

## HELD HOSTAGE

### U.S. Ports, Labor Unrest, and the Threat to National Commerce

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#### EXECUTIVE SUMMARY

America's economic growth depends on ports for a competitive edge in exports and for the flow of imported goods that bolster Americans' paychecks. The costs incurred during slowdowns at U.S. ports, recent and otherwise, highlight the considerable importance of ports to the U.S. economy and the need to reform U.S. port labor law. Indeed, if America is to reap the benefits of the two major new free-trade deals currently under negotiation, the Transatlantic Trade and Investment Partnership (TTIP) and the Trans-Pacific Partnership (TPP), U.S. ports must be open for business.<sup>1</sup>

At present, port employers—container carrier operators, marine terminal operators, shipping associations, and port associations—are represented on America's 29 West Coast ports by the Pacific Maritime Association (PMA); and on the country's 14 major East and Gulf Coast ports by the U.S. Maritime Alliance (USMX). West Coast port workers are represented by the International Longshore and Warehouse Union (ILWU); and on the East and Gulf Coast by the International Longshoremen's Association (ILA).

With international trade now a substantial and rising component of U.S. GDP, port slowdowns and shutdowns present a growing threat to national commerce.<sup>2</sup> During the West Coast port slowdown of

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2014–15, apple farmers lost \$19 million per week, while certain foreign companies had to air-freight goods into the United States.<sup>3</sup> In 2002, an 11-day West Coast port lockout cost the U.S. economy \$15.6 billion.<sup>4</sup> Slowdowns prevent shippers and truckers from operating, which raises costs for U.S. importers and exporters. Higher costs are passed on to U.S. consumers and make American exporters less competitive. Further, when foreign clients replace U.S. exporters with cheaper, more reliable alternatives, it can be difficult, if not impossible, to later restore such relationships.<sup>5</sup>

In 1926, Congress passed the Railway Labor Act (RLA) to ensure that commerce was not disrupted by labor disputes between railroad employee unions and management. The House of Representatives' Committee on Interstate and Foreign Commerce noted that the law would “insure to the public continuity and efficiency of interstate transportation service, and to protect the public from the injuries and losses consequent upon any impairment or interruption of interstate commerce through failures of managers and employees to settle peaceably their controversies.”<sup>6</sup> In 1936, Congress expanded the RLA to cover unionized airline employees. Today, when disputes in the U.S. railroad and airline industries arise, they can be resolved rapidly without loss to commerce. For example, in a 2011 dispute between railroads and employees, President Obama set up a Presidential Emergency Board that successfully negotiated an agreement.

Ports are no less critical to U.S. infrastructure and trade—and should be governed in the same manner as America's railroad and airline industries. Congress and the president should not allow millions of jobs and hundreds of billions of dollars in income to be held hostage when labor contracts expire. It is time to update U.S. labor law by putting the country's ports under the RLA's jurisdiction.

## INTRODUCTION

America's network of 180 commercial ports facilitates the flow of merchandise into and out of the

country. The ports serve as the intermodal point for foreign goods to be transported by freight trains and trucks across the United States—and, at the behest of U.S. exporters, allow the reverse flow of goods overseas.

In recent years, U.S. port disputes between union longshoremen and management over the extension and renegotiation of collective-bargaining contracts have been frequent and costly. Since 2012, three major disputes at East and West Coast ports, including a contract dispute that began in the summer of 2014, resulted in the slowdown of cargo processing at West Coast ports.

Port strikes have serious economic consequences beyond port employers and employees. They damage the larger U.S. trade-based economy, disrupting the lives and businesses of many Americans in the process. Disruptions generate persistent uncertainty among exporters and importers. Even temporary shutdowns and slowdowns can cost the U.S. economy billions of dollars. As Congress and the president negotiate major new trade pacts and American dependence on international trade expands accordingly, future shutdowns carry even greater economic risk.

At present, U.S. labor law does not provide an adequate framework for negotiations between port labor and management. Port workers are currently covered by the National Labor Relations Board (NLRB), under the jurisdiction of the National Labor Relations Act (NLRA). This paper also explains why placing port employees and collective-bargaining agreements under the National Mediation Board (NMB)—under RLA jurisdiction—would ensure that port operations are legally bound to continue during negotiations. **Section I** discusses the importance of American ports to the U.S. economy. **Section II** explains how the labor structure at West and East Coast ports creates the potential for strikes. **Section III** analyzes the effects of strikes on U.S. exporters and importers. **Section IV** proposes reforms.

## I. IMPORTANCE OF PORTS TO THE U.S. ECONOMY

Ports, as discussed, are the center of intermodal transport in America. From ports, cargo containers are moved to trains and trucks and then to stores and consumers. Exporters use the system in reverse, shipping products by rail and road to ports, from which they head to all parts of the globe. America's economic growth depends on effective ports for its competitive edge in exports, as well as for the imported goods that make Americans' paychecks go further and widen their choices.

U.S. international trade in goods accounted for more than \$3.6 trillion in 2013 (**Figure 1**), nearly 22 percent of U.S. GDP.<sup>7</sup> Ports directly employ 470,000 workers, and seaport-related jobs account for \$650 billion in annual income.<sup>8</sup> In the past decade, maritime trade increased dramatically, from \$958 billion in 2004 to \$1.75 trillion in 2013.<sup>9</sup> Imports of 20-foot equivalent units (TEU)<sup>10</sup> of containerized cargo are

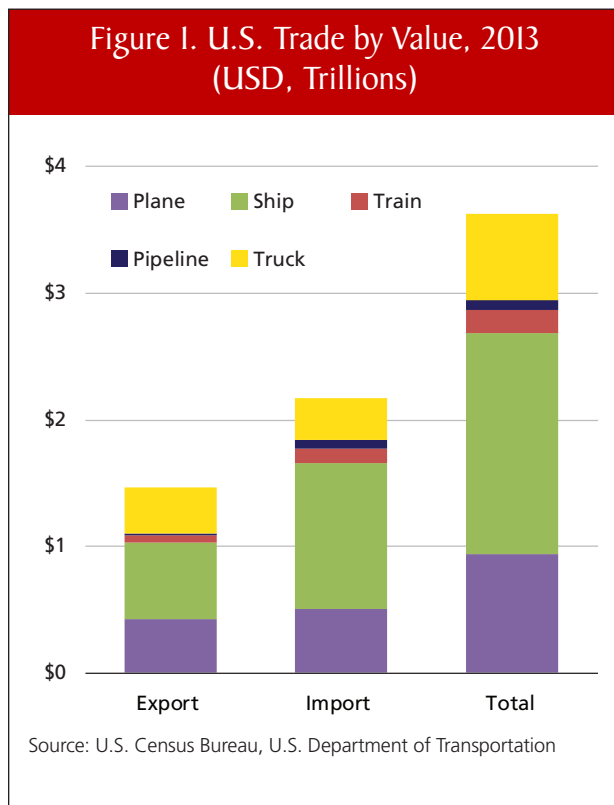
projected to triple, from 17 million in 2011 to 60 million in 2037; exports are set to rise from 13 million to 52 million containers by 2037.<sup>11</sup>

To accommodate more cargo from growing international trade and increased use of large container transport vessels ("post-Panamax vessels"), America has been investing \$1.5 billion annually to expand and modernize its waterside infrastructure.<sup>12</sup> In 2012, post-Panamax vessels constituted 16 percent of the world's container fleet but 45 percent of global container cargo.<sup>13</sup> In 2030, post-Panamax vessels are expected to account for 62 percent of global cargo capacity.<sup>14</sup>

Ports in Baltimore, Miami, New York, and Norfolk are undergoing depth expansion to accommodate larger cargo ships. In 2011, America's East Coast surpassed its West Coast in container traffic growth for the first time since World War II.<sup>15</sup> Funded by China, Nicaragua is planning a \$50 billion Inter-oceanic Grand Canal linking the Pacific and the Caribbean.<sup>16</sup> The Panama Canal is doubling capacity, to accommodate more traffic bound for U.S. Gulf and East Coast ports. East Coast ports are, in turn, acquiring cranes to accommodate the largest possible cargo ships heading through the Panama Canal.<sup>17</sup> Indeed, the Panama Canal expansion is expected to change the entire U.S. supply chain, including manufacturing plants, commodities, agricultural exports, and retail supply chains.<sup>18</sup>

East and Gulf Coast ports hope to capture 70 percent of imports currently shipped to West Coast ports.<sup>19</sup> Import and export tonnage at East Coast ports is projected to rise from 65.1 million tons in 2012 to 146.3 million tons in 2029. Over the same period, Gulf Coast trade in containerized tonnage is forecast to expand from 29.6 million tons to 64.6 million, according to the U.S. Army Corps of Engineers.<sup>20</sup>

As billions of tons of merchandise, raw materials, and agricultural products pass through U.S. ports, reliable operations are crucial to domestic and international



commerce. Disruptions in trade can cost the U.S. economy billions in lost output. Even short disruptions can wreak havoc with perishable agricultural exports. Port shutdowns or slowdowns have occurred almost exclusively during labor disputes with ports' management, underscoring the need to examine how labor law can be reformed to mitigate these risks.

Consider the contract dispute between the ILWU and Pacific Northwest Grain Handlers Association, which began in 2013 and escalated when grain employers locked out union members in March 2014. Initially, Washington State provided police escorts to allow state grain inspectors to cross ILWU picket lines, but pulled their support in July 2014. After the intervention of the Federal Mediation and Conciliation Service (FMCS), an agreement was finally reached in August 2014.<sup>21</sup> The ILWU strike generated a large backlog in the ports of Vancouver, Washington, and Portland, Oregon—which typically account for 35 percent of U.S. grain exports and 40 percent of wheat exports<sup>22</sup>—preventing the export of some 2.8 million bushels of grain.<sup>23</sup>

In December 2012, ILWU clerical workers at the port of Los Angeles–Long Beach—the nation's largest, handling about 40 percent of U.S. containerized cargo—went on strike for eight days. In solidarity, other ILWU port workers refused to cross picket lines. The cost of the strike is estimated at \$8 billion, with the processing-cargo backlog continuing into January 2013.<sup>24</sup> Only after Los Angeles mayor Antonio Villaraigosa threatened federal mediation did the union reach an agreement.

In August 2012, one month before the expiration of the union's contract on September 30, 2012, failure to reach an accord on a new master agreement for 14,500 longshoremen at 14 large USMX East Coast ports led both parties to request FMCS mediation.<sup>25</sup> The FMCS concluded that the threat of strike was a realistic possibility and would have “inevitably crippled the nation's economy.”<sup>26</sup> Top FMCS officials then persuaded both sides to temporarily extend the

current union contract until 2013,<sup>27</sup> thus beginning a protracted, eight-month fight that was resolved only in April 2013.<sup>28</sup>

Importers' fear of potential strikes has caused certain ports to see significant decline in cargo. Shipments at Georgia's Savannah port declined by over 1 percent during the aforementioned dispute.<sup>29</sup> For comparison, a 1 percent decline in the value of goods shipped through Savannah's port would cost the port more than \$900 million.<sup>30</sup>

In October 2013, a Baltimore ILA-affiliated union, ILA local 333, went on strike for three days because of a dispute with the city's Steamship Trade Association. Three other ILA unions honored the picket lines.<sup>31</sup> While the brief strike affected only one of the port's terminals, it was enough to temporarily disrupt global trade, as dozens of ships were forced to reroute. After the USMX filed a lawsuit in U.S. District Court, the arbitrator determined that ILA local 333 had violated the no-strike provision in the USMX-ILA master contract and fined it \$3.86 million.<sup>32</sup>

The most costly port shutdown in recent years was an 11-day West Coast shutdown in 2002. The conflict began on July 1, 2002, when the PMA and the ILWU failed to reach an agreement to replace their expiring labor deal.<sup>33</sup> On September 26, the ILWU began a coordinated slowdown, causing productivity to fall by 60 percent.<sup>34</sup> On September 27, the PMA responded by locking out the ILWU from its ports, leading to the shutdown, which affected the entire nation's transportation infrastructure, including exporters, importers, freight trains, and truckers. On October 8, President Bush issued a Taft-Hartley Act injunction to end the dispute.

About 10 percent of the daily value of U.S. imports was lost during the 11-day lockout—at a cost of \$15.6 billion.<sup>35</sup> Jonathan Gold, vice president of the National Retail Federation, estimated that it took six months to clear up shipping backlogs.<sup>36</sup> The lockout hit Alaska particularly hard, where 70 percent of

the state’s consumer goods are shipped through the ILWU-controlled port of Tacoma.<sup>37</sup>

In yet another damaging West Coast port dispute—which saw negotiations between the ILWU and the PMA begin in May 2014 and conclude with a tentative agreement in February 2015—operations continued after the contract expired in July 2014, though the union was accused of slowing down cargo processing.<sup>38</sup> As a result, American exporters, especially agricultural producers, experienced difficulty shipping goods to overseas markets;<sup>39</sup> carriers enjoyed lower on-time reliability, with some ships anchored outside ports for up to a week; in November 2014, transpacific ships were 2.4 days late, on average;<sup>40</sup> and carriers have begun to find alternatives, with 65 percent of shippers pledging to avoid West Coast ports altogether.<sup>41</sup>

With ratification of the agreement still pending, a full-scale strike has so far been averted. If West Coast ports had experienced a 20-day shutdown in 2014, however, it would have cost the U.S. economy \$49.9 billion, according to the National Association of Manufacturers and the National Retail Federation.<sup>42</sup>

As the global economy becomes more integrated, America will depend even more on its ports. International trade through seaports is expected to grow to 60 percent of U.S. GDP by 2030.<sup>43</sup> The Trans-Pacific Partnership and the Transatlantic Trade and Investment Partnership have the potential to further boost trade by some \$400 billion by 2025.<sup>44</sup>

## II. LABOR STRUCTURE AT U.S. PORTS

Port employers—container carrier operators, marine terminal operators, shipping associations, and port associations—are represented on America’s 29 West Coast ports by the Pacific Maritime Association (PMA); and on 14 East and Gulf Coast ports by the U.S. Maritime Alliance (USMX). West Coast port workers are represented by the International

Longshore and Warehouse Union (ILWU); and on the East and Gulf Coast by the International Longshoremen’s Association (ILA) (**Figure 2**).

Unionized positions include dockworkers (“longshoremen,” who load and unload containerized cargo), clerks, and workers in warehousing, manufacturing, health care, and waste. At ports such as Houston, hiring is handled exclusively by unions. In other ports, hiring responsibility is divided between labor and management, with the former often selecting candidates and the latter conducting background checks.

A master contract stipulates pay, overtime, health care, pensions, and safety conditions for all union members. Longshoremen earn high pay and generous benefits: average salaries exceed \$100,000, annual pensions often exceed \$70,000, and health care plans have no premiums.<sup>45</sup> Master contracts typically run five to six years and prohibit strikes and slowdowns while in effect. (Union locals can sign separate contracts with individual port and shipping associations for additional benefits, although the master contract still applies for all union members.)

**Figure 2. U.S. Ports by Share of Container Trade and Union Representation, 2012\***

Rank	Port/State	Share (%)	Union
1	Los Angeles, CA	20.15	ILWU
2	Long Beach, CA	14.69	ILWU
3	New York, NY	14.41	ILA
4	Savannah, GA	7.76	ILA
5	Hampton Roads, VA	5.59	ILA
6	Oakland, CA	5.23	ILWU
7	Houston, TX	5.07	ILA
8	Seattle, WA	4.21	ILWU
9	Charleston, SC	4.13	ILA
10	Tacoma, WA	3.70	ILWU
<b>Top 10</b>		<b>84.93</b>	
Other Ports		15.07	

\*Percentages reflect number of TEU processed at ports as a proportion of national total.  
Source: U.S. Department of Transportation, U.S. Maritime Administration



The ILA has roughly 43,500 members working at East and Gulf Coast ports, on the Great Lakes, and at a few other inland ports.<sup>46</sup> The ILWU has 37,000 members in 60 local unions in California, Washington, Oregon, Alaska, and Hawaii.<sup>47</sup> ILA members earn average annual wage and benefits packages of \$124,000.<sup>48</sup>

Labor at East Coast ports tends to be more stable and reliable than at West Coast ports.<sup>49</sup> Since 1977, no union-wide strikes or lockouts have occurred between the ILA and the USMX.<sup>50</sup> About 14,500 ILA port workers are employed at the 14 major East and Gulf Coast ports, including New York–New Jersey, Norfolk, Miami, New Orleans, and Houston—with direct water transportation services linking Asia to New York, Norfolk, Savannah, Baltimore, and Houston.<sup>51</sup>

Longshoremen enjoy disproportionate influence over port operations. For example, while New York employs 3,250 longshoremen, about 200,000 additional jobs are dependent on the port's activity<sup>52</sup>—a union strike would prevent the vast majority from returning to work and would disrupt the entire U.S. supply chain. Unions often leverage their power to prevent port management from upgrading port facilities and increasing automation<sup>53</sup>—as seen in the 2012 ILA port dispute.<sup>54</sup>

ILWU's longshore division has 30 local organizations with 20,000 members, covering 29 West Coast ports, including Los Angeles–Long Beach, San Francisco, Tacoma, and Portland.<sup>55</sup> The average ILWU worker earns more than \$147,000 annually, with a maximum annual pension of \$80,000.<sup>56</sup>

As mentioned, after the master contract expired in July 2014, the West Coast port slowdown lasted eight months, during which the PMA accused the ILWU of providing unqualified longshoremen and slowing down cargo-processing times. The ILWU's demands, according to the PMA, included maintaining “Cadillac” health plans (which include no worker premiums, co-pays, or deductibles), continued control over maintenance and repair of truck chassis, and changing the arbitrator selection process to allow the PMA to

unilaterally fire arbitrators who rule against it.<sup>57</sup> ILWU spokesman Craig Merrilees says that the ILWU seeks safety upgrades and job tenure guarantees: “[There has been] incredible frustration on the part of workers due to congestion that has made their work more dangerous and difficult.”<sup>58</sup> The ports, argues Merrilees, suffer not from worker slowdowns but from a chassis shortage, insufficient shipping containers, and increased railroad competition.

On February 20, 2015, the PMA and ILWU reached a tentative five-year agreement, ending their lengthy standoff. Casualties included American manufacturers, truckers, and agricultural and meat exporters. Brokered by U.S. Labor Secretary Thomas Perez and a federal mediator, the agreement affected 20,000 dockworkers and all 29 West Coast ports. Though the exact terms have not been made public, a pre-agreement PMA offer in February would raise pay (currently \$147,000 annually, on average) by 3 percent per year; workers' health benefits would total \$35,000 per year; and maximum pensions would rise to \$88,800 per year.<sup>59</sup> Before the agreement is finalized, it must be ratified by ILWU members—a process that can take several months.

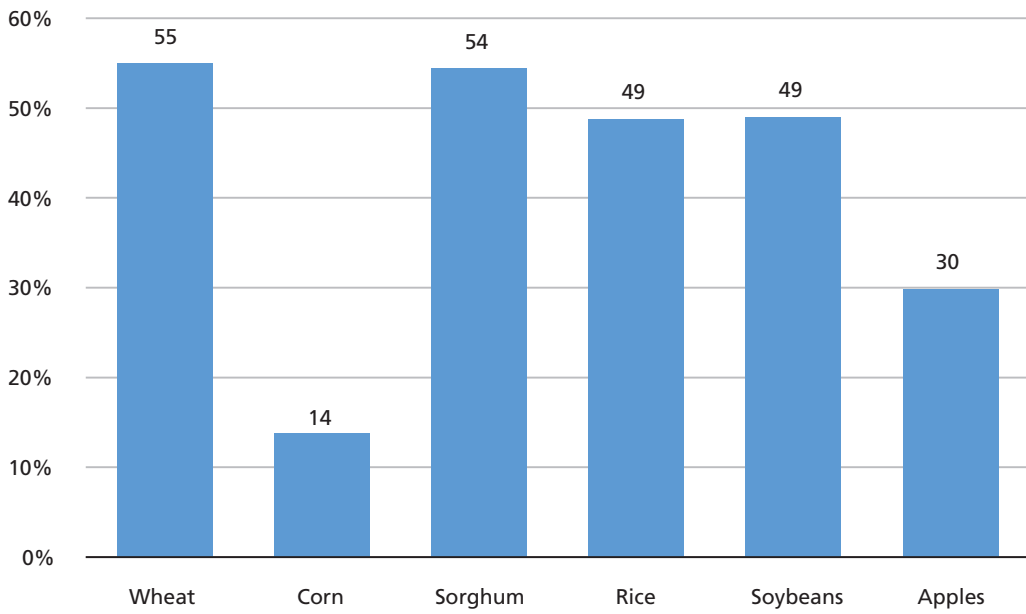
### III. IMPACT OF STRIKES ON EXPORTERS AND IMPORTERS

Slowdowns, as discussed, prevent shippers and truckers from operating, which raises costs for U.S. importers and exporters. Higher costs are passed on to U.S. consumers and make American exporters less competitive. Further, when foreign clients replace U.S. exporters with cheaper, more reliable alternatives, it can be difficult, if not impossible, to later restore such relationships.

#### Costs to Exporters

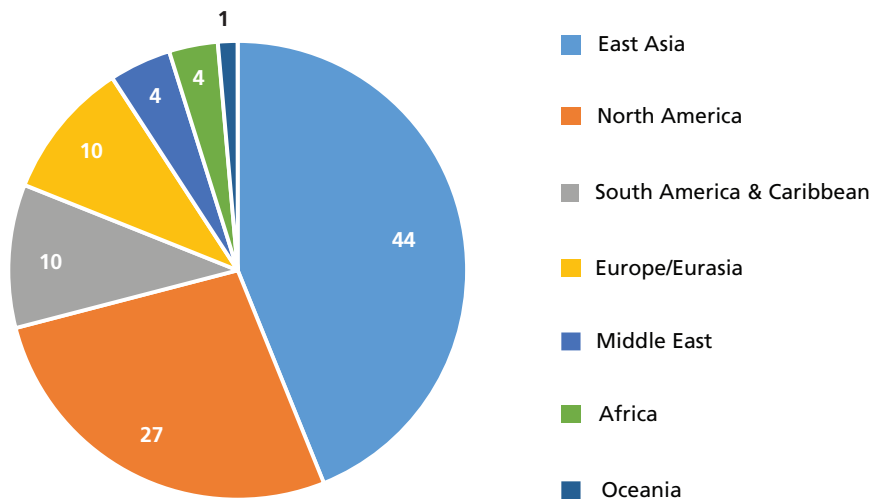
American farmers export 55 percent of their wheat, 49 percent of their soybeans, and 30 percent of their apples (**Figure 3**).<sup>60</sup> Eighty-one percent of U.S. agricultural exports are shipped by ocean carriers to major export markets;<sup>61</sup> **Figure 4** offers a breakdown of U.S. exports by destination. High-growth

Figure 3. U.S. Agricultural Exports as Percentage of Total Produced, 2013



Source: U.S. Department of Agriculture

Figure 4. Destination of U.S. Agricultural Exports by Percentage Value, FY 2014



Source: U.S. Department of Agriculture

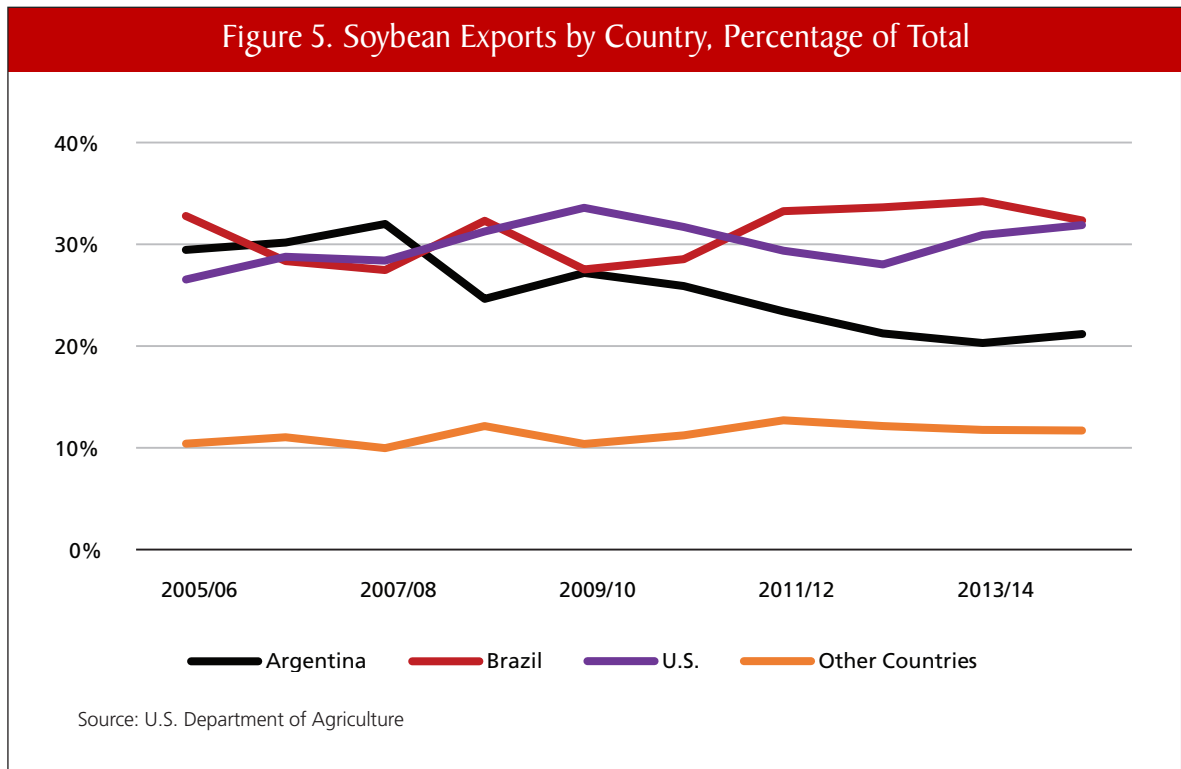
markets, such as Southeast Asia, Latin America, and India, are only reachable via ocean freight.<sup>62</sup> America's agricultural sector—which earns \$150 billion annually in exports—is particularly vulnerable to supply-chain interruptions.<sup>63</sup>

Port strikes can inflict irreparable damage to entire sectors. Prior to the aforementioned 2002 shutdown, California almonds were exported in vast quantities to Asia.<sup>64</sup> After the strike, Asians turned their purchasing power to more reliable supplies.<sup>65</sup> Japanese candy makers, for instance, have since permanently switched to Turkish almond exporters.<sup>66</sup>

As a result of the 2002 shutdown, U.S. grain and meat exporters ceded 5 percent of their market share—a \$135 million loss.<sup>67</sup> Low profit margins make U.S. agricultural producers particularly sensitive to transportation cost hikes. **Figure 5** reveals the stiff global competition among American, Argentinean, and Brazilian soybean exporters.<sup>68</sup>

U.S. soybean producers, notes the U.S. Department of Agriculture (USDA), can retain market share despite higher production costs, thanks to lower transportation costs.<sup>69</sup> Brazil has taken note and is upgrading its transportation infrastructure to better compete with U.S. shipping.<sup>70</sup> The stakes are high: a mere 1 percent drop in America's soybean market share would equal \$500 million annually in lost export sales.<sup>71</sup> When the 2014 labor dispute delayed corn and soybean shipments to Asia, certain U.S. soybean exporters offered discounts to preserve business relationships: Prairie Creek Grain offered Asian importers a 6 percent discount per container of soybeans.<sup>72</sup>

The U.S. is the world's largest exporter of corn: since 2005, it has accounted for about 50 percent of the global export market (**Figure 6**).<sup>73</sup> In recent years, foreign corn production has increased dramatically, and the U.S. market share has fallen. As with soybeans, transportation costs play a vital role in keeping U.S. corn exports competitive.<sup>74</sup>





Season-focused exports, such as Christmas trees, must be delivered on time or they become worthless. Oregon and Washington produce 8.7 million holiday evergreens annually, many destined for Hawaii, which imports 96 percent of its trees.<sup>75</sup> During the 2014 slowdown, one Portland freight manager—who typically exports 500,000 fir trees to Hong Kong, Singapore, and Malaysia—reported that 30 percent of her orders had been canceled.<sup>76</sup>

American apples are a popular holiday fruit in Central and Latin America, where over 50 percent of U.S. apple exports go in the lead-up to Christmas.<sup>77</sup> During the 2014 slowdown, apples were left to rot in Washington warehouses, losing the industry \$19 million per week.<sup>78</sup> Apple processors began firing employees, too.<sup>79</sup> Indeed, for every 5,000 containers of apples diverted from exports—a figure nearly reached in the 2014 slowdown—Washington farmers lose \$116.7 million in income and the state loses 1,100 jobs.<sup>80</sup>

Japan is the largest importer of U.S. hay, alfalfa, and forage exports.<sup>81</sup> During the 2014 slowdown, Japan’s Ministry of Agriculture sent a letter warning the USDA that American agricultural and livestock exports were arriving late to Japan.<sup>82</sup>

America’s potato industry is another casualty of the 2014 slowdown. During 2003–12, U.S. potato exports rose from \$646 million to \$1.64 billion (**Figure 7**), with frozen french-fry exports accounting for 56 percent of the total.<sup>83</sup> During 2003–12, U.S. potato exports to Japan, including frozen fries, more than doubled, from \$178 million to \$404 million.<sup>84</sup> Yet during the 2014 slowdown, more than 1,000 tons of frozen potato products destined for Japanese McDonald’s outlets were flown into Japan; 1,600 more tons had to leave from East Coast ports.<sup>85</sup> Despite such efforts, the company still had to ration fries and offer smaller portions to Japanese customers.<sup>86</sup>

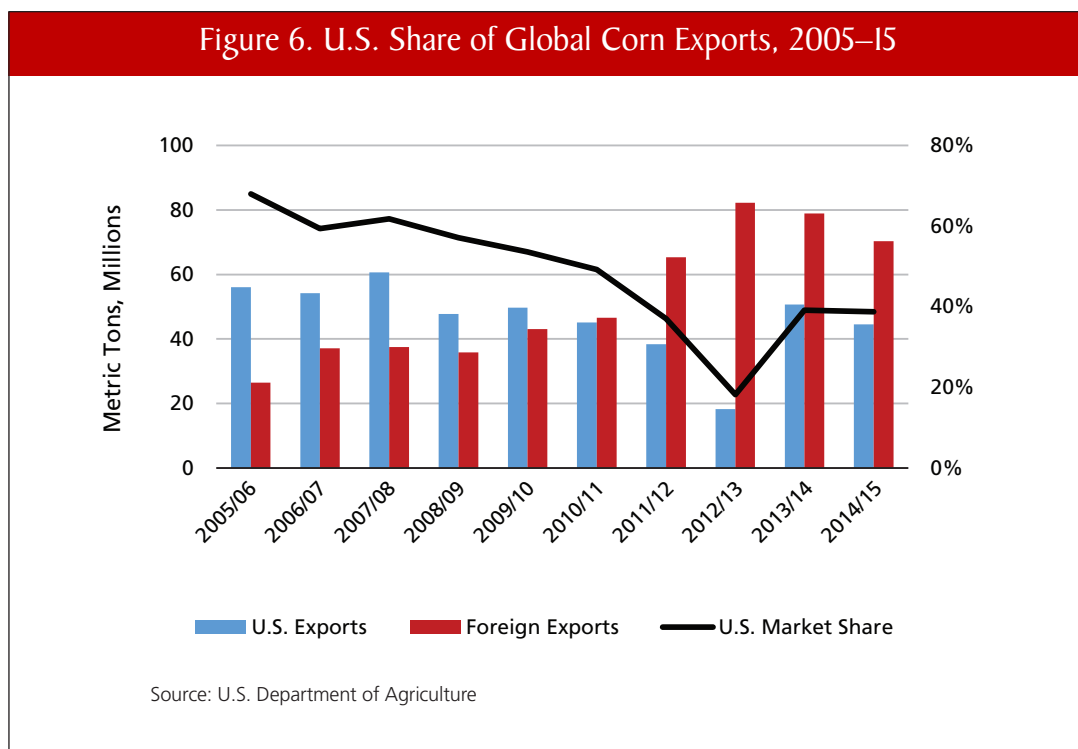
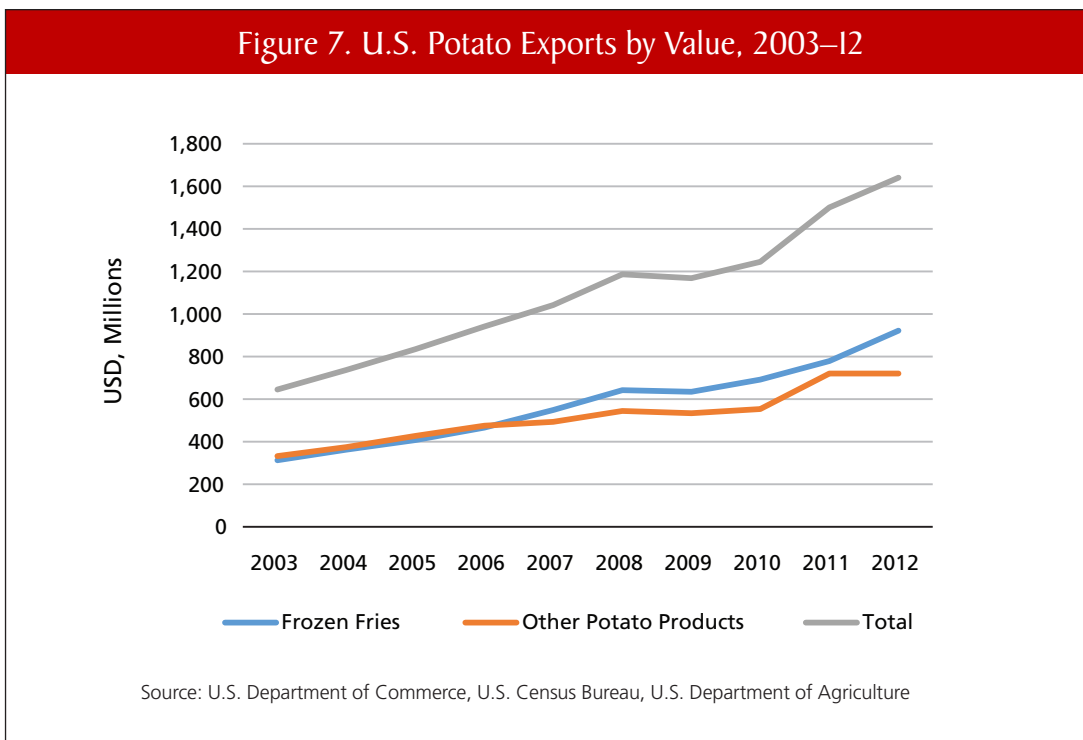


Figure 7. U.S. Potato Exports by Value, 2003–12



### Costs to Importers

U.S. manufacturers rely on imported raw materials (Figure 8). American retailers depend on imported goods, too. In 2013, they imported \$105 billion worth of apparel and textile products, of which China accounted for \$41.6 billion.<sup>87</sup> The costs to importers from port slowdowns are easier to estimate than those imposed on exporters.

During the 2002 shutdown, U.S. retailers, especially toy, apparel, and electronics importers, faced steep losses.<sup>88</sup> Retailers that rerouted cargo through East Coast ports—about 2 percent of the total—saw costs rise by 50 percent.<sup>89</sup> For the roughly 10 percent of cargo-bound imports that were flown in by air instead, costs rose by 1,500 percent.<sup>90</sup> As a result of the shutdown, various auto-product manufacturers in California were forced to close, triggering, in turn, the closure of various auto-parts manufacturers.<sup>91</sup>

With retailers scheduling clothing inventory cycles and prices months in advance, late or missed shipments shorten the window when products are sold,

while causing reduced sales due to inventory shortages.<sup>92</sup> During October and November of the 2014 West Coast slowdown, air-freight shipments from Asia to North America increased by 17 percent.<sup>93</sup> Ann Inc. spent an extra \$13 million to ship products by air,<sup>94</sup> while New York & Company, Inc. spent an extra \$2 million.<sup>95</sup> Tommy Bahama spent \$3 per product by air rather than the usual \$0.50 per product by ship.<sup>96</sup> Lululemon Athletica announced that fourth-quarter sales would likely fall by \$15 million.<sup>97</sup> Perry Ellis International experienced delays of \$6 million in goods.<sup>98</sup> Higher costs frequently translated into losses for retailers, as many were unable to pass the increased prices on to consumers.<sup>99</sup>

In December 2014, the Institute for Supply Management's (ISM) Purchasing Management Index declined to 55.5 percent, from 58.7 percent in November 2014.<sup>100</sup> Respondents from the fabricated metal products, textile mill, and machinery industries stated that the raw material shortage and subsequent productivity drop were directly caused by the West Coast strikes, forcing them to purchase materials via air freight.<sup>101</sup>

During the same period, ISM's Inventories Series Index fell, from 51.5 down to 45.5, while the ISM Supplier Risk Index rose to a three-year high.<sup>102</sup> In March 2015, ISM's Manufacturing Report on Business revealed continued delays.<sup>103</sup>

### Changing Supply Chains

The 2002 shutdown catalyzed changes to America's port network: market share for containerized cargo ports was dispersed away from the West Coast, with new retail distribution centers emerging closer to the East Coast and a general rebalancing of the entire supply chain.<sup>104</sup> Yet changing supply chains to avoid dysfunctional ports raises costs for consumers and lowers profits for exporters.

In a 2006 report, the Congressional Budget Office noted various alternatives that importers and exporters can use to bypass blocked ports—all of which add significant costs.<sup>105</sup> Air freight, for example, typically costs 10–15 times more than ocean freight.<sup>106</sup> (When assessing the 2002 slowdown, the CBO report did not, however, account for the loss to the U.S. economy when foreign suppliers permanently adjust their supply chains and replace U.S. producers.) To avoid disruption before contracts between port unions and

management expire, suppliers, retailers, and manufacturers can pursue four strategies:

1. **Change suppliers.** The downside: five to six months' advance commitment.<sup>107</sup>
2. **Stockpile inventory.** The downside: advance planning, a single large capital investment, and the need for substantial warehouse space.<sup>108</sup> In anticipation of the 2014 slowdown, Wal-Mart and Kohl's pursued this strategy.<sup>109</sup>
3. **Change shipping routes.** The downside: longer routes add significantly to costs. Shipping goods directly from China to California takes about 12 days; from China to New York, via the Panama Canal, 24 days; and from China to New York, via the Suez Canal, 32 days.<sup>110</sup> During the 2014 slowdown, Dollar General, Express, Kohl's, and Fuji Bikes, among others, shifted deliveries to East Coast ports.<sup>111</sup>
4. **Use air freight.** The downside: far higher transportation costs typically make this the method of last resort.<sup>112</sup> Various retailers, including Chico's, New York & Company, McDonald's, and The Children's Place, pursued this strategy during the 2014 slowdown.<sup>113</sup>

By lowering productivity, port slowdowns have an immediate negative effect on those who work directly in the supply chain, such as shippers, truckers, and terminal operators. Productivity at the port of Oakland, a major export center for agricultural goods, dropped by as much as 40 percent during the 2014 slowdown.<sup>114</sup> Carriers often impose congestion surcharges on exporters to cover increased costs, such as storage, trucking charges, and wasted fuel from idling ships. During the 2014 slowdown, ports charged exporters as much as \$800 per 20-foot container, and \$1,266 per 45-foot container.<sup>115</sup> Stansport, a camping equipment reseller, was hit with a \$1,000 congestion fee for each 40-foot shipping container.<sup>116</sup>

Increased cargo unloading time has led to congestion at ports for truckers, more than doubling the time it takes to ship containerized cargo.<sup>117</sup> When truckers

Figure 8. U.S. Raw Material Imports, 2014

Product Imported	USD, Millions
Oil and Gas	196,517
Petroleum and Coal Products	113,155
Textile and Fabrics	8,415
Textile Mill Products	19,602
Leather and Allied Products	38,552
Wood Products	16,614
Paper Products	20,855
Chemicals	214,541
Plastic and Rubber Products	49,303
Nonmetallic Mineral Products	20,889
Primary Metal Products	101,556
Fabricated Metal Products	65,106

Source: U.S. Department of Commerce, U.S. Census Bureau

wait hours or days for ports to open, trucking costs rise dramatically. During the 2014 slowdown, some trucking companies began assessing \$250 surcharges for each load taken to Oakland's port.<sup>118</sup> Cargo owners, meanwhile, incurred tens of thousands of dollars in demurrage costs by holding on to cargo due to be exported.<sup>119</sup> When truckers reduce the number of trips to warehouses, goods scheduled to be shipped are left instead to languish—and often, to rot.

#### IV. PROPOSED REFORMS

The cost of port disruptions can be lowered by moving the governance of ports from the NLRA to the RLA. When the RLA was passed, the report of the Committee on Interstate and Foreign Commerce stated: “During the hearings conducted by the committee it was conceded by all concerned that the enactment of this agreement into law would impose upon the parties to the agreement the moral obligation to settle their differences in the manner provided by law, so as to insure to the public continuity and efficiency of interstate transportation service, and to protect the public from the injuries and losses consequent upon any impairment or interruption of interstate commerce through failures of managers and employees to settle peaceably their controversies.”<sup>120</sup>

Today, the same is true for ports, where Congress has a public duty to minimize disruptions to commerce. The current NLRA system is *not* designed to ensure ongoing operations in the event of port disputes. Passed in 1935, the NLRA covers most private-sector employees—including those who work in ports staffed by the ILWU and the ILA—and establishes employees' rights to unionize and engage in collective bargaining, strike, or air their grievances through other means.

The NLRB is the independent agency that investigates and arbitrates unfair labor practices. Its authority does not cover disputes over expiring contracts or the renegotiation of contracts. (Port disputes, as noted, usually arise when master contracts expire.) The Labor

Management Relations Act of 1947 (also known as the Taft-Hartley Act) was created to “prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, to assist parties to labor disputes in industries affecting commerce to settle such disputes through conciliation and mediation.”<sup>121</sup> Among others, Taft-Hartley outlawed certain types of strikes and offered guidance for renegotiating and eliminating collectively bargained contracts.

Pursuant to Taft-Hartley, the FMCS was created to mediate collective-bargaining disputes. The law requires employers and unions to notify the FMCS 30 days before a collective-bargaining contract expires, and requires employers to provide notice to the other party 60 days prior to the expiration or proposed elimination of the collective-bargaining agreement. If requested to do so by labor and management, the FMCS can intervene during a contract dispute that may result in a strike—though this is limited to the arbitration of collective-bargaining agreements.<sup>122</sup>

Not all industries, however, are subject to intervention by the NLRB or the FMCS. The RLA, passed in 1926 and amended in 1934 and 1936, provides a framework for mediation in the event of disputes between labor and management exclusively in the airline and railroad industries. The RLA was passed to develop a framework for federal mediation of labor disputes between railroad companies and their unionized employees. Congress amended the RLA in 1934 to create the NMB, an independent agency to oversee the reconciliation process and minimize disruption of transit points. The NMB determines when to release parties from mediation. The purpose of the RLA and the NMB, as stated in the statute, is to “avoid any interruption of commerce” while providing for “the prompt and orderly settlement of all disputes” that arise in labor matters.<sup>123</sup>

Under the RLA, labor contracts do not expire (unlike current contracts signed by longshoremen at ports). Instead, they become “amendable” and remain in force until a new agreement is reached. The RLA

stipulates that management and labor can, at first, begin negotiating contracts without outside help (though the NMB acknowledges that the majority of cases require mediation). If negotiations are unsuccessful, federal mediation is required—though the NMB’s arbitration is not binding—before unions and employers can engage in “self-help” actions, such as slowdowns, strikes, and lockouts. If the parties cannot reach a settlement after initial mediation, they must commit to a monthlong cooling-off period. If the dispute is a substantial threat to transportation, a Presidential Emergency Board (PEB) may be created, with the board responsible for making recommendations on an agreement. If the parties reject the PEB’s recommendations, Congress has the option to take action and impose a settlement.<sup>124</sup>

On October 6, 2011, President Obama appointed a PEB by executive order when the National Carriers’ Conference Committee of the National Railway Labor Conference could not reach agreement with 11 separate unions representing 90,000 employees.<sup>125</sup> The railroads in the disagreement included five Class I railroads (Union Pacific, CSX Transportation, Norfolk Southern, BNSF, and Kansas City Southern) and 31 smaller railroads. Had these railroads stopped running, much of the country’s rail commerce would undoubtedly have ground to a halt.

The dispute began in November 2009 when the railroads filed notices with the unions to change pay and working conditions. After differences could not be resolved, the NMB was brought in by the Coalition of Rail Unions (in July 2010) and by the Rail Labor Bargaining Coalition (in January 2011). After NMB efforts proved fruitless, the board advised President Obama to create a PEB to prevent substantial disruption to commerce.<sup>126</sup>

The creation of the PEB, with five members appointed by the president and two by the NMB, triggered a 30-day cooling-off period, during which employees were required to work, after which the PEB was required to issue its recommendations. On November

5, 2011, the PEB proposed a package of wage, health, and welfare benefits, which were used by the unions and management as the basis for voluntary agreements. The agreements were, in turn, approved by the vast majority of the unions’ membership. And the railroads avoided the stoppages and slowdowns that have plagued U.S. ports.<sup>127</sup>

This is a model that works well for American airlines and railroads—and likely would work equally well for American ports. Indeed, the success rate of the NMB process is astounding: since the NMB’s founding in 1925, 97 percent of all cases have been resolved without interruption; since 1980, this rate has risen to 99 percent.<sup>128</sup> In 2013, there were no strikes in the U.S. airline or railroad industries.<sup>129</sup> The FCMS, on the other hand, estimates that its efforts have reduced work stoppages by 33 percent, on average. In FY 2013, in 84 percent of FCMS cases, labor and management reached an agreement;<sup>130</sup> however, of the FCMS’s 22,700-plus case intake, it only mediated 4,122.<sup>131</sup>

## CONCLUSION

Smooth operation of America’s 29 West Coast ports is vital: in 2013, goods totaling \$2.1 trillion, or 12.5 percent of U.S. GDP, entered the country through them.<sup>132</sup> Such cargo supports millions of American jobs. Port slowdowns can devastate U.S. manufacturers, food producers, and retailers, and impose higher costs on consumers. Indeed, the U.S. economy has lost billions from port disruptions in recent years—and will lose far more in the future if port disruptions prevent Americans from enjoying the full benefits of increasingly liberalized international trade.<sup>133</sup>

At present, ports are governed by the NLRA, while airlines and railroads are required to abide by the RLA. Port disruptions, currently used as a legal negotiating tactic under the NLRA, would be illegal under the RLA. American railroad crews cannot decide to stop working on train tracks, American airline crews cannot withhold fuel from

planes, but—as witnessed in the 2014 West Coast port slowdown—American longshoremen in Los Angeles, Oakland, and elsewhere can currently hold out for higher wages by simply not showing up for work. In 1924, President Coolidge observed that “the public has the right to the uninterrupted service of transportation, and therefore a right to be heard when there is danger that the nation may suffer a great injury through the interruption of operations because of labor disputes.”<sup>134</sup> Yet American ports are currently held to a different standard from other major U.S. industries that facilitate trade. Just as airlines were added to the RLA, it is now time to add ports.

Providing a legal requirement to discuss grievances with a nonpartisan arbitrator has proved highly effective. Placing U.S. ports under the auspices of the NMB would mean that national commerce and transportation would remain uninterrupted throughout the dispute and mediation process. To do this, Congress should reform labor law. The president and Congress should not allow millions of jobs and hundreds of billions of dollars in income to be held hostage every time a port contract expires. Protections written into the RLA adequately safeguard our nation’s airline and railway networks. With Americans’ ports more important than ever to the U.S. economy, they deserve the same protections as railroads and airlines.

## ENDNOTES

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