

LEGISLATION PROPOSED for Introduction into and passage by the U.S. Senate and House of Representatives
Calendar No. _____

110TH CONGRESS
2ND SESSION

HR. _____

IN THE UNITED STATES HOUSE OF REPRESENTATIVES

July 17, 2008

A BILL

To advance and protect the national security of the people of the United States of America through increased security at and control over points of entry into the United States at the nation's seaports, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Seaport Security Act of 2008".

SECTION 2. FINDINGS OF CONGRESS

WHEREAS, the regulation of international commerce is a responsibility entrusted to the United States Congress by Article I, Section 8, Clause 1,3:of the United States Constitution, and

WHEREAS, America's seaports are a unique responsibility of the United States Government as ports of entry into the United States, where access and entry into the United States needs to be governed by the Federal Government exclusively, and

WHEREAS, more stringent requirements are justified for ownership, management, operation, and employment of and in ports of entry into the United States, and

WHEREAS, seaports comprise part of the international border of the nation as eloquently explained recently by Senator Ernest Hollings, and

WHEREAS, disruption of the channels of international commerce and disruption of the U.S. economy from the effects of terrorism could directly threaten the prosperity and economic strength of the United States of America, and ultimately the ability of the nation to defend itself and safeguard its citizens, and

WHEREAS, through the terrorist attacks carried out by Al Qaeda against the United States on September 11, 2001, terrorist organizations intentionally targeted the economy of the United States along with the symbols of America's identity, and

WHEREAS, as a consequence of the shut-down of the aviation system of the nation in the week following the terrorist attacks of September 11, 2001, and the resulting economic disruption and recession, the United States suffered economic losses estimated to have cost the nation between \$500 billion and \$1 trillion, and

WHEREAS, foreign ownership of U.S. seaports and infrastructure is not necessary for the free and open trade of products on international markets, and

WHEREAS, the cost of doing business for private firms engaged in international commerce necessarily includes all the actual costs of shipping, transporting, processing, and handling products imported into and exported from the United States, often in competition with similar products manufactured by U.S. factories, and

WHEREAS, if the United States Government subsidizes the importation of foreign products into the United States by paying for some of the costs of shipping and processing out of the U.S. Treasury, the United States Government directly undercuts U.S. manufacturers, harms the economy of the nation, and costs American workers jobs, and

WHEREAS, to the extent that the United States Government pays some of the costs of private firms importing foreign products, the price of foreign products is artificially reduced and inaccurately made to appear lower than the price of domestically produced U.S. products, and

WHEREAS, the United States Government incurs very substantial costs related to security as a direct consequence of the desire of private business to import foreign products into the United States for private benefit, and

WHEREAS, the Congress has determined that notwithstanding any agreements or protocols of trade, these security safeguards are necessary for the national security of the United States in an era of anti-Western terrorism, after the experience of deadly terrorism inside the United States on 9/11, 2001.

SECTION 3. IMPROVING SEAPORT SECURITY

THEREFORE, BE IT ENACTED, that --

- (a) No foreign government, nor any corporation or other entity owned or controlled by any foreign government, directly or indirectly, may own, operate, or manage any “facility at a port of entry.”
- (b) Every person acting as a manager or supervisor of any “facility at a port of entry” or acting as a manager of any business or organization operating any “facility at a port of entry” is hereby required to be a United States citizen.
 - (i) Every person performing any work at or in any “facility at a port of entry” is hereby required to be a United States citizen or alternatively a lawful permanent resident authorized to work in the United States (in common terms, the holder of a valid “green card”).
 - (ii) No worker shall be eligible to work at or in any “facility at a port of entry” under (b)(i) above who holds dual citizenship and/or the right to vote in any other country.
 - (iii) To the extent that a worker’s authorization to work in the United States is based upon the sponsorship of any employer, a worker shall be ineligible under (b)(i) above unless said employer is a business headquartered and based in the United States of America.
 - (iv) A worker may not qualify under (b)(i) above using an “L” visa, that is an intra-company transfer between branches of a foreign company from a foreign country to a branch inside the United States of America.
- (d) Every owner, manager, and/or operator of every “facility at a port of entry” as a business or government institution is required to be a United States citizen if a natural person.

- (e)
 - (i) Every owner, manager, and/or operator of every “facility at a port of entry” as a business if a corporation or similar entity is required to be owned by United States citizens, directly or indirectly.
 - (ii) Alternatively, if an owner, manager, or operator of a “facility at a port of entry” is a corporation whose shares trade freely on any public stock exchange, all of the Board of Directors and corporate officers of the corporation shall be U.S. citizens, or the corporation shall not own, manage or operate any “facility at a port of entry.” However, no restriction is created by this Section upon the public trading or ownership of the corporation’s stock; and the corporation shall not be accountable hereunder for private purchases and sales of its stock on the open markets.
- (f)
 - (i) No person who is not a United States citizen may participate in any planning activity or process concerning the security arrangements for ports of entry into the United States or concerning security or inspection of cargo entering the United States or concerning techniques used to identify risks relating to cargo or persons entering the United States.
 - (ii) No government agency, whether Federal, State, or local or any port authority, may share information concerning said security arrangements with any person who is not a United States citizen.
 - (iii) However, nothing in this paragraph shall be deemed to limit the sharing of information which is knowingly made public by the relevant agency or authority or the sharing of information which is not deemed confidential by the relevant agency or authority
 - (iv) Nothing in this paragraph shall be deemed to limit the dissemination of directives or instructions issued to workers, managers, or companies concerning their responsibilities or directing the implementation of any security-related plans. Such dissemination shall be limited with due regard for the sensitivity of higher-level planning and information about security techniques and arrangements.
 - (v) Nothing in this paragraph shall be deemed to limit consultation and/or coordination with foreign governments or foreign agencies or foreign

companies but only to the extent necessary to effectively plan and carry out security arrangements for entry of persons and cargo into the United States. Nevertheless, security arrangements and plans for ports of entry and for the clearance of cargo into the United States shall be maintained confidential to the extent possible and practical.

(vi) The Department of Homeland Security shall promulgate rules governing the confidentiality of security arrangements implementing the principle that security arrangements cannot succeed if those who might seek to evade U.S. security techniques, plans, or arrangements actively participate in planning or implementing those security arrangements.

- (g) No person who has been actually convicted by any court of industrial or other espionage (by whatever label called); participation in organized crime; or of trafficking in, selling, or dealing in illegal drugs or of possession with the intent to sell may work at or in any “facility at a port of entry.” Possession alone shall not trigger the requirement of this paragraph. Nothing in this paragraph shall be deemed to authorize a worker as eligible who would otherwise be ineligible under any Federal, State, or local law, regulation, directive, or policy or under any contractual requirement or management decision. Where a person has been convicted by a foreign court, such person may petition the Secretary of Homeland Security for a waiver on the grounds that the foreign court did not provide due process and substantial justice and/or retaliated against a political dissident, whistleblower, or the like.

SECTION 4. COSTS OF SECURITY AT PORTS OF ENTRY

- (a) All costs of providing security for the importation of cargo into the United States, including screening, inspecting, modeling, analyzing, and intercepting cargo for the protection of United States citizens, residents, property, and interests, shall be borne as a cost of doing business by those private businesses who choose to import foreign products into the United States..
- (b) Costs of providing security addressed in (a) above shall include the costs of achieving by 2012 actual inspection of at least one-third of all shipping containers, cartons, or other containers of freight or cargo entering the United

States, whether by opening and visually and physically inspecting the contents or using any superior techniques that may emerge in the nature of sonograms or other methods of seeing inside closed containers.

- (c) Each year, the Secretary of Homeland Security shall determine the full cost of providing security arrangements which are made necessary by the importation of cargo into the United States, as further described in (a) above, and shall calculate users' fees for the next year, which will apportion those costs equally among all importers of cargo. The Secretary of Homeland Security shall set user's fees most likely to fund all security arrangements and activities related to and/or caused by the importation of foreign goods by importers.
- (d) Every person, business, or entity importing products into the United States for the purpose of resale shall pay the security user's fees set by the Secretary of Homeland Security as a condition of being permitted entry of the products into the United States.
- (e) Nothing in this Section is intended to apply to the transportation of personal property, household goods, personal effects, contents of luggage, consumer electronics, souvenirs, art, or the like already owned or being purchased by any individual or family and brought into the country for their personal use as the end-user.

SECTION 5. DEFINITIONS

- (a) As used in this title, the term 'port of entry' means any location, structure, seaport, bridge, border crossing, gate, or any station or office for the clearance of recreational boat traffic, whether large or small, formal or informal, whether or not staffed only part-time, through which persons, vehicles, or freight enter the United States of America from any foreign country or from international waters or international airspace. "Port of entry" also includes only that portion of any airport where persons or freight actually enter the United States and are processed to permit or deny entry, but not other portions of an airport. Nothing in this title is intended to alter the staffing, management, or operation of the United States Department of

Homeland Security or of any State or local law government agency with regard to those areas of the national border or coastline where entry may be occurring which is not authorized by the United States Government. For the purposes of this title, “port of entry” only refers to where freight actually enters the United States physically, not ports which are deemed to be an “entry” for customs purposes after freight passes through one or more previous ports and moves within the United States.

- (b) As used in this title, a “facility at a port of entry” includes any facility, structure, location, or equipment used for handling, moving, transporting, inspecting, loading, unloading, or storing freight within or connected to a ‘port of entry,’ including any pier, dock, anchorage, structure, crane, equipment, warehouse, customs bonded warehouse, cargo-handling equipment, cargo storage area. Furthermore, a “facility at a port of entry” also includes any facility, structure, or location used by passengers or other persons when entering the United States or waiting to enter.
- (c) As used in this title, the term ‘seaport’ means all piers, wharves, docks, and similar structures to which a vessel may be secured, areas of land, water, or land and water under and in immediate proximity to such structures, and buildings on or contiguous to such structures, and the equipment and materials on such structures or in such buildings.
- (d) For the purposes of this title, a corporation is considered owned by a foreign government if a foreign government owns directly or indirectly 25% or more of the shares of stock of the corporation, or if any member of the Board of Directors or any corporate officer is an official of the foreign government or a national of the foreign country or is under any contractual or legal obligation to follow the directions, desires, or orders of the foreign government, or is under any coercion or pressure upon family members residing in the foreign country, threat, blackmail, or extortion.

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