

Joint Committee on Taxation
March 30, 1992
JCX-14-92

COMMITTEE ON WAYS AND MEANS

ACTION TO AUTHORIZE FURTHER AMENDMENT TO

H.R. 2056

(SHIPBUILDING TRADE REFORM ACT OF 1992)

I. Legislative Background and Summary

Legislative background of H.R. 2056

H.R. 2056 was reported on November 4, 1991 (H. Rept. 102-284, Part 1), by the Committee on Ways and Means ("Ways and Means"), and was sequentially referred to the Committee on Merchant Marine and Fisheries ("Merchant Marine"). Merchant Marine ordered the bill reported on March 6, 1992, with an amendment as a substitute (H. Rept. 102-284, part 2). As originally reported by Ways and Means, H.R. 2056 would amend the Tariff Act of 1930 to require that a document certifying that a vessel is subsidy free be provided as a condition of entry of that vessel into customs collection districts and to provide remedies under the countervailing and antidumping laws against foreign-built ships that are subsidized or dumped.

Summary of H.R. 2056 as reported by Merchant Marine

Merchant Marine approved five changes to H.R. 2056. First, with respect to the provisions of H.R. 2056 that provide trade remedies against subsidized and dumped foreign commercial ships, the bill as reported by Merchant Marine includes a number of changes related to the effective date, a listing by the Secretary of Commerce of subsidized foreign shipyards, repairs, agreements with foreign nations, and certain maritime promotion programs.

Second, as reported by Merchant Marine, the bill includes a phased repeal, beginning in fiscal year 1993, of the annual Coast Guard recreational boat user fee ("boat user fee") imposed by section 10401 of the Omnibus Budget Reconciliation Act of 1990 ("1990 Act").

Third, as reported by Merchant Marine, the bill includes a provision intended to raise offsetting revenues for the phased repeal of the boat user fee by imposing a fee on persons directly or indirectly electronically using certain tariff information available from the Federal Maritime

Commission ("FMC"), effective on June 1, 1992 (the "FMC access fee").

Fourth, as reported by Merchant Marine, the bill establishes a Strategic Sealift Fund ("Sealift Fund") in the Treasury. Amounts raised by the FMC access fee in excess of FMC requirements for the electronic data base would be credited to the Sealift Fund to be available for future authorizations for U.S. sealift requirements.

Fifth, as reported by Merchant Marine, the bill expands the definition of vessels eligible for the capital construction fund provisions of the Merchant Marine Act, 1936 and the Internal Revenue Code of 1986 to include certain vessels constructed or reconstructed in foreign ports.

II. Present Law

A. Trade Matters

Part II of title IV of the Tariff Act of 1930, as amended (19 U.S.C. 1431 et seq.) establishes the rules and procedures for the report, entry, and unloading of vessels and vehicles. Sections 433-435 of that Act provide the requirements for the arrival and entry of American and foreign vessels. Under these provisions, the general rule is that the master of any foreign vessel, or of any American vessel arriving from a foreign port or place, arriving at a United States port must make formal entry of the vessel at the customhouse within 48 hours of arrival.

Title VII of the Tariff Act of 1930, as amended, authorizes the imposition of antidumping or countervailing duties on foreign merchandise that is being sold at less than its fair value or is subsidized, when such imports are causing material injury to a domestic industry. However, vessels are not considered merchandise for purposes of Title VII and are therefore not covered by the antidumping and countervailing duty laws.

B. Revenue Matters

Boat user fee

Under the 1990 Act, the Secretary of Transportation is directed to establish a "fee or charge" to be collected annually in fiscal years 1991-1995 from owners or operators of "recreational vessels" greater than 16 feet in length. The boat user fee is to be imposed as follows: (a) for vessels of greater than 16 feet but less than 20 feet, not more than \$25; (b) for vessels of 20 feet but less than 27 feet, not more than \$35; (c) for vessels of 27 feet but less than 40 feet, not more than \$50; and (d) for vessels of 40 feet or more, not more than \$100.

The Coast Guard issued rules implementing the boat user fee, at the maximum levels allowed under the 1990 Act, effective July 31, 1991. Subject to several exemptions provided by the 1990 Act and/or by the Coast Guard rules, the boat user fee applies to vessels operated on the navigable waters of the United States where the Coast Guard has a presence. Among the exempt vessels are: manually powered boats (e.g., canoes, kayaks, and rafts), public vessels (e.g., State and local government vessels), sailboard, vessel tenders, unpowered houseboats, and vessels of nonprofit organizations.

Revenues from the boat user fee are deposited in the General Fund of the Treasury as offsetting receipts for Coast Guard activities.

FMC access fee

Water common carriers in United States foreign and domestic offshore shipping are required to file tariffs with the Federal Maritime Commission. These tariffs and service contracts are currently filed on paper.

In recent years, the FMC has been designing a computer system to allow water common carriers to file the tariffs electronically. This computer system is known as the Automated Tariff Filing and Information System ("ATFI"). The electronically filed tariff information will be the information currently required to be filed under section 8(a)(1) of the Shipping Act of 1984 (46 App. U.S.C. 1707), and includes all rates, charges, classifications, rules and practices assessed by a carrier between all points or ports on a route and any through transportation rate a carrier has established.

It is understood that the FMC plans to sell this tariff data to persons in bulk. Commercial vendors then could resell the information to carriers, shippers, and freight forwarders. The information also could be obtained from the FMC by remote computer access.

Sealift funding

The sealift needs of the United States Government currently are funded through General Fund appropriations.

Capital construction funds

In determining taxable income for regular tax purposes, a qualified taxpayer who owns or leases a qualified vessel is allowed a deduction for certain amounts contributed to a "capital construction fund" ("CCF") established under section 607 of the Merchant Marine Act, 1936. In addition, the investment earnings on amounts contributed to a CCF are excluded from gross income for regular tax purposes.

If a withdrawal from a CCF is used to acquire, construct or reconstruct a qualified vessel, the amount withdrawn generally is not included in gross income and the basis of the qualified vessel is reduced by the amount withdrawn to the extent attributable to amounts previously deducted or excluded from income. In the case of any other withdrawal from a CCF, the amount withdrawn generally is included in gross income to the extent attributable to amounts previously deducted or excluded from income and interest on the tax liability attributable to such inclusion generally must be paid from the date of the deduction or exclusion.

A qualified vessel generally is any vessel constructed or reconstructed in the United States and documented under the laws of the United States. In addition, the person maintaining the CCF must agree with the Secretary (of Commerce or Transportation) that the vessel will be operated in the United States foreign trade, Great Lakes trade, noncontiguous domestic trade, or in the fisheries of the United States.

C. Budget Matters

The Budget Enforcement Act of 1990 ("1990 Act") amended the 1985 Balanced Budget and Emergency Deficit Control Act to establish new budget scorekeeping rules for legislation with budgetary consequences. The 1990 Act subjects discretionary spending for 1991 through 1995 to specified dollar maximums ("caps"). Increases in discretionary spending may not be offset by higher taxes or fees under the new budget rules.

Direct spending programs (entitlements and other mandatory spending) may be increased only if the increases are offset in each year by lower direct spending in other programs or by higher taxes or fees ("pay-as-you-go scorekeeping"). Under the pay-as-you-go scorekeeping regime, if direct spending increases or revenue losses are not offset within the pay-as-you-go accounts, a sequester (automatic reduction) in these accounts will occur at the end of the fiscal year.

III. Prior Ways and Means Consideration

A. Trade Matters (H.R. 2056)

H.R. 2056 was reported with amendments by Ways and Means on November 4, 1991.

As reported by Ways and Means, the bill amends Title IV of the Tariff Act of 1930 to require the master of a vessel to present a subsidy certification to the U.S. Customs Service as a condition of formal entry of the vessel. This customs document would certify that any construction, reconstruction, or repair carried out with respect to the vessel meets one of several criteria, which would in essence assure that the vessel was free of any foreign construction or repair subsidy.

The bill establishes procedures for obtaining certifications, and for investigations by the Secretary of Commerce to ascertain whether a subsidy, in the context of this certification requirement, has been granted or provided to a particular vessel. The Customs Service would collect the certification from the master of a vessel at the time of formal entry. False certification may lead to civil and criminal penalties under section 436 of the Tariff Act, as well as payment to the U.S. Treasury for the amount of subsidies received.

The bill also amends Title VII of the Tariff Act of 1930, as amended, to authorize the application of countervailing or antidumping duties to purchases of dumped or subsidized vessels by U.S. persons.

B. Revenue/Budget Matters (H.R. 534)

On October 22, 1991, Ways and Means reported, with amendments, H.R. 534 (H. Rept. 102-182, Part 2), which had been sequentially referred from Merchant Marine.

As reported by Merchant Marine on August 1, 1991 (H. Rept. 102-182, Part 1), H.R. 534 would have repealed the boat user fee for fiscal years after 1992, and would have provided for an FMC access fee of 35 cents per minute of direct or indirect use of the FMC's automated tariff system. The Ways and Means amendment to the bill would repeal the boat user fee, effective for fiscal years after 1992, subject to provisions protecting against a sequester. These provisions would--

- (1) Provide that repeal of the boat user fee would not be effective, or that the fee would only be repealed in part, for any fiscal year in which the official cost estimate of H.R. 534, as enacted, otherwise

would result in a net increase in the deficit under the pay-as-you-go rules of the 1990 Act;

- (2) Direct the Coast Guard to announce a boat user fee schedule to raise revenues sufficient to offset the projected deficit increase for each fiscal year for which such an increase in the deficit is projected; and
- (3) Direct the Coast Guard to set a fee schedule that eliminates the boat user fee for categories of smaller boats entirely before reducing fees for categories of larger boats.

The Ways and Means action also approved the FMC access fee included in the Merchant Marine-reported bill, but provided that the fee would be reduced after September 30, 1995, to an amount not exceeding the amount necessary to offset the direct costs incurred by the FMC in providing access to automated FMC tariff data and would not be imposed on secondary uses of the data after that date.

Revenues from the FMC access fee would be retained in the General Fund (i.e., the provisions of H.R. 534, as reported by Merchant Marine, creating the Sealift Fund would be deleted).

IV. Description of Provisions in H.R. 2056 as Reported by Merchant Marine

A. Trade Matters

H.R. 2056 as reported by Merchant Marine includes a number of changes related to the effective date, a listing by the Secretary of Commerce of subsidized foreign shipyards, repairs, agreements with foreign nations, and certain maritime promotion programs.

As for the effective date, the bill makes it clear that all aspects of the bill are prospective as of the date of enactment of the bill and that all vessels in service as of the date of enactment are grandfathered with respect to previous construction and repair subsidies.

Regarding the listing of subsidized foreign shipyards, the Secretary of Commerce is to establish and publish such a list so as to give vessel owners advance notice of subsidy payback requirements before they enter into construction contracts. A vessel operator or owner is free to construct a vessel in any non-listed (nonsubsidized) shipyard without subjecting himself to the sanctions of the bill.

Concerning repairs, vessel owners must post a bond or other surety if they have repairs in shipyards listed by the Secretary. Upon the filing of the surety, the vessel is free to clear Customs as originally scheduled. The administering authority is to determine the actual amount of the subsidy to be repaid, with the surety guaranteeing that payment.

As for agreements with foreign nations, if the United States signs an agreement with another nation to eliminate shipbuilding subsidies, the certification provisions of this bill will not apply to vessels built or repaired in that nation.

Finally, with respect to maritime promotion programs, the bill, as reported by Merchant Marine, amends various promotional programs--including the capital construction fund, the operating-differential subsidy, and Title XI shipbuilding loan guarantees--so that owners can use these programs to purchase vessels from any shipyard not listed by the Secretary. (See below for further discussion on the capital construction fund.)

B. Revenue Matters

Boat user fee repeal

H.R. 2056, as reported by Merchant Marine, provides a phased repeal of the boat user fee effective for fiscal years after 1992.

Under the Merchant Marine amendment, the boat user fee would be imposed as follows:

<u>Boat Length</u>	<u>Amount</u>
<u>Fiscal year 1993</u>	
19 feet, but less than 20 feet	not more than \$25/year
20 feet, but less than 27 feet	not more than \$35/year
27 feet, but less than 40 feet	not more than \$50/year
40 feet or more	not more than \$100/year
<u>Fiscal year 1994</u>	
25 feet, but less than 27 feet	not more than \$25/year
27 feet, but less than 40 feet	not more than \$50/year
40 feet or more	not more than \$100/year
<u>Fiscal year 1995</u>	
65 feet or more	not more than \$100/year

FMC access fee

H.R. 2056, as reported by Merchant Marine, would require water common carrier tariffs to be filed electronically, and would impose a fee of 35 cents for each minute of remote computer access to the information in the ATFI. Purchases of the entire database in the ATFI would be allowed. If the purchased information were then resold or otherwise disseminated ("secondary use"), the 35 cents per minute fee would apply for each separate computer access to the information. There would be no charge for filing of the tariffs with the FMC. Federal agencies would be exempt from the fee. The FMC would be authorized to establish an alternative schedule of such fees that would result in equivalent receipts.

The bill also would allow the FMC to retain the amount of fees collected necessary to carry out its requirements under the bill. Any excess fees collected would be deposited in a new Sealift Fund (see below).

Sealift Fund

H.R. 2056, as reported by Merchant Marine, provides that any receipts collected under the FMC access fee in excess of amounts for FMC administrative requirements under the bill would be deposited in the General Fund of the Treasury, as offsetting receipts, to be transferred to a new Sealift Fund. Monies in the Sealift Fund would be available, subject to future authorization for appropriation, to the Department of Transportation to (1) provide a manpower base for vessels in

the Ready Reserve Fleet and (2) meet the sustainment sealift requirements of the United States.

Capital construction funds

Section 106(b) of H.R. 2056, as reported by Merchant Marine, amends section 607 of the Merchant Marine Act, 1936, to provide that the definition of a qualified vessel that is eligible to participate in a CCF is to include a vessel that is constructed or reconstructed in a foreign shipyard under a contract entered into after October 16, 1991. In addition, in order to be qualified, such vessel must have been issued a construction subsidy certification under section 435B of the Tariff Act of 1930 (as added by H.R. 2056). It is understood that no vessels presently qualify for such certification. H.R. 2056 also amends section 7518(i) of the Internal Revenue Code of 1986 to cross-reference the changes described above. This cross-reference is necessary to provide the tax benefits associated with CCFs to the vessels that meet the expanded definition of qualified vessels.

C. Budget Matters

As reported by Merchant Marine, the FMC access fee revenues likely would not be sufficient to offset the estimated revenue loss from repeal of the boat user fee in fiscal years 1994 and 1995 under the estimate of the bill by the Office of Management and Budget ("OMB"). Thus, if the bill as reported by Merchant Marine were enacted, an OMB-declared sequester potentially would result.

V. Possible Options

A. Trade Matters

Authorize the Chairman to request the Committee on Rules to present for floor consideration Title I of the H.R. 2056 as reported by Merchant Marine (with the deletion of section 106(b) relating to CCFs, as discussed further below).

Title I as reported by Merchant Marine incorporates the amendments of both Ways and Means and Merchant Marine.

B. Revenue Matters

Authorize the Chairman to request the Committee on Rules to include in the amendment to H.R. 2056 the following:

Boat user fee repeal

Provide a phased repeal of the boat user fee beginning in fiscal year 1993, so that for fiscal years 1993 and 1994 the fee would be imposed under the following schedule--

<u>Boat Length</u>	<u>Amount</u>
<u>Fiscal year 1993</u>	
More than 21 feet, but less than 27 feet	not more than \$35/year
27 feet, but less than 40 feet	not more than \$50/year
40 feet or more	not more than \$100/year
<u>Fiscal year 1994</u>	
More than 37 feet, but less than 40 feet	not more than \$50/year
40 feet or more	not more than \$100/year

No boats would be required to pay the fee in fiscal year 1995 or thereafter.

FMC access fee and Sealift Fund

Adopt the FMC access fee included in H.R. 2056, as reported by Merchant Marine, except--

- (1) Increase the FMC access fee from 35 cents per minute to 46 cents per minute (to provide sufficient revenue to offset the phased repeal of the boat user fee and to prevent a possible sequester);

- (2) Provide that the FMC access fee expires after September 30, 1995 (to correspond with the present-law expiration of the boat user fee after fiscal year 1995); and
- (3) Retain the revenues from the FMC access fee in the General Fund, and delete the provisions of the bill as reported by Merchant Marine that create a Sealift Fund (to reflect the fact that the boat user fee revenues, which the FMC access fee is to offset, are retained in the General Fund).

Capital construction funds

Delete the provision in the bill as reported by Merchant Marine (sec. 106(b)) relating to the CCFs.