

October 5, 2007

The Honorable Antonio Villaraigosa
Mayor
City of Los Angeles
200 North Spring Street, Room 303
Los Angeles, CA 90012

The Honorable Robert Foster
Mayor
City of Long Beach
333 West. Ocean Blvd., 14th Floor
Long Beach, California 90802

Dear Mayor Villaraigosa:

Dear Mayor Foster:

The undersigned state and national associations representing importers and exporters, and the service supplier industries which support them such as customs brokers, forwarders, warehousemen, and NVOCC's, doing business at the ports of Los Angeles and Long Beach are writing to express our concerns about aspects of the San Pedro Area Ports' proposed Infrastructure and Environment Container Fee (IECF), and the Clean Air Action Plan (CAAP) truck replacement proposal. We understand that aspects of both of these proposals will be taken up and likely approved by the both Port Commissions at an upcoming meeting.

We are writing, not merely to object to aspects of these proposals, but to suggest discrete changes that we believe would improve them. We urge you to consider these proposed changes prior to any such meeting of the Port Commissions. We also pledge ourselves to continue to work with you to find a compromise that will result in private-sector support. It is our understanding that some industry stakeholders are considering litigation against the ports if the plan and fee as currently drafted are approved, something that we would like to see avoided.

We have three recommendations for change:

- 1. Eliminate the Employer Requirement in the CAAP Truck Replacement Plan.**
The CAAP truck replacement plan as outlined earlier this year would eliminate independent owner-operators by requiring all truckers serving the harbor to become employees of a small number of large licensed motor carriers. This anti-competitive proposal is almost sure to be litigated, and, as such, it will not move us closer to cleaner trucks operating in the harbor. A better way would be to eliminate these requirements and focus on emission standards and mitigation fees. We publicly support tighter emission standards for trucks and believe the private sector can pay for them. Indeed, some of the importers represented by the undersigned organizations have *already committed privately* to move freight using trucks that meet the EPA 2007 standard or higher. These importers have committed to higher dray rates and are working with licensed motor carriers who are providing financial help and incentives to get independent contractors into cleaner trucks. Standards coupled with mitigation fees will result very rapidly in

cleaner trucks, as has been suggested by the recent economic study undertaking on the CAAP Truck Replacement Plan.

- 2. Focus port-collected user-fees on port projects only.** We expect that the Port Commissions will consider a new tariff that calls for a \$26 per TEU fee (the Infrastructure and Environmental Container Fee--ICEF) on loaded containers to be paid by Beneficial Cargo Owners (BCOs). The projects supported by this fee include \$1.5 billion in road and bridge improvements inside the ports, \$600 million in rail improvements not located on any specific terminal that, nevertheless, support on-dock rail, and \$3.7 billion in projects (mostly the Alameda Corridor East) that fall outside the port boundaries.

We support the \$2.1 billion of infrastructure projects the ports have identified that fall within the boundaries of either the Port of Los Angeles or the Port of Long Beach. The ports have estimated a private sector contribution to these projects of almost \$800 million, and we do not object to that contribution. We believe the private sector has an obligation to help defray the costs of these projects, and we acknowledge that the ports have the authority to raise reasonable tariffs to undertake these projects.

However, the ports do not have the legal authority under state law to collect fees for projects that fall outside their boundaries. Pursuing these projects in this manner will result in litigation. Projects like Colton Crossing and the Alameda Corridor East are important projects, but they should be part of the state working groups that the Governor and Senator Lowenthal recently announced. We have long supported the notion of creating state corridor authorities that could prioritize projects in a coordinated way and bring together much larger groups of potential users to help defray the costs. We strongly oppose making the port authorities the collection agents for every infrastructure project in Southern California. Their nexus is only with the freight community, and the freight community is but one user of highways in Southern California.

- 3. Create a user fee that doesn't penalize intermodal rail or benefit free riders:** The ICEF proposed by the ports would be assessed on all loaded containers, including intermodal rail containers that already pay the Alameda Corridor fee. Because the majority of the projects are road projects, the fee is inherently unfair and would penalize intermodal, on-dock rail users, which would be simply bad policy.

In addition, the fee creates free-riders who are not BCOs but who nevertheless use the port road infrastructure. These free-riders include those moving empties or those moving bob-tail rigs. It creates a large class of BCO free riders who move break bulk or project cargo through the ports. Finally, of course, vehicle users of the roads and bridges would also be exempt from having to pay for the improvements.

Given these deficiencies, the IECF is hardly a user fee. Unless restructured, it will be challenged under the Shipping Act and at the Federal Maritime Commission. It may also be challenged on Constitutional grounds as a tax on foreign commerce.

We would propose the following changes: 1) move the financing of the \$600 million of on-dock rail projects to the Alameda Corridor Authority (ACTA) and let the ACTA finance those projects through the existing or adjusted ACTA fees and 2) find an equitable user-fee that eliminates free-riders for the remaining \$1.5 billion in road and bridge improvements that lie within the port. The BCOs of containerized cargo are not the nexus for all of these possible users of improved port infrastructure. Hence the container fee as proposed is not equitable or fair. The BCO fee should be dropped in lieu of something that includes more port users. The mechanism for collecting a fair and equitable toll is not entirely clear, and we would urge you to bring stakeholders together to determine a way to collect road user fees and/or tolls that would: 1) ensure that truck traffic does not divert to side streets, 2) ensure that trucks using facilities not located on Terminal Island still pay some form of user fee for the roads and bridges necessary to serve the port community, and 3) ensure that any fees on truck movements can be passed through to importers and exporters of all types of cargo and other types of users such as those whose equipment travels on port-financed roads and bridges.

We realize time may be short, but we want to emphasize that we have always been willing to work toward fair and equitable user-fees to support infrastructure within the port boundaries. In addition we have supported the concept of public-private partnerships to help finance larger projects that would be undertaken by state corridor authorities and supported by Proposition 1B funds. Our most sincere hope is to avoid litigation and move forward in collaboration with the ports and the cities of Los Angeles and Long Beach to manage the growth in international trade and transportation in a more rational and environmentally sound manner.

Sincerely,

Agriculture Transportation Coalition
American Apparel & Footwear Association
American Association of Exporters & Importers
American Import Shippers Association
California Chamber of Commerce
California Grocers Association
California Independent Grocers Association
California Manufacturers & Technology Association
California Retailers Association
Coalition of New England Companies for Trade
Consumer Electronics Association
Footwear Distributors and Retailers of America

Idaho Retailers Association, Inc.
Illinois Retail Merchants Association
Joint Industries Group
Maryland Retailers Association
Meat Importers Council of America, Inc.
Minnesota Retailers Association
Missouri Retailers Association
National Customs Brokers & Freight Forwarders Association of America
National Foreign Trade Council
National Retail Federation
Pacific Coast Council of Customs Brokers & Freight Forwarders
Retail Industry Leaders Association
Retail Merchants Association of New Hampshire
Retail Merchants of Hawaii
Sporting Goods Manufacturers Association
The Waterfront Coalition
Toy Industry Association
Travel Goods Association
US Association of Importers of Textiles and Apparel (USA-ITA)
US Council for International Business
Virginia Retail Merchants Association
Wine Institute

cc:

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