National Retail Federation
*The Voice of Retail Worldwide*

December 22, 2011

Karen V. Gregory
Secretary
Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, D.C. 20573-0001

**RE: Notice of Inquiry – U.S. Inland Containerized Cargo Moving Through Canadian and Mexican Seaports (Docket 11-19)**

Dear Ms. Gregory,

On behalf of the National Retail Federation (NRF) we are submitting the following comments regarding the Federal Maritime Commission's (FMC) Notice of Inquiry (NOI) looking into the factors that may cause or contribute to the shift of containerized cargo destined for U.S. inland points from U.S. to Canadian and Mexican seaports. The NOI is specifically examining the impact of the Harbor Maintenance Tax (HMT) on an importer's decision to shift cargo destinations.

For NRF's members, there are several operational factors that are taken into consideration when deciding what ports to use in their supply chain. The biggest motivating factor is the speed at which they can get their products to market. This includes factors such as the productivity of the port, reliability of services, workforce stability, and available infrastructure. While fees such as the HMT are a consideration, they are not the sole factor in a retailer's decision. Shippers, including retailers, who are using ports such as Prince Rupert, are choosing these ports because of the operational efficiencies of these ports, and it is our view that any change in U.S. tax policy will have no impact on shippers' routing decisions. However, Federal, state and local policies that encourage investment in goods movement infrastructure projects designed to reduce transit times may prove beneficial in enticing shippers to route cargo through U.S. maritime gateways.

As the world's largest retail trade association and the voice of retail worldwide, NRF represents retailers of all types and sizes, including chain restaurants and industry partners, from the United States and more than 45 countries abroad. Retailers operate more than 3.6 million U.S. establishments that support one in four U.S. jobs – 42 million working Americans. Contributing $2.5 trillion to annual GDP, retail is a daily barometer for the nation's economy. NRF's Retail Means Jobs campaign emphasizes the economic importance of retail and encourages policymakers to support a Jobs, Innovation and Consumer Value Agenda aimed at boosting economic growth and job creation.

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**Shippers' Cargo Routing Decisions**

The FMC is seeking to understand the differences in taxes, fees, laws, regulations and other processes that come into play when shippers make their routing decisions for cargo. Whether a port is located in the United States, Mexico or Canada, there are several factors that come into play when retailers make their routing decisions. Among the primary considerations are speed to market, reliability of service, operational efficiency, workforce stability, proximity to the distribution network and the availability and cost of domestic transportation services. In the retail industry, short transit times are essential in managing just in time supply chains. Cargo delays may result in empty shelves and lost sales for retailers which impact our members' bottom line. .

After the events of September 11, 2001, the U.S. west coast lockout of 2002 and west coast labor shortage in 2004, many NRF members chose to apply port diversification strategies to their supply chains which allows them to route cargo though a diverse mix of North American gateways in order to mitigate the risk of delayed cargo owing to an unforeseen event at a single facility. In certain instances, some NRF members may choose to route a portion of their product though facilities in Mexico and Canada. Retailers continue to evaluate their options at all North American ports, and many are now looking at ways to use the Panama Canal once the lock changes are completed in 2014.

Speed to market plays an integral role for NRF members choosing to route cargo through maritime gateways in Canada. Transit times from originating ports in North Asia to destinations in the U.S. Midwest and intermodal hubs in Memphis, TN are typically 2 to 3 days shorter when using a Canadian port of discharge than alternative U.S. maritime gateways. For other origins and destinations, U.S. maritime facilities may offer shorter transit times. This decision is the direct result of the issue of available domestic transportation. The rail services offered from Prince Rupert to Chicago seem more efficient and offer faster speed to market than those from the Pacific Northwest.

**Experience using Canadian Gateways**

We understand that significant private investment was made in developing the Port of Prince Rupert, B.C. Additionally, provincial and federal investments were made in public infrastructure to help ensure the commercial success of the port. These combined investments help promote the reliability of service through the region necessary to maintain the transit time advantage.

Marine terminals in the Port of Prince Rupert, B.C. are relatively small compared to other U.S. blue water container ports. It has been the experience of some NRF members that service to the port has reached capacity. Additional service is frequently unavailable due to the port's relatively small size. We understand that "diversion" of U.S. bound cargo to ports outside the U.S. is estimated to be roughly 6%. The Port of Prince Rupert, B.C. would represent a fraction of this 6%. While there are plans to expand the port modestly, we understand that the volume of cargo moving through the port would not increase significantly relative to the volume of cargo moving through all U.S. blue water ports.

## U.S. Government Efforts to Promote U.S. Port Competitiveness

We believe that the U.S. government should play an active role in investing in public infrastructure to promote the movement of goods to reduce transit times from origination to destination. The cooperation between the private and public sectors in Canada to invest in infrastructure to guarantee a reliable service that maintains the two to three day advantage in Pacific crossings should be a case study for the U.S. government. We support the adoption of a national freight policy that clearly defines needed investment in both public and private infrastructure to reduce transit times and promote the competitiveness of U.S. ports, transportation service providers, and shippers including retailers.

Appropriate projects for public investments include "last mile" connectors that link ports, rail yards, and other intermodal facilities to highways and other roads. Bottlenecks projects that reduce congestion along highways, roads, bridges and tunnels that move freight are also in need of federal investments. Rail grade separation projects, such as the Chicago CREATE program will greatly reduce transit times by allowing trains to move through congested regions quickly while reducing cargo delays. Clearly, there is no shortage of projects that would greatly benefit from enhanced federal investments. We are supportive of a process to objectively determine those goods movement projects of importance to promoting the freight mobility through U.S. ports to be funded through federal investments.

## Treatment of the Harbor Maintenance Tax

Our members moving imported freight through a U.S. maritime gateway pay the Harbor Maintenance Tax of 0.125% of declared value. This does not represent a significant tax burden to our members. In fact, our members support the tax as a needed revenue mechanism to ensure that shipping channels are maintained to support commercial activity. We feel strongly, however, that the money collected from the HMT be used for its intended purpose, harbor dredging. HMT money should be used for port improvements and not be left sitting on the books to offset the deficit.

We have strong concerns over any attempt to impose the HMT on U.S. bound cargo discharged at a Mexican and Canadian port. Such an effort would not lead to cargo coming back to U.S. ports. It also represents and unfair imposition of a user fee and violates North American Free Trade Agreement and World Trade Organization treaty provisions.

As mentioned earlier, the HMT does not represent a significant tax burden for our members. Retailers who choose to route cargo through Canadian ports do so given the availability of shorter and more reliable transit times and not as a way to avoid the HMT. Applying a fee on cross border freight runs against the grain of the intent of the tax – to raise revenue for shipping channel maintenance from those that gain from the service provided.

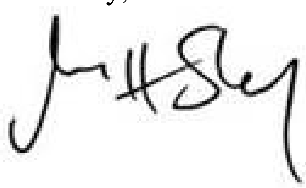
We also fear that efforts to attach the tax on cross border freight may violate provisions of the North American Free Trade Agreement (NAFTA) and the General Agreement on Trade and Tariffs (GATT) enforced by the World trade Organization. Article VIII of the GATT explicitly forbids the imposing of fee on imports and exports that is not specifically tied to the movement or processing of trade. The World Trade Organization Dispute Resolution Panel has ruled that similar fees violate Article VIII. Similar treaty requirements are included in NAFTA.

**Conclusion**

As discussed above, there are numerous factors that retailers consider when establishing their supply chain operations and deciding which ports they will use to get products to their store shelves. Service, reliability and speed to market are the most critical, and the HMT is a relatively insignificant consideration. The U.S. should look at Canada and the work they have done with their ports as an example of what is needed for a national freight policy that will help make the U.S. more competitive. Applying an HMT to cross-border traffic will not shift cargo back the U.S. for distribution, but steps to ensure that there is appropriate infrastructure at U.S. ports, reliable service and efficient operations will help make U.S. ports much more competitive.

We thank the FMC for the opportunity to submit comments on this important topic. If you have any questions, please contact Jonathan Gold, Vice President, Supply Chain and Customs Policy (goldj@nrf.com) in the NRF office.

Sincerely,



Matthew Shay
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