COMMENTS ON VANCOUVER-FRASER PORT AUTHORITY'S PROPOSED EMPTY CONTAINER WHARFAGE FEE

March 12, 2025

We are writing on behalf of the owners, operators and agents of the oceangoing ships that carry Canada's imports and exports to and from world markets to express our concern over the Vancouver-Fraser Port Authority's proposed imposition of a wharfage fee on empty containers. Although the points raised in this letter relate specifically to the fee proposal published on January 14, 2025, our views on this subject are well documented, and have been communicated to the VFPA on at least a half dozen previous occasions since it first attempted to introduce an empty container fee in 2015. While the rates associated with this fee have increased significantly from the original proposal of 2015 (from a rate of $5.00 per export TEU then, to a rate of $35.14 per export TEU today), the port's overall rationale for such a fee has remained remarkably consistent and, in our view, unsupportable – whether from an economic, competitiveness or efficiency perspective.

Indeed, we remain more convinced than ever that the imposition of an empty container wharfage fee on ships calling the Vancouver-Fraser Port Authority will increase costs and reduce the port's competitiveness, without having any impact whatsoever on the congestion issues it is purportedly intended to resolve – and this in a context where the port can ill afford to withstand any further blows to its already battered reputation as a reliable and cost effective gateway through which to move cargo destined to and from North American customers.

Costs Associated with Empty Containers

As per its July 18, 2024 and January 8, 2025 presentations to the industry, one of the VFPA's main justifications for an empty container wharfage fee is that empty containers use the same assets and infrastructure as fully-laden containers, and the new fee is therefore necessary to assist the port in recouping the costs related to the terminal space that empty containers occupy, as well as the wear and tear to the terminal that they cause. We continue to dispute this rationale, given that it is the terminal operator who claims responsibility for the costs cited above, and who already has a range of tariff measures in place to ensure their recovery from the shipping line.

Such measures include throughput fees (which range from $450 to $850 per unit depending on the terminal involved), gate fees (which range from $100 - $380 per container) and daily storages fees for containers that exceed their space allocation (which range from $145 and $170 per TEU per day depending on the terminal). Terminals also assess additional charges (including trucking costs to off-site depots and gate charges and re-handling costs) for evacuating empty containers when the number of empties on-site exceeds a certain threshold. Given the foregoing, it is quite frankly disingenuous for the Port to claim these expenses as its own, and impose a substantial new fee on marine carriers in order to essentially recoup expenses it has not incurred – all under the pretext of solving a port efficiency and capacity problem that the terminal already has measures in place to address.

We would also note that wharfage is by definition a fee that is applicable to cargo that is loaded and unloaded at a given port, and which is therefore payable by the cargo owner and not the marine carrier. The port's effort to extend wharfage to empty containers – which is essentially ship's equipment that involves no cargo whatsoever – flies in the face of this common understanding of the concept of wharfage, and further underscores the seemingly arbitrary grounds on which the proposed fee is based.

Lack of Precedent for an Empty Container Wharfage Fee

Although the port's slide deck of January 8, 2025 suggests that there is precedent for the imposition of such a fee at other Canada Port Authorities, we would note that contrary to the information provided in that deck, the Halifax Port Authority does not, in fact, apply the wharfage fee indicated in its tariff document on empty containers, while the Port of Saint John handles only a fraction of the containerized traffic that moves through Vancouver every year, and Port Alberni handles very little if any containerized cargo at all. Given the VFPA's role as Canada's largest, busiest and most economically significant port by far, we cannot help but question the appropriateness of using the practices of less than a handful of ports which operate on a completely different scale than Vancouver, as benchmarks for imposing a new fee that has already been proven to be highly contentious, and which has a range of potentially negative impacts not only for port users but the Vancouver gateway overall.

In a similar vein, we also question the logic of the port's assertion (also made in its fee presentation of January 8, 2025) that the introduction of any empty container wharfage fee would place Vancouver on more competitive footing with the west coast ports of Seattle and Tacoma (which charge a fee for empties). Surely, a more effective business strategy would be for the VFPA to seek to differentiate itself from its competitors by offering lower costs, rather than increasing the cost burden on users by introducing additional fees that replicate those of its competitors.

Role of Empty Containers in the Success of the Vancouver Gateway

Another justification the port has provided for the proposed new fee is that it will help ease port congestion by leading to more efficient use of capacity, presumably by incentivizing carriers to load more empties with export cargo, thereby freeing up terminal space. This argument is problematic for a number of reasons, including the fact that it fails to take into account the operational and commercial realties that are the key factors determining a carrier's assessment of how an empty asset is to be optimally employed.

More specifically, because imports exceed exports, but export cargo weighs more than import cargo, vessels will normally "top off" their export loads with excess empties to allow them to depart not only at optimum deadweight capacity, but also at full slot utilization. In other words, the vessel will seek to ensure that its cargo-carrying capacity is as fully optimized on the outbound leg as it was on the inbound leg, which it achieves by loading to its maximum permissible weight, while also fully utilizing all of its available space (the vessel being "full and down" when this balance has been achieved). This practice also contributes to the safety and stability of the vessel and the crew on board, which is a key consideration that is totally absent from any of the port's fee documents.

The concept of incentivizing the carrier to fill more empties with export cargo makes no sense within such a context, as the vessel's cargo carrying capacity is inherently constrained from both an operational and commercial perspective, and cannot simply be expanded in response to a new financial measure imposed by the port. Consequently, rather than increasing the volume of containerized exports moving through the port, the introduction of an empty container wharfage fee will likely compel carriers to route their excess empties through either US west coast ports or through Prince Rupert, which will result in fewer units being available for local exporters in cases where a vessel does have available capacity for loaded

export containers, and less business for the VFPA overall. Such an outcome will also have a significant impact on the operating practices of both CN and CPKC, whose business models are highly reliant on a steady and predictable supply of empties to haul back to Vancouver after having been unloaded as import cargo in eastern Canada.

The premise that empties are best deployed when laden with export cargo ignores the essential role that the export of empty containers plays in the VFPA's effectiveness as a gateway for the movement of Asia-Pacific trade. More specifically, any increase in the number of empty containers at VFPA is a direct result of the port's efforts to position itself as a competitive gateway for Asian-Pacific cargo, thereby creating a continuous (and potentially growing) stream of laden import containers, a portion of which must be re-positioned empty to Asia as an operational necessity of this trade. Indeed, as the volume of containerized imports grows (which is presumably a positive from the port's perspective) so too will the volume of empty containers moving through the port.

As a final point on this particular subject, we would also note that the introduction of an empty container fee would place container vessels at a competitive disadvantage to the bulk and muti-purpose vessels they compete for certain types of export cargoes (including agricultural commodities and forest products such as lumber and pulp) that can be carried on both types of vessels. Since the empty fee would be assessed against container carriers only, it would essentially amount to a fee that discriminates between competitors for the types of cargoes noted above, thereby exposing the VFPA to a potential charge of "unjust discrimination" under section 50 of the *Canada Marine Act,* and an investigation by the Canadian Transportation Agency. Indeed, the CTA's existing jurisprudence on this issue indicates that although a fee which discriminates among users or classes of users is not necessarily "unjust" (and therefore not subject to appeal under the *Canada Marine Act*), a fee which discriminates among users who are competitors is a different entity, and may indeed rise to the level of rendering such discrimination potentially unjust, and thus subject to CTA investigation.

Financial Justification for an Empty Container Wharfage Fee

As outlined above, it is difficult to see how the imposition of the proposed new fee can be justified on the grounds that it will either help the port recoup the costs associated with the handling of empties (since these costs are not incurred by the port but the terminal, and the terminal already recovers these costs through its own fees and tariffs), or that it will incent more efficient use of terminal capacity by encouraging carriers to fill more empties with export cargo (since this is a function of the vessel's operational, trade and safety considerations as opposed to the port's preferences as to how the vessel should or should not use its assets).

Given the foregoing, we can only conclude that the port's sole justification for the introduction of an empty container wharfage fee is financial, insofar as the new fee would generate approximately $30 million in additional annual revenue for the VFPA (assuming a no growth scenario), and represent a completely new source of untapped revenue, for which there is extremely limited precedent among Canada's other Port Authorities. This is also revenue that will increase in direct proportion to the port's future ability to grow its imports volumes, given that any increase in laden import containers will necessarily involve an increase in empties on the export side.

Although there is clearly revenue to be generated from the imposition of a wharfage fee on empty containers (or indeed from the introduction of any new fee the port may wish to create), this in no way means that such a fee is justifiable or supportable from a commercial or financial perspective. This is particularly true in a context where the VFPA continues to post very healthy profits, where the cost of the services it is mandated to provide are already covered through a number of pre-established funding streams (in the form of harbour dues, wharfage fees, storage charges, gateway infrastructure fees, etc.),

and perhaps most egregiously of all as relates to this particular issue, where its is already receiving revenue for the terminal space occupied by empty containers in its capacity as a landlord charging rent to the terminal operator. Nor does the port appear to be experiencing a shortfall in funding for capital expenditures, given that such expenditures have been falling steadily over the last five years (to 39 percent of revenue in 2023), as well as the fact that the port benefits from the revenues generated by both iterations of its gateway infrastructure fee to cover expenditures related to major projects occurring outside of port property.

The only area in which the port does appear to be experiencing a financial shortfall is on the expense side, with operating expenses having increased by 56 percent over the last five years, and within that category, salaries and benefits having risen by a very substantial 89 percent. It is very difficult to discern a sound rationale for such a major increase in workforce costs over such a relatively short period of time, particularly in a context where the level of traffic being handled at the port, which rose by approximately 4.4 percent over the same period, would by no means necessitate an increase in personnel-related costs of such magnitude.

Based on the port's financial statements, these workforce-related costs began rising in earnest in 2020 when they increased by 12 percent (to almost $51 million), and continued to rise steadily thereafter, increasing by 19.6 percent in 2021 (to almost $61 million), by 6.2 percent in 2022 (to almost $65 million), and by 33 percent in 2023 (to $86 million). In terms of rationale, the port's financial statements for 2021 and 2022 indicate that the increases were related not only to salaries and employee benefits, but also to increased head count "to advance the port authority's strategic initiatives and operational needs" (although they provide no additional granularity in this respect), while the statements for 2023 – which is when this category of costs increased at the highest rate by far (33 percent) – provide no explanation whatsoever as to the underlying factors necessitating an increase of such magnitude.

This port's lack of transparency with respect to such a major and continually escalating cost item is problematic under any circumstances, but particularly so in a context where the port is attempting to introduce a new fee that represents an untapped and unprecedented source of revenue from users, which has significant implications not only for container carriers calling the Port of Vancouver, but for the Vancouver gateway overall. We would strongly suggest that a more appropriate course of action would be for the port to conduct a comprehensive review of its workforce-related expenditures, practices and priorities over the last several years, with a view to identifying areas where costs can be controlled and reduced, and how hiring practices and remuneration models can be streamlined to more realistic and financially manageable levels going forward. Such action would not only serve the port well in the future, but would also represent the kind of prudent financial management that is necessary in today's highly uncertain and volatile economic climate.

Concluding Remarks

As illustrated throughout this submission, none of the rationales the VFPA has provided for the introduction of an empty container wharfage fee are supportable from either an operational or efficiency perspective. Indeed, rather than increasing port efficiency or capacity, such a fee will significantly disrupt the "match-back" models that are essential to ocean carrier and rail operations through the Vancouver gateway. Such a fee will also create a shortage of empty containers for Canadian exporters wishing to move their cargoes via Vancouver, increase the cost burden on port users in an already high-cost environment, and lead to a loss of traffic from Vancouver to the Port of Prince Rupert and to ports on the US west coast.

Given the foregoing, we have no choice but to conclude that the only genuine rationale for the fee's introduction is that it represents a new funding source that will generate approximately $30 million of

annual revenue for the port once it has been fully implemented in January 2026. This being said, if revenue generation for its own sake is the only reason for introducing this fee, and the port chooses to move ahead with its implementation despite the objections we have raised, then we will truly be charting new territory in terms of the port's discretion to not only increase existing tariffs but to also invent new fees, and to do so without any meaningful effort to demonstrate a link between the fee and the service provided, or to offer any concrete justification of financial need. Although we have long expressed concern over the need for the *Canada Marine Act* to provide stronger guardrails around the port authorities' fee-setting processes, the introduction of the proposed empty container fee will increase those concerns exponentially, by exposing port stakeholders to an unprecedented level of uncertainty and volatility as relates to port fees, and casting further doubt on the VFPA's role as a reliable and competitive trade gateway.

As a final point on this subject (and as the port is undoubtedly aware), there is a bill before Parliament (Bill C-52) which seeks to address the above-noted concerns by providing port users with a mechanism for contesting new or increased fees, and ensuring greater transparency and accountability in the fee-setting process. Although that bill is unlikely to complete the current Parliamentary session due to the anticipated federal election call, we are encouraged by the regulator's acknowledgement of and interest in this issue, and will advocate strongly for bill's re-introduction in the next Parliament.

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We trust that the VFPA will give our comments, as well as those submitted by the Chamber of Shipping, full consideration, as it considers both the appropriateness and potential impacts of introducing a new wharfage fee on empty containers. We look forward to continued collaboration with the port in its role as Canada's largest trade gateway and are available to provide any additional information as required.

Respectfully Submitted,

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