



BRIEFING PAPER

H.R. 1533 SHORT SEA SHIPPING ACT

Introduction

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 North American economy. Likewise, rail capacity is limited in many 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.

A key impediment to the establishment of new regional shipping services ("short sea shipping") 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, the HMT was set by Congress 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. ports, and cargo imported to U.S. ports from other countries. The tax is not assessed on export cargo.

The HMT is collected for shipments to/from East Coast, West Coast, Gulf Coast and Great Lakes ports. The HMT does not apply to the Inland River Navigation System. Congress has enacted a completely separate user fee regime 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. As of FY2010, there was an excess balance of 5.2 billion in the Harbor Maintenance Trust Fund.

Legislative History

In 2005, legislation (H.R. 3319) was introduced by Congressman Dave Weldon (R-FL) and Chris Shays (D-CT) to exempt any cargo transported between U.S. ports from the HMT. There was no companion measure in the U.S. Senate.

Because the Weldon-Shays bill did not address U.S.-Canadian trade, Great Lakes interests decided to pursue their own legislative initiative. On their behalf, Congresswoman Stephanie Tubbs-Jones (D-OH) and Congressman Phil English (R-PA) introduced legislation in 2006 (H.R. 5889) to exempt any non-bulk cargo transported between ports on the Great Lakes-St. Lawrence Seaway from the HMT. The Tubbs-Jones/English bill applied to both U.S.-U.S. shipments and Canadian-U.S. shipments.

In 2007, during the 110th Congress, Congresswoman Tubbs-Jones and Congressman English reintroduced their legislation (H.R. 981). In the U.S. Senate, companion legislation (S. 1683) was introduced by Senator Debbie Stabenow (D-MI). The Joint Committee on Taxation (JCT) scored the Tubbs-Jones legislation and found it to have a di minimis impact on federal revenue (<0.5 M/year). On July 31, 2007, the Bush Administration endorsed the Tubbs-Jones bill. Through Senator Stabenow's good work, S. 1683 was approved by the Senate Finance Committee on November 17, 2007 (S. Rept. 110-228).

During the 110th Congress, elected officials from other regions introduced "national" short sea shipping bills. Congressman Elijah Cummings (D-MD) introduced H.R. 1499 in 2007. Senator Frank Lautenberg (D-NJ) introduced a similar measure, S. 3199, in 2008. These bills addressed the HMT problem in both the Great Lakes and coastal ports.

At the beginning of the 111th Congress, and after the death of Congresswoman Tubbs-Jones, Congressman John McHugh (R-NY) reintroduced the Tubbs-Jones legislation, but expanded it to include all areas of the United States (H.R. 528). The McHugh legislation also expanded the definition of the Great Lakes-St. Lawrence Seaway to include Nova Scotia. Other legislators reintroduced their own versions of the HMT legislation: Stabenow (S. 1509), Cummings (H.R. 638), and Lautenberg (S. 551).

After McHugh resigned from Congress to accept President Obama's appointment as Secretary of the Army, Congressman Brian Higgins (D-NY) reintroduced the McHugh text as his own (H.R. 3486). This was done with full cooperation and support of Congressman McHugh.

During the 111th Congress, H.R. 3486 was the focal point of efforts to enact short sea shipping legislation. The bill had 53 cosponsors from all over the United States and enjoyed broad support from the maritime industry and maritime labor. The bill also enjoyed the support of both the Chairman and Ranking Member of the House Ways and Means Committee.

On May 10, 2010, the Joint Committee on Taxation scored H.R. 3486 and determined that it would have a minor impact on revenue of <2 M/year.

Efforts to enact short sea shipping legislation continue in the 112th Congress. On April 14, 2011, Congressman Pat Tiberi (R-OH) introduced H.R. 1533, in partnership with Congressman Brian Higgins (D-NY), and Congressman Steve LaTourette (R-OH).

The text of H.R. 1533 is identical to that of short sea shipping legislation (H.R. 3486) from the 111th Congress.

Description of H.R. 1533

Geographic Scope of Exemption:

The legislation provides a narrow exemption to the Harbor Maintenance Tax for non-bulk cargo transported between any two ports in the United States; and for non-bulk cargo transported between Canada and the United States in the Great Lakes - St. Lawrence Seaway System. The legislation defines the "Great Lakes-St. Lawrence Seaway" to include all five Great Lakes and the St. Lawrence River east to Nova Scotia.

Types of Cargo Exempted:

The legislation does not seek to provide a tax break to anyone currently paying the tax. For this reason, the legislation specifically targets "non-bulk" cargo for the HMT exemption. Why? Non-bulk cargo is rarely shipped by water within North America. This type of cargo typically is transported by truck or rail. Such cargo would include shipping containers, steel products, forest products, large machinery, etc.

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. The owners of these cargoes currently pay the HMT. They would continue to pay the HMT under the terms of the legislation.

Examples of Anticipated Benefits

Import Cargo - Eliminate Double Taxation

Under current law, the contents of any shipping container imported to a coastal port is assessed the HMT. If that container is subsequently transported by vessel to a second port, the contents are taxed a second time. If the container were moved to the second port by truck or rail, there would be no additional taxation. In this regard, the HMT serves as a disincentive for companies to transport goods by water (unless there is no other option).

Domestic Cargo - New Regional Shipping Services

Products manufactured in the United States must be transported to market. This is most often accomplished utilizing truck and rail. In some areas of the U.S., coastal shipping could supplement land-based transportation and help relieve congestion. Further, such regional shipping services would create new jobs in the maritime sector.

Great Lakes Cargo - Ease Border Congestion

The United States and Canada have the largest bi-national trade relationship in the world. The majority of this trade takes place in the Great Lakes region. Due to the geographic configuration of the Great Lakes, commerce is funneled through a handful of border crossings such as Detroit-Windsor, Port Huron-Sarnia, and Buffalo-Niagra. Border infrastructure is overwhelmed and often bottlenecked. A number of cross-lake truck ferries have been proposed to help facilitate the flow of commerce. Unfortunately, the HMT is currently an impediment to the viability of such truck ferries.

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