



May 22, 2009

Hon. Charles Rangel
Chairman
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth H.O.B
Washington, DC 20515

Hon. Dave Camp
Ranking Member
Committee on Ways and Means
U.S. House of Representatives
1139E Longworth H.O.B
Washington, DC 20515

Dear Chairman Rangel and Ranking Member Camp:

I am writing you on behalf of the Waterfront Coalition to urge your opposition to the ON TIME Act (HR 947) and the MOVEMENT Act (HR 2355) both of which have been referred to your committee. While we appreciate that these proposals seek dedicated sources of funding for freight related transportation infrastructure, we are concerned that the funding streams identified in these proposals unfairly single out only a very small segment of freight users to fund the infrastructure provided. Still yet, the types of fees identified in these two proposals may run afoul of certain provisions of international trade law possibly resulting in retaliatory tariffs imposed on U.S. exports. While our members are not opposed to the concept of broad based user fees to fund goods movement infrastructure including intermodal connectors, such a user fee mechanism must capture each and every user of the infrastructure and do so fairly with minimal administrative cost and burden. To that end, we have developed a user fee concept which we would like to share with you.

By way of background, the Waterfront Coalition represents manufacturers, retailers and agricultural exporters and importers as well as transportation providers moving international commerce through America's blue water ports and along the surface transportation system. Our members have a vested interest in making sure that the network of roads, rails, highways, bridges and tunnels can efficiently move commerce needed to fill orders here and abroad while also helping our economy to grow and generate jobs.

Maintaining and expanding this goods movement infrastructure is no easy task. We recognize that the traditional system of funding for federal surface transportation programs, namely motor fuels taxes, will prove to be an unstable source of revenue in the long term. In order to augment federal sources of revenue, we recognize the need to rely on non-traditional source of finance including user fees. However, structuring this user fee will prove to be quite a difficult task but not an impossible one.

Concerns Over Existing User Fee Proposals

Both the MOVEMENT Act and the ON TIME Act call for the imposition of a fee based on the declared value of international cargo. We are concerned that import fees as called for in these proposals may run afoul of international trade obligations while export fees could prove unconstitutional. Article VIII of the General Agreement on Trade and Tariffs strictly forbids the imposition of fees on imports that are not tied to processing or expediting the release of cargo. Our trading partners may view these ad valorem fees as a hidden trade tariff designed to provide services well beyond the scope of releasing international cargo. Similar fees have been brought before the World Trade Organization's dispute settlement mechanism and been struck down as a violation of Article VIII. Such a finding could allow our trading partners to place punitive tariffs on U.S. exports that may harm U.S. international competitiveness. After the recent G20 declaration condemning the sudden rise in trade protectionist practices, our major trading partners may have a greater appetite for seeking retaliatory tariffs for decisions that run against the grain of international trade law. The treatment of export cargo in these proposals is equally problematic. In 1998, the Supreme Court struck down the ad valorem fee attached to exports in the Harbor Maintenance Tax. We are concerned that the Supreme Court could rule in a similar manner if a case were to find its way before the Court.

We also have concerns over the use of a value based tax to fund transportation infrastructure. In our view, a fee on the value of cargo is not an appropriate proxy for the cost borne to the transportation infrastructure for the cargo's movement. Quite often, high value cargo is of little weight and is responsible for far less "wear and tear" than lower value heavier cargoes. The shippers of a multi-million dollar pallet of microchips should not bear a greater burden to pay for transportation infrastructure than a shipper of proportionately lesser value scrap products or building supplies.

These proposals also unfairly burden international freight moving through customs ports of entry by way of rail. We fear that international shippers moving freight by rail would pay the ad valorem fee but derive little if any benefit from the infrastructure provided. A significant share of import intermodal cargo moves through marine terminals by rail, often by on-dock rail services. For example, almost forty percent of containerized import cargo moves by rail through the ports of Los Angeles and Long Beach. This proportion is even greater in the ports of Seattle and Tacoma.

Finally, both bills fail to capture each and every freight user of the infrastructure. The MOVEMENT Act and the ON TIME Act call for revenue collected only from international shippers to pay for infrastructure within a 40 mile and 300 mile radius of a customs port of entry respectively. However, many domestic manufacturing facilities are located in close proximity to blue water and aviation ports of entry. For example, one of the largest manufacturing zones by employment is Los Angeles County. Most of these facilities are located well within a 300 mile radius of the ports of Los Angeles and Long Beach. Similar manufacturing hubs surround other blue water ports notably Tacoma, Washington; Savannah, Georgia; Charleston, South Carolina and Newark, New Jersey. This cargo would travel along the freight corridors funded exclusively by shippers of international cargo. In essence, domestic freight shippers would get a free ride on the transportation infrastructure provided by others. It is fundamentally inequitable to force the owners of import and export commerce to fund transportation infrastructure that benefits commuters and domestic freight owners.

A Way Forward

The Waterfront Coalition would like to emphasize that our members are committed to identifying a workable funding solution to pay for the next generation of roads, highways, bridges and tunnels that move the nation's international and domestic commerce. From our viewpoint, funding freight intermodal connectors should be a top priority. As mentioned earlier, we recognize that in the long term federal motor fuels taxes will remain an unstable source of revenue on which to rely for transportation infrastructure investments. We should begin today to consider a workable freight user fee for the medium to long term. This user fee should meet certain criteria - the most important being that each and every user of the system must pay. The Waterfront Coalition along with many other cargo owners and transportation providers attempted to identify such a fee as well as a collection mechanism. Given the intricacies of the transportation and logistics industries, administering and collecting such a user fee must be carefully considered by a panel of industry experts along with representatives of the U.S. Department of Treasury, Transportation and representatives of state and local government. These industry experts have an intimate working knowledge of shipping documents, logistics practices and financial and other transactions in the logistics industry while government representatives understand how to collect any user fee with the least administrative cost. We believe that time is of the essence and we urge Congress to pass, and President Obama to sign, legislation creating such a technical committee designed to implement a freight user fee.

We also understand that the immediate needs for freight mobility are great. In order to meet these immediate needs, we propose an increase in the federal diesel tax paid only by motor carriers with the increase from the current rate going into a special account to fund a national freight program. An increase in the diesel tax paid by motor carriers is not controversial and has been supported by the American Trucking Associations. This special account is necessary to prevent the transfer of funds paid by motor carriers to fund other transportation initiatives beyond the scope of moving freight. In our view, the special account would fund important intermodal connectors along with other necessary improvements to infrastructure that promotes freight mobility.

I thank you for the opportunity to share our concerns with these freight funding proposals. I am more than willing to discuss our user fee concept with you. Please feel free to contact me with any questions or concerns at (202) 861-0825.

Sincerely,

Robin Lanier
Executive Director

CC: Committee on Ways and Means