Remarks of
Chairman Richard A. Lidinsky, Jr.
Federal Maritime Commission
at the
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Thank you very much for that kind introduction. I'm delighted to be in Montreal on the doorstep of fall after the summer of earthquakes and hurricanes we've had in Washington, DC.

Today, I'd like to talk about ocean cargo that travels to an inland destination in one of our great countries, but moves through a port in the other country. I would like to call today for discussion and cooperation on the issues raised by this growing trade.

As with many issues in the maritime world, this issue is not new. Twenty-seven years ago, an attorney for the Baltimore Port Authority wrote a law review article entitled, "American-Canadian Cross Border Container Traffic: Innovation or Cargo Diversion?" At that time, the cross-border container traffic was largely an issue that affected the East Coast, with U.S. ports complaining that U.S. cargo was being "diverted" unfairly through Halifax by a line called CAST Container Ship Company.

The article analyzed the legal, regulatory, and transportation issues raised by that new trend, and concluded by stating that we needed to address "the basic question of whether a United States agency can regulate cross-border transportation of United States based containerized cargo." It proposed that "[t]he ideal solution to eliminate friction created by

cross-border container transportation . . . would be a frank recognition and discussion of the issue by the United States, Canadian, and Mexican Governments. . . . In this respect, contiguous nations that are engaged in international trade in the age of containerization can compete for cargo *on equal footings* and ensure that their national interest, laws, public policy and economic health keep pace with technological innovations."

In the years since that article's publication, much has changed in the area of trade and transportation regulation. The U.S. Interstate Commerce Commission was abolished; the FMC has moved from regulating tariff rates to allowing a wide array of millions of service contracts and new cargo growth; rail handling has multiplied; and NAFTA was of course ratified. And last and some may say least, the attorney for the Port of Baltimore who wrote that law review article was lucky enough to be appointed chairman of the FMC.

When I joined the FMC, I was surprised when I began hearing new questions about this old issue. Only this time, the issue was on the West Coast, with U.S. ports raising fears about a new Canadian port with plans for exponential growth that they advertised would be based largely on cargo bound for the United States from Asia. And while the volume of U.S. cargo we saw moving through Canadian ports was around 140,000 TEU in the early 1980's, today it stands at approximately 750,000 TEU annually.

Then two weeks ago, I received a letter from two U.S. Senators from the West Coast requesting that the Commission "analyze the impact that the [U.S.] Harbor Maintenance Tax may have on the diversion of U.S.-bound cargo from U.S. ports to those in Canada or Mexico." It stated that "it is imperative that we level the playing field between international ports and

domestic ports so that the U.S. can continue to compete for cargo." The letter concluded by asking the Commission to look at the impacts of the harbor maintenance tax and other factors on diversion from U.S. West Coast Ports to . . . Canadian and Mexican ports," and to offer legislative and regulatory recommendations.

With that background, I have chosen this time and place to explain my personal view of this issue, with the firm belief that it is in the mutual interest of both of our countries to examine the matter and achieve solutions for all parties with full information and transparency.

At our next Commission meeting in early October, I plan to propose that the Commission begin the study that the U.S. Senators requested. Not to prejudge the results, but at this point in time I can give you the outline of concern as parties primarily on our West Coast want to compete with Prince Rupert and other Canadian ports on a level playing field, as reflected in the 1984 law review article. Maybe a better analogy here in Canada as Fall approaches would be National Hockey League Rule 3.1, which covers players' benches and says that "[t]he accommodations provided, including benches and doors, MUST be uniform for both teams."

In my opinion, the five key elements of this issue are as follows:

I. ***Basic Legal Questions:*** Where does waterborne commerce of the U.S. begin and end? The move by ship from Shanghai to Chicago is our waterborne commerce as contained in more than 1200 service contracts filed at my agency. What about previous FMC rulings in this area? What about the Supreme Court case last year affirming our authority over rail movement from port to destination? What law governs when there is a train accident involving intermodal cargo bound for Memphis but that moves

through Prince Rupert? If it happens in Alberta, is that marine or rail cargo under Canadian law? What is it considered on the U.S. side of the border? Adoption of the Rotterdam Rules by both of our countries would go a long way to resolve many of these questions.

II. ***Harbor Maintenance Tax:*** Right now, cargo at U.S. ports is subject to a harbor maintenance tax, and the more valuable the cargo, the higher the tax. Here is an issue where we need to ask in the U.S., are we handicapping ourselves with our tax policy? How do Canadian ports raise revenues and pay for dredging and maintenance, and is there something we can learn from that?

III. ***Container Inspection:*** I know that U.S. Customs and Canadian counterparts work quite closely on security issues. We understand that the security regime in Prince Rupert involves container inspections that are "comparable" to in the U.S., but perhaps not identical. For example, I don't believe that Prince Rupert is currently part of the Container Security Initiative. We need to better understand how our two countries are approaching the issue of cargo security together.

IV. ***Rail Cost Disparities:*** We have heard claims of low rates for rail services between Prince Rupert and points in the United States — rates that can't be matched by cargo moving by rail from U.S. ports. We need to take a look to see, if such disparities exist, why? Are there issues with U.S. rail services and competition? Is there some rate structure or cross-subsidization for Prince Rupert movements into the U.S.? Or is any disparity based solely on natural competitive differences?

V. ***Port and Intermodal Infrastructure:*** Closely related is the urgent need for the United States to upgrade its infrastructure. In Canada, the national government invests in a state-of-the art new port with new infrastructure — aimed expressly at handling U.S. cargo. In contrast, in the United States we see the federal government requiring West Coast ports to pay a harbor maintenance tax, and not providing needed investments in return. So the question is not just whether anything unfair is being done north of the border – perhaps the more fundamental problem is that too many U.S. ports, railways,

highways, and bridges are slowly decaying due to lack of investment and strategic long-term planning.

In conclusion, the study I am requesting will attempt to focus on each of the above and our door will be open to all parties to file comments, provide information, and to assist us in producing workable answers through this neighborly discussion. I believe strongly that if our inquiry, and our open discussion, lead to improvements to U.S. ports and policies, the commerce and the economies of both of our great nations will benefit.

Little did that lawyer in 1984 realize that he would still be dealing with this question all these years later, but as the saying goes "predictions are hard, especially when they are about the future." Thank you for your attention, potential participation in our inquiry, and I will be glad to answer any questions.