BEFORE THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

UNITED STATES HOUSE OF REPRESENTATIVES

Rising Diesel Fuel in the Trucking Industry

COMMENTS

submitted by the

TRANSPORTATION INTERMEDIARIES ASSOCIATION

TRANSPORTATION INTERMEDIARIES ASSOCIATION
1625 Prince Street, Suite 200
Alexandria, Virginia 22314

Robert A. Voltmann
President & CEO

May 6, 2008

The Transportation Intermediaries Association (TIA) submits these comments on the rising cost of diesel fuel costs in the trucking industry and the role that transportation brokers and other third party logistics companies play with regard to fuel in the trucking industry.

IDENTITY AND INTEREST OF THE TRANSPORTATION INTERMEDIARIES ASSOCIATION

TIA is the professional organization of the $162 billion third party logistics industry. TIA is the only organization exclusively representing transportation intermediaries of all disciplines doing business in domestic and international commerce. TIA is also the United States member of the International Federation of Freight Forwarders Associations (FIATA), the worldwide trade association of transportation intermediaries representing more than 40,000 companies in virtually every trading country. The members of TIA include transportation property brokers, domestic and international forwarders, NVOCCs, air forwarders, logistics management companies, intermodal marketing companies, warehousemen, and motor carriers. TIA members adhere to the only mandatory Code of Ethics in the transportation industry. TIA's 1,200 company members include publicly traded as well as family owned businesses that employ tens of thousands of people throughout the United States.

THE ROLE OF TRANSPORTATION INTERMEDIARIES

Transportation intermediaries or third party logistics companies (3PL) act as the "travel agents" for freight. They serve tens of thousands of shippers and carriers, bringing together the transportation needs of the cargo interests with the corresponding capacity and special equipment offered by rail, motor, air, and ocean carriers. Transportation intermediaries play a key role in cross border transportation by land, sea, and air.

Traditionally, transportation intermediaries have been primarily non-asset based companies whose expertise is providing mode- and carrier-neutral transportation arrangements for shippers with the underlying asset-owning and operating carriers. They get to know the details of a shipper's business, then tailor a package of transportation services, sometimes by various modes of transportation to meet those needs. Transportation intermediaries bring a targeted expertise to meet the shipper's transportation needs. Transportation intermediaries invest in sophisticated software that helps maximize logistics efficiency. Today, many also invest in physical assets such as trucks, aircraft, warehouses, and consolidation centers so that they can offer a fuller, vertically integrated range of service options.

Depending on the mode of transportation or the services offered, transportation intermediaries are called by a number of names. Transportation intermediaries involved in the trucking industry are licensed by the Federal Motor Carrier Safety Administration (FMCSA) of the United States Department of Transportation as either brokers or freight forwarders. The terms transportation intermediary or third party logistics company (3PL) will be utilized throughout this brief.

Over the past decade, many shippers of cargo have streamlined their acquisition and distribution operations. They have reduced their in-house transportation departments, and have chosen to deal with only a few "core carriers" directly. Increasingly, they have contracted out the function of arranging transportation to intermediaries or third party experts. Every Fortune 100 company now has at least one 3PL as one of its core carriers. Since the intermediary or 3PL, in turn, may have relationships with dozens, or even thousands, of underlying carriers, the shipper has many service options available to it from a single source. A 3PL may use more than a hundred carriers to serve a single shipper. In 2007, 3PLs directed the purchase of $162 billion in transportation services according to Armstrong & Associates.

Transportation intermediaries are independent contractors. They negotiate the terms and conditions of the services to be provided to their customers, including the role to be played by the intermediary at each stage of the transportation movement. 3PLs provide shippers with logistics expertise and access to thousands of small truck fleets through a single source.

The typical 3PL involved in the trucking industry will contract with thousands of carriers each year. 3PLs provide an essential service to a large and dynamic market. 3PLs manage equipment imbalances for carriers and provide small carriers with access to freight from big shippers. 3PLs act as the sales arm for the thousands of motor carriers that cannot afford to have their own sales staff in each region in which their trucks travel. In short, without a healthy 3PL industry, there would not be a healthy small trucking industry.

3PLs assume the credit risk for the carrier. When a carrier takes a load from a TIA member, they know they will be paid whether the 3PL is paid by the shipper or not. This is because the 3PL pays the carrier within hours of delivery even though the cargo shipper may take up to 30 days after delivery to pay the 3PL. There are credit agencies that track 3PL payments to carriers. These agencies report on days to pay and any non-payment complaints received about particular 3PLs. No 3PL wants to have a negative credit rating. TIA member days to pay are the lowest in the industry and the average credit score for TIA members is higher than that of shippers.

STATEMENT OF THE TRANSPORTATION INTERMEDIARIES ASSOCIATION

1. Transportation Intermediaries Pay Fuel Surcharges to Carriers

Shippers and 3PLs understand how rapidly increasing diesel fuel costs affect carriers in every mode. Shippers and 3PLs also understand how the increasing cost of fuel affects all American business. 3PLs generally enter into long-term contracts with their shippers. These contracts are generally fixed and do not fluctuate. Some shippers negotiate to pay a separate fuel surcharge, while others want what is called an "all in" rate with the price of fuel included in the transportation rate. In any event, price matrixes are negotiated shipper by shipper with different "trigger" points defining the base price of diesel before a separate fuel surcharge may be added.

While rates with shippers are set in long term contracts, rates with carriers are generally negotiated on a load by load based on supply and demand and the fuel costs at the time the load ships. As fuel costs increase, transportation intermediaries have to pay more money or the trucker will not haul the load. Truckers are generally interested only in the total dollars the intermediary is offering to pay on the shipment, so the intermediary almost always negotiates an all-inclusive rate. If the carrier needs a portion of the charge separated as a fuel surcharge, the 3PL can accommodate them. <u>The trucker alone decides how much money they need to profitably handle a specific shipment on a specific day and they are never forced to take a shipment.</u>

It is not correct to state that intermediaries are profiting from fuel surcharges. In truth, due to the dynamic nature of 3PL-carrier contracts and the more static nature of 3PL-shipper contracts, intermediaries are paying trucking companies more money when fuel spikes occur than the intermediaries receive from shippers. TIA members report that their profit margins (the difference between the money paid to them by the shipper and the money they pay to the carrier) have declined since early 2007 because of rising fuel costs and the weak economy. For example, C. H. Robinson Worldwide, the largest 3PL in the United States, reported that its margin declined 10 percent during the first quarter of this year compared to the first quarter of 2007. This reduction in margin is a direct result of their receiving less revenue from shippers while paying carriers more for fuel. A quick analysis of the dozen or so largest privately held 3PLs shows similar reductions in margin. The following example indicates the increase in truckload rates from first quarter 2007 to first quarter 2008 paid by 3PLs to carriers in specific lanes:

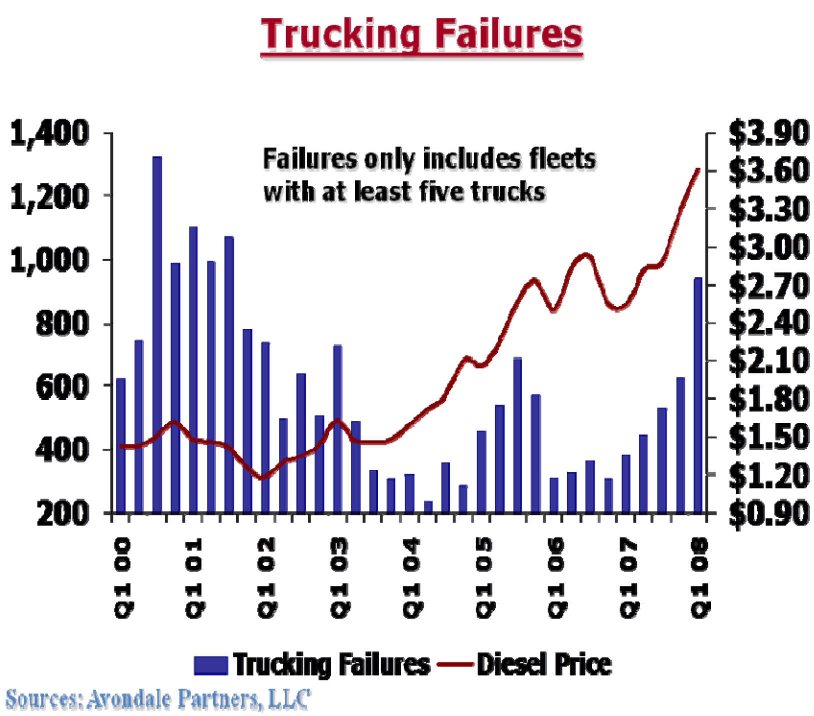
St. Paul, MN to Laredo, TX	$397 increase
San Francisco, CA to Seattle, WA	$210 increase
Los Angeles, CA to Minneapolis, MN	$317 increase
Baltimore, MD to Eugene, OR	$267 increase

These rate increases represent what the 3PL paid to obtain the truck, but the actual increase paid by the shipper to the 3PL is less. In other words, even though 3PLs cannot recover the increase in the cost of fuel from their customers, 3PLs are paying motor carriers more to cover the cost of the fuel increase. In effect, the 3PLs are *absorbing* some of the increased cost of fuel for their carriers, and accepting *lower* profit margins as a result. If these, the largest companies in the industry with the greatest market share are not profiting from fuel surcharges, then no one is. It is utterly false, therefore, to claim that brokers and other 3PLs are profiting from fuel surcharges.

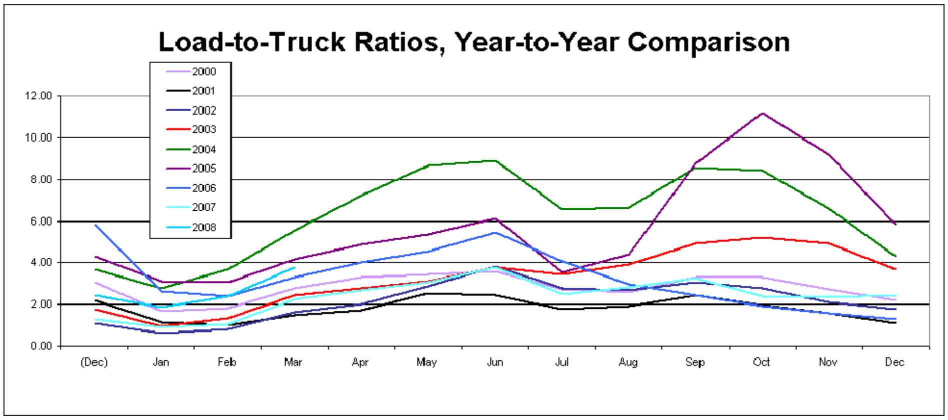
2. Affects of Rapidly Increasing Fuel on the Trucking Industry

The economy and the corresponding amount of freight being shipped coupled with fuel costs and an overcapacity of equipment have had a severe impact on trucking companies. When the amount of freight being shipped declines the demand for trucks decline. When demand drops, utilization of the truck drops as well. During times like the first quarter of 2008, when freight shipped was particularly low, carriers have had to travel greater distances without a load (deadheading) in order to get another load. Shippers and 3PLs generally only pay for truck moves when they have a load on the truck, so these deadhead miles are not generally covered. When fuel prices spike and empty deadhead miles increase in search of a load, it is a perfect storm for the carrier.

The chart below indicates carrier failures compared to the price of fuel. The chart indicates that there is not a direct correlation between the price of fuel and carrier failures. During the period 2000 to 2003, for example, as fuel slowly increased in price, the number of carrier failures dramatically increased. During the period of 2003 to 2005, however, as fuel sharply increased, carrier failures fell to their lowest point during the eight year period. Even today, failures are not as severe as the very dramatic increase in fuel would seem to indicate. The following chart adds further explanation to the fuel/failure chart. During the period 2000 to 2003, when carrier



failures were at their highest and fuel was fairly stable by today's standards, the chart indicates that freight was a low 2.5 loads per truck. The combination of scarce freight and high fuel costs led to carrier failures. By the same token, during 2003 to 2005 as fuel spiked, the number of loads available to trucks increased to a high of 11 loads posted for each truck posted, leading to the lowest carrier failure rate during the eight year period. The same can be seen comparing both charts during 2006. It is only when the economy started to slow during 2007 and the first quarter of 2008 with freight low and fuel high that the carrier failure rate increased.



Yet, even the current failure rate of carriers does not correlate to the failure rate during the period 2000 to 2002. For example, there were nearly 1,400 carrier failures during the third quarter of 2000 with fuel at $1.50 a gallon. If there was a direct correlation between fuel and failures then today, with fuel over $4.00 a gallon, carrier failures could be expected to be in the thousands, but they are not. The question then is why not? TIA believes that the relatively low carrier failure rate during a period of severely spiking fuel costs and decreased available freight results from shippers and 3PLs paying fuel surcharges to their carriers. The real issue affecting carriers, therefore, is the weakened economy, which has reduced the number of loads available for them to haul. As the economy improves, even with high fuel costs, carriers should do fine. This could be why there are no motor carrier organizations supporting either S. 2910 or H.R. 5934.

3. The 3PL – Motor Carrier Industry is a Dynamic Market

3PLs buy carrier capacity on a load by load, or spot market basis. The rates offered to the carrier adjust load by load based on truck supply and freight demand in the local market, fuel costs, and the urgency of the shipment. When the 3PL and carrier begin their negotiation, the carrier generally asks for a total rate for the load including the cost of fuel. If the carrier wants, the 3PL can break out the cost of fuel. The transaction between the 3PL and the carrier is a negotiation. The 3PL knows what it is going to receive from the cargo shipper and so it tries to obtain truck service at a lower rate so that the 3PL's costs are covered. As previously indicated, in many instances in today's market, the 3PL may pay more to get the truck than they thought they would just as the carrier alone decides whether to take a load at an offered rate. The 3PL alone decides whether or not to hire the truck. The 3PL could, for example move the load by railroad, which is generally less expensive for long moves.

The dynamic nature of the market coupled with spiking fuel costs and scarce freight from a weak economy create the perfect storm for carriers. Typically, the carrier pegs its fuel surcharges to the date the load is booked, say $3.00 on April 1. The load might actually move however, on April 10 when fuel costs $3.25 and the carrier will receive the money for that load on May 8 when he is paying $3.75 for fuel. In a dynamic market economy, carriers need to know how to be profitable and manage current and expected costs.

The carrier alone decides how much they need to profitably handle the specific shipment on a specific day. Just as 3PLs are free to reject a load from a shipper unwilling to pay enough to cover the 3PL's costs, carriers are free to say no to freight that they do not think provides adequate or fair compensation. If a carrier does decide to take the load at the rate offered, that is its choice alone—and the federal government should not be asked to protect the carrier by law from the exercise of poor business judgment if the load is accepted at rates that are too low to cover the carrier's costs.

There are services that provide tools to carriers to help them understand where they are most likely to obtain their next load. With this information, a carrier that takes a load to an area in which there is a paucity of backhaul freight should seek a higher rate to the area since they will likely receive a lower rate coming out of the area.

TIA makes it easy for carriers to find loads from TIA members. Loads posted by TIA members are marked with the TIA logo on all of the major freight listing services. There is no excuse, therefore, for carriers to take non-remunerative loads from 3PLs offering to pay rates that are below the carrier's costs.

4. The TRUCC Act Will Result in Re-Regulation and Lawsuits

The Trust in Reliable Understanding of Consumer Costs Act, is not necessary, will re-regulate the industry, will create a lawsuit nightmare for shippers, carriers, and 3PLs, and will harm owner operators.

a. The TRUCC Act is Not Necessary

As indicated earlier, shippers and 3PLs are paying fuel surcharges to carriers, sometimes at a loss to the 3PL. If shippers and 3PLs were not paying fuel surcharges to carriers, the truck failure rate would be significantly higher than what it is and our members would not be able to find trucking companies willing to work with them.

The real problem for carriers is the high price of fuel coupled with a weak freight market. The TRUCC Act will do nothing to affect these issues. The price of fuel will only come down when fear and speculation is reduced in the world, the value of the U.S. dollar increases, and the U.S. produces more oil domestically.

b. The TRUCC Act will Re-Regulate the Industry

The second provision of the TRUCC Act

> (2) at the time payment is made under paragraph (1), a written list that specifically identifies any freight charge, brokerage fee or commission, fuel surcharge or adjustment, and any other charges invoiced or otherwise presented to the person described in paragraph (1).

would, if enacted, turn the clock back on 38 years of economic deregulation in the motor carrier and third party logistics industries=industries that are the envy of the world because of our efficiency and innovation.

The TRUCC Act would essentially return the industry to the era of rate tariffs that ended in the mid-1990s. If enacted, the TRUCC Act will require every broker, forwarder, and motor carrier to detail their income on every load. In no other American business has Congress so repudiated deregulation and private enterprise. More than 90 percent of the 3PL and motor carrier industry are small family owned businesses. If enacted, the TRUCC Act will severely harm these family run businesses, cripple creativity, eliminate innovation, and stifle competition. Every carrier, broker, and forwarder would know what every other carrier, broker, and forwarder is making. This information would lead to a reduction in competition, which would lead to a rush to consolidate, which in turn, would further reduce competition.

Mandatory disclosure of what private companies earn would be a repudiation of Congress's support for the free market and family run business. For 28 years since the passage of the Motor Carrier Act of 1980, U.S. 3PLs and the trucking industry have created the most efficient transportation and logistics system in the world. It should be noted that not a single trucking association supports this return to 1930's style regulation.

c. The TRUCC Act will Result in a Lawsuit Nightmare

The TRUCC Act would require the disclosure of actual fuel surcharges and fuel costs, freight charges, commissions, and all other charges associated with every load, so that the owner-operator can police how much the shipper is paying the 3PL and demand a larger share of the revenue earned by the 3PL. The TRUCC Act is supported solely by the Owner-Operator Independent Drivers Association (OOIDA), an organization well known for its lawsuits against trucking companies. A quick look at the OOIDA website (www.ooida.com), shows that OOIDA is currently involved in 28 lawsuits against trucking companies and 3PLs.

Previously, OOIDA sought fuel surcharge legislation in 2005. That version contained a specific lawsuit provision for enforcement. Congress declined to act on that bill to avoid a new rash of lawsuits brought by OOIDA. In the TRUCC Act, OOIDA is much more clever. They first expand the scope of the legislation to include all pricing information and then eliminate any specific reference to lawsuits. The Interstate Commerce Act at §14704(a)(2), however, provides for private lawsuits to enforce any aspect of the Act.

The lawsuit provision is, therefore, a component of the current legislation. If enacted, Congress would be handing OOIDA a weapon to use against shippers, brokers, forwarders, and the very motor carriers they claim to help. It is incongruous to imagine Congress knowingly unleashing a new nightmare of lawsuits against America's family run small businesses.

d. The TRUCC Act will Harm Owner Operators

The legislation being proposed purports to be a simple fix to a complex problem. In recent years Congress has seen how easily legislation meant to remedy one problem can have unintended consequences that create worse problems. The same is true here. We believe that one of the most likely effects of the TRUCC Act would be to give shippers and 3PLs a strong incentive to avoid disclosure of their margins and the exposure to lawsuits under the Act by avoiding altogether the use of carriers that utilize owner operators. Such a result would have a devastating effect on the very people this proposal is supposed to help.

CONCLUSION

The Transportation Intermediaries Association urges the Congress to reject the TRUCC Act (HR 5394 and S 2910) as an unnecessary return to heavy handed government regulation of an essential world class industry.