

## **Globalization and Deregulation: Port Trucking as a Case Study of Destructive Competition**

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The container revolution of the 1960s and 1970s made possible the explosion of global trade and investment that began in the late 1970s and is still going strong today. As Marc Levinson's book (makes clear, the container revolution made it possible to bring down the cost of freight movement so radically that what had previously been insuperable barriers to offshore investment and global trade became manageable.

For the past three years, I have been part of a research team that has been trying to understand how the growth of trade and investment triggered by the container revolution has impacted the labor markets of workers in the U.S. as well as in that of its business partners around the world.. We decided that one way to illustrate that impact was to look at the labor markets of the freight moving industry itself, since that industry is surely one that has been most immediately impacted by the growth of global trade and investment.

As we began to study the labor markets of the logistics industry, which is what I will call the freight movement industry from now on, I realized that the impact of globalization can not be understood separate from the simultaneous global movement toward deregulation and privatization that was going on at the same time. Indeed, if you talk about neo-liberal globalization, that concept embraces both the rapid increase in global investment and trade, and the deregulation and privatization that accompanied it.

The story of the impact of neo-liberal globalization on the labor markets of the logistics industry could be told about any of the industrial sectors involved in moving

containers of goods from the supplier plants at one end of the global supply chain to the retail stores on the other end. I could talk here about the labor markets on Indian or Chinese truck routes and railways, in Indonesian or Guatemalan warehouses, on ships flying the flags of Liberia or Panama, or on the docks in Pusan, Rotterdam, or Capetown. In all of these places, neo-liberal globalization has brought about profound changes in the labor markets. However, today I am going to focus on the labor market in the port trucking industry in the U.S., in Los Angeles and Long Beach California, Miami Florida, and the Port of NY and New Jersey, which is mostly concentrated in the cities of Elizabeth, pioneer of the container revolution, and Newark, New Jersey.

If you visit any of the leading ports in the United States, in Los Angeles, Long Beach, Oakland, Seattle, New Jersey or Miami, and you talk to the (mostly) men who drive trucks into and out of the port, you will hear a story of exploitation that illuminates how neo-liberal globalization and America's thirty year old deregulation policy have combined to create destructive competition in low-wage labor markets.

When a worker decides he wants to become a port trucker, and participate in a trucking sector that collects \$623 billion, or 84.3% of the total revenue collected by all transport modes, he will often go to a port trucking company to ask for work. If he has a clean driving record and a commercial driver's license, the company manager may suggest to him that they visit a truck dealer, where the worker will be able to select a truck cab for his new career as an owner operator. (If he doesn't have legal documentation, the first step will be to buy fake ID's). The new driver will pick out a cab – usually an old one to keep down monthly payments - and sign a lease. If he is unlucky enough to have landed in the hands of an unscrupulous – or low-road – trucking company, his boss will then take the lease back to headquarters. If his company is one of the better ones, he will keep the lease, and the burden of paying for not only his rig, but truck maintenance and fuel costs as well. From then on, this so-called owner-operator will

“independently contract” to drive for the trucking company by appearing at the dispatch station every day to receive his assignment. He will receive a written order to pick up and deliver a container from a warehouse to the port or vice versa, for a specified sum, which is supposed to be based on a percentage of the rate that the drayage company has negotiated with a logistics service provider. But since the driver doesn’t see the company’s contract to haul the freight, he doesn’t know if he is receiving the correct amount.

The trucking company will deduct from his payment sums for such things as “tire insurance,” and various fines and penalties for such infractions as returning a chassis in damaged condition, or returning an empty container to the terminal later than the three days allowed. Sometimes, he's paying more insurance money to the employer than the employer is paying to the insurance company. Sometimes he's paying for insurance that his employer hasn't even taken out. Because he is an owner-operator, rather than an employee, there is no employer contribution to the unemployment insurance, Medicare or worker compensation funds, no social security tax, no health insurance and pension contributions.

The trucking company mayl require this independent operator to report daily to the dispatch office to await work, which means he can't seek work orders from more than one company. If he decides to leave one of the unscrupulous contractors, he will be told that he can leave but the truck stays behind so it can be assigned to a replacement driver. Since the lease has remained with the contractor, he has no recourse. Another common scenario is that a driver gets into an accident, and only then discovers that the trucking company has not paid to cover him and his truck on its insurance policy; the costs of the accident may drive him into bankruptcy and/or out of the trucking business.<sup>1</sup>

Two trajectories in the political economy of neo-liberal globalization intersect to create this story of exploitation. First, there is the growth of trade in particular the growth of imported goods from China. Since the Clinton and Bush (II) administrations agreed to support China’s entry into the WTO, which was finalized in 2001, Chinese exports to the US have grown from

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<sup>1</sup> This composite picture is drawn from research conducted under an NSF-funded research project entitled, “The Logistics Industry as an Agent of Change in the Global Economy,” of which the author is a co-principal investigator.

\$102 billion to \$287 billion, an increase of more than 180% in just five years.<sup>2</sup> Not surprisingly, this surge overwhelmed the west coast ports and forced shippers to begin sending goods originating in China through the Panama Canal to east coast ports that were ill-prepared for the unexpected flood. Congested docks, jammed highways, and long delays along the nation's inadequate railroad tracks are the result.

The explosion in imports might have led to soaring freight rates and rising wages for port truckers had not deregulation, which is the second trajectory of neo-liberal globalization taken place in the U.S. in the late 1970s. Carter/Kennedy "reforms" brought to an end the regulatory regime which limited the number of trucking companies that could operate on each delivery route, a regime that set freight rates, a regime in which port truckers were union workers with health insurance, pensions, and industrial workers' wages. Post-1981, most drayage companies ceased to be owners of trucks and employers of drivers; under the new regime, most became brokers with few assets and even fewer responsibilities towards the drivers; Their role is to take orders and schedule pick ups and deliveries from port terminals to distribution centers and warehouses, which may be as far as seventy-five miles from the ports, depending on distribution patterns, land prices and labor costs. For their role in scheduling the truck movements of their contract drivers, they receive at least one half of the freight delivery rate<sup>3</sup>

In a generation, port trucking became a scene of destructive competition. With virtually no barriers to entry, anyone with a phone and fax machine could become a trucking broker. There are now thousands of these brokers contracting with the 50,000 owner operators, who constitute 70% of the drayage labor force. Since these brokers have few if any assets or overhead costs, they constantly underbid each other, keeping transportation costs low, but shifting much of the cost of doing business onto surrounding communities in the form of dirty air, congested and broken roadways, and ubiquitous traffic accidents.

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<sup>2</sup> Economic Policy Institute, "Costly Trade With China," Oct. 9, 2007.

<sup>3</sup> See Dale Belman and Kristen Monaco, The Consequences of De-Regulation, De-Unionization, Technology and Human Capital On the Work and Work Lives of Truckers," *Industrial and Labor Relations Review*, March 2001.

As independent contractors, owner drivers are treated by the law as independent businesses and have no collective bargaining rights, making them powerless to join together to negotiate higher rates. In fact, drivers have been sued for violating the federal Sherman Anti-Trust Act for going on strike to demand wage hikes.. The low rates drivers receive do not allow them to maintain their trucks properly. The resulting high maintenance costs keep them from accumulating enough savings to afford to replace their aging trucks with newer ones that provided better fuel economy and produced lower emissions. Lack of health insurance means that when a driver, or a member of his family, gets sick, the driver can not afford to remain in a job without benefits. As tens of thousands of formerly Teamster union drivers left the industry, they were replaced by workers with the fewest options – immigrants from India and Pakistan in Seattle and Vancouver, from Central America and Mexico in California, from Cuba in Miami, and from Latin America, Africa and Asia in New Jersey. Studies by researchers at the west coast ports show that drivers' net pay averages less than \$11 per hour without benefits for work weeks that can exceed sixty hours.<sup>4</sup> This is an wage level 30% below what union members earned when drayage was regulated; when you factor in benefits, the income loss exceeds 50%<sup>5</sup>.

Sixty hours on congested highways in aging, diesel fume spewing trucks would be bad enough, but the daily experience of drivers is worse than that. Because port truckers are not paid for their time, but for the load, the operators of terminals, trucking firms, distribution centers and warehouses have no incentive to invest in technology or to streamline systems so that drivers can maximize the number of deliveries they make per day. Instead, drivers wait on lines – to get through the terminal gates, to pick up the chassis on which their loads will sit, to exit the ports with their boxes inspected, to drive through bottlenecks at ramps and bridges leading to and from the port, to deliver and pick up boxes at the loading docks of dc's and warehouses. Waiting on line, losing time, breathing in diesel fumes from old, outmoded trucks leads to disabling stress, heart and lung disease, and cancer, but nobody knows how much, because no one has bothered to study the health impacts on these drivers who sit on the bottom of the American logistics

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4. East Bay Alliance for a Sustainable Economy, "Taking the Low Road: How Independent Contracting at the Port of Oakland Endangers Public Health, Truck Drivers and economic Growth." September, 2007.

<sup>5</sup> James Peoples and Wayne Talley, "Owner-Operator Truck Driver Earnings and Employment: Port Cities and Deregulation," in Peoples and Talley, Transportation Labor Issues and Regulatory Reform.

supply chain. (The National Resources Defense Council is conducting a study in Oakland to be released in November, 2007).

The fact that drivers are not paid for their waiting time takes a toll not only on their health, but on the efficiency of the logistics chain itself. Since their extra low earnings means that freight rates have remained low despite the rapid increase in shipping volumes, logistics firms have little incentive to invest in modern equipment to speed up the movement of the trucks carrying containers into and out of the ports. In most of America's ports, the chassis which carry containers are old and traffic software outdated. Freight rates are so low that it is economical for shippers to let their containers sit around at the terminal yards for up to three days awaiting pick up and delivery – and some sit even longer, accumulating late fees. These boxes take up space, and clutter the yards. Because the freight rates are so low for the containers moving slowly through the congested terminals and highways, most customers don't insist on just-in-time delivery, for which they would have to pay a premium. As a result, they have higher inventory and insurance costs, and they lose potential profits when they have to discount items that arrived at the stores too late to satisfy customer demands. (Wal-Mart is an exception; the world's largest shipper pays extra to have its containers delivered on time because its business model depends on tight coordination between retail sales, production, shipping, drayage and warehousing).

Furthermore, the costs of destructive competition are borne directly by the public in two ways. First, drivers without health insurance have to rely on public hospitals for state-paid emergency medical care. The costs of this emergency care have been rising rapidly, causing state governments to cut back on aid to education, road repair, and housing. And second, the fact that trucking companies don't have to contribute to social security, to make payments to workers' compensation funds, or to make pension contributions intensifies the negative impact on public program budgets.

Yet these costs are probably minor when compared to the costs imposed by the negative health impacts of heavy diesel emissions from tens of thousands of old trucks with dirty, obsolete engines. In California, researchers estimate that the health impacts on California residents of these port-related emissions amount to \$19 billion per year and two premature deaths per

week;<sup>6</sup> a study conducted by the New Jersey Environmental Justice Federation on diesel emissions in the Ironbound section of Newark projected that in 2010, health impacts on community residents from diesel soot will cost New Jersey \$4.8 billion annually.<sup>7</sup> Asthma, high death rates from cancer, days missed from work, high blood pressure, heart disease – these constitute the toll borne by residents of New Jersey's eleven counties (along the highway truck routes) which are out of compliance with Federal air quality standards.

In California, the destructive competition in port trucking has reached crisis proportions. Throughout the state, residents of communities blighted by dirty air from ships, old trucks and old diesel train engines, organized to insist that something be done to clear the air. Finally, in 2005, the state's Air Resources Board ruled that the state's ports could not carry out needed expansion and modernization plans unless they demonstrated that the added traffic would produce less, not more, diesel emissions.<sup>8</sup> In the fall of 2007, the harbor commissions of LA, Long Beach and Oakland gave general approval to plans requiring that drayage trucks meet strict emissions standards; they are considering whether to require that trucking companies doing business at the port themselves meet strict licensing standards, including requirements that they employ their drivers directly. This model, direct service contracting, is already in place in Vancouver, which decided years ago that drayage based on owner operators was unsustainable. Now, a labor-environmental coalition has been formed, which includes the International Brotherhood of Teamsters, backed by the new Change to Win labor federation and by numerous environmentalist, environmental justice, public health and community groups, to push for bold changes. The Coalition for Clean and Safe Ports is pushing for direct service contracting in California's three largest ports, and they have the support of local political leaders, including LA Mayor Villaraigosa and Oakland Mayor Dellums.

Naturally, logistics-related businesses are resisting direct service contracting. They want the public to subsidize retrofitting of old truck engines as a way of meeting air quality standards,

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<sup>6</sup> California Air Resources Board, "Emission Reduction Plan for Ports and Good Movement," Appendix A, p. 76, March 22, 2006.

<sup>7</sup> New Jersey Environmental Foundation and Clean Water Action, "Diesel Hot Spots: A Snapshot of Newark, New Jersey, June 2006.

<sup>8</sup> California Air Resources Board, "Goods Movement in California," January 27, 2007.

and they desperately want to keep the Teamsters union out of the port. They are not only lobbying against the Coalition's plan, they are threatening to tie up the reform process with lawsuits challenging the ports' authority to set standards for port trucking. On October 23, the Bush Administration weighed in on the employers' side, when Sean Connaughton, the Department of Transportation's Maritime Coordinator, sent a letter to the Directors of the Ports of Los Angeles and Long Beach, supporting the logistics industry's concerns about the plan to require that trucking companies employ their drivers; Connaughton went so far as to threaten litigation if the plan were approved.

Meanwhile, community and environmental groups are reaching out across the country to put excessive diesel emissions from dirty trucks (and dockyard equipment, and ships, and tugboats) on the agenda of the national movement to reduce greenhouse gases and meet air quality standards. California community organizers – some from towns 75 miles away from the ports, along highway and railroad routes – are visiting port communities along the East Coast to spread the message of their local successes and of the need for national action. Change to Win has made organizing the nation's 70,000 owner operator port truckers one of its five top priorities. And in New York, the campaign against misclassification of employees as independent contractors, is getting into full swing, supported by the Governor Spitzer Commissioner of Labor. Patricia Smith.<sup>9</sup> On May 3, Smith announced the creation of an Immigrants' Rights Bureau within the DOL to be staffed by 10 new labor standards investigators proficient in Spanish or Korean. The Bureau is liaising with immigrants rights groups throughout the state, to educate immigrant workers of their rights and to "ferret out the most egregious labor law violators in the state". According to a DOL press release issued just before Labor Day, "In the first seven months of 2007, the Department collected over \$4.5 million in minimum wage underpayments for 4,835 workers, an increase of nearly a \$1 million compared with the same time period last year."

The destructive competition of the port trucking labor market is a vivid example of how neo-liberal globalization's unregulated growth is unsustainable. Progressive think-tanks like

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<sup>9</sup> For information on New York City's unregulated labor markets, see Bernhardt's "Unregulated Labor Markets in a Global City." Brennan Center for Justice. New York University School of Law. June, 2007.

Demos Foundation, the Century Foundation, and the Economic Policy Institute are beginning to ask whether it's time to put effective regulation back on the policy agenda, after thirty years of neglect. As Demos, an increasingly important progressive think-tank based in New York, put it at its recent conference on Finding a New Balance Between Business and the Common Good, "An exciting new conversation is under way about the relationship between business, government, and civil society. It reflects dramatic political changes in Washington and new challenges to the laissez-faire policies of recent years."

The California Clean Air Action Plan is a good example of what a new balance would look like – setting standards for the environment, for community accountability, for decent jobs, and for industry efficiency and sustainability. Perhaps even more important, the fact that environmental, public health, labor and community groups have been able to work together successfully to raise public awareness of the issues and to place them high on the public policy agenda is a model for how progressives can confront the challenges presented by the forces of neo-liberal globalization and deregulation, which for the past thirty years have combined to degrade America's environment and labor markets.