TESTIMONY OF
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BEFORE THE
SUBCOMMITTEE ON SELECT REVENUE MEASURES
AND
SUBCOMMITTEE ON OVERSIGHT

HOUSE COMMITTEE ON WAYS AND MEANS

Joint Hearing on Maritime Tax Issues
February 1, 2012

Chairman Boustany, Chairman Tiberi, Ranking Member Lewis, Ranking Member Neal, and members of the subcommittees, I appreciate this opportunity to testify on the U.S. Harbor Maintenance Tax and the development of short sea shipping services in the United States.

The American Great Lakes Ports Association represents the public port authorities on the United States side of the Great Lakes. Each of our member port agencies is a division of state or local government, or an independent agency created by state statute. As a group, and individually, Great Lakes ports work to foster maritime commerce in our region and economic development in their communities. A 2010 economic impact study determined that Great Lakes shipping supports more than 128,000 jobs in the United States, generating $18.1 billion in business revenue, and contributing $2.7 billion in federal, state and local taxes.

We want to thank you for holding this important hearing on harbor maintenance funding and the Harbor Maintenance Tax. While I am appearing today primarily to focus on short sea shipping, I want to make clear that our organization and, indeed, the entire Great Lakes maritime industry, supports Congressman Boustany's legislation (H.R. 104) to liberate the Harbor Maintenance Trust Fund and ensure that user fee dollars are being spent for their intended purpose - dredging the nation's harbors.

While the Harbor Maintenance Tax is an important source of user fee revenue, its structure has had several unfortunate side effects. In some regards the tax has actually been an impediment to full use of our nation's waterways. The Great Lakes ports wholeheartedly support H.R. 1533, legislation sponsored by Chairman Tiberi, which will provide a narrow exemption to the U.S. Harbor Maintenance Tax to stimulate so-called short sea shipping services and remove the discriminatory double taxation of transshipped intermodal cargo.

I would also like to recognize the support this legislation has received from Ways and Means Committee Chairman, Dave Camp, Ranking Member, Sander Levin, Transportation and Infrastructure Committee Chairman, John Mica, and Ranking Member, Nick Rahall - all of whom have cosponsored this legislation in either the 111th or 112th Congress.

Short Sea Shipping

In recent years, transportation planners have been struggling to identify ways to move people and goods more efficiently. Congested highways - particularly in urban areas - hinder the flow of commerce and create a drag on the nation's economy. Likewise, rail capacity is limited in some areas. The expansion of highway and rail infrastructure is expensive, difficult and time consuming. Today, there is a real concern that our nation's transportation system is constraining economic growth. The European Union confronted these same challenges a decade ago and found relief in greater utilization of its waterways for the movement of freight. America's waterways offer similar opportunities. For example, in the Great Lakes region, our navigation system operates at only 50-60 percent of its capacity. At the same time, many of the region's highways are severely congested.

In concept, short sea shipping refers to the movement of freight regionally between ports as a means of complementing the nation's highway and rail systems with the goal of relieving congestion. This same concept is also referred to as "marine highways."

In 2007, Congress recognized the potential benefits of short sea shipping and directed the U.S. Department of Transportation to establish a short sea transportation program to stimulate new regional shipping services. Subsequent legislation authorized a marine highway grant program. The resulting "America's Marine Highway Program" is administered by the U.S. Maritime Administration and provides grants to assist with planning and development of new short sea shipping services.

Despite these efforts, a key impediment to the establishment of short sea shipping services is the U.S. Harbor Maintenance Tax. Because the Harbor Maintenance Tax is only assessed on cargo if it moves by ship, the tax serves as a disincentive to move freight by water. As such, the tax actually encourages greater highway congestion and resulting fuel consumption and air pollution.

Harbor Maintenance Tax

The U.S. Harbor Maintenance Tax (HMT) was enacted by Congress in the Water Resources Development Act of 1986 (P.L. 99-662). The HMT is an "ad valorem" tax, meaning a tax on the value of cargo. Originally, Congress set the HMT at 0.04 percent of the value of cargo carried on ships. In 1990, the tax was increased to

0.125 percent of the value of cargo. The tax is not paid by the vessel owner, nor the port, but rather, by the owner of the cargo in each ship.

While the original tax applied to all cargo transported by ship (with a few exceptions), in 1998 the Supreme Court struck down the taxation of export cargo as unconstitutional. Thus, today, the Harbor Maintenance Tax is assessed on cargo transported between any two U.S. coastal ports - including Great Lakes ports - and cargo imported to U.S. ports from other countries. The tax is not assessed on export cargo.

It is important to note that the Harbor Maintenance Tax is also not assessed on shipments through inland river ports. Congress has enacted a separate user fee for the river barge industry. (Commercial barge operators pay a federal fuel tax).

The purpose of the HMT is to generate revenue from port users for port maintenance conducted by the U.S. Army Corps of Engineers. Specifically, the Army Corps of Engineers maintains federal shipping channels by conducting periodic dredging. Such dredging is necessary to remove sand and silt that naturally accumulate.

Harbor Maintenance Tax receipts are placed in the Harbor Maintenance Trust Fund, which serves as a source of revenue for the Army Corps of Engineers' dredging budget. However, there is no direct link between the inflow of tax revenue to the federal government and the outflow of dredging funds. Tax collections are determined by the volume of trade, which has grown over the last two decades. Expenditures are determined by the Congressional budget and appropriations process, which is increasingly constrained. For this reason at the end of FY2011, there was an excess balance of $6.28 billion in the Harbor Maintenance Trust Fund.

Negative Impacts

As stated earlier, the Harbor Maintenance Tax plays an important role in supporting the nation's marine transportation system; however, the structure of the tax has caused some unfortunate negative side effects. Specifically, the tax has become a disincentive for companies to ship goods by water when other options exist. This dynamic manifests itself in two primary ways.

> First, the tax discourages waterborne transport of domestic freight between U.S. cities. For example, the I-95 corridor along the east coast of the United States is heavily congested, particularly in urban areas. This key artery handles more than 10,000 trucks a day carrying 5.3 billion tons of freight annually. Despite this crush of commerce, there is very little movement of freight by water between east coast cities.
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> Second, the tax creates a discriminatory double taxation of intermodal cargo transshipped to feeder vessels. For example, when a shipping container arrives at a U.S. coastal port from overseas, the cargo is assessed the Harbor

Maintenance Tax upon its arrival. Should that same cargo then be transshipped and loaded onto a second vessel for delivery to a second U.S. port, that cargo is taxed a second time. To avoid double taxation, transportation companies avoid domestic coastal shipping and instead choose to move freight to its final destination by road. The resulting diversion of cargo to local highways only exacerbates highway congestion and gridlock.

Legislative Solutions

A number of bills have been introduced during the last three Congresses to fine-tune the Harbor Maintenance Tax, eliminate double taxation of cargo, and stimulate short sea shipping:

110th Congress: H.R. 1499 (Cummings)
111th Congress: H.R. 3486 (Higgins), H.R. 528 (McHugh), H.R. 638 (Cummings)
112th Congress: H.R. 1533 (Tiberi)

These measures have the following common elements:

Geographic Scope of Exemption:

Each legislative proposal provides a narrow exemption to the Harbor Maintenance Tax for non-bulk cargo transported between any two ports in the United States. The legislation also exempts non-bulk cargo transported between Canada and the United States in the Great Lakes - St. Lawrence Seaway System. In this regard, the legislation acknowledges the unique bi-national economy of the Great Lakes region.

Types of Cargo Exempted:

The purpose of the legislation is not to provide a tax break for those currently paying the tax, but rather, to remove the tax as a disincentive. For this reason, the legislation specifically targets "non-bulk" cargo for exemption. Such cargo would include shipping containers, steel products, forest products, large machinery, etc. Because the HMT discourages the shipment of non-bulk cargo by water, there generally is no such activity today.

To the contrary, bulk cargo is often shipped by water. Such cargo is defined as loose, unpackaged products such as coal, oil, grain, salt, iron ore, etc. Due to its quantity and weight, it is often impractical to transport bulk cargo by other means. The owners of these cargoes currently pay the HMT. They would continue to pay the HMT under the terms of the legislation.

Cost:

The Joint Committee on Taxation's revenue estimate on this proposal indicates that the legislation is generally successful in its focus. More than $1.4 billion of Harbor Maintenance Tax revenue was collected during 2011. The narrow exemption provided in the legislation only results in a loss of $2 million annually for the Treasury.

Detroit-Windsor Truck Ferry

There is perhaps no better "poster boy" for the Harbor Maintenance Tax problem than Greg Ward. Mr. Ward operates a small truck ferry across the Detroit River between Detroit, Michigan and Windsor, Ontario. The ferry's primary customers are trucks carrying hazardous materials (such as gasoline and chemicals) across the border. For homeland security reasons, hazmat trucks are prohibited from using the nearby Ambassador Bridge.

More than 9,000 trucks cross the Ambassador Bridge on an average day. At times of peak congestion, delays may exceed 4 hours to make the crossing. Despite such delays, trucking companies refuse to utilize the Detroit Windsor Truck Ferry as an alternative for fear of being assessed the Harbor Maintenance Tax. Mr. Ward has marketed his service to many trucking companies, but none are interested. The tax disincentive is too great.

Throughout the United States other maritime entrepreneurs are exploring new short sea shipping services. These include services in Southern California, San Francisco Bay, the Gulf of Mexico, in the Pacific Northwest and along the East Coast. We have had at least five new services under evaluation in the Great Lakes. In each instance, these services will supplement and complement the nation's highway and rail network, ease traffic congestion, cut fuel consumption, and reduce greenhouse gas emissions.

For these reasons, a number of national organizations have endorsed elimination of the Harbor Maintenance Tax on domestic short sea shipping services. These organizations include the American Association of Port Authorities, the AFL-CIO, the American Waterway Operators, International Longshoremen's Association, International Organization of Masters, Mates & Pilots, Marine Engineers' Beneficial Association, American Maritime Officers, and Seafarer's International Union.

Chairman Tiberi, we are thankful for your leadership on this issue, and let me stress that Ohio's Great Lakes ports are - at this very time - developing short sea shipping projects that will, in part, be dependent on the success of your legislation. These new shipping services will create well-paying jobs for Ohio longshoremen and others in the maritime sector.

Thank you for inviting me to participate in today's hearing.