

Statement of Commissioner Rebecca Dye

Federal Maritime Commission

Study of U.S. Inland Containerized Cargo Moving Through Canadian and Mexican Seaports

July 24, 2012

In August and September, 2011, the Commission received a request from Senator Murray, Senator Cantwell, seven Members of the House of representatives from the Washington State delegation and one Member from California to analyze the impact and the extent to which the Harbor Maintenance Tax and other factors impact container cargo diversion from U.S. west coast ports to west coast Canadian and Mexican ports, as well as legislative and regulatory recommendations to address this concern. On November 3rd of last year, I supported the Commission decision to issue a Notice of Inquiry to solicit the public's views and other information concerning factors that may contribute to a shift of containerized cargo from U.S. ports to Canadian or Mexican seaports.

Although the Commission does not have expertise in tax or trade policy, I voted for the notice of inquiry because the Commission should respond to the Members of Congress' letters with a thorough, unbiased analysis appropriate to an independent regulatory agency. The Members of Congress deserve an independent evaluation of the issues involved, including public views, with which they may determine the need for changes in national port policy. Unfortunately, the document we have provided to Congress does not contain such an analysis, and for that reason I voted not to release it.

The "study" we have submitted to Congress is a political policy paper developed to justify a predetermined conclusion that the Harbor Maintenance Tax affects "cargo diversion" from U.S. to Canadian ports. This study is not based on an independent economic model designed to isolate the effect of the Harbor Maintenance Tax and other factors, including government policies, that may have a causal relationship with the flow of cargo through North American ports.

The Commission's brief comparison of certain "natural" and "artificial" factors does not support the study's broad conclusion that "It is clear that the HMT is one of many factors affecting the increased use of foreign ports for cargo bound for U.S. inland destinations." The "natural" factors do not include an evaluation of some of the most important competitive factors among ports, including the many Federal, state, local, and port user fees collected from shippers and vessel operators using U.S. ports; port services, policies, and charges; and most important, individual port efficiency and reliability. The "artificial" factors do not include the North American Free Trade Agreement, or other government actions related to trade or tariffs.

One of my greatest concerns with this study relates to the misinterpretation of the comments submitted in response to the Commission's Notice of Inquiry. Of the 76 comments received, 12 supported the conclusion that the Harbor Maintenance Tax causes cargo diversion, while 64 opposed that conclusion. Rather than clarify the views contained in the comments, the study confuses certain positions, inappropriately characterizes several comments, and fails to acknowledge many of the important commenters.

Another of my concerns with the study involves a statement that the Port of Prince Rupert, unlike the Ports of Vancouver, Montreal, and Halifax, is not a Container Security Initiative (CSI) port. While the Container Security Initiative was begun in the fall of 2001, the Port of Prince Rupert did not begin operations until 2007. Ports were selected for the Container Security Initiative according to greatest volume of cargo destined for the United States.

All containerized marine cargo arriving in Canada, regardless of its ultimate destination, is screened through operating radiation detection portals that detect radioactive material and possible security threats entering Canada.

In addition, the Beyond the Border Action Plan, developed by both the U.S. and Canadian governments, selected Prince Rupert for a pilot project for a Cargo Targeting Initiative, which will involve perimeter vetting and examination of inbound marine cargo at the port and destined for Chicago by rail.

For Canadian railways, maritime shipping containers that enter the U.S. from Canada undergo scanning through a Vehicles and Cargo Inspection System (VACIS) at the land border point of entry.

The only data submitted by the commenters, who believe there is a relationship between the harbor maintenance tax and cargo “diversion”, is a 2007 study conducted by Dr. Robert C. Leachman. According to the Commission study, the estimates developed by Dr. Leachman suggest that up to half of the U.S. containers coming into Canada’s west coast ports could revert to using U.S. west coast ports if the HMT were eliminated or if an identical fee were imposed on containers entering Canada’s west coast ports destined for the U.S. Dr. Leachman’s estimates, however, are long-term predictions controlled by the nature of the operational model employed in his study. That model analyzes the “least-cost” path for the flow of west coast cargo but does not account for the dynamic reality in the marketplace when competitors respond in ways difficult to anticipate. As noted in a footnote in the Commission study, cost-based models tend to over-estimate the amount of containers that may shift to other lower cost alternatives.

Despite my objections to the methods and conclusions of the Commission study, it does contain a valuable contribution to the discussion concerning whether cargo diversion exists. For most of the past decade, U.S. containerized cargo imported via Canadian ports as a share of total U.S. port traffic, averaged less than 2.5 percent per year. This was generally true in 2011, when approximately 162,000 TEUs of U.S. cargo arrived via Montreal, 150,000 TEUs via Vancouver, 140,000 TEUs via Prince Rupert, and 26,000 TEUs from Halifax. In 2010, 2.6 percent of total U.S. imported containers that entered via west coast ports entered through Canada.

Moreover, if Canadian cargo imported via U.S. ports is subtracted from the total U.S. port traffic, U.S. containerized cargo averaged less than 1.3 percent per year for the last decade.

The small percentage of U.S. cargo imported via Canadian ports is obscured in the Commission study by implications regarding the potential for future

changes in the flow of cargo through North American ports. The Commission should have clarified the facts in the study related to the flow of cargo through North American ports for Members of Congress and the maritime industry.