

## A different theory for 100 percent container scanning

A look at the chief problems with the current model for 100 percent container



**Dr. Jim Giermanski, Powers International**

*SecurityInfoWatch.com, December 2007*

By now most of us have read more than we need to about the issue of 100% scanning, but this is one more attempt to shed more light than heat on the subject, and how this political issue can be addressed to satisfy almost all of us. Understanding the purpose of 100% scanning is probably the best place to start, and understanding that there is a problem will follow.

### Why Scan All Containers?

The common sense answer is to find out if there are any weapons of mass destruction (WMD) contained in an inbound container set to detonate in the United States. Conceptually, it simply makes sense to do so. The other reasoning is that Congress legislated it and the president signed the legislation. The requirements to scan containers were contained in the SAFE Port Act signed into law in October 2006, and the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Commission Act of 2007), signed into law in August 2007. The SAFE Port Act says this about scanning at U.S. seaports:

*"SCANNING CONTAINERS.-Subject to section 1318 of title 19, United States Code, not later than December 31, 2007, all containers entering the United States through the 22 ports through which the greatest volume of containers enter the United States by vessel shall be scanned for radiation. To the extent practicable, the Secretary shall deploy next generation radiation detection technology." (Section 121).*

Additionally, the Act says that scanning must detect "shielded and unshielded nuclear and radiological material" (Section 231).

The new 9/11 Commission Act of 2007 goes further by amending the SAFE Port Act to say:

*"IN GENERAL.-A container that was loaded on a vessel in a foreign port shall not enter the United States (either directly or via a foreign port) unless the container was scanned by nonintrusive imaging equipment and radiation detection equipment at a foreign port before it was loaded on a vessel also mandate scanning." (Section 1701)*

## **Now the Problems**

### **Problem One**

There are four basic problems. The first is that we, as a nation, cannot or should not mandate another nation to provide the means for or perform the scanning of containers in their ports inbound to the United States. There is a clear question of sovereignty and a foreign nation's right to decide what steps to take within its sovereign territory. The EU's Taxation Commissioner, Laszlo Kovacs said 100% scanning would not only not improve security but cost EU exporters. Further, even introducing U.S. legislation of this type puts the resource burden of protecting the United States on its trading partners (International Herald Tribune, Aug. 2, 2007). The UE commission is already examining whether these U.S. laws breach World Trade Organization (WTO) and World Customs Organization (WCO) rules (FT.com Europe, August 2007). Even Ralph Basham, the U.S. Commissioner of Customs and Border Protection (CBP) said on July 11, 2007, in a speech to the Center for Strategic and International Studies, that 100% scanning is "fundamentally flawed" and "just does not make sense" because it would impede the flow of commerce. Supporting commissioner Basham's position are Christopher Koch, president of the World Shipping Council (WSC), and Janet F. Kavinoky, Director of Transportation Infrastructure for the U.S. Chamber of Commerce (Florida Shipper, August 27, 2007).

The WSC detailed their objections as follows:

1. Failure to define who is to perform container scanning;
2. Failure to define who is to purchase, operate and maintain the technology;
3. Failure to address health and safety issues;
4. Failure to seek or obtain necessary cooperation of other governments;
5. Failure to "practice what you preach"-no reciprocity;
6. Failure to define the scanning requirement; and
7. Failure to address scanning analysis responsibility (American Shipper, September 2007)

### **Problem Two**

The second problem is that both the Safe Port Act and the 9/11 Commission Act of 2007 contain a fatal flaw, the use of the word, "at." The SAFE Port Act contains 20 references to scanning containers but only two need to be used to demonstrate where the scanning is to take place. The SAFE Port Act which codified the Container Security Initiative, revealed the following:

*"...scanning, and inspection protocols and technologies utilized at designated seaports and the effect on the flow of commerce at such seaports, as well as any recommendations for improving the effectiveness of screening, scanning, and inspection protocols and technologies utilized at designated seaports." (Section 205)*

And with respect to scanning at U.S. domestic ports:

*"SCREENING OF CARGO CONTAINERS.-The Secretary shall ensure that 100 percent of the cargo containers originating outside the United States and unloaded at a United States seaport undergo a screening to identify high-risk containers.*

*(2) SCANNING OF HIGH-RISK CONTAINERS.-The Secretary shall ensure that 100 percent of the containers that have been identified as high-risk under paragraph (1), or through other means, are scanned or searched before such containers leave a United States seaport facility. (Section 232)*

The 9/11 Commission Act of 2007 focused on foreign ports:

*"IN GENERAL.-A container that was loaded on a vessel in a foreign port shall not enter the United States (either directly or via a foreign port) unless the container was scanned by nonintrusive imaging equipment and radiation detection equipment at a foreign port before it was loaded on a vessel also mandate scanning. (Section 1701)*

So why is the use of "at" so bad? For all of us outside of Congress who know something about international transportation and global supply chain security, the port is the worst and last place to find out about WMD, if one really finds out about it. We need to find out about it long before it gets to our trading partners' ports because they cannot risk an explosion in one of their major seaports anymore than we in our seaports.

### **Problem Three**

The third problem is that these portal scanning machines used to detect shielded radiation do not exist, and Congress knew that they did not exist when the legislation was drafted. In referencing the requirement to scan at foreign ports, the 9/11 Commission Act of 2007 reflects the following with respect to its application:

*"...shall apply with respect to containers loaded on a vessel in a foreign country on or after the earlier of--(A) July 1, 2012; or (B) such other date as may be established by the Secretary under paragraph (3)." (Section 1701)*

At the present time U.S. ports utilize PVT portal machines that are very good at detecting radiation from materials such as ceramic tile but not highly enriched uranium or shielded uranium. Therefore, Congress is expecting that new portal machines will be developed and commercialized to detect dangerous radiation. These new machines, called Advanced Spectroscopic Portals (ASP), have not been yet developed. The GAO -- in April of 2007 (GAO-07-347R, Combat Nuclear Smuggling) -- stated very clearly that the Domestic

Nuclear Detection Office (DNDO) established and responsible for ASP development has not even collected all the testing data on its basic PVT portal detectors and is not close to any developed ASP portal detector. Experts don't expect a commercial version of the ASP anytime soon, if ever. Congress knew the technology didn't exist. We do not have the machines now, and we won't likely have them in 5 years (in 2012). Therefore, Congress allowed for an extension until such time that these radiation portal detection machines become available.

The obvious question is: "How is that helping our security?" The follow-on question is: "Why did Congress limit scanning to seaports only with these non-existent machines?" I can say with absolute certainty that certain members of the respective House and Senate Homeland Security committees knew that this part of the legislation was inadequate, because I have electronic evidence demonstrating that I informed them how the scanning for shielded radiation can be done now without new portal-machine technology by simply using in-container technology and systems. With the use of in-container systems that can detect and report WMD, one can learn the container's risk factor long before it gets to any seaport. In fact, using in-container sensors and communication platforms allows us to detect shielded enriched uranium today (American Shipper, October, 2006, p.2-4), to reduce lines and the time it takes waiting to drive through portal machines that don't exist for WMD anyway. This would even reduce the time it takes today driving through portal x-ray machines at our seaports and land ports.

#### **Problem Four**

The fourth problem is clear and easily documented. Both laws have failed to designate land ports-of-entry as critical infrastructure. Neither these nor any other U.S. laws designate land ports as critical. Therefore, no funding is available under the critical infrastructure umbrella and they are not included in the concept of ports outlined in the SAFE Port Act and the 9/11 Commission Act of 2007. Congress has also clearly failed to consider the criticality of land ports and the risks and vulnerabilities these ports host as brought to the attention of the Congressional homeland security committees early in 2007 prior to creating the 9/11 Commission Act of 2007 (Homeland Defense Journal, February 2007).

#### **A Simple Solution**

Actually, the fix is simple. With respect to the use of "at" seaports, Congress merely has to amend the Acts to allow for the alternative use of in-container systems of detection and reporting. With respect to land ports-of-entry as critical infrastructure, the fix is just as clear: Amend the Acts to include land ports! These amendments seem not only legislatively simple and doable, but also seem smart.

#### **Conclusion**

It seems that these amendments would be favored not only by our trading partners, and worldwide Customs authorities, but also by industry itself that has more to gain than lose

by adopting "existing" in-container systems. In addition to collected WMD intelligence, in-container systems that begin at origin and end at destination provide not only greater security with respect to unauthorized container access, they can be used by the private sector and government alike to improve risk assessments, provide electronic evidence for transshipment verifications, better logistics control, knowledge of product locations within the global supply chain, and ultimately for industry, a verifiable financial savings brought about by CBP special treatment (Green Lanes) that accelerate container movement through traditionally cluttered seaports and land ports. Finally, they are smart alternatives that serve the goals of Congress to help keep us safe. The current scanning requirement fails to do so.

**About the author:** Dr. Jim Giermanski is director of the Centre for Global Commerce at Belmont Abbey College and chairman of Powers International Inc., an international transportation security company.