

## Customs Law Advisory

August 31, 2007

### One Hundred Percent Scanning of Import Containers Now Required by US Law

As of August 2007, US import law now requires 100% of all containers bound for the United States to be scanned. However, the law does not require full compliance for five years. Critics have predicted that this law would significantly delay shipments and increase import costs. Companies that rely on tight shipment schedules and/or cost structures, or those with any stake in the flow of imports into the United States, should closely monitor the details surrounding implementation of 100% scanning. Such companies should develop a strategy to advise the officials at the Department of Homeland Security (DHS) and US Customs and Border Protection (CBP) on the shape of the real-world requirements that should go into effect.

On August 3, President Bush signed the [Implementing Recommendations of the 9/11 Commission Act of 2007](#). Under section 1701 of the new law, all US-bound containers must be "scanned by nonintrusive imaging equipment and radiation detection equipment" before being loaded on a vessel in a foreign port. The law states that 100% scanning must commence by July 1, 2012. However, the Secretary of Homeland Security may extend the implementation deadline indefinitely, in two-year increments and for any number of foreign ports, for a variety of reasons. Section 1701 also states that, if the Secretary has not established an interim rule by October 15, 2008, all containers will have to comply with the container sealing standards in [ISO/PAS 17712:2006](#).

The 100% scanning measure was strongly supported by many members of Congress [who argued](#) that it was essential to national security. Citing the successful scanning program already in place in Hong Kong, Representative Jerrold Nadler (D-NY) [contended](#) 100% scanning was technologically feasible, would not cause delays, and could be implemented at manageable expense.

Before passage of the new law, reservations about 100% scanning were expressed from several sources. In June, the American Association of Exporters and Importers, the US Chamber of Commerce, the World Shipping Council and several other industry associations<sup>1</sup> all criticized the 100% scanning proposal, arguing it did not address what would be done with scanning data, who would review such data, and who would bear the cost of the purchase and operation of scanning equipment. In a [July 2007 speech](#), CBP Commissioner W. Ralph Basham argued that 100% scanning is "fundamentally flawed," and that such scanning would result in "lower profits and higher transportation costs for US importers" and do "serious damage" to the US economy. In [remarks later in July](#), DHS Secretary Michael Chertoff stated that Congressional proposals to "fully examine the contents of every piece of cargo...would bring commerce to a screeching halt."

Now that 100% scanning has become law, the administration has begun considering implementation. In his [signing statement](#), President Bush stated that he will "continue to work with Congress to ensure the workability of the cargo screening provisions in a way that increases our vigilance on homeland security while ensuring the continuance of vital commerce." Meanwhile, Congress has continued to address the issue, with Senators Lieberman (I-CT) and Akaka (D-HI) and Representatives Thompson (D-MS) and Langevin (D-RI) [asking](#) Secretary Chertoff to carefully consider the cost-effectiveness of radiation monitors to be installed in foreign ports.

Clearly, DHS and CBP will have difficult choices to make in the coming months regarding how and when to implement 100% scanning. Due to the long lead time provided in the law, companies with interests in the processing of imports into the United States should look for opportunities to comment and shape the ultimate requirements.

If you have any questions on US import procedures, please contact Greg McCue (<http://www.steptoel.com/professionals-294.html>) at [gmccue@steptoel.com](mailto:gmccue@steptoel.com) or 202.429.6421.

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<sup>1</sup> [The US Business Alliance for Customs Modernization, the Joint Industry Group, the National Brokers & Forwarders Association of America, Inc., the National Industrial Transportation League, the Retail Industry Leaders Association](#). For similar reasons, [the National Retail Federation also opposed the measure](#).

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