



# Agriculture Transportation Coalition (AgTC)

"The principal voice of agriculture exporters in U.S. transportation policy" -- The Journal of Commerce

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## AgTC: Q & A on All the New Port Fees January 16, 2008

Hello,

Many questions regarding the port fees adopted at Ports of LA and Long Beach.

In combination, they could be as high as \$260/FEU. Following is a recap of the major developments. AgTC members are welcome to respond with specific questions you may have on any aspect.

### What are the Port Fees Adopted by Ports of Long Beach and LA so Far?

1. Infrastructure Container Fee- \$15/TEU, \$30/FEU to pay, in combination with the revenue from State of California Infrastructure Bonds, for local port projects, such as bridge, freeway and rail port access; imposed on all containers entering or leaving the port by truck or rail starting Jan, 1, 2009. plus.
2. Pier Pass at \$50/TEU, \$100/FEU, currently in effect; plus
3. Clean Truck Replacement Fee (\$35/TEU, \$70/FEU) effective June 1.

### What Additional Fees are Coming?

The California Legislature is likely to pass, and Governor Schwarzneger has promised to sign, the so-called Lowenthal fee (\$30/ TEU, \$60/FEU ) to pay for transportation infrastructure, environmental mitigation, and health care

### Who Supports these Fees?

Environmental organizations seeking to address truck, ship and general port emissions at the Southern California ports.

The Teamsters Union, which plans to organize and represent the employees of the drayage companies selected by the Ports to replace the independent owner-operators. Also, both Hillary Clinton and Barak Obama have now endorsed the Clean Air Action Plan, including the new truck replacement program and fees. They are currying favor with the Teamsters

and the environmental organizations.

### **What is Wrong with the Fees, in addition to increasing costs of shipping through POLA and POLB?**

1. If the Marine Terminal Operators (MTO's) collect these fees (they currently collect the Pier Pass fees), we will have no way of knowing how much money is collected, and how much is being spent on the intended purpose. Or if the fees become a new profit center for the MTO's. Lack of transparency, means that we will not know what, if anything, we are getting for the new fees.
2. The fees impose substantial additional costs which cut into already thin margins, raise the cost of the product to the foreign customer, makes the US ag export less competitive in the foreign markets, and in some cases will cause lost sales.
3. The fee would be collected from the beneficial cargo owner (BCO) by the marine terminal operator (MTO), but the definition of BCO is unworkable, because it covers shippers or consignees, but not forwarders or any intermediaries;
4. There are also big problems on how to collect the fee against BCOs (e.g., there is no direct business relationship between the BCO and the MTO), and how to apportion the fee among several BCOs sharing consolidated shipments.
5. The fee would apply to all loaded and drayed containers, even those moving on clean trucks. Although the ports are contemplating a rebate system for clean trucks, it would be an administrative nightmare and would not refund the full amount of the fee.
6. There is a free-rider problem – i.e., the fee does not apply to bob-tails, bulk cargo, project cargo, or break-bulk cargo, even though they are contributing to air pollution. Cargo that is not moving by container would be exempt from the fee, even though it also uses the port infrastructure.
7. The ports have no legal authority under the Shipping Act or their FMC agreement to assess fees (tariffs) to fund projects outside their jurisdiction (such as the infrastructure and health care training for trucks and truckers who are not on the port premises, but rather, on the highway.)
8. The fee is not a true user fee in that it would be assessed on containers moving by rail to fund road projects, infrastructure the railroads don't use. Thus it would be a tax, unconstitutional as a tax on exports and on interstate commerce.

### **What Are We Doing To fight the Fees?**

1. AgTC Advisory Bd member Brian McGuire's (Dunavant) was invited by the Port of Long Beach Board of Commissioners to present on behalf of ag exporters.. Even while the Commissioners were blasting big importers, saying that people in the Midwest and East Coast who buy things at Wal-Mart should help pay for cleaning up the Southern California port environment, they expressed great interest and sympathy for exporters, and agriculture exporters specifically. A Port Commissioner and senior port staff have asked to discuss the new fees at the upcoming Ag Shipper Workshop in Long Beach.
2. AgTC Member Washington Potato Commission was one of the most visible and effective opponents of the Washington State container fee legislation, and other AgTC members participated in the successful effort to derail the fee legislation.
3. The AgTC participates in a broader coalition, including the National Retail Federation, opposing these fees. I sit on a "Litigation Task Force" which is currently interviewing various law firms to determine how best to fight and defeat these fees in court. The litigation will be expensive, and could continue for 5 or more years. A law firm will be selected shortly.

## **Are Other States Going to Follow with their Own fees?**

In January 2002, the Washington state legislature considered a proposal to impose a \$50-per-TEU fee on containers moving through Washington state ports, collected by container terminal operators. The funds would go into a "freight congestion relief account" to improve rail freight systems and state highways that are used as freight corridors. But an intense lobbying campaign against the plan by ports, carriers and shippers (including notably the Washington Potato Commission) led to a container tax/freight funding study instead. That study is delayed to later this year, and the legislature won't consider the fee this year.

## **How Can I Learn More?**

Come to one of the 6 Ag Shipper Workshops this winter, Seattle (next week), then Minneapolis, Boise, Modesto, Long Beach, and Atlanta. For example, at the Long Beach Workshop opposing views will be presented by a Port Long Beach Commissioner and a representative of the independent truckers, leading to a very stimulating discussion. See the Workshops' Agenda/ Registration at [www.agtrans.org](http://www.agtrans.org).

AgTC  
Agriculture Transportation Coalition  
1120 G Street, NW  
Suite 1020  
Washington, DC 20005  
Tel: 202-783-3333  
Fax: 202-783-4422  
[ExecutiveDirector@AgTrans.org](mailto:ExecutiveDirector@AgTrans.org)  
[www.agtrans.org](http://www.agtrans.org)

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