



FEDERAL MARITIME COMMISSION

STATEMENT OF COMMISSIONER RICHARD A. LIDINSKY, JR.

THIRD ANNUAL UPDATE:

U.S. Inland Containerized Cargo Moving Through Canadian and Mexican Seaports 2014: Diversion, Expansion, and Congestion

Three years ago, the Federal Maritime Commission released the *Study of U.S. Inland Containerized Cargo Moving through Canadian and Mexican Seaports* ("2012 Study"). Consistent with our practice since the release of that study, I am pleased to present this third update.

Since the release of the 2012 Study, the container shipping industry has seen significant developments that were aimed at making U.S. ports more competitive with their Canadian and Mexican counterparts. Last year, the *Water Resources Reform and Development Act of 2014* (WRRDA), Pub. L. No. 113-121, was signed into law. WRRDA allows for the use of the Harbor Maintenance Trust Fund (HMTF) for port and harbor maintenance, in addition to dredging. This year saw the House of Representatives pass the Fiscal Year 2016 Energy and Water Appropriation Bill, H.R. 2028, which includes amendments to increase the amount allocated for Harbor Maintenance Trust Fund expenditures by \$36.3 million, and to guarantee that expenditures from the Army Corps of Engineers' Operations and Management (O&M) account complied with WRRDA. The Senate Appropriations Committee also approved a bill that guarantees the Harbor Maintenance Tax (HMT) funding targets specified in WRRDA for FY 2016 will be met.

Within the last year, vital members of the supply chain serving American consumers have begun to address issues affecting the competitiveness of U.S. ports. The Ports of Seattle and Tacoma began the process of entering into a competitive working agreement that will allow the two ports to exchange information and combine efforts to find synergies that allow them to compete more effectively with international ports. The Ports of Los Angeles and Long Beach also entered into an agreement, allowing the ports to discuss and agree on projects and programs that address transportation infrastructure needs and reduce pollution caused by port-related activities. In addition, the Ocean Carrier Equipment Management Association (OCEMA), the West Coast MTO Agreement (WCMTOA), and almost every vessel-operating carrier and marine terminal operator serving U.S. West Coast ports, together formed the Pacific Ports Operational Improvements Agreement (PPOIA). PPOIA authorizes the parties to discuss and exchange information, and reach agreement on measures that address and improve the efficiency of operations at U.S. West Coast port facilities, to aid in the reduction of congestion.

However, U.S. ports are still facing challenges that impact their ability to compete with international ports. International ports are continuing to grow and expand faster than U.S. ports. The Port of Prince Rupert (Canada) is North America's fastest growing port at 13.8% year-over-year, followed by the Port of Manzanillo (Mexico) at 11.23%. Larger ships, new alliances, labor-management disputes, and equipment and trucking shortages have contributed to the already building congestion at U.S. ports, with the most severe effects felt on the West Coast. As a result, shippers have been diverting cargo to different routes and ports to lessen delays.

Throughout this report we have used data and sources such as *The Wall Street Journal*, *The Journal of Commerce* and PIERS, *Lloyd's List*, various port authorities, as well as private sources. Each source is cited where appropriate.

As with other updates, the views and/or opinions expressed herein are my own and not the official policy of the FMC. I would like to extend thanks to the Commission staff who participated in the writing of this update, with special thanks to Jewel Jennings-Wright and Marcus Foster in my office.

Richard A. Lidinsky, Jr.
Commissioner
Federal Maritime Commission
Washington, D.C.
June 30, 2015

PART ONE: 2014 UPDATE

2014 NORTH AMERICAN CONTAINER TRADE

Collectively, container trade grew 2.5% in 2014, totaling approximately 39.9 million twenty-foot equivalent units (TEUS).¹ U.S. ports led all North American ports, handling close to 31.6 million TEUS (79.1% of the total container trade in North America), while Canadian ports handled about 4.7 million TEUS (11.7%) and Mexican ports handled almost 3.7 million TEUS (9.2%).²

Total North American Container Trade - 2014

Country	TEUS Handled	Percentage of Trade
United States	31,563,913	79.1%
Canada	4,675,475	11.7%
Mexico	3,682,730	9.2%
Total North America	39,922,118	100.0%

Though U.S. ports still lead all North American ports in TEUS handled, Mexican ports experienced the highest year-over-year growth at 3.5%. United States ports grew 2.6%, and Canadian ports grew 1.4%.³ The Port of Prince Rupert, located in British Columbia, Canada, was North America's fastest growing port, growing 13.8% year-over-year.⁴ Mexico's Port of Manzanillo narrowly edged out the Port of Boston as the second fastest growing port at 11.23% year-over-year, compared to 11.20%.⁵ It should be noted that the Port of Boston reported a more conservative 10.5% year-over-year, still making them the third fastest growing port in North America.⁶

Fastest Growing North American Ports (TEUS)

Port	2013		2014		2013 Total	2014 Total	Y-O-Y % Change
	Inbound	Outbound	Inbound	Outbound			
Prince Rupert	301,804	151,624	358,902	156,998	453,428	515,900	13.8%
Manzanillo	901,359	655,924	1,032,464	699,695	1,557,283	1,732,159	11.2%
Boston	98,154	66,204	106,771	74,847	164,358	181,618	10.5%
South Carolina Ports	665,972	625,625	742,763	682,548	1,291,597	1,425,311	10.4%
New Orleans	81,004	220,040	92,933	238,148	301,044	331,081	10.0%

¹ Marsha Salisbury, *Ports of Prince Rupert, Manzanillo Lead Growth*, THE JOURNAL OF COMMERCE, May 18, 2015, at 44, "46-48. "

² *Id.* "

³ *Id.*

⁴ *Id.* See also, Prince Rupert Port Authority, *Monthly Traffic Summary for Dec. 2014*, 1 (Jan. 6, 2015), " <http://files.rupertport.com.s3.amazonaws.com/snapshots/95/Monthly%20TEU%20Cargo%20SummaryTEU%20-%20DEC%202014.pdf?Expires=1436283780&AWSAccessKeyId=AKIAJT7NKA535OKDFPBQ&Signature=qVyiMw8Bqx%207De8pPq%2F5CkOwtXVI%3D> (last visited May 21, 2015).

⁵ Salisbury, *supra* note 1, at 44.

⁶ Massachusetts Port Authority, *Port of Boston Container Volumes*, <https://www.massport.com/media/296397/Port-of-Boston-Container-Volumes.pdf> (last visited May 21, 2015). "

Inbound trade saw Mexican ports lead growth with a 9.2% year-over-year increase, followed by 7% in Canadian ports, and 6.1% in U.S. ports.⁷ Of the total inbound cargo handled at North American ports, U.S. ports saw 19.1 million TEUS in 2014. Canadian ports saw 2.66 million, and Mexican ports saw 2.14 million.

Total North American Inbound Container Trade Growth

Country	2013	2014	Y-O-Y % Change	2013 % of Total	2014 % of Total
United States	18,014,693	19,106,412	6.1%	80.2%	79.9%
Canada	2,489,155	2,663,543	7.0%	11.1%	11.1%
Mexico	1,959,857	2,140,798	9.2%	8.7%	9.0%
Total	22,463,705	23,910,753	6.4%	100.0%	100.0%

This represented a 0.3% decrease in overall container trade handled by U.S. ports (80.2% versus 79.9%), while Mexico experienced a 0.3% increase in overall container trade handled. The amount handled by Canadian ports remained constant.⁸

CARGO DIVERSION

CANADIAN PORTS

The Port of Prince Rupert

In the original *Study of U.S. Inland Containerized Cargo Moving Through Canadian and Mexican Seaports*, the Port of Prince Rupert (Prince Rupert) was examined. In the three years since the issuance of the original report, Prince Rupert has become a significant competitor of the West Coast ports.

Prince Rupert advertises itself as having “significant competitive advantages over other West Coast ports.”⁹ These advantages include being 68 hours closer to Shanghai than Los Angeles, natural channel depth, “state-of-the-art” facilities, and access to efficient rail.¹⁰ It is also 36 hours (a day and a half) closer to Shanghai than the Puget Sound ports.^{11,12}

As mentioned above, Prince Rupert grew 13.8% year-over-year in 2014, making it the fastest growing North American port. Private sources state that as much as 61.8% of cargo imported into Prince Rupert in 2014 had a final destination somewhere in the United States, compared to 57.2% in 2013. As a result, of the 359,959.50 loaded TEUS shipped into Prince Rupert, approximately 222,455 TEUS were transshipped to a destination in the United States. In 2013 that number was approximately 173,796 TEUS.

⁷ Salisbury, *supra* note 1, at 44.

⁸ *Id.*

⁹ Port of Prince Rupert Port Authority, *Competitive Advantages*, <http://www.rupertport.com/trade/advantages> " (last visited May 21, 2015).

¹⁰ *Id.*

¹¹ Peter Robison and Thomas Black, *Buffet Railroad's Shale Focus Blunts Ports' Comeback Bid*, BLOOMBERG, Oct. 31, 2014, <http://www.bloomberg.com/news/print/2014-10-31/buffett-railroad-s-shale-focus-blunts-comeback-bid.html>.

¹² The Port of Seattle and the Port of Tacoma "

Port of Prince Rupert - TEUS Handled (By Destination) '

Country of Destination	2014	%	2013	%	% Change Y-O-Y
United States	222,455	61.8%	173,796	57.2%	28.0%
Canada	137,505	38.2%	130,044	42.8%	5.7%
Total	359,960	100.0%	303,840	100.0%	18.5%

There are also planned expansion projects that will increase the port's capacity. Maher Terminals announced in March 2015 that it will be expanding its terminal operation at Prince Rupert to allow it to handle 1.3 million containers. Its current capacity is 850,000.¹³ This represents an annual capacity increase of 60%.¹⁴ Shortly after the announcement of the planned expansions, DP World, based in Dubai, United Arab Emirates, announced that it would be purchasing the terminal. DP World plans to continue on with the slate of announced expansions, and "undertake feasibility assessments in relation to development of the lands intended for further expansion which could potentially increase the capacity to 2.45 million TEUS."¹⁵ DP World also owns Centerm terminal in Port Metro Vancouver.

Canadian National Railway Co. (CN) has begun to place advertisements for the expansion to the terminal, projecting the terminal to open in second quarter 2017.¹⁶

Port Metro Vancouver

Port Metro Vancouver (Vancouver) is Canada's largest port. Vancouver advertises itself as a more advantageous option than other ports. Vancouver offers twenty-eight major marine cargo terminals with three Class 1 railroads converging at the port. The terminals are Super Post-Panamax capable, and have on-dock rail facilities.¹⁷ Of the twenty-eight marine cargo terminals, Vancouver has four common-user container terminals supported by fourteen transloading facilities, and three container storage and maintenance facilities.¹⁸ Vancouver boasts that it is, "the most diversified port in North America... [operating] across five business sectors: automobiles, breakbulk, bulk, container, and cruise."¹⁹

Terminals in Vancouver are planning and making infrastructure investments in anticipation of handling more cargo destined for the United States. GCT Global Container Terminals stated that it plans to spend several hundred million dollars to increase its Vancouver terminals' capacity and fluidity in anticipation of handling more U.S.-bound cargo and Canadian volume, which will include spending more than C\$200

¹³ *Prince Rupert Port expanding to handle 500,000 more containers annually*, THE VANCOUVER SUN, Mar. 10, 2015, <http://www.vancouversun.com/Prince+Rupert+Port+expanding+handle+more+containers+annually/10877349/story.html>. "

¹⁴ David George-Cosh, *Canada's Railroads Look to Peel Away More U.S. Imports*, THE WALL STREET JOURNAL, May 14, 2015, <http://www.wsj.com/articles/canadas-railroads-look-to-peel-away-more-u-s-imports-1431624752>.

¹⁵ Chris Dupin, *DP World buys Prince Rupert container terminal*, AMERICAN SHIPPER, Apr. 03, 2015, "[http://www.americanshipper.com/Main/News/DP World buys Prince Rupert container terminal 59874.aspx](http://www.americanshipper.com/Main/News/DP_World_buys_Prince_Rupert_container_terminal_59874.aspx)."

¹⁶ CN Advertisement, THE JOURNAL OF COMMERCE, May 18 2015, back cover.

¹⁷ Port Metro Vancouver, About Us, <http://www.portmetrovancover.com/en/about.aspx> (last visited Jun. 4, 2015).

¹⁸ Port Metro Vancouver, Container, "<http://www.portmetrovancover.com/en/portusers/landoperations/terminalsandfacilities/container.aspx> (last visited Jun. 29, 2015).

¹⁹ *Id.*

million to expand on-dock rail capacity at GCT's Deltaport terminal by 2017.²⁰ (GCT is also planning to upgrade the equipment at Vanterm, the smaller of its two terminals, to give the terminal a 40% increase in yard capacity.)²¹ Deltaport has already seen an increase in its U.S. bound cargo from 6%-8% in 2008 to 38% currently.²² GCT also indicated that it was only planning for long term cargo diversions and not, "one-off diversions of cargo from congested U.S. West Coast ports," with Eric Waltz, president of GCT Canada, stating, "the company will only take volume it can handle and for customers who see shipping through Vancouver as a 'long-term fit.'"²³

CANADIAN RAIL – CANADIAN NATIONAL EXPANDS

The backbone of the Canadian ports' ability to divert cargo from the U.S. West Coast is Canada's railway system. Canadian National Railway Co. ("CN") announced in March 2015 plans to build a US\$210 million container terminal outside of Toronto. The terminal is designed to serve as the new intermodal hub that will, according to CN President and CEO Claude Mongeau, "...benefit our customers and the regional economy by improving central Canada's access to the key transborder market as well as the Pacific and Atlantic coast trade gateways [CN serves]..."²⁴ The terminal is projected to increase the railroad's Toronto capacity by approximately 350,000 containers.²⁵

MEXICAN PORTS

Mexican ports have been touted as contenders for cargo diverted from the U.S. West Coast. However, unlike the Canadian ports, Mexican ports face geographical disadvantages. For example, it takes roughly four to five days longer to sail from Shanghai to Lazaro Cardenas than from Shanghai to Los Angeles and Long Beach. Furthermore, the distance from Lazaro Cardenas to Chicago is more than 200 miles longer than from Los Angeles and Long Beach.²⁶ Industry insiders suggest container volume has grown at Mexican ports due to strong demand as a result of the North American Free Trade Agreement (NAFTA), lower labor costs than China, as well as a broader economic growth.²⁷

In October 2014, Kansas City Southern Railway (KCS), which has rail connecting Lazaro Cardenas to the United States, reported talking to ocean carriers and beneficial cargo owners about potentially diverting shipments bound for the U.S. Gulf region away from Los Angeles-Long Beach.²⁸ Though they have not

²⁰ Mark Szakonyi, *Vancouver terminal operator invests to handle more US cargo*, THE JOURNAL OF COMMERCE, Jan. 30, 2015, http://www.joc.com/port-news/international-ports/port-metro-vancouver/vancouver-terminal-operator-invests-handle-more-us-cargo_20150130.html. "

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *CN to build new C\$250-million intermodal and logistics hub in Milton, Ont., west of Toronto*, Canadian National Railway Co., Mar. 17, 2015, https://www.cn.ca/en/news/2015/03/pressrelease_20150317011634_2091. "

²⁵ David George-Cosh, *Canada's Railroads Look to Peel Away More U.S. Imports*, THE WALL STREET JOURNAL, May 14, 2015, <http://www.wsj.com/articles/canadas-railroads-look-to-peel-away-more-u-s-imports-1431624752>. "

²⁶ Mark Szakonyi, *Mexican port unlikely to win big from West Coast rerouting*, THE JOURNAL OF COMMERCE, Mar. 5, 2015, http://www.joc.com/port-news/international-ports/mexican-ports-unlikely-win-big-west-coast-rerouting_20150305.html.

²⁷ *Mexican Ports Unlikely to Gain US-Bound Cargo*, THE JOURNAL OF COMMERCE, Mar. 23, 2015, at 6.

²⁸ *Id.*

begun to transship any “significant” importers from Lazaro Cardenas, the railroad continues to carry on talks with carriers and their customers about this option.²⁹

There is some evidence of shippers sending cargo through Mexico as opposed to Los Angeles-Long Beach. For example, big-box retailer Costco reported shipping, “50,000 truckloads and containers annually into Mexico.”³⁰ It was reported that over the last 20 years, Costco has shifted from importing goods through Los Angeles-Long Beach to having the port of entry into the United States being Laredo, Texas by routing more cargo through Lazaro Cardenas.³¹

The Mexican government is investing \$5 billion into its port network with at least 25 major projects planned.³² The Port of Veracruz is thought to be a major beneficiary of this influx of capital, with an expansion planned that would increase the facility’s capacity to 88 million tons.³³ There is also a plan to add 35 new berths, and the construction of a 13-mile double-track railway bypass, among other infrastructural improvements. Construction is scheduled for completion in 2030.³⁴

U.S.-MEXICAN RAIL

Several United States-based railroads are beginning to increase their activity in Mexico. BNSF Railway, the second-largest freight rail network in North America, launched an all-rail U.S.-Mexico service in May 2014, partnering with the Mexican railroad Ferromex.³⁵ The service runs from Chicago, Illinois, to El Paso, Texas, at which point there is a “steel wheel interchange” of the cargo to Ferromex, which then routes to Silao, Mexico.^{36,37}

Union Pacific Railroad has also partnered with Ferromex to provide cross-border intermodal services from the United States to Mexico, running from Chicago to Monterrey, Mexico. Union Pacific has been operating in Mexico since 1998. On April 1, 2014, Union Pacific opened a \$400 million intermodal hub in Santa Teresa, New Mexico, which also attracts cargo going across the U.S.-Mexico border.³⁸

With intermodal rail continuing to grow and aid container trade in Mexico, the cross-border trade between the United States and Mexico will most likely continue to grow. Whether this will equate to an increase in cargo diverting to Mexico from the U.S. West Coast remains to be seen.

²⁹ *Id.* "

³⁰ Mark Szakonyi, *Mexican shippers increasingly turning to intermodal to protect cargo from theft*, THE JOURNAL OF COMMERCE, Sep. 25, 2014, http://www.joc.com/rail-intermodal/intermodal-shipping/mexican-shippers-increasingly-turn-intermodal-protect-cargo-theft_20140925.html. "

³¹ *Id.*

³² Reynolds Hutchins, *Mexico’s Port Push*, THE JOURNAL OF COMMERCE, May 18, 2015, at 34-35.

³³ *Id.* at 38.

³⁴ *Id.*

³⁵ Mark Szakonyi, *BNSF taps growing U.S.-Mexico intermodal volume with new service*, THE JOURNAL OF COMMERCE, " Sep. 25, 2014, http://www.joc.com/rail-intermodal/class-i-railroads/bnsf-taps-growing-us-mexico-intermodal-volume-new-service_20140925.html.

³⁶ *Id.*

³⁷ A “steel wheel exchange” happens when a direct rail to rail handoff occurs without a truck move.

³⁸ Szakonyi, *BNSF taps growing U.S.-Mexico intermodal volume with new service*.

CONGRESSIONAL

Harbor Maintenance Tax

The *Water Resources and Development Act of 2014* (WRRDA) was designed to address the use of monies collected by the Harbor Maintenance Trust Fund (HMTF) through the Harbor Maintenance Tax (HMT), and reaffirm the HMTF's original purpose of providing funding for the maintenance and dredging of U.S. ports and harbors. This comes after longstanding complaints of collected monies not being spent. The law sets the annual HMTF target percentage expenditures, increasing each year until FY 2025 when 100% of the collected funds will go towards operation and maintenance (O&M) activities.³⁹ Further, the law allocates 10% of HMTF expenditures for emerging harbors, as well as authorizes donor ports to use the HMT for expanded uses including berths and the dredging of contaminated sediments, environmental remediation, and payments to importers, exporters, and shippers transporting cargo through that port.⁴⁰ The target for FY 2016, the first year of increases, is for 69% of the HMT revenues collected, or \$1.25 billion, to be expended.

In May 2015, the House of Representatives passed H.R. 2028, the *Fiscal Year 2016 Energy and Water Appropriations* bill, with two amendments directly related to expenditures of funds in the HMTF. The original FY 2016 budget presented missed the projected mark outlined under the WRRDA by about \$66 million.⁴¹ The first amendment, introduced by Representatives Bill Huizenga (R-MI), Charles Boustany, Jr. (R-LA), and Janice Hahn (D-CA), increased the appropriation of the HMT spending by \$36.3 million.⁴² The second amendment, introduced by Peter DeFazio (D-OR), Ranking Member of the Transportation and Infrastructure Committee; Grace Napolitano (D-CA), Ranking Member of the Transportation and Infrastructure Subcommittee on Water Resources and Environment; and Ted Poe (R-TX), Congressional Port Caucus Co-Chair, was aimed at guaranteeing that expenditures from the Army Corps of Engineers' O&M account complied with the WRRDA's target spending levels and allocation formulas.⁴³

In May 2015, the Senate Appropriations Committee passed a companion bill that would provide \$1.25 billion for port maintenance.⁴⁴ The Senate bill included \$50 million in funding for donor ports. Senators Patty Murray (D-WA) and Maria Cantwell (D-WA) pushed for the \$50 million additional funding, wanting to use the funding to reimburse shippers who pay the HMT.⁴⁵

³⁹ *Water Resources Reform and Development Act of 2014*, Pub. L. No. 113-121 "

⁴⁰ *Id.* at § 2106. "

This section defines a donor port as a port: 1) that is subject to the harbor maintenance fee, 2) at which the total amount of harbor maintenance taxes collected comprise not less than \$15 million annually of the total funding of the Harbor Maintenance Trust Fund; 3) that received less than 25% of the total amount of harbor maintenance taxes collected in the previous five fiscal years; and 4) that is located in a state in which more than 2 million cargo containers were unloaded from, or loaded onto, vessels in FY2012.

⁴¹ The Journal of Commerce Staff, *Fulfilling WRRDA's Promise*, THE JOURNAL OF COMMERCE, Jun. 15 2015, at 24-25.

⁴² Energy and Water Development and related Agencies Appropriations Act, 2016, H.R. 2028, 114th Cong. (as passed by House of Representatives, May 1, 2015).

⁴³ *Id.*

⁴⁴ *Fulfilling WRRDA's Promise*, at 24-25.

⁴⁵ *Id.* at 25.

GAO Study

On April 16, 2015, Senator Deb Fischer (R-NE) sent a letter to the U.S. Government Accountability Office (GAO) asking that it look into the quantitative and qualitative costs of the slowdown at the West Coast ports that are compounding significant congestion at the ports (discussed in more detail below). Senator Fischer asked GAO to complete the report in 18 months, stating:

“West Coast ports, in particular, are key hubs for international trade, handling nearly half of all U.S. maritime imports and exports, including inputs for manufacturers in Nebraska and across the United States... Freight infrastructure, such as railroads, inland highways, and highways, is essential to the efficient flow of goods through our nation’s ports.”⁴⁶

Multimodal Freight Bill

On June 25, 2015, Senators Cantwell, Murray, Cory Booker (D-NJ), and Edward Markey (D-MA), introduced *The National Multimodal Freight Policy and Investment Act* (S. 1680), which is designed to implement a comprehensive and strategic plan to improve the condition and performance of the national multimodal freight network, to ensure that the U.S. maximizes its competitiveness in the global economy.⁴⁷ If passed, the bill would authorize \$2 billion for each fiscal year starting in FY 2016 through FY 2021 in various multimodal freight projects, including \$150 million for grade separations to reduce truck and rail network delays, eliminate congestion, and reduce highway/rail conflict, as well as \$50 million for repairs to last mile short-line rail that connects to agricultural and industrial centers.⁴⁸

⁴⁶ Letter from Debra Fischer, U.S. Sen., to Hon. Gene Dodaro, U.S. Comptroller Gen., Gov’t. Accountability Office (Apr. 15, 2015) (on file with author), *available at* & <https://www.intermodal.org/assets/docs/senfischerlettertogao.pdf>. "

⁴⁷ National Multimodal Freight Policy and Investment Act, S. 1068, 114th Cong. § 2 (2015).

⁴⁸ *Id.*

PART TWO: CARGO DIVERSION AS A RESULT OF PORT CONGESTION

THE FMC AND PORT CONGESTION

During the fall of 2014, the Federal Maritime Commission (FMC) held four public forums regarding port congestion.⁴⁹ Public notice was given prior to these forums, inviting the public and stakeholders in the nation's ports to submit comments regarding the issues facing U.S. ports, and meet with Commissioners to discuss these issues. Participating in these forums were representatives of various stakeholders, including port authorities, marine terminal operators, ocean common carriers, motor carriers, chassis owners and lessors, organized labor, and shippers, as well as government agencies.

While each port region had congestion factors that were specific to its locale, the forums uncovered several uniform factors contributing to congestion: new alliances creating terminal inefficiency with increased vessel size and poor preparation for unloading at the terminal, chassis unavailability, and long drayage turn times and truck shortages. Also widely discussed at the forums was that shippers were experiencing an unexpected increase in demurrage and detention fees. The South Atlantic and Gulf Coast ports also reported the need for port and surrounding highway infrastructure investments. They were less congested than their Mid-Atlantic, Northeast, and West Coast counterparts, as they are ports that handle more exports than imports. (Details and transcripts of these forums can be found on the FMC website.)⁵⁰ As a result of the findings from each of the forums, Chairman Cordero made congestion at U.S. ports the primary focus of 2015, stating that, "the efficient operation of the [n]ation's ports is squarely within [the FMC's] mandate and paramount to the Commission's responsibilities."⁵¹

On April 13, 2015, the FMC published a report entitled *Rules, Rates, and Practices Relating to Detention, Demurrage, and Free Time for Containerized Imports and Exports Moving through Selected United States Ports*. The report was based on feedback from the port congestion forums, and on an analysis of selected vessel operating common carrier (VOCC) tariffs, port rules, and other sources, and concluded that demurrage charges are higher for importers than exporters, charges are higher for demurrage than detention, and the charges are similar across all ports except for New York-New Jersey, where they are much higher. The report also determined that VOCCs, rather than marine terminal operators (MTOs), tend to control these prices and policies. It noted, however, that direct comparisons between tariffs are difficult due to inconsistent terminology and application of charges bearing similar names. Continuing with the release of information gathered from the port forums, on June 24, 2015, the Commission unanimously voted to release a staff report entitled *U.S. Port Congestion & Related International Supply Chain Issues: Causes, Consequences, & Challenges*. The report is a synopsis of the stakeholder viewpoints

⁴⁹ The forums were held at the ports of Baltimore, Los Angeles-Long Beach, Charleston, and New Orleans " respectively. On September 15th, in San Pedro, CA, discussing West Coast port congestion; on October 1st, in " Baltimore, MD, discussing Mid-Atlantic and Northeast port congestion; on October 30th in Charleston, SC, discussing South Atlantic port congestion; and on November 3rd, in New Orleans, LA, discussing Gulf Coast port congestion. "

⁵⁰ Federal Maritime Commission, 2014 Public Port Forums (2014), "<http://www.fmc.gov/news/2014portforums.aspx>. "

⁵¹ Federal Maritime Commission, *Congestion at U.S. Ports is Commissioner Priority for 2015*, Jan. 15, 2015. "<http://www.fmc.gov/congestion-priority-2015/?pg=4>. "

expressed across the forums held by the Commission. The FMC urged the public, and those with an interest in port congestion, to submit their comments regarding this report.

Port congestion during 2014 was due to a variety of factors, some recurring problems, and some new. The increasing prevalence of vessel-sharing alliances, slowdowns and temporary lockouts due to labor-management disputes, as well as, shortages of equipment and reduced truck availability, all contributed to the problems. These problems are interconnected, and often have a cascading effect on one another.

Increasing numbers of megaships, a phenomenon becoming more common with the formation of container shipping alliances, means ports must handle larger numbers of containers arriving at once, adding to congestion.⁵² This will create a cascading effect where ships of up to 14,000 TEUS will be pushed into the U.S. trade, potentially straining port facilities' ability to efficiently handle cargo. Furthermore, the number and complexity of container moves within a port increases when a single ship carries containers for multiple lines.⁵³ In the port of Los Angeles, for example, a large ship can generate 5,000 container moves during a single call over two and a half days, with up to 8,000 moves total.⁵⁴ The situation is further compounded when one box moves several times. With the larger ships, some alliances have gone away from block stowage. This has created a situation where ports have cited containers being moved, not their usual one to three times, but four to eight times.⁵⁵

Equipment shortages also played a role in port congestion. Chassis availability for container transport has been a particular problem at Los Angeles-Long Beach and New York-New Jersey.⁵⁶ Increases in shipping volumes contributed to this problem, as did the relatively recent decision of most carriers to divest themselves of chassis ownership. Trucking interests have expressed concern about a provision in the ILWU-PMA agreement requiring safety inspections of certain chassis by ILWU workers, which some believe could cause significant delays.⁵⁷

Truck and driver shortages have also been a continuing problem. Trucking industry representatives reported long wait times in ports as a primary issue.⁵⁸ Because drayage truck drivers are usually paid by

⁵² *Id.*

⁵³ *Id.* &

⁵⁴ Bill Mongelluzzo, *Chassis Shortage could lead to Gridlock at LA-LB, Terminals Warn,* THE JOURNAL OF COMMERCE, " Sep. 12, 2014, http://www.joc.com/port-news/us-ports/port-los-angeles/chassis-shortage-could-lead-gridlock-la-lb-terminals-warn_20140912.html. '

⁵⁵ Chris Dupin, *Container shipping needs better information exchange says Slangerup,* AMERICAN SHIPPER, Jan. 29, 2015, http://www.americanshipper.com/Main/News/Container_shipping_needs_better_information_exchan_59336.asp "

⁵⁶ Bill Mongelluzzo, (Sep. 12, 2014).

⁵⁷ Bill Mongelluzzo, "ILWU Chassis-Inspection Provision Already Causing Delays," THE JOURNAL OF COMMERCE, May 26, " 2015, http://www.joc.com/port-news/longshoreman-labor/international-longshore-and-warehouse-union/ilwu-chassis-inspection-provision-already-causing-truck-delays_20150526.html. "

⁵⁸ Joseph Bonney, *Virginia Port Publishes Weekly Truck Turn Times,* THE JOURNAL OF COMMERCE, Feb. 11, 2015, http://www.joc.com/port-news/us-ports/port-virginia/virginia-port-publishes-weekly-truck-turn-times_20150211.html.

the mile, long wait times decrease their profits because they cannot make as many trips per day.⁵⁹ This can, in turn, threaten to decrease the pool of drivers if the industry is not sufficiently profitable. In addition, trucking interests have been urging ports to publish accurate truck turn times and container dwell times.^{60,61} Few ports regularly measure and publish this information, and trucking interests claim that ports often measure only “gate-to-gate” times, which does not account for time spent waiting outside a gate.⁶² Some ports have begun testing and implementing appointment systems for cargo pickups that could ease congestion, but some truckers oppose these systems.⁶³ Trucking companies have reported increased difficulty in recruiting and retaining drivers in the drayage trade.⁶⁴

CARGO DIVERSION AS A RESULT OF CONGESTION

When gathering comments for the Commission Notice of Inquiry for the original 2012 containerized cargo diversion study, the Commission received a number of comments that cited Prince Rupert’s geographic location as a reason for preferring that port to the ports on the U.S. West Coast. Those same commenters stated a preference for using Prince Rupert due to the, “ability to shift cargo to Prince Rupert should there be labor unrest or instability at U.S. [W]est [C]oast ports.”⁶⁵ This proved to be particularly prophetic during the severe port congestion experienced in the U.S. West Coast ports during this past year.

Congestion has prompted many shippers to seek alternate routes for future cargo, leading to cargo not only being diverted to the U.S. East Coast, but to Canadian and Mexican ports as mentioned above.⁶⁶ Port of Los Angeles Director Gene Seroka said that the Ports of Los Angeles and Long Beach have made progress in eliminating backlogs, getting services back on schedule, and improving cargo flow. Many shippers, however, fear future labor-management disruptions, prompting them to move their cargo to other ports as they are willing to pay more for greater predictability, according to Mark Hirzel, President of the Los Angeles Customs Brokers and Freight Forwarders Association.⁶⁷ Furthermore, the Panama Canal expansion, scheduled to open in 2016, may lead to more cargo bypassing West Coast ports in

⁵⁹ Joseph Bonney, *US Ports Move Toward Truck Appointment Model*, THE JOURNAL OF COMMERCE, Apr. 27, 2015, http://www.joc.com/port-news/us-ports/port-new-york-and-new-jersey/us-ports-move-toward-truck-appointment-model_20150427.html. "

⁶⁰ Joseph Bonney, *Virginia Port Publishes Weekly Truck Turn Times*, THE JOURNAL OF COMMERCE, Feb. 11, 2015, http://www.joc.com/port-news/us-ports/port-virginia/virginia-port-publishes-weekly-truck-turn-times_20150211.html.

⁶¹ The dwell time for a container is the average time a container remains stacked on the terminal. A truck turn time is defined as the amount of time it takes for the trucker is in the terminal from gate-in to gate-out. This does not include the time spent waiting to get into the terminal.

⁶² *Id.* &

⁶³ *Id.* For example, the Association of Bi-State Motor Carriers opposes appointment systems until truckers can be "assured that turn times will be short and reliable. "

⁶⁴ *Id.*

⁶⁵ Federal Maritime Commission, “Study of U.S. Inland Containerized Cargo Moving Through Canadian and Mexican ” Seaports.” July 2012, 4-5.

⁶⁶ Andrew Edwards, *Port News: ILWU Members Ratify 5-Year Labor Contract*, PRESS-TELEGRAM, May 22, 2015, <http://www.presselegram.com/business/20150522/port-news-ilwu-members-ratify-5-year-labor-contract>.

⁶⁷ *Id.*

favor of an all-water route to the East Coast, as the canal will be able to accommodate up to 13,000 TEU ships.⁶⁸ The canal currently handles 4,500 TEU ships.

For the first time in recent decades, East Coast ports handled more laden containers than West Coast ports in the first three months of 2015.⁶⁹ Year-over-year laden container traffic increased by 9% on the East Coast, decreased by 12% on the West Coast, and increased by 8% on the Gulf Coast.⁷⁰ Atlantic ports' market share in the first quarter was about 48%, while West Coast ports' share dropped to around 44%, and the Gulf Coast increased market share to about 8.3%.⁷¹ This trend has continued well into the first half of this year. East Coast ports grew their U.S. import market share to 44% between January and April 2015, while West Coast ports share of the import market shrank to 49% as compared to 54% for the same period in 2014.⁷²

During the most recent wave of port congestion on the U.S. West Coast, Canadian ports also experienced a wave of cargo diverting to its ports specifically related to this congestion. In October 2014, the manager of marketing for the Prince Rupert Port Authority, Brian Friesen, stated that, "[their] carriers have advised [Prince Rupert] and CN and Maher Terminals to expect an increase in volume in the [coming] weeks."⁷³ Friesen also noted that CN was prepared to add capacity to carry an additional 2,600 TEUS to their then current ability to carry 5,850 TEUS from Prince Rupert to the U.S. Midwest per week.⁷⁴

In a recent survey, *The Journal of Commerce* interviewed 138 shippers. Sixty-five percent of those surveyed said they planned to ship less cargo through the U.S. West Coast.⁷⁵ (By comparison, in a similar survey conducted in December 2014, 66% said they would reroute cargo away from the U.S. West Coast, indicating that shipper opinion had not changed over the past year.⁷⁶) Of those who reported they would reroute cargo away from the West Coast, 22.7% said they would reroute 10-30% of their cargo, while 18.3% said they would reroute 5-10% of their cargo.⁷⁷ The survey also asked what alternative port would be used. The majority said they would reroute to other U.S. ports, primarily the East Coast.

⁶⁸ Bill Mongelluzzo, *West Coast Volume down Months after Slowdowns Ended*, THE JOURNAL OF COMMERCE, Jun. 2, 2015, http://www.joc.com/port-news/port-productivity/west-coast-volume-down-months-after-slowdowns-ended_20150602.html. "

⁶⁹ JOC Staff, *US East Coast Laden Container Outpaces West Coast Traffic*, THE JOURNAL OF COMMERCE, Jun. 4, 2015, http://www.joc.com/port-news/us-ports/us-east-coast-laden-container-outpaces-west-coast-traffic-first-time_20150604.html.

⁷⁰ *Id.* &

⁷¹ *Id.* These numbers equal more than 100% because of the way the numbers were rounded in the article cited. "

⁷² *Record Savannah Volume suggests diversions becoming permanent*, THE JOURNAL OF COMMERCE, May 18, 2015, http://www.joc.com/port-news/us-ports/port-savannah/record-savannah-volume-suggests-diversions-becoming-permanent_20150518.html. "

⁷³ Peter Tirschwell, *Prince Rupert expects wave of diversion cargo from LA-LB congestion*, THE JOURNAL OF COMMERCE, Oct. 23, 2014, http://www.joc.com/port-news/international-ports/port-prince-rupert/prince-rupert-expects-wave-diversion-cargo-la-lb-congestion_20141023.html.

⁷⁴ *Id.*

⁷⁵ Mark Szakonyi, *65 percent of shippers in JOC survey say they'll divert from West Coast*, THE JOURNAL OF COMMERCE, Feb. 25, 2015, http://www.joc.com/maritime-news/trade-lanes/65-percent-shippers-surveyed-say-they%E2%80%99ll-divert-west-coast_20150225.html.

⁷⁶ *Id.*

⁷⁷ *Id.*

However, 14.7% responded that they would ship to either Vancouver or Prince Rupert, and less than 1% said they would use a Mexican port.^{78,79} This trend continued into 2015, but there has been some evidence that this trend is beginning to reverse.⁸⁰

Industry analysts are already stating that permanently diverting to the U.S. East Coast ports may ultimately turn out not to be a sound choice for some shippers. Maritime analysts with SealIntel say that during the period of heavy congestion diverting cargo to the U.S. East Coast benefitted shippers. However, with the situation stabilizing and returning to normal, West Coast reliability is also predicted to return to normal.⁸¹ According to SealIntel, under "normal conditions," U.S. West Coast on-time reliability was higher, at 84%, compared to 75.6% on the U.S. East Coast.

PART THREE: CONCLUSION

Now in the third year since the issuance of the original containerized cargo diversion study report, we have seen that shippers are not going to stop diverting cargo through Canadian ports, and that Mexican ports continue to present another option for those individual shippers looking for alternative routes. As a result of the congestion seen on the U.S. West Coast, 2014 was the most active year for cargo diversion. It remains to be seen whether this trend will continue in the future, though there are several indicators that 2014 is not an anomaly: several ocean container shipping lines have submitted orders for megaships capable of carrying 19,000 TEUS or more, and the enlarged Panama Canal is scheduled to open in 2016. Though U.S. ports cannot handle the largest of the megaships, there is a cascading effect of the "smaller" 4,000 to 9,000 TEU ships being pushed into service on the U.S. trade routes.

In the face of these challenges, it is crucial that we, as a country, continue to ensure the viability of our nation's ports. The primary function of the Federal Maritime Commission is, and will continue to be, the protection of those engaged in the United States' foreign waterborne commerce while fostering a fair, efficient, and reliable international ocean transportation system. True to our mandate, the Commission will continue to monitor cargo diverting from U.S. ports to our Canadian and Mexican neighbors.

⁷⁸ *Id.*

⁷⁹ The breakdown of the percentage of survey respondents that reported that they would use alternative ports is " as follows: the U.S. Northeast Ports 16.1%, U.S. Southeast Ports 22.7%, U.S. Gulf Coast Ports 16.1%."

⁸⁰ Eric Kulish, *L.A. Port Cargo Volumes Down 6.1 percent in April*, AMERICAN SHIPPER, (May 18 2015).

⁸¹ *Have US West Coast defectors jumped too soon?*, LLOYD'S LIST, (Jun. 2, 2015) at 4-5.