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## **Milking the maritime cow**

**Dennis L. Bryant, Maritime Consultant**

While some in the general public recognize the importance of the maritime industry to maintaining a modern economy, too often the industry is perceived as a cash cow to be milked as frequently as possible. Recent events have highlighted this unfortunate predilection.

On June 15, the Supreme Court of the United States struck down a personal property tax imposed by the City of Valdez, Alaska. The tax was nominally assessed against boats and vessels that regularly travel to the City, are kept within the City, or are used in the City. The ordinance establishing the tax contained exceptions that, in effect, limited the tax's applicability primarily to large oil tankers calling at the Trans-Alaska Pipeline System (TAPS) terminal in Valdez. Reports indicate that the tax collected about \$8 million annually, covering about 20% of the city's budget. The Court found that the Valdez tax violated the Tonnage Clause of the US Constitution, which prohibits states and municipalities from imposing a tax or duty on a vessel for the privilege of entering, trading in, or lying in a port. It also found that the tax was intended to raise revenue for general municipal services, not to compensate for particular services provided to the ships.

On May 29, the US Court of Appeals for the Second Circuit, based in Manhattan, struck down a fee imposed on ferry passengers by the Bridgeport (Connecticut) Port Authority. The port authority charged a fee of \$2.00 per foot passenger and \$3.00 for a vehicle including the driver. The ferry involved traveled between Bridgeport, Connecticut and Port Jefferson, New York. The court found that the fees assessed exceeded the cost of services provided to the ferry passengers and was not even a fair approximation of those costs. The monies collected by the passenger fee were for the impermissible purpose of raising general revenues and actually were used to provide services to local residents that were completely unrelated and unavailable to the ferry passengers. For these reasons, the court ruled that the passenger landing fee violated both the Commerce Clause and the Tonnage Clause of the federal Constitution.

On May 12, Representative Richardson (D-CA) introduced the "Making Opportunities Via Efficient and More Effective National Transportation (MOVEMENT) Act of 2009 (H.R. 2355) to establish a National Goods Movement Improvement Fund to provide funding for infrastructure projects that will improve the movement of goods, mitigate environmental damage caused by the movement of goods, and enhance the security of transported goods. Projects

E-mail

[dennis.l.bryant@gmail.com](mailto:dennis.l.bryant@gmail.com)

Internet

<http://brymar-consulting.com/>

Maritime Reporter & Engineering News

<http://marinelink.com/en-US/magazines/Archive.aspx?MID=3>

eligible for funding through this mechanism would include, among others, a project whose primary purpose is improving the movement of goods in interstate commerce; a project that enhances or expands freight rail service; a project that mitigates environmental damage to air, water, and soil caused by the movement of goods; and a project to improve cargo inspection, screening, and security training for workers. Certainly, projects in seaports would meet these standards, but so would projects that have no connection therewith.

Close analysis of the proposed source of the National Goods Movement Improvement Fund reveals that this legislation would basically hijack and fundamentally alter the Harbor Maintenance Trust Fund (HMTF). The bill provides that 71.43% of the HMTF would be appropriated to the new NGMIF. It further provides that the Harbor Maintenance Tax (HMT) assessment rate would rise from 0.125% of the value of the cargo to 0.4375% of the value of the cargo, but would be imposed only on imported cargo (although cargo that originated in either Canada or Mexico would be exempt). The HMT would also be imposed on cargoes landed in Canada or Mexico and brought into the United States by truck or rail. The European Union (among others) has been dissatisfied for years with the HMT, contending that it violated first the General Agreement on Trade and Tariffs (GATT) and now the World Trade Organization (WTO) provisions regarding non-discrimination. The foreign governments have held back from filing a formal objection, acknowledging that most (but not all) of the HMT funds went into actual harbor maintenance projects and that the cost was equitably shared by both foreign and domestic shippers. This proposed legislation, if enacted into law, would eliminate any rationale for foreign governments to exercise continued forbearance. It is nothing more than an attempt to impose a duty on goods imported into the United States by ship to pay for projects largely unrelated to the ships carrying the goods or the ports at which they call.

The United States Constitution provides that no state shall, without the consent of Congress, lay any duty of tonnage. This prohibition extends to all taxes and duties that, in effect, are charges for calling at the port. It does not, though, prohibit states and local government entities from charging for services actually rendered, such as pilotage, towage, and lading of cargo. The goal of the framers of the Constitution was to prevent states and local governments from disadvantaging interstate and foreign commerce by imposing taxes and duties on that commerce largely for the benefit of the local citizenry and for the purpose of giving local commerce an edge over out-of-state or foreign commerce. This had been a problem during the period shortly after the Revolutionary War, when the states were operating under the Articles of Confederation. The reason that interstate and foreign commerce needs this Constitutional protection is that such commercial interests don't vote in state and local elections.

Maritime commerce is a highly efficient, but largely hidden, industry. On the rare occasions when an average citizen sees a modern merchant vessel, he or she is unlikely to be appreciating how it transports large quantities of goods at historically low freight rates. Rather, that person is probably concerned about potential pollution, because that is virtually the only maritime news in the general media. Therefore, the tendency is that this person will support a state or local tax or duty that transfers some of the burden of paying for governance from the local populace to a stranger.

This commonly-attempted ploy of milking the maritime cow is counterproductive in the long run because it has uneconomical costs and breeds systemic inefficiencies, as well as having unintended consequences. The courts are right when they put a stop to these efforts. It is hoped that members of Congress will recognize the proposed MOVEMENT Act for what it is, another attempt to increase revenues by milking the maritime cow through another means.

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