



January 9, 2012

Karen V. Gregory, Secretary
Federal Maritime Commission
800 North Capitol Street NW
Washington, DC 20773-0001

RE: FMC Docket Number 11-19
Notice of Inquiry
U.S. Inland Containerized Cargo Moving Through Canadian and Mexican
Seaports

Dear Ms. Gregory:

The Port of Tacoma appreciates this opportunity to submit comments on the Federal Maritime Commission's Notice of Inquiry into U.S. inland containerized cargo moving through Canadian and Mexican seaports.

The Port of Tacoma is an economic engine for Washington state, with more than 43,000 family-wage jobs in Pierce County and 113,000 jobs across Washington state connected to Port activities. A major gateway to Asia and Alaska, the Port of Tacoma is among the largest container ports in North America. The Port is also a major center for bulk, breakbulk and project/heavy-lift cargoes, as well as industrial machinery, automobiles and trucks.

The Port deeply appreciates that, as part of its inquiry, the FMC is examining the diversionary impacts U.S. tax law—primarily the Harbor Maintenance Tax (HMT)—has on cargo flows. As you know, the HMT is assessed on ocean-going international imports that land at US ports. It is not, however, assessed on importers who route cargo through non-US ports (such as Canada and Mexico) and afterwards move the cargo into US markets by land. The Port believes the current structure creates an unintended incentive for international importers to divert cargo to non-US ports to avoid the HMT.

Past research has already demonstrated that the imposition of taxes and fees by US governmental bodies can incentivize shippers to divert discretionary cargo to alternative gateways so as to avoid those charges. Of particular note is a 2007 study conducted for the Washington State Legislature's Joint Transportation Committee by Leachman and Associates (see Attachment 1). This study determined the economic viability and impact on demand for Puget Sound port services from the assessment of additional port user fees. The Port and Modal Elasticity Study analyzed the long-run elasticity of port demands as a function of access fees, determining what levels of fees would induce traffic diversion to other ports or induce shifts in modal shares (truck vs. rail) at the ports of Seattle and Tacoma. A Long-Run Elasticity Model previously developed for studying the San Pedro Bay ports was applied to analyze imports at the Puget Sound ports with updated data. The model allocated imports to ports and modes so as to minimize total inventory and transportation costs from the point of view of importers. It concluded that Puget Sound import volume is very elastic with respect to potential container fees. Even relatively small fees of \$30 per TEU (twenty-foot equivalent units of containerized cargo) or less would render supply-chain channels using other ports more economically attractive for imports, resulting in a loss of nearly 30 percent of Puget Sound cargo volumes. According to research performed by Martin and Associates, this loss of cargo would translate into a loss of 9,415 jobs; \$590.8 million in personal income; \$938.7 million in business revenue and \$58.5 million in state and local tax revenue. If a \$30/TEU container charge would have that sort of impact, one must ask what sort of impact the HMT, which averages \$150 per container, has on existing cargo flows.

The diversionary influence of the HMT can be found in a review of containerized cargo volumes through Pacific Northwest ports over the last twenty years. Beginning in 1998, after the Supreme Court ruled on the validity of the HMT on imported cargo, the Port of Vancouver saw exponential growth in containerized cargo—growth that far exceeded that seen at other ports in the Pacific Northwest. (See Attachment 2)

The importance of the HMT to shippers and carriers is acknowledged by stevedoring companies and port officials in Canada who go to great lengths to tout the financial benefits of bypassing American ports and the HMT. The Port of Vancouver has run advertisements in such trade publications as the *Journal of Commerce* touting how they could “save you time and money with...no harbor maintenance tax.” As early as the 1998 International Intermodal Expo in Dallas, representatives of the Port of Vancouver passed out marketing materials emphasizing this same point (see Attachment 3).

More recently, Global Container Terminals (GCT), the largest marine terminal operator at the Port of Vancouver, made a presentation at the 2010 World Shipping Summit in China quantifying annual HMT savings to shippers should they bypass American ports and call on their terminal in British Columbia (see Attachment 4). Similar figures have been used by GCT in sales calls made to shippers in the United States in which the Port of Vancouver is promoted as a “US gateway” with “Financial Incentives to BCOs.” “Shippers saved an estimated \$17 + mm in Harbor Maintenance Taxes” by circumventing American ports, declared GCT (see Attachment 5).

The financial costs of the HMT might be acceptable if meaningful benefits were provided to those who pay the HMT. Unfortunately this is not the case. The law, as currently written, creates a massive transfer of revenue from deep-harbor ports – such as Seattle and Tacoma, which need little dredging – to shallower harbors that need frequent dredging. A fifth of all expenditures are spent in a single state, Louisiana. According to a Congressional Research Service report, Seattle and Tacoma get “just over a penny for every dollar” their shippers pay in harbor maintenance taxes. (See Attachment 6) This inequity was recently called out by the *Tacoma News Tribune* editorial board (See Attachment 7), and the Washington Council on International Trade (See Attachment 8).

Finally, it is worth noting that questions remain regarding the HMT’s compliance with international trade law. In 1998, the European Union (EU) requested consultation with the United States over the HMT. The Port of Tacoma would strongly encourage the FMC, as part of its inquiry, to examine whether the existing HMT is consistent with US obligations under the WTO, which prohibits “taxation of imports or exports for fiscal purposes” (GATT Article VIII para.1), especially in light of the US Supreme Court’s decision (*United States vs. United States Shoe Corporation*) that HMT is a tax and not a user fee.

One must acknowledge that shippers and carriers, when determining where to route cargo, examine the entire throughput cost of moving their cargo. The HMT is not the “sole” or “determining” factor. Other factors do play some role in determining cargo flows, including geographic proximity, cargo velocity improvements resulting from infrastructure investments, rail rates, labor rates and other factors. It is difficult to deny, however, that any factor that can increase the cost of moving a container by \$150 plays no role. Over the last several years carriers have sought lease rate reductions and other financial concession from public ports for smaller dollar amounts than this, while

shippers have voiced concerns in the past with smaller increases in other supply chain costs. Price matters and the HMT affects the price of moving cargo through American ports. This begs the question: why should U.S. tax law provide preferential treatment for containerized cargo entering the United States via a Canadian port as compared with cargo entering the country through an American port?

Once again, the Port of Tacoma appreciates the Federal Maritime Commission's examination of the HMT as it relates to US inland containerized cargo moving through Canadian and Mexican seaports. I hope this material will prove useful in the FMC's deliberations. Please do not hesitate to contact me if you have questions about the information provided.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Wolfe', written in a cursive style.

John Wolfe
CEO

CC: Senator Patty Murray
Senator Maria Cantwell
Congressman Jay Inslee
Congressman Rick Larsen
Congresswoman Jaime Herrera-Beutler
Congressman Doc Hastings
Congresswoman Kathy McMorris-Rodgers
Congressman Norm Dicks
Congressman Jim McDermott
Congressman Dave Reichert
Congressman Adam Smith