

February 3, 2004

To: U.S. Chamber Board of Directors

From: Tom Donohue

SUBJECT: President's Update – January 2004

Returning to session in late January, Congress has had only a few legislative days to begin work on its own priorities as well as the comprehensive agenda the Chamber has set forth for 2004.

The distractions are many: a Presidential campaign that has already been full of surprises; continuing controversy over Iraq; and growing concerns about the federal budget deficit, even though the nation's economy continues to improve, and interest and inflation rates remain low.

Despite this difficult environment, we are already seeing some movement on several business priorities. The challenge facing the Chamber is to navigate across a fiercely partisan divide to get the votes we need from both parties to win on specific issues. At this stage it is anyone's guess as to how much Congress will ultimately accomplish in 2004.

Yet Capitol Hill is just one of the venues where the Chamber will work this year to help business. We will be very active in the courts, seeking legal victories that could save business billions of dollars. We will continue to target problem states and jurisdictions for aggressive lobbying campaigns in order to secure important legal reforms. The National Chamber Foundation will conduct over 60 events this year and launch major initiatives to combat counterfeiting, bring balance to corporate governance and accounting rules, and boost the nation's travel and tourism industry.

On the international front, we will lobby governments around the world to open their markets and level the playing field for U.S. products, services and investments –

while leading the fight here at home to stop politically-motivated protectionist measures. And in politics, we intend to play a major role in determining who sits in the next Congress, through a vigorous grassroots program to turn out the business vote like never before and elect pro-growth candidates from both parties. Our Institute for Legal Reform will continue its successful program of educating voters in state supreme court and attorney general elections.

Now, back to the opening days of the second session of the current Congress...

Progress on pension reform

The Senate has moved quickly to replace the 30-year Treasury bond with a new benchmark to use in calculating required contributions to pension plans.

The Treasury stopped issuing 30-year bonds in 2001, and continuing to use that rate has artificially inflated employer pension funding requirements. Without a solution, billions of dollars in job-creating capital will be siphoned away from the productive economy.

This is why the Chamber sounded the alarm when the Senate went home last year without acting. We worked the issue over the holiday recess and strongly urged lawmakers to make the 30-year Treasury bond replacement its first priority in 2004. The bill passed by the Senate is a welcome step, which also includes some of the reforms needed in multi-employer pension plans. Since it is different than the bill the House passed last October, either a conference committee must be appointed or the House must acquiesce to the Senate's plan. The Chamber is working with Congress to find the quickest route to final passage of this critical legislation.

Transportation Funding

The nation's core surface transportation program (TEA-21) expired last year and is operating on temporary funding until the end of February. The Chamber and our coalition, Americans for Transportation Mobility, are working hard to reauthorize the program (called SAFETEA) in a manner that increases funding for critical improvements and ensures that transportation trust funds are actually used for that purpose.

Given election year politics and the complex set of interests and Congressional personalities impacting the debate, it is uncertain whether full reauthorization will be achieved before the November elections. Yet it is critical that Congress at least approve a funding extension before a February 29th deadline. Failure to do so will throw workers off

the job and seriously disrupt projects that are necessary to keep goods and people moving as well as improve safety.

Yesterday, in a move strongly backed by the Chamber, the Senate voted to invoke cloture and shut off a filibuster so that the transportation funding debate can move forward. The Senate, House and the administration all have different funding levels in mind. The debate over whether and when to raise the fuel tax to fund transportation improvements is also heating up.

The Chamber's focus this year is to ensure no interruption in the program, protect the integrity of the trust funds, achieve the highest level of funding possible, and educate Americans about the undeniable need to improve, expand and increase investments in the nation's transportation infrastructure – to create jobs, grow the economy, clean the air, bolster national security, and save lives.

Legal Reform

The debate over transportation funding will also have an impact on the timing of efforts to secure Senate passage of the Class Action Fairness Act. You may recall that late last year, an agreement was reached with several Democratic Senators that should put us over the 60 votes needed to end a filibuster and pass the bill.

Majority Leader Bill Frist has targeted early March for floor action, presumably following extension of transportation funding -- provided he sees the coalition of Republican and Democratic votes we built holding together. Chamber and Institute for Legal Reform (ILR) lobbyists are working hard to keep supporters in line, especially those who have come under intense election-year pressure from the trial bar.

The Majority Leader's current plan also includes taking up a legislative solution to the asbestos litigation crisis in the spring. We continue to work with all affected and interested parties within the business community, in labor and in Congress. Our goal is to help shape an acceptable solution that treats the truly sick, protects companies from excessive and outrageous claims, and begins to shut off the spigot of largesse that has poured tens of billions of dollars into the pockets of a relatively small number of class action trial lawyers.

Last month, the ILR also announced an important new legal reform initiative designed to combat the growing trend of global forum shopping.

In some ways, the United States is rapidly becoming the Madison County, Illinois of the world. By that I mean that U.S. courts are the most favored venue for foreign

plaintiffs whose lawsuits may have little if anything to do with conduct or events inside our borders. Yet they seek jurisdiction here thanks to:

- Expansive interpretations of antitrust laws allowing for triple damages
- Liberal discovery procedures that are so expensive and invasive that many defendants just want to settle
- Our reputation for excessive jury awards
- Our fondness for punitive damages, which don't even exist in many legal systems
- The Alien Tort Statute – a bill signed into law by George Washington that has been manipulated by today's trial lawyers to hold our global companies responsible for the harsh actions of governments in the countries where they do business

ILR is creating a new Coalition to Curb Global Forum Shopping, which I announced in remarks to the recent World Economic Forum meeting in Switzerland and found intense interest among companies from many countries.

Yet U.S. companies also have a big stake in stopping this troubling trend. Without reform, global investors will be discouraged from doing business with American firms. They will tread lightly when it comes to mergers and partnerships. Abuse of the Alien Tort Statute Act will continue to expose U.S. companies to specious liability for the conduct of regimes around the world. The trial lawyers will generate huge new streams of income to attack business on other fronts. And, courts in other countries will start playing copycat and seek to extend *their* jurisdiction across the globe as well. The Chamber has already played a significant role in turning back one such effort by Belgian legislators to create the ability to haul our executives into Belgian courts for somehow “aiding” human rights abuses in other countries.

The coalition will have its first meeting and program here at the Chamber on March 25th. In addition, the U.S. Supreme Court is now considering three cases related to aspects of this problem, including the Alien Tort Statute Act – and our National Chamber Litigation Center is involved in all three cases. For more information about these activities and how to participate in our coalition, please contact the Chamber's Robin Conrad at (202) 463-5337.

Immigration – Jump-Starting the Debate

Last month, President Bush, to his credit, renewed the sensitive debate over immigration. It's sensitive because many Americans seem to be of two minds when it comes to immigrants. They applaud the role of immigrants in the development of our country and celebrate their own family heritage and ethnicity. But they don't necessarily

want to see additional immigrants following in their footsteps. Add to this, legitimate concerns about security in the wake of 9-11, unease about jobs and the economy, and the justifiable belief that illegal entrants shouldn't be easily rewarded with benefits and citizenship – and you have the makings of an emotional and politically charged debate.

Over three years ago, the President took office fully intending to seek comprehensive immigration reform that would create guest worker programs as well as a pathway that undocumented workers could follow to eventually earn legal status. Regrettably, 9-11 got in the way.

Recently the administration unveiled a new immigration package that, while vague on many details, represents a significant step forward. Several legislative measures have also been introduced containing ideas that would make the President's proposal even more effective. Predictably, political anger has bubbled up around the country, including but not limited to the President's strongest supporters from the right.

The Chamber's view is simple. Without reasonable increases in immigration, expanded visa and guest worker programs, and a plan to deal realistically and fairly with the millions of undocumented workers already supporting our economy, our country will not have enough workers or taxpayers to produce sufficient economic growth to handle the coming avalanche of retirees. While there may not be a legislative solution in 2004, the Chamber will seize and create every opportunity to advance immigration reform and in the process, hopefully remind Americans where they once came from and who built this country.

Federal Deficits – Should We Worry?

Another hot issue as 2004 moves into high gear is the growing federal budget deficit. We are sure to hear about this issue all year, and it will likely influence the outcome of legislation important to business, from tax measures to transportation funding to the comprehensive energy bill.

How concerned should we be about deficits? The answer depends on how big they are, whether they are temporary or structural, what's causing them, and the alternatives being proposed to deal with them.

The most meaningful measurement of the deficit is its size in relation to the size of our economy. For fiscal year 2003, the deficit stands at about 3.5% of Gross Domestic Product (GDP). By way of comparison, France and Germany, whose economists and spokespersons have roundly criticized the U.S. deficit, are currently running 4% deficits.

In FY 2004, our deficit should be at 4.5% of GDP, perhaps a little higher, before coming down.

As high as this is, it is not a record. Deficits traditionally spike in the aftermath of a recession. The deficit hit 6% of our total economy after the recession of the early 1980s and almost 5% in the early 1990s. Many economists are not greatly concerned about the economic impact of deficits as long as they remain below 5%. Indeed, there are no signs that the current deficit is about to send either interest rates or inflation on an upward trajectory.

Today's deficit has been heavily driven by recent events – a recession that depressed revenues, and the need to fight a war on terror that generated huge increases in spending for national defense and homeland security. As our economy continues to recover and these new expenses are absorbed, the deficit will start to come down – but it will not disappear.

Are Congress and the President blameless when it comes to controlling spending and managing fiscal affairs? No. Up to now, there has been little serious effort in either branch to cut back on spending elsewhere to accommodate priority expenses for defense and security. However, the President's new budget proposal puts a tight lid on non-defense, non-homeland security discretionary spending. And guess what? The same critics who have been condemning the budget deficit are now condemning the cuts and spending restraint he has proposed!

What many of these critics are really after are the Bush tax cuts. Without regard to the terrible impact it would have on economic growth and job creation, they would do away with all or some of the cuts. Yet a recent study by the Congressional Budget Office concluded that just 23% of the nation's recent shift from surpluses to deficits could be attributed to the tax cuts. Spending increases and poor economic performance caused the rest. Meanwhile, the tax cuts have undoubtedly fueled the growth and momentum we're seeing in our economy today.

So while it goes without saying that we don't like deficits and would rather not have them, just how concerned should business and the country be? So far, deficits have not hampered our economic recovery. In fact they have probably helped. They have also helped finance our response to the deadliest attack on our country since World War II. And there is a plan on the table for bringing the deficit down -- the President's FY 2004 budget.

Yet we should be troubled by the deficit's rapid growth and the lack of spending restraint in Congress. The business community should be especially concerned that

continued growth of the deficit could create tremendous pressures for ill-advised tax increases. When the politicians come looking for money, whose door do you think they will knock on first?

Finally, we must not overlook the fact that the real deficit crisis facing our country is not the one all of Washington is talking about today, but the one whose bill will come due as legions of baby boomers retire and put unbelievable pressures on public entitlements, health care, and private pensions. Without significant entitlement reform, more immigration to build our workforce and tax base, and positive measures to shore up private pensions, reduce health care costs and encourage individual savings, the nation's social safety net system could simply collapse under the weight of its massively underfunded liabilities.

Now that's a deficit to really worry about!

Liz and I look forward to seeing you in Boca Raton for the Chamber's board meeting and related activities and the National Chamber Foundation's Business Horizon Retreat and dinner beginning on February 22. In the meantime, please don't hesitate to contact me at (202) 463-5300 if you ever have any questions. In my absence, feel free to call Suzanne Clark, the Chamber's COO, at (202) 463-5549.

Until next month...