U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

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August 1, 2008

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Coast Guard and Maritime Transportation

FROM: Subcommittee on Coast Guard and Maritime Transportation Staff

SUBJECT: Hearing on "Port Development and the Environment at the Ports of Los Angeles and Long Beach"

PURPOSE OF HEARING

The Subcommittee on Coast Guard and Maritime Transportation will meet on August 4, 2008, to examine the efforts of the Ports of Los Angeles and Long Beach to meet infrastructure needs, including through the assessment of a container fee that will be applied to containers passing through the port and then expended on projects intended to improve infrastructure in and around the port areas.

The Subcommittee will also consider the ports' efforts to reduce emissions from port-related activities, including from trucks that provide drayage services at the ports as well as from vessels in transit to and from the ports. Specifically, the hearing will examine the ports' adoption of the San Pedro Bay Ports Clean Air Action Plan, including the Plan's "Clean Trucks" program. Under the Clean Trucks program, the Ports of Los Angeles and Long Beach plan to assess a fee on each container loaded in the port to generate the funding necessary to replace the entire fleet of trucks providing drayage services at the ports with clean trucks meeting 2007 federal emissions standards.

BACKGROUND

Overview of the Ports of Los Angeles and Long Beach (LA/LB)

The Ports of Los Angeles and Long Beach are adjacent port facilities located on San Pedro Bay in southern California. Together, they constitute the fifth busiest port complex in the world, moving some $260 billion in total trade, including handling 15.7 million 20-foot containers (commonly referred to as twenty-foot equivalent units or TEUs) in 2007 (approximately 40 percent

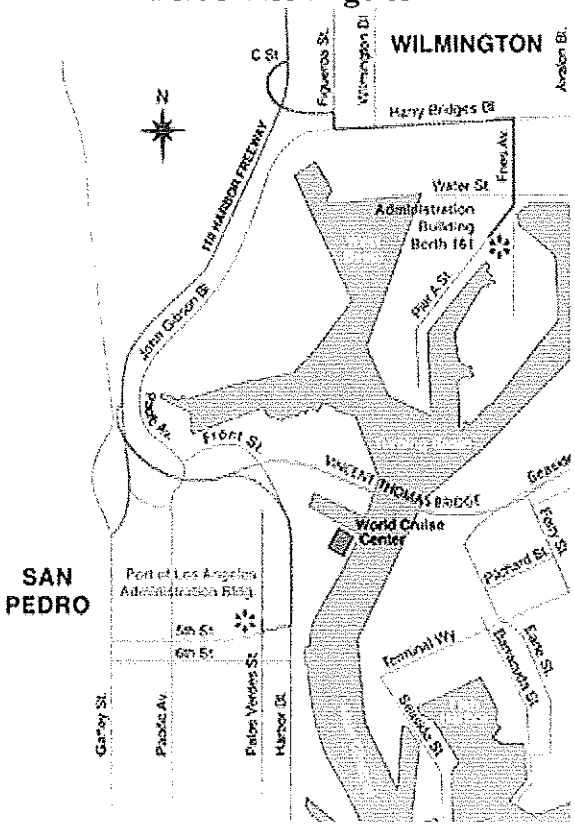
of all the containers entering the United States). In 2007, the Ports of Los Angeles and Long Beach received 5,881 vessel calls – a decline of 3 percent in total vessel calls under the previous year.[1]

The Port of Los Angeles

The Port of Los Angeles is the busiest seaport in the United States. Its port facilities cover approximately 7,500 acres along 43 miles of waterfront property; these facilities employ approximately 16,000 people. The Port of Los Angeles is a department of the City of Los Angeles; it is managed by an executive director and administered by a five-member Board of Harbor Commissioners.

In calendar year 2007, the Port of Los Angeles handled 8.4 million TEU containers – which was a slight decline below the port's container traffic in 2006. In fiscal year 2007, the port handled a total of 190.1 million metric revenue tons of cargo, of which 171.9 million metric tons was general cargo.

Port of Los Angeles

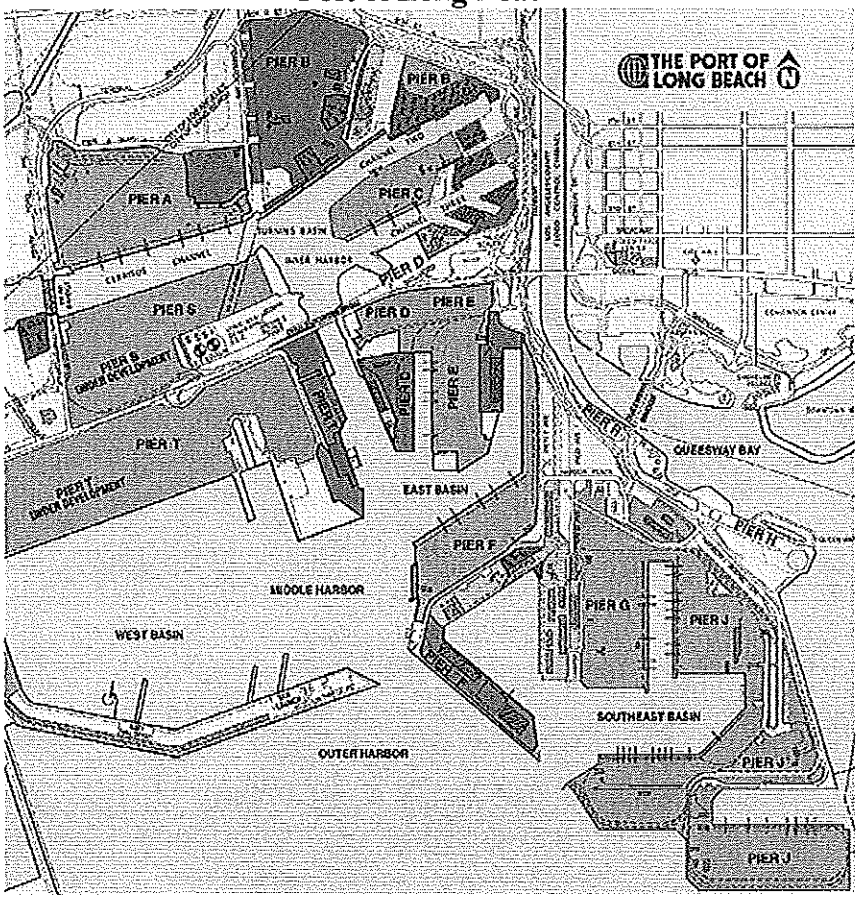


[1] Chris Phillips, "Regional Report: Los Angeles and Long Beach," *Pacific Maritime Magazine*, June 2008.

The Port of Long Beach

The Port of Long Beach is the second busiest port in the United States. It encompasses 10 piers located on more than 3,000 acres of land. In 2007, the port handled more than 7.31 million TEU containers and a total of 87 million metric tons of cargo valued at $140 billion. The Port of Long Beach is managed by the Long Beach Harbor Department, part of the city of Long Beach. The Harbor Department is managed by a five-member Board of Harbor Commissioners.

Port of Long Beach



Container Fees

The Ports of Los Angeles and Long Beach have identified extensive infrastructure needs in and around the port facilities, including the Gerald Desmond Bridge Replacement, the SR-47 Expressway, the Navy Way/Seaside Avenue Interchange, the South Wilmington Grade Separation,

the I-110 Connectors Program, and the development of an on-dock rail system. In an effort to generate revenue to support the development of this infrastructure, the Ports of Los Angeles and Long Beach have approved an "infrastructure cargo" fee that will be applied to containers moving through the ports. Additionally, the State of California is considering legislation to create a container fee at the Ports of Los Angeles, Long Beach, and Oakland which would support infrastructure projects as well as projects intended to mitigate the environmental impacts of port operations. These fees are described in more detail below.

Ports of Los Angeles and Long Beach Infrastructure Fees

Beginning January 1, 2009, the ports of Los Angeles and Long Beach will each assess an "infrastructure cargo" fee on containers moving through the ports to support. The fees approved by ports are expected to be $15 per 20-foot TEU in 2009 – but the fees can fluctuate based on the funding needs of infrastructure projects in progress. A fact sheet authored by the Port of Los Angeles anticipates that the fee will grow to $18 in 2010 and 2011 but could fall to $14 in 2012. The fee is expected to raise approximately $1.4 billion to support designated infrastructure projects.

California State Container Fee

California is considering legislation that would create a State-imposed container fee. According to an analysis of SB 974 as amended on July 14, 2008 (Senate third reading) produced by the California Assembly, the legislation would require the Ports of Los Angeles, Long Beach, and Oakland to begin collecting a container fee of up to $30 per 20-foot TEU by January 1, 2009. The analysis indicates that 50 percent of the funds generated through this fee would be utilized to fund projects that would contribute to congestion relief and improve the flow of containerized cargo, while the other half of the funding would be utilized to fund projects that mitigate air pollution created by the movement of cargo through the ports. SB 974 also authorizes the ports that collect these fees to bond against the fees collected to finance the projects for which the funds are authorized to be expended. The analysis of SB 974 indicates that the container fees collected by the Ports of Los Angeles and Long Beach will generate approximately $100 million in 2008 to 2009 – and will generate approximately $340 million annually in each year after 2009.

In its analysis of SB 974, the Assembly notes that critics have suggested that imposition of the container fee the legislation would create may violate the Commerce Clause of the United States Constitution. The Commerce Clause, found in Article I, Section 8, reads in part:

> The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;
>
> To borrow money on the credit of the United States;
>
> To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.

Regarding this issue, the Assembly analysis of SB 974 states that a 2005 opinion provided by the Assembly's Legislative Counsel concluded "it is our opinion that a court faced with the question would find that the charge proposed is a valid regulatory fee imposed under the police power of the state, as long as the amount of the charge assessed does not exceed the reasonable cost of providing the services described, and that amount bears a reasonable relationship to the burdens created by the marine terminal operators."

As of July 22, 2008, SB 974 had passed the California Assembly and awaited final action by the California Senate.

In their report "Cargo on the Move Through California: Evaluating Container Fee Impacts on Port Choice," dated July 28, 2006, Dr. James Corbett, Dr. James Winebrake, and Erin Green argue that imposition of a container fee of up to $30 per TEU would increase voyage costs to these ports by between 1.5 percent and 2.5 percent on average, resulting in ship diversions of less than 1.5 percent.

Air Emissions at the Ports of Los Angeles and Long Beach

Ships are a major source of polluting air emissions in California – and the port complex of Los Angeles/Long Beach is the largest single source of polluting air emissions in southern California. According to the South Coast Air Quality Management District (SCAQMD), ships generate 70 percent of the sulfur dioxide emissions in that management district. The SCAQMD also reports that ships traveling along the southern California coast generate more emissions of nitrogen oxides than are emitted from all of the power plants and refineries in that area combined.

Further, the shipping lanes that ships traverse to reach the ports of Los Angeles and Long Beach bring them close to the coasts of Ventura and Santa Barbara counties – causing significant air pollution in these counties. The Santa Barbara Air Pollution Control District estimates that ships are the sources of more than 40 percent of all nitrogen oxides generated in that county.

The trucks that serve the Ports of Los Angeles and Long Beach are also a significant source of polluting emissions. According to one source, approximately 10 percent of total emissions from the port complex and port-related activities come from trucks[2]. However, according to the California Air Resources Board (CARB), the particulate matter released from diesel is the greatest single threat to public health – and 66 percent of diesel particulate matter released as part of port-related activities originates from trucks. CARB indicates that in California, diesel particulate matter accounts for up to 70 percent of the cancer risk associated with air pollution.

San Pedro Bay Ports Clean Air Action Plan

Together, the Ports of Los Angeles and Long Beach have adopted a plan to reduce polluting air emissions at the ports called the San Pedro Bay Ports Clean Air Action Plan. Full implementation of the plan's components is expected to require the combined expenditure of billions of dollars from all participating sources, including the ports, the State of California, and industries that work in and around the ports of Los Angeles and Long Beach. The plan's

[2] Jon Haveman and Christopher Thornberg, "Clean Trucks Program: An Economic Policy Analysis" Beacon Economics, February 2008.

components are expected to cut emissions of particulate matter from port-related sources by 47 percent within five years. The plan will also reduce emissions of nitrogen oxides by 12,000 tons per year and reduce emissions of sulfur oxides by 8,900 tons per year.

The specific components of the plan include the following:

- Requiring the use of clean diesel trucks at the ports (the "Clean Truck" initiative).
- Requiring the use of low sulfur fuels during transits close to the ports and requiring reductions in transit speeds – and providing shore-side electricity to vessels docked at ports (so that they do not have to idle their engines to generate electricity).
- Replacing or retrofitting cargo-handling equipment to meet stricter air emissions standards.
- Requiring the use of cleaner locomotives in the port complexes, including requiring the use of cleaner fuels and equipment that treats the exhaust produced by locomotives.

Several of these plan elements are discussed in more detail below.

Clean Truck Programs

The San Pedro Bay Ports Clean Air Action Plan includes as one of its centerpieces the implementation by the Port of Los Angeles and the Port of Long Beach of Clean Truck programs, which are intended to reduce the air pollution emitted by trucks used in port properties by more than 80 percent below current emissions levels. The programs will achieve these reductions by replacing (or retrofitting) as many as 16,000 trucks by the year 2012.

The Clean Truck programs developed by each of the Ports of Los Angeles and Long Beach are described in more detail below. The two plans are similar – but not identical – and individual trucking companies wishing to carry cargo in each port must enter into a separate concession agreement with each port.

Port of Los Angeles Clean Truck Program

Under the terms of the Clean Truck program adopted by the Port of Los Angeles, beginning October 1, 2008, trucks built before 1989 will be forbidden from entering the Port of Los Angeles. Beginning January 1, 2010, trucks built before 1993 will be banned from the port together with all trucks built between 1994 and 2003 that have not been retrofitted with emissions control technologies. Beginning January 1, 2012, any truck not in compliance with the 2007 Federal Clean Truck Emissions Standard will be forbidden from entering the port.

Only Licensed Motor Carriers (LMC) who have "direct control over employee drivers" will be eligible to receive a concession agreement from the Port of Los Angeles – though the employment requirements will be phased in between 2008 and 2012 (for example, 20 percent of an LMC's drivers must be employees of the LMC by the end of 2009). Individual truck owner-operators that are not LMCs will not be eligible to receive concessions at the Port of Los Angeles – but they will be eligible to operate at the port until the employment requirement is fully phased in to effect.

LMCs will be required to pay $2,500 for a five-year concession; they will also be required to pay an annual fee of $100 for each truck they operate. Concessionaires must meet specified safety and security standards and hold required licenses and insurance policies.

Concessionaires will be eligible to receive grants from the Port of Los Angeles Clean Truck Fund (described below) to cover up to 80 percent of the cost of purchasing a 2007 standard diesel truck or a truck that runs on LNG. Concessionaries purchasing a 2007 diesel truck with funding from the Clean Truck Fund must turn in an old truck to be scrapped. Further, only trucks sold by vendors authorized to participate in the Clean Truck Program will be eligible to be purchased through the assistance provided to concessionaires.

Entities that do not receive funding for the purchase of a new truck will be eligible to receive $5,000 for every truck built prior to 1989 that they turn in for scrapping. Additionally, certain older trucks will be eligible to receive funding to cover the installation of equipment that will make emissions compliant with the 2007 emissions standards.

Beginning October 1, 2008, the Port of Los Angeles will collect a "clean truck fee" of $35 from cargo owners for each 20-foot TEU loaded in the port; this fee will not apply to cargo moving on a train or cargo moved from one terminal to another terminal within the port complex. The fee will be collected until 2012, when the entire fleet of trucks serving the Port of Los Angeles will be required to meet 2007 emissions standards. The funds collected from this fee will be deposited in a Clean Truck Fund and will be used to assist LMCs in purchasing clean trucks. Trucks privately funded by LMCs that meet the requirements of the Clean Truck program will be exempted from the container fee.

According to data issued by the Port of Los Angeles, there are approximately 1,000 LMCs currently coordinating the drayage provided by 17,000 owner-operator truckers in the Port of Los Angeles. The Port states that this is "a financially unstable, inefficient system that perpetuates the use of cheap, high-polluting and poorly maintained trucks." The Clean Truck Program seeks to remedy this problem by instituting a concession plan that "establishes a contractual relationship between the Port and the licensed motor carriers to provide drayage services under guidelines meeting the Port's business objectives." The Port of Los Angeles claims that this will benefit truck drivers by "freeing drivers from the burden of purchasing and maintaining the trucks they drive."

Port of Long Beach Clean Truck Program

The Port of Long Beach's Clean Trucks Program specifies that trucks of model year 1988 and older will be banned from the Port of Long Beach beginning October 1, 2008. Beginning January 1, 2010, trucks of model year 1993 and older will be forbidden from serving the Port of Long Beach – together with trucks from model years 1994 through 2003 that have not been retrofitted with emissions control technology. Beginning January 1, 2012, any truck not meeting the model year 2007 federal truck emission standard will be forbidden from serving the Port of Long Beach.

Under the Port of Long Beach's Clean Truck program, only LMCs holding concessions issued by the Port of Long Beach will be able to provide drayage services at that port. However, unlike at the Port of Los Angeles, at the Port of Long Beach, LMCs holding a concession agreement

will be allowed to dispatch either employee-operators or owner-operators to serve the Port of Long Beach. Owner-operator truck drivers serving the port will be required to enter their truck in the Port Drayage Truck Registry.

LMCs seeking a concession will be required to pay an application fee of $250 for a concession lasting 5 years; they will also be required to pay a fee of $100 per year for each truck they operate at the port. Concession sign-up begins at the Port of Long Beach on July 28, 2008.

Concessionaire employees and owner-operators dispatched by concessionaires will be offered financial assistance through two different programs to assist them in purchasing clean trucks. Concessionaires can participate in a lease-to-own program, through which they can trade in an old truck and make monthly payments ranging between $500 and $600 for the lease of a new diesel truck or make monthly payments ranging between $500 and $1000 for the lease of a new LNG-powered truck. These leases will last for seven years. At the end of the lease period, concessionaires will be eligible to purchase their leased truck by paying half of the remaining cost of the truck. Conversely, concessionaires can trade in an old truck and receive a grant that will cover up to 80 percent of the purchase cost of a new clean truck.

Like the Port of Los Angeles, the Port of Long Beach will begin collecting a $35 fee for each 20-foot TEU ($70 per 40-foot TEU) loaded in the port. The fee will not be applied to containers that move through the port by train. These container fees will be collected in a fund that will be utilized to pay for concessionaires' lease-to-own program and truck purchase grants.

Containers carried on privately financed LNG-powered trucks will not be charged a container fee. Containers carried on privately financed diesel-powered trucks will pay half the standard container fee. However, if the privately financed clean truck enters service after October 1, 2008, the truck's owner must provide proof that a truck that did not meet the 2007 federal emissions standards has been removed from service.

Potential Economic Impact of the Clean Truck Programs

The Port of Los Angeles and the Port of Long Beach have commissioned several different studies of the potential economic impacts of their Clean Truck Programs. Most of the studies conclude that implementation of the Clean Truck Programs will raise drayage costs by some amount (though the predicted increases vary widely) and that some containers could be diverted from the Ports of Los Angeles and Long Beach. Importantly, the studies suggest that the actual increase in drayage costs will result from an equation that will involve some increased costs (such as the increased costs of labor when all drivers serving the Port of Los Angeles become employees and increased truck maintenance costs) balanced by reduced costs in other of the factors contributing to drayage costs (including efficiencies predicted in dispatching through the management of the drayage process that is expected to be provided by LMCs and increased fuel efficiency).

In his "Economic Analysis of Proposed Clean Truck Program," Dr. John Husing found that drayage rates could increase by as much as 80 percent at the Ports of Los Angeles and Long Beach. He also found that there are between 800 and 1,200 LMCs currently serving the port – but that 85 percent or more of the actual drivers are owner-operators.

In a report dated September 27, 2007, prepared for the Ports of Los Angeles and Long Beach by Moffat & Nichol and BST Associates, the authors examined the Husing report and found that some of the drayage cost increases Husing identified were likely due to the implementation of the Transportation Workers Identification Credential (TWIC) and that if these increases were excluded, "the increase in trucking costs *relative to trucking costs at other ports* is actually closer to 40 percent." They attributed much of this increase to increases in labor costs that will be created when drivers become employees of LMCs. The authors of this report suggest that no more than 193,000 TEUs will actually be diverted from the Ports of Los Angeles and Long Beach due to the Clean Trucks Programs.

A February 2008 report by Jon Haveman and Christopher Thornberg with Beacon Economics entitled "Clean Trucks Program: An Economic Policy Analysis" projects the likely increase in drayage costs at the Ports of Los Angeles and Long Beach will be between 20 percent and 25 percent. Haveman and Thornberg also found that trucks 10 years old or older provide more than half of the truck miles of drayage service at the ports. They also argue strongly that consolidating drayage services through LMCs that hold concessions will improve the efficiency of trucking operations through the ports – which will contribute some of the savings in the equation that will yield the final increase in drayage rates.

Interestingly, in a report made to the Los Angeles Harbor Board of Commissioners on March 6, 2008, the Boston Consulting Group suggested that if – as has happened – the Ports of Los Angeles and Long Beach adopted different Clean Truck programs, "there is a risk that volume of containers and supply of truckers could divert from Los Angeles to Long Beach" [sic.].

Federal Maritime Commission's Role in Reviewing the Clean Truck Programs

The Federal Maritime Commission (FMC) is an independent regulatory agency responsible for enforcing U.S. shipping laws. The FMC reviews agreements made by ports, liner services, and other maritime entities – many of which enjoy some immunity from anti-trust provisions – to assess their compliance with U.S. law, including whether they may result in an unreasonable increase in transportation costs or a decrease in transportation services. Under the Shipping Act of 1984, agreements filed with the FMC are allowed to go into effect unless challenged by the FMC in court. Once agreements filed with the FMC take effect however, any party affected by them can file a challenge with the FMC – which can then initiate an investigation of the agreement that has been challenged.

Section 40301 of Title 46, United States Code, requires that all agreements between or among marine terminal operators be filed with the FMC if they are intended to "discuss, fix, or regulate rates or other conditions of service" or if they are created to "engage in exclusive, preferential, or cooperative working arrangements, to the extent the agreement involves ocean transportation in the foreign commerce of the United States." Additionally, Title 46 forbids certain conduct by marine terminal operators. For example, section 41106 states that marine terminal operators may not "give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any person" and may not "unreasonably refuse to deal or negotiate."

On June 13, 2008, the FMC announced that it had concluded its review of the Los Angeles/Long Beach Port/Terminal Operator Administration and Implementation Agreement (AIA). In its announcement, the FMC noted that the AIA under review did not provide sufficient detail regarding how the Clean Trucks Program will be administered. As a result, the FMC determined "that there was no basis at this time to determine that the AIA is likely to result in an unreasonable increase in transportation costs or decrease in transportation services." The FMC instructed that the parties to the AIA "need to immediately file with the Commission all substantive aspects of the Clean Truck Programs" so that a determination of the programs' impacts on costs and service levels could be made. Even if the FMC allows the AIA to go into implementation, the Commission may investigate the actions of the marine terminal operators at the Ports of Los Angeles and Long Beach and penalize them if violations of Sections 40301 or 41106 of Title 46 are found.

Lawsuit Challenging Clean Truck Programs

On July 28, 2008, the American Trucking Associations (ATA) filed a complaint for declaratory judgment and injunctive relief in the U.S. District Court for the Central District of California against the Board of Harbor Commissioners of the City of Los Angeles, the Board of Harbor Commissioners of the City of Long Beach, the cities of Los Angeles and Long Beach, and the Harbor Department of the City of Long Beach. The ATA alleges that the concession plans approved by the Ports of Los Angeles and Long Beach would "unlawfully re-regulate the federally-deregulated trucking industry and, effective October 1, 2008 bar more than one thousand licensed motor carriers from continuing to enter and service routes in interstate commerce directly to and from the ports of San Pedro Bay."

The suit alleges that the Ports of Los Angeles and Long Beach have violated the Federal Aviation Administration Authorization Act, P.L. 103-305, which states that a "State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier." The suit further alleges that the concession plans impose unreasonable burdens on interstate commerce under the Commerce Clause of the U.S. Constitution and 49 U.S.C. §14504a.

Importantly, the ATA lawsuit challenges only the concessions portion of the Clean Truck programs. The suit does not challenge the schedule for banning older trucks from the ports.

Reducing Emissions from Ships

In 2006, the Port of Long Beach initiated its Vessel Speed Reduction Program, which offered vessels a 15 percent reduction in their dockage fees if they slow their speed to 12 knots or less within 20 miles of the port.

On July 1, 2008, the ports announced that they were initiating another incentive plan intended to reduce emissions from ships transiting the California coast line near the Ports of Los Angeles and Long Beach. Under this plan, the ports have offered to pay ships that switch to low-sulfur fuel within 40 nautical miles of the ports the difference in cost between this fuel and regular

bunker fuel, which is typically high in sulfur. On July 10, 2008, the ports announced that 13 shipping lines had enrolled their ships in this program.

Regulations promulgated by the CARB took effect in 2007 requiring that ships sailing within 24 miles of the California coast use fuel in their auxiliary engines (which are used to generate the electricity that powers systems on board vessels) containing less than 1,000 parts per million of sulfur. These regulations were written specifically to limit polluting air emissions. In February 2008, the U.S. Court of Appeals for the Ninth Circuit ruled that California could not issue such regulations without first receiving a waiver from the Environmental Protection Agency from current federal law.

In July 2008, CARB approved a new regulation requiring that ships use lower sulfur fuel in both their auxiliary and main engines within 24 miles of the California coast line. The regulations phase in reductions in allowable sulfur content between 2009 and 2012, when fuel with no more than 1,000 parts per million of sulfur will be allowed to be used. This regulation has been written to specify allowable fuels – rather than to limit emissions. The CARB estimates that enactment of this regulation would reduce the emissions from ships of particulate matter by 15 tons per day

Internationally, air emissions from ships are governed by the International Convention for the Prevention of Pollution from Ships (MARPOL), Annex VI. This Annex limits the sulfur content of fuel to 4.5 percent, limits nitrogen oxide emissions from new engines, and prohibits the intentional release of ozone depleting emissions. The *Maritime Pollution Prevention Act,* H.R. 802, which brings U.S. laws into compliance with the provisions of Annex VI, passed the Senate on June 26, 2008 and passed the House of Representatives on July 8, 2008. The measure was signed by the President on July 21, 2008, becoming Public Law 110-280.

PREVIOUS COMMITTEE ACTION

The Subcommittee on Coast Guard and Maritime Transportation previously held hearings on April 15, 2008, and on June 19, 2008, to examine the Federal Maritime Commission's proposed fiscal year 2009 budget as well as the administration of the Commission and its conduct of the regulatory business before it.

WITNESSES

PANEL I

The Honorable Ronald O. Loveridge
Mayor, City of Riverside
Riverside, California

PANEL II

Mr. Richard D. Steinke
Executive Director
Port of Long Beach

Dr. Geraldine Knatz
Executive Director
Port of Los Angeles

PANEL III

Mr. Charles Mack
Director, Port Division
International Brotherhood of Teamsters

Mr. David Petitt
Senior Attorney
Natural Resources Defense Council

Ms. Elizabeth Warren
Executive Director
FuturePorts