal Security (PWCS), anti-terrorism, limited counter-narcotics and general law enforcement missions; are deploying over 80 new small boats and crews; added radiation detection capability to our boarding teams; deployed field intelligence support teams to better collect and use maritime threat information; and acquired 15 coastal patrol boats and accepted transfer of five Navy 179-foot patrol craft. We are in the process of rebuilding our aircraft and cutter fleet through our Deepwater acquisition initiative. We also are in the process of improving our Maritime Domain Awareness to allow us to detect vessels of all sizes off our coast and ports through the use of required Automatic Identification Systems (AIS), which provide real-time information on vessel positions and movements. We required the submission and approval of Area Maritime Security Plans to link up with the facility and vessel security planning to the larger port and regional area by Coast Guard Sector Commanders in concert with Area Security Committees. This ensures completely integrated port-level planning.

As required by the MTSA, we formed the International Port Security program with auditors to assess the effectiveness of anti-terrorism measures in place in ports overseas through visits to our trading partners.

I believe this description accurately describes the Coast Guard's actions to develop and set maritime security standards and then enforce them.

P&O and DP World

Regarding the Coast Guard's involvement in the CFIUS process, the Coast Guard's initial review identified potential gaps in available intelligence related to specific Coast Guard interests in the transaction. However, after fully considering all available intelligence, the Coast Guard's assessment was that it did not oppose the transaction and raised no objections with DHS to the transaction. Since completing its intelligence assessment, the Coast Guard has continued its due diligence by auditing all P&O operations in the United States, examining DPW operations outside the United States, obtaining formal assurances from DPW regarding ongoing access to information on personnel and operations, and further evaluating the proposed transaction in conjunction with other components of the intelligence community. These additional efforts have reinforced the conclusion of the Coast Guard's intelligence assessment, and the Coast Guard continues to believe that, in light of the assurances DHS received from the companies, DPW's acquisition of P&O does not pose a threat to U.S. assets in continental United States ports. In fact, as a consequence of the transaction and because of the commitments made by the companies, the Coast Guard will have more information about the affected terminals under DPW ownership than it currently does under P&O ownership. In the context of any further review, the Coast Guard will continue to work diligently within the Department of Homeland Security and the intelligence community to ensure that the port security concerns are fully raised and objectively analyzed. In addition, the Coast Guard is in the process of scheduling a Coast Guard international port visit to Dubai.

Thank you for the opportunity to testify before you today. I will be happy to answer any questions you may have.

DOCUMENTS SUBMITTED FOR THE RECORD

MARCH 2, 2006

Copyright 2000 Council on Foreign Relations, Inc.
Foreign Affairs

November, 2000 / December, 2000

SECTION: ESSAYS; Pg. 57

LENGTH: 5013 words

HEADLINE: Beyond Border Control

BYLINE: Stephen E. Flynn; STEPHEN E. FLYNN is Senior Fellow with the National Security Studies Program at the Council on Foreign Relations. He is also a commander in the U.S. Coast Guard and a member of the permanent commissioned teaching staff at the U.S. Coast Guard Academy.

BODY:

TEARING DOWN THE WALLS

LAST DECEMBER, as year 2000 celebrations approached, Americans got a case of the pre-holiday jitters when news broke that an Algerian terrorist with suspected ties to Osama bin Laden had been arrested in Port Angeles, Washington. Ahmed Ressam had arrived in the United States from Vancouver in a car loaded with bomb-making materials. Only a U.S. Customs Service official's unease with the way Ressam answered her questions prevented him from driving onto American soil. What was most surprising about Ressam's arrest was that he was detected and apprehended at all -- one man amid the 475 million people, 125 million vehicles, and 21.4 million import shipments that came into the country last year. The United States has nearly 100,000 miles of shoreline and almost 6,000 miles of borders with its neighbors. People and goods arrive daily at more than 3,700 terminals in 301 ports of entry. Intercepting the ripples of danger in this tidal wave of commerce is about as likely as winning a lottery.

The global economy's movement toward more open societies and liberalized economies does not just facilitate the movement of products and workers -- it also expedites passage for terrorists, small arms, drugs, illegal immigrants, and disease. The obvious solution to the challenge of filtering the bad from the good might seem to be increased funding for border controls. On the face of it, such an investment would appear logical. Stopping threats at the frontier is better than trying to cope with them once inside the country; customs officials also have the strongest legal authority for inspecting and searching people and goods. Accordingly, if there are more people and goods to police, there should be more agents and security forces along the border to do so.

But efforts to bolster regulatory, enforcement, and security operations at busy borders may result in a cure worse than the disease. Such endeavors place governments on a collision course with easy trade, which is key to the sustained expansion and integration of the global economy. Most successful enterprises need to move workers and products quickly, reliably, and affordably around the planet. Delays associated with intensified inspections along borders undermine the competitiveness of exports by raising transaction costs. Overseas buyers are likely to avoid ports where there is a heightened risk that products will arrive damaged, spoiled, or late. And rapid, hassle-free immigration controls are essential to both global business and tourism.

Fortunately, there is an alternative to long queues and intrusive border inspections, but it requires creative thinking on the parts of the private sector, states, and international bodies. The sights of regulation and enforcement must be set beyond national borders. Properly confronting new threats without disrupting business requires a three-part paradigm

shift. First, rather than relying on a hodgepodge of controls at national borders, countries must tighten security within the international transportation and logistics system to reduce the risk that importers, exporters, freight forwarders, and transportation carriers will serve as conduits for criminals or terrorists. Second, states must urge international companies to develop transparent systems for tracking regional and global commercial flows, so that regulators and enforcement officials can conduct "virtual" audits of inbound traffic well before it arrives. And third, border agencies need faster and stronger capabilities to gather intelligence and manage data. A well-informed customs and immigration agent can identify and target high-risk goods and people for inspection while quickly and confidently processing those that pose less of a danger.

THE PRICE OF TRADE

MOST AMERICANS -- particularly those clamoring for more vigorous border enforcement -- have little appreciation for the scale and sophistication of the logistical backbone underpinning global commerce. Take the automotive industry, for example. General Motors, Ford, and DaimlerChrysler buy some of the parts to build their cars and trucks from suppliers in the Canadian province of Ontario. The contract requires that within as little as six hours from receipt of an order, these Canadian suppliers must have made their deliveries to the assembly plants in the United States. Delivery trucks are loaded so that parts meant for specific vehicles can be unloaded and placed directly on the appropriate chassis as it moves down the assembly line. This "just-in-time" delivery system has given the Big Three a more cost-effective and efficient production process. But the resulting savings could evaporate with a delay at the border. If trucks carrying the parts for a Ford Explorer are stuck in an inspection queue, assembly plants can quickly fall idle, with costs running as high as $ 1 million per hour.

The need to move beyond old-fashioned border control becomes apparent on visiting a major port of entry. Five inspectors take, on average, three hours to conduct a thorough physical inspection of a loaded 40-foot container. Even with the assistance of new high-tech sensors, there will never be enough inspectors or sufficient hours in the day to inspect the cargo arriving in places like the Port of Long Beach, California, which received more than one million inbound containers in 1999 (more than double 1995 levels). Nor is it possible to check all the inbound vehicles at the world's busiest commercial land-border crossing -- the Ambassador Bridge between Detroit, Michigan, and Windsor, Ontario -- where a record-breaking 7,000 trucks entered the United States on a single day in February 2000. At these rates, U.S. Customs officials must clear one container every 20 seconds in southern California, and one truck every 12 seconds in Detroit.

Even if the number of inspectors were to rise in proportion to the growth in traffic, there is little room for trucks or containers to wait for inspection. The explosion in international trade is pushing port, bridge, rail, and road infrastructures to their capacity and beyond. Congestion along the access routes, within port and airport terminals, and at border crossings is becoming more commonplace. For instance, the parking lot for secondary and tertiary inspections at Detroit's Ambassador Bridge can accommodate only 90 tractor-trailers at a time. Although it might be possible to double the number of inspectors doing primary inspections, there is no room for the labor-intensive and time-consuming follow-ups. Once the parking lot fills, trucks back up onto the bridge. The resulting pileup virtually closes the border, generating roadway chaos throughout metropolitan Windsor and Detroit.

Faced with these volumes, the U.S. Customs Service must still monitor compliance with more than 400 laws and 34 international treaties, statutes, agreements, and conventions on behalf of 40 federal agencies. One of the Customs Service's top priorities is to interdict illicit narcotics -- a daunting task when one considers that all the pure cocaine to feed America's annual coke habit could be transported in just 15 40-foot containers. As the southern California and Detroit statistics make clear, drug traffickers have more and more haystacks in which to hide their contraband needles. Nationally, 16.4 million trucks and more than 5 million loaded 40-foot maritime containers entered the United States in 1999, and trade is expected to more than double in the next two decades.

Rising volumes are not the only consequence of economic globalization making the lives of border control agents so difficult. In addition, agents must bear in mind that delayed shipment clearance raises costs for any business that

engages in cross-border trade -- and few companies can survive today without at least a minimum level of participation in other countries' markets. Media and scholarly discussions about the wonders of the modern global economy are ubiquitous, but most dwell on liberalized trade rules and the rapid spread of information-age technologies. Not enough attention goes to affordable and reliable transportation, the third leg of the global-market stool. Legal access to a distant client and instantaneous ordering will mean very little if the number of hours required, expense, and uncertainty of these transactions are high. Only efficient and rapid transportation can render large distances irrelevant; only when distance means little in economic terms does the construction of global assembly lines become possible.

More and more firms in a diverse array of industries are finding themselves (and their profit margins) dependent on international transportation. To retain their competitive edge, international companies must outsource production, have ready access to customers worldwide, and invest in new technologies to adapt the production process to its widening geographical breadth. The automotive giants' just-in-time delivery system, one such adaption, means that the automakers do not need large inventory reserves to guarantee that the assembly line keeps running. Inventory guarantees that supply will be available to meet demand. But maintaining large stockpiles of goods consumes capital and may be wasteful if they sit around forever. According to one industry study based on U.S. Commerce Department sales and inventory reports for 1997, the total value of retail sales in the United States for that year was $ 2.6 trillion. To support these sales, retailers, merchant wholesalers, and manufacturers held $ 300 billion, $ 250 billion, and $ 450 billion in inventory, respectively -- a total of $ 1 trillion. In order to help lower this cost, logistics and transportation providers are investing in faster and more efficient shipping, aviation, rail, and trucking fleets; constructing seamless chains; consolidating distribution networks; upgrading warehouse management systems; and incorporating state-of-the-art tracking, communications, and database technologies. This "value-chain inventory opportunity" is a powerful driver of the transportation and logistics revolutions.

After making such massive capital outlays in technology and infrastructure, companies now want the state to do its part to enhance the savings and efficiency resulting from these private-sector investments. Not surprisingly, customs, immigration, and other officials are finding themselves under mounting pressure to improve the "facilitation" of transborder flows. After all, a just-in-time delivery system works only if the goods actually do arrive just in time.

Large corporations are not the only ones that would suffer in a world of heavily policed borders. Developing countries would be worse off as well, especially those hoping that export development render large distances irrelevant; only when distance means little in economic terms does the construction of global assembly lines become possible.

More and more firms in a diverse array of industries are finding themselves (and their profit margins) dependent on international transportation. To retain their competitive edge, international companies must outsource production, have ready access to customers worldwide, and invest in new technologies to adapt the production process to its widening geographical breadth. The automotive giants' just-in-time delivery system, one such adaptation, means that the automakers do not need large inventory reserves to guarantee that the assembly line keeps running. Inventory guarantees that supply will be available to meet demand. But maintaining large stockpiles of goods consumes capital and may be wasteful if they sit around forever. According to one industry study based on U.S. Commerce Department sales and inventory reports for 1997, the total value of retail sales in the United States for that year was $ 2.6 trillion. To support these sales, retailers, merchant wholesalers, and manufacturers held $ 300 billion, $ 250 billion, and $ 450 billion in inventory, respectively -- a total of $ 1 trillion. In order to help lower this cost, logistics and transportation providers are investing in faster and more efficient shipping, aviation, rail, and trucking fleets; constructing seamless chains; consolidating distribution networks; upgrading warehouse management systems; and incorporating state-of-the-art tracking, communications, and database technologies. This "value-chain inventory opportunity" is a powerful driver of the transportation and logistics revolutions.

After making such massive capital outlays in technology and infrastructure, companies now want the state to do its part to enhance the savings and efficiency resulting from these private-sector investments. Not surprisingly, customs, immigration, and other officials are finding themselves under mounting pressure to improve the "facilitation" of transborder flows. After all, a just-in-time delivery system works only if the goods actually do arrive just in time.

Large corporations are not the only ones that would suffer in a world of heavily policed borders. Developing countries would be worse off as well, especially those hoping that export development will lead them to future prosperity. In Central Asia, through which 40 percent of the heroin consumed in western Europe flows, Uzbekistan has been busy installing electronic sensors, erecting barbed-wire barricades, and mobilizing its military to patrol its once largely open borders with neighboring Kyrgyzstan and Tajikistan. Although it is unclear if such measures will succeed in blockading illicit drugs, they certainly keep the region's prospects for cross-border trade and cooperation at a distance. For those developing countries that find their exports all dressed up with no place to go, the benefits of opening up to the world will not materialize. This, in turn, might lead to greater civil unrest, higher emigration, and a backlash against globalization. Thus unilateral border-control initiatives that disrupt the flow of trade and travel could end up fueling the very flames of transnational threats that led to the adoption of tighter controls in the first place.

CLEAR AND PRESENT DANGER

ADVOCATES of better-policed borders are battling against rising volume and mounting pressure for expedited customs clearance. Even if they somehow prevail against the powerful market forces arrayed against them, their victory will prove hollow. The economic costs of supply-chain disruption would be huge. On the other hand, if the market prevails and border controls collapse -- leaving no suitable security alternative in place -- the resulting price in insecurity may also be more than most societies are willing to pay.

As the December 1999 Port Angeles terrorist arrest made clear, Americans have reason to worry about the porousness of their borders. Considering that more than 2.7 million undocumented immigrants have succeeded in entering the United States simply by walking, swimming, or riding across the Mexican and Canadian borders, a terrorist could just as easily slip by the Border Patrol and the Immigration and Naturalization Service. Five to ten million pounds of chlorofluorocarbons are smuggled into the United States each year to supply the large black market for these ozone-depleting products, so it is probably a safe bet that a few pounds of a deadly biological or chemical agent could make their way into the United States undetected. One of the dark jokes circulating through the Pentagon is that if a terrorist wants to smuggle a weapon of mass destruction into the United States, the best place to hide it would be in a shipment of illicit drugs.

American concern over the spread of weapons of mass destruction may soon translate into an investment of more than $ 60 billion in ballistic missile defense. But why should a rogue state or terrorist organization invest in ballistic missile technologies when a weapon of mass destruction could be loaded into a container and sent anywhere in the world? Osama bin Laden could have a front company in Karachi, Pakistan, load a biological agent into a container ultimately destined for Newark, New Jersey, with virtually no risk that it would be intercepted. He could use a Pakistani exporter with an established record of trade in the United States. The container could then be sent via Singapore or Hong Kong to mingle with the half a million containers that are handled by each of these ports every month. It could arrive in the United States via Long Beach or Los Angeles and be loaded directly onto a railcar or truck for the transcontinental trip. Current regulations do not require an importer to file a cargo manifest with U.S. Customs until the cargo reaches its "entry" port -- in this case, Newark, 2,800 miles of American territory away from where it first entered the country -- and the importer is permitted 30 days' transit time to make the trip to the East Coast. The container could be diverted or the weapon activated anywhere en route, long before its contents were even identified as having entered the country.

Let us hope such a scenario will be only grist for a future Tom Clancy novel. But if such an incident did take place, the political repercussions would be swift and brutal. All eyes would turn to Capitol Hill for the congressional postmortem. The public would be outraged when the U.S. Customs commissioner testified that routine practice allows 40-foot containers with multi-ton shipments to roam around the United States for up to 30 days without anyone declaring the contents or the sender. At a minimum, one could expect a serious public backlash against the current systems that facilitate trade, travel, and commerce. The political base for global liberalization could be severely and irreparably eroded.

UNITE AND CONQUER

POLICYMAKERS may soon find themselves in a rather tight spot. Calls for greater vigilance in ports of entry and along national frontiers will be met by private-sector warnings of the dire economic consequences of disrupting the global supply chain. The only way around this potential deadlock requires the private sector to become a part of the solution. The age when improving border security meant simply reinforcing national reporting and inspection processes is past. Reforms must instead work backward from "point of entry" controls to the networks that take goods from their "point of origin" toward their destination. If greater security and accountability can be embedded within transportation networks, then much of the traffic can be audited, cleared for entry, or targeted for inspection well before it arrives at national borders.

It is in an international firm's own interest to clean up the logistical quagmire of its transportation procedures. The same competition driving just-in-time delivery also mandates greater levels of oversight and control throughout the international transportation process. Virtual global assembly lines with minimally stocked shelves require a degree of logistical choreography impossible just a few years ago. Given the high costs associated with cargo losses or delays, managers want guarantees that goods will arrive by the date specified in the contract. Transportation and logistics firms have responded by embracing new tagging, tracking, communications, and information technologies that make it possible to monitor in near real time the flow of products and passengers as they move from their points of origin to their final destinations. Shipper Web sites, such as those developed by the Ohio-based Roadway Express, provide customers with their own personal home page where they can monitor all their active shipments aboard the company's global positioning system -- equipped trucking fleet, including their current locations and a constantly updated estimate of the expected delivery times.

Security concerns also receive new priority in the global marketplace, since the importance of guaranteeing delivery has placed a premium on tightening safeguards within the transportation industry. According to the National Cargo Security Council, American companies lost $ 10 billion in stolen cargo in 1999. The computer industry has been particularly hard hit, with theft and insurance costs adding an estimated ten percent to the cost of the average personal computer. Sixty high-tech companies with combined annual revenues of $ 750 billion have responded by forming the Technology Asset Protection Association (TAPA). Founded in 1997, TAPA has identified a comprehensive set of security practices to govern the shipment of members' supplies and products. If a freight forwarder or carrier wants to do business with any of TAPA's well-heeled members, they must adopt these practices.

Thus market pressures are mounting for the transportation and logistics industries to embrace standards and adopt processes that can make some border-control activities redundant or irrelevant. In response to these pressures, companies are becoming better able to implement safeguards, police themselves, and provide useful and timely information necessary for public security -- information that states have traditionally tried to verify independently at border crossings. Theft-proof transportation networks are more difficult for criminals and terrorists to compromise. Should there be advance intelligence of such a compromise, these computer systems will make it easier to locate and interdict a contaminated shipment before it enters a crowded port; alternatively, authorities can put together a "controlled-delivery" sting operation, where the contraband is allowed to reach the intended recipient so that the appropriate arrests can be made.

These technological innovations could reduce the need for time-consuming and personnel-intensive physical examinations at the border. In principle, government inspectors can remotely examine commercial tracking and monitoring systems for compliance with regulations. If customs agents can verify that a company is using such safety checks when transporting goods and people, they will feel confident enough to allow that cargo expedited passage through border crossings.

To put principle into practice, laws and regulations are needed that compel companies to maintain and provide access to supply-chain information that can assist inspectors in their work. Since border-control activities can cause long and unpredictable holdups, companies should be receptive to alternative arrangements that can reduce that

disruptive risk. Left to its own devices, it is unlikely that the private sector would willingly allow remote inspections. Happily, however, borders offer governments substantial leverage to encourage international firms to do so. Governments enjoy the power of having the final say over who and what can enter their land -- the key is for the state to exploit its power to make or break the success of international supply chains.

Wielding the stick of entry delays or denials over companies that are unwilling to develop viable and transparent security systems, governments could hold out a carrot to those who have made such developments. Manufacturers, freight forwarders, travel agents, carriers, importers, and retailers who maintain tight control over their transportation flows and provide detailed and timely information to support customs and immigration activities would qualify for expedited border passage. Those private-sector actors who facilitate compliance with regulations and reduce the risk of serving as criminal or terrorist conduits could be allowed to move through the equivalent of a trade and travel "E-Z lane," garnering the benefits of lower transportation costs by way of prescreening and clearance through border entry points. Border-control agents would continue to conduct spot checks to ensure compliance, but the overwhelming majority of these goods and people would be allowed to travel with few restrictions. Private-sector actors who were unwilling to adopt the requisite security and transparency systems could inch through the "slow lane" of traditional inspections as they move across borders. Similarly, private-sector actors who have signed up for the E-Z lane but fail to comply with its mandates would, at a minimum, be placed back in the slow lane for a probationary period.

THE NEW FRONTIER

THE U.S. CUSTOMS SERVICE has taken some tentative steps toward such a preventive approach to border control. Rather than taking a gamble on waiting to intercept illicit drugs at the border, given the daunting odds of identifying and intercepting narcotics at a busy port of entry, the agency has sought to lower the risk of drugs' entering the transportation processes upstream. Beginning in 1998, the Customs Service launched the Americas Counter Smuggling Initiative (ACSI), which sends customs officers throughout Latin America to assist exporters, carriers, manufacturers, and other businesses in developing and implementing security programs to reduce their risk of being exploited by drug smugglers. As an incentive for participation, the Customs Service agrees to reduce penalties should a company's good-faith efforts prove less than foolproof.

To lower congestion at the border, U.S. Customs has also begun experimenting with an automated clearance system that encourages carriers to provide advance customs documentation electronically. Revenue Canada, the Canadian customs agency, adopted a similar program in 1991 for single-load trucks. Companies that enroll in these programs and comply with their mandates receive immediate release of the cargo when their conveyances arrive at the border.

Although these systems are designed primarily for high-volume, low-risk shippers, the approach could be readily applied to the movements of people as well. The promise of expedited immigration processing through airports and borders could encourage frequent travelers to carry a "smart" passport containing immunization records, travel history, or handprint or even retina information. Such a system is already in place in Bermuda, where IBM has developed the FastGate immigration "smart" card system aimed at shortening passport queues. Passengers who want to bypass the normal immigration procedures can encode passport details and an identifying handprint on something resembling an ATM card. On arriving at the airport, passengers must swipe their card through a machine and place their hands on an electronic reader before proceeding.

As the FastGate system suggests, the days of tedious, paperbound, labor-intensive border inspection systems -- the bane of every legitimate international traveler and business -- should be numbered. The time losses and geographic constraints inherent in traditional border-control practices guarantee their continuing inability to tame the surge in international commerce and the growing array of threats that confound the international system.

The days of private-sector opposition to all reporting and inspection requirements -- criticized as bad for the bottom line -- should be over as well. Although existing methods are often inept and at times even counterproductive, states have important and legitimate reasons to control their borders. Governments need to manage the flows of contraband

such as weapons, drugs, and child pornography. Immigration policies require that states possess the means to regulate who enters and who leaves their jurisdictions. Many public-health strategies aimed at managing the spread of disease require the identification and isolation of people, livestock, and agricultural products that could place the general population at risk. Safety and environmental threats connected with unsafe shipping and trucking mandate that the transportation sector be monitored. And particularly in the developing world, many states continue to rely on the collection of import duties as an important source of government revenue.

Cooperative international mechanisms for policing trade flows are needed to enforce and substantiate arms control agreements and economic sanctions. Lengthy negotiations on export controls for nuclear, chemical, and biological weapons are meaningless without effective impediments to the cross-border transfer of restricted materials and technologies. And although the international community continues to roll out economic sanctions to demonstrate disapproval with wayward states, these sanctions have teeth only to the extent that proscribed imports and exports are actually prevented from entering or exiting the targeted country.

In short, virtually all of the imperatives that have made border control a critical mission for states in the past remain operative today. What is different now is that commercial and social patterns of interaction are becoming more dynamic, organic, and transnational. As such, the traditional means at states' disposal are proving insufficient to enforce the many national and international rules and to advance important security and public policy interests. Absent a follow-on act, the late-twentieth-century triumph of capitalist markets and democratic institutions may prove short-lived.

The growing crisis of border control suggests that global economic activity risks becoming like the robber-baron capitalism of the nineteenth century. In that era, the private sector tried to avoid responsibility for the negative effects of its commercial activities. At the same time, public institutions were unable to keep up with the scope, pace, and complexity of the public-policy challenges spawned by the implications of the commercial explosion. The result was massive economic dislocation. History will repeat itself unless the major beneficiaries of our increasingly open global society take responsibility for the welfare of a free and stable international system.

LOAD-DATE: October 25, 2000

attempt to gather intelligence and wait for an opportunity. One Special Operations commander said his view of actionable intelligence was that if you "give me the action, I will give you the intelligence."[148] But this course would still be risky, in light both of the difficulties already mentioned and of the danger that U.S. operations might fail disastrously. We have found no evidence that such a long-term political-military approach for using Special Operations Forces in the region was proposed to or analyzed by the Small Group, even though such capability had been honed for at least a decade within the Defense Department.

Therefore the debate looked to some like bold proposals from civilians meeting hypercaution from the military. Clarke saw it this way. Of the military, he said to us, "They were very, very, very reluctant."[149] But from another perspective, poorly informed proposals for bold action were pitted against experienced professional judgment. That was how Secretary of Defense Cohen viewed it. He said to us: "I would have to place my judgment call in terms of, do I believe that the chairman of the Joint Chiefs, former commander of Special Forces command, is in a better position to make a judgment on the feasibility of this than, perhaps, Mr. Clarke?"[150]

Beyond a large-scale political-military commitment to build up a covert or clandestine capability using American personnel on the ground, either military or CIA, there was a still larger option that could have been considered—invading Afghanistan itself. Every official we questioned about the possibility of an invasion of Afghanistan said that it was almost unthinkable, absent a provocation such as 9/11, because of poor prospects for cooperation from Pakistan and other nations and because they believed the public would not support it. Cruise missiles were and would remain the only military option on the table.

The Desert Camp, February 1999

Early in 1999, the CIA received reporting that Bin Ladin was spending much of his time at one of several camps in the Afghan desert south of Kandahar. At the beginning of February, Bin Ladin was reportedly located in the vicinity of the Sheikh Ali camp, a desert hunting camp being used by visitors from a Gulf state. Public sources have stated that these visitors were from the United Arab Emirates.[151]

Reporting from the CIA's assets provided a detailed description of the hunting camp, including its size, location, resources, and security, as well as of Bin Ladin's smaller, adjacent camp.[152] Because this was not in an urban area, missiles launched against it would have less risk of causing collateral damage. On February 8, the military began to ready itself for a possible strike.[153] The next day, national technical intelligence confirmed the location and description of the larger camp and showed the nearby presence of an official aircraft of the United Arab Emirates. But the location of Bin Ladin's quarters could not be pinned down so precisely.[154] The CIA did its best to answer a host of questions

about the larger camp and its residents and about Bin Ladin's daily schedule and routines to support military contingency planning. According to reporting from the tribals, Bin Ladin regularly went from his adjacent camp to the larger camp where he visited the Emiratis; the tribals expected him to be at the hunting camp for such a visit at least until midmorning on February 11.[155] Clarke wrote to Berger's deputy on February 10 that the military was then doing targeting work to hit the main camp with cruise missiles and should be in position to strike the following morning.[156] Speaker of the House Dennis Hastert appears to have been briefed on the situation.[157]

No strike was launched. By February 12 Bin Ladin had apparently moved on, and the immediate strike plans became moot.[158] According to CIA and Defense officials, policymakers were concerned about the danger that a strike would kill an Emirati prince or other senior officials who might be with Bin Ladin or close by. Clarke told us the strike was called off after consultations with Director Tenet because the intelligence was dubious, and it seemed to Clarke as if the CIA was presenting an option to attack America's best counterterrorism ally in the Gulf. The lead CIA official in the field, Gary Schroen, felt that the intelligence reporting in this case was very reliable; the Bin Ladin unit chief, "Mike," agreed. Schroen believes today that this was a lost opportunity to kill Bin Ladin before 9/11.[159]

Even after Bin Ladin's departure from the area, CIA officers hoped he might return, seeing the camp as a magnet that could draw him for as long as it was still set up. The military maintained readiness for another strike opportunity.[160] On March 7, 1999, Clarke called a UAE official to express his concerns about possible associations between Emirati officials and Bin Ladin. Clarke later wrote in a memorandum of this conversation that the call had been approved at an interagency meeting and cleared with the CIA.[161] When the former Bin Ladin unit chief found out about Clarke's call, he questioned CIA officials, who denied having given such a clearance.[162] Imagery confirmed that less than a week after Clarke's phone call the camp was hurriedly dismantled, and the site was deserted.[163] CIA officers, including Deputy Director for Operations Pavitt, were irate. "Mike" thought the dismantling of the camp erased a possible site for targeting Bin Ladin.[164]

The United Arab Emirates was becoming both a valued counterterrorism ally of the United States and a persistent counterterrorism problem. From 1999 through early 2001, the United States, and President Clinton personally, pressed the UAE, one of the Taliban's only travel and financial outlets to the outside world, to break off its ties and enforce sanctions, especially those relating to flights to and from Afghanistan.[165] These efforts achieved little before 9/11.

In July 1999, UAE Minister of State for Foreign Affairs Hamdan bin Zayid threatened to break relations with the Taliban over Bin Ladin.[166] The Taliban did not take him seriously, however. Bin Zayid later told an American diplo-

mat that the UAE valued its relations with the Taliban because the Afghan radicals offered a counterbalance to "Iranian dangers" in the region, but he also noted that the UAE did not want to upset the United States.[167]

Looking for New Partners

Although not all CIA officers had lost faith in the tribals' capabilities—many judged them to be good reporters—few believed they would carry out an ambush of Bin Ladin. The chief of the Counterterrorist Center compared relying on the tribals to playing the lottery.[168] He and his associates, supported by Clarke, pressed for developing a partnership with the Northern Alliance, even though doing so might bring the United States squarely behind one side in Afghanistan's long-running civil war.

The Northern Alliance was dominated by Tajiks and drew its strength mainly from the northern and eastern parts of Afghanistan. In contrast, Taliban members came principally from Afghanistan's most numerous ethnic group, the Pashtuns, who are concentrated in the southern part of the country, extending into the North-West Frontier and Baluchistan provinces of Pakistan.[169]

Because of the Taliban's behavior and its association with Pakistan, the Northern Alliance had been able at various times to obtain assistance from Russia, Iran, and India. The alliance's leader was Afghanistan's most renowned military commander, Ahmed Shah Massoud. Reflective and charismatic, he had been one of the true heroes of the war against the Soviets. But his bands had been charged with more than one massacre, and the Northern Alliance was widely thought to finance itself in part through trade in heroin. Nor had Massoud shown much aptitude for governing except as a ruthless warlord. Nevertheless, Tenet told us Massoud seemed the most interesting possible new ally against Bin Ladin.[170]

In February 1999, Tenet sought President Clinton's authorization to enlist Massoud and his forces as partners. In response to this request, the President signed the Memorandum of Notification whose language he personally altered. Tenet says he saw no significance in the President's changes. So far as he was concerned, it was the language of August 1998, expressing a preference for capture but accepting the possibility that Bin Ladin could not be brought out alive. "We were plowing the same ground," Tenet said.[171]

CIA officers described Massoud's reaction when he heard that the United States wanted him to capture and not kill Bin Ladin. One characterized Massoud's body language as "a wince." Schroen recalled Massoud's response as "You guys are crazy—you haven't changed a bit." In Schroen's opinion, the capture proviso inhibited Massoud and his forces from going after Bin Ladin but did not completely stop them.[172] The idea, however, was a long shot. Bin Ladin's usual base of activity was near Kandahar, far from the front lines of Taliban operations against the Northern Alliance.

TESTIMONY OF THE DEPARTMENT OF DEFENSE BEFORE THE HOUSE ARMED SERVICES COMMITTEE REGARDING THE DUBAI PORTS WORLD CFIUS CASE

Mr. Chairman, Members of the Committee.

Thank you for the opportunity to appear before you today to discuss the Department of Defense's role in the Committee on Foreign Investments in the United States (CFIUS) and our review of the Dubai Ports World (DPW) and Peninsular and Oriental Stream Navigation Company (P&O) transaction.

As a formal member of the CFIUS process, the Department of Defense weighs a number of factors when it considers any individual proposed foreign acquisition of a U.S. company.

First and foremost, our primary objective in this process is to ensure that any proposed transaction does not pose risks to U.S. national security interests. To do this, the Department of Defense reviews several aspects of the transaction, including:

The importance of the firm to the U.S. defense industrial base (e.g., is it a sole-source supplier, and, if so, what security and financial costs would be incurred in finding and /or qualifying a new supplier, if required?);

Is the company involved in the proliferation of sensitive technology or WMD?

Is the company to be acquired part of the critical infrastructure that the Defense Department depends upon to accomplish its mission;

Can any potential national security concerns posed by the transaction be eliminated by the application of risk mitigation measures, either under the Department's own regulations or through negotiation with the parties?

Regarding this specific CFIUS transaction, the Departments of Treasury, Commerce, and Homeland Security met with the legal representatives of DPW and P&O for CFIUS pre-filing notification consultations on October 31, 2005. On December 6, 2005, the companies held a pre-filing briefing for all CFIUS agencies. The Defense Technology Security Administration (DTSA) attended the meeting for DoD. On December 16, 2005, the Department of Treasury received an official CFIUS filing. On the same day, Treasury circulated the filing to all CFIUS member agencies for review and DTSA staffed the filing to sixteen other Department of Defense (DoD) elements or agencies for review and comment.

The review conducted by the Department of Defense on this transaction was neither cursory nor casual. Rather, it was in-depth and it was comprehensive. This transaction was staffed and reviewed within the DoD by 17 of our agencies or

major organizations. In this case, DoD agencies reviewed the filing for impact on critical technologies, the presence of any classified operations existing with the company being purchased, military transportation and logistics as well as other concerns this transaction might raise. During the review process (December 21, 2005 through January 6, 2006), DoD did not uncover national security concerns that warranted objecting to the transaction or requiring a 45-day investigation. Positions were approved by staff that ranged from staff-matter experts up to a Deputy Under Secretary of Defense, as appropriate to the office undertaking the review. All who were consulted arrived at the same position: "do not investigate further."

The DoD organizations that reviewed this and all other CFIUS transactions bring to bear a diverse set of subject matter expertise, responsibilities and perspectives. The organizations included, for example, the Office of the Under Secretary for Intelligence; the Office of the Under Secretary for Acquisition, Logistics, and Technology; the Military Departments (Army, Navy and Air Force); U.S. Transportation Command; the National Security Agency; and the Defense Intelligence Agency. The Army, for example, reviewed the case in the following manner: Army Materiel Command (AMC) Headquarters and Assistant Secretary of the Army for Acquisition, Logistics, and Technology (ASA(AL&T)) staff gave a preliminary review, immediately upon receipt of the case. AMC staffed the

filing to their subordinate readiness commands responsible for acquisition and logistics, including the Military Surface Deployment and Distribution Command (SDDC). For this case, the Army's review criteria included the question of assured shipping, and the Army's final position was "no objection."

The Defense Technology Security Administration, which reviews, coordinates and analyzes the recommendations from all the DoD components, as well as assessing export control and sensitive technology issues, ultimately "signed off" on the transaction for the Department. Therefore, we had a comprehensive and in-depth review of this transaction, and no issues were raised by any agencies or departments within the Department of Defense. We are comfortable with the decision that was made.

I do want to provide a perspective from the Department of Defense regarding our relationship with the United Arab Emirates and their support, as a friend and ally, in the Global War on Terrorism. In the War on Terrorism, the United States needs friends and allies around the world, and especially in the Middle East, to help in this struggle. A community of nations is necessary to win this Long War.

In our recently published Quadrennial Defense Review, we highlight that in conducting this fight to preserve the security of the American people and our way of life, it is important that we strengthen the bonds of friendship and security with our friends and allies around the world. We must have the authority and resources to build partnership capacity, achieve unity of effort, and adopt indirect approaches to act with and through others to defeat common enemies.

The United Arab Emirates is an outstanding example of the kind of partner critical to winning this Long War. Dubai was the first Middle Eastern entity to joint the Container Security Initiative – a multinational program to protect global trade from terrorism. It was also the first Middle Eastern entity to join the Department of Energy's Megaports Initiative, a program aimed at stopping illicit shipments of nuclear and other radioactive material. The UAE has also worked with us to stop terrorist financing and money laundering by freezing accounts, enacting aggressive anti-money laundering and counter-terrorist financing laws and regulations, and exchanging information on people and entities suspected of being involved in these activities.

As you may know, the UAE provides the United States and our coalition forces with important access to their territory and facilities. General Pace has

summed up our defense relationship by saying that "in everything that we have asked and work with them on, they have proven to be very, very solid partners."

The UAE provides excellent access to its seaports and airfields like al Dhafra Air Base, as well as overflight through UAE airspace and other logistical assistance. We have more Navy port visits in the UAE than any other port outside the United States. Last year, US Naval warships and Military Sealift Command ships spent over 1400 days in the ports of Dubai, Jebel Ali, Abu Dhabi and Fujairah. And, by the way, the port at Jebel Ali—which is the only carrier-capable port in the Gulf—is managed by DPW. Coalition partner ships also used the UAE ports last year. The U.S. Air Force has operated out of al Dhafra Air Base since the Gulf War in 1990. Today, al Dhafra is an important location for air refueling and aerial reconnaissance aircraft supporting operations in Iraq and Afghanistan.

And we should note that our most important commodity—our military men and women—are frequent visitors to the UAE on liberty or leave while deployed to the region. So we rely on the Emirates for our security in their country, and I appreciate and thank them for that.

Our close military-to-military relationship with the UAE also includes the use of the UAE Air Warfare Center, established in January 2004, where our pilots train with pilots from countries across the Middle East.

Finally, the United Arab Emirates have been very supportive of our efforts in Iraq and Afghanistan. They have provided military and operational support to OPERATION ENDURING FREEDOM in Afghanistan and financial and humanitarian aid to Afghanistan and its people. The UAE has provided monetary and material support to the Iraqi government, including a pledge of $215M in economic and reconstruction assistance.

Mr. Chairman, this concludes my formal statement. I would be happy to answer any further questions you may have regarding this subject.

Page	Translation AFGP-2002-603856
1	American document numbers
2	In the Name of Allah the Most Compassionate and Merciful Number (blank) Date 14/ May/June/2002 **Al-Jihad Qaida's** [TC: Qaida: also means base in Arabic] {Get the idolaters out of Arab Island} [TC: Gulf Countries] To: Officials in the United Arab Emirates and especially the two emirates of Abu-Dhabi and Dubai: We have come to know definitely that the Emirate country is committing acts of injustice against the striving youth of the Emirates and others who sympathize with us in order to appease the Americans' wishes which include: spying, persecution, and detainments. The United Emirates authorities have recently detained a number of Mujahideen and handed them over to suppressive organizations in their country in addition to having a number of them still in its custody. Undoubtedly, these practices bring the country into a fighting ring in which it cannot endure or escape from its consequences especially since the Emirates' social composition is the most productive, and very explosive. You are well aware that we have infiltrated your security, censorship, and monetary agencies along with other agencies that should not be mentioned. Therefore, we warn of the continuation of practicing such policies, which do not serve your interests and will only cost you many problems that will place you in an embarrassing state before your citizens. In addition, it will prove your agencies' immobility and failure. Also, we are confident that you are fully aware that your agencies will not get to the same high level of your American Lords. Furthermore, your intelligence will not be cleverer than theirs, and your censorship capabilities are not worth much against what they have reached. In spite of all this Allah has granted us success to get even with them and harm them. However, you are an easier target than them; your homeland is exposed to us. There are many vital interests that will hurt you if we decided to harm them, especially, since you relyon shameless tourism in your economical income!! Finally, our policies are not to operate in your homeland and/or tamper with your security because we are occupied with others which we consider are enemies of this nation. If you compel us to do so, we are prepared to postpone our program for a short period and allocate some time for you. Therefore, we ask you to release all the Mujahideen detainees since September

بسم الله الرحمن الرحيم

الرقم _____ التاريخ 14 / ربيع الأول / 1423هـ

قاعدة الجهاد

{ أخرجوا المشركين من جزيرة العرب }

إلى المسؤولين في دولة الإمارات العربية المتحدة وخاصةً إمارتي أبو ظبي ودبي:

فقد نمى إلى علمنا بشكلٍ قطعي أن دولة الإمارات تمارس في حق الشباب الإماراتي المجاهد وغيرهم من المتعاطفين معنا ما يرضي رغبات الأمريكان من تجسسٍ وملاحقةٍ واعتقال ، حيث قامت السلطات الإماراتية في الفترة الأخيرة باعتقال عددٍ من المجاهدين وتسليمهم للأنظمة القمعية في بلادهم ، ولا زالت تحتفظ في سجونها بعدد آخر منهم، ومما لا شك فيه فإن هذه الممارسات تُدخل الدولة في حلبة صراع لا تستطيع تحمله والخلاص من تبعاته ، خاصة وأن تركيبة المجتمع الإماراتي من أخصب التركيبات الصالحة للعمل والقابلة للانفجار .

وأنتم تعلمون جيداً أننا مخترقون لأجهزتكم الأمنية والرقابية والمصرفية ومخترقون لأجهزة أخرى ليس المجال مجال ذكر لها .

لذا فإننا نحذركم من الاستمرار في مثل هذه السياسة التي لا تخدمكم ولا تخدم مصالحكم لأنها ستجر عليكم كثيراً من المشاكل والتي ستوقعكم في حرج كبير أمام شعبكم وتثبت عجزكم وفشل أجهزتكم ، وأننا على يقين أنكم تعلمون حق العلم أن أجهزتكم لن ترقى إلى أجهزة أسيادكم من الأمريكان، واستخباراتكم لن تكون أذكى من استخباراتهم، وإمكانياتكم الرقابية لا تساوي شيئاً أمام ما وصلوا إليه ومع ذلك فقد وقفنا الله تعالى للنيل منهم وإيذائهم .

أما أنتم فأسهل علينا منهم وأرضكم مكشوفة لنا وهناك الكثير من المصالح الحيوية سيؤلمكم النيل منها لو عزمنا على القيام بعملٍ ضدها خاصة وأنتم تعتمدون على السياحة الماجنة في دخلكم الاقتصادي !!

أخيراً : فإن سياستنا ليست العمل في أرضكم والعبث في أمنكم لأننا مشغولون بغيركم ممن نعتقد أنهم أعداء هذه الأمة ، أما إذا اضطررتمونا لذلك فإننا مستعدون لتأجيل برنامجنا لفترةٍ بسيطة والتفرغ لكم .

وعليه فإننا نطالبكم بإطلاق سراح جميع المعتقلين من المجاهدين منذ أحداث سبتمبر وكل من أعتقل شبهة بصلته بهذه الأحداث ، وإلا فإننا سنضطر غير آسفين بتغير سياستنا تجاهكم .

تنظيم قاعدة الجهاد

QUESTIONS AND ANSWERS SUBMITTED FOR THE RECORD

MARCH 2, 2006

QUESTIONS SUBMITTED BY MR. SKELTON

Mr. SKELTON. I request of you to produce to our committee any documents relating to the deliberation and decision making process for this port deal, and this includes correspondence, minutes of any CFIUS meetings, statements or summaries of fact, and written decisions. All right, Mr. Lowery?

Secretary LOWERY. [The information referred to is propietary information and retained in the committee files.]

QUESTIONS SUBMITTED BY MR. LOBIONDO

Mr. LOBIONDO. But with government involvement, that is where our—we can't separate some of these issues because with Israel as our most reliable partner in that part of the world, some of us view that if there is, in fact, a boycott, that something like the deal we are talking about is in effect ending up subsidizing a boycott, and that is where we have got a serious problem and where this is coming down. You probably can't answer if it were one of the conditions after the 45 days that there not be anything like a boycott, how you would react to that condition, but that will certainly be one of the questions that we will be asking.

Mr. BILKEY. [The information referred to was unavailable at the time of printing.]

QUESTIONS SUBMITTED BY MR. SPRATT

Mr. SPRATT. We had a statistic given to us earlier today that there were 80 Customs inspectors for monitoring the compliance of 5,800 importers, and that there were only 20 Coast Guard inspectors to monitor the international shipping port facilities code. Is that correct, 20 inspectors to monitor the worldwide international code?

Admiral GILMOUR. All 63 billets assigned to the International Port Security Program are involved in monitoring the security of international ports/facilities; however, the primary responsibility for physically visiting foreign countries resides with the two Coast Guard Area Commanders who determine the appropriate number of personnel to conduct the visits.

Below is the unit allocation of the 63 billets assigned to the International Port Security Program:

Headquarters: 9
Atlantic Area (Portsmouth, VA): 23
Atlantic Area (Activities Europe): 12
Pacific Area (Alameda, CA): 7
Pacific Area (Activities Far East and Maritime Inspection Detachment Singapore): 12

QUESTIONS SUBMITTED BY MR. ANDREWS

Mr. ANDREWS. Okay. Here is what I am going to ask you to do. I would ask the Department to supplement on the written record whether it acknowledges or disclaims the basis of the Chairman's question about the 2003 transaction of the triggers which could be used in a nuclear weapon; whether the Department acknowledges that, in fact, took place over the protest of the United States or whether it did not. Could you do that for us?

Mr. MISENHEIMER. [The information referred to was unavailable at the time of printing.]