
Deregulating Book Imports

J. Hayden Boyd

The “manufacturing clause” of U.S. copyright law was the longest-lived U.S. nontariff trade barrier. Beginning in 1891, the manufacturing clause restricted the import of foreign-printed books by denying U.S. copyright protection to American authors whose books were printed abroad. Congress did narrow the coverage over the years, but until the last months of its life, the manufacturing clause attracted little effective opposition.

In early 1986 efforts to extend permanently the manufacturing clause and broaden its coverage appeared to enjoy overwhelming political support. The trade association and the printers’ unions proposed legislation that attracted broad and influential support in both houses of Congress despite opposition by the Reagan administration. This continued political support was predictable. The manufacturing clause benefitted a narrow, politically aware, and mobilized special-interest group, and it imposed mostly indirect and widely diffused costs. As the debates over extension began, proponents seemed well organized and vocal, while opponents seemed scattered and ineffective.

But Congress did not extend the manufacturing clause. Opponents were able to organize an effective coalition as it became apparent that the costs associated with the manufacturing clause were about to become more concentrated through retaliation by our trading partners. Although legislation to extend the manufacturing clause was approved

by committees in both the House and the Senate, the bill never came to the floor of either chamber.

The tale of how and why this regulation was allowed to fade away may offer insights useful in opposing other trade barriers and economic regulation.

The Manufacturing Clause

The Chace Act of 1891 contained the earliest version of the manufacturing clause. American printers had insisted on some protection for their industry before they would support extension of U.S. copyright protection to foreign authors. Extending U.S. copyrights to foreign authors enabled American writers to receive reciprocal foreign protection.

In its original form the manufacturing clause required that all books receiving U.S. copyrights, whether by foreign or domestic authors, be printed from type set or plates made in the United States. The manufacturing clause was modified through amendments to the copyright laws in 1909, 1949, 1954, and 1976. Over time, works by foreign authors, low-volume works (involving imports of fewer than 2,000 copies), and picture books with less than 50 percent textual material were exempted. The 1976 law banned the import of copyrighted works of “preponderantly nondramatic literary material in the English language” by American authors unless printed in the United States or Canada.

The 1976 Copyright Act also provided that the manufacturing clause would expire on July 1, 1982. In early 1982 the printers and their unions supported legislation to postpone the expiration date

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to July 1, 1986. The measure passed both houses easily in June 1982, by a 339-47 vote in the House and by unanimous consent in the Senate. President Reagan vetoed the legislation, but the House overrode the veto by 324-86 and the Senate by 84-9, making it the first veto of the Reagan presidency to be overridden. A majority of Republicans in both houses voted to override the veto.

Political Economy of the Manufacturing Clause

Economic conditions in early 1982 help explain the overwhelming congressional support enjoyed by the manufacturing clause. At the time, the country was in the depths of a recession. The civilian unemployment rate was over 9 percent and rising. Proponents of extension testified that severe employment losses would occur if the manufacturing clause were allowed to expire. A 1981 Labor Department study added credibility to this claim by predicting that up to 367,000 jobs would be lost in printing and other industries in the absence of the manufacturing clause. (In contrast, a Congressional Research Service study that predicted no significant job losses had little impact on the debate.)

Furthermore, the Reagan administration failed to play an active role in the legislative debate, despite the later veto. The manufacturing clause was not formally debated by the cabinet or by the under-secretary level Trade Policy Review Group, and inter-agency staff level discussions did not produce a clear consensus. During the 1982 debates, no cabinet officials testified on the issue.

More than any of these other considerations, however, it was the distribution of the costs and gains of the manufacturing clause that underlay its overwhelming political support in 1982. Here was a classic example of a measure benefitting a narrow, politically aware, and mobilized special-interest group while imposing mostly indirect and difficult-to-measure costs on the nation as a whole.

As 1986 began, this political calculus seemed at first to be largely unchanged. Printing industry leaders and union officials had begun in mid-1985 to organize a sophisticated and effective lobbying effort to retain the trade barrier. The situation was not entirely the same as in 1982, however. The economy was now in a period of sustained growth, and the unemployment rate had fallen to 7 percent. Furthermore, an authoritative 1983 study by the International Trade Commission had concluded that the long-term employment effect of eliminating the manufacturing clause would be insignificant. An

updated Labor Department study had reached a similar conclusion in sharp contrast to the 1981 study. Finally, printing industry output was growing. It was clear that the "lost jobs" argument had lost much of its force.

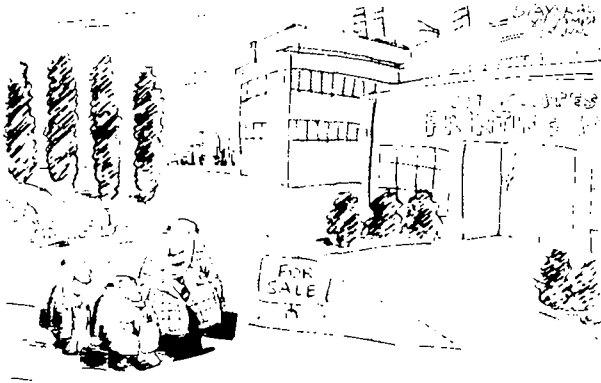
Nevertheless, many in Congress were concerned by the 1985 merchandise trade deficit that had reached a record \$124 billion, representing 3.1 percent of GNP, and the deficit promised to be even larger in 1986. There was also widespread congressional concern over perceived unfair trade practices and copyright violations abroad.

Given these considerations, printer and union interests decided not to focus on how eliminating the manufacturing clause might affect employment, although union testimony continued to cite the 1981 Labor Department job-loss estimates. Rather, proponents' rhetoric focused on concerns about the competitive conditions facing U.S. firms in world markets. Manufacturing clause advocates proposed legislation that would make the manufacturing clause permanent and extend its coverage, but the suggested legislation would also allow exemptions after two years for countries that met strict standards on copyright protection and protection of workers' rights and that raised no barriers to trade in printed products. This approach allowed proponents to claim that the manufacturing clause was a

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"bargaining chip" that would aid future trade negotiations. In reality, however, few countries were expected to meet all the requirements for exemption. The protection offered by the manufacturing clause would remain.

The printer-union coalition neutralized publisher opposition to its original proposal by eliminating the extension of coverage to additional works. This change addressed the publishers' strongest objections as they would be able to continue importing children's picture books, art books, and books containing large numbers of photographs or drawings. Printing such books is a relatively labor-intensive effort, and publishers often prefer to use printers in



"IT'S A GREAT INVESTMENT, MR MOTO ... THEY'RE THE BIGGEST SUPPLIER OF 'BUY AMERICAN' POSTERS IN THE COUNTRY!"

East Asia and other areas with lower labor costs.

This strategy seemed to be quite effective in generating support. Senate and House versions of the printer-union bill attracted such distinguished sponsors as Strom Thurmond, the chairman of the Senate Judiciary Committee, and Barney Frank, a leading member of the House Judiciary Committee. (The judiciary committees have jurisdiction over copyright matters.) Twenty-two senators and more than 130 representatives eventually signed on as cosponsors, including a majority of the Senate Judiciary Committee and a significant minority of the House Judiciary Committee. Congressional support-

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ers typically cited the bargaining-chip rationale; they argued that the United States should not give up any trade barriers without getting something in return.

The Senate Judiciary Committee reported S. 1822, amended to incorporate the printer-union-publisher compromise language, on April 24, 1986. On April 29, an identical bill, H.R. 4696, was introduced with 92 cosponsors. With the publishers' opposition neutralized, the legislation's opponents seemed scattered

and impotent. Supporters of the manufacturing clause had every reason to believe that Congress would soon pass the legislation.

Opposition to the Manufacturing Clause

In April 1986, as the House and Senate Judiciary Committees were preparing to extend the manufacturing clause indefinitely, new opposition arose in the form of the increasingly active Coalition against the Manufacturing Clause. Two areas of concern united a disparate group of interests in an effort to eliminate this particular trade barrier.

First, certain U.S. export industries faced the threat of retaliation by the European Community if the manufacturing clause were extended. Second, many companies and associations that relied heavily on copyrights, trademarks, and patents were convinced that the pending measure would jeopardize, rather than aid, negotiations for better protection of U.S. intellectual property abroad. One of these latter groups, the Computer and Business Equipment Manufacturers Association, played a key leadership role in the coalition.

Those concerned about trade retaliation and better protection of intellectual property rights were joined by several general business and free-market advocacy groups and, later, by several major book publishers. In all, 56 firms and associations participated in the coalition at some point during its brief life. Finally, visible Reagan administration activity against the manufacturing clause, including the unmistakable commitment of top trade officials, helped coalesce and motivate the opposition.

The European Community Retaliation Threat

When Congress extended the manufacturing clause in 1982, the European Community lodged a formal protest under the General Agreement on Tariffs and Trade. In response to this complaint a GATT panel held hearings during September and November 1983. In January 1984 the panel found that the 1982 extension of the manufacturing clause violated the United States' obligations under GATT. The GATT Council endorsed the panel's decision in May 1984. This decision gave countries whose exports were damaged by the manufacturing clause the legal right to retaliate by restricting their imports of selected products from the United States.

In early 1986 the European Community announced its plans to impose restrictions on several hundred million dollars of U.S. exports if the United

States extended the manufacturing clause beyond July 1. Industries targeted for retaliatory restrictions included paper, machinery for the paper and printing industries, tobacco, machinery for the tobacco industry, machinery for the textiles industry, and chemicals. In response to this threat 11 firms and associations representing the paper, tobacco, chemical, and machinery industries joined the coalition opposing the manufacturing clause, and many of the most active participants came from these ranks.

The threat to retaliate also helped to defuse what remained of the job-loss argument advanced by printers and their unions. Reduced export opportunities for threatened industries would mean lost jobs if the manufacturing clause remained in force. Opponents began to convey to Congress that voters and businesses other than printing and publishing had taken an interest in the issue.

Intellectual Property Industries

Among the leaders of the opposition to extending the manufacturing clause was the computer industry. Computer manufacturers were interested both in securing better intellectual property rights protection abroad (especially copyright protection for computer software) and in removing restraints on imports of copyrighted computer manuals that normally accompany equipment manufactured abroad. Seventeen computer manufacturers and associations joined the Coalition against the Manufacturing Clause. (Significantly, the computer industry continued its active opposition even after sponsors amended the bills to exempt computer manuals from import restrictions.) The computer industry was joined by a dozen other associations and firms interested in better protection of intellectual property rights abroad including firms producing motion pictures, records, and pharmaceuticals, as well as multiindustry intellectual property associations.

These firms and associations argued that retaining the manufacturing clause would hinder, not aid, U.S. intellectual property rights negotiations. Indeed, Singapore, long identified as one of the countries whose laws allowed piracy of U.S.-copyrighted work, announced that it would not rewrite its laws if it continued to be subjected to the manufacturing clause.

The End of the Manufacturing Clause

The effects of the opposition were soon felt. Hearings on May 22 and June 5 before a House Judi-

ciary Subcommittee featured for the first time the administration's top trade officials. Commerce Secretary Malcolm Baldrige and U.S. Trade Representative Clayton Yeutter offered testimony opposing extension. They were joined by members of the Coalition against the Manufacturing Clause. The

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increased controversy led to the first coverage in the general press, and although the subcommittee reported an amended H.R. 4696, the 7-6 vote indicated a significant erosion of support.

As a further result of the increased controversy, the Senate Finance Committee and the House Ways and Means Committee, the committees with jurisdiction over trade policy, asked for a joint referral of the proposed bills. The House Ways and Means Committee held hearings on June 26, but did not report a bill. The Senate Finance Committee held hearings on June 10, and it reported a bill that restored the manufacturing clause's July 1, 1986, expiration date. Rejection by the Finance Committee, which carries considerable weight in trade matters, represented a serious blow to proponents of the manufacturing clause.

Absent legislation to extend it, the manufacturing clause expired on July 1. Last-ditch efforts of proponents did not result in a proposal acceptable to the administration or the majority of the coalition members. The 99th Congress adjourned in October 1986 without legislation to extend the manufacturing clause having reached the floor of either chamber.

Why Were Book Imports Deregulated?

During its 95-year tenure, the manufacturing clause provided protection from import competition for certain book printers and their employees. For most of this period, little opposition was apparent once publishers were appeased. No avid readers testified or visited their congressmen to complain about higher book prices.

Even in 1986, proponents seemed to have fashioned legislation that would not only preserve print-

ing jobs but would also contribute to broader national trade policy goals. The reciprocity provisions allegedly gave other countries incentives to reduce their trade barriers and to improve their protection of intellectual property rights.

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But in early 1986 the EC threat of retaliation gave specific industries—especially paper, machinery, tobacco, and chemicals—an incentive to mobilize against the manufacturing clause. These industries, along with computer manufacturers and other interests affected by intellectual property protec-

tion abroad, provided a countervailing political force against the printer and union interests that sought extension of the manufacturing clause. Visible, high-level administration activity, backed by a credible veto threat, helped to coalesce the opposition.

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The emergence of significant, organized opposition increased the perceived costs of supporting the measure. Opponents’ testimony and congressional visits along with increased media attention made Congress aware of increasingly intense opposition. Specific, credible arguments refuting the claims of proponents were presented. These actions increased the perceived cost of supporting this special-interest legislation by showing that the measure was visible and important to others. Ultimately, the administration and the Coalition against the Manufacturing Clause prevailed.