TESTIMONY OF

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SUBMITTED FOR THE RECORD

JOINT HEARING OF THE HOUSE WAYS AND MEANS COMMITTEE'S

SUBCOMMITTEE ON OVERSIGHT AND

SUBCOMMITTEE ON SELECT REVENUE MEASURES

ON HARBOR MAINTENANCE FUNDING AND MARITIME TAX ISSUES

FEBRUARY 1, 2012

Chairman Boustany, Chairman Tiberi and Members of the Subcommittee on Oversight and the Subcommittee on Select Revenue Measures, the Port of Tacoma appreciates the opportunity to submit testimony for your hearing on U.S. harbor maintenance funding and maritime tax issues. We appreciate your Subcommittees' interest in examining the structure of the Harbor Maintenance Trust Fund (HMTF) and the Harbor Maintenance Tax (HMT) and addressing the issue of whether the HMTF and HMT are appropriately structured.

The Port of Tacoma is an economic engine for Washington State, with more than 43,000 family-wage jobs in Pierce County and 113,000 jobs across Washington State connected to Port activities. The Port of Tacoma is a major trade gateway to Asia and Alaska and one of the largest container ports in North America. The Port is also a major center for bulk, breakbulk, and project/heavy-lift cargoes, as well as industrial machinery, automobiles and trucks.

Washington State is the most trade-oriented state in the nation, and the Ports of Tacoma and Seattle together are the third-largest container load center in the United States.

The Ports of Tacoma and Seattle, like the ports in America's largest container load center---the Ports of Los Angeles and Long Beach---get virtually no benefits from the HMT revenues collected at our ports, but the HMT drives cargo away from our ports to Canadian and Mexican ports. We encourage your Subcommittees to address these problems with the structure of the HMTF and the HMT, especially be removing the incentive in our tax code for shippers to divert cargo away from U.S. ports.

As you know, the HMT is assessed on ocean-going international imports that land at U.S. ports, but it is not assessed on U.S. imports that are routed through Canadian and Mexican ports. That cost differential is large enough to incentivize shippers to use foreign ports for their import shipments instead of U.S. ports. The Federal Maritime Commission is currently conducting an Inquiry (Docket No. 11-19) into whether and to what extent the HMT causes cargo diversion to Canadian and Mexican ports, and we eagerly await their findings.

Past research has demonstrated that the imposition of taxes and fees by U.S. governments can incentivize shippers to divert discretionary cargo to alternative gateways to avoid those charges. A 2007 study conducted for the Washington State Legislature's Joint Transportation Committee by Leachman and Associates concluded that import volume at the Ports of Tacoma and Seattle is very elastic with respect to potential container fees. Even

relatively small fees of $30 per TEU (twenty-foot equivalent units of containerized cargo) or less would make alternative supply-chain routes more economically attractive for imports, resulting in a loss of nearly 30 percent of cargo volumes at our Puget Sound ports. According to research performed by Martin and Associates, that amount of lost cargo would translate into a loss of 9,415 jobs, $590.8 million in personal income, $938.7 million in business revenue, and $58.5 million in state and local tax revenue. If a $30/TEU container charge would have that level of impact, surely the HMT, which averages $150 per container, has an even greater impact.

We believe that the dramatic growth of the Port of Vancouver and especially the Port of Rupert in Canada since the HMT was imposed in 1986 and then more than tripled in 1991 is not a coincidence. The importance of the HMT to shippers and carriers is acknowledged by stevedoring companies and port officials in Canada who go to great lengths to tout the financial benefits of bypassing U.S. ports and the HMT. The Port of Vancouver has run advertisements in trade publications like the *Journal of Commerce* claiming that they can "save you time and money with . . . no harbor maintenance tax." As early as the 1998 International Intermodal Expo in Dallas, representatives of the Port of Vancouver passed out marketing materials emphasizing this same point.

More recently, Global Container Terminals (GCT), the largest marine terminal operator at the Port of Vancouver, made a presentation at the 2010 World Shipping Summit in China quantifying annual HMT savings to shippers who bypass U.S. ports and call on their terminal in British Columbia. Similar figures have been used by GCT in sales calls made to shippers in the

United States in which the Port of Vancouver is promoted as a "U.S. gateway". They claim that "shippers saved an estimated $17 million in Harbor Maintenance Taxes" by circumventing U.S. ports.

The financial costs of the HMT might be acceptable if meaningful benefits were provided to those who pay the HMT. Unfortunately, that is not the case. The law as currently written creates massive transfer of revenue from natural deep-draft ports like Tacoma and Seattle to shallower harbors that need frequent dredging. A fifth of all HMTF expenditures are spent in a single state, Louisiana. According to a recent Congressional Research Service report, Tacoma and Seattle get "just over a penny for every dollar" their shippers pay in HMTs.

Finally, it should be noted that questions remain about the HMT's compliance with international trade law. In 1998, the European Union (EU) requested consultation with the United States over the HMT. Article VIII of the General Agreement on Tariffs and Trade prohibits "taxation of imports or exports for fiscal purposes", and the U.S. Supreme Court ruled in *United States vs. U.S. Shoe Corporation* that the HMT is a tax and not a user fee. That decision also struck down imposition of the HMT on exports as unconstitutional; the fact that the HMT is now collected on imports, but not on exports, makes it even more suspect under international trade law.

We acknowledge that shippers and carriers, when determining where to route cargo, consider many factors. The HMT is not the sole or determining factor. Shippers also consider

geographical proximity, cargo velocity improvements resulting from infrastructure investments, rail rates, labor rates and other factors. It is difficult to claim, however, that any factor that can increase the cost of moving a container by $150 plays no role. In recent years, carriers have sought lease rate reduction and other financial concessions from public ports for smaller dollar amounts than this, and shippers have voiced concerns about smaller increases than this in other supply chain costs. Price matters and the HMT significantly affects the price of moving cargo through U.S. ports.

This begs the question: Why should U.S. tax law provide preferential treatment for containerized cargo entering the United States through a Canadian or Mexican port compared with cargo entering the United States through a U.S. port?

Thank you for giving us this opportunity to present our views.

This testimony was submitted solely on behalf of the Port of Tacoma, Washington by:

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