

**WATER RESOURCES CONSERVATION, DEVELOPMENT, AND
INFRASTRUCTURE IMPROVEMENT AND REHABILITATION
ACT OF 1985**

SEPTEMBER 23, 1985.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. JONES of North Carolina, from the Committee on Merchant
Marine and Fisheries, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 6]

[Including cost estimate of the Congressional Budget Office]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 6) to provide for the conservation and development of water and related resources and the improvement and rehabilitation of the Nation's water resources infrastructure, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

On page 23, line 13, strike "Final EIS and".

On page 23, line 19, strike "final environmental impact statement required by section 102(2)(C) of the National Environmental Policy Act of 1969, and any".

On pages 24-30, strike section 104 and substitute a new section 104 to read as follows:

SEC. 104. DESIGN AND CONSTRUCTION OF PROJECTS BY NON-FEDERAL INTERESTS.

(a) **DESIGNING AND PLANNING.**—(1) **SUBMISSION TO SECRETARY.**—A non-Federal interest may plan and design a port navigation project not authorized by Federal law and

submit the plan and design to the Secretary for review under paragraph (2) of this subsection.

(2) **REVIEW BY SECRETARY.**—The Secretary shall review each plan and design submitted under paragraph (1) of this subsection to determine whether the plan and design and the process under which the plan and design were developed comply with Federal laws and regulations applicable to the planning and designing by the Secretary of a port navigation project.

(3) **SUBMISSION TO CONGRESS.**—Not later than 180 days after receiving a plan and design submitted under paragraph (1) of this subsection, the Secretary shall transmit to the Congress, in writing, the results of the review and any recommendations the Secretary may have concerning the project described in the plan and design.

(4) **CREDIT AND REIMBURSEMENT.**—If a project for which a plan and design have been submitted under paragraph (1) of this subsection is authorized by Federal law enacted after the date of the submission, the Secretary shall credit toward the non-Federal share of the cost of construction of the project an amount equal to the portion of the cost of developing the plan and design that would be the responsibility of the United States if the plan and design were developed by the Secretary. If the amount of the portion exceeds the non-Federal share, the Secretary shall reimburse the non-Federal interest for the amount of the excess. The reimbursement is subject to appropriation of funds.

(b) **CONSTRUCTION AND ACQUISITION OF LANDS.—(1) APPROVAL OF PLANS; COST SHARING AGREEMENTS.**—A non-Federal interest may—

(A) construct, in whole or in part, a port navigation project authorized by this title or another Federal law enacted before, on, or after the date of enactment of this title, and for which appropriations may be made for acquisition of interests in real property and actual construction; and

(B) acquire lands for disposal of dredged material, and relocate utilities, structures, and other improvements, necessary for the construction;

if the Secretary first approves the plans for construction of the project by the non-Federal interest, and if the non-Federal interest enters into an agreement to pay the non-Federal share of the cost of operation and maintenance of the project.

(2) **MONITORING.**—The Secretary shall regularly monitor and audit a port navigation project being constructed under this subsection by a non-Federal interest to ensure that the construction is in compliance with the plans approved by the Secretary.

(3) **REIMBURSEMENT.**—Subject to appropriation of funds, the Secretary shall reimburse any non-Federal interest for the Federal share of the cost of a port navigation project carried out substantially in accordance with the plans approved by the Secretary under this section.

(c) **COORDINATION AND SCHEDULING OF FEDERAL, STATE, AND LOCAL ACTIONS.**—(1) **NOTICE OF INTENT.**—The Secretary, on request from an appropriate non-Federal interest in the form of a written notice of intent to construct a port navigation project, under subsection (b) of this section or under this subsection, shall initiate procedures to establish a schedule for consolidating Federal, State, and local agency environmental assessments, project reviews, and issuance of all permits for the construction of the project, including associated access channels and berthing areas, and onshore improvements, before the initiation of construction. The non-Federal interest shall submit with the notice of intent studies and documentation, including environmental reviews, that may be required by Federal law for decision making on the proposed project.

(2) **PROCEDURAL REQUIREMENTS.**—Within 15 days of receiving the notice under paragraph (1) of this subsection, the Secretary shall publish that notice in the Federal Register. When the Secretary receives the notice under paragraph (1) of this subsection, the Secretary shall notify, in writing, all State and local agencies that may be required to issue permits for the construction of the port navigation project or related activities. The Secretary shall solicit the cooperation of those agencies and request they enter into a memorandum of agreement described in paragraph (3) of this subsection. Within 30 days after the notice is published in the Federal Register, State and local agencies that intend to enter into the memorandum of agreement shall notify the Secretary of their intent in writing.

(3) **SCHEDULING AGREEMENT.**—Within 90 days of receiving the notice under paragraph (1) of this subsection, the Secretary of the Interior, the Secretary of Commerce, the Administrator of the Environmental Protection Agency, and any State or local agencies that have notified the Secretary under paragraph (2) of this subsection shall enter into an agreement with the Secretary establishing a schedule for approving the port navigation project, required permits, and related activities. The schedule may not exceed two and one-half years from the date of the agreement.

(4) **CONTENTS OF AGREEMENT.**—The agreement entered into under paragraph (3) of this subsection, to the extent practicable, shall consolidate hearing and comment periods, procedures for data collection and report preparation, and the environmental review and permitting processes associated with the project and related activities. The agreement shall detail, to the extent practicable, the non-Federal interest's responsibilities for data development and information that may be necessary to process each permit, including a schedule when the information and data will be provided to the appropriate Federal, State, or local agency.

(5) **PRELIMINARY DECISION.**—The agreement shall include a date by which the Secretary, taking into consideration the views of all affected Federal agencies, shall provide to

the non-Federal interest in writing a preliminary determination whether the port navigation project and Federal permits associated with it are reasonably likely to receive approval.

(6) **REVISION OF AGREEMENT.**—The Secretary may revise the agreement once to extend the schedule to allow the non-Federal interest the minimum amount of additional time necessary to revise its original application to meet the objections of a Federal, State, or local agency that is a party to the agreement.

(7) **PROGRESS REPORT.**—Six months before the final date of the schedule, the Secretary shall provide to Congress a written progress report for each port navigation project subject to this section. The Secretary shall transmit the report to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate. The report shall summarize all work completed under the agreement and shall include a detailed work program that will assure completion of all remaining work under the agreement.

(8) **FINAL DECISION.**—Not later than the final day of the schedule, the Secretary shall notify the non-Federal interest of the final decision on the approval of the port navigation project and related permits.

(9) **REPORT ON TIMESAVINGS METHODS.**—Not later than one year after the date of enactment of this Act, the Secretary shall prepare and transmit to Congress a report estimating the time required for the issuance of all Federal, State, and local permits for the construction of port navigation projects and associated activities. The Secretary shall include in that report recommendations for further reducing the amount of time required for the issuance of those permits, including any proposed changes in existing law.

(d) **NONAPPLICABILITY TO SAINT LAWRENCE SEAWAY.**—This section does not apply to a port navigation project for that portion of the Saint Lawrence Seaway administered by the Saint Lawrence Seaway Development Corporation.

On page 32, lines 21 and 22, strike “(including dredged spoil disposal areas)”.

On page 33: on line 2, add at the end, “For purposes of this section, ‘lands, easements, and rights-of-way’ include dredged spoil disposal areas.”; on lines 7 and 8, strike “(including dredged spoil disposal areas)”;

and on lines 23 and 24, strike “(including dredged spoil disposal areas)”.

On page 34, after line 25, add:

(7) Notwithstanding another law, the cost of removal, alteration, and reconstruction of the armor (protective covering) of an existing bridge tunnel attendant to dredging a channel deeper than 45 feet for a port navigation project authorized by this Act or by the Supplemental Appropriations

Act, 1985 (P.L. 99-88, 99 Stat. 293) shall be borne by the Secretary.

(8) Notwithstanding another provision of this Act, the non-Federal share for projects authorized prior to 1985 shall be fully credited for the acquisition, construction, and operation of lands, easements, rights-of-way, and dredged spoil disposal sites that were constructed to comply with the terms of the original authorization and related purposes.

On page 36, line 25, after "port," insert "including reasonable mitigation measures,".

On page 38-43, strike section 107 and substitute a new section 107 to read as follows:

SEC. 107. GUARANTEE OF OBLIGATIONS TO FINANCE PORT PROJECTS.

(a) **AUTHORITY OF SECRETARY TO GUARANTEE OBLIGATIONS.**—On application by the appropriate non-Federal interest and notwithstanding another law, the Secretary may guarantee the payment of the interest on, and the unpaid balance of the principal of, an obligation issued by a non-Federal interest to finance a port navigation project that—

(1)(A) is authorized by this title or by another Federal law; and

(B) is subject to a requirement for non-Federal contribution to the cost of project construction, operation, and maintenance under section 105 of this Act; or

(2) is constructed with the approval of the Secretary under section 104 of this Act.

(b) **AMOUNT OF GUARANTEES.**—The Secretary may guarantee 90 percent of the principal of that obligation.

(c) **FULL FAITH AND CREDIT.**—The full faith and credit of the United States Government is pledged to the payment of a guarantee made under this section, including interest as provided for in the guarantee accruing between the date of default on a guaranteed obligation and the payment in full of the amount guaranteed.

(d) **REIMBURSEMENT OF CERTAIN INTEREST COSTS.**—Subject to appropriation of funds, the Secretary may reimburse a non-Federal interest for not more than one-half of the interest cost incurred by the non-Federal interest on an obligation that is guaranteed under subsection (a) of this section and the interest on which is subject to Federal income taxes during the period of construction and until the level of project-derived revenues equals those amounts necessary to make payments of principal and interest on those obligations.

(e) **INCONTESTABILITY OF GUARANTEE.**—A guarantee made by the Secretary under this section is conclusive evidence of the eligibility of the obligation for that guarantee. The validity of a guarantee is incontestable.

(f) **LIMITATION ON AMOUNTS GUARANTEED.**—The unpaid principal amount of the obligations that are guaranteed, or for which commitments to guarantee have been entered into, under this section and that are outstanding at any time may not exceed \$1,000,000,000.

(g) **FEES.**—The Secretary shall assess a guarantee fee of not less than one-quarter of one percent per year of the average principal amount of a guaranteed obligation outstanding under this section.

(h) **FEDERAL PORT NAVIGATION PROJECT FINANCING FUND.**—(1) The Federal Port Navigation Project Financing Fund is established in the Treasury of the United States.

(2) The Secretary:

(A) shall deposit amounts received under subsection (g) of this section in the Fund;

(B) shall pay an amount required to be paid under subsection (i) of this section from the Fund in cash, subject to appropriations;

(C) may use amounts from the Fund to redeem notes and obligations issued under subsection (i) of this section;

(D) shall invest amounts in the Fund not needed for current withdrawals in bonds or other obligations of, or guaranteed as to principal and interest by, the Federal Government; and

(E) may deposit amounts borrowed under this section in the Fund.

(i) **DEFAULTS.**—

(1) **DEMAND FOR PAYMENT.**—When a default has continued for thirty days in a payment by the obligor of principal or interest due under an obligation guaranteed under this title—

(A) the Secretary may assume the obligor's rights and duties under the guarantee or related agreement before a demand is made under subparagraph (B) of this paragraph; or

(B) the obligee or the obligee's agent, not later than the period specified in the guarantee or related agreement (but not later than ninety days from the date of the default), may demand payment by the Secretary of the unpaid principal amount of that obligation and the unpaid interest on the obligation to the date of payment, except when the Secretary—

(i) has assumed the obligor's rights under subparagraph (A) of this paragraph and the Secretary has made the payments in default;

(ii) finds there was not a default by the obligor in the payment of principal or interest; or

(iii) finds that the default has been remedied before the demand.

(2) **BORROWING AUTHORITY.**—

(A) When the amounts in the Fund are not sufficient to pay an amount the Secretary is required

to pay under this subsection, the Secretary may issue to the Secretary of the Treasury notes or other obligations. The notes or obligations:

- (i) may be in any form;
- (ii) may be in any denomination;
- (iii) may bear any maturities;
- (iv) are subject to any terms and conditions prescribed by the Secretary;

(v) shall be approved by the Secretary of the Treasury; and

(vi) shall bear interest at a rate the Secretary of the Treasury decides, taking into consideration the current average market yield on outstanding marketable obligations of the Federal Government of comparable maturities during the month preceding the issuance of those notes or obligations.

(B) After the Secretary of the Treasury approves the notes and obligations, the Secretary:

(i) shall purchase the notes and obligations issued under paragraph (2)(A) of this subsection;

(ii) may use the proceeds from securities issued under chapter 31 of title 31, United States Code to purchase the notes and obligations; and

(iii) may sell the notes or obligations the Secretary acquires under this section.

(C) All redemptions, purchases, and sales by the Secretary of the Treasury of the notes or obligations are public debt transactions of the Federal Government.

(3) **ACTIONS BY SECRETARY.**—For a default under a guaranteed obligation or a related agreement, the Secretary shall take any action against the obligor or any other liable parties that the Secretary believes is required to protect the interests of the Federal Government. A suit may be brought in the name of the Federal Government or in the name of the obligee. The obligee shall make available to the Federal Government all records and evidence necessary to prosecute that suit. The Secretary may accept a conveyance of title to and possession of property from the obligor or other parties liable to the Secretary. The Secretary may purchase the property for an amount not to exceed the unpaid principal amount of the obligation and interest. If the Secretary receives, through the sale of property, money in excess of a payment made to an obligee under this section and the expenses of collection of those amounts, the Secretary shall pay that excess to the obligor.

On pages 43-49, strike section 109 and substitute a new section 109 and a new section 110 to read as follows:

SEC. 109. PORT OR HARBOR DUES.

(a) **CONSENT OF CONGRESS.**—Subject to the following conditions, a non-Federal interest may levy port or harbor dues (in the form of tonnage duties or fees) on a vessel engaged in trade entering or departing from a port and on cargo loaded on or unloaded from that vessel under clauses 2 and 3 of section 10, and under clause 3 of section 8, of article 1 of the Constitution:

(1) **PURPOSES.**—Port or harbor dues may be levied only in conjunction with a port navigation project whose construction is complete (including a usable increment of the project) and for the following purposes and in amounts not to exceed those necessary to carry out those purposes:

(A)(i) to recover the non-Federal share of the cost of construction and operation and maintenance of a port navigation project under the requirements of section 105 of this Act; or

(ii) to finance the cost of construction and operation and maintenance of a port navigation project under section 104(b) or 104(c) of this Act, less any reimbursements by the United States Government; and

(B) to provide emergency response services in the port, including contingency planning, necessary personnel training, and procurement of equipment and facilities, less any reimbursements by the United States Government.

(2) **LIMITATIONS ON PORT OR HARBOR DUES FOR EMERGENCY SERVICE.**—Port or harbor dues may not be levied for the purposes described in paragraph (1)(B) of this subsection after the dues cease to be levied for the purposes described in paragraph (1)(A) of this subsection.

(3) **GENERAL LIMITATIONS.**—(A) Port or harbor dues may be levied only on a vessel entering or departing from a port and its cargo if the vessel—

(i) requires a channel with a depth of more than 14 feet in the case of a port navigation project greater than 14 feet and not greater than 20 feet in depth;

(ii) requires a channel with a depth of more than 20 feet in the case of a port navigation project greater than 20 feet and not greater than 45 feet in depth; and

(iii) requires a channel with a depth of more than 45 feet in the case of a port navigation project in excess of 45 feet in depth.

(B) Port or harbor dues may not be levied on a vessel entering or departing from a port and its cargo if the vessel—

(i) is engaged in intraport movement; or

(ii) is owned and operated by the United States Government, a foreign country, a State, or a polit-

ical subdivision of a country or State, unless engaged in commercial service.

(4) **FORMULATION OF PORT OR HARBOR DUES.**—Port or harbor dues may be levied only on a vessel entering or departing from a port and its cargo on a fair and equitable basis. In formulating port and harbor dues, the non-federal interest shall consider—

(A) the direct and indirect cost of construction, operations, and maintenance, and providing the facilities and services under paragraph (1) of this subsection;

(B) the value of those facilities and services to the vessel and cargo;

(C) the public policy or interest served; and

(D) any other pertinent factors.

(5) **NOTICE AND HEARING.**—(A) Before the initial levy of or subsequent modification to port or harbor dues under this section, a non-Federal interest shall transmit to the Secretary—

(i) the text of the proposed law, regulation, or ordinance that would establish the port or harbor dues, including provisions for their administration, collection, and enforcement;

(ii) the name, address, and telephone number of an official to whom comments on and requests for further information on the proposal are to be directed;

(iii) the date by which comments on the proposal are due and a date for a public hearing on the proposal at which any interested party may present a statement; however, the non-Federal interest may not set a hearing date earlier than 45 days after the date of publication of the notice in the Federal Register required by subparagraph (B) of this paragraph or set a deadline for receipt of comments earlier than 60 days after the date of publication; and

(iv) a written statement signed by an appropriate official that the non-Federal interest agrees to be governed by the provisions of this section.

(B) On receiving from a non-Federal interest the information required by subparagraph (A) of this paragraph, the Secretary shall transmit the information required by clauses (i) through (iii) of subparagraph (A) of this paragraph to the Federal Register for publication.

(C) Port or harbor dues may be imposed by a non-Federal interest only after meeting the conditions of this paragraph.

(6) **REQUIREMENTS ON NON-FEDERAL INTEREST.**—A non-Federal interest shall—

(A) file a schedule of any port or harbor dues levied under this subsection with the Federal

Maritime Commission which the Commission shall make available for public inspection;

(B) provide to the Comptroller General of the United States on request of the Comptroller General any records or other evidence that the Comptroller General considers to be necessary and appropriate to enable the Comptroller General to carry out the audit required under subsection (b) of this section;

(C) designate an officer or authorized representative, including the Secretary of the Treasury acting on a cost-reimbursable basis, to receive any documents that the non-Federal interest may by law, regulation, or ordinance require for the imposition, computation, and collection of port or harbor dues; and

(D) consent expressly to the exclusive exercise of Federal jurisdiction under subsection (c) of this section.

(b) AUDITS.—The Comptroller General of the United States shall—

(1) carry out periodic audits of the operations of non-Federal interests that elect to levy port or harbor dues under this section to determine if the conditions of subsection (a) of this section are being complied with;

(2) submit to each House of the Congress a written report containing the findings resulting from each audit; and

(3) make any recommendations that the Comptroller General considers appropriate regarding the compliance of those non-Federal interests with the requirements of this section.

(c) JURISDICTION.—(1) The district court of the United States for the district in which is located a non-Federal interest that levies port or harbor dues under this section has original and exclusive jurisdiction over any matter arising out of or concerning, the imposition, computation, collection, and enforcement of port or harbor dues by a non-Federal interest under this section.

(2) On petition of the Attorney General or any other party, that district court may—

(A) grant appropriate injunctive relief to restrain an action by that non-Federal interest violating the conditions of consent in subsection (a) of this section;

(B) order the refund of any port or harbor dues not lawfully collected; and

(C) grant other appropriate relief or remedy.

(d) ENFORCEMENT.—At the request of an authorized representative referred to in subsection (a)(6) of this section, the Secretary of the Treasury may:

(1) withhold the clearance required by section 4197 of the Revised Statutes of the United States (46 App. U.S.C. 91) for a vessel if the master, owner, or operator of a vessel subject to port or harbor dues under this

section fails to comply with the provisions of this section including any non-Federal law, regulation or ordinance issued hereunder; and

(2) assess a penalty or initiate a forfeiture of the cargo in the same manner and under the same procedures as are applicable for failure to pay customs duties under the Tariff Act of 1930 (19 App. U.S.C. 1202 et. seq.) if the shipper, consignor, consignee, or terminal operator having title to or custody of cargo subject to port or harbor dues under this section fails to comply with the provisions of this section including any non-Federal law, regulation, or ordinance issued hereunder.

(e) **MARITIME LIEN.**—Port or harbor dues levied under this section against a vessel constitute a maritime lien against the vessel and port or harbor dues levied against cargo constitute a lien against the cargo that may be recovered in an action in the district court of the United States for the district in which the vessel or cargo is found.

SEC. 110. Section 4219 of the Revised Statutes of the United States (46 App. U.S.C. 121) is amended as follows:

(1) strike the section heading and insert “**TONNAGE DUTIES OR CARGO FEES**”;

(2) strike “**Upon**” the first place it appears and substitute “(a) **TONNAGE DUTIES.—On**”; and

(3) add the following new subsection:

(b)(1) **CARGO FEES.**—A fee is levied at the rate of .04 percent on the value of cargo transported by a vessel engaged in trade entering or departing from a port in the Customs territory or a possession outside the Customs territory but within the jurisdiction of the United States.

(2) **PURPOSES.**—The fee levied under paragraph (1) of this subsection is to reimburse the United States Government towards the cost of operation and maintenance of port navigation projects authorized under this Act or other Federal law.

(3) **APPLICATION.**—(A) A fee levied under this subsection may be levied on cargo loaded on or unloaded from a vessel entering or departing from a port, if the vessel requires a channel with a depth of more than 14 feet.

(B) A fee levied under this subsection shall be levied on cargo entering a United States port from a country contiguous to the United States if:

(i) the cargo enters or departs from the United States on transportation other than foreign or domestic commerce waterborne transportation, and

(ii) the cargo entered or will depart the country contiguous to the United States on waterborne transportation.

(C) A fee levied under subparagraph (B) shall be assessed at the United States port at which the cargo enters or departs from the United States.

(D) A fee levied under this subsection may not be levied on cargo arriving from a foreign country and destined for a country contiguous to the United States or cargo arriving from a country contiguous to the United States destined for a foreign country.

(E) A fee levied under this subsection may not be levied on cargo loaded on or unloaded from a vessel entering or departing from a port, if the—

(i) vessel is engaged in intraport movement;

(ii) vessel enters the port under conditions of *force majeure*;

(iii) vessel is owned and operated by the United States Government, a foreign country, a State, or a political subdivision of a country or State, unless the vessel is engaged in commercial service; or

(iv) fee has been previously assessed and collected on the cargo.

(4) COLLECTION.—The Secretary of the Treasury:

(A) Shall assess and collect the fee from the shipper of the cargo, acting through the local collector of customs; or

(B) may require by regulation the person acting as agent for the shipper to assess and collect the fee from the shipper of the cargo subject to the fee and remit the fee to the Secretary during each calendar quarter before the 31st day after the last day of that quarter. For the purposes of this subsection, shipper means consignor, consignee, importer, exporter, an export trading company, or other person holding title to or beneficial interest in the cargo.

(5) DELEGATION.—In those instances when a person other than the Secretary assesses and collects a fee under paragraph (4)(B) of this subsection, that person shall identify separately in the appropriate bill of lading, freight bill, charter party, contract of affreightment, service contract, or other documentation the amount of fees assessed under this subsection for that cargo.

(6) PAYMENT.—The shipper of cargo subject to the fee under this subsection shall pay that fee to the Secretary. The Secretary may by regulation provide for posting of bond or other security pending liquidation of the fee.

(7) REPORTING.—(A) The Secretary shall prescribe by regulation requirements for submission by shippers or their agents of documentation or other information necessary to assess, collect, and verify the fees levied under this subsection.

(B) The master or operator of a vessel entering a port in which cargo to be loaded on or unloaded from that vessel is subject to a fee under this subsection shall deliver to the local collector of customs acting for the Secretary, the documentation prescribed by regulation by the Secretary within 48 hours after the vessel enters the port and before any cargo is unloaded from the vessel.

(8) **ENFORCEMENT.**—The Secretary may assess a penalty or initiate a forfeiture of the cargo in the same manner and under the same procedures as are applicable for failure to pay customs duties under the Tariff Act of 1930 (19 App. U.S.C. 1202 et seq.).

(9) **OFFSETTING RECEIPTS.**—Amounts collected under this subsection shall be deposited in the Treasury of the United States and credited as an offsetting receipt against appropriations for the Port Infrastructure Development and Improvement Trust Fund.

On page 49: on line 13, strike “SEC. 110.” and substitute “SEC. 111.”; and on line 19, strike “SEC. 111.” and substitute “SEC. 112.”.

On page 50, line 4, strike “SEC. 112.” and substitute “SEC. 113.”.

On page 53: strike lines 5-21 and substitute:

SEC. 114. EMERGENCY RESPONSE SERVICES.

(a) **GRANTS.**—The Secretary is authorized to make grants to a non-Federal interest, operating a port navigation project to provide emergency response services in the port (including contingency planning, necessary personnel training, and the procurement of equipment and facilities either by the non-Federal interest, by a local agency or municipality, or by a combination of local agencies or municipalities on a cost-reimbursable basis, under a cooperative agreement, mutual aid plan, or mutual assistance plan).

(b) **AUTHORIZATION OF APPROPRIATIONS.**—Those sums as may be necessary to carry out subsection (a) of this section are authorized to be appropriated for fiscal years beginning after September 30, 1985, from the Port Infrastructure Development and Improvement Trust Fund.

On page 53: on line 22, strike “SEC. 114.” and substitute “SEC. 115.”.

On page 54: after line 7, add a new section 116 to read as follows:

SEC. 116. SEVERABILITY.

If section 110 of this title is invalid, all valid parts that are severable from section 110 remain in effect. If section 110 of this title is invalid in one or more of its applications, section 110 remains in effect in all valid applications that are severable from the invalid applications.

On page 54: on line 8, strike “SEC. 115.” and substitute “SEC. 117.”.

On page 55, line 16, strike “SEC. 116.” and substitute “SEC. 118.”.

On page 95, line 15, strike “final environmental impact statement required by section 102(2)(C) of the National Environmental Policy Act of 1969, and any”.

On page 117, lines 13-15, strike “final environmental impact statement required by section 102(2)(C) of the National Environmental Policy Act of 1969, and any”.

On page 139, lines 5-7, strike "final environmental impact statement required by section 102(2)(C) of the National Environmental Policy Act of 1969, and any".

On page 409: on line 13, strike "taxes" and substitute "tonnage duties or cargo fees"; on line 14, strike "subsection (c)" and substitute "section 110", and strike "section" and substitute "Act"; and strike lines 21-24.

On page 410: strike lines 1-19; and on line 20, strike "(d)" and substitute "(c)".

On page 411, line 8, strike "113" and "114" and substitute "114" and "115" respectively.

On page 413, line 2, strike "115" and substitute "117".

PURPOSE OF THE LEGISLATION

The purpose of this legislation is to promote the development of an integrated national water resources policy by adopting a comprehensive approach to the conservation, development, and use of the nation's water resources. H.R. 6, as reported, undertakes this comprehensive approach by authorizing new water resource projects, modifying existing projects, and deauthorizing other projects encompassing port development, inland waterways, shoreline protection, and floor control. The legislation also proposes a cooperative water supply renovation program for the repair and improvement of the Nation's water distribution system, additional water resource studies, and a National Board on Water Resource Policy for long-term water resource planning.

Title I of the Port Development and Navigation Improvement Act of 1985 establishes a national policy on the operation, maintenance, and construction of coastal ports in the United States.

It accomplished this purpose by providing comprehensive procedural, reform of the process of planning, authorizing, and financing the construction, operation and maintenance of port navigation projects.

BACKGROUND AND NEED FOR THE LEGISLATION

The national system of 189¹ deep-draft commercial ports and 25,000 miles of navigable inland waterways is the result of a 200-year-old partnership between the Federal Government and the States (operating through local ports, municipalities, and State port authorities). Through this Constitutionally-sanctioned partnership, the Federal Government has, since 1824, invested almost \$3 billion² in improving and maintaining the navigability of deep-draft commercial ports. Meanwhile, local ports and private interests have invested over \$40 billion in 1,456 marine terminals and 2,939 ship berthing facilities in the United States.³ Fifty percent of these are owned and operated by private interests and are principally liquid- or dry-bulk cargo facilities.⁴ The remainder are generally

¹ National Port Assessment 1980/1990, Maritime Administration, Department of Transportation, June 1980.

² Port Development in the United States, National Research Council, National Academy of Sciences, 1976. Updated with data supplied by U.S. Army Corps of Engineers.

³ Ibid, note 1.

⁴ Ibid.

publicly-owned, common carrier facilities for the handling of general cargo.

Port development is dictated by international trade—well over 95 percent of which is transported by sea. Since World War II, the United States has emerged as the world's greatest trading nation, accounting for almost 18 percent of total world trade.⁵ During this period, the overall value of U.S. foreign waterborne commerce increased from \$35 billion to almost \$300 billion in value;⁶ and, in volume, to more than 1 billion tons in 1980.⁷ The total value of foreign waterborne trade now equals almost 10 percent of our domestic gross national product (GNP) of \$2.8 trillion.⁸

Total waterborne commerce has tripled since 1947 to 2.1 billions tons, almost equally divided between foreign and domestic commerce (including coastwise, Great Lakes, and inland movements).⁹ Ninety percent of the total traffic volume is in bulk commodities.¹⁰ The remainder is principally general cargo, including liner service. However, general cargo represents almost 60 percent of the total value of foreign waterborne commerce. Two-thirds of domestic commerce constitutes shallow-draft movement, aggregating almost 600 million tons. The remaining 300 million tons represents domestic traffic—nearly half of which moves on the Great Lakes. This leaves approximately 1.41 billion tons in foreign and domestic tonnage handled by deeper draft coastal ports, including those on the Great Lakes.¹¹ (See Table A)

Inextricably related to international trade, port development is increasingly important to the Federal Government, both as a direct source of revenue and as a stimulus to domestic economic development. Customs collections, related to the overall value of international trade, have amassed some \$45 billion since 1979.¹² Annual collections at seaports of some \$6 billion¹³ make customs receipts the fourth largest source of revenue to the general treasury after individual and corporate income taxes and outer continental shelf oil and gas revenues. Between 1950 and 1980, the percentage of the gross national product that represents the value of U.S. international trade doubled.¹⁴ In addition, ports contribute directly over \$35 billion to the GNP. They are credited with creating one million jobs in the domestic economy. Commercial port operations annually contribute over \$10 billion in Federal taxes, \$4 billion in State and local taxes, and \$27 billion in business and personal income.¹⁵

Technological innovations in the port and maritime industries have transformed a traditionally labor-intensive industry to a cap-

⁵ Data supplied by U.S. International Trade Commission.

⁶ United States Foreign Trade, U.S. Waterborne Exports and General Imports, Annual 1980, Department of Commerce, Bureau of the Census.

⁷ *Ibid.*

⁸ *Ibid.*, note 5.

⁹ Waterborne Commerce of the United States, Calendar Year 1979, U.S. Army Corps of Engineers.

¹⁰ American Seaports and Changes Affecting Operations and Development, Report of the Comptroller General of the United States, CED 80-8, Nov. 16, 1979.

¹¹ *Ibid.*, note 9.

¹² *Ibid.*, note 2.

¹³ Public Port Financing in the United States, Maritime Administration, Department of Transportation, June 1974.

¹⁴ *Ibid.*, note 5.

¹⁵ Economic Impact of the U.S. Port Industry, Maritime Administration, Department of Transportation, April 1978.

ital-intensive activity in the past 30 years. Among those innovations were the container revolution, specialized bulk cargo-handling facilities, and the application of economies of scale in marine transportation. These have led to the use of larger, more sophisticated vessels with shorter turnaround times in liner and bulk trades. The economies of scale resulting from the use of larger vessel can be considerable, often resulting in overall savings in ocean transportation costs of 20 to 40 percent or even greater in the bulk trades.

Technological innovation and increased productivity have brought with them increased capital investment requirements for local port authorities. Since World War II, the pace of port development has accelerated. Of the \$5 billion vested in capital improvements between 1946 and 1980, over \$1.6 billion was expended in just the last decade.¹⁶ Waterborne experts are expected to decrease slightly. Domestic waterborne commerce is expected to increase at an annual rate of two percent, increasing from 1.0 to 1.5 billion tons by the year 2000.¹⁷ To meet this challenge, U.S. ports must spend \$3.3 billion for new marine facilities before 1990.¹⁸ Both timely maintenance dredging and incremental channel improvements have become increasingly important to the uninterrupted flow of maritime commerce. To encourage offshore deepwater transshipment of liquid bulk cargoes, such as imported oil, Congress enacted the Deepwater Port Act (Public Law 93-627). However, container and dry-bulk cargoes require considerable land area for storage and connection with surface transportation; for them, inshore harbor access is essential.

Since ports play a key role in international trade, improvements in some of the 2,000 major world ports lead to pressures for improvements in others. During the 1970's, at least 30 major ports undertook significant navigation improvements to accommodate an expanded liquid and dry-milk trade (especially crude oil and refined products, iron ore and, more recently, metallurgical and steam coal.) (See Table B)

The inadequacy of U.S. ports to handle larger, more efficient vessels entering many specialized trades was highlighted by a steam coal export crisis in 1981, which resulted in a large number of coal colliers being subjected to lengthy loading delays in the Port of Hampton Roads, Virginia.

This event served to crystalize dissatisfaction within the port and shipping communities over delays of 20 years or more required from planning to construction of a typical port navigation project. As the same time, growing budgetary pressures on the U.S. Corps of Engineers (the principal Federal agency responsible for port dredging) reduced Federal spending for new project construction while total expenditures for maintaining the national port system increased.¹⁹

¹⁶ United States Port Development Expenditure Survey, Maritime Administration, Department of Transportation, January 1980.

¹⁷ National Waterways Study (Draft), Institute for Water Resources, U.S. Army Corps of Engineers, July 1981.

¹⁸ Public Port Financing in the United States, Maritime Administration, Department of Transportation, September, 1985.

¹⁹ Water Project Construction Backlog—A Serious Problem with No Easy Solution, Report of the Comptroller General of the United States, RCED 83-49, January 26, 1983.

In the United States the pace of construction of deep-draft navigation improvements by the Federal Government has come to a virtual halt in recent years. Not a single major navigation improvement has been initiated in over a decade. No project has received Congressional authorization in over nine years. Today, by any measure, channel construction in the U.S. port system lags behind that in the rest of the world. In contrast to growing local port and private investments in shoreside facilities, annual expenditures by the Federal Government for port navigation improvements have averaged \$150 million or less in recent years. Numerous studies have shown that dwindling Federal support for port development is particularly conspicuous in comparison to that of other developed countries.

Total expenditures by Corps of Engineers for operations and maintenance of port navigation channels have averaged \$300 million in recent years, of which approximately \$200 million has been expended in maintaining coastal ports. Historically, port improvements have represented approximately 30 percent of total Federal navigation expenditures. This distribution of expenditures for operations and maintenance has held relatively constant until the last five years. Since then, although current expenditures for operations and maintenance have increased significantly, actually dredging accomplished has declined in real terms in constant dollars. The reasons are principally related to rising fuel costs, general inflation, and environmental restrictions. In addition, no new project have been authorized since 1970. Indicative of this trend, between 1970 and 1980, the average unit cost of dredging increased over 400 percent nationally from 30 cents to \$1.25 per cubic yard of dredged material, well in excess of the underlying rate of inflation for the period.

The traditional process of authorization, funding, and construction of navigation improvements involves multiple authorizations for the preparation of all required preliminary feasibility reports and advance engineering and design studies, separate appropriations for pre-authorization and post authorization studies, and seven independent technical and administrative reviews of projects prior to initiation of project construction. In all, 19 separate procedural steps are required to be completed prior to project construction. (See table C)

Federal laws and regulations are significant contributory factors to the complex and often lengthy dredging permit process. Along with severe problems in the traditional process for authorizing port navigation improvements, such regulations are important variables in explaining the 21.6 year average time required from initiation of a project feasibility study to authorization of project construction.²⁰ These delays are attributable, in part, to procedural problems in the administration of those laws within the jurisdiction of the Committee governing regulatory review and environmental protection, including dredge disposal site designations, with respect to maintenance dredging and port navigation improvements.

²⁰ Update on Army Corps of Engineers' Planning and Designing Time for Water Resources Projects, Report of the Comptroller General of the United States, RCED 84-16, January 4, 1984.

Approved delays are caused by: redundant State and Federal permit procedures; poorly defined procedures for processing permit applications for maintenance dredging; lack of accountability in those agencies exercising commenting authority relating to permit requirements, particularly with regard to the operation of project mitigation aspects of the permit process; incomplete integration of environmental laws in the process of authorizing, financing, and constructing navigation improvement projects; and absence of a clear decision-making and conflict resolution process for balancing and reconciling competing engineering, economic, and environmental aspects of navigation improvement projects in the national interest.²¹

These events and observations led to a series of proposals first introduced by Mr. Biaggi in the 97th Congress designed to alter the traditional method for planning, constructing, and financing port improvement projects. These proposals included:

A generic approach to expediting the authorization of new port navigation projects and shoreside facilities constructed by non-Federal interests;

Project cost-sharing reforms institutionalizing previously ad hoc arrangements for local cost-sharing requirements for port navigation projects;

Granting the consent of Congress to ports for the discretionary levy of local user fees to finance the local contribution to project cost as a means of expediting project construction; and

Procedural modifications to the permitting process for port dredging to impose strict schedules for Federal decisionmaking and to reduce, substantially, the time required for project and permit approvals.

GENERAL DISCUSSION

Committee consideration of H.R. 6, marks the third occasion in as many Congresses in which the Committee has reported comprehensive port development legislation either independently or as part of water resources authorization legislation. The Committee undertook a thorough and independent review of those provisions within its jurisdiction.

This review had three objectives. First, to insure that any provision in the legislation within the Committee's jurisdiction was in compliance with constitutional, legal, and international treaty obligations of the United States. Second, to insure that those provisions were technically feasible and administratively workable in the context of international trade, and in foreign and domestic marine transportation. Third, to reflect, where possible, the previous findings of the Committee in its review of basic policy options for the levy of port user fees.

The first element of a comprehensive national policy for port development is incorporated in the fast-track approval process for local port initiated navigation projects. This was modeled after the consolidated permit review and approval process for deepwater

²¹ Managerial Changes Needed to Speed Up Processing Permits for Dredging Projects, Report of the Comptroller General of the United States, CED 80-71, June 9, 1980.

ports developed by the Committee in cooperation with the Committee on Public Works and Transportation culminating in the enactment of the Deepwater Port Act of 1974 (Public Law 93-627). The Committee's original intent was to develop a consolidated engineering, economic, and environmental review process for conventional port projects initiated by a non-Federal interest as an alternative to the traditional authorization process.

The Committee concludes that rigorous efforts by involved Federal agencies to consolidate their related regulatory responsibilities on a project-by-project basis will produce more efficient, timely decisionmaking while preserving completely the substantive integrity of those decisions.

Under section 104 of the bill, as reported, a local port will have three options by which to plan, finance, and construct local navigation projects in the future. First, a local port may plan and design any navigation project and submit it to the Secretary of the Army for review and approval. Within 180 days, the Secretary must report his recommendation concerning the project to Congress. Thereafter, if the local port decides to construct its own project, it may commence a consolidated decisionmaking process involving all affected federal agencies, and participating state and local agencies. Final approval of project construction must come from the Secretary within two and one-half years from the filing of written notice of intent to construct the project. The port then may construct and maintain the project entirely at its own expense.

Secondly, a local port may seek Congressional authorization for the port to construct its own port navigation project. It may still undertake its own feasibility study at its own expense. If the project is subsequently authorized, the local port may be reimbursed by the Secretary for the cost of the feasibility study from the Port Infrastructure Development and Improvement Trust Fund established under the legislation, subject to annual appropriations. Thereafter, the port may elect to construct its navigation project, in whole or in part, without waiting for project authorization or the availability of appropriations, but with Secretarial approval prior to initiation of project construction. In so doing, the port will be required to finance the cost of project construction initially, thereby substituting a market test through public offering of revenue bonds for the traditional cost-benefit analysis of project economic viability.

The third alternative is the traditional process of project authorization by the Secretary with or without local initiation of a project feasibility study, and subject to local cost-sharing requirements under the legislation.

In its repeated consideration of port development legislation, the Committee has continued to perfect the fast-track procedures. The procedures are extended from strictly deep-draft projects in excess of 45 feet in depth to any port navigation project initiated by a non-Federal interest. These procedures have been refined to the point where the Committee expects them to result in a substantial reduction in the time required to plan and construct port navigation projects.

The Committee adopts the requirement that a non-Federal interest provide lands, easements, and rights-of-way as an in-kind con-

tribution to construction prior to project authorization, including dredged spoil disposal areas and the undertaking of environmental mitigation measures. The Committee has received testimony that the cost of fulfilling those requirements has ranged from under 10 to over 30 percent of total project costs for various projects across the country. The Committee has consistently recommended a structured costsharing requirement as a substitute for the ad hoc arrangements previously negotiated. The Committee's adoption of this change in cost sharing for new project construction should complement the fast-track procedures in expediting the planning and construction of port navigation projects in the national interest.

The Committee has surveyed the manner of financing navigation projects in most developed countries. Based upon this survey the Committee found that most of the national Governments in those countries financed general navigation improvements, including main and entrance channels to a depth of 45 feet to accommodate general cargo vessels. This assistance is normally justified on the basis of national and regional economic development. At the same time, most of those countries require local contribution to the cost of construction and maintenance of navigation projects in excess of that depth to accommodate larger, specialized vessels increasingly operating in liquid and dry bulk trades. The national Governments in those countries that normally require local contribution to the cost of construction and maintenance of navigation improvements also guarantee the issuance of locally-issued revenue bonds to finance the local share of the cost of project construction.

The bill, as reported, applies this experience by reconciling national investment policy toward future port development with prevailing international practice. This is accomplished through the establishment of 45 feet as the maximum standard depth for ports not designed to accommodate deep draft vessels, and the declaration of channel depths in excess of 45 feet as "deep draft ports." A graduated scale for the local contribution to the cost of project construction depending upon depth culminates in a 50:50 Federal/local cost-sharing formula for deep-draft navigation projects. The 50:50 formula was originally recommended by this Committee.

The Committee's inclusion of a Federal guarantee of a non-Federal share of project construction and maintenance cost is similarly based upon the Committee's survey of the operation of major ports around the world. The bill provides for 90 percent Federal guarantee of locally-issued revenue bonds to finance the cost of construction and operation and maintenance (if any) of navigation improvements. This is intended to strike a balance between local initiative and responsibility, and the necessity for Federal financing assistance in order to insure the marketability of locally-issued project financing in the absence of an historical market for those financing instruments.

The third critical element of comprehensive port development reform is the granting of the required consent of Congress under the Constitution for local ports to levy port and harbor dues. These levies are in the form of duties of tonnage on vessels and fees on cargo. The absence of authority for local ports to levy fees on vessels and cargo in gross, as a condition of port access and for the

provision of services, represents a void in local revenue-raising authority. It is routinely employed by most port nations. These fees, generally not specific to a particular vessel, are recoverable through traditional port charges, such as wharfage, dockage, and demurrage.

Since a secure revenue stream is necessary as a condition of marketability of locally-issued revenue bonds even with the Federal guarantee, this authority is a necessary prerequisite to the successful implementation of the legislation. This authority is to be implemented in a nondiscriminatory manner under workable administrative framework.

The broadening of the scope of mandatory local cost sharing beyond deep-draft ports necessitated the Committee's expansion of local user fee authority. The Committee tailored the delegation of that authority to the three-tier system (shallow, general cargo, deepdraft) incorporated in the bill, as reported.

Under the Constitution, cargo fees in the form of duties on imports and exports (under Article 1, section 10, clause 2) and tonnage duties on vessels (under article 1, section 10, clause 3) required the express consent of Congress to be levied by a non-Federal interest. The exercise of that authority may be further circumscribed by Congress under the Commerce Clause, Article 1, section 8, clause 3 of the Constitution. In the case of *Clyde Mallory Lines v. United States*, 296 U.S. 261 (1935), the Supreme Court reaffirmed the limitation on the authority of local ports to levy fees to direct services including wharfage, dockage, pilotage, stevedoring, and demurrage, by holding that proscription "embraces all taxes and duties regardless of their name or form, and even though not measured by the tonnage of the vessel, which operate to impose a charge for the privilege of entering, trading in, or lying in a port", 296 U.S. at 265-266.

Local ports are permitted to levy fees on vessels requiring channels within the three-tier classification structure. The exercise of this authority is intended to reflect a reasonable relationship between the cost of providing services and the benefits conferred upon vessels and cargo interests from channel usage. The standard is adapted from the judicially-sanctioned standard applicable to the analogous exercise of general user fee authority conferred upon Federal agencies under Title 31, United States Code. The standard was upheld by the U.S. Supreme Court in *National Cable Television Association v. United States*, 415 U.S.C. 336 (1973).

As reported, the legislation confers the express consent of Congress to a non-Federal interest to levy port or harbor dues in the form of tonnage duties or fees on a vessel engaged in trade entering or departing a port and on cargo loaded or unloaded from that vessel. Permissible purposes in the levy of such a fee are limited to: first, to recover the non-Federal share of the cost of project construction and operation and maintenance (if any) of a port navigation project; second, to finance the cost of construction and operation and maintenance of a port navigation project subject to reimbursement by the Federal Government depending upon the availability of appropriations; and, third, to provide emergency response services in the port, including contingency planning, necessary personnel training, and procurement of equipment and facilities.

Other limitations on the levy of local port user fees include: a minimum vessel draft limitation of 14 feet within the three-tier system applicable to the future recovery of project construction costs; a time limitation on the commencement of levies of fees to project completion (including a usable increment of the project); and exemptions from the levy of such fees for vessels engaged in intraport movement and Government-owned vessels, unless engaged in commercial service. The Committee emphasized that any government involvement in the ownership or control of commercial shipping should not provide an exemption from any fees authorized in this Act.

The Committee intends that local ports would be able to levy fees only on vessels engaged in trade. This means, therefore, that it would not be possible for a local port to levy a fee on the initial landing of U.S. harvested fish and fisheries products since U.S. fishing vessels are not engaged in trade. Imported and exported fisheries products, as well as those shipped in domestic commerce, would be subject to the fees.

In addition to the general standard against which to assess the reasonableness of local port user fees, and certain minimal procedural requirements in the levy of those fees, including a notice and hearing requirement, other administrative requirements are incorporated. These include mandatory Federal Maritime Commission filing; audit by the Comptroller General of the United States; designation of the local official, or the Secretary of the Treasury, acting through local collector of customs, as a repository for necessary documentation in the levy of those fees; and express written consent prior to any levy by the non-Federal interest of the exercise of the exclusive Federal court jurisdiction over questions rising out of the levy of local port user fees, including mandatory repayment of fees held to be discriminatory or beyond the scope of authority delegated by Congress.

Local fees may be enforced at the request of an authorized representative of the non-Federal interest by the Secretary of the Treasury through the withholding of clearance or forfeiture in the case of a vessel, or through the imposition of penalties or forfeiture in the case of cargo. Port or harbor dues levied under the Act constitute a maritime lien against the vessel and cargo that may be enforced in the same manner as a lien having priority under Federal maritime law.

The one new issue dealt with by the Committee during its consideration of the legislation was the manner and method of attempted recovery of a significant portion of the cost of conducting operations and maintenance of Federally-maintained channels in ports in excess of 14 feet in depth. When the Committee last visited this issue in the 97th Congress, the Committee made findings and conclusions with respect to systemwide operations and maintenance cost recovery.

In particular, the Committee found support for its determination to exempt the maintenance of existing channels from any requirement for local cost recovery, as proposed by the Administration. This proposal called for a reduction of \$300 million in Federal outlays. In rejecting this proposal, the Committee concluded that the fundamental Federal interest in port development is the mainte-

nance of the existing national port system of 189 ocean and Great Lakes commercial ports. Only in the most extreme circumstances did the Committee find even conditional acceptance on the part of some State and local port interests for the adoption of such a requirement. In that instance, this was predicated upon the implementation of a national user fee scheme as a mechanism for avoiding unintended impacts upon interport competition, potential cargo diversion, and economic dislocation.

The Committee emphasizes that the most compelling argument for Congressional caution in considering the imposition of local cost recovery on all existing channel maintenance is the uncertainty of the relative economic impact of this proposal upon various ports and economic regions. In addition, the Committee is fully aware that the prospective cumulative impact of deep-draft as well as shallow-draft user fees upon the aggregate demand for and competitiveness of export commodities such as coal and grain, must be carefully considered.

Based upon its analysis, the Committee determined that section 1301 of H.R. 6, as reported by the Committee on Public Works and Transportation, which levies a uniform ad valorem tax, may raise constitutional, legal, and international treaty obligation problems. It also presents additional ministerial problems associated with its technical feasibility, administrative simplism, and enforceability.

Article 1, section 9, clause 5 of the Constitution provides "no tax or duty shall be laid on articles exported from any State". This is the only limitation on the otherwise plenary taxing authority of the Congress under Article 1, section 8, clause 1 of the Constitution. The Supreme Court has historically and consistently ruled against legislative attempts to directly or indirectly impose such levies. Whether characterized as a tax or a fee, to the extent that such a levy is construed as primarily for the purpose of revenue raising, it is tantamount to a tax on export and in part unconstitutional.²²

²² For example, in *Pace v. Burgess* 92 U.S. 372 (1875), the U.S. Supreme Court held that "the constitutional provision that 'no tax or duty shall be laid to articles exported from any State's absolutely prohibits Congress from imposing a pecuniary charge on them, whether it consists of a tax or a duty . . . even if it has been asserted that these charges are only for the regulation of trade, and are not a tax or duty for the purpose of revenue." (emphasis added) This provision has been extended to prohibit indirect attempts to accomplish the same purpose in the purported taxation of trade documentation such as a "Federal stamp tax on a foreign bill of lading since its equivalent of a direct tax on the article included in the bill of lading." *Fairbank v. United States*, 181 U.S. 283 (1900). The Court reached a similar result in the case of Federal stamp taxes on charter parties made exclusively for the carriage of cargo in foreign commerce. *United States v. Hvoslef*, 237 U.S. 1 (1914). Likewise, the Court struck down Federal stamp taxes on policies insuring exports against maritime risks. *Thames and Mersey Insurance Company v. United States*, 237 U.S. 19 (1914). In the *Hvoslef* case, the Court opined "We know historically it was one of the compromises which entered into and made possible the adoption of the Constitution. It is a restriction on the power of Congress; and as in accordance with the rules heretofore noticed the grants of power should be so construed as to give full efficacy to those powers that enable Congress to use such means as it deems necessary to carry them into effect, so in like manner restriction should be enforced in accordance with its letter and spirit and no legislation can be tolerated which, although it may not conflict with the letter, destroys the spirit and purpose of the restriction imposed. . . . If mere discrimination between the States was all that was contemplated it would seem to follow that an ad valorem tax upon all exports would not be obnoxious to this constitutional prohibition. But surely under this limitation Congress can impose an export tax neither on one article export, nor on all articles of export. In other words, the purpose of the restriction is that exportation, *all exportation*, shall be free from national burden." 237 U.S. at 15 (emphasis added).

In terms of international treaty obligations, Article VIII of the General agreement on Tariffs and Trades (1947) permits the imposition of reasonable fees connected with imports and exports, such as consular transactions, licensing, inspection and quarantine. While it does not specifically contemplate charges for port services, neither does it expressly prohibit them. The Articles' only proscription is that the charge not represent either indirect protection of domestic products or a taxation of imports or exports for fiscal purposes (article VIII, para. 1(a)).

If the proposed levy is construed to be a revenue-raising measure, there is the possibility of either a GATT claim or the threat of retaliation by individual trading partners, or both.

In addition, although it may be characterized as a fee for services rather than a tax measure for the purposes of raising revenue, questions have been raised relating to the relationship between the cost of providing port dredging services and the identification of the cargo interest, as distinguished from the vessel itself, as the ultimate beneficiary of those services. For this reason, the Committee members emphasized their view that the assessment is, in fact, intended as a fee that is reasonably related to the services financed by the fee.

Notwithstanding its earlier recommendation against the enactment of systemwide operations and maintenance dredging cost recovery, the Committee, in view of certain arguments and reservations concerning the constitutionality of an ad valorem tax on cargo determined it to be within its jurisdictional to establish a nexus between the levy assessed, regardless of the assessment basis, and the service provided to the payer of the levy. Indicative of the sensitivity of Congress to the constitutionality problem of the tax on exports, the Committee reviewed analogous user tax provisions of the Internal Revenue Code. It found a precedent, the excise tax on the value of transportation services (26 U.S.C. 4271) utilized to recover a portion of the cost of providing commercial aviation facilities, even though that levy is assessed only for domestic services, thereby avoiding the export—constitutionality problem.

The Committee reviewed four basic options available to recover the cost of port maintenance dredging from the beneficiaries of those services. In so doing, the Committee was sensitive to the fundamental distinction to be drawn in comparison to its previous recommendation for local authority to establish a limited, consensual user fee regime restricted to deep-draft ports. This is distinguished from the imposition of a mandatory, systemwide user fee applicable to both foreign and domestic trade and to transportation by common, contract, and proprietary carriage. Within this context the Committee reviewed basic options for establishing a uniform national fee structure.

The first option was to increase the rate, frequency of collection, and potentially the scope, of the existing Federal tonnage duty enacted in the third Act of Congress in 1790. (Section 4219 of the Revised Statutes of the United States (46 App. U.S.C. 121)). This authorizes the levy of two cents per ton on a net registered tonnage (or cargo carrying capacity) of a vessel engaged in foreign trade calling at a U.S. port. It is assessed at every fifth port call, and is collected by the U.S. Customs Service. This fee yields approximate-

ly \$14 million in annual revenue to the Treasury. although the most administratively simple option to raise the necessary funds, the Committee rejected it. It decided that assessment of additional fees exclusively on vessels could not likely be passed through to cargo interests because of currently depressed competitive conditions in virtually all sectors of the maritime industry. It also would weigh more heavily on foreign commerce vessels, since it is assessed only in that trade.

The second option considered was a specific rate tonnage fee on cargo as a complement to the tonnage duty on vessels. The principal administrative advantage of this approach is the universal availability of tonnage or weight statistics on customary trade documentation forms in all trades. This approach also results in greater revenue to the Treasury in the early years of its imposition. This is in contrast to an inflation-indexed ad valorem fee. However, from the Committee's perspective while a port user fee might perhaps more easily be assessed on the basis of tonnage rather than value, such an assessment could create disproportionately heavy price increases for bulky, but low-value commodities. These commodities constitute a substantial share of domestic, coastwise, Great Lakes exports. For these reasons, a pure tonnage based fee was not adopted.

The third option considered by the Committee was the revenue ton. Defined as the greater of weight or equivalent volume of cargo, the concept developed historically for calculating the equivalent bulk or vessel space occupied by cargo as distinguished from cargo weight for determining freight charges for general cargo. Revenue tons are generally equal to a measurement ton in the general cargo trade of 40 cubic feet, and 2,240 pounds or a long ton for low value, high volume cargoes that are transported without mark or count. Utilizing this conversion factor, a carrier could easily estimate its revenue on a particular voyage. Likewise, an individual shipper could also estimate, within a reasonable margin, his freight charges, since the standard form ocean or intermodal bill of lading utilizes revenue or measurement tons in the determination of freight charges. The proposal, when factored against the relative values of the liner versus bulk cargoes, would have assessed a fee of \$.07 per revenue ton for bulk cargo and \$.35 for liner cargoes to generate the \$140 million necessary for the program.

The fourth option considered and ultimately adopted by the Committee was the conversion of the proposed ad valorem tax to an ad valorem fee. That fee is to be assessed on the value of cargo loaded or unloaded from a vessel calling at a port with Federally-maintained channels while engaged in foreign or domestic trade.

In analyzing the option of levying on a revenue basis, the Committee requested the Library of Congress, with the assistance of the Maritime Administration, to classify major commodity groups by frequency of liner or bulk transport. This analysis reflected a spectrum measured in average value per ton of the commodity groups from the highest value liner to the lowest value bulk cargo handled in foreign and domestic trade. (See Table D). CRS calculated the relative economic impact of a revenue ton fee required to yield the desired revenue level and the comparable .04 percent ad valorem fee for the same set of commodities. Based on this calculation, it

determined that in addition to most general cargo, 17 bulk commodities are impacted less under a revenue ton than a comparable ad valorem fee. Six commodities are impacted approximately equally under a revenue ton as compared to an ad valorem based fee. Seven commodities with an average value per ton of less than \$137 are impacted more by revenue ton than an ad valorem based fee. However, within this latter commodity groups are included iron ore and concentrates, transported primarily in Great Lakes domestic trade, and corn, fertilizer, coal, and coke which are major exports for the United States. (See Table F).

This detailed analysis provided the basis for the Committee's ultimate election of an ad valorem based fee, in view of the relative distribution of the burden of payment in favor of imports, rather than exports and the domestic trade.

In choosing this option, the Committee is cognizant of the difficulty in determining the actual or transactional value of the article traded, as distinguished from its Customs' value, as the base for assessing the fee. However, the Committee expects the U.S. Customs Service to make every effort to implement this requirement across the full spectrum of U.S. foreign and domestic waterborne trade in the most efficient and equitable manner.

In addition, the Committee, by including territories and possessions of the United States lying outside the Customs territory but still within U.S. jurisdiction, intends that the fee apply to imports and exports in those areas.

Furthermore, the Committee recognizes that because of different Customs practices between the United States and its trading partners, the increase in the entered cost of a dutiable article subject to the fee could be slightly lower for U.S. imports than for U.S. exports to most trading partners, even when all other components of the entered cost are identical. This is because U.S. exports would be at a slight cost disadvantage to U.S. imports because the United States (but very few of its trading partners) assesses its Customs' duties on the basis of freight-on-board (FOB) or freight-along-side (FAS) value of imports, while most market countries use the cost insurance and freight (CIF) valuation method. The Committee intends, therefore, that cargo fees levied at a U.S. port on an import should be incorporated as part of the U.S. dutiable base, and the amount of the fee included in the computation of the U.S. Customs duty so as to negate any potential competitive disadvantage resulting from the fee between imports and exports.

The Committee believes that, with the possible exception of the coastwise trade, in which value-based data is virtually nonexistent in customary usage, the U.S. Customs Service should be able to implement an ad valorem fee on imports by utilizing the standard form international ocean or intermodal bill of lading and Customs entry form with data independently verified against a vessel's cargo manifest under dual reporting requirements incorporated in the legislation. The Committee intends that the same limitation that applies to fees levied by local ports under section 109 on fish and fisheries products would also apply to cargo fees levied under section 110. The fee may be imposed on exports utilizing the shipper's export declaration generated in most cases by the shipper or the shipper's agent.

However, new data will have to be generated to ensure the reliability and integrity of the information on which the fee is based for enforceability purposes. In this regard, the Committee is aware that operators in the domestic commerce file quarterly Vessel Operation Reports with the Federal Government (OMB No. 0702-0008). Although no value related entries appear on the form, it may be modified to accomplish the purposes of this title.

Regardless of the potential difficulty in administration, the Committee reiterates that the cargo, being the beneficiary of the facilities provided by the port, is for purposes of this Act the user responsible for paying the fees required for ongoing operation and maintenance. The Committee intends that no burden, financial or administrative, fall on vessel owners or operators.

COMMITTEE ACTION

Following action by the House Committee on Public Works and Transportation reporting H.R. 6, the legislation was referred to the Committee on Merchant Marine and Fisheries through September 23, 1985, for consideration of those matters within its jurisdiction. The Committee identified the following areas addressed by the bill as those within its jurisdiction: Section 104, "Design and Construction of Projects by Nonfederal Interests"; Section 105, "Cost Sharing"; Section 107, "Guarantees of Obligations"; Section 109, "Port or Harbor Dues"; Section 112, "Ocean Dumping Sites"; Section 1301, "Port Infrastructure Development and Improvement Trust Fund"; and those portions of Sections 103, 301, 401, and 501, dealing with or concerning the National Environmental Policy Act (NEPA). All of the above areas are within the jurisdiction of the Committee on Merchant Marine and Fisheries since they involve the development and maintenance of ports and harbors that are used in the ocean-borne commerce of the United States.

Section 104 of H.R. 6, as reported, is intended to provide a mechanism for allowing port authorities to plan and design port projects and to be reimbursed for the federal costs of these projects. The administrative proposals in section 104 center around the development of a comprehensive decisionmaking schedule for all federal permits associated with a port development project undertaken by a port that would encompass the preparation, review and approval of all feasibility reports and advanced engineering design and environmental studies associated with the project.

The proposals in section 104 result from an extended effort by the Committee on Merchant Marine and Fisheries over the past several Congresses to enact port improvement legislation. Through an extensive series of hearings dating from the 97th Congress, the Committee has concluded that greater efforts by federal agencies to consolidate their regulatory responsibilities on a project-by-project basis will produce more efficient decisionmaking while preserving completely the substantive integrity of those decisions.

The provisions of section 104 in H.R. 6 are largely similar to provisions developed by the Merchant Marine Committee and reported in earlier port improvement bills. They would authorize port authorities to plan and design navigation projects that are not authorized by federal law and submit their plans to the Corps of En-

gineers for its review and approval. Traditionally, the Corps itself has assumed primary responsibility for all such planning and design activities. Furthermore, section 104 would authorize local ports to contract, in whole or in part, federally authorized navigation projects upon approval of the Corps and after the port entered into a memorandum of understanding with the Corps relating to payment of the non-Federal share of the costs of operation and maintenance of the project.

Finally, section 104 would authorize the Corps, when requested by a port intending to construct a navigation project, to initiate procedures to establish a schedule for consolidating Federal, state, and local agency environmental assessments, project reviews, and permits for the construction of the project. This "fast tracking" authority is intended to consolidate Federal, state and local decision-making related to the project by way of an agreement with the Corps of Engineers. The agreement, in which all Federal agencies involved with the project would participate, is intended to require final decision on the project within 2½ years from the date of the agreement. While this agreement is intended to consolidate decisionmaking schedules, it in no way is intended to override the substantive responsibilities of the individual Federal agencies for regulatory responsibilities under their respective authority.

As reported, Section 105 establishes the share for port projects provided by the non-Federal interest. While such particulars as the varying percentage to be contributed depended upon the varying depth of the channel, the concerns of this Committee are directed towards the provisions dealing with lands, easements, and rights of way. The section requires the non-Federal interest to contribute all lands easements and rights of way required for a project, subject, however, to a maximum contribution not to exceed 5% of the total project cost. Included in "lands, easements, and rights of way" is dredged spoil disposal areas.

Section 107 provides for the way obligations issued by the non-Federal interest are to be guaranteed. Investment policy and practice in the United States necessitate the inclusion of provisions in legislation that insure the marketability of locally issued obligations, in an unproven investment market and for obligations sold in advance of the development of a revenue stream.

Section 109 deals with the consent authority for ports to levy fees in the form of duties of tonnage on vessels on cargo utilizing ports, following new construction. Specific problems will constitutional interpretation of the types of fees levied, and the ways in which fee schedules are established, including notice, hearing requirements, and publication, have been under review and are within the jurisdiction of this Committee.

Section 112 of H.R. 6 is intended to direct EPA to designate a new dredged spoil disposal site as an alternative to the "Mud Dumpsite," an area located approximately 5¾ miles east of Sandy Hook, New Jersey. In 1983, Environmental Protection Agency (EPA) redesignated the "Mud Dumpsite" for a period not to exceed ten years. The proposal in section 112 would require EPA to designate a new site between 20-40 miles offshore within four years of enactment, and transfer all current dredge disposal operations now occurring at the Mud Dumpsite to this new dredge disposal site.

The Committee is currently examining the necessity to terminate legislatively the designation of the current disposal site.

Section 103, 301, 401 and 501, of H.R. 6 require the completion of the final Environmental Impact Statement (EIS) within one year of enactment for projects authorized by those titles. (title I pertains to port development projects, title III pertains to flood control projects, title IV relates to shoreline protection, and Title V relates to water resources, conservation, and development projects.) These sections require the Corps of Engineers to submit to Congress final EISs that may be required under the NEPA for projects authorized under these titles within one year if such EIS' have not already been completed. The purpose of these requirements is to expedite completion of final EISs. These provisions, however, are not intended in any way to alter the substantive requirements for those EISs established under NEPA.

Section 1301 of H.R. 6 would impose an ad valorem tax on cargo entering or departing all ports, regardless of whether the cargo is in foreign or domestic commerce. Examination of the provision has raised several practical problems. The Committee questioned the constitutionality of a tax on exports, and on the feasibility of determining the value of goods and commodities against which an ad valorem fee would be levied. It was generally agreed that some fee (not a tax) levied against tonnage of goods, assessable against the cargo interests (not the ship operator) would be both legally and practically feasible. In any case, a provision levying fees must generate approximately 140 million dollars annually, in order to fund a portion of the cost of operations and maintenance of our ports, in a manner that is equitable among the payers, and nondiscriminatory among ports.

The Committee considered H.R. 6, as amended, on September 12, 1985. It approved seven amendments to the bill, as reported by the Committee on Public Works, and by voice vote ordered the bill, as amended, favorably to the House of Representatives. A majority quorum was present.

Mr. Biaggi offered several amendments. One series of amendments considered and approved en bloc by the Committee, modified sections 104, 105, 107, and 109. The section 104 amendment clarified that the fast-tracking provisions apply to several options that ports may use to initiate and construct projects; the section 105 amendment incorporates, in the cost recovery formula, reasonable mitigation measures; in section 107, a substitute makes clear that (port issued) local revenue bonds are both Federally guaranteed and tax exempt; and in section 109 Mr. Biaggi substituted language so that the consented to authority of ports to levy duties of tonnage extends to all construction, whether in shallow, general cargo or deep draft ports, and inserts procedural safeguards on the imposition of duties.

Mr. Biaggi offered another amendment to strike substantial portions of section 1301, and inserted a new section 110. These changes sought to address the way in which users of port services should be assessed for a portion of the cost of Corps of Engineers' routine port operations and maintenance. In addition to clarifying language addressing the administration of the program, the amendment sought to substitute a levy based on revenue tons rather than

straight value, to address questions of constitutionality and feasibility, but, after amendment, the Committee adopted the .04 percent ad valorem assessment, as proposed by the Committee on Public Works and Transportation as part of an otherwise restructured section 110. The Committee, in accepting the amendment took special note of a provision requiring that the receipts representing the fees collected be credited as offsetting receipts against appropriation for the Port Infrastructure Development and Improvement Trust Fund.

An amendment offered by Ms. Mikulski dealt with the way in which the cost sharing provisions would apply to lands, easements, and rights-of-way constructed to contain dredged spoil made necessary by previously authorized project terms.

An amendment by Mr. Lowry added language to the new section 110, title XIII designed to exclude from the user fee requirements that cargo which is loaded or unloaded at a U.S. port, but has as its origin a point not within the United States but within a point in a country adjacent to the United States. The same amendment provides that the user fee will be applied to cargoes that are destined for the United States and arrive by waterborne commerce through ports in adjacent countries and are then moved overland to the United States.

Another amendment by Mr. Lowry removes certain provisions in titles I, II, III, IV and V of the bill that would require the Corps of Engineers to complete and submit to Congress final Environmental Impact Statements for all projects authorized by those titles within one year of enactment. This requirement is judged to be a burden that would be extremely difficult to comply with, raising the likelihood that incomplete Environmental Impact Statements might be submitted that would risk a judicial challenge and jeopardize the projects themselves.

Lastly, Mr. Bateman's amendment would provide for severability, should any of the provisions of section 110 be found unconstitutional or invalid for other reasons. The concern of the Committee and the subject of the amendment was, for example, that the constitutional arguments that had been made against imposing a tax on exports might result in the legislation being declared invalid and it was the desire of the Committee to preserve all other provisions of the Act if that or a similar provision be found invalid.

LEGISLATIVE ACTION

The Port Development and Navigation Improvement Act (H.R. 4627) was first introduced by Vice Chairman Mario Biaggi in the 97th Congress. H.R. 4627 was favorably reported by the Committee, the only such measure reported to the House in the 97th Congress. The same legislation (H.R. 1512) was reintroduced in the 98th Congress, and as amended was incorporated by the Committee on Public Works and Transportation as title I of H.R. 3678, The Water Resources Conservation, Development, and Infrastructure Improvement and Rehabilitation Act of 1983. H.R. 3678 was passed twice by the House, by overwhelming margins.

In all, this Committee and the Subcommittee on Merchant Marine conducted 10 days of hearings and briefings on the general

subject of port development in the 97th and 98th Congresses. In the 99th Congress, the Committee held a hearing on March 12, 1985 (Committee Serial 99-1) on H.R. 45, as reintroduced by Mr. Biaggi; H.R. 50, as introduced by Ms. Mikulski; H.R. 6, introduced by Mr. Howard; and H.R. 1557, the Administration's bill introduced by request.

SECTION-BY-SECTION ANALYSIS

The following section-by-section analysis reviews the provisions of H.R. 6, as reported, within the Committee's jurisdiction that were referred sequentially to the Committee and amendments to them adopted by the Committee.

SECTION 101

Section 101 authorizes the Secretary of the Army to prosecute designated deep-draft port projects in accordance with details specified in this section. The Committee adopted no amendments to this section.

SECTION 102

Section 102 authorizes the Secretary of the Army to prosecute designated general cargo port projects in accordance with details specified in the section. The Committee adopted no amendments to this section.

SECTION 103

Section 103 requires that for any authorized project under title I for which a final report of the Chief of Engineers has not been completed, the Secretary shall submit within one year of date of enactment a final environmental impact statement and any recommendations with respect to the project to the appropriate Congressional committees. The Committee amended this section to delete the mandatory time limit for filing a final environmental impact statement for projects authorized under the title.

SECTION 104

Section 104 provides a mechanism for allowing non-Federal interests to plan, design, and construct port projects, and to be reimbursed for the Federal share of costs incurred by these activities subject to construction authorization and the availability of appropriations.

The Committee added an amendment to section 104(c) to clarify the availability of fast-tracking provisions for Secretarial approval of port navigation projects to all local port-initiated projects whether or not undertaken in anticipation of Congressional authorization of appropriations for reimbursement of the Federal share of the cost of project construction.

SECTION 105

Section 105 specifies the cost sharing formula for port improvement projects.

The Committee adopted amendments to section 105(e) to expressly incorporate reasonable mitigation measures in the local cost sharing formula for new project construction. The amendment also expressly includes locally-provided dredged spoil disposal areas within the five percent ceiling calculated as a percentage of total project cost applicable to lands, easements, and right-of-way required as conditions of project authorization.

SECTION 106

The Committee adopted no amendment to section 106.

SECTION 107

The Committee adopted a substitute amendment incorporating a technical redrafting of the section reflecting the Committee's intention that local revenue bonds issued to finance the local share of the cost of port navigation project construction are eligible for both tax exempt status and the loan guarantee provisions of this section as long as they benefit the public at large to an equal degree in the same manner as interstate highways and airport runways.

SECTION 108

The Committee adopted no amendment to section 108.

SECTION 109

The Committee adopted a substitute amendment to the section expanding the delegation of authority through the consent of Congress for local ports to levy user charges on vessels and cargo (denominated as port or harbor dues). The phrase "port or harbor dues" is used in part for its recognition, internationally, as a means of assessing local port user fees. It includes tonnage duties, which require the consent of Congress, but is more broadly phrased in contemplation that a cargo-based assessment may be preferred. These fees are to recover the required local share of the cost of project construction for all new projects subject to local cost sharing under section 105 of the Act.

The delegation of local user fee authority corresponds to the three-tier system of ports described in section 105, as amended. The system is predicated upon channel depth including shallow-draft ports with channels between 14 and 20 feet in depth, general cargo ports with channels between 20 and 45 feet in depth, and deep-draft ports with channels in excess of 45 feet in depth. All three categories are subjected to increasing levels of local cost-sharing corresponding to channel depth, as specified in section 105.

Under the proposed local user fee structure, local ports would be permitted to levy fees on a vessel engaged in trade that requires a channel depth of more than 14 feet of water and on cargo loaded on or unloaded from such a vessel in a port subject to local cost recovery requirements. The permissible purposes in levying fees are to recover a portion of the costs applicable to completed projects (including usable increments), for operations and maintenance, where local cost sharing is required for deep draft improvements, and for other necessary port services provided in gross to

vessels at large and not subject to specific existing fees for wharfage, dockage, and demurrage. A usable increment of a project might include, for example, a channel dredged to its project depth where the project actually involves the construction of more than one channel. It might also include the circumstance where the authorized project depth is 44 feet for a channel which has had a depth of 35 feet, but for some reason, dredging has been suspended at a 42 foot depth.

Local ports are permitted to levy fees on vessels requiring channels within the three-tier classification structure subject to a general standard intended to reflect to a reasonable degree the costs of providing services and the benefits conferred upon vessels and cargo interests from channel usage. The reasonableness of indirect costs, the Committee realizes, is of concern to those who may be required to pay. To that end, the Committee believes that recoverable indirect costs must bear a substantial relationship to the project improvements. The standard is adapted from the judicially-sanctioned standard applicable to the exercise of general user fee authority conferred upon Federal agencies under title 31, United States Code, and upheld by the U.S. Supreme Court in *National Cable Television Association v. United States*, 415 U.S. 336 (1973). It is contemplated that failure to consider the factors in section 109(a)(4) would give rise to a judicial finding of arbitrary and capricious abuse of discretion.

The Committee intends that local ports would be able to levy fees only on vessels engaged in trade. This means, therefore, that it would not be possible for a local port to levy a fee on the initial landing of U.S. harvested fish and fisheries products since U.S. fishing vessels are not engaged in trade. Imported and exported fisheries products, as well as those shipped in domestic commerce, would be subject to the fees.

In addition, the amendment incorporates certain minimum procedural requirements for notice and comment in the adoption of local port user fees, including Federal Register publication (after receipt of enumerated materials) and mandatory filing with the Federal Maritime Commission.

Although the balance of the remaining administrative provisions are virtually unchanged from previous versions of the legislation reported by the Committee, two exceptions are worth noting. First, among the remedies available in U.S. district courts for disputes arising under section 109, the Committee has added the court's power to order the refund of any port or harbor dues not lawfully collected. The word "collected" includes all phases of the collection process, including formulation and assessment, and the use of the word "may" is meant only to indicate that under circumstances where the legality of the collection process is not at issue, or where the court has found it to be lawful, a refund is not an appropriate remedy. It is expected that a refund will always be ordered in those few circumstances where, for some reason, the collection of port or harbor dues is found to be unlawful.

Second, the Committee has clarified the enforcement and lien provisions of section 109, found in subsections (d) and (e), respectively. Specifically, changes were made to eliminate any uncertainty over a vessel or vessel master's owner's or operator's liability or

penalty for violations by cargo interests of the section or other laws, ordinances or regulations issued with respect to it. The changes make clear that cargo interests are accountable for their own transgressions, just as carrier interests are accountable for theirs. Neither is liability for the acts or omissions of the other.

SECTION 110

The Committee adopted an amendment substituting a new section 110 classified to 46 App. U.S.C. 121(b).

As amended, section 110 establishes a national uniform ad valorem levy at a rate of .04 percent of the value of cargo loaded on or discharged from a vessel using a port with a Federally-maintained channel in excess of 14 feet in depth. The fee is intended to recover approximately 40 percent of the cost of current expenditures for routine operations and maintenance of those channels by the U.S. Army Corps of Engineers.

The fee is to be assessed and collected by the Secretary of the Treasury, acting through the local collector of customs, from either the shipper or the shipper's agent. The shipper is responsible for payments of the cargo fee. Dual reporting requirements are imposed upon shippers and carriers to provide the requisite documentation for the assessment, collection, and enforcement. In requiring the carrier to provide verifying documentation, the Committee expects that, to the extent possible, the Secretary will specify documents already within commercial usage and in the carrier's possession. The Secretary is authorized to enforce voluntary self-assessment, reporting, and payment of fees through the assessment of penalties and forfeiture of cargo subject to the fee.

The Committee intends that the same limitation that applies to fees levied by local ports under section 109 on fish and fisheries products would also apply to cargo fees levied under section 110.

The Committee expects that a minimum period of time will be required for the Secretary to put into effect the implementing regulations and administrative practices necessary to carry out section 110. It is considered appropriate and understood that cargo interests will not be legally liable for the ad valorem fees until the requisite administrative collection mechanisms are in place and operative.

Consistent with the addition of a new section 110 and the severability clause (which description follows), all sections in title I which follow section 110 are renumbered accordingly.

SECTION 116

Cognizant of the debate which could be legally joined over the validity of a fee or tax on cargo, particularly as applied to exports, the Committee has added a new section 116 severability provision to H.R. 6.

INFLATIONARY IMPACT STATEMENT

With respect to the requirement in clause (2)(1)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 6, as amended, would have no

significant inflationary impact upon prices and costs in the operation of the national economy.

COST OF LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires a statement of the estimated costs to the United States that would be incurred in carrying out H.R. 6, as amended, in Fiscal Year 1985, and each of the following five years. However, under paragraph (d) of clause 7, the provisions of (a) do not apply when the Committee has received a timely report from the Congressional Budget Office.

DEPARTMENTAL REPORTS

As of a filing date of this report, no departmental reports have been received on H.R. 6, as amended, by the Committee.

COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirements of clause (2)(1)(3)(A) of rule XI of the Rules of the House of Representatives, no oversight findings or recommendations on the subject of H.R. 6 have been made by the Committee during the 98th Congress.

2. With respect to the requirements of clause (2)(1)(3)(B) of rule XI of the Rules of the House of Representatives and sections 308(a) of the Congressional Budget Act of 1974, H.R. 6, as amended, does not contain any new budget authority or tax expenditures.

3. With respect to the requirements of clause (2)(1)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report from the Committee on Government Operations on the subject of H.R. 6.

4. The Committee has been furnished a letter from the Director of the Congressional Budget Office with an estimate and comparison of costs, pursuant to section 403 of the Congressional Budget Act of 1974. The submission is as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 23, 1985.

HON. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 6, Amendments to the Water Resources Conservation, Development, and Infrastructure Improvement and Rehabilitation Act of 1985.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

JAMES BLUM
(For Rudolph G. Penner).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: Amendments to H.R. 6.
2. Bill title: Amendments to the Water Resources Conservation, Development, and Infrastructure Improvement and Rehabilitation Act of 1985, as reported by the House Committee on Public Works and Transportation, August 1, 1985.
3. Bill status: As ordered reported by the House Committee on Merchant Marine and Fisheries, September 11, 1985.
4. Bill purpose: The amendments to H.R. 6 would eliminate the ad valorem tax imposed in the bill and replace it with a cargo fee equally .04 percent of the value of all commercial cargo entering or departing from a U.S. port. The amendments specify that the amounts collected from this fee are to be credited as offsetting receipts in the budget. Certain vessels would be exempt from payment of the fee, in particular, commercial cargo vessels passing through U.S. ports to or from countries bordering the U.S.

In addition, the amendments would remove provisions in titles I, III, IV, and V that would have required the Army Corps of Engineers, within one year of the bill's passage, to complete and submit to Congress final environmental impact statements on all projects authorized in the bill. Other amendments would allow nonfederal interests in port projects authorized before 1985 to receive full credit under new cost-sharing provisions for all lands, easements, rights-of-way dredge disposal sites already contributed to comply with original authorizations.

Finally, the amendments would expand the ability of nonfederal entities to recover costs associated with projects authorized in this bill through the collection of user fees.

5. Changes in the estimated cost to the Federal Government: Enactment of the committee's amendments would decrease outlays relative to H.R. 6 as reported by the House Committee on Public Works and Transportation, by authorizing the collection of cargo fees on all commercial users of ports. In addition, the amendments would decrease revenues relative to H.R. 6 by eliminating the ad valorem tax. There would be no net budget impact as a result of these changes, as shown in the following table.

ESTIMATED BUDGET IMPACT OF COMMITTEE AMENDMENTS—RELATIVE TO H.R. 6 AS REPORTED

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990
Estimated budget authority	-165	-190	-208	-226	-246
Estimated outlays	-165	-190	-208	-226	-246
Estimated revenues	-165	-190	-208	-226	-246
Estimated net effect on the deficit					

The remaining costs of H.R. 6 are described in the CBO cost estimate for the Committee on Public Works and Transportation, dated July 17, 1985.

Relative to current law, under which no cargo fee or ad valorem tax exists, the committee amendments would increase offsetting receipts and thereby reduce federal outlays by the following amounts:

ESTIMATED BUDGET IMPACT OF COMMITTEE AMENDMENTS—RELATIVE TO CURRENT LAW

(By fiscal years, in millions of dollars)

	1986	1987	1988	1989	1990
Estimated budget authority.....	-165	-190	-208	-226	-246
Estimated outlays.....	-165	-190	-208	-226	-246

The costs of this bill fall within budget function 300.

Basis of estimate: Because of the cargo fee established by the Committee amendments is set at the same rate as the ad valorem tax established in H.R. 6, it is estimated that receipts would be the same as the revenues in H.R. 6. It is also estimated that the exemptions from the commercial cargo fee would have no significant effect on estimated receipts.

In addition, the elimination of the one-year deadline for submission of Environmental Impact Statements and the provision allowing previously authorized projects to be credited for nonfederal contributions already made are not expected to result in any significant budget impact.

6. Estimated cost to State and local governments: An amendment to Title I expands the authority of nonfederal interests in port projects to recover their share of project costs through the collection of user fees. While it is not possible to precisely estimate the budget impact of this provision, it is estimated that this provision would further enhance the ability of the rate at which nonfederal entities will be able to undertake harbor improvement projects.

The remaining costs to state and local governments resulting from H.R. 6 are described in the CBO cost estimate for the Committee on Public Works and Transportation, dated July 17, 1985.

7. Estimate comparison: None.

8. Previous CBO estimate: On July 17, 1985, CBO prepared a cost estimate for H.R. 6, as ordered reported by the House Committee on Public Works and Transportation. This cost estimate reflects only amendments ordered reported by the House Committee on Merchant Marine and Fisheries.

9. Estimate prepared by: Theresa Gullo.

10. Estimate approved by: C.D. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, as amended, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 4219 OF THE REVISED STATUTES OF THE UNITED STATES

(46 App. U.S.C. 121)

SEC. 4219. [AMOUNT OF TONNAGE DUTIES] *TONNAGE DUTIES OR CARGO FEES.*

[Upon] (a) *TONNAGE DUTIES.*—On vessels which shall be entered in the United States from any foreign port or place there shall be paid duties as follows: On vessels built within the United States but belonging wholly or in part to subjects of foreign powers at the rate of thirty cents per ton; on other vessels not of the United States, at the rate of fifty cents per ton, and any vessel any officer of which shall not be a citizen of the United States shall pay a tax of fifty cents per ton.

A tonnage duty of 2 cents per ton, not to exceed in the aggregate 10 cents per ton in any one year, is imposed at each entry on all vessels which shall be entered in any port of the United States from any foreign port or place in North America, Central America, the West India Islands, the Bahama Islands, the Bermuda Islands, or the coast of South America bordering on the Caribbean Sea, or Newfoundland and a duty of 6 cents per ton, not to exceed 30 cents per ton per annum, is imposed at each entry on all vessels which shall be entered in any port of the United States from any other foreign port, not however, to include vessels in distress or not engaged in trade.

Upon every vessel not of the United States, which shall be entered in one district from another district, having on board goods, wares, or merchandise taken in one district to be delivered in another district, duties shall be paid at the rate of 50 cents per ton: *Provided*, That no such duty shall be required where a vessel owned by citizens of the United States, but not a vessel of the United States, after entering an American port, shall, before leaving the same, be registered as a vessel of the United States. On all foreign vessels which shall be entered in the United States from any foreign port or place, to and with which vessels of the United States are not ordinarily permitted to enter and trade, there shall be paid a duty at the rate of \$2 per ton; and none of the duties on tonnage above mentioned shall be levied on the vessels of any foreign nation if the President of the United States shall be satisfied that the discriminating or countervailing duties of such foreign nations, so far as they operate to the disadvantage of the United States, have been abolished. Any rights or privileges acquired by any foreign nation under the laws and treaties of the United States relative to the duty of tonnage on vessels shall not be impaired; and any vessel any officer of which shall not be a citizen of the United States shall pay a tax of 50 cents per ton.

(b)(1) *CARGO FEES.*—A fee is levied at the rate of .04 percent on the value of cargo transported by a vessel engaged in trade entering or departing from a port in the Customs territory or a possession outside the Customs territory but within the jurisdiction of the United States.

(2) *PURPOSES.*—The fee levied under paragraph (1) of this subsection is to reimburse the United States Government towards the cost

of operation and maintenance of port navigation projects authorized under this Act or other Federal law.

(3) APPLICATION.—(A) A fee levied under this subsection may be levied on cargo loaded on or unloaded from a vessel entering or departing from a port, if the vessel requires a channel with a depth of more than 14 feet.

(B) A fee levied under this subsection shall be levied on cargo entering a United States port from a country contiguous to the United States if:

(i) the cargo enters or departs from the United States on transportation other than foreign or domestic commerce waterborne transportation, and

(ii) the cargo entered or will depart the country contiguous to the United States on waterborne transportation.

(C) A fee levied under subparagraph (B) shall be assessed at the United States port at which the cargo enters or departs from the United States.

(D) A fee levied under this subsection may not be levied on cargo arriving from a foreign country and destined for a country contiguous to the United States or cargo arriving from a country contiguous to the United States destined for a foreign country.

(E) A fee levied under this subsection may not be levied on cargo loaded on or unloaded from a vessel entering or departing from a port, if the—

(i) vessel is engaged in intraport movement;

(ii) vessel enters the port under conditions of force majeure;

(iii) vessel is owned and operated by the United States Government, a foreign country, a State, or a political subdivision of a country or State, unless the vessel is engaged in commercial service; or

(iv) fee has been previously assessed and collected on that cargo.

(4) COLLECTION.—The Secretary of the Treasury:

(A) shall assess and collect the fee from the shipper of the cargo, acting through the local collector of customs; or

(B) may require by regulation the person acting as agent for the shipper to assess and collect the fee from the shipper of the cargo subject to the fee and remit the fee to the Secretary during each calendar quarter before the 31st day after the last day of that quarter. For the purposes of this subsection, shipper means consignor, consignee, importer, exporter, an export trading company, or other person holding title to or beneficial interest in the cargo.

(5) DELEGATION.—In those instances when a person other than the Secretary assesses and collects a fee under paragraph (4)(B) of this subsection, that person shall identify separately in the appropriate bill of lading, freight bill, charter party, contract of affreightment, service contract, or other documentation the amount of fees assessed under this subsection for that cargo.

(6) PAYMENT.—The shipper of cargo subject to the fee under this subsection shall pay that fee to the Secretary. The Secretary may by regulation provide for posting of bond or other security pending liquidation of the fee.

(7) *REPORTING.*—(A) *The Secretary shall prescribe by regulation requirements for submission by shippers or their agents of documentation or other information necessary to assess, collect, and verify the fees levied under this subsection.*

(B) *The master or operator of a vessel entering a port in which cargo to be loaded on or unloaded from that vessel is subject to a fee under this subsection shall deliver to the local collector of customs acting for the Secretary, the documentation prescribed by regulation by the Secretary within 48 hours after the vessel enters the port and before any cargo is unloaded from the vessel.*

(8) *ENFORCEMENT.*—*The Secretary may assess a penalty or initiate a forfeiture of the cargo in the same manner and under the same procedures as are applicable for failure to pay customs duties under the Tariff Act of 1930 (19 App. U.S.C. 1202 et seq.).*

(9) *OFFSETTING RECEIPTS.*—*Amounts collected under this subsection shall be deposited in the Treasury of the United States and credited as an offsetting receipt against appropriations for the Port Infrastructure Development and Improvement Trust Fund.*

ADDITIONAL VIEWS OF MR. BIAGGI ON H.R. 6

Although I believe that the amendments adopted by the Committee to H.R. 6, substituting a cargo fee for the proposed ad valorem tax, convert a potentially discriminatory revenue measure to a fee for services, I continue to hold grave reservations concerning the constitutionality and policy implications of an ad valorem fee.

First, in my judgment there is no intrinsic relationship between the imposition of a fee on cargo for port dredging services based exclusively on cargo value and the value of services provided. A tax by under any other name remains a tax. The research performed, by and at the Committee's request, only strengthens my convictions in this regard.

Secondly, in electing to levy a national uniform ad valorem fee the United States is creating an international precedent. This action ignores 600 years of tradition in the evolution of port and harbor dues. It also ignores the manner of assessing fees on vessels and cargo (based on revenue tons for liner cargo and long tons for bulk cargo) relies upon almost exclusively in prevailing international port practice.

Third, in term of the relative impact of an ad valorem fee on domestic interport competition, I feel compelled to point out that an ad valorem fee is inherently discriminatory against large ports, which handle the bulk of our international general cargo trade, in favor of smaller ports. This results in a massive cross-subsidy in the maintenance of the national port system. This is an addition to the cross-subsidy inherent in earmarking amounts equivalent to customs receipts for the same purpose.

In this regard, a table from "Highlights of U.S. Export and Import Trade" of December, 1984, prepared by the Bureau of the Census, U.S. Department of Commerce provides a fair assessment of the inherent unfairness to some ports under the value system of assessment. In particular, I am advised that the Port of New York alone may be responsible for generating between \$12 and \$14 million more per year under an ad valorem based fee structure. A survey of the same table reveals that other large ports such as Los Angeles/Long Beach, Seattle, San Francisco/Oakland, Baltimore, Hampton Roads, Houston, and New Orleans are similarly situated.

MARIO BIAGGI.

ADDITIONAL VIEWS OF REPRESENTATIVE
THOMAS M. FOGLIETTA

I am pleased that H.R. 6 has been approved by the Committee; the bill has many merits. Not only does H.R. 6 establish a national water policy but it also authorizes many vital water projects while deauthorizing a few which have proven to be not in our best interest. Furthermore, H.R. 6 contains fast-tracking provisions which will accelerate the approval process for port-initiated navigation projects without impairing environmental concerns. In addition, H.R. 6 provides the long awaited vehicle for establishing a method of cost sharing between federal and non-federal interests.

Unfortunately, included in this cost sharing scheme are port user fees. Specifically, H.R. 6 contains a .04% ad valorem fee to be imposed on all cargoes imported, exported, or shipped between U.S. ports. I adamantly oppose this concept and regret that we must break with our 200 year commitment to provide 100% of the operations and maintenance costs of our general cargo ports. There are many compelling reasons why we should not impose such a user fee; these range from the constitutionality of such a proposal to the potential for cargo diversion and possible foreign retaliation.

However, I do understand and appreciate the need to compromise on this issue so as to not imperil the water resources bill which having been debated and delayed for over ten years is in urgent need of House consideration.

Therefore, it is my belief that this .04% ad valorem fee is only agreed upon in an attempt to break the long-standing impasse on the omnibus water resources bill and only as a last resort. This must settle the issue for the future. The Committee will not revisit the area to fight attempts to change the level or the nature of these O&M user fees in the future. The ad valorem fee must be no higher than .04% of the commercial value of the cargo and it must remain uniform.

I appreciate the compromises which must take place in an effort to conquer our federal budget deficit and yet, in the process, an equitable balance must be struck to maintain our existing port system which is vital to both our national defense and our balance of trade.

I also want to make clear that it is the intent of this legislation to have the local customs agent bear the responsibility for the collection of the O&M user fees. I want to stress that at no time should the local ports serve as a collection agent for the fees.

Finally, I believe if we must agree to a user fee it is important to ensure that this operations and maintenance fee proposed in H.R. 6 not be assessed on cargoes more than once, be the cargoes foreign or domestic. A provision of this nature is also included in H.R. 6 as reported by the Public Works and Transportation Committee. Do-

mestic cargoes often move through several ports before reaching their final waterborne destination and it is of the utmost importance to guard against multiple O&M fee imposition. Needless to say, domestic waterborne transportation competes directly with land-based transportation modes and additional costs imposed on waterborne movements have a direct impact on this competitive modal relationship. The imposition of multiple fees on domestic cargoes would of course only serve to diminish further the competitive posture of our domestic merchant marine as would any further incremental adjustment of such a user fee.

In conclusion, although I oppose the concept of user fees, I will support H.R. 6, the Water Resources Conservation, Development, and Infrastructure Improvement and Rehabilitation Act of 1985 and appreciate the precarious status of the bill if a user fee proposal is not accepted. However, I emphasize it is in the best interest of the Committee to obtain some confirmation that the .04% ad valorem fee to be assessed on all cargo remain untouched and unchallenged. While it is important to authorize water projects and to balance our budget, it is also important to protect our ports and our balance of trade.

THOMAS M. FOGLIETTA.

APPENDIX

Table A

(1/18/82)

SUMMARY TABLE
COMPOSITION AND DISTRIBUTION OF TOTAL WATERBORNE COMMERCE
FOR TWENTY LARGEST COASTAL PORTS BY VOLUME
CALENDAR YEAR 1973

(Excludes Great Lakes)

(In millions of short tons)

PORT	TOTAL FOREIGN & DOMESTIC	% U.S.	FOREIGN		DOMESTIC		INTERNAL		LOCAL
			IMPORTS	EXPORTS	RECEIPTS	SHIPMENTS	RECEIPTS	SHIPMENTS	
1. New Orleans	167.1	8.0	27.2	43.0	1.7	11.4	54.7	23.1	6.1
2. New York	163.6	7.9	49.5	6.8	26.7	21.5	4.1	15.6	39.5
3. Houston	117.6	5.7	41.9	23.0	4.6	16.3	13.6	13.3	5.9
4. Baton Rouge	76.7	3.7	16.2	12.9	5.8	5.5	15.6	19.7	1.1
5. Valdez	65.6	3.2	-	.05	.2	65.2	-	-	-
6. Beaumont	58.1	2.8	31.9	4.2	2.5	8.6	6.1	4.2	.7
7. Philadelphia	54.9	2.6	28.6	5.9	2.0	4.2	9.6	3.0	1.6
8. Baltimore	51.4	2.5	19.4	18.2	4.1	.8	3.3	1.6	4.1
9. Norfolk	48.7	2.3	6.1	31.1	2.2	.09	3.8	3.7	1.6
10. Tampa	47.9	2.3	4.9	18.9	16.8	7.1	.09	.07	.03
11. Corpus Christi	46.4	2.2	19.3	5.6	.7	11.9	1.8	5.6	1.5
12. Texas City	36.0	1.7	17.0	.8	.4	6.0	5.6	5.4	.09
13. Mobile	35.3	1.7	9.7	5.4	.4	1.0	7.7	9.5	1.6
14. Long Beach	33.3	1.6	9.4	8.5	12.9	2.2	.1	.1	.02
15. Port Arthur	32.8	1.6	16.8	2.9	1.1	7.3	1.0	3.6	.03
16. Marcus Hook	32.7	1.6	15.0	.09	6.0	3.2	3.6	4.3	.4
17. Los Angeles	31.7	1.5	10.7	4.1	11.1	5.4	.1	.1	.2
18. Portland	29.1	1.4	2.6	10.9	5.3	.4	4.8	2.8	2.4
19. Boston	26.3	1.3	7.3	.9	14.2	2.8	.01		1.2
20. Pascagoula	25.3	1.2	9.5	4.4	.6	5.3	1.9	3.5	.2

56.8

PROFILE: Total U.S. Waterborne Commerce.	2,073,757,628	
Foreign	993,444,963	
Coastal Ports	919,684,819 (93%)	
Domestic.	1,080,312,665	(Coastwise - 304,665,522 Lakewise - 143,563,644 Internal - 534,563,644 Local - 93,113,665 Other - 4,000,667)
Net Deep-Draft Oceaingong Traffic	1,414,674,195	

Source: U.S. Army Corps of Engineers

TABLE B

SURVEY OF WORLD PORTS WITH EXISTING AND PLANNED OPERATING CHANNEL
DEPTHS IN EXCESS OF 45 FT

Port	Maximum draft (in feet)	Port	Maximum draft (in feet)
Japan:		Belgium:	
Kimitsu.....	59.04	Antwerp.....	54.00
Kashima.....	57.00	Finland: Port.....	51.00
Muroran.....	52.48	Sweden:	
Kawasaki.....	67.00	Gothenburg.....	56.00
Mizushima.....	52.48	Oxelösund.....	72.00
Fukuyama.....	52.48	Denmark:	
Chiba.....	55.76	Aabenraa.....	55.00
Tobata.....	57.00	Stignæs.....	49.00
Kakogawa.....	52.48	Spain:	
Oita.....	79.00	Barcelona.....	127.00
United Kingdom:		Gijón-Musel.....	50.00
Hunterston.....	95.12	Sagunto.....	49.00
Port Talbot.....	46.97	Carbonesas.....	55.00
Redcar.....	52.97	Yugoslavia:	
The Netherlands:		Rijeka.....	51.00
Rotterdam.....	68.00	Australia:	
Proposed.....	72.00	Abbots Point.....	72.00
IJmuiden.....	52.00	Hay Point.....	56.00
Federal Republic of Germany:		Newcastle.....	54.00
Wilhelmshaven.....	47.00	Port Kemble.....	53.00
Hamburg.....	47.00	Gladstone.....	54.00
France:		South Africa:	
Le Havre.....	45.92	Richards Bay.....	56.00
Proposed.....	52.48	Proposed.....	75.00
Marseille.....	61.00	Canada:	
Dunkerque.....	45.92	Quebec City.....	48.00
Proposed.....	75.44	Vancouver.....	65.00
Nantes-St-Nazaire.....	51.00	Prince Rupert.....	65.00
Fos.....	57.00	Poland:	
Italy:		Gdansk.....	50.00
Taranto.....	52.00	U.S.S.R.:	
		Vostochnyy.....	50.00

Source: Maritime Administration,
Department of Transportation

(1/18/82)

Table C

TRADITIONAL AUTHORIZATION PROCESS FOR
PORT NAVIGATION IMPROVEMENTS

1. Public requests assistance from congressional delegation to solve water resources problems
2. Committee on Public Works of House or Senate authorizes study
3. Initial funds for study enacted into law
4. Corps district conducts reconnaissance (Stage 1 Planning)—includes public meeting and other forms of public involvement
5. If results of reconnaissance favorable, Corps district continues study and develops preliminary alternatives (Stage 2 Planning)—includes public meeting and other public involvement
6. Corps district selects several alternatives to develop in detail and on the basis of further evaluation tentatively selects plan, which best achieves the objectives of the study (Stage 3 Planning)—includes public meeting and the preparation and circulation of draft report and draft environmental impact statement (EIS)
7. District engineer submits report and EIS to division engineer
8. Division engineer submits report and results of division review to Board of Engineers for Rivers and Harbors (BERH)—includes public notice
9. BERH reviews district and division recommendations and issues its findings and recommendations—includes public notice of recommendations
10. Chief of Engineers coordinates proposed report and EIS with Governors of affected States and Federal department heads
11. Chief of Engineers report reviewed by Secretary of the Army and the Office of Management and Budget and submitted to Congress—final EIS filed with EPA
12. Committee on Public Works hold hearings and include project in authorization bill or authorize by joint resolutions
13. Initial funds for Advance Engineering and Design (AED) for project enacted into law—usually several years after authorization
14. Corps reaffirms plan based on current conditions and any new planning criteria applicable to project—includes a public meeting and other forms of public involvement
15. If plan reaffirmed, or satisfactorily modified to accommodate new conditions or criteria, Corps continues with sufficient engineering and design to award initial construction contracts
16. Non-Federal interests required to enter into formal agreement with Secretary of the Army to fulfill their obligations, as authorized by Congress
17. Initial funds for construction of project enacted into law—requires specific decision by President and Congress to initiate construction of project
18. Continuation of engineering and design and project construction—may include adjustments based on results of detailed engineering design
19. Completion of project construction

Source: Coal Exports and Port Development,
A Technical Memorandum, April, 1985,
Office of Technology Assessment

TABLE D

SUMMARY OF
POTENTIAL USER CHARGE DOCUMENTS

1. Cargo Tonnage

A. Foreign Trade

1. Shippers Export Declaration (Commerce Form FT 7525)
2. Consumption Entry (Customs Form 7501)
3. Ocean Bill of Lading
4. Dock Receipts (not uniform in format)

B. Domestic Ocean Trade

1. Bill of Lading
2. Corps of Engineers (Form 3925)
3. Record of Arrivals and Departures (COE Form 3926)
- Received from terminal operators on a voluntary basis.
4. Dock Receipts (not uniform in format)

2. Cargo Value

A. Foreign Trade

1. Shippers Export Declaration (Commerce Form 7525)
2. Consumption Entry (Customs Form 7501)
3. Cargo Declaration (Customs Forms 1302, 1302A)

B. Domestic Ocean Trade - There are no formal reporting requirements which include cargo value. For Puerto Rico, the Virgin Islands, and other U.S. possessions, value data are available because the document requirements for these areas are the same as for foreign trade.

3. Value of Transportation Services - The following documents may include information on ocean freight charges depending on the type of carriage.

A. Foreign Trade

1. Bill of Lading
2. Carrier Invoice
3. Consumption Entry (Customs Form 7501)- Imports only, CIF

B. Domestic Ocean Trade

1. Bill of Lading
2. Carrier Invoice
3. Consumption Entry (Customs Form 7501)- Imports only, CIF
This document applies only to Puerto Rico, the Virgin Islands, and other U.S. possessions.

4. Vessel Tonnage (GRT and NRT)

A. Foreign Trade - Vessel registration papers

B. Domestic Ocean Trade - Vessel registration papers

Source: Maritime Administration, Department of Transportation

TABLE E

Average Value/Ton:

liner cargo \$2,300/ton
 liquid bulk \$ 233/ton
 dry bulk \$ 208/ton

COMMODITY GROUP	TOTAL TONNAGE ('000)	TOTAL USER CHARGE (\$'000)	TOTAL \$ VALUE (\$'000)	VALUE PER TON (\$/Ton)	USER CHARGE PER TON (\$/Ton)	USER CHARGE PER \$ VALUE (\$/'000)
1 WHEAT	32,514	\$5,400	\$5,095,323	\$181.32	\$0.17	\$0.92
2 CORN	50,296	8,787	8,088,398	137.37	0.15	1.10
3 SOYBEANS	20,123	3,071	5,511,863	273.91	0.15	0.56
4 OTHER GRAINS & SEEDS	11,939	2,832	2,771,771	232.94	0.24	1.02
5 FRUITS & VEGETABLES	5,646	5,701	2,987,530	529.14	1.02	1.94
6 SEEDS OILS & FATS	3,589	2,056	2,179,348	607.23	0.57	0.94
7 SUGAR, MOLASSES, HONEY	4,865	1,258	2,450,496	503.70	0.26	0.51
8 ALCOHOLIC BEVERAGES	1,740	1,842	2,487,537	1,429.62	1.06	0.74
9 OTHER FOOD & FARM PROD	19,829	14,780	19,476,393	982.22	0.75	0.76
10 IRON ORE & CONCENTRATES	25,250	3,398	815,461	32.29	0.13	4.17
11 OTHER ORES & CONCENTRATES	21,848	3,456	3,902,317	178.61	0.16	0.89
12 NON-METALLIC MINERALS	9,987	1,951	384,992	38.55	0.20	5.07
13 PRIMARY IRON & STEEL	1,777	597	801,065	450.80	0.34	0.75
14 IRON & STEEL PRODUCTS	12,835	5,475	7,071,064	550.92	0.43	0.77
15 NON-FERROUS METALS	2,807	1,690	5,434,495	2,787.77	0.84	0.31
16 CEMENT & LIMESTONE	10,995	1,861	177,805	16.17	0.17	10.47
17 OTH BLDG MATLS EX CEMENT	4,070	1,653	755,966	185.74	0.41	2.19
18 WOOD & LUMBER	23,121	7,392	4,056,289	175.44	0.32	1.82
19 PULP & PAPER	8,810	5,859	4,280,078	484.34	0.33	1.37
20 FERTILISER	26,604	5,055	3,077,965	115.70	0.23	1.64
21 SULPHUR	1,530	287	174,194	113.65	0.19	1.65
22 CHEMICALS	16,518	7,550	10,942,993	662.49	0.46	0.69
23 CHEMICAL PRODUCTS	1,812	899	2,495,681	2,466.09	0.89	0.36
24 NATURAL & SYN FIBERS	2,270	2,989	3,535,126	1,557.32	1.32	0.85
25 NAT & SYN RUBBER, PLASTICS	4,821	5,505	8,327,388	1,727.32	1.14	0.66
26 WASTE & SCRAP MATERIALS	10,219	3,176	2,299,756	225.05	0.31	1.38
27 COAL & COKE	83,694	12,920	4,832,766	57.81	0.15	2.67
28 CRUDE OIL	239,446	35,996	57,171,835	238.77	0.15	0.63
29 RESID & DIRTY PETROL PROD	38,465	6,990	6,732,860	175.04	0.18	1.04
30 CLEAN PETROLEUM PRODUCTS	14,809	3,768	4,574,324	308.89	0.25	0.82
31 LPG & LNG	3,563	809	742,789	208.47	0.23	1.09
32 INDUST & AGRIC MACH, PARTS	3,302	5,964	21,975,800	6,655.30	1.81	0.27
33 MOTOR VEHICLES, PARTS	4,259	7,816	20,474,592	4,807.37	1.84	0.38
34 OTHER TRANSP EQUIP, PARTS.	1,817	2,437	5,395,088	5,304.90	2.40	0.45
35 ELCT, ELECTRONICS, OPTICS	2,086	4,149	17,935,131	8,597.86	1.99	0.23
36 METAL MANUFACTURES	2,054	2,400	4,904,994	2,388.02	1.17	0.49
37 TEXTILES & APPAREL	1,732	4,717	9,784,945	5,649.51	2.72	0.48
38 FURNITURE, PARTS	354	1,540	1,025,429	2,896.69	4.35	1.50
39 DRY CARGO, NEC	2,895	5,953	12,244,171	4,229.42	2.06	0.49
40 SKIPP COMMODITIES	128	255	1,550,431	12,112.74	1.99	0.16
Total	739,897	\$200,317	\$279,646,457	\$378.36	\$0.27	\$0.72

TABLE F

**A COMPARISON OF RECEIPTS UNDER TWO PORT USER FEES:
1980 FOREIGN TRADE**

COMMODITY GROUP	TOTAL LONG TONS (000)	VALUE PER TON (\$/Ton)	AD VALOREM RECEIPTS (\$000)	REVENUE TON RECEIPTS (\$000)
-BULK-				
CEMENT & LIMESTONE	10,995	16.17	71.12	746.56
IRON ORE & CONCENTRATES	25,258	32.29	326.18	1,715.02
NON-METALLIC MINERALS	9,987	38.55	154.00	679.12
COAL & COKE	83,604	57.81	1,933.11	5,676.71
SULPHUR	1,530	113.85	49.68	103.89
FERTILIZER	26,604	115.70	1,231.19	1,806.41
CORN	58,296	137.37	3,203.36	3,958.30
RESID & DIRTY PETROL PROD	38,465	175.04	2,693.14	2,611.77
WOOD	23,121	175.44	1,622.52	1,569.92
OTHER ORES & CONCENTRATES	21,848	178.61	1,560.93	1,483.49
WHEAT	32,314	181.32	2,358.13	2,207.70
OTH BLDG MATLS EX CEMENT	4,070	185.74	302.39	276.35
LPG & LNG	3,563	208.47	297.12	241.93
WASTE & SCRAP MATERIALS	10,219	225.05	1,119.90	693.87
OTHER GRAINS & SEEDS	11,899	232.94	1,108.71	807.94
CRUDE OIL	239,446	238.77	22,868.73	16,258.38
BOYBEANS	20,123	273.91	2,204.75	1,366.35
CLEAN PETROLEUM PRODUCTS	14,809	308.89	1,829.73	1,005.53
PRIMARY IRON & STEEL	1,777	450.80	320.43	120.66
SUGAR, MOLASSES, HONEY	4,865	503.70	980.20	330.33
FRUITS & VEGETABLES	3,646	529.14	1,195.01	383.36
PULP & PAPER	8,010	534.34	1,712.03	543.88
IRON & STEEL PRODUCTS	12,835	550.92	2,828.43	871.50
EDIBLE OILS & FATS	3,589	607.23	871.74	245.69
CHEMICALS	16,518	662.49	4,377.20	1,121.57
OTHER FOOD & FARM PROD	19,829	982.22	7,790.56	1,346.39
NATURAL & SYN FIBERS	2,270	1,557.32	1,414.05	154.13
NAT & SYN RUBBER, PLASTICS	4,821	1,727.32	3,330.96	327.35
NON-FERROUS METALS	2,007	2,707.77	2,173.80	136.28
MOTOR VEHICLES, PARTS	4,259	4,807.37	8,189.84	289.19
Total	722,777	18,316.54	79,938.90	49,076.56
-LINER-				
ALCOHOLIC BEVERAGES	1,740	1,429.62	995.01	1,341.35
METAL MANUFACTURES	2,054	2,388.02	1,962.00	1,583.41
CHEMICAL PRODUCTS	1,012	2,466.09	998.27	780.14
FURNITURE, PARTS	354	2,896.69	410.17	272.90
DRY CARGO, NEC	2,895	4,229.42	4,897.67	2,231.73
OTHER TRANSP EQUIP, PARTS	1,017	5,304.90	2,158.04	784.00
TEXTILES & APPAREL	1,732	5,649.51	3,913.98	1,335.18
INDUST & ABRIC MACH, PARTS	3,302	4,655.30	8,790.32	2,545.49
ELECT, ELECTRONICS, OPTICS	2,086	8,597.86	7,174.05	1,608.08
EXEMPT COMMODITIES	128	12,112.74	620.17	98.67
Total	16,320	51,730.15	31,919.69	12,580.76

Source: Commodity groups, total long tons, and value per ton provided by the Maritime Administration, Office of Port and Intermodal Development. Ad valorem receipts and revenue ton receipts calculated by CRS. Table prepared by Jose Padua, Reference Assistant, Economics Division.

