June 2, 2014

The Honorable Jeh Johnson
Secretary of Homeland Security
Washington, D.C. 20528

Dear Mr. Secretary:

On behalf of the undersigned organizations representing United States manufacturers, farmers, wholesalers, retailers, importers, distributors, and transportation and logistics providers, we are writing in strong support of your May 5 letter to Congress renewing, for another two years, the extension of the deadline for implementation of 100% scanning of U.S. bound maritime cargo containers. The current risk-based strategy employed by the Department is the right approach to enhance global supply chain security. We also strongly believe that Congress needs to repeal the mandate and focus on practical supply chain security solutions.

The statutory provision calling for 100% container scanning has always been, and remains, impractical and does not actually improve security. If implemented, this provision would have a significantly negative impact on global commerce and cause significant conflict with the governments of our foreign trading partners, many of which have stated their opposition to the requirement previously.

U.S. Customs and Border Protection (CBP), working with the support of U.S. importers, exporters, and ocean carriers, has developed an impressive and effective risk-based strategy to screen all containerized cargo shipments bound for the United States and inspect those that are found to be high risk. Unlike the 100% scanning mandate, this strategy does not impair the efficiency of the global supply chain. The risk-based strategy enables CBP to use state of the art screening systems and scanning technology to identify and thoroughly inspect any and all containers that it finds to be high risk or that warrant a closer examination. This strategy is fully embraced by industry as well as our foreign trading partners and has proven to be highly effective.

The statutory provisions mandating 100% container scanning fail to address a host of questions, including:

1. The statute does not define what "scanned" means. For example, does scan mean simply taking a reading or image of a given container, or does it also require an analysis of the reading or image to determine if the container may be released or held for further inspection?
2. Without such analysis, the "scan" would be pointless, yet the statute is silent on this point, as well as the key question of who is to perform such analysis. What resources would CBP's National Targeting Center require to analyze scans taken of the 10-plus million maritime cargo containers that are bound for the United States each year?
3. What are the standards for the applicable scanning technology?
4. Who is to pay for the capital cost of the scanning equipment?
5. Who is to operate, maintain and monitor the equipment? Who is to pay for the operation and maintenance of the equipment?
6. What protocols are to be used in the foreign ports when a container is scanned?

7. What is the role of the Customs and other relevant governmental authorities in all those nations around the world that ship goods to the United States?
8. Does DHS have the consent of these foreign governments to such a mandatory regime?
9. What would the United States' response be if and when foreign governments insist on a reciprocal or "mirror image" requirement that all U.S. containerized exports be scanned?

Congress was made aware of all these questions when it considered this statute, and it did not answer them. It passed a statute that it knew was wholly impractical, which is why it included the provisions allowing the Secretary of the Department to waive the 100% scanning requirement every two years. As required by the SAFE Port Act, CBP conducted a series of pilot programs in an attempt to address these and other questions. The results of the pilot programs showed the impracticality of achieving 100% scanning in the maritime environment.

Your waiver was sound as a matter of policy and is, in fact, the only action you could take without imperiling international commerce and the U.S. economy. We fully support your waiver; however, instead of going through this exercise every two years, we urge you and the Administration to recommend to the Congress that the statutory 100% container scanning requirement be repealed. That would be the most appropriate way to address this flawed provision and allow the Department, industry and our trading partners to focus on real solutions to address any security gaps that remain in the global supply chain. You would have our full support for such a proposal.

Sincerely,

Agricultural Retailers Association
Agriculture Transportation Coalition - AgTC
Airforwarders Association
Airlines for America
American Apparel & Footwear Association (AAFA)
American Association of Exporters and Importers
American Association of Port Authorities
American Import Shippers Association
American Meat Institute
American Pyrotechnics Association
American Trucking Associations
ASIS International
Association of Global Automakers, Inc.
Auto Care Association
Border Trade Alliance
Business Alliance for Customs Modernization
CAWA - Representing the Automotive Parts Industry
Coalition of New England Companies for Trade - CONECT
Columbia River Customs Brokers and Forwarders Association
Cookware Manufacturers Association
Craft and Hobby Association
Customs Brokers and Forwarders Association of Northern California
Customs Brokers and International Freight Forwarders of Washington State
Distilled Spirits Council of the United States, Inc.
Express Association of America

Fashion Accessories Shippers Association (FASA)
Footwear Distributors & Retailers of America (FDRA)
Halloween Industry Association
Institute of Makers of Explosives
Intermodal Association of North America
International Wood Products Association
Juvenile Product Manufacturers Association
Los Angeles Customs Brokers and Freight Forwarders Association
Meat Importers Council of America, Inc.
Motor & Equipment Manufacturers Association
NASSTRAC, Inc.
National Association of Beverage Importers
National Association of Chemical Distributors
National Association of Manufacturers
National Association of Waterfront Employers
National Chicken Council
National Customs Brokers and Forwarders Association of America (NCBFAA)
National Grain and Feed Association
National Oilseed Processors Association
National Retail Federation
National Turkey Federation
National Wooden Pallet & Container Association
North American Export Grain Association
North American Meat Association
North American Shippers Association, Inc.
Outdoor Industry Association
Pacific Coast Council of Customs Brokers and Freight Forwarders Associations, Inc. – The PCC
Pacific Northwest Asia Shippers Association
Retail Industry Leaders Association
San Diego Customs Brokers Association
Society of Chemical Manufacturers and Affiliates (SOCMA)
Sports & Fitness Industry Association
TechAmerica
The Bicycle Product Suppliers Association
The National Industrial Transportation League
Toy Industry Association
Transportation Intermediaries Association
Travel Goods Association (TGA)
U.S. Chamber of Commerce
U.S. Hide, Skin and Leather Association
US Council for International Business
US Fashion Industry Association
USA Poultry & Egg Export Council
Wine & Spirits Wholesalers of America
World Shipping Council

CC: The Honorable Gil Kerlikowske, Commissioner, U.S. Customs and Border Protection
The Honorable Tom Carper, Chairman, Senate Committee on Homeland Security and Governmental Affairs

The Honorable Tom Coburn, Ranking Member, Senate Committee on Homeland Security and Governmental Affairs
The Honorable Michael McCaul, Chairman, House Committee on Homeland Security
The Honorable Bennie Thompson, Ranking Member, House Committee on Homeland Security
The Honorable Ron Wyden, Chairman, Senate Finance Committee
The Honorable Orrin Hatch, Ranking Member, Senate Finance Committee
The Honorable David Camp, Chairman, House Ways & Means Committee
The Honorable Sander Levin, Ranking Member, House Ways & Means Committee