Vancouver Fraser Port Authority, Prince Rupert Port Authority, Montreal Port Authority, and Halifax Port Authority Submission to the U.S. Federal Maritime Commission

I. Overview

The Canadian Ports of Vancouver, Halifax, Montreal, and Prince Rupert jointly submit this comment regarding the above mentioned Notice of Inquiry ("Inquiry") published by the Federal Maritime Commission ("FMC") on November 8, 2011, in the Federal Register at 76 Fed. Reg. 69271.

For the past 200 hundred years, the United States and Canada have been the closest of allies, the most prosperous of trading partners and collaborators on global challenges. We share the values of individual liberty, democracy, the rule of law, innovation and competition. We are each other's largest market and most important customer, and our nations are interlinked socially and commercially throughout the supply chain.

As President Harry S. Truman famously said of Canada in 1947:

> "We seek a peaceful world. a prosperous world, a free world, a world of good neighbors, living on terms of equality and mutual respect … We intend to support those who are determined to govern themselves in their own way, and who honor the right of others to do likewise. We intend to aid those who seek to live at peace with their neighbors, without coercing or being coerced, without intimidating or being intimidated … We count Canada in the forefront of those who share these objectives and ideals, With such friend, we face the future unafraid."[1]

Ports throughout North America provide a vital link in global commerce, connecting manufacturers with customers, communities with products and people with jobs. Healthy competition between North American ports has played an enormously positive role in the prosperity that Canada and the U.S. have enjoyed over the past two hundred years.

Canadian ports are especially significant to U.S. economic competitiveness because they provide shippers and manufacturers options in running their businesses. Choice, redundancy, and competition are all key elements in helping the U.S. economy grow in good times, and bounce back in bad times. Whether it is providing an outlet for western U.S. coal to reach Asian markets since there is currently insufficient capacity at coal terminals in U.S. west coast ports; or

[1]Public Papers version is Address Before the Canadian Parliament in Ottawa, 1947 Pub. Papers 272, 275 (June 11, 1947) .

providing options to shippers when there are work stoppages, Canadian ports help U.S. businesses just as U.S. ports help Canadian businesses reach their markets.

On November 8, 2011, FMC published an Inquiry in the Federal Register requesting public comment on factors that may cause or contribute to the shift in containerized cargo from the U.S. to Canadian and Mexican ports. U.S. Ambassador David Jacobson and FMC Chair Richard Lindinsky have both stated that the Obama Administration is not contemplating imposing fees on containers at the U.S.-Canadian border. Yet, some Members of Congress and Port and terminal operators are suggesting that containerized cargo is being diverted to Canadian ports so that shippers can avoid paying the harbor maintenance tax ("HMT").[2] These Members of Congress are suggesting that the HMT should be applied at the U.S. border with Canada to "level the playing field."[3] Such a move, they argue, would somehow help U.S. ports compete better with their Canadian competitors. We strongly disagree.

In this submission, the four major Canadian ports address several of the questions raised in the U.S. FMC's Inquiry about Canadian port practices and reinforce the economic importance to the U.S. economy of fostering healthy competition among North American ports.

II. INTRODUCTION

A. Who We Are

The Canadian ports of Halifax, Montreal, Prince Rupert, and Vancouver are defined as Canadian Port Authorities ("CPAs") under Canadian federal law. As CPAs, each of our ports are federal agencies and are required by law to be financially self-sufficient. As a result, CPAs do not receive funding from the federal or provincial governments to meet operating costs or deficits. CPAs are responsible for funding their own harbor maintenance, including dredging and are also required to remit an annual payment to the federal government for maintaining their "Letters Patent", a charge based on a percentage equal to the aggregate of specified gross revenues. Each port is governed by a board of directors, who are nominated by user groups, industry groups, municipalities, provinces, and the Government of Canada.

The Vancouver Fraser Port Authority ("Port Metro Vancouver") is Canada's largest port which handles $CDN 75 billion annually in trade with over 160 countries.[4] The economic impact in Canada alone of Port Metro Vancouver includes 129,500 jobs, $CDN 10.5 billion in gross domestic product, and $CDN 6.1 billion in wages.[5] Port Metro Vancouver is North America's most diversified port, comprised of 28 major marine terminals with a jurisdiction that covers more than 400 miles of shoreline.

Prince Rupert Port Authority ("Prince Rupert") is Canada's second largest West Coast port and the continent's deepest harbor.[6]. The direct economic impact of the Port of Prince

[2] See Letter from Senator Patty Murray and Senator Maria Cantwell to Richard Lidinsky, Chairman of the Federal Maritime Commission (Aug. 29, 2011).
[3] Id.
[4] See http://www.portmetrovancouver.com/en/about/factsandstats.aspx.
[5] Id.
[6] See http://www.rupertport.com/faqs.htm.

Rupert in Canada is 1,500 jobs, $80 million in wages, and $150 million in gross domestic product.[7] Prince Rupert is approximately 500 miles north of Vancouver and is the closest North American West Coast port for vessels travelling along the "Great Circle Route" to and from Asia. In addition, the port offers access to one of the largest transcontinental rail and highway systems, which helps connect goods to the rest of the continent.[8]

Montreal Port Authority ("Port of Montreal") is located on the St. Lawrence River, one of the largest navigable waterways in the world, offering the shortest route between European and Mediterranean ports and markets in North America's industrial heartland.[9] The port creates nearly 18,000 direct and indirect jobs and generates business revenues of almost $CDN2 billion annually.[10]

The Halifax Port Authority ("Port of Halifax") handles over 1,500 vessels annually.[11] In 2011, the port is projected to generate more than 11,190 jobs and $CDN 1.5 billion in economic impact in Canada, with additional spill over benefits to the New England states in the U.S.[12] Over the past five years, the private sector has invested $CDN 250 million in the Port of Halifax.[13]

As port authorities, we work with the Canadian federal government, provinces and private industry to leverage investment in updating infrastructure to offer competitive, efficient and reliable services to shippers. These partnerships between governments and private industry have been praised by our U.S. counterparts.[14] As Geraldine Knatz, the head of the largest container port in the U.S. recently said:

> "I think what the Canadians have done is a best practice that we can learn from. The way they came together and really unified the national and provincial governments to support port development is a best practice. So more power to them. They're doing a great job."[15]

Increasing efficiency and reliability at Canadian ports decreases costs for all North American businesses and consumers and increases trade competitiveness in both countries.

---

[7] See http://www.rupertport.com/pdf/prpa/prpa_eis_v2_19july2010-2.pdf.
[8] Id.
[9] See http://www.port-montreal.com/site/1_0/1_1.jsp?lang=en.
[10] Id.
[11] See http://www.portofhalifax.ca/english/about-us/index.html.
[12] Id.
[13] Id.
[14] See American Shipper, "Knatz: U.S. at fault for Canada diversion", October 26, 2011. See also Port of Seattle's Yoshitani on Port Issues, Forecast for 2011 The Journal of Commerce (Mar. 20, 2011).
[15] American Shipper, "Knatz: U.S. at fault for Canada diversion", October 26, 2011.

B. About Our Submission

1. A Joint Canada/U.S. Vision for North America

This comment will first discuss the shared vision of the U.S. and Canadian governments in perimeter security and economic competitiveness. The objective of recent efforts by both governments is to expand cooperation and mutual benefits regarding trade and security. However, this Inquiry seems to be in conflict with the overarching goals of both governments, in that it focuses on the misconception that U.S. cargo is somehow "diverted" through Canadian ports. We also disagree with the notion that Canadian ports have less secure security screening mechanisms than their U.S. counterparts. As we discuss in detail below, we believe containers entering U.S. by rail via Canadian ports are as secure, and may in some cases be even more secure, than containers that enter U.S. ports directly.

2. Rationale for Shippers in Making Port Choices

The U.S. and Canadian economies are highly integrated and have the largest bilateral trading relationship in the world, valued at $527 billion in 2010.[16] Eight million U.S. jobs are linked to trade with Canada.[17] Canada is also the leading export market for 34 U.S. states. Canadian ports are key to the North American transportation infrastructure and vital for movement of U.S. commerce. In 2009, the volume of rail marine exports for goods originating in the U.S. which moved through Canadian ports was 2,527.7 thousand metric tons.[18]

The comment will then discuss perspectives on the questions raised in the Inquiry on why shippers route U.S. bound cargo through Canadian gateways, and why Canadian gateways provide many advantages to the U.S. economy. Canadian ports support U.S. jobs by providing outlets for U.S. exports and inlets for U.S. imports. Overall, U.S. exports supported an estimated 9.2 million jobs in the U.S. in 2010.[19] An estimate in 2007 found that exporter and importer-related businesses and support industries combined employ 12 million throughout the U.S.[20] Canadian ports also provide an export solution for U.S. products and commodities which otherwise would not have access to Asian markets. For example, there are limited options for shipping coal mined in Montana and Wyoming via U.S. ports, and so these producers rely on Westshore Terminals in Vancouver and Ridley Terminals in Prince Rupert to reach their customers in Asia. In January 2011, Arch Coal, an American coal company that is a major player in Powder River Basin mining, announced that it had reached an agreement to export 2.5 million tons of coal annually through the Port of Prince Rupert. These examples show that Canadian ports are becoming more important for the movement of U.S. cargo to international markets. As U.S. Commerce Secretary John Bryson said on December 15, 2011 in an address to

---

[16] Source: U.S. Census Bureau.

[17] See: http://www.international.gc.ca/commerce/facts-infos/usa-20009-eu.aspx?view+d.

[18] Source: PIERS.

[19] Testimony of Jerry A. Bridges, Chairman of the Board of the American Association of Port Authorities and Executive Director of Virginia Port Authority before the U.S. House of Representatives Transportation and Infrastructure Committee Hearing on October 26, 2011: "The Economic Importance of Seaports: Is the United States Prepared for 21st Century Trade Realities?"

[20] Marine Transportation System National Advisory Council, 2009 Report to the Secretary of Transportation, January 2009.

the U.S. Chamber of Commerce, the U.S. policy priority is to "build it here and ship it everywhere."[21]

Canadian products and commodities that are exported through U.S. ports also support U.S. jobs. U.S. ports maintain a significant market share of Canadian exports to global markets. The American Association of Port Authorities reported that for every $1 billion in exports shipped through U.S. ports, 15,000 U.S. jobs are created.[22] In 2010, 10.8% of all Canadian containerized cargo exports by volume were exported through U.S. ports.[23] Canadian commodities are also shipped through U.S. ports, such as potash mined in Saskatchewan and exported through Portland, Oregon.

3. Why Competition Is Good for U.S. Business

Competition between North American ports is healthy and drives down costs of goods for consumers. For example, the Port of New York and New Jersey compete for Canadian companies to use its port with advantages such as proximity to Ontario and Quebec, multiple services, more first-ins and last-outs, and on-dock rail origins/destinations. There is also abundant competition between U.S. ports -- both on a coastal and regional basis. For example, the Port of Tacoma in Washington experienced a 5.8 decline in container volumes in 2010 largely due to the decision of Maersk, the shipping giant, to use Port of Seattle instead.[24]

The North American economic engine and supply chain depends upon redundancy of ports, choice in ports, and an integrated approach to transportation systems. U.S. shippers have advised Canadian ports that they want to ensure that they have various options to protect themselves from supply chain disruptions such as inclement weather, labor strikes and lockouts, congestion, and lack of capacity. Further, shippers have advised us that the key factors in determining their routes are speed and reliability. For example, in early 2011, a major Canadian retailer re-routed some of its Canadian-bound container traffic via U.S. ports, as labor negotiations in Canada were causing uncertainty. Canadian Tire did the same during this period and continue to move a portion of their Canadian-destined containers through Southern California as one of their supply chain risk mitigation strategies.

III. Context for FMC Inquiry

A. <u>Beyond the Border: A Shared Vision for Perimeter Approach</u>

The FMC Inquiry is occurring in the broader context of expanded cooperation between the U.S. and Canada on enhancing security and accelerating the free flow of people, goods and services. On December 7, 2011, President Obama and Prime Minister Harper released an Action Plan for the "Beyond the Border: A Shared Vision for Perimeter Security and Economic

[21] Commerce Secretary John Bryson, Address as the U.S. Chamber of Commerce (Dec. 15, 2011).
[22] Testimony of Jerry A. Bridges, Chairman of the Board of the American Association of Port Authorities and Executive Director of Virginia Port Authority before the U.S. House of Representatives Transportation and Infrastructure Committee Hearing on October 26, 2011: "The Economic Importance of Seaports: Is the United States Prepared for 21st Century Trade Realities?"
[23] Source: PIERS.
[24] Puget Sound Business Journal, April 1, 2011.

Competitiveness ("BYB Declaration").[25] The plan envisions building upon the two countries long-standing ties to develop a perimeter approach to deal with the following issues: addressing threats early; trade facilitation, economic growth and jobs; cross-border law enforcement; and critical infrastructure and cyber security.[26] The BYB Declaration recognizes the importance of expediting the free flow of goods and improving both countries trade competitiveness in order to spur economic growth and job creation.

The Action Plan specifically addresses the importance of enhanced cooperation between the U.S. and Canada on cargo screening in order to increase security and expedite the movement of secure cargo across the U.S.-Canadian border. Both countries pledged to develop a harmonized approach to screening inbound cargo arriving from offshore under the principle of "cleared once, accepted twice."[27] By June 30, 2012, the U.S. and Canada will develop a common set of advance data requirements for advance security screening of cargo, including targeted populations for collections, timing for collections, and what data elements are needed as a common set of elements for collection.[28] By December 2013, both countries will implement a common set of required data for advanced security screening.[29]

The Action Plan also commits to developing an Integrated Cargo Security Strategy ("ICSS") to identify and resolve security concerns as early as possible in the supply chain or at the perimeter.[30] Through early detection, ICSS aims to reduce the level of screening at the U.S.-Canadian border.[31] In September 2012, both countries will launch several pilot projects, which include perimeter vetting and examination of inbound marine cargo at Prince Rupert and the Port of Montreal.[32] As part of the ICSS, Canada will also build new cargo examination facilities in Halifax and Vancouver. The Action Plan expects that implementation of the ICSS will commence in 2014.[33]

Under the Action Plan, the U.S. and Canada will negotiate a pre-clearance agreement in the land, rail and marine modes by December 2012.[34] This agreement will establish a legal framework for the Customs Border Protection ("CBP") and the Customs Border Services Agency ("CBSA") to conduct security, facilitation and inspection processes in the other country.[35]

The Action Plan also pledges to provide greater public transparency and accountability related to the imposition of border fees and charges in order to reduce costs to businesses and improve trade competitiveness.[36] Under the Action Plan, each country will develop an inventory

---

[25] United States-Canada: A Shared Vision for Perimeter Security and Economic Competitiveness. Action Plan (Dec. 2011).
[26] Id. at 1.
[27] Id. at 5.
[28] Id.
[29] Id.
[30] Id. at 5-6.
[31] Id. at 6.
[32] Id.
[33] Id.
[34] Id. at 14.
[35] Id.
[36] Id. at 16.

of border fees and charges that includes information related to their purpose and legal basis, process for collection, level of revenue collected, their intended use, and the reasons for collecting the fees at the border.[37] The U.S. and Canada will commission a third party to conduct an economic analysis of these fees and charges, analyzing their cumulative impact on the competitiveness of three economic sectors in both countries.[38] The Department of Homeland Security and Public Safety Canada will complete a joint "Report on Border Fees" by September 30, 2012.[39] The "Report on Border Fees" will include both the inventory of U.S. and Canadian border fees and the economic impact analysis of these fees.[40]

President Obama correctly identified trade barriers as an obstacle to increasing U.S. exports.

The suggestion by some Members of Congress that there should be an imposition of the HMT on U.S.-bound cargo routed through Canadian ports is directly contrary to the vision outlined by President Obama and Prime Minister Harper in the BYB Declaration.[41] The Action Plan specifically identifies reducing costs associated with border fees as important to improving trade competitiveness, which is critical to spurring greater economic growth and job creation in both the U.S. and Canada. Instead of improving competitiveness, the imposition of the HMT will increase costs for businesses and consumers and could delay, not expedite, the flow of containerized cargo from Canadian ports to U.S. markets. In addition, Canadian ports are required to fund their own dredging and these costs are incorporated into the fees charged by ports that require dredging. In 2010, Port Metro Vancouver spent $CDN 7 million on dredging and the ports and industry along the St. Lawrence River spent $CDN 5 million.

B. U.S. Goal of Doubling Exports by 2014

The notion of an imposition of the HMT on cargo coming across the land border is also inconsistent with and could undermine President Obama's National Export Initiative. On March 11, 2010, President Obama issued an Executive Order establishing the National Export Initiative with the goal of doubling U.S. exports over the next five years.[42] The Executive Order pledges to work to remove trade barriers abroad that pose challenges to U.S. exports entering new export markets.[43] President Obama correctly identified trade barriers as an obstacle to increasing U.S. exports. The possible imposition of an HMT on U.S.-bound cargo routed through Canadian ports is not only unproductive from an international trade policy perspective, but it could also undermine the President's goal of doubling U.S. exports by the end of 2014. The application of the HMT at the U.S.-Canadian border would also distort the operation of the market and impose costs on shippers, manufacturers, and consumers in the U.S.

[37] Id.
[38] Id.
[39] Id.
[40] Id.
[41] See Letter from Senator Patty Murray and Senator Maria Cantwell to Richard Lidinsky, Chairman of the Federal Maritime Commission (Aug. 29, 2011).
[42] Exec. Order No. 13534, 75 Fed. Reg. 12433 (Mar. 11, 2010)
[43] Id. at 12434.

C. Security Advances in Canadian Containers Destined for U.S. Post 9/11

The FMC Inquiry is also occurring in the context of enhanced border security measures by Canada over the last decade. The Canadian government has improved its own security and intelligence operations, while also partnering with the U.S. and other allies. Canada established Customs Border Services Agency ("CBSA"), which brought together the government's key border security and intelligence functions, along with authorities previously conducted by three federal agencies: the Canada Customs and Revenue Agency, Citizenship and Immigration Canada, and the Canadian Food Inspection Agency.[44]

All containerized marine cargo arriving in Canada, regardless of its ultimate destination, must be reported to CBSA prior to loading to a foreign port.[45] CBSA's National Risk Assessment Centre conducts risk assessments of 100% of all marine cargo, including screening 100% of inbound containerized marine cargo through operating radiation detection portals that detect illegitimate radioactive material and possible security threats entering Canada.[46]

In order to detect high-risk shipments, CBSA conducts risk-based, automated targeting analysis using electronic carrier and cargo information transmitted 24 hours prior to loading at the foreign port before goods arrive in Canada.[47] CBSA officers receive Advanced Commercial Information ("ACI") (e.g., electronic pre-arrival and pre-load information) which provides them with the right information at the right time to identify health, safety and security threats related to commercial goods before they arrive in Canada.[48]

For Canadian rail ways, virtually all of the 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.

For Canadian railways, virtually all of the 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.[49] This highly effective tool is able to penetrate all kinds of railcars and shipping containers using low-level gamma radiation and provides customs officers with a radiographic image of the interior of the container/car.[50] Canadian Pacific, for instance, has instituted biometric technology at intermodal in-gate terminals, which is another example of security enhancement. This combination of off-shore screening, rigorous scanning at seaports and land border crossings, and regular detailed examinations of containers deemed to be high-risk provides a multi-layered and thorough security check for entry into the U.S.

---

[44] CBSA: Ten-Year Look Back Since 9/11. Protection Canada's border (September 2011), *available at* http://www.cbsa-asfc.gc.ca/media/facts-faits/098-eng.html

[45] See http://www.cbsa-asfc.gc.ca/media/facts-faits/039-eng.html.

[46] Id.

[47] Id.

[48] Id.

[49] See http://www.cbsa-asfc.gc.ca/media/facts-faits/038-eng.html.

[50] Id.

IV. PERSPECTIVES ON QUESTIONS RAISED IN THE NOTICE OF INQUIRY

A. Why do shippers route U.S. bound cargo through Canadian gateways?

There are a variety of factors that ocean transportation intermediaries or importers consider when deciding where to route their customers' cargo. One of the most important factors is the **distance between ports of call.** West Coast Canadian ports such as Prince Rupert and Vancouver enjoy inherent geographic advantages over some U.S. West Coast Ports. For instance, the distance between Shanghai, China and Prince Rupert is 4,642 nautical miles, and the distance between Shanghai and Vancouver is 5,092 nautical miles. On the other hand, the distance between Shanghai and Los Angeles is 5,810 nautical miles. The fact that Prince Rupert Port and Port Metro Vancouver are closer geographically offers attractive options for shippers since they can reduce their shipping time to get their goods to U.S. markets. On the East Coast, the Port of Montreal offers the shortest route between major European and Mediterranean ports and North American markets.[51] The Port of Halifax is 1,500 nautical miles closer to the Suez Canal than any North American east coast port and one day closer to Southeast Asia and Europe than any other North American east coast container port.[52] Shorter shipping times can lower transportation costs, which can in turn reduce costs for U.S. businesses and consumers.

Another important factor for shippers is the **efficiency and reliability of a port's operations.** The efficiency of Canadian ports is enhanced by competition between modes of transportation and transportation service providers at these ports. For example, the Port of Montreal is serviced by Canada Pacific ("CP") and CN Rail, each of which are Class I freight railways. Port Metro Vancouver is serviced by CP, CN Rail and BNSF. Prince Rupert is serviced by CN Rail. Railways in Montreal and Vancouver also compete with numerous trucking firms. In addition, Port Metro Vancouver, the Port of Halifax and the Port of Montreal contain multiple competing terminal operators. The level of competition between transportation providers and terminal operators improves the overall efficiency and reliability of the integrated supply chains at Canadian ports.

In Canada, the port authorities, port terminal operators and the railways continually seek to find new efficiency in the supply chain. For instance, CP and CN Rail have reached collaboration agreements with major terminal operators at the Canadian ports they serve. These agreements require both the railways and terminal operators meet the following goals: establish measurable performance targets; provide increased accountability through enhanced information sharing and develop mitigation plans that address potential disruptions. These positive working relationships have resulted in tangible service level improvements. For example, at Port Metro Vancouver, these agreements have decreased the average dwell time from 3.7 days in January 2010 to 2 days in November 2011. At the Port of Halifax, CN and terminal operators have decreased terminal dwell times from 1.79 days in January 2010 to 1.37 days in November 2011. Reducing these dwell times expedites goods reaching U.S. markets.

Geographic advantages, coupled with efficiency and reliability advances, result in reducing by at least two days the transit time from Asia to U.S. markets. To the extent that these

---

[51] See http://www.port-montreal.com/site/1_0/1_1.jsp?lang=en.
[52] See http://www.portofhalifax.ca/english/about-us/publications/documents/HalifaxCNBrochure.pdf.

advantages have increased competition between North American ports, it is beneficial because it reduces costs for businesses and consumers.

The potential of Canadian ports is beginning to be realized through **a coordinated transportation strategy.** In 2006, the Canadian government, along with private and provincial partners, launched the Asia-Pacific Gateway and Corridor Initiative with the goal of establishing a world-class transportation market that links global supply chains in Asia and North America. The Asia-Pacific Gateway and Corridor Initiative is leveraging federal and provincial funds through private-public partnerships which total $CDN 3.4 billion and have funded 47 important infrastructure projects. Most of these infrastructure projects are focused on constructing public roads, a core government function.

The private-public partnership through the Asia-Pacific Gateway and Corridor Initiative have been praised by U.S. operators. In a March 2011 interview, Tay Yoshitani, CEO of the Port of Seattle, stated that the U.S. needs to "replicate what they [Canada] are doing."[53] Yoshitani also said that the U.S. needs to develop a national freight strategy that is similar to Canada.[54] Geraldine Knatz, Executive Director of the Port of Los Angeles, stated "what the Canadians have done is a best practice that we can learn from.[55] The way they came together and really unified the national and provincial governments to support port development is a best practice."[56]

Tay Yoshitani, CEO of the Port of Seattle, stated that the U.S. needs to "replicate what they [Canada] are doing."

Geraldine Knatz, Executive Director of the Port of Los Angeles, stated "what the Canadians have done is a best practice that we can learn from. The way they came together and really unified the national and provincial governments to support port development is a best practice."

Irrespective of efficiency gains at Canadian ports, the overall North American shipping **container market is growing significantly.** Between 2000 and 2010, East and West Coast U.S. ports grew at an annual rate of 3% annually, while Canadian East and West Coast ports experienced 5% annual growth. From 2000 to 2010, the U.S. captured 74% of the increased North American cargo traffic. Contrary to claims of cargo diversion by some Members of Congress, **the Canadian share of U.S. containerized imports via Canadian ports as a share of total U.S. port traffic averaged less than 2.5% in 2010, which is a decrease from 3.2% in 2000.** At the same time, **U.S. market share of Canadian containerized cargo imports and exports is three times Canada's market share of U.S. containerized cargo.** Specifically, U.S. ports handled more than 8% of Canadian containerized imports and exports.

Shippers use Canadian gateways to provide a diversity of ports for their goods and products. Canadian gateways provide additional shipping options in case a particular supply chain is disrupted. Common supply chain disruptions can be caused by inclement weather which can limit cargo loading/unloading, labor disruptions such as strikes and lockouts, and congestion or lack of capacity at certain ports. In a post-911 world, issues such as security and terrorism

[53] Port of Seattle's Yoshitani on Port Issues, Forecast for 2011 The Journal of Commerce.
[54] Id.
[55] American Shipper, Knatz: U.S. at fault for Canada diversion.
[56] Id.

also add to the possibility of unanticipated service disruptions, which lead to costly manufacturing delays and lost sales for U.S. retailers and exporters.

For example, it has been well documented that during the period of 2002 – 2007, U.S. West Coast ports achieved record volumes of imports, primarily from Asia, testing the capacity of these ports to handle such volume. The existing U.S. freight transportation system faced challenges in accommodating the surge in demand. In order to prevent further delay in the supply chain, shippers sought alternative shipping routes to access the U.S. market. Canadian ports such as Port Metro Vancouver provided alternative options for shippers.

Canadian gateways provide shipping channels for U.S. exports that have no U.S. port available to them. The shipment of U.S. coal using Canadian ports illustrates the U.S. reliance on Canadian gateways.

B. Canadian gateways provide advantages to U.S. economy

There has been an unprecedented expansion and diversification of the Asian marketplace which continues to significantly alter global trade patterns and supply chains. The growth of Asian markets has resulted in tremendous economic opportunities for all North American ports. Naturally, the availability of Canadian ports increase flows of commerce in North America. In addition, competition between U.S. and Canadian ports encourages efficiencies and reliability of our integrated North American transportation supply networks. Therefore, **a North American marketplace with various port options is healthy for both the U.S. and Canadian economies**.

Ports in Canada and the U.S. offer shippers multiple options that help them manage bottlenecks, service disruptions, backups, and delays. Any disruption in the supply chain causes serious ramifications. Consequently, U.S. shippers use Canadian ports in their ports diversification and supply chain strategy.

Canadian gateways provide shipping channels for U.S. exports that have limited transportation options to Asia. **The shipment of U.S. coal using Canadian ports illustrates the U.S. reliance on Canadian gateways.** U.S. exporters ship coal that is mined in Wyoming and Montana to Asian markets through Canadian West Coast ports because they have limited options via U.S. ports. For instance, as of October 2011, approximately 4 million metric tons of U.S. coal were shipped through Prince Rupert. In particular, Arch Coal's Black Thunder mine in Wyoming ships its coal through Prince Rupert. By 2015, experts project that U.S. coal exports through Prince Rupert could reach 10 million metric tons per year. Westshore Terminals at the Port Metro Vancouver exports the largest amount of coal in North America. In 2010, Port Metro Vancouver exported over 30 million metric tons of coal. In 2009, Westshore Terminals shipped 1.9 million metric tons of U.S. coal which originated mainly in the U.S. Powder River Basin. In 2010, Consol Energy's Energy mine in Utah shipped over 69,000 metric tons of coal via Westshore Terminals. As of October 2011, U.S. coal traffic made up 32% of Westshore Terminals' volume, and 27% of the port's total coal business.

Canadian goods and commodities exported through U.S. ports directly support the U.S. economy. For example, Canadian Potash Exporters ("Canpotex"), owned by Agrium Inc., The Mosaic Company and the Potash Corporation of Saskatchewan Inc., the world's largest potash exporter, owns Port of Portland terminal in Oregon to export Canadian potash. In 2010, Canpotex exported 2.5 million tons or 30% of its total potash export through Portland. Potash exports through Portland increased 200% within the 2009 to 2010 time frame.[57] Global demand for potash is predicted to grow from 41.3 million metric tons in 2009 to 59.7 million metric tons in 2014. Other mining companies are racing to enter the potash industry, as prices are high and demand is growing. BHP Billiton, the largest mining company in the world, based in Australia, has made arrangements to ship potash from their proposed Canadian Jansen mine through a port in the state of Washington.[58] These are just a few examples of Canadian exports through U.S. ports that continue to support the U.S. economy.

V. CONCLUSION

We have endeavored to describe many of the misconceptions that have led to this Notice of Inquiry. First, there **is no statistical evidence to support the claim that U.S. cargo is being "diverted"** through Canadian ports. It is known that U.S. containerized imports via Canadian ports, as a share of total U.S. port traffic, have averaged less than 2.5% over the past decade.[59] Canadian ports have natural geographic advantages, including being the closest deepwater container ports to Asia and Europe. Second, **shipping firms do not choose Canadian ports to avoid the HMT.** Shippers make routing choices, and manage risk, based on many factors such as cost, reliability, efficiency, and proximity to markets. Canada's natural geographic advantages and strategic focus on infrastructure and efficiency provides a competitive option for shippers. Third, Canadian **security measures** are equivalent, and in some cases, superior to those of the U.S. In fact, Canada conducts 100% radiation portal screening upon arrival at its ports. In addition, virtually all of the U.S.-bound containerized cargo is scanned that enters the U.S. by rail.

It should be recognized that Canadian ports provide a vital link in the U.S. supply chain which is critical to the U.S. economy. Therefore, any effort to apply the HMT or other measures against Canadian ports would hurt U.S. economic growth, especially when the U.S. is trying to recover from its recession woes.

Trade between the two countries is essential to creating economic growth and jobs on both sides of the borders. **Competition between North American ports can help spur that growth** by providing options for shippers and exports and encouraging reliability and efficiency.

DC:50841897.1

[57] Oregon Business, January 4, 2011, available at www.oregonbusinesss.com/contributed-blogs/4628-an-export-to-build-on.
[58] Port of Vancouver USA, "Terminal 5 Selected as Preferred Site For Future Potash Export Facility", available at http://www.portvanusa.com/news-room/news-releases/terminal-5-selected-preferred-site-future-potash-export-facility.
[59] Source: Canada Port Authorities and PIERS.