american apparel & footwear association

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December 22, 2011

Karen V. Gregory
Secretary
Federal Maritime Commission
800 North Capitol Street NW
Washington, DC 20573-0001

RE: Notice of Inquiry; U.S. Inland Containerized Cargo Moving Through Canadian and Mexican Seaports [Docket No. 11-19]

Dear Ms. Gregory:

On behalf of the American Apparel & Footwear Association (AAFA), I am submitting the following comments in response to the request for public comment by the Federal Maritime Commission concerning factors that may cause or contribute to the shift of containerized cargo destined for U.S. inland ports from the United States to Canadian and Mexican Seaports as posted in the Federal Register on November 8, 2011.

AAFA is the national trade association representing U.S. apparel, footwear and other sewn products companies and their suppliers, which compete in the global market. Our primary mission is to promote and enhance our members' competitiveness, productivity and profitability in the global market by minimizing regulatory, legal, commercial, political, and trade restraints.

AAFA's members include importers, exporters, retailers, and manufacturers who produce all types of apparel and footwear. Our industry represents more than $340 billion in domestic sales and four million American jobs. It is an industry in which success is found not only in the quality of product, but also the reliability, efficiency and speed with which a product is delivered. Currently more than 98 percent of apparel and 99 percent of footwear sold in the United States is made internationally and ports are the gateways by which imported apparel and footwear products enter U.S. markets.

We appreciate the opportunity to voice our comments and concerns on this important issue and thank the Commission for its consideration.

The Federal Register Notice stated that in recent years there has been an "increase in the amount of U.S.-destined cargo moving through newly established west coast Canadian port Prince Rupert and the expanded Mexican port Lázaro Cárdenas. These same years saw investment in and promotion of

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Canadian and Mexican port and intermodal rail infrastructure, as well as changes to environmental requirements, security considerations, and customs inspection procedures."[1] This statement intrinsically answers the very question with which it is presented. While our neighbors have been investing value in their ports, the United States has made itself a less desirable option as it disregards infrastructure needs and continues to impose gratuitous and burdensome regulations on shippers.

The most important factor that should be considered when attempting to explain any possible hesitation to use American ports is the lack of infrastructure investment in the United States. As an average since 1980, the growth of infrastructure investment has lagged behind overall economic growth. The result has been a worsening infrastructure deficit and mounting investment needs. In 2009, the American Society of Civil Engineers issued a report that pointed to a $1.176 trillion five-year investment shortfall for infrastructure in the United States with a $549.5 billion shortfall specifically in roads and bridges, $11.7 billion shortfall in rail, and $20.5 billion shortfall in infrastructure at our nation's ports and inland waterways.[2]

Unlike Mexico and Canada, the United States does not have a comprehensive national strategy for transportation infrastructure development. This omission often leads to lags in funding for important projects such as developing key freight corridors.

Since 2007, Canada has invested over $4 billion to build a container terminal at the Port of Prince Rupert, more capacity at the Port of Vancouver, and enhanced road and rail infrastructure. Their investment has paid off in increased exports and the ability to increase cargo moved to eastern Canada and parts of the United States. Meanwhile, the most recent U.S. Public Port Development Expenditure Report, which was released in February 2009, estimated the United States would spend only $9.4 billion for all its nationwide port expenditures between 2007 and 2011.[3]

The lack of U.S. infrastructure investment bodes poorly when combined with the proliferation of Customs requirements in the United States that far outweigh those in Mexico and Canada, including the Importer Security Filing (ISF) and the Harbor Maintenance Tax. The ISF rule, which went into effect January 2009, places additional burden on shippers by requiring a list of information to be provided to the United States Customs and Border Protection Agency before goods may be loaded onto an ocean carrier bound for the United States. The rule has also required businesses to upgrade their existing data processing systems which placed yet another drain on financial resources. This strain is particularly hard on small businesses are likely to be already very limited. Other costs that have been associated with the ISF rule include more bond charges and increased insurance payments for extra days if the sailing deadline is missed due to delays in compiling the information and, most important for our industry, retail chargebacks if delivery deadlines are missed.

[1] Federal Maritime Commission, *Notice of Inquiry; U.S. Inland Containerized Cargo Moving Through Canadian and Mexican Seaports*, 76 Federal Register 216, pp. 69271-69272, (8 November 2011)

[2] American Society of Civil Engineers, *2009 Report Card for America's Infrastructure*, http://www.infrastructurereportcard.org/report-cards, (2009).

[3] U.S. Department of Transportation Maritime Administration, *U.S. Public Port Development Expenditure Report (FYs 2006 & 2007-2011)*, http://www.marad.dot.gov/documents/2006_port_expenditure_rpt_--_final.pdf, (February 2009).

The Harbor Maintenance Tax (HMT) is a federal tax imposed on shippers based on the value of the goods being shipped through U.S. ports. With the useful intention of the tax set to improve infrastructure projects at the ports in which it is collected, it would not be likely to deter shippers on its own. However, many shippers have become frustrated with the inadequate system of collecting the tax and the fact that funds are not reaching their proposed destination. In a House Transportation and Infrastructure Committee hearing July 2011, the President and CEO of the Port of New Orleans, Gary P. LaGrange, testified that in the fiscal year 2010 the Harbor Maintenance Trust Fund received $1.363 billion from the HMT, yet only $828 million, or approximately 60 percent of the total, was spent on port maintenance.[4] This lack of investment in port maintenance and dredging projects makes it difficult for larger vessels to enter ports fully loaded and often requires reduced capacity, thus reducing the efficiency of American ports.

In addition to regulations imposed on shippers, many along the rest of the commodity chain are also relevant. Recent attempts have been made by several West Coast ports to implement Clean Truck Programs that ban the use of independent truck drivers and place heavy restrictions on trucks concerning engine manufacturing dates. Although restrictions on independent drivers proposed by the ports have been overturned by recent court decisions, many of the regulations continue to be costly and burdensome to importers who need surface transportation to move product.

Clean Ports Acts have been introduced in both chambers of Congress that would endorse controversial, unnecessary and counterproductive changes to longstanding federal trucking rules codified in the Federal Motor Carrier Act. Such unnecessary regulations will only serve to reduce efficiency and dissuade importers from servicing American ports. AAFA strongly supports efforts to improve air quality and congestion in and around America's ports, but we believe it can be done without regulations that drive away business.

The notice of inquiry asks for reasons why common carriers may prefer to make Mexican or Canadian ports their first North American port of call. Simple fact proves that Mexican ports would be a reasonable choice for imports coming from South America as it is a closer location. Traveling a shorter distance saves ocean liners money and time in addition to the benefits derived through reduced inventory carrying costs. With the same logic, the port of Prince Rupert in Canada is up to 48 hours closer to Asia than other West Coast ports. Furthermore, as mentioned before, in recent years Canada and Mexico have both made an effort to improve and promote intermodal rail infrastructure from their ports. Canada offers better intermodal connections to the Midwest United States, cities such as Chicago and Memphis, than do California ports.

The same way that Mexico, Canada, and the United States strive to be contenders in the global economy, businesses will always look for ways to make themselves more competitive in the marketplace. They excel by moving products, and doing so successfully involves many steps, among them choosing which port may be the most beneficial to get product into the hands of consumers. The lack of suitable infrastructure in the United States and overly burdensome regulations are preventing the United States from being the best option available to many. AAFA encourages the FMC to consider how these factors affect not only the apparel and footwear industries but all industries in the nation.

[4] United States House of Representatives Committee on Transportation and Infrastructure, Press Release: *Subcommittee Hearing Focuses on Bill to Ensure Maintenance of U.S. Harbors,* http://transportation.house.gov/News/PRArticle.aspx?NewsID=1340, (July 2011).

Again, we thank the Commission for the opportunity to comment on this issue and hope a positive solution may soon be reached. If you have any questions regarding these comments, please feel free to contact myself or my staff at mdavignon@wewear.org. Please let us know if we can be of any help in the coming process.

Sincerely,

Kevin M. Burke
President & CEO
American Apparel & Footwear Association