

OPERATING ENVIRONMENT FOR TODAY'S PORTS

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ABSTRACT

Historically, ports have functioned without much direct involvement by the federal government or the general public. Recent, increased public scrutiny and tight budgets at the federal, state, and local levels have created a maze of political, financial, and legislative obstacles for ports to overcome to successfully develop and operate their facilities. Given this fiscal and political climate, ports face a serious dilemma in convincing local voters and governments of their genuine need for public support, particularly in the area of financing major capital programs.

U.S. public ports are finding the business of facilitating waterborne commerce more and more susceptible to public pressures, primarily at the local level, with no one at the federal level advocating the importance of ports and the need to resolve the ports' problems. Although projects to provide efficient landside access to ports and keep navigation channels open for international trade are in the national interest, they are often held hostage by local government or local interest groups that are not concerned with the needs of the nation as a whole.

In the face of these challenges, ports, the maritime community, and port user groups have begun to reach out to the public, community, and specific interest groups to assure them that there are widespread benefits generated by port development, and in particular, that environmental values will be preserved.

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The operating environment for public ports today has never been more complex. Port managers must make their way through a maze of political, financial, and legislative obstacles to successfully develop and operate their facilities, which facilitate transfer of cargo from one mode to another. Because approximately 95 percent of world trade moves on oceangoing vessels, these impediments directly affect world trade and economic development in the United States.

There are more than 180 commercial deep draft ports, which handled 893.9 million metric tons of cargo

in 1993, which was worth \$512.1 billion. These ports include 3,173 ship berths and 1,917 terminals through which cargo and passengers are transferred. Port activities create substantial economic and international trade benefits for the nation as well as the local port community and regional economy. According to the U.S. Department of Transportation (DOT) report, in 1992 commercial port activities generated 1.5 million jobs, contributed \$73.7 billion to the gross domestic product, provided personal income of \$52 billion, and generated federal taxes of \$14.5 billion and state and local taxes of \$5.5 billion.

This paper will address some of the obstacles ports increasingly face on a daily basis, with a particular focus on 3 areas: landside access; waterside access, including related environmental regulation; and capital financing for port development. An overarching theme is the fact that all these challenges depend on better public awareness of ports and their new and evolving role in their communities. In addition, attached to this presentation for background purposes is a more detailed legislative agenda outlining the myriad issues affecting port operations and development.

POLITICAL CHALLENGES

Even though some challenges facing ports are within the control of port managers, most, it seems, are not. These challenges include the current global recession and its dampening affect on world trade, the shipping industry, and the financial resources of public ports and their stakeholders; new technologies; the consolidation of ocean carriers; environmental pressures inhibiting needed dredging and landside access projects; trade policy protectionism at home and abroad; and the growing intrusion of state and local government on port revenues and cash reserves. Moreover, on the national and local level there is a maze of seemingly endless and often contradictory trade, transportation, and environmental laws.

Let me focus for a moment on two key, relatively new factors in the equation: (A) tight budgets at the federal, state, and local levels and (B) increased public scrutiny. Theoretically, public ports and their budgets

were intended to be insulated from shorter term, politically expedient needs of city or state government. However, this insulation is wearing thin. Efficient port operations as well as our nation's fundamental interest in waterborne commerce are at stake if this trend continues.

U.S. public ports are finding the business of facilitating waterborne commerce more and more susceptible to public pressures, primarily at the local level, with no one at the federal level advocating the importance of ports and the need to resolve the ports' problems. Leadership at the federal level is needed to balance the more parochial local interest groups. For example, efficient landside access to ports and keeping navigation channels open for international trade are in the national interest, but often are held hostage by local government or local interest groups that are not concerned with the needs of the nation as a whole.

Ports face a variety of challenges from environmental laws and regulations that limit their ability to develop scarce waterfront property, including laws to protect wetlands, preserve habitat for sensitive species, manage hazardous waste, and limit impacts on air quality. The existing legal and regulatory framework sets up many roadblocks that can frustrate or stop a project in its tracks and that provide disgruntled or dissatisfied special interest groups numerous opportunities to derail projects that are designed to enhance a port's ability to fulfill its mission to the general public.

In the face of these challenges, ports, the maritime community, and port user groups must reach out to the public, community, and specific interest groups to assure them that there are widespread benefits generated by port development, and in particular, that environmental values will be preserved.

Another roadblock to port expansion is the growing competition for urban waterfront property suitable for port operations. Waterfront land in urban areas is scarce and expensive, yet a number of competing uses, such as commercial real estate development, residential housing, recreational facilities, and even historical preservation, seem to be able to gain the upper hand in local zoning debates.

Given this fiscal and political climate, ports face a serious dilemma in convincing local voters and governments of their genuine need for public support, particularly in the area of financing major capital programs. The problem is compounded by the fact that the average citizen in a port city may be unaware of the economic benefits he or she gains from the port's activities. As a result, in recent years, ports have substantially increased their efforts to publicize their benefits and the return on their investments to local and regional areas.

REGULATORY FRAMEWORK

The traditional separation of transportation into separate and distinct modes—air, highway, rail, and water—does not reflect the way freight moves today in international commerce. Similarly, environmental regulation has traditionally focused on specific media—for example, air, water and land. The reality is, however, that strict regulation of one environmental medium usually displaces and, in some cases, increases pollution in another medium.

Not surprisingly, the administration of transportation and environmental policy and regulation continue to be managed along these modal and media-specific approaches. For example, DOT is staffed and funded on the basis of highway, rail, maritime, and aviation functions. U.S. environmental laws such as the Clean Water Act, Clean Air Act, Endangered Species Act, and Ocean Dumping Act rarely permit cross-media environmental policy coordination and are administered by different offices at the Environmental Protection Agency (EPA). The long-standing habits of "business as usual" pervade the layers of traditional bureaucracy. A broader ethic based on intermodalism and sustainable development is only recently insinuating itself into policy-making considerations.

This recent progress is due to the recognition that in both the transportation and environment examples, economics plays a significant role in revealing the limits of these traditional, narrow approaches. Competition for public dollars and private investment has never been tougher. Whether talking about transportation improvements or environmental problems, policy makers have begun to ask themselves: how can we get the best return on our investment? Or, more colloquially: how can we get the biggest "bang for our buck?" Because of what ports have at stake in this issue, they too must look at the big picture.

There are many players in the transportation logistics chain and, at each level, there is at least one corresponding environmental or public interest group that may be affected by any proposed activity. At times, the process can resemble the Tower of Babel, with each player speaking its own language. Increasingly, ports are taking on a more active role to bring the players together, help find common ground, and translate the various needs into a common objective.

PORT ACCESS AND CHANGING TECHNOLOGIES

Ports sit at a central point in the intermodal transportation chain. In fact, ports have been practicing

"intermodalism" for many years. With the advent of containerization, many intermodal innovations were either created or are in regular use at ports: double-stack trains, double-trolley cranes, terminal and office automation, landside access corridors, and intermodal container transfer facilities.

The use of containers to transport cargo is a fairly recent phenomenon, dating from the late 1950s. The evolution of containership size, capacity, and speed has been dramatic in the past 30 years. In the 1960s, containerships holding fewer than a thousand 20-ft containers traveled at approximately 16 knots. Today, vessels holding more than 4,000 containers can travel at 24 knots, and even larger vessels that can cross the Pacific in only 3 days at 50 knots are being designed.

Another significant change in transportation logistics is the use of double-stack trains to maximize efficiency. In 1984, there was only one weekly, eastbound double-stack train from Los Angeles/Long Beach, California, to Chicago, Illinois. In comparison, in April 1989, there were 114. Our intermodal capacity has increased dramatically in the past 8 years, and double-stack cars are a large part of the reason.

Larger containerships also increase the importance of dredging our ports deeper and wider. Because the amount of international cargo moving through U.S. ports is expected to triple by the year 2020, the need for efficient landside access and dredging will only increase and must be planned for today.

LANDSIDE ACCESS

Like a pipeline, our nation's transportation system is only as efficient as its narrowest, most congested point, that is often the landside access from the port to the closest Interstate Highway or rail yard. Landside needs involve a number of competing government jurisdictions, each of that has effective veto power over a project. No matter how productive ports make their marine terminal facilities, our nation's intermodal transportation system cannot operate to maximum efficiency unless ports are accessible by ship on the waterside and cargo can move quickly and easily in or out of ports from the landside.

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) placed a new emphasis on intermodalism, yet still remains a highway and transit reauthorization statute. In its policy statement, the act clearly recognizes that an efficient freight transportation system is a critical factor in our nation's ability to compete in the international marketplace and to ensure competitive prices for U.S. consumers. However, the

major ISTEA funding programs remain largely highway- and transit-oriented. Railroad eligibility is limited to commuter passenger rail, and aviation is excluded, thus making ISTEA less than a complete intermodal statute. Despite strong intermodal policy statements and planning provisions, the statute has not resulted in increased funding for freight projects.

Freight projects meeting national transportation needs still are not surfacing as high-priority projects within the local decision-making framework. The expression "freight doesn't vote" sums up the political reality at the local level—the needs of passenger traffic are considered first, and there is little or no thought given to providing access to intermodal facilities that handle freight. The American Association of Port Authorities (AAPA) believes that the creation of the National Highway System and National Transportation System may not benefit freight projects and will seek changes in ISTEA to give more priority to freight projects.

AAPA, with DOT, sponsored a port landside access study in 1993 under the auspices of the National Academy of Sciences, Transportation Research Board (TRB), that examines the various physical and regulatory impediments to landside access to ports.

As part of the TRB study, AAPA surveyed its members about their landside access problems. More than half of ports responding identified congestion from passenger cars and trucks on linking roads as "always" a problem; one-third answered that it is "sometimes" a problem. Forty-three percent of the respondents identified numerous at-grade rail crossings that create conflicts between rail tracks and streets. At one major East Coast port, rail lines intersect major roads at one location, and the 24 daily trains are estimated to block intersections for 28 hr per week. One Midwest port suffers from a situation in which access to the port's main entrance crosses a busy rail line, that in turn is often blocked by another busy rail line. The productivity losses that result are staggering.

Improved landside access to the nation's public ports not only would result in increased jobs but also a cleaner environment. Poor landside access to public ports means congestion and air and noise pollution. Consistent with the 1990 Clean Air Act, a reduction of truck congestion into and out of the nation's public ports would be a positive step toward obtaining air-quality standards set forth in the law. Dedicated freight corridors or removal of bottlenecks between ports and major Interstate and rail facilities can result in significant reductions in air emissions through reduced congestion and in improved safety by consolidating freight traffic. Resolving the problems associated with

intermodal landside access to public ports consistent with environment protection will only become more challenging as our economy becomes increasingly globalized.

DOT Secretary Federico Peña has made infrastructure investment a top priority and has identified intermodalism as a key issue. Peña's speeches have stressed the importance of ports and intermodalism and have gone even further in stressing the need for rational approaches to environmental regulation and dredging.

These are the most positive signals ports have heard from a DOT Secretary in memory. The Office of Intermodalism, a new position in the Secretary's office, which has the challenging task of bridging the traditional modal departments within DOT, has a former port official in charge who is an articulate and knowledgeable representative of port interests. However, the Office of Intermodalism will need to develop focused programs and policies.

ENVIRONMENTAL REGULATION AND WATERSIDE ACCESS

The dredging of our nation's navigation channels to keep them open for trade is too often frustrated by inconsistent, complex, and duplicative laws and regulations. The federal government and millions of U.S. consumers and businesses can no longer take our navigation system for granted. At every level, from the general public to Congress, there is failure to fully appreciate the need for sustained investment in the maintenance and enhancement of the water transportation infrastructure.

Due to natural siltation processes, there is no alternative to dredging federal navigation channels if port operations are to continue and if harbors are to be improved to handle the increased trade volumes expected in the coming decades. Approximately 400 million yd³ of sediment is dredged annually; about 5 to 7 percent is seriously polluted. More than 90 percent of major U.S. ports require regular maintenance dredging. These ports are diverse; they are load-center container ports and regional bulk or breakbulk ports. Together they move almost 93 percent of the total U.S. waterborne commerce in any given year. Dredging, whether to maintain existing depths or to improve channel dimensions, is as essential to the nation's commerce as maintaining or improving our highway and railroad networks.

AAPA has called on the current administration to adopt a national dredging policy. AAPA is also increasing its efforts to work more closely with the U.S.

Army Corps of Engineers to ensure that it takes on its proper role as a federal advocate for navigation dredging projects. AAPA's national dredging policy urges the federal government to assert its leadership in coordinating various federal regulatory programs and in involving state and local government in the dredging project approval process. The nation must end the "gridlock"—the delays and construction of vital navigation dredging projects—by setting priorities for environmental policies and achieving better coordination of the overlapping, and sometimes conflicting, regulatory roles played by numerous agencies. The coordination must go beyond the federal level to include state and local government because the reality is that most port projects are stymied by local objections.

When President Clinton traveled to the Port of Oakland in August 1993, he sounded what we have become the battle cry for dredging our country's deep-draft ports—"Get on with it!" In his speech at the Oakland Naval Supply Center, the President emphasized the need to create jobs. He recognized that the Port of Oakland cannot fully realize its potential as a magnet for shipping and commerce until its harbor is dredged.

In Oakland, the President gave hope to all U.S. ports, because dredging is not just a local problem, it is a national issue. The President directed the U.S. Army Corps of Engineers, EPA, and other regulatory agencies to "get on with it and to act as quickly as possible to resolve" the environmental concerns that have stymied dredging for too long.

Transportation Secretary Federico Peña has fully realized the broader systemic implications of what he terms the "national dredging crisis" and its negative impact on the intermodal shipment of the nation's freight. Secretary Peña declared, "We must solve the current dredging crisis...that is in reality an economic crisis. Dredging is submerged in conflicting missions and mandates among a number of federal agencies and a pyramid of federal rules and regulations, plus state and local government laws, that make it a miracle every time a port dredging project is brought to fruition."

However, the United States can no longer depend on miracles to move essential commodities in and out of ports. The nation's economic health depends on access to international markets. U.S. export trade was responsible for 25 percent of the growth in private industry jobs in the United States between 1986 and 1990. Dredging gridlock hurts ports, but U.S. consumers and exporters really pay the price. With federal leadership now emerging, perhaps we can finally, with the support of countless Americans who depend on U.S. ports but may not know it, just get on with it.

PORT DEVELOPMENT AND CAPITAL FINANCING

In 1994 AAPA members identified facility development and capital requirements as the number one issue facing ports in North America. U.S. exports and imports are projected to increase in value from \$454 billion in 1990 to \$1.6 trillion in 2010. The volume of cargo is projected to increase from 875 million metric tons to 1.5 billion metric tons in 2010. The infrastructure and cargo handling capabilities of ports must be in place to accommodate the projected increase in cargo.

Shoreside cargo handling facilities and other infrastructure related to the ports' primary function historically has been financed almost entirely through the use of public monies. According to DOT, U.S. ports invested more than \$12.5 billion from 1946 to 1992 on port and related shoreside transportation infrastructure and are expected to invest more than \$5.5 billion during the next 5 years. This reflects the continued commitment of the port community and local and state governments to upgrade their infrastructure to the latest in efficient intermodal facilities.

During the 1990-1992 time period, the financing methods used most often by ports for capital expenditures were port revenues (retained earnings, or 39 percent of total expenditures), general obligation bonds (12.5 percent), and revenue bonds (28.9 percent). Specialized general cargo facilities continue to account for nearly one-third of the current and projected capital expenditures. The expenditures for new construction totaled \$425 million in 1992 plus \$247 million for modernization and rehabilitation of existing facilities. These statistics, which are based on a survey of AAPA members, are contained in the *United States Port Development Expenditure Report*, published by the Maritime Administration (MARAD).

According to the MARAD study, port revenues and revenue bonds are expected to be the predominant method of financing port infrastructure projects in the future. The growing dependence on port revenues for capital improvements intensifies the need for ports to be able to control their own financial futures without the interference of cash-starved local and state governments.

There is an increasing demand on ports to become financially self-sufficient. In California, where the ports are self-sufficient, city and state governments have looked at ports as potential revenue sources. Cash-starved governments there and elsewhere are eyeing port-retained earnings. In 1992 California enacted legislation giving municipal governments with tideland ports the authority to "take" discretionary reserves for municipal services not related to port activities. The "discretionary reserves" siphoned were port revenue

dollars set aside for future capital improvements. The net effect of the so-called "cash grab" is a port system in California that may be unable to fully finance infrastructure improvements needed to facilitate trade in the future.

The cash grab also affected California ports' bond ratings. Soon after the legislation was enacted, the ports of Los Angeles, Long Beach, San Francisco, and Oakland were placed on credit watch by Standard and Poor's Corporation. Although the California law is supposed to be repealed on January 1, 1995, state legislation was considered during the last session of 1994 to extend the authority of municipalities to use port revenues to fund other municipal services.

No other state has gone so far as to raid the coffers of its ports. However, other states and local governments may be forced to look at port revenues as a source for funding basic public services in the future.

In addition to preserving an unencumbered pool of port revenues for capital improvements, preserving and enhancing a port's ability to use tax-exempt bonds is a critical element of future port infrastructure financing. This authority was fundamentally reviewed and reaffirmed in the Tax Act of 1986; however, some restrictions were imposed that have made it more difficult to use tax-exempt bond authority. These new restrictions, in addition to other longstanding regulations, can impede port financing.

For example, port bonds do not have advance refunding capabilities similar to municipal bonds. This restriction ties the hands of public port administrators and ties up much needed revenue. For example, the Virginia Port Authority (VPA) has issued a 20-yr, \$106 million bond to support infrastructure at its three Hampton Roads terminals, which cannot be refunded because of industrial development bond regulations. Because VPA cannot refund this bond issue until 1998, it missed a prime opportunity in 1993 to refund during a period of uncommonly low interest rates. If VPA could have refunded its 1988 bonds, it would have realized \$1.5 million to \$2 million per year in debt service. The freed-up cash could have been used for additional debt service on a new tax-exempt issue or to fund other port development projects.

Public port financing will continue to be a major issue. Fewer and fewer public dollars are available for basic municipal and county services such as schools, hospitals, police and fire protection, and housing. The trends discussed here in funding port capital improvements will undoubtedly continue and increase into the next century.

PUBLIC AWARENESS AND ROLE OF PORTS IN THE COMMUNITY

As this paper illustrates, the days of ports' traditional narrow focus on their own infrastructure and economic development have long passed. The question is not how to throw off ports' broader public responsibility, but how to accommodate or redirect the new demands. The "head-in-the-sand" approach will not work. Some methods undertaken by ports and the related business community to addressing these challenges include the following:

- Ports are making public awareness of ports and intermodal transportation a primary objective. What ports are, what they do, and what they contribute to the U.S. economy needs to be better understood by the general public. AAPA and its members are increasing efforts to educate the public about the importance of landside access, facility development, and dredging our nation's harbors.
- Ports are shoring up the support of the local and national maritime community, defining common goals, and showing a solid and common front on key issues. Of course, communication of the goals and the means to achieve them is vital.
- Ports are expanding beyond the traditional port and local maritime groups into the broader business community (e.g., chambers of commerce, other civic associations, labor organizations, etc). They are setting up speakers' bureaus and developing grassroots outreach to advance a coordinated agenda.
- Ports are working with local groups to overcome traditional approaches to transportation planning and environmental regulation to ensure that the vision of seamless, intermodalism and environmentally sustainable development can be realized.

The new perspective on the role of ports in the community was summed up nicely in a recent editorial in the industry's trade paper, the *Journal of Commerce*: "Suspended between the public and private sectors, ports are in a difficult position. But it is, at the same time, a unique position, presenting a chance to become a bridge between two worlds. A prosperous, well-run port is a tremendous economic engine for a community. But a port that is willing to go beyond that, to take a more aggressive role in local business development, to stage serious outreach efforts, to sponsor local training and recreation programs, can provide enormous opportunities for the community and bind itself more closely to the citizens it serves."

In conclusion, there can be no doubt the 21st century will bring new challenges to ports—challenges that are even more complex and potentially intractable. However, what is also clear is the fact that these challenges will require fully coordinated planning and enhanced cooperation among port customers and public constituents alike. I believe the common denominator will continue to be the need for solid public appreciation of our ports and support of trade.

LEGISLATIVE AGENDA FACING PORTS

Transportation and Water Resources

In terms of general infrastructure needs, AAPA and the public port community support the goal of fostering economic growth through targeted public investment that stimulates private investment. Transportation infrastructure development and technological innovation are the keys to more efficient movement of U.S. goods and enhancement of trade opportunities. Efficient port operations increasingly are becoming critical to an integrated intermodal transportation system.

No matter how productive our marine terminal facilities are, our port and intermodal transportation system cannot operate at maximum efficiency unless ports are accessible by ship on the waterside and unless cargo can move quickly and easily in or out of ports from the landside. Again, we recall the analogy that the intermodal transportation system can be compared to a pipeline, with its overall efficiency determined by the pipeline's most narrow section.

Regulatory gridlock must be untangled so that ports can get on with the nation's business. Ports and their private-sector partners are investing millions of dollars in technology and improvements in cargo handling techniques. We cannot maximize these new efficiencies, however, unless the federal government cooperates by promoting and investing in upgraded navigation channels and landside access to ports.

AAPA strongly supported passage of ISTEA, which explicitly recognizes the importance of landside access to our nation's ports and the importance of an efficient intermodal transportation system to our nation's global competitiveness. AAPA also supports the designation of the National Highway System, as required under ISTEA, and the creation of a national transportation system, as proposed by Transportation Secretary Federico Peña.

Most of the planning and implementation authority under ISTEA is vested in state and local governments, which historically have considered passenger over freight

needs and local over national (commerce and defense) needs. Congress and federal agencies must help instill the new intermodal way of thinking at the local level and overcome entrenched state interest groups.

U.S. public port officials would like to see an increase in emphasis on intermodalism. The traditional focus of transportation policy on passengers must be expanded to include fuller consideration of the needs of freight movement. Our nation's international competitiveness will depend largely on our ability to move freight efficiently through our ports to the international marketplace. Therefore, when ISTEA is reauthorized, AAPA will pursue the following policy objectives:

1. ISTEA should be made truly intermodal by allowing the use of all program funds for rail freight projects. (Currently, only congestion mitigation and air-quality funds, which are limited, can be used for rail freight.) Many worthwhile port rail freight access projects, for both rail bridges and double-stack train access, have been rejected for funding for this reason.

2. ISTEA should create a financial incentive to fund national need projects, particularly access to intermodal facilities, either through a separate funding source or a higher federal cost share for projects meeting certain criteria.

3. The federal government should develop and support innovative financing ideas for transportation infrastructure projects. For example, we urged the 103rd Congress to enact H.R. 3231, a bill that would allow the use of tax-exempt bonds to finance transportation facilities beyond the dock, including trackage or rail facilities.

Waterside access to a port is just as critical as adequate landside access. Our nation's deep-draft navigation channels are our nation's highways to the world marketplace. It is absolutely essential that they be improved and maintained in a timely and cost-effective manner. A recent U.S. Department of Commerce report indicates that it "is not uncommon for major federal improvement dredging projects to require more than 20 years of effort to complete work." There is no federal agency that serves as an advocate for port projects. The lack of interagency coordination and strong federal leadership contributes to the inertia of open-ended, multiagency permit reviews.

The maritime, port, labor, and business communities have called for the adoption of a national dredging policy to facilitate the timely and cost-effective dredging of our nation's navigation channels. Toward that end, AAPA has received a letter from President Clinton who pledged to call on federal agencies to "redouble their efforts" to

find solutions to dredging problems. Transportation Secretary Peña has established a federal Interagency Task Force on the Dredging Process, which includes the U.S. Army Corps of Engineers, EPA, and other interested federal agencies, to provide recommendations on coordinating and facilitating dredging our nation's ports.

To provide a more coherent and consistent program for dredging and managing sediments, inconsistencies between the Clean Water Act (CWA) and Ocean Dumping Act (ODA) must be reconciled. Outdated provisions in the 1986 Water Resources Development Act (WRDA '86) that favor open water disposal over confined and upland disposal options need to be revised. These changes are required to establish a clear and consistent federal responsibility for long-term disposal planning, including ensuring that adequate capacity and federal funding for the construction of dredged material disposal sites continues.

To facilitate implementation of national dredging policy objectives, AAPA has advocated the following legislative changes:

1. Establish a new section of the CWA, separate from the 404 wetlands provisions and consistent with ODA, to permit the discharge of material dredged from navigation channels to EPA-approved disposal areas.

2. Amend other provisions of the CWA to emphasize the prevention of pollution that may contaminate sediments and to require consideration of the usefulness and value of waters and channels to navigation when establishing appropriate criteria and standards.

3. Establish a comprehensive program under WRDA, clarifying federal responsibility for siting, constructing, and funding confined and land-based disposal facilities for dredged material, in connection with construction and maintenance of authorized federal navigation projects.

Ports are currently responsible for funding construction of any needed confined dredged material disposal areas. Because environmental regulation has become more stringent and testing techniques more sophisticated, an increasing amount of material has been required to go to confined disposal facilities, a result not anticipated when cost-sharing policies were adopted in WRDA '86.

As part of its legislative proposals to implement a national dredging policy, AAPA proposes that any disposal sites that must be constructed to accommodate dredged material from authorized harbor and channel dredging be considered part of the general navigation

features of the project and therefore, be subject to the same cost-sharing requirements as any other part of the navigation project. This would be a change from current law and would remove an existing strong economic incentive to utilize open-water disposal sites wherever possible, even when this may not be the most environmentally preferred option. This approach would reduce the disparity of treatment between open-water disposal sites for that the federal government shares the cost with local sponsors and confined and upland sites. In most cases, this cost is the total nonfederal (local) cost. Provisions clarifying federal responsibility to share in the cost of construction of dredged material disposal was approved both in the House version of WRDA '92 and WRDA '94.

Last year (1994) was the first year since the passage of WRDA '86 that Congress failed to enact a biennial water resources authorization bill. The passage of such a bill is essential to the ability of our nation to provide a transportation system that meets our national defense and international commerce needs. This failure not only delays important navigation projects, but also it postpones necessary policy changes included in the 1994 legislation. AAPA favors enactment of water resources bills in both 1995 and 1996 to restore the cycle.

Continuation of biennial authorizations and maintaining adequate annual appropriations levels are necessary for effective planning and budgeting of dredging projects by state and local governments that share the cost of navigation projects and have substantial investment in landside facilities that link our nation's navigation channels with our rail and highway systems. AAPA will continue to work to ensure regular passage of this important legislation.

Environment

Sustainable Development and Environmental Responsibility

AAPA recognizes the need to balance environmental protection with economic impacts. Priorities should be established and limited resources applied to achieve maximum environmental benefits. Economic growth will enhance ability to address environmental challenges. Too often the quagmire of local, state, and federal environmental regulation inhibits project development without concomitant environmental benefit. Increased emphasis should be placed on pollution prevention and control of nonpoint runoff that pollutes our waterways.

Wetlands

Because ports, by their nature, are water-dependent, port development projects often affect definitional wetlands, many with little true ecological worth. AAPA strongly supports the goal of no net loss of wetlands and favors the development of a mitigation banking program that will encourage the net gain of ecologically valuable wetlands, while enabling ports to undertake environmentally responsible development. AAPA strongly advocates the need to account for the functions and values of wetlands and the importance of streamlining wetland identification and permitting procedures.

Endangered Species

AAPA recommends that Congress, in reauthorizing the Endangered Species Act, consider (A) the national economic impact and limitations encountered when seeking to protect threatened or endangered species; (B) how the livelihoods of individuals are affected when a specific plant or animal is declared threatened or endangered; and (C) that when conflict between protected species and port-sponsored development projects occurs, the solutions to saving the species and the project can and should be pursued concurrently.

Marine Sanctuaries

AAPA strongly supports the protection of marine resources but opposes unwarranted restrictions on maritime commercial activities in marine sanctuaries that are compatible with the goals of the sanctuary and comply with applicable environmental regulation. As sanctuaries become larger and are proposed in more active waterway areas, accommodating conservation efforts and existing uses becomes more difficult. Decisions are further complicated by overlapping regulation and ill-defined lines of authority among various federal and local agencies that have jurisdiction over multiple activities in a sanctuary.

AAPA believes that proponents and opponents of species classification should provide adequate evidence, before invoking the Endangered Species Act, to determine the need for: designating species as threatened or endangered; determining the impact on the ecosystem if a specific species became extinct; and assessing the economic impact of proposed actions and

inactions, by conducting cost/benefit analyses of the local, regional, and national economy.

Trade

Free and Fair Trade

AAPA has a standing resolution that emphasizes the importance of foreign trade to the United States, warns about the dangers of trade protectionist policies, and advocates reciprocal international trade liberalization on a fair and equitable basis. Further, AAPA supports the establishment of internationally accepted rules to bring about trade stability and equity to services and foreign investment. After all, exports as well as imports create jobs.

AAPA strongly supported passage of the North American Free Trade Agreement as well as implementation of the Uruguay Round of the General Agreement on Tariffs and Trade. It has opposed import and export restrictions, such as efforts to prohibit exports of raw logs. It also has opposed unilateral, sector-specific trade remedies, such as efforts to impose severe penalties on foreign flag vessels to force other governments to discontinue subsidies to their nations' shipyards.

Trade Taxes

In the 1990 budget agreement, numerous user fees and taxes were imposed or increased on trade without any consideration of the cumulative impact on the competitiveness of U.S. exports and U.S. ports. Among the tax and user-fee increases affecting trade were vessel tonnage taxes; harbor maintenance taxes; taxes on fuel for railway, truck and inland waterway transport; Coast Guard fees; and commodity inspection fees. High trade taxes create a competitive disadvantage for U.S. exports and U.S. ports. AAPA favors reducing trade taxes on a fair and equitable basis, including, where appropriate, the elimination of such taxes on trade.

Harbor Maintenance Tax

Before 1986, the federal government paid for dredging, including new projects and maintenance dredging. WRDA '86 provided that the cost of new projects would be shared with a local project sponsor and that the cost of maintenance dredging would be partially paid (40 percent) by an ad valorem user fee assessed against

cargo, the harbor maintenance tax. At the time, there was great concern about raising more than 40 percent of maintenance costs through the harbor maintenance tax because of the potential adverse effect on U.S. exports and on the competitiveness of U.S. ports. In the 1990 budget agreement, the harbor maintenance tax was tripled to cover 100 percent of the cost of maintenance dredging, and the result has been the diversion of some cargoes to Canadian ports.

AAPA strongly opposes any further increases in the harbor maintenance tax; seeks to ensure that the tax is used only for its intended purposes and that it is rolled back to the minimum level needed to meet those needs; and opposes the accumulation of any surplus or use of the fund for deficit reduction purposes. AAPA also is concerned about the anticompetitive impact of the tax on northern tier ports.

Maritime

Maritime Reform

U.S. public ports have an interest in the United States maintaining a strong flag fleet as well as a viable shipbuilding industry. Although our cargo and revenues may come from both U.S.- and foreign-flag carriers, the maintenance of a U.S.-flag fleet assists in our national defense needs and provides competition in the international shipping market. AAPA has supported efforts to create a program to provide subsidies for U.S.-flag carriers but has opposed the use of taxes on trade to fund it. AAPA also supports leveling the playing field between U.S.- and foreign-flag carriers by imposing similar construction, inspection, and safety standards—U.S.-flag vessels should not bear the entire expense of more stringent standards.

Cruise Industry

AAPA opposes efforts requiring that vessels engaging in "cruises to nowhere" be U.S.-flag, U.S.-owned, and U.S.-built. Cruises to nowhere benefit the U.S. economy and create U.S. jobs and should not be restricted. In addition, AAPA has supported efforts to build up a cruise industry between U.S. ports.

Extension of U.S. Labor Laws to Foreign-Flag Vessels

AAPA opposes efforts to extend the application of U.S. labor laws to foreign-flag vessels. Such legislation would

increase the cost of trade, hurt the export position of certain U.S. products (particularly bulk and breakbulk commodities), adversely affect the cruise industry, and make U.S. ports less competitive. In addition, unilateral action to force foreign-flag vessels to comply with U.S. labor laws is highly inappropriate under international law.

Shipping Act of 1984

AAPA believes that the existing regulatory regime and the Federal Maritime Commission's jurisdiction governing the ocean transportation industry with its concomitant antitrust immunities, as authorized in the Shipping Act of 1984, has been a successful compromise and that the current system should be maintained. The 1984 act was reviewed by the Advisory Commission on Conferences in Ocean Shipping in 1991, that found no evidence regarding any abuse of statutory immunity by either port agencies or marine terminal operators. AAPA strongly asserts that Congress and federal regulatory agencies should refrain from any action that would impair or alter the existing antitrust immunity of port agencies and marine terminal operators.

Tax Issues

There is a need to simplify the arbitrage rebate. The Tax Reform Act of 1986 placed severe restrictions on how the interest income from monies raised through tax-

exempt bonds can be used. Congress imposed these restrictions because many bond issuers were not spending bond proceeds in a "timely" way and were using the interest income for purposes other than the original intent of the bonds. To put an end to the problem, Congress took away this arbitrage incentive by requiring that any arbitrage profit earned be rebated to the U.S. Treasury. The subsequent regulations promulgated by the Treasury Department for the collection of the arbitrage rebate are difficult to understand and comply with. In many cases, the administrative cost and burden of collecting the rebate was more than the amount being collected.

U.S. ports have been responsible for investment, development, and often operation of shoreside facilities. More than \$12.5 billion has been expended by ports since World War II to upgrade these shoreside facilities. Tax-exempt bonds have been critical to ports in this effort. AAPA strongly supports more flexible and simplified arbitrage rebate regulations.

BACKGROUND

AAPA, founded in 1912, represents the interests of public port agencies. Virtually every public port agency in the United States as well as the major port agencies in Canada, Latin America, and the Caribbean are members of AAPA. As public entities, ports are mandated by law to serve public purposes—primarily the facilitation of waterborne commerce and the generation of local and regional economic growth.