

**Remarks of Michael A. Khouri
Commissioner, Federal Maritime Commission**

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

July 27, 2012

The FMC received letters from members of the U.S. Senate and U.S. House of Representatives in August and September, 2011. The letters asked, "...that the Federal Maritime Commission undertake an analysis of the impact the federal Harbor Maintenance Tax (HMT) may be having on the diversion of U.S.-bound cargo from U.S. ports to those in Canada or Mexico." and analysis of "...other U.S. government policies" that may affect cargo diversion. I voted for the Notice of Inquiry (NOI) and anticipated significant public comments. As an independent federal agency, the FMC should provide the U.S. Congress with an objective, unbiased and balanced report on the public commentary together with our agency's analysis.

The FMC published its responsive Study on July 27, 2012. I believe the FMC Study falls short of answering the Congressional inquiry. Further, I believe the Study fails to assist or advance meaningful discussion or debate concerning either the federal HMT or the broader subject of a National Transportation Policy. For these reasons, I could not join in the decision to release and publish the Study. Some particular concerns are highlighted below.

The Study begins with a Foreword that proposes that California and Pacific Northwest ports are "...at a strong competitive disadvantage." Page two offers the question, "...what can Congress do to help create a 'level playing field?'" Page three offers the "...fact that each container requires, on average, a \$109/FEU fee to use a U.S. port places those ports at a competitive disadvantage...". The Study's analysis of these propositions, facts and conclusions then follows.

After discussion on various aspects and factors involved in cargo routing, a long ago history of common carriage, and "natural" versus "artificial" competitive factors, the Study arrives at page 52 with the HMT section and Dr. Robert Leachman, an economist who developed a "complex spatial-economic multimodal transportation simulation model for U.S. west coast ports..."

The Study notes that, "The underlying premise in [the Leachman model] is that U.S. importers seek to minimize the total generalized cost...". Translation – route decisions are highly sensitive to cost. On page 54-55, citing application of a \$100 FEU fee at the San Pedro Bay ports would, according to the Leachman model, result in significant lost container volume. It concludes that "...[d]iscretionary Inland Point Intermodal container volume would appear to be highly elastic."

However, the Study then incorporates a substantive footnote [footnote 115] that questions the applicability of both the Leachman methodology and Leachman's conclusions. A subsequent footnote points out that the figures are "long term elasticity estimates" and container volume shifts – if any – "...would not occur immediately but rather over a period of years."

Notwithstanding these qualifications and seeming contradictions; the Study proceeds to utilize Dr. Leachman's model and states on page 55 that, "The long-run elasticity estimates derived from 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 these fee adjustments were made", [i.e. either repeal HMT or charge HMT equivalent at the Canadian border].

The Study then quantifies the impact suggested by the Leachman model, using 2010 data. Beginning with 9.27 million TEUs entering through all North American west coast ports, there are 236,439 TEUs bound for U.S. destinations and entering through Canadian ports. Therefore, the Leachman model maximum prediction is - 118,220 TEUs per year “could revert” to U.S. ports following a period of years. As the Study mentions but offers no analysis, many factors influence routing of containers. As revealed in Study footnote 115 - a dynamic market place will constantly respond and adapt to competitive alternatives.

A broad but generous estimate would scale back the Leachman model maximum prediction from 50% reversion down to 25% – again, assuming any container reversions. Adjusted maximum prediction - 59,110 TEUs per year that “could revert” to U.S. west coast ports after market adjustments over a period of years. That figure represents slightly more than one-half of one percent of total TEUs entering North American west coast ports.

Further note, the Study offers \$109 as the “average” HMT per FEU [page 55]. So the average HMT per Twenty Foot equivalent Unit would be \$54.50. These figures compute to a maximum potential estimated loss of HMT revenue of \$3.2 million per year beginning in some out year subject; however, to all route readjustments and corresponding market competitive responses.

The original question was how to “level the playing field”. An alternative question could be – is there enough tilt to the playing field to allow for rain water to run off?

Other questions / conundrums run through the Study. For example, pages 18 through 23 discuss the “propensity” of U.S. import and export cargo to use Canadian ports and then the “propensity” of Canadian import and export cargo to use U.S. ports. Interestingly, on a relative proportional basis, Canadian bound import cargo has 2.4 times the “propensity” to use U.S. west coast ports as opposed to Prince Rupert or Vancouver. This U.S. port entry / Canada bound cargo, on average, would have paid \$7.5 million in HMT in 2010. The unaddressed question is – if HMT is such a relevant factor in route selection, why would any Canadian bound cargo enter through a U.S. port and pay the HMT? Another question / conundrum is found on page 34. “After the *Austasia* cases made clear the FMC lacked jurisdiction, the issue was put to rest until this current competitive controversy.” *Austasia* was considered and decided under the 1916 Shipping Act. With the passage of the 1984 Shipping Act, the 1998 OSRA amendments, NAFTA, WTO and the general globalization of trade, there is nothing in the Study or any surrounding commentary that remotely supports a reconsideration of the 1970’s era *Austasia* cases.

The Congressional letters inquired into factors causing U.S. ports to lose share of import “container” cargo. It should be noted that, on a Dollar value basis, 55% of U.S. import cargo and resulting HMT revenue is containerized cargo – 45% of import cargo and HMT revenue is bulk and other cargo that is not subject to FMC jurisdiction nor mentioned in the Study.

Last, I find it concerning that the Study, on page 6, characterizes various NOI responses in terms that may appear to question the parties motives, agendas and the overall weight that the FMC may give to any individual or group of commenters. Members of the public, together with local, state and federal entities who express the interest and take the time to respond to Commission issued Notices of Inquiry should be treated with the highest level of respect. The characterization of any commenter is inappropriate at best and could have the effect of dissuading participation by public parties in future Commission NOIs.