

# DHS DOESN'T WANT TO SCAN SHIPPING CONTAINERS

In 2007, Congress passed the 9/11 Act mandating the government implement the remaining recommendations of the 9/11 Commission. As part of this, they required that, by 2012, all shipping containers be scanned before they get to the United States. Only, DHS is balking at this, calling it unachievable. So GAO did a study of efforts to scan shipping containers to see whether DHS really knows whether it is achievable or not. The study shows that DHS has basically refused to even figure out whether 100% scans is feasible, and instead plans on just granting all ports a waiver from this law.

Basically, DHS is refusing to follow the law because it doesn't want globalized trade to pay for the costs of making such trade secure.

As a reminder, the 9/11 Commission recommended scanning all shipping containers for WMDs (really, nukes, since they're not doing chemical or biological scans). But scans would be valuable, as well, for hindering the importation of other things—drugs, arms, and people. Basically, scanning shipping containers would address one of the security risks of globalized trade that all sorts of illicit groups are currently exploiting. It would be asking importers to pay the full cost of importing foreign goods.

But no one wants to do this. GAO describes the complaints about the mandate to screen shipping containers.

Both DHS and CBP, as well as foreign governments and customs organizations, have expressed serious concerns regarding the feasibility and efficacy of the 100 percent scanning requirement. In April 2009, the Acting Commissioner for CBP testified that much had been

done to enhance the security of cargo containers relative to other modes of transportation, and added that the area of maritime security should not be overemphasized to the detriment of other transportation modes. He also emphasized that the threat of a significant nuclear weapon in a container remains remote and requested that the scanning requirement be thoughtfully reconsidered by Congress. In January 2009, the Secretary of the Department of Homeland Security also stated that any requirement regarding container scanning from Congress must be achievable and affordable and noted that the July 2012 deadline for 100 percent container scanning appeared to be unattainable. In April 2009, the Secretary determined that CBP would focus deployment of the SFI program to foreign locations of strategic importance in a way that will maximize security benefits given its limited resources. In addition to DHS' concerns that the requirement to scan all U.S.-bound cargo containers cannot be met, foreign governments and customs organizations have expressed their opposition to the requirement. For example, in June 2008, members of the WCO unanimously endorsed a resolution expressing concern that implementation of 100 percent scanning would be detrimental to world trade and could result in unreasonable delays, port congestion, and international trading difficulties.<sup>10</sup> Similarly, in May 2008, the European Parliament issued a resolution calling for the United States to repeal the 100 percent scanning requirement.

Now, the GAO explains a number of real impediments to scanning all shipping containers at other ports: governments at those ports don't want to do the scans, the scan technology is not

yet robust or effective enough to work well. And, of particular concern, there are safety concerns for drivers that drive the shipping containers through scanners.

And thus far, the federal government has paid most of the costs of the scanning—to the tune of over \$100 million. In effect, the federal government is paying to ensure the security of outsourcing production overseas. Other governments have threatened to impose scanning requirements at US ports if required to scan at their own ports. And other governments have complained that this law was imposed unilaterally.

So there are real challenges to scanning all shipping containers coming to the US. But rather than figuring out how to solve these challenges, DHS has basically decided to implement different, selective checks on shipping containers. It has basically decided it won't implement the law, but will instead give blanket extensions to all ports.

DHS officials told us that the department had made a decision to grant a blanket extension to all foreign ports rather than on a port-by-port basis since some of the conditions listed in the 9/11 Act as a basis for granting extensions can be applied systemically to all ports. Specifically, DHS believes the last two conditions—that the use of the equipment would significantly impact trade capacity and the flow of cargo, and that scanning equipment does not adequately provide automatic notification of an anomaly in a container—could apply to all foreign ports and, thus, warrant the use of a blanket extension because two conditions are sufficient to justify an extension under the statute.

Now, GAO concludes that DHS should actually do some studies to see whether following the law is

feasible. And DHS has agreed to do some of this, though it also claims incomplete reports it has already done are enough.

But the bottom line is this. After 9/11 the government did what it took to not only test everyone's laptop and shoes for risk. But it also checks our behavior as we board airplanes. DHS checks each and every passenger that boards an airplane (and has gotten other countries to not only check its own in-bound passengers, but also get biometrics on non-US persons). But it refuses to do the same for the cheap shit Walmart is importing from China.