

Written Statement for the Record  
of  
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Executive Director  
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of the  
American Trucking Associations  
before the  
Subcommittee on Coast Guard and Maritime  
Transportation  
House Committee on Transportation and Infrastructure  
U.S. House of Representatives  
Field Hearing on  
Port Development and the Environment at the Ports of Los  
Angeles and Long Beach  
Port of Long Beach Administration Building  
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Mr. Chairman, members of the Subcommittee, my name is Curtis Whalen, and I am the Executive Director of the Intermodal Motor Carriers Conference (IMCC) of the American Trucking Associations, Inc. (ATA). ATA, the national trade association for the trucking industry, is a federation of affiliated state trucking associations, conferences and organizations that includes more than 37,000 motor carrier members representing every type and class of motor carrier in the country. The IMCC is an affiliated conference within the ATA and is open to ATA member companies engaged in intermodal truck transportation or businesses and services supporting intermodal transportation.

As is the case with many national issues, activities in California often serve to both initiate and shape state and federal programs and policies throughout our nation. For that reason, the debate and now legal action surrounding the Ports' adoption of their Clean Truck Programs (CTP) is of utmost importance to motor carriers, shippers, retailers, other port stakeholders, and consumers everywhere who depend on our maritime freight transportation system.

I am sure that the port officials who are scheduled to appear at today's hearing will provide you with the overall details of their respective CTPs. From the local intermodal motor carriers' potential impacts perspective, however, I note for the record that there are approximately 1,300 motor carriers that regularly serve the combined Ports complex. Those companies collectively deploy nearly 17,000 trucks that regularly

service the Ports during an annual period. In addition, a larger number of trucks (as many as 25,000) perform infrequent Port drayage operations during each annual period.

The vast majority (Port study indicates 85%+, IMCC members estimate 98%) of the trucks that regularly service the Ports are not owned by the motor carriers. Instead, the trucks are owned by Independent Owner Operators (IOOs) that contract with the motor carriers for port – container transport services. Many IMCC members in fact use only IOO drivers—they have no employee drivers. From a national perspective, it is important for Subcommittee members to understand that it is a fundamental characteristic of the IOO/motor carrier relationship that IOOs provide the power unit truck tractors – this is not a situation unique to port drayage.

In order to qualify as an independent contractor, owner-operators must have a substantial investment in their businesses, which generally comes from their ownership interest in their power-unit tractors. Indeed, it is this interest that allows owner-operators to command significantly higher overall compensation than that of employee drivers. It is customary in the trucking industry that owner-operators procure that ownership interest in their tractors via lease/purchase arrangements that allow them to own and operate relatively expensive equipment without being forced to bear the entire financial burden up front. Therefore, the Port's recent selection of Daimler Truck Financial as their program funds administrator creates a lease/purchase mechanism entirely consistent with the traditional manner in which owner-operators procure their tractors. By utilizing Daimler's well-honed lending process evaluation, selection procedures, and safeguards, only financially capable IOOs or motor carriers will be selected for the program and the

Ports' clean air efforts will be advanced without the need for the intrusive Concession Plans.

Moreover, again from a national perspective, it is also important for Subcommittee members to note that since passage of the Motor Carrier Act of 1980, motor carrier transportation has operated under a deregulated, highly competitive, smaller sized, open-entry business model. According to statistical analyses undertaken by the ATA of motor carrier data released recently by the Department of Transportation, the vast majority of motor carriers in the U.S. (87.3 percent) operate six or fewer trucks and 95.9 percent of the fleets have twenty or fewer trucks. Only 4.1 percent of carriers operate more than twenty trucks. Since the inception of the national trucking industry, motor carriers' decisions as whether to operate with trucks owned and driven by IOOs as subcontractors or with company-owned trucks and employee drivers (or a combination of both) has been a free-market business choice not subject to federal, state or local official control.

The Port of Los Angeles' attempt to eliminate IOOs, if successful, would be the first time in the history of this nation's trucking industry that the well-established IOO/motor carrier business model has been outlawed by government fiat. Even the attempt illustrates that the Ports' lack a basic understanding of how the motor carrier industry works and the far-reaching detrimental impact such action would have on the trucking industry and the movement of goods in this nation.

On July 28, ATA was forced to file a lawsuit in the U.S District Court, Central District of California against the Concession Plan components of the Ports' CTPs. (complaint without attachments attached). It is again extremely important to understand

that the trucking industry supports the clean air goals of the Ports' CTPs. Specifically, the Ports' approved clean truck tariffs, by establishing mandatory truck retirements beginning this October for pre-1989 trucks and ending in 2012 when all port trucks must be 2007 engine compliant), have been and are supported by our motor carrier members. Considering that these soon to be retired trucks are and will continue to be "legal" in the other 49 states illustrates the support of the industry for efforts to improve air quality in the region.

However, as we explain in our complaint, the intrusive regulatory oversight associated with the Concession Plan mechanisms, are not needed to support the truck retirement and replacement program with its associated clean air benefits. Those Concession Plans, which unlawfully re-regulate the port trucking industry to the detriment of motor carriers, shippers, other port stakeholders and the businesses and consumers, serve only to disrupt port operations and add billions of dollars of unnecessary cost to transportation operations involving the Ports.

The ATA litigation, which is specifically structured so as to not interfere with the ports' clean air truck retirement and new truck funding efforts, focuses only on Concession Plans. Under 49 U.S.C. § 14501(c)(1), a political subdivision of a state "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 Ports' Concession Plans control access into the Port markets and will have a major impact on motor carrier rates and services. In addition, the LA plan to ban owner operators and require employee-only/company-owned trucks will greatly exacerbate concession impacts for motor carriers operating in both ports.

The Complaint further alleges that this is the type of interference with competitive market forces that the U.S. Supreme Court (*Rowe v. New Hampshire Motor Transport Association*, No. 06-457 (U.S. S.Ct. Feb. 20, 2008) recently identified as the target of the federal preemption provision. The 9-0 decision reiterated the broad scope of federal preemption, noting in particular that state requirements are preempted if they “have a connection with, or [make] reference to carrier rates, routes, or services.” The Court described Congress’ purpose behind the preemption provision as ensuring that motor carrier rates, routes, and services “reflect ‘maximum reliance on competitive market forces,’ thereby stimulating ‘efficiency, low prices,’ as well as ‘variety’ and ‘quality’.” The Court further noted that the preemption provision was designed to eliminate “a State’s direct substitution of its own governmental commands for ‘competitive market forces’ in determining (to a significant degree) the services that motor carriers will provide.”

In the litigation, we are also asking the Court for a preliminary injunction against the Ports’ enforcing the October 1, 2008 commencement date of the Concession Plans. We are also seeking an expedited schedule for hearing the ATA request for injunctive relief and hope the court will make a ruling on that request in advance of the scheduled October 1 implementation date.

Finally, as Subcommittee members review the testimony and consider the clean air and transportation impacts of the Ports’ CTP plans, you should also consider that under regulations adopted by the California Air Resources Board (CARB) on December 7, 2007, drayage trucks serving California’s ports and intermodal rail yards must also meet clean air objectives mirroring the ports’ plan but with a final goal of requiring all

port diesel trucks to meet 2007 standards by December 31, 2013, not 2012 as required under the CTP. Unlike the Ports approach, however, the CARB state program does not interfere with port trucking operations and contains no employee mandate.

Thank you.