

Testimony of John Atkins
Before the
United States House Committee on Ways and Means
May 9, 2023
GCT New York, Staten Island, NY

1. Background of John Atkins

Good morning, and I want to thank the Committee for coming to GCT New York for its meeting. We are all here today because trade is our livelihood, which you will hear more about in my testimony. My name is John Atkins, I have worked in the marine cargo handling industry, which is reliant on the trading relationships of the United States, for thirty-eight years. I am the President of GCT USA, a subsidiary of GCT Global Container Terminals, Inc. GCT USA operates two Green Marine-certified marine terminals in the United States—GCT Bayonne and the marine terminal that is hosting today's hearing GCT New York located in Staten Island, New York. Prior to my employment with GCT USA, I worked at Maher Terminals, Inc. and Sea-Land Service, Inc., which were both located in Port Elizabeth, New Jersey. In addition, I have operations and equipment experience through work for ocean carriers CMA-CGM and NYK Line. I earned a B.S. in Management Sciences from Kean University in Union, New Jersey. My college education was funded in part through money I earned repairing and maintaining heavy equipment.

I serve on the Boards of the Shipping Association of New York and New Jersey and the Metropolitan Marine Maintenance Contractors' Association. These organizations are management collective bargaining associations that negotiate and administer the local collective bargaining agreements for GCT's ILA-represented longshore, checker, and maintenance craft workers. Along with the ILA, these associations do a great job in ensuring that we have a great working relationship with labor in the Port of New York and New Jersey with well-trained and efficient workers ready to do the job every day.

I am also the Chairman of Sustainable Terminal Services, Inc. (STS), a nonprofit corporation composed of the six (6) container terminal operators in the Port of New York and New Jersey whose primary purpose is to promote environmentally sensitive, efficient, and secure marine terminal operations in the Port. While we are all competitors, we put that competitive spirit aside to focus on collective projects that have been implemented for the betterment of the Port as a whole. These projects focus on environmental issues, security both physical and cyber, and supply chain fluidity through information sharing. The six (6) container terminal operators can only work together to pursue these port wide goals through the authorities granted through a discussion agreement filed with and approved by the Federal Maritime Commission. This discussion agreement provides limited antitrust immunity for discussions of this nature among the marine terminal operators. As will be discussed in this testimony, this arrangement is under attack, and we urge your support to preserve this tool that allows marine terminal operators to act together for the collective good.

Under the auspices of this FMC-filed discussion agreement (see FMC Agreement No. 201175) the six (6) container terminal operators in the Port, created a port wide security system to

address a gap in the layered approach to facility security envisioned by the Maritime Transportation Security Act of 2002 or MTSA. MTSA laid the foundation for what has become the TWIC program, which requires the positive identification of individuals seeking unescorted access to marine terminals. It also requires cargo security and access control procedures. What was missing in this regime was positive identification of the over-the-road trucks seeking access to terminals. To fill this void, the terminal operators implemented an RFID-based truck identification and tracking system. It was anticipated that captured information from this system could be used to provide early warning of suspicious activity as well as a forensic tool in criminal investigations. Moreover, the system was to have the functionality to enable STS member companies, at their own discretion, to restrict access to their facilities to those truckers with an appointment to pick-up or deliver cargo.

The Port Authority also saw this RFID-System as a potential means of enforcing compliance with its Clean Truck Program. Environmental concerns are of great importance to the terminal operators in the Port. Thereafter, the System was further leveraged to create a web-based terminal information portal that would provide greater transparency to cargo interests and the motor carrier community in seeking information about the availability of expected containers. This was a significant step forward in addressing cargo chain efficiency.

That portal, now known as TIPS, was established in September of 2015. TIPS was the first-of-its-kind information system designed to enhance terminal efficiencies by reducing uncertainty regarding container availability and unnecessary “trouble ticket” transactions. Often drayage providers dispatch truckers to marine terminals before containers are available for pick-up or without ensuring that outstanding charges have been paid and necessary releases issued. This causes delays in terminals. The Port Authority has reported that “seven of the top 10 causes of trouble tickets in the Port of New York and New Jersey can be avoided by checking TIPS in advance.”¹ In addition to general information about port wide matters and terminal-specific announcements regarding special conditions or changed operating hours, TIPS provides information about container availability and location, regulatory holds, any charges or demurrage as well as the status of free time. TIPS is noteworthy because it was implemented by marine terminal operators working with limited antitrust immunity under a discussion agreement monitored by the FMC. TIPS has been made available to the shipping public at no cost.

I am also a founding member of the Council on Port Performance or CPP, a which was formed by port industry stakeholders in the Port of New York and New Jersey to provide oversight on the implementation of programs and initiatives to improve efficiency and service reliability. The CPP was an outgrowth of the Port Performance Task Force or PPTF, which was created in 2013 in response to a convergence of factors that created obstacles to the smooth flow of cargo in the Port of New York and New Jersey. I am proud to say that the PPTF was conceived of and its implementation facilitated under the Port of NY/NJ Sustainable Services Agreement and the Port of NY/NJ—Port Authority/Marine Terminal Operators Agreement, which are FMC-filed

¹ Alan M. Field, *Port of New York and New Jersey Inaugurates the TIPS System* (September 2015) at 4 available at https://www.panynj.gov/port/pdf/JoC_WP-NYNJ0915-v3.pdf.

discussion agreements.² The CPP is a unique group that gives voice to a wide cross section of stakeholders in the Port, whose businesses are also dependent on trade.

2. The Port of New York and New Jersey—An Economic Engine for the Nation

GCT New York located in the Port of New York and New Jersey is a particularly relevant venue for the Ways and Means Committee that addresses matters related to taxation, trade, and tariffs. I will provide a short history lesson today because it is relevant to the issues this Committee is considering. This great Port began its ascendancy in becoming the leading port in the nation during the Dutch settlement of the area in the 1600's.³ By 1797, the Port surpassed both Boston and Philadelphia to assume its number one position.⁴ Port stakeholders doing business here take great pride in the fact that their harbor was the first great port of the United States. In the 19th century the Port was the primary port of entry for cargo destined for the United States and by 1828 customs duties collected in the bustling Port paid all federal expenses apart from interest on the federal debt.⁵ These customs duties facilitated the stability and growth of the new republic.⁶ Ultimately, the Port also became the symbol of our nation's freedom when in recognition of its position as the gateway to the United States it was chosen by Auguste Bartholdi in 1871 as the ideal spot to erect his gift to the people of the United States—the Statue of Liberty.⁷

Since the founding of our nation the Port has consistently been an economic engine supporting the regional and national economies.⁸ This Port has also been on the cutting edge of cargo-handling technology. A deceptively simple innovation incubated in the Port revolutionized how goods are shipped worldwide. This innovation that came to be known as containerization provided the platform for the transformation of the global economy.⁹ The box that changed the world was loaded on the *Ideal X*, a converted tanker ship in Newark, New Jersey on April 26, 1956.¹⁰ The fifty-eight containers that departed Newark, New Jersey for Houston, Texas that day set events in motion that inspired management and labor in the Port to establish work rules that permitted the proliferation of containerization in the Port and the world.¹¹

² See FMC Agreements Nos. 201175 and 201210.

³ See MARK KURLANSKY, *THE BIG OYSTER*, 74 (2007).

⁴ See *id.* at 98.

⁵ See EDWIN G. BURROWS & MIKE WALLACE, *GOTHAM A HISTORY OF NEW YORK CITY TO 1898*, 572 (1999). By 1849, over three thousand ships from more than 150 countries transited the Port, carrying half the nation's imports and almost one-third of its exports. See *id.* at 653.

⁶ See WILLARD STERNE RANDALL, *ALEXANDER HAMILTON/A LIFE*, 376-77 (2003).

⁷ See BURROWS & WALLACE at 1034.

⁸ See A. STRAUSS-WIEDER, *THE 2020 REPORT ON THE ECONOMIC IMPACT OF THE PORT OF NEW YORK AND NEW JERSEY* 5-7.

⁹ See MARC LEVINSON, *THE BOX/HOW THE SHIPPING CONTAINER MADE THE WORLD SMALLER AND THE WORLD ECONOMY BIGGER*, 1-2 (2006).

¹⁰ See *id.*

¹¹ See *NLRB v. Int'l Longshoremen's Ass'n*, 473 U.S. 61, 84 (1985) ("Under the Rules on Containers, the ILA has given up some 80% of all containerized cargo work and the technological 'container revolution' has secured its position in the industry. We have often noted that a basic premise of the labor laws is that 'collective discussions backed by the parties' economic weapons

3. The Port of New York and New Jersey Steps Up During the Pandemic

The businesses and labor serving this Port have always stepped up in performing their functions that are vital to the regional and national economy as well as the well-being of all Americans. As I previously noted, GCT New York's longshore labor is represented by various locals of the International Longshoremen's Association. Its Port Security Officers are represented by the Port Police and Guards Union. I am particularly proud of the performance of our management and longshore workers during the challenges of the COVID-19 pandemic. In uncertain times, they came to work every day and kept the cargo flowing. This was not easy but in cooperation with the ILA, the marine terminal operators in the Port were able to implement reasonable work rules and sanitizing procedures that permitted work to go on in a responsible manner. These workers are the unsung heroes of the pandemic. Because of these workers, the nation was able to obtain PPE and supplies needed to permit people to go to stores and other places of business to get the economy moving. However, it is important for this Committee to note that the PPE that was so vital to protect our workers and citizenry during the pandemic came to our shores through trade and more precisely that trade came from China.

4. The Marine Cargo Handling Industry is Being Harmed by Misconceptions

Generally, our industry prefers to be the strong silent type doing our job under the radar—without attention, but times have changed and now our industry is front page news. Collectively the marine terminal operators in the Port of New York and New Jersey have invested billions of dollars in facility improvements and equipment to efficiently handle current and enhanced cargo volumes. In 2022 in the Port of New York and New Jersey, efficiently handled cargo volumes (9.5 million TEUs) that had not been anticipated to occur until 2030. However, the story of our significant investment and dedication to the work are not what you read about in the news. In general, media coverage has done our industry a great disservice and our industry fears that this misrepresentation may be fueling hasty governmental regulation while considered with good intentions may have unforeseen and harmful consequences.

The media reporting on the 2022 supply chain crisis often used venues like GCT New York as visuals in their news accounts. This reporting has been harmful to the industry because it gave legislators and the public the mistaken impression that the crisis was caused by ocean carriers transporting goods into the United States and marine terminal operators like GCT New York that off load the cargo from these vessels and transfer it to trucks and rail cars for delivery to its final destination. This mistaken impression also brought forth the ire of the White House, which resulted in hastily enacted legislation that will not prevent but may encourage the next supply chain crisis.

The Ocean Shipping Reform Act of 2022 (OSRA 2022) and the ensuing regulations of the Federal Maritime Commission have sought to lay the blame for supply chain challenges on ocean carriers and marine terminal operators. This regulatory activity places undue burdens on carriers and marine terminal operators for the failure of shippers and other cargo interests to retrieve their

will result in decisions that are better for both management and labor and for society as a whole.' The Rules represent a negotiated compromise of a volatile problem bearing directly on the well-being of our national economy.'").

cargo in a timely manner (or what is referred to as within “free time”). It is an undisputed fact that domestic marine terminals have limited space. The efficient operations of a marine terminal are based on principles of velocity and fluidity. Impediments to fluidity are long container dwell times. During the 2022 supply chain crises, cargo interests allowed their containers to languish at our facilities causing log jams in the system. Our marine terminals were used as long term container storage alternatives to off terminal container depots and warehouse facilities. Now the regulators are placing the burden on marine terminal operators to bear the costs for such long dwell containers. This is antithetical to the incentive principle that the FMC is supposed to espouse in ensuring that cargo moves efficiently through marine terminals. The longer container dwell on a terminal, the longer it takes to service the trucks that come to drop them off and pick them up. However, pending FMC regulations do not enumerate procedures for the FMC to assess whether the cargo interest was in fact verifiably ready and able with a truck driver, a chassis, and a destination to bring the container before a container can be retrieved. Instead, they place the sole burden on ocean carriers and marine terminal operators for the inefficiencies in the inland components of the supply chain.

Truck drivers have often indicated that they do not want to work on evenings and weekends and even if they did most receiving facilities are not open. Yet, the cost of terminal land does not go away on weekends or holidays. Therefore, the FMC must promulgate reasonable rules for detention and demurrage fees. In addition, limited antitrust immunity for ocean carriers and marine terminal operators provided under the Shipping Act must be maintained. In addition, this antitrust immunity should be under the purview of the Federal Maritime Commission and not the Department of Justice. The FMC has an expertise of over 100 years in regulating this industry and while we do not always agree with the FMC, it is the proper entity to monitor the commercial relationships of ocean carriers and marine terminal operators in the foreign commerce of the United States.

5. The Port of New York and New Jersey Needs its Fair Share of Dredging Funds

Another issue of critical importance to the Port of New York and New Jersey is dredging, which includes having a reliable source for funding critical dredging projects. This Port is dependent on a consistent program of maintenance and deepening dredging projects. The Port of New York and New Jersey in dredging parlance is referred to as a “Donor Port” to the Harbor Maintenance Trust Fund. That means the fees generated by cargo operations here significantly outweigh the moneys that are allocated to the Port for vital dredging projects. As this Port has done since the beginning of our Nation, it continues to be one of the largest contributors to this Nation’s ability to maintain the waterways for the common good. Notwithstanding the fact that the Harbor Maintenance Trust Fund needs to be spent down, the Port of New York and New Jersey is having issues with obtaining the funds that were supposed to be authorized for its piles and fender dredging project under WRDA 2020. The Port should have been slated to get \$56 million for this maintenance dredging with escalations up to \$70 million. However, the Port was only authorized for \$6.1 million for this purpose because of differences between what was negotiated and what was appropriated under WDRA 2020. We need your help. If not corrected, the Port will take a \$350 million hit on dredging funds that should be authorized for this Port. We understand that the problem is expanding the use for Harbor Maintenance Trust Fund to secondary sources like lock and levees and beach refurbishment. However, this is against the principle that Harbor

Maintenance Fees generated in Ports should inure to the benefit of those Ports. Please help the Port maintain its position as an economic engine for this region and the Nation and release money being held in the Harbor Maintenance Trust Fund.

6. Issues of Trade and the Need for Low Emissions Cargo Handling Equipment

As stated, the domestic marine cargo handling industry is dependent on this country's trade with other nations. We understand that this is a complex issue with certain nations acting in a belligerent manner towards the United States. However, the foreign and trade policy of the United States must be mindful of the quandary that places the domestic cargo handling industry particularly as it pertains to issues related to sustainability. This is another area that is of great significance to marine terminal operators, which is also directly related to the work of your Committee. We all want to be stewards of the environment and operate in a manner that has the least possible negative impact on the environment. However, obtaining new equipment from container gantry cranes to yard hustlers is a challenge for marine terminal operators. While most of our container cranes are now electrified, marine terminal operators are in the process of seeking to replace cargo handling equipment including rubber tire gantry cranes, top loaders, reach stackers, and straddle carriers with low emission or zero emissions equipment. This presents several challenges.

- Notwithstanding power grid issues, which would have to be addressed prior to the widescale deployment of such equipment, obtaining such equipment presents problems;
- The cost of such equipment is prohibitive without the assistance of government grants but most of this equipment is not manufactured in the United States, which disqualifies it from federal grant programs;
- Recently introduced legislation would prohibit marine terminal operators from obtaining foreign made container cranes and other terminal cargo handling equipment. However, the domestic suppliers of such equipment are limited or non-existent and if such equipment is available, it is cost prohibitive. You will notice that the container gantry cranes at GCT New York were manufactured by an Irish company. If a domestic source for such equipment was available, it would have been considered. However, there are simply no domestic manufacturers of similar container gantry cranes.
- If this Committee is considering legislation to prohibit or otherwise limit the use of such equipment, it must consider the lack of viable alternatives and the impact that will have on the trade of the United States. It must also consider that equipment such as a container gantry crane has a steel superstructure as well as electronic systems. Thus, any regulations prohibiting the purchase or use of foreign manufactured container gantry cranes should delineate between steel super structures and electronic systems.

7. Conclusion--The Congress of the United States Must Encourage and Protect Trade

We are living in difficult times. We appreciate the efforts of our Congressional leaders in seeking to protect American interests and security. The interest of America as it has been since the founding of our Nation lies in strong trade relationships with other nations. We respectfully request that this Committee act carefully in considering trade restrictions that will harm the ability of the domestic cargo handling industry to obtain new equipment particularly when that equipment is not manufactured in the United States. We also ask that this Committee seek to ensure that the Port of New York and New Jersey obtains its fair share of funds generated by its significant contributions to the Harbor Maintenance Trust Fund to ensure that critical Port dredging projects continue. We also urge this Committee to reject legislative efforts to repeal the limited antitrust immunity provided to ocean carriers and marine terminal operators under the Shipping Act that permits cooperation among competitors to act for the common good. We ask that members of this Committee reach out to the FMC to ensure that regulations for detention and demurrage billing practices will be reasonable and include the responsibilities of the inland participants in the supply chain in expeditiously retrieving cargo from a marine terminal. On a personal note, I thank the Committee for taking the time to have its meeting here at GCT New York given the pressing nature of the work of your Committee.