

# FOLLICK & BESSICH, Attorneys at Law

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MEMORANDUM

DATE: April 9, 1998

TO: Exporters, Customs Brokers, Freight Forwarders and Others Concerned

RE: Harbor Maintenance Fee Litigation

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The U.S. Supreme Court has unanimously affirmed two lower court opinions holding the Harbor Maintenance Fee ("HMF") unconstitutional when assessed and collected on exports from the United States. The case, *United States v. U.S. Shoe Corp.*, No. 97-3720 (March 31, 1998), was closely watched by the international trade community, as it represented the appeal of a landmark decision by the Court of International Trade ("CIT"), *United States Shoe Corp. v. United States*, 907 F. Supp. 408 (CIT 1995) which was affirmed by the Court of Appeals for the Federal Circuit ("CAFC"), 114 F.3d 1564 (1997).

In affirming the CAFC's decision, the Supreme Court held that the HMF (1) is a tax, which is imposed on an ad valorem basis, (2) is not a fair approximation of services, facilities, or benefits furnished to the exporters, and (3) does not qualify as a permissible fee. Slip Op. at 1 - 2. Moreover, the Court reasoned that

under the Export Clause, the connection between a service the Government renders and the compensation it receives for that service must be closer than is present here. Unlike the stamp charge in *Pace* [a prior Supreme Court case], the HMT is determined entirely on an ad valorem basis. The value of export cargo, however, does not correlate reliably with the federal harbor services used or usable by the exporter.

Slip Op. at 8.

It is important to understand that exporters will not automatically receive a refund, and in order to claim a refund, exporters must file an action with the CIT seeking the HMF paid on all shipments during the previous two years. Moreover, as the assessment was held unconstitutional, exporters may be able to recover all HMF fees paid. We will be filing a further challenge to the HMF paid on merchandise exported since the assessment of the tax in 1987.

**Should you have any questions or if we can be of assistance to your company in seeking a refund of the HMF, please do not hesitate to call us either at our Long Island office (516) 549-1938, our New Jersey office (201) 946-1200, our New York office (212) 233-6630, or contact us by e-mail at CUSTOMS@IDT.NET or TARIFFLAW@AOL.COM.**

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