December 20, 2011

Karen V. Gregory
Secretary
Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, D.C. 20573-0001
By email: Secretary@fmc.gov

RE: U.S. Containerized Cargo Flows – Response to NOI

On behalf of the Waterfront Coalition we submit these comments regarding the Notice of Inquiry into U.S. inland containerized cargo moving through Mexican and Canadian ports. Those of our members choosing to route U.S. bound freight through Canadian and Mexican maritime gateways do so to take advantage of speed to market to a select few U.S. destinations. From the feedback we received from our membership, we understand that any change in U.S. tax policy will have no impact on shippers' routing decisions. Public and private investments in goods movement related infrastructure designed to reduce transit times may prove beneficial in enticing shippers to route cargo through U.S. maritime gateways.

By way of background, the Waterfront Coalition represents manufacturers, product suppliers, retailers and transportation providers moving import and export freight through North American blue water ports. Our members have a direct interest in making sure that the nation's ports and the network of railroads, highways, roads, bridges and tunnels moves commerce quickly, safely and in an environmentally responsible manner. It is the mission of the Waterfront Coalition to support industry initiatives to speed the movement of freight and to work with elected officials to make sure that the goods movement industry benefits from infrastructure investments.

1. Shippers' Routing Decisions

In response to the Notice of Inquiry, we requested that our members to provide us with their rationale for routing U.S. bound cargo through Mexican and Canadian maritime facilities. The responses we received only pertained to the movement of freight through ports in British Columbia. All respondents stated that speed to market, reliability and port diversification plans explained the decision to route some freight through Canadian ports. Respondents understand that Prince Rupert B.C experiences a geographical advantage over U.S. west coast ports. Cargo originating at ports in North Asia will arrive at the Port of Prince Rupert, B.C. two to three days faster owing to geography. This advantage is lost when cargo originates in ports south of North Asia (for example, Singapore, Vietnam, Bangladesh).

For our members, short transit times and reliability are the most important factors in choosing a North American gateway. The two to three day advantage enjoyed by the Port of Prince Rupert results in significant supply chain cost savings and efficiency for our members. This geographical advantage only pertains to originating ports in North Asia and certain U.S. Midwest destinations, notably Chicago, IL. The Port of Prince Rupert does not enjoy this advantage with other origin and destination points.

Our members using the Port of Prince Rupert also report reliable service from the port to the U.S. final destination. Reliable service is just as important as speed to market. A two to three day advantage does not mean much for a shipper if this advantage cannot be guaranteed consistently. Frequent unanticipated service disruptions lead to costly manufacturing delays, lost sales for retailers and our exporter members.

Since the events of September 11, 2001 and the West Coast lockout of longshore workers in 2002, many shippers developed port diversification plans. For many of our members, a small amount of cargo may be routed through the Port of Prince Rupert as part of these plans. In the event of an incident that closes U.S. maritime facilities, shippers currently using the Port of Prince Rupert have one option with which to feed into their U.S. supply chain network.

2. Experience Using Prince Rupert

Again, our members using the Port of Prince Rupert report a reliable two to three day advantage to certain U.S. destinations over other U.S. west coast ports. However, rail service disruptions are known to occur occasionally owing to inclement weather. Severe snow and rain events have been known to lead to lengthy delivery disruptions.

The Port of Prince Rupert is a small one berth facility with three cranes. While there are modest future expansion plans, service into the port is limited. Many of our members looking for service through the port have frequently been told that space is unavailable. We understand that U.S. bound cargo discharged at all Mexican and Canadian ports represents roughly 7% of all cargo. Cargo routed through Prince Rupert represents a small share of this 7%. Cargo routed through Vancouver, B.C. represents an even smaller share.

3. Targeted Government Investment in Freight Mobility

The success of the Port of Prince Rupert to offer shippers fast and reliable service is a case study in the effectiveness of coordinated investments by the private and public sectors. Private investors and public agencies at the provincial and federal levels worked collaboratively to invest in infrastructure to take full advantage of the Port of Prince Rupert's geographical advantage to serve certain U.S. Midwest destinations by rail. Private investors along with state, local and federal agencies in the U.S. should invest in aging roads, highways, bridges and tunnels designed to move much of the nation's commerce.

Several years ago the Waterfront Coalition adopted a policy to advocate for better goods movement infrastructure that moves maritime commerce. We quickly learned that inadequate infrastructure hundreds of miles from a U.S. blue water port results in cargo delays at a marine terminal. For example, rail bottlenecks in Chicago can result in on-dock rail service disruptions in the Port of L.A. Inadequate air draft of a bridge in New Jersey can result in lines of idling ships waiting to enter marine terminals in New Jersey during low tide. A holistic approach to identify all public and private pieces of the goods movement network must be adopted.

For this reason, the Waterfront Coalition supports the adoption of a national freight policy that identifies key pieces of infrastructure vital for the movement of commerce. This policy clearly defines needed investment in both public and private infrastructure to reduce transit times and promote the competitiveness of U.S. ports. Enhanced infrastructure could result in shortened land side transit times and better position U.S. ports to compete with Canadian ports for certain cargo. The Chicago CREATE project is a prime example of an appropriate goods movement project that can be funded through a mix of private and public funds to greatly reduce rail bottlenecks in Chicago rail yards. The project, when complete, could reduce freight transit times through Chicago by one to two days.

4. Impact of the Harbor Maintenance Tax

Imposing the U.S. Harbor Maintenance Tax (HMT) on freight discharged at a Canadian or Mexican port will not result in significant diversion of freight to U.S. ports. Our members moving import freight through a U.S. maritime gateway pay the Harbor Maintenance Tax of 0.125% of declared value. The HMT does not represent a significant tax burden to many of our members. Many of our members support the tax as a needed revenue mechanism to ensure that shipping channels are maintained to support commercial activity.

Applying the Harbor Maintenance Tax on U.S. bound cargo discharged at a Mexican and Canadian port represents an unfair imposition of a user fee and violates North American Free Trade Agreement and World Trade Organization treaty provisions. The HMT was established as a user fee to fund shipping channel maintenance and other maritime related projects. Applying the fee at the land border crossing violates the principle of a user fee.

The imposition of the tax on cross border freight may violate provisions of the North American Free Trade Agreement (NAFTA) and the General Agreement on Trade and Tariffs (GATT) enforced by the World trade Organization. Article VIII of the GATT prohibits the imposition of any fee on imports that is not specifically tied to the movement or processing of trade. In the past, the World Trade Organization has ruled that similar fees violate Article VIII and we understand that similar treaty requirements are included in the North American Free Trade Agreement.

Imposing the HMT on U.S. bound cargo discharged at a Mexican or Canadian port will not, in our view, result in much diversion of freight to U.S. ports. The primary motivating factor for shippers' routing cargo is speed to market not avoiding payment of the HMT. The imposition of such a tax will not result in an increase in cargo volumes for U.S. ports and could result in retaliatory trade tariffs imposed on U.S. exports to Mexican and Canada – one of our largest trading partners and a growing source of revenue for many U.S. ports.

Sincerely,

Robin Lanier
Executive Director