

Before the

UNITED STATES SENTENCING COMMISSION

Testimony of

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Representing

THE AMERICAN TRUCKING ASSOCIATIONS, INC.

On

Amendments to the Federal Sentencing Guidelines

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Driving Trucking's Success

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Mr. Chairman and members of the Commission, thank you for inviting me today to testify on behalf of American Trucking Associations, Inc. (“ATA”) as this Commission considers amendments to the Federal Sentencing Guidelines related to transportation. My name is Shawn Driscoll. I am the Assistant Director of Security for Swift Transportation, the largest truckload carrier in the United States with over \$3.1 billion in operating revenues and approximately 18,000 trucks and forty-plus full service facilities in both the continental U.S. and Mexico. Prior to my work at Swift, I served as a Colonel and chief of the Montana Highway Patrol and was with that agency for over 20 years. I am a member of the Security Council of ATA. ATA is a federation of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the trucking industry. ATA’s membership includes more than 2,000 trucking companies and industry suppliers of equipment and services. Directly and through its affiliated organizations, ATA encompasses over 37,000 companies and every type and class of motor carrier operation.

I will focus this testimony on the proposals related to implementation of section 307(c) of the USA PATRIOT Improvement and Reauthorization Act of 2005 (“PATRIOT Act Reauthorization”), Pub. L. No. 109-177, as they relate to cargo theft, an issue of paramount importance to the trucking industry and those served by the trucking industry. Enactment of section 307 of the PATRIOT Act Reauthorization was the culmination of a lengthy effort by ATA, others in the transportation industry, law enforcement and interested Members of Congress to promote efforts to combat the scourge of cargo theft. Subsection (c), which directs the Commission to review the Federal Sentencing Guidelines “to determine whether sentencing enhancement is appropriate” for an offense under section 659 of title 18¹, United States Code, is just part of a multi-pronged approach to more effectively stem the rise in cargo theft.

To fully grasp the potential impact of cargo theft on the U.S. supply chain, it is helpful to understand a broad picture of the trucking industry. According to the 2002 Commodity Flow Survey conducted jointly by the Bureau of Transportation Statistics and the U.S. Census Bureau, trucks hauled 74.3% of the value of all shipments in 2002. In 2005, trucking generated \$622.9 billion in gross freight revenues, representing 84.3% of the nation’s freight bill. That same year, trucking transported 68.9% of total domestic tonnage shipped. The statistics confirm that trucking is the primary mode of transportation for our nation’s freight.

Unfortunately, the statistics on cargo theft are not so readily available or precise. Yet, as one industry commentator noted, cargo theft is not new, but “never before in this country have the targets been so plentiful and the goods so moveable and the chance of getting caught so slim to make cargo thieving in all its forms a truly promising career for criminals.”² While recognizing the imprecise nature of their figure, the Federal Bureau of Investigation estimates the direct costs of cargo theft to be between \$15-30 billion in the United States annually.³ When indirect costs

¹ It should be noted that 18 U.S.C. § 659 is within the chapter of embezzlement and theft crimes and refers specifically to interstate or foreign shipments by carrier. While there is no specific crime of cargo theft in title 18, for purposes of this testimony, the crime delineated in 18 U.S.C. § 659 shall be loosely termed cargo theft.

² David Cullen, *Shining a Light on Cargo Theft*, Fleetowner, August 1, 2006.

³ Federal Bureau of Investigation, *Cargo Theft’s High Cost: Thieves Stealing Billions Annually*, http://www.fbi.gov/page2/july06/cargo_theft072106.htm (accessed on March 12, 2007).

are considered, the annual losses are estimated to be “well north of one percent of GDP or \$100 billion.”⁴ While the figures range dramatically, law enforcement generally agrees that they are low for a variety of reasons, including failure to bring charges under a uniform criminal offense and under-reporting. My experience tells me that it may not be a matter of carriers not reporting as much as it is law enforcement not taking the report for lack of jurisdiction or manpower. Either way, a primary impediment to reporting – that cargo theft is not often a law enforcement priority – remains. Therefore, it is safe to assume that cargo theft is a significant threat with negative impacts on manufacturers, carriers, and ultimately, consumers.

Why am I here before you today? The trucking industry’s interest lies in focusing resources to deter cargo theft. We in the trucking industry spend significant amounts on security measures to prevent cargo theft. Unfortunately, our efforts are not 100 percent effective. The trucking industry supports coordination of law enforcement efforts at the local, state, and federal level, as witnessed by cargo theft task forces such as CargoCATS in the LA/Long Beach area and TomCATS in the South Florida area as well as the motor carrier industry-organized Regional Security Councils which comprise both carriers and law enforcement. However, one glaring impediment to preventing cargo theft was identified in the Report of the Interagency Commission on Crime and Security in U.S. Seaports (“Seaport Commission Report”):

Former drug traffickers are becoming more involved in cargo theft because of the high profit that can be made and *because the criminal sentences are much lower than those for drug offenses, according to law enforcement officials.* (emphasis added)⁵

This sentiment is oft-cited as an obstacle by both law enforcement and prosecutors. Therefore, the trucking industry is pleased that Congress expressed interest in having this Commission examine the current sentencing guidelines, and is further encouraged by the two proposals being considered by the Commission, both of which would potentially enhance sentences for convictions under 18 U.S.C. § 659.

ATA believes enhancing sentences for cargo theft or its federal equivalent, 18 U.S.C. § 659, would assist the fight against cargo theft in different ways. First, ATA believes there is a credible deterrent effect that accompanies increased sentencing and penalties. While I am not an expert in criminology or sociology, I believe that most would agree that mandatory minimums and increased sentences for drug trafficking has had some deterrent effect. ATA recognizes, however, that increased sentencing and penalties are not sufficient standing alone. Law enforcement and prosecutorial resources need to be devoted to pursuing convictions for the increased sentences to have the desired, most complete deterrent effect.

This leads to the second manner in which enhanced sentences are beneficial in the fight against cargo theft. ATA member carriers hear all too often from law enforcement officials at all levels that there is a reluctance to pursue cargo theft crimes, since prosecutors rarely prosecute the cases. In turn, prosecutors say the penalties associated with cargo theft convictions do not justify

⁴ Michael Wolfe, *In this Case, Bad News is Good News on Cargo Security*, Journal of Commerce, July 26, 2004.

⁵ Report of the Interagency Commission on Crime and Security in U.S. Seaports, Fall 2000 at 48.

the allocation of scarce prosecutorial resources. Enhanced sentencing directly addresses these heretofore valid concerns.

Finally, there is discussion among law enforcement officials that some of the proceeds from cargo theft are being diverted to fund other organized crime activities. The Seaport Commission Report stated that, according to law enforcement authorities, “the majority of cargo theft today is committed by organized criminal groups.”⁶ Enhanced sentencing for cargo theft crimes could assist in the fight against foreign and domestic, organized criminal groups by cutting off profits that are currently obtainable with little risk.

The Commission has proposed two options for implementing section 307(c) of the Patriot Act Reauthorization. As emphasized throughout this testimony, ATA is strongly supportive of enhancing sentences and criminal penalties associated with conviction under 18 U.S.C. § 659. Therefore, ATA supports Option 2, which, per our interpretation, would provide for an enhancement of two levels for convictions under 18 U.S.C. § 659 (as well as for organized schemes to steal vehicles or vehicle parts) and further provides that the offense level would be no less than level 14. ATA finds this option preferable to Option 1 in terms of consistently generating a more robust sentence or penalty.

Mr. Chairman and members of the Commission, thank you for the opportunity to testify before you on this issue that impacts companies like mine and, ultimately, you as the consumer of the goods and products we in the trucking industry carry. The work this Commission is undertaking today is a significant, positive step at the federal level toward defeating the perpetrators of cargo theft. While not all cargo theft cases are brought at the federal level (in fact, most are at the state level), the U.S. Attorneys’ Manual states, “Thefts from interstate shipment should be prosecuted under Federal laws where . . . (2) the thefts are systematic or widespread.” It further goes on to state, “Major theft cases and cases involving repeat offenders should be given priority attention under 18 U.S.C. § 650.” ATA believes that amending the Federal Sentencing Guidelines, as proposed in Option 2, gives federal law enforcement authorities and prosecutors another arrow in the quiver as they confront this particular crime. The trucking industry has long been a partner with law enforcement and prosecutors in this effort, and we pledge to continue to be partners in this worthwhile effort.

⁶ *Id.*