



CALIFORNIA COUNCIL FOR INTERNATIONAL TRADE

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December 1995

Commerce Dismantlement and Trade Funding in the First Session of the 104th Congress

by Paul Freedenberg*

As the First Session of the 104th Congress draws to a close, it looks as though the Commerce Department has dodged the dismantlement bullet. Thus far, the Senate has resisted attempts to add a Commerce Dismantlement amendment to any legislation before it, and it successfully demanded that the House drop the "Commerce Dismantlement" amendment from the Budget Reconciliation Bill that had been in legislative conference between the two Houses. The House Freshmen Republicans continue to say that they have a commitment from the House Republican Leadership to add Commerce Dismantlement to one more legislative vehicle before the end of the First Session of the 104th Con-

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Ronald H. Brown (left)

CCIT Dinner a Rousing Success

CCIT's 1995 Golden State Award Dinner, honoring U.S. Secretary of Commerce Ronald H. Brown, drew nearly 500 distinguished guests to the Fairmont Hotel's Grand Ballroom on November 3rd. Mr. J. Tracy O'Rourke, Chief Executive Officer of Varian Associates and current Chairman of the National Association of Manufacturers addressed the assembled guests, representing CCIT members, Bay Area high-tech companies and several Southern California firms.

Secretary Brown was recognized for his achievements in addressing the challenges the U.S. must face in a global economy. Under Brown's leadership, the Department of Commerce has successfully collaborated with private and public sec

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Opinion

Harbor Maintenance Fee Declared Illegal

by Susan Kohn Ross*

In a stunning rebuke to the government's position, the Court of International Trade (C.I.T.) on October 25, 1995 in United States Shoe Corp. v. United States, declared the harbor maintenance fee (HMF) unconstitutional as a tax on exports. The HMF imposes an ad valorem tax on any port use of federally maintained navigable waterways, regardless of the size of the vessel, the manner or extent of use of port facilities,

the condition of a particular port, or the geographic location from which the funds were originally collected. As of fiscal year 1995, over \$600 million had been collected through the HMF from exports alone.

The government argued 1) that the HMF was a legitimate exercise of Congress' power to regulate commerce, and 2) that the HMF did not violate the Export Clause because enhancement of the general

revenue was not its primary purpose. Instead they urged that the primary purpose of the HMF was maintenance of safe and efficient ports and harbors, that the size of the fee reasonably related to the charges imposed and that the fee accrues, at least in part, to an identifiable private beneficiary. The court found instead that there was no regulatory framework provided by the HMF statutes, only revenue enhancement; the HMF in no way regulates the

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CCIT Dinner... *continued from p.1*

tors to develop an aggressive policy of business advocacy. In his acceptance remarks, Secretary Brown championed the success of California companies in overseas markets and reiterated the importance of a business perspective in the formulation of trade policies and regulations.

The keynote speaker, Tracy O'Rourke, emphasized the importance of exports to the U.S. and California economies in terms of wages, job stability and global competitiveness. California exports surged twenty percent in the first half of 1995, creating approximately 136,000 jobs, indicating that California workers are reaping the

"In terms of the American economy overall, the benefits of exports are stunning."

benefits of U.S. export promotion programs. For example, workers at exporting firms earn up to fifteen percent more than workers at non-exporting companies in the same industry and locality.

Furthermore, growth rates of employment, output and productivity are three to eleven percent higher at exporting plants, while failure rates are nearly one-third less. Exporters tend to adopt advanced manufacturing concepts and technologies more quickly than domestic firms, enabling them to compete more cheaply and effectively. The impact of export expansion on the nation's total economic growth has been dramatic, accounting for a third of the growth over the past decade. Mr. O'Rourke also cited areas needing improvement, including regulatory barriers and financing.

As a fundraiser and as a social event, the 1995 Golden State Award Dinner was the most successful to date. In addition to recognizing Secretary Brown's significant achievements as head of the Department of Commerce, CCIT raised over \$100,000 toward its 1996 international trade policy education effort. Dinner guests enjoyed casino games, danced to the sounds of Soul University and bid on a wide selection of fine gifts well into the evening.

Welcome New Members!

Corporate

Digital Microwave Communications

Business

The Pacific Bank *San Francisco*

Individuals

Kit Cooper *South San Francisco*

Susan Bade Hull *Los Angeles*

Eisenhower Park *San Mateo*

Many Thanks to Renewing Members

Premium Corporate

California Farm Bureau Federation

Intel Corporation

Solar Turbines

Business

Wilson, McCall & Daoro

Individual

Ken Lacy

Beverly Rowen

Publications Available

CCIT will ring in the New Year by clearing out its overflowing library of trade publications. We have numerous titles which may be of interest to you and can be yours absolutely free of charge. Included are 1993 and 1994 reports from the International Trade Commission, Japan Economic Institute, German Consulate, European Commission, Hong Kong Economic and Trade Office, and many other country and industry reports. For a complete listing, contact CCIT at (415) 788-5356 (fax) or ccit@well.com.

104th Congress: 1st Session Trade Review

A Quiet Year

Following two years of major trade agreements (NAFTA and GATT), 1995 appeared to be relatively calm for trade legislation. Although no less than 119 trade bills were introduced in the first session, very few made it to a vote. Preoccupied with the Contract with America and balancing the federal budget, trade legislation took a back seat unless it offered budgetary savings. Two important trade issues, the renewal of fast-track negotiating authority and the final structure for federal trade facilitating programs, were at the forefront of CCIT's education and advocacy activities and will carry over in 1996.

Trade Profile of the 104th

China MFN

The annual review of Most Favored Nation status for China was colored by the imprisonment of Harry Wu, an American citizen and critic of Chinese policies. The China Policy Act of 1995 (HR 2058) called upon the President to take diplomatic measures to persuade China to release Mr. Wu and improve its human rights record. The passage of this bill allowed MFN supporters to defeat the joint resolution to disapprove President Clinton's waiver of Jackson-Vanik (HJ Res 96). CCIT supported the renewal of MFN for China as part of a policy of broad engagement.

See page 4 for the vote record on HJ Res 96.

Dept. of Commerce Dismantlement

Leaders in both Houses proposed legislation to dismantle or reorganize the Department of Commerce in an effort to save money and cut corporate welfare. CCIT advocated taking a close look at all federal programs and evaluating them on a return-on-investment basis. The final appropriations package was 83% of 1995 funding levels. The vote for appropriations for Commerce programs is on the following page. For a complete status report on this issue, see page 1.

Mexican peso crisis

President Clinton used Executive powers to help mitigate the effects of the Mexican peso crisis. CCIT supported the loan package as a means to stabilize the Mexican economy for the benefit of both American and Mexican businesses. The House passed a resolution opposing the aid package. See page 4 for the California Delegation's voting record.

Preview of 2nd Session

Fast-track Renewal

A final draft of fast-track renewal legislation is expected in the 2nd session, although Congress and the Administration remain deadlocked over labor and environment provisions. CCIT

supports extension of current fast-track law; that is, without explicit reference to "blue" and "green" provisions.

Iran Foreign Oil Sanctions

The Iran Foreign Oil Sanctions Act of 1995 (S 1228, HR 2458, HR 2619) would impose sanctions on foreign persons exporting certain goods or technologies which would enhance Iran's ability to extract, refine, produce, transport, etc. petroleum products or natural gas. CCIT opposes unilateral sanctions.

Cuba

The Cuban Liberty and Democratic Solidarity Act of 1995 (S 381, HR 2347) would strengthen international sanctions against the Castro Government. CCIT opposes unilateral sanctions.

Other issues to watch:

- U.S. - Japan Semiconductor agreement.
- U.S. - Chile trade negotiations.
- APEC "blueprint" implementation.
- MFN for China, Cambodia, Bulgaria, Vietnam.
- Export Administration Act.
- NAFTA / GATT implementation issues.
- Federal Maritime Commission dismantlement.

Member Poll

NAFTA: *If we had known then what we know now...*

As the U.S. continues trade negotiations with Chile, the business community remains divided over the advantages of free trade agreements for American firms. We would like to hear your opinions on issues which were overlooked or inadequately addressed in the NAFTA agreement. Please continue on a separate page if necessary.

Industry: _____

Issue(s): _____

Name: _____ Company: _____

Telephone: _____ E-mail: _____

Return by fax: (415) 788-5356
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104th Congress: 1st Session Voting Record on Trade Issues

HJ Res. 96 HR 2254 HR 2020

District	Representative	MFN	Appropriations	Peso Crisis	Sponsorship of other trade bills
10 - R	Baker				
30 - D	Becerra				
24 - D	Beilenson				
26 - D	Berman				HR 527 - Extension for drawback claims
49 - R	Bilbray				
44 - R	Bono				HR 1756 - Commerce dismantling
42 - D	Brown				
43 - R	Calvert				
18 - D	Condit				
47 - R	Cox				
51 - R	Cunningham				
9 - D	Dellums				
32 - D	Dixon				
20 - D	Dooley				
4 - R	Doolittle				
46 - R	Dornan				HR 796 - Withdrawal from NAFTA supp.
28 - R	Dreier				
14 - D	Eshoo				
17 - D	Farr				
3 - D	Fazio				
50 - D	Filner				
23 - R	Gallegly				
36 - D	Harman				
2 - R	Herger				
38 - R	Horn				
52 - R	Hunter				
41 - R	Kim				
12 - D	Lantos				HR 1142 - Labor standards for US in China
40 - R	Lewis				
16 - D	Lofgren				
31 - D	Martinez				
5 - D	Matsui				
25 - R	McKeon				
7 - D	Miller				
15 - D	Mineta				H Res 50 - Sense of House re: China IPR
27 - R	Moorhead				HR 1659, 1732, 1733 - Patents
48 - R	Packard				
8 - D	Pelosi				
11 - R	Pombo				
19 - R	Radanovich				HR 1756
1 - R	Riggs				HR 1756
45 - R	Rohrabacher				HR 1451 - MFN for Cambodia
33 - D	Roybal-Allard				
39 - R	Royce				
22 - R	Seastrand				HR 1756
13 - D	Stark				HR 1653 - GSP prohibition: nuclear nations
21 - R	Thomas				
34 - D	Torres				
37 - D	Tucker				
35 - D	Waters				
29 - D	Waxman		n/a		
6 - D	Woolsey				

Support CCIT position

Oppose CCIT position

Commerce Dismantlement...

Continued from page 1

gress. That vehicle could just be the last bill that is sent over to the Senate by the House during the First Session. That bill would likely be a Continuing Resolution funding agencies whose appropriations have not passed. Unfortunately for the Freshmen Republicans, but fortunately for those who believe that the Commerce Dismantlement bill is too hastily constructed and poorly thought out, Members in both Houses are losing patience as the Budget battle with the White House drags on. As a result, it is less and less likely that anything other than a simple Continuing Resolution containing the necessary funding sufficient to carry unfunded agencies into the first few weeks of next year will pass the Congress in the waning hours before the Congress adjourns for Christmas.

Turning to the bill that the house and Senate State, Justice, Commerce Appropriations Committees agreed to in Conference, it was vetoed on December 19. That is because the bill has several areas that the President finds unacceptable beyond his problems with the Commerce Department funding levels. It turns the President's "Cops on the Beat" program into a block grant and cuts other local police support programs. At Commerce, the Advanced Technology Program ("ATP") and the Manufacturing Extension Program ("MEP") are cut way back. These are the items that he cited in his veto message. It is interesting that the President feels that the ATP program is so important that it provides justification for vetoing the entire bill. That veto message is an indication of both how important the President believes technological research and development is to our country's future and also how important he feels that California is to his election in 1996.

Harbor Maintenance Fee...

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amount or manner of port use nor does it seek to influence commercial practices or seek to enforce compliance with a legislative goal.

In addition, the court held that for a charge to withstand constitutional scrutiny under the Export Clause, it had to defray the costs of the services rendered in the course of the regulation of commerce and the tax collected could not be excessive. The HMF is tied to the value of the cargo; there is no minimum or maximum charge involved. Further, there is no mechanism in the HMF fund disbursement to insure that the funds are earmarked for projects in the ports where they were first collected. Finally, the HMF trust fund has a sizable surplus and much of the money collected is intended for future projects. The court found that the revenue raised by the HMF bore no rational relationship to the services provided.

The government is very likely to appeal the decision. In the meantime, do not expect any refunds to result for at least another year. Those closest to the

What should exporters do to preserve their rights?

case speculate that the appellate court will uphold the CIT's decision, in which case the government would consider an appeal to the U.S. Supreme Court. Since the challenge to the HMF is constitutional in nature, it is possible the Supreme Court would consider hearing the case.

So what should exporters do to preserve their rights? Many exporters have been paying their quarterly HMF fees and then protesting. The court clarified that if protests are involved, exporters should file an amended quarterly report seeking a full refund and then protest its denial. At the same time, the court recognized that exhausting the administrative process was not required, as the relief sought is beyond the power of Customs to grant. As a result, the court authorized exporters to file

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summons at the CIT seeking recovery of all HMF paid in the last two years without regard to whether or not any protest had previously been filed.

In light of the court's decision, exporters may be tempted to stop making their quarterly HMF payments. However, until the decision in U.S. Shoe, supra, is final, i.e., until all the appeals have been exhausted, the HMF is a legal requirement and so future payments should continue to be made in a timely fashion.

* Susan Kohn Ross is an international trade attorney with Ross & Associates.

The good news from the First Session is that the International Trade Commission is that the International Trade Administration ("ITA") and the Bureau of Export Administration were funded at approximately last year's funding levels. In fact, the Commercial Service was funded at slightly more than last year's level. The Commercial Service received \$4 million more than last year's funding, with legislative report language instructing the Commerce Department to spend those funds on "domestic field restructuring and expansion of the Commercial Service in the big emerging markets." In a legislative climate in which the Commerce Department was cut more than 25 percent, this has to be seen as a victory for those who were concerned about trade promotion and trade competitiveness. Of course, even within ITA, International Economic Policy ("IEP") was cut 14 percent, partly as a result of an assumption that there will be no trade negotiation next year that will need the economic analysis that IEP supplies.

Unfortunately, the issue of Commerce Dismantlement is not settled by this year's probable victory. It is likely to come up again and again during the Second Session of the 104th Congress if it is not passed during the First Session. Commerce Dismantlement has taken on a life of its own, and despite factual arguments about its impact, or attempts by the business community to study the proper way to organize the entire Federal Government as an alternative to passing the current dismantlement legislation, it is likely that Commerce Dismantlement in its current legislative form will be with us for the entire Second Session of the 104th Congress.

**Paul Freudenberg is Trade Counselor at the Washington, D.C. firm of Baker & Botts. He serves as the D.C. representative for the national DEC Consortium.*

Calendar

December

- 11 Executive Committee Meeting
- 25 - CCIT Secretariat Closed for Holidays
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January

- 1 CCIT Secretariat Closed
- 9 Public Policy Committee Meeting
Executive Committee Meeting
- 26 Board of Directors Meeting and
Dinner

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San Francisco, CA 94111



CCIT would like to welcome Gina Pham and Caroline Lee as our 1995-1996 interns from U.C. Berkeley. We'd also like to wish a fond farewell to Stephanie Broerman who has done a terrific job for the past year and a half as CCIT's Administrator and Policy Analyst. Good Luck Stephanie! We wish you all a joyous holiday season and a happy and peaceful new year.

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