



Alliance of the Ports of Canada, the Caribbean, Latin America and the United States

**AMERICAN ASSOCIATION OF PORT AUTHORITIES**

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Good Morning. I am Jean Godwin, Executive Vice President and General Counsel for the American Association of Port Authorities (AAPA). Founded in 1912, AAPA is an alliance of the leading public ports in the Western Hemisphere. Our testimony today reflects the views of our U.S. members, which are state and local public agencies located along the Atlantic, Pacific, and Gulf coasts, the Great Lakes, and in Alaska, Hawaii, Puerto Rico, Guam, and the U.S. Virgin Islands.

Port authorities develop, manage and promote the flow of waterborne commerce and also act as catalysts for economic growth in their state, county or city. Public ports own, develop and maintain terminal facilities, some of which are leased to private terminal operators. U.S. ports handle 99% of this nation's overseas cargo by volume.

Whether products are arriving at our shores or departing for foreign sale, trade relies on an efficiently operating U.S. port system. On average, each of our 50 states relies on 13 to 15 ports to handle its imports and exports, which total more than \$1.3 billion worth of goods moving in and out of U.S. ports every day. While the cargo tonnage and passenger count numbers that go through America's ports are already staggering, projections are even larger. The nation's cargo volumes will double by 2020; passenger counts on cruise lines will also more than double. Ports stand at the forefront of the impact of the liberalization of U.S. trade policies.

Terminal development is a key priority at America's seaports, as they plan for this unprecedented projected increase in overseas cargo trade. Without significant increases to port development investments—currently running about \$2.1 billion a year nationwide—efficiency at America's ports will surely suffer as will industries that rely on these goods, and ultimately the U.S. consumers. The next 15 years will be very challenging since the U.S. maritime industry

needs to find the resources to fund the infrastructure, technology, terminal access and personnel improvements that will ensure America's ports are able to accommodate the huge influx of trade while at the same time meeting security requirements and addressing environmental needs.

The ability of ports to meet collectively to address these challenges, with antitrust immunity under the Shipping Act, is extremely important. Ports and marine terminal operators effectively coordinate on a variety of important issues, ranging from clean air initiatives to labor allocation to the collection of fees to fund security enhancements.

Public ports are extremely valuable public resources, which play a major role in the health and vitality of regional, state and national economies. The federal agreements were established originally to allow ports to confer, discuss and make recommendations on marine terminal practices and other matters of concern to the shipping industry, including, but not limited to, labor practices, infrastructure development, railroad practices and services, and environmental policy. These guiding principles continue to provide important policy direction in today's goods movement marketplace. The limited antitrust authority the ports enjoy facilitates appropriate discussion before operational, pricing or significant policy changes occur at one port, which may have detrimental, and perhaps unknown, effects on other ports.

AAPA believes that the 1998 amendments to the Shipping Act have worked well, and meet the needs of the U.S. public port community as well as U.S. trade. The amendments related to conference agreements and antitrust immunity created more flexibility in the business relationship between shippers and carriers while ensuring continued, effective regulatory oversight where it is most appropriate. While the bill was under consideration, AAPA sought continued regulatory scrutiny particularly of joint activity among competitors immune from antitrust laws.

Ocean shipping is an extremely competitive industry--rates are low and service options have never been better. Unlike carriers and shippers, ports cannot move their assets, which are the product of the investment of billions of dollars of public funds. Ports can be whipsawed by the other players in the transportation market--a fact exacerbated by ports' need to protect the billions of dollars in public investment and their public nature itself, which makes all their actions open to public scrutiny.

As noted above, ports and marine terminal operators work cooperatively in a number of areas, some of which are included in the examples below. We believe that the Shipping Act strikes the appropriate balance between providing antitrust immunity in this unique industry but providing regulatory protection through the Shipping Act to prevent anticompetitive or monopolistic behavior.

The following are examples of the use of antitrust immunity by ports and marine terminal operators.

## Port Infrastructure and Environmental Programs

In June 2006, the neighboring ports of Los Angeles and Long Beach released the draft San Pedro Bay Clean Air Action Plan outlining measures that they will take to cut air pollution emissions from port-related activities. The Plan addresses air quality issues resulting from tenant operations at terminals, as well as the ships, trucks and trains that move cargo through the ports.

Historically, each port addressed air quality issues separately by implementing a wide range of environmental initiatives. It became apparent, however, that inconsistent or conflicting transportation projects and environmental measures implemented by each port may have unintended or counterproductive effects on air quality improvements. Therefore, the two ports decided to work together and, with cooperation and input from state and federal environmental regulatory agencies, developed the Plan.

The Plan currently envisions various strategies the ports intend to utilize to reach the clean air goals. These strategies may include tenant leasing requirements, tariff changes, operation incentive programs, and voluntary measures.

In order to discuss and agree upon joint programs and strategies, the ports filed a discussion agreement with the FMC. The agreement has been in effect since August 2006 and authorizes the ports to agree upon the various proposed joint strategies. Without this agreement in place, the two ports would not have antitrust immunity and therefore would not be able to discuss, decide upon and implement the Plan.

Through on-going reporting requirements, the ports will keep the FMC apprised of their actions, allowing the FMC to monitor the progress of the Plan implementation and the impacts it may have on the Southern California ocean transportation system.

Under the authority of the FMC discussion agreement, the two ports seek to accommodate projected trade growth volumes through efficient cargo movement while concurrently addressing adverse environmental impacts such as air pollution emissions. The antitrust immunity provided by the FMC discussion agreement has provided the federal level framework through which the Ports of Los Angeles and Long Beach will be able to reach their goals in the Clean Air Action Plan.

## West Coast Labor Issues

The Northwest Marine Terminal Association (NWMTA) and the California Association of Port Authorities (CAPA) have an inter-conference terminal agreement to confer, discuss and make recommendations on rates and charges. Currently, this joint conference is working together with carriers and longshore employers to promote consistent labor practices at West Coast ports (something that could not happen without antitrust immunity). These joint meetings allow the ports to discuss labor issues affecting their operations and ability to meet customer needs.

The public ports involved are **not** members of the Pacific Maritime Association, which is the management association whose principal business is to negotiate and administer maritime labor agreements with the International Longshore and Warehouse Union (ILWU). However, the agreements negotiated by PMA, which determine wages, employee benefits, and conditions of employment, and other decisions made by PMA addressing labor allocation, training, etc. directly affect the cargo volumes and the competitiveness of the West Coast ports. Labor shortages and the lack of skilled labor (crane operators, foremen, etc.) can significantly affect a port's ability to maintain customers and attract new business.

A couple of years ago, the West Coast ports found that there were a number of labor issues affecting them that they wanted to discuss and develop a coordinated response to in order to ensure that decisions made by PMA did not create a competitive imbalance among ports. For example, (1) manpower allocations were being made based on historical use of labor with no consideration given to future needs, even in instances where existing contractual commitments would clearly increase the need; (2) manpower allocations were not addressing seasonal fluctuations in business and the use of traveling labor gangs was not flexible enough to meet those needs; (3) the use of a single coast-wide labor contract (geared to address the need of container facilities) did not provide the flexibility needed for non-container lines of business; and (4) there was no mechanism in place to facilitate any regular dialogue between the public ports and PMA on these issues.

The ability of the ports to meet and discuss these and other issues facilitated the development of a common position that was then brought to PMA, allowing the issues to be resolved with all affected parties at the table and in agreement. A new PMA committee was created to interact with the ports, ports are now able to attend PMA steering committee meetings on a request basis, PMA has developed 2 coast-wide agreements (one for container terminals and one for other cargoes), and the workforce allocation problems have been substantially improved. The joint ports conference has since expanded its focus to other issues of common interest, including gentrification (use of scarce coastal property for non-maritime cargo use, such as real estate) and environmental issues.

### Security Practices and Fees

Another area where ports and MTOs have worked together is on the issue of port security. Without antitrust immunity, ports would “compete” on port security resulting in a rapid “race to the bottom” when it comes to security. Furthermore, they would not be able to discuss “best practices” amongst themselves. The antitrust immunity has allowed ports and MTOs to discuss different approaches to port security, including the cost of those approaches.

The West Coast MTO Discussion Agreement has also allowed MTOs to work together in implement port wide security programs such as the use of RFID tags on motor carriers that have both increased security while lowering costs. Members agreed to share the cost of RFID tags and to require local motor carriers to use the tags.

The Gulf Seaports Marine Terminal Conference (GSMTC) (FMC Agreement 224-200165-001) includes 20 public ports in the Gulf of Mexico from Florida to Texas. This conference was formed in June 1995 to be able to consult with each other and to establish port terminal minimum rates and charges, as well as uniform rules and regulations. With respect to any action taken by the Conference, any member may decide to take independent action by simply notifying the Conference members of its intent.

Over the years, the GCMTC has been successful in addressing a variety of issues that impact its members including: dockage, free time, crane charges and most recently security fees. Because of the ability of Gulf ports to be able to discuss security costs and a partial fee recovery plan that includes both the vessel operator and the owner of the cargo, Gulf Coast ports were the first range of ports that implemented security fees covering a wide variety of cargo across multiple ports. Because of the uniformity of application at ports that chose to implement the fees, individual shippers/consignees and vessel operators were not able to leverage one port over another over the implementation and collection of the security fees. Several ports did exercise independent action and decided not to implement the fees (primarily ports that tend to compete with ports outside the GSMTC).

In conclusion the GSMTC enables its members to compete on an equal basis, by not allowing cargo interests to play one port against the other over these few, very specific but very important issues and associated fees. The ability of the Conference to establish these uniform fees and the ports' ability to collect them has made clear that the cost of port security is a partnership among the ports, the cargo interests, and the vessel operators as well as the Federal Government.

#### Reducing Air Emissions and Enhancing Security

Private marine terminal operators (MTOs) on the west coast (tenants of our public port authority members) have used their antitrust immunity to achieve public policy objectives demanded by government where competition would not be appropriate. For example, on the West Coast, there was a demand for environmental and safety reasons to reduce truck congestion during daylight hours on public roads. The customers wanted their cargo delivered during daylight hours so competition alone would not have addressed this important public policy problem.

Members of the West Coast Marine Terminal Operating Discussion Agreement agreed to assess a fee on cargo movements that would be refunded to any company using terminal facilities during off-peak hours. As a result of this PIERPASS system, a significant percentage of the cargo has been shifted to evening hours. This shift has reduced truck congestion and pollution, but has increased costs to the customers—the cargo shippers, who had to change their business practices. The solution could never have been accomplished without an agreement between the operators, supervised by the federal government.

MTO's typically have no direct contractual relationship with motor carriers or cargo shippers. Instead, their contractual relationship is with the ocean carrier. Many of the environmental and security issues have involved the MTO/motor carrier interface. Therefore, MTOs have needed

the ability to discuss terms and conditions of service to develop common approaches to address these environmental and security issues. Without the ability to work together, these types of programs could never have been accomplished.

### Chassis Pooling and Other Congestion Issues

Over the past decade, the South Carolina State Ports Authority (“SCSPA”) and the Georgia Ports Authority (“GPA”), state ports authorities located on the Atlantic Coast, have experienced tremendous increases in container traffic in their Charleston and Savannah ports, respectively. The explosive growth experienced in the container trades combined with future forecasted growth require ongoing modifications to terminal operations to accommodate capacity demands.

One key component of terminal efficiencies and space utilization is the method of container chassis management and maintenance. Duplication of inventory supply, management asset control, operational inventory control, volatile commercial demand, maintenance expenses and safety considerations all drive the need for an improved operational model to accommodate chassis supply and storage in the United States. Without such a model, ports, marine terminals, carriers, trucking companies, and shippers will continue to operate in an increasingly less efficient manner.

On January 27, 2006, the Bi-State Public Marine Terminal Discussion Agreement (“Bi-State Agreement”) by and between the SCSPA and the GPA became effective. The Agreement authorizes the SCSPA and GPA to meet, discuss, and exchange information, records, and ideas with respect to terminal rates, charges, rules, conditions of service, and methods for addressing and relieving terminal congestion. The antitrust immunity permits the ports to discuss different approaches to the container congestion issue and the costs of those approaches, including the establishment of chassis pools. Permitting open discussions of this nature between state ports authorities lead to improvements which benefit the industry.

### Operational Efficiencies at California Ports

The California Association of Port Authorities (CAPA) is comprised of California’s eleven commercial, publicly owned ports. Since 1940, CAPA has managed agreements with the Federal Maritime Commission (FMC), which grant member ports limited antitrust immunity under specified circumstances. This authority, while restricted, allows member ports to participate in appropriate discussions through the Association and to take certain actions within the scope of, and in accordance with, the procedures provided for through federal agreement. The dialogue facilitated by these agreements helps to ensure the efficient operation and continued health of our CA public ports, promotes better services to the shipping public, and maintains vigorous and appropriate competition in the marketplace.

While each port functions independently, under governance rules spelled out in federal agreement, each port is also required to inform all members and the Association before significant policy changes are taken at any individual port. Each port is allowed to take

independent action regardless of the will or desire of other member ports, but the process identified in federal agreement assures that all ports are well informed before action is taken and allows for discussion of significant policy changes. All CAPA meetings governed by federal agreement are noted and minutes of each meeting are submitted to the FMC.

The authority provided to the ports, and the process identified by federal agreement, protects these valuable public resources to some degree from potentially unfair pricing or business practices, and assures that important public policy decisions are not made in a vacuum. The agreements allow the ports to share best management practices, operational efficiencies, security concerns and environmental policy positions among themselves so that each can learn from the experiences of others and can limit the need for duplicative and costly research.

By providing a limited degree of uniformity in the establishment of operational practices, the shipping public benefits by easier comparison of services, procedures, and rate structures. In addition, the goods movement industry benefits when member ports share their practices and policies and are not required to make additional expenses that would otherwise be rolled into the costs for services. In some cases, multiple ports will participate in infrastructure development projects or security programs, for example, which benefit more than one port. In these cases, significant costs can be appropriately shared and unnecessary expenses kept to a minimum. Some examples include:

- Gerald Desmond Bridge replacement: joint effort of Ports of Long Beach and Los Angeles. Built in 1968, provides one of three routes onto terminal island servicing both ports.
- Port of Sacramento management services agreement with the Port of Oakland. The Port of Sacramento, struggling during the last few years with budget deficits, has entered into an agreement with the Port of Oakland to assist in the management of the port, providing cost savings and other benefits.
- Joint Command and Control Center. Long Beach and Los Angeles effort to provide centralized communications center for harbor and local police forces, Coast Guard and other law enforcement entities.
- Joint Container Inspection Facility. Long Beach and Los Angeles joint effort to provide facility for Customs and Border Patrol to inspect targeted containers.

The limited antitrust immunity granted to California's public ports continues to play an important role in facilitating discussions that have greatly improved the operational efficiency of our ports; that have promoted very significant environmental improvements to port operations; that have helped to manage potential labor issues, including worker shortages; that have led to more secure facilities; and that have assisted in the development of key infrastructure projects of statewide and national significance, while maintaining healthy competition in the goods movement marketplace.

## Pacific Northwest Port Cooperation

The Northwest Marine Terminal Association (NWMTA) is a voluntary association of deepwater ports and marine terminal operators in Oregon and Washington, and has operated continuously since 1939 under an agreement approved by the Federal Maritime Commission subject to provisions of Section 15 of the Shipping Act of 1916, the Shipping Act of 1984, and more recently the Ocean Shipping Reform Act of 1998 (OSRA). This and other information is available on the NWMTA website located at: <http://home.comcast.net/~nwmta/>.

Currently, NWMTA members include the Ports of Anacortes, Astoria, Bellingham, Everett, Grays Harbor, Kalama, Longview, Olympia, Port Angeles, Portland, Seattle, Tacoma and Vancouver.

The provisions of the NWMTA agreement provide ample authority for the 13 member ports to agree on uniform rates, establish consistent rules and practices, exchange relevant information, and pursue cooperative ventures. Association members are free to abstain from any vote regarding rate increases or policy changes, and may take independent action on any rate, charge, practice or any item required to be filed in a tariff.

Member ports routinely meet to discuss changes in policies and procedures in addition to setting rates. These meetings are critical to the membership in ensuring consistency across the public ports in the northwest. Within the last 18 months, the association has established new policies governing port operations. For example, at the request of a member port, the association discussed and implemented uniform procedures to ensure efficient cargo operations at all member ports.

A major effort of the association in the past 18 months has been to develop consensus regarding the implementation of a security fee. It is the ability to meet under antitrust immunity that allows the members to exchange and share confidential information needed to arrive at consensus. The security fee was agreed to by association members in the fall of 2005 and implemented in member tariffs in January 2006. Through independent action, ports were able to deviate from the recommended security fee developed during NWMTA discussion and also were able to make exceptions to the fee according to their individual terminal operations.

Customers affected by association policies and prices may request review by association membership. The membership is committed to fully considering any customer feedback of its policies and prices. Within the past 15 years, the association has not received any customer requests for review of policies and prices.

The NWMTA regularly practices the sharing of information by discussing possible ways to attract new cargo then promoting the NWMTA Ports as part of the logistics chain for that cargo. Also, the NWMTA has jointly marketed their facilities (pursuing cooperative ventures) by participating in the Russian American Pacific Partnership forum that supports business with the Russian Far East.

The antitrust immunity provided to the NWMTA is critical to enable association members to share information and discuss potential impacts of changes to pricing, policies and procedures, all with the proviso that any member may pursue independent action without penalty.

### Conclusion

In conclusion, AAPA supports the Shipping Act and the related antitrust exemptions in the maritime industry, which permit ports and marine terminal operators to work cooperatively to address a multitude of challenges.

Thank you. I would be happy to answer any questions.

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