



January 7, 2009

Allen Biehler, PE
President
American Association of State Highway and Transportation Officials
444 North Capitol Street N.W.
Suite 249
Washington, DC 20001

Dear President Biehler:

On behalf of the Waterfront Coalition I would like to provide you with our views concerning your freight policy adopted recently by the Board of Directors of the American Association of State Highway and Transportation Officials. Far too long the needs of American commerce have been left by the wayside when establishing federal surface transportation policy and spending priorities. Your freight policy will go a long way toward elevating freight mobility as a needed priority to be addressed in the forthcoming policy debate. Given the severe deficit in the Highway Trust Fund to pay for the next generation of roads, highways, bridges and tunnels that move the nation's commerce, we understand that alternative sources of finance must be relied upon to fund this infrastructure. To that end, we are willing to pay our fair share for this infrastructure through a combination of some user fee revenue and traditional sources of surface transportation funds, namely motor fuels taxes. However, the entirety and majority of this infrastructure should not be funded through a user fee. We have put much thought into developing an equitable and workable user fee concept and we would like to share our work with you.

In our comments I would first like to explain the features of your freight policy that, in our view, will address freight mobility needs for the next generation. Sharing your understanding for the need to rely on additional or non-traditional sources of finance for federal freight projects, I would then like to outline our concerns with certain revenue streams identified in your report. Finally, I would like to propose a way forward to pay for these projects quickly.

I. Definition of a National Freight System

We commend you for the thought and analysis you provided to define a national freight system that also includes a price tag on much needed freight-related infrastructure. Too often policy makers consider new revenue sources before considering projects funded let alone the total costs of needed projects. In our view, this is simply putting the cart before the horse. We consistently support a process to define national freight projects in an effort to determine total costs before considering how to pay for the projects though user fees. Recognizing that cargo owners will

pay their share, we have been reluctant to agree to any user fee mechanism without a firm definition of projects funded and a total price tag.

Secondly, we support the feature of your policy that would require state departments of transportation to allocate staffing and other resources to focus exclusively on freight needs. It is our experience that often state transportation and planning officials ignore pressing needs for freight mobility or remain unaware of fundamental business practices in freight transportation when developing certain transportation policies.

Your program also represents a step in the right direction towards developing multi-state and multi-jurisdiction freight corridors. Such planning exists for bridge and tunnel projects and should exist for freight projects. Frequently, bottlenecks at one end of a freight corridor results in delays and congestion for shippers at other nodes along the corridor. We support your proposal to define these multi-state and multi-jurisdictional freight corridors to allow transportation planners along the entire network to collaborate on projects designed to promote mobility along the entire corridor.

II. Funding for a National Freight System

While we commend AASHTO on defining a six-year \$60 billion freight program, we do not believe that undefined user fees or non-traditional sources of finance should fund seventy percent of the program. The Surface Transportation Policy and Revenue Commission suggested that a national freight program should rely on non-traditional sources of revenue, such as user fees. However, in the Commission's view, user fee revenue would only meet twenty percent of total project costs. The remaining costs would be covered by transfers from the Highway Trust Fund. We support this proportion of user-fee-to-highway-trust-fund revenue sharing recognizing that infrastructure funded would not be used exclusively by freight users and that there remain enormous public benefits to freight projects that must be internalized by relying mostly on highway trust fund revenues.

The Waterfront Coalition would like to emphasize that we have always supported a user fee concept to fund freight infrastructure provided that the fee is equitable and workable. To that end we convened a stakeholder group that included companies beyond the membership of our group to discuss how to move forward on a user fee. The group included a cross-cut of various cargo owners as well as transportation providers. While we have not endorsed a specific fee mechanism we have put together parameters or principles that any fee should meet. Those criteria are listed as follows:

- (1) The fee must be levied on all freight users.
- (2) The fee should be fair and balanced. A freight user fee should not fall on just one segment of freight users, but should capture all users. The fee must be levied equally and fairly on all users.
- (3) The fee must be applied equally by mode.
- (4) The fee should not be constructed based on the value of the goods, as this is irrelevant to the impact on the infrastructure.

- (5) If the fee is a new revenue source that does not exist elsewhere, it must be accompanied with federal preemption on similar fees raised by non-federal entities. States, counties, municipalities and other authorities should not impose similar fees to pay for their non-federal share of the same projects.
- (6) The fee must be use specific whereby fee revenue must be used to only fund those projects identified as part of a national freight program.
- (7) Fee revenue must be firewalled to pay for only those projects for which it is intended and prevent fee revenue from paying for transportation projects outside the scope of improving freight mobility.
- (8) The fee must be carefully constructed to avoid legal issues surrounding unfair taxes on exports.

We then applied these principles to existing user fee proposals. I would like to share our analysis with you.

1. Customs Duty and Customs Fee Set-Asides: First, a user fee defined as such does not include all users of the freight system. The fee would only fall on importers that pay duty and Customs fees. Domestic freight, exporters, and importers that have duty-free access would not contribute. Also, over half of all import tariff revenue is collected from low cost footwear and apparel. In our view, these taxes are highly regressive and the consumers of these products should not pay more than their fair share for freight infrastructure.

Second, it has been the stated policy of the United States since the inception of the General Agreement on Trade and Tariffs to gradually eliminate trade tariffs. In our view, it would be a misguided policy to rely on a declining source of revenue to meet the growing need for freight mobility infrastructure.

2. Fee on Declared Import and Export Value. Once again, a fee imposed on the value of international commerce to fund national freight infrastructure would exclude domestic freight shippers that use the network. Also, the value of goods is not indicative of the cost borne to transportation infrastructure for its use.

According to our estimations, a fee on the value of all imports and exports to pay for \$7 billion per year in freight fees would represent a tax of about .2%. This represents a considerable burden to those importers that currently do not pay import tariffs and cargo owners moving low-margin exports. Similar fees levied on exporters, such as the Harbor Maintenance Tax, have been deemed unconstitutional by the Supreme Court. Given legal issues surrounding such a fee on exports, this tax burden increases once it is only applied only to imports.

3. Container Fee. Once again, a user fee defined as such would not include all users of the system. The fee would force a very small segment of road users to fund national transportation infrastructure. It is our understanding that international freight represents roughly 10% of the 20 billion tons of freight moved along the U.S. transportation network. Maritime freight represents only 5% of this 20 billion tons each year after excluding air cargo, cross-border truck cargo, and pipelines. The percentage of containerized trade is even smaller after excluding bulk, breakbulk, and other non-containerized maritime cargoes. Relying on a very small segment of total

shipments moved along the U.S. transportation system to fund freight infrastructure is not only unfair but also an unwise source of revenue.

A container fee to raise \$7 billion each year in user fees would be quite large. Your freight policy proposes to raise \$7 billion of a \$10 billion freight program annually through an undefined user fee. According to the U.S. Department of Transportation, the U.S. imported and exported about 14.5 million containers (FEUs). Only a container fee on the magnitude of almost \$500 would generate this revenue. This number is truly striking when you consider that the spot market price of moving a container from Asia to the U.S. West Coast is about \$1500. A \$500 container fee could very well put many companies out of business with a disastrous impact on U.S. global competitiveness.

4. Manifest or Waybill Fee. This concept has the potential to capture the most freight truck users. Given the complexities and variety of contracts for carriage, we believe a better definition would be an “origination fee” that does not single out one shipping document. While the origination fee concept is promising, there are many daunting challenges in establishing a fee collection and payment mechanism that may take many years to create.

We urge you to consider these many operational difficulties with collecting an origination fee. Without addressing these issues, collecting such a fee may be quite difficult if not impossible. First, assessing an “origination fee” on many domestic moves involving consumer products could be complicated by the fact many moves are originated by an electronic interchange that does not involve any shipping document. Often retailers and product suppliers communicate by way of electronic transmission of inventory control data. Shared logistics software then notifies a contracted trucking company to move product to a retailer’s store. These electronic interchanges do not generate any shipping documents and the information shared between motor carrier, product supplier and retailer is proprietary. It would be quite difficult for an agency of the government to tap into this electronic interchange for the purpose of collecting a fee. It is even more difficult to determine which entity in this transaction remains the party responsible for collecting the fee.

Assessing an origination fee on trucking moves involving international cargo could also be quite complicated. Frequently cargo owners contract with ocean carriers, brokers or other logistics providers to manage the entire supply chain from point of foreign manufacture to the store or warehouse in the U.S. The logistics provider or broker, as opposed to the beneficial cargo owner, is often considered the shipper of record on these “store door” transactions. As such, the shipper of record would be the entity contracting for trucking services and not necessarily the beneficial cargo owner.

As mentioned earlier, assessing the fee on internal trucking moves would be quite difficult given the fact that a shipping document or purchase order is not generated. Private fleets or internal trucking accounts for almost half of all trucking moves in the U.S. and should not be exempt from the fee.

One of the greatest hurdles of establishing an origination fee may be the cost of establishing the infrastructure needed to pay the fee. Today, there is not a nexus between the agent contracting for carriage and an agency of the federal government needed to collect such a fee. Creating this

nexus – essentially a sales tax on trucking services - could prove quite costly and time consuming given the large variety of shipping documents and supply chain management practices.

III. A Way Forward

As mentioned earlier, the Waterfront Coalition is not opposed to the principle of a user fee to help fund a rational federal approach to fund goods movement infrastructure. User fee revenue alongside traditional sources of finance are much needed to pay for the next generation of infrastructure needed to move the nation's commerce. However, given the complexities of the freight and logistics industry, developing and assessing such a fee is not impossible but is certainly no easy task. We believe that Congress can act now to help leverage this additional user fee revenue in the near future by creating a technical advisory committee comprised of industry stakeholders with expert knowledge of shipping documents and logistics practices. The technical committee would be specifically tasked with advising the Department of Transportation on how to structure such a fee within a specified timeframe.

We also recognize that time is of the essence. As the Highway Trust Fund falls deeper into deficit, there is much need to raise additional revenue quickly. To that end, we support increasing federal diesel fuel taxes with the increase in these taxes flowing into the special freight account. Additional user fee revenues would then help fund the freight account as soon as the technical advisory group has forwarded its proposal.

To this end we have engaged in productive discussions with the American Trucking Associations to adopt a common position regarding the use of an increase in diesel tax revenues for freight projects with a hope of leveraging additional user fee revenues in the near future built on the recommendations of the technical advisory committee. It is also our understanding that such a proposal is not controversial as it would quickly raise revenues for needed freight projects both now and in the medium term.

We thank you for considering our thoughts on your freight policy. Please feel free to contact us with any questions or concerns.

Sincerely,

Robin Lanier
Executive Director