

Washington Continues to Focus on

# Maritime Security Issues Large and Small

By Joan M. Bondareff and Drew Dyer

As summer temperatures soar to ridiculous highs, work in Washington resumes on a wide variety of measures impacting maritime security. Congress has returned from the July 4 district work period and removed a major roadblock to finishing work on an important security measure, the 9/11 Commission Act, and is also about to present the President with a bill to establish new rules for mergers and acquisitions of U.S. companies, including maritime companies, by foreign-owned entities. At the same time, the Coast Guard is taking a closer look at the community of recreational boaters and the impact of unregistered small boats on maritime security while at the same time issuing a long-awaited final Navigation and Vessel Inspection Circular (NVIC) concerning the implementation of its Transportation Worker Identification Credential (TWIC) program. The heat, however, has apparently delayed implementation of the long-awaited plan to roll-out TWIC at 10 U.S. ports, starting with the Port of Wilmington, Delaware.

## 9/11 Commission Act

Established by Congress following the September 11, 2001, attacks at the World Trade Center and Pentagon, the 9/11 Commission was created in response to a large hue and cry from

families of victims of 9/11. Ever since the Commission issued its report, Congress and the Administration have been attempting to implement its numerous recommendations. One of the promises made by Speaker Nancy Pelosi when the Democrats took over the leadership of the 110th Congress was to enact the remaining recommendations of the 9/11 Commission. The House passed its version of the 9/11 bill (H.R. 1) on January 9, 2007, by a vote of 299-128, and the Senate soon followed by passing its bill (S. 4) on March 13, 2007, by a vote of 60-38. Both versions contained several important maritime provisions, described below.

Both the House and Senate bills initially included provisions allowing airport screeners who work for the Transportation Security Administration (TSA) to engage in collective bargaining. However, when the Senate Republicans — acting at the behest of the Administration — blocked the naming of conferees, the Democrats agreed to strike the provision. A remaining major sticking point in the House-

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Senate Conference is how to screen the 11 million cargo containers that come into the U.S. every year. The House bill contains language requiring inspection of all containers entering the U.S. from foreign ports within five years. The Senate rejected an amendment offered by Senators Schumer and Menendez that would have required 100% inspection of all cargo containers entering the U.S. within three years. Shippers and manufacturers lobbied hard against the Schumer-Menendez amendment on the grounds that the required technology would be too expensive and its use would impede commerce and trade. As a fall-

back, Senator Menendez secured approval for an amendment calling on the Department of Homeland Security (DHS) to develop a plan to move towards 100% inspection of all containers in three years. The 9/11 conferees agreed on July 19, 2007, to require that all containers entering the U.S. be scanned by July 1, 2012, but the Secretary of Homeland Security could extend the deadline if the scanning equipment did not meet certain require-



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ments. The House-passed FY 2008 Homeland Security Appropriations Bill increased the President's budget request for port security grants to \$400 million in line with last year's authorization level in the SAFE-Port Act. The Senate-reported bill contains a similar allocation. These funds can be used by ports to implement the new TWIC rules, below.

## Reform of the CFIUS Process by Congress is Complete

In response to last year's public and political outcry over the proposal by Dubai Ports World to acquire an owner-

## Maritime Security: A View from the Hill



Experts, including **Senator Frank Lautenberg** (far left), estimate that TSA has already spent close to \$100 million on prototyping and developing the (TWIC) card while issuing fewer than 2000 cards to date. The Senate rejected an amendment offered by Senators **Charles Schumer** (D-NY) (second from left) and Menendez that would have required 100% inspection of all cargo containers entering the U.S. within three years. Shippers and manufacturers lobbied hard against the Schumer-Menendez amendment on the grounds that the required technology would be too expensive and its use would impede commerce and trade. **Congresswoman Nancy Pelosi** (third from left) attends U.S. Coast Guard Cutter PIKE Commissioning Ceremony. One of the promises made by Speaker Nancy Pelosi when the Democrats took over the leadership of the 110th Congress was to enact the remaining recommendations of the 9/11 Commission. The Senate Commerce Committee held an oversight hearing on the TWIC roll-out plan in April, at which both Chairman Inouye and Ranking Member Stevens expressed concern with the TSA Administrator for failing to meet Congressional deadlines, and another oversight hearing, this time held by the House Coast Guard and Maritime Transportation Subcommittee and chaired by **Congressman Elijah E. Cummings** (D-MD) (far right), took place on July 12, 2007.

ship interest in six major U.S. port facilities, Congress has been examining the question of reforming the little-known interagency committee that initially signed off on this proposal. The committee, called the Committee on Foreign Investment in the United States, or CFIUS, is chaired by the Secretary of the Treasury. Final passage of a bill to reform the CFIUS process is expected this week. H.R. 556 codifies the CFIUS process, directs when the President and Director of National Intelligence must be involved in the review of a "covered transaction," and, finally, requires the Committee to report to Congress on a regular basis. A "covered transaction" means any merger, acquisition, or takeover that is proposed or pending after August 23, 1988, by or with any foreign person which could result in foreign control of any person engaged in interstate commerce in the United States. We expect the President to sign the bill into law.

**Whither TWIC?**

The TWIC program was first authorized in 2001, then mandated for all maritime workers in the Marine Transportation Security Act of 2002 (MTSA). While the MTSA did not impose a deadline for implementation of TWIC, eventually, in the SAFE-Port Act of 2006, Congress directed TSA to roll-out the TWIC card at the 10 ports of highest risk by July 1, 2007. Approximately 770,000 maritime workers will be required to obtain TWIC cards before the deadline of September 25, 2008. TSA has not, as of this date, been able to meet any of the Congressional deadlines, including its own plan to roll-out the first TWIC program at the Port of Wilmington, Delaware.

Further testing of computer equipment appears to be further delaying the roll-out of TWIC and TSA officials now estimate that the roll-out will not commence until the fall. Experts, including Senator Lautenberg, estimate that TSA has already spent close to \$100 million on prototyping and developing the card while issuing fewer than 2000 cards to date. As a result of these extensive delays, Congress is quickly losing patience with TSA and DHS officials. The Senate Commerce Committee held an oversight hearing on the TWIC roll-out plan in April, at which both Chairman Inouye and Ranking Member Stevens expressed concern with the TSA Administrator for failing to meet Congressional deadlines, and another oversight hearing, this time held by the House Coast Guard and Maritime Transportation Subcommittee and chaired by Congressman Cummings (D-MD), took place on July 12, 2007. Chairman Cummings announced at the July 12th hearing that there would be a follow-up hearing in 90 days to review progress.

In the meantime, TSA and the Coast Guard issued a final rule governing the TWIC program, while deferring until 2008 — and for a future rulemaking - a requirement for ports and vessels to have biometric card readers. The Coast Guard also, on July 2, 2007, issued the final version of NVIC No. 03-07 (first released in January), which governs the implementation of the TWIC program in the maritime sector. The NVIC contains: (1) a detailed description of the TWIC enrollment and issuance process; (2) guidance on how vessels and facilities can comply with the TWIC regulation; and (3) guidance explaining the Coast Guard's enforcement methodology. Members of the maritime industry should carefully review this NVIC in order to prepare for the looming compliance dates: September

25, 2008 for vessels and facilities, although implementation at facilities may occur sooner, as the Coast Guard is phasing in earlier compliance deadlines on a COTP- zone basis. Hopefully, the roll-out to all U.S. ports will be completed by then.

**Coast Guard Interest in Small Boats?**

Now that the Coast Guard has developed programs to secure large vessels and ports and OCS facilities, might

the agency start looking at recreational and other small boats? Some initial reports indicate this might well be the case. At a recent National Small Vessel Security Summit in Washington, DC, Secretary Chertoff asked participants to work with DHS on a plan for securing all small vessels of less than 300 gross tons, citing the U.S.S. Cole incident as an example where a small boat can do tremendous damage. Stay tuned for further updates on this question.



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