Commerce

THE WHITE HOUSE

WASHINGTON

August 12, 1975

MEMORANDUM FOR: JACK MARSH

FROM: CHARLES LEPPERT, JR. CLJr.

SUBJECT: H.R. 7940, "Third Flag Bill"

You requested a status report on H.R. 7940, a bill to provide for minimum rate provisions by nonnational carriers in the foreign commerce of the United States.

H.R. 7940, was introduced on June 16, 1975, by Rep. Sullivan, Downing and McCloskey. The bill was referred to the House Committee on Merchant Marine and Fisheries. The Committee has held one day of hearings and heard four groups of witnesses. A copy of the witnesses statements are attached.

The House Merchant Marine and Fisheries Committee will continue hearings on H.R. 7940 in September. The chances for passage of the bill at this time is questionable and the staff considers passage of H.R. 7940 in its present form as very doubtful. The problems presented against passage of the bill are its impact on domestic port facilities and the impact on domestic corporations heavily involved in foreign commerce. The bill addresses the problem of rate cutting and related malpractices in foreign commerce.

S. 868 is a companion measure introduced in the Senate. The Senate Commerce Committee has held hearings on similar legislation in the 93rd Congress and has completed hearings on S. 868 in this session of the 94th Congress. If no further hearings are requested the bill S. 868, is expected to be reported to the Senate after the August recess.

STATEMENT BY EDWARD J. HEINE, JR. ON BEHALF
OF PANEL IN SUPPORT OF H.R. 7940

Mr. Chairman, Members of the Committee, my name is Edward J. Heine, Jr. I am President of United States Lines, Inc. Seated with me at the table today are representatives of every segment of the American flag liner shipping industry, subsidized and unsubsidized, labor, management and the leading shipping associations. All are present because of their support of H.R. 7940 and S. 868. I will ask each member of the panel from right to left to identify himself and his affiliation, to demonstrate the unanimity in the liner industry behind the proposed legislation. We also have our attorneys present who have helped in structuring the legislation.

The Chairman has been kind enough to allow the panel to present to the Committee a series of slides which clearly illustrate the necessity of this legislation. Attached to my prepared statement is a booklet, the text of which is the verbatim voice presentation accompanying the slides, and containing several of the illustrations. I ask that the Committee accept this booklet as part of our testimony so that the visual presentation will be reflected in the printed record.

Before going into the merits of the legislation, it might be well to point out some of the differences between H.R. 7940 as introduced by Mrs. Sullivan, Mr. Downing and Mr. McCloskey, and S. 868 as it presently is before the Senate Commerce Committee. Before doing so, I would like to

express my appreciation to the Chairman of the full Committee, the Chairman of the Subcommittee and the ranking minority member of the Subcommittee for introducing H.R. 7940.

As noted, the bill as it is now in the Senate in the form of S. 868, as amended, has certain differences from the bill as originally introduced in the Senate and as originally introduced in the House. Briefly, the differences are as follows:

The Senate bill provides not only for single rate-against-rate analysis, but also contemplates consideration of structures of rates or charges--which affect ocean transportation costs. Inclusion of structures were deemed essential so as to encompass the possibility of a third flag carrier attempting to evade the legislation through the utilization of a tariff device. For instance, nonnational flag carriers might employ "per container" pricing as a tariff device, while only transporting a selective variety of commodities. In the absence of the Senate's amendment this could defeat the purpose of the legislation. Where it can be shown that such a tariff device is being used, the legislation will now be effective.

A second major change to S. 868 as introduced is intended to prevent diversion of cargo from U.S. ports to foreign ports as a way to avoid the provisions of this legislation.

A third modification is in the definition of "national flag carrier". That modification recognizes multi-national vessel operating consortia approved by the Federal Maritime Commission under Section 15 of the Shipping Act, 1916.

A fourth change relates to the movement of certain hardwood products. As the Committee is aware, Section 18(b)(1) of the Shipping Act of 1916, which this legislation will amend, exempts from the tariff publications requirements softwood lumber products not further manufactured than passing lengthwise through the standard planing machine and cross-cut length logs, poles, pilings, and ties, including articles preservatively treated on board or frames but not including plywood or finished articles. The fourth amendment would extend this exemption to certain hardwood products from Alaska.

A fifth change has been suggested to protect the terminal, stevedores and others. We concur in this particular amendment.

Before going to the reasons for the legislation, we believe it is essential to highlight what this legislation is not.

1. The legislation is not conference orientated. There is nothing in the proposed legislation that in any way gives to conferences control over the rates of carriers who are not members of the conferences. The bill merely provides that a nonnational flag carrier may neither maintain nor

establish rates or tariffs below the lowest national flag carrier rates or tariffs in the given trade unless the non-national flag carrier shows, if challenged that its rates or tariffs are compensatory on a commercial cost basis.

In virtually every trade where there are conferences, there are national flag nonconference operators. These independent national flag operators will remain free to set their own rates and nonnational flag competitors will retain full freedom to meet those rates. Several American carriers who support this bill have only recently withdrawn from the Hong Kong/Taiwan conference, not just because of the rate structures, but because of malpractices. Other U.S. flag operators supporting this bill have been independents for years in certain trades where conferences exist. Clearly the bill is not a conference device.

2. The legislation is <u>not</u> an anti-third flag bill but is quite to the contrary. The legislation will in fact be entirely compatible with the interests of legitimate third flag carriers. Those carriers who operate in the U.S. trades with third flag vessels under normal competitive pressures need have no fear of the legislation. In fact those carriers will benefit from the stability resulting from the legislation.

3. The bill is not inflationary and it requires no appropriation. It will cause stability of rates under a free competitive system which if anything must be anti-inflationary in nature.

Without this legislation our foreign trade could well become the captive of third flag carriers who have no interest in the needs of U.S. foreign commerce and no ties to the trade. Distorted rates having adverse impact upon U.S. foreign commerce will inevitably follow.

4. The legislation will not invite retaliation. On the contrary, it will stimulate international cooperation and will create the beginning of a period of stability in world trade where legitimate commercial competition will be the controlling factor. This was clearly illustrated in the Senate when the Committee on Commerce received a statement from the Council of European and Japanese National Shipowners Association (CENSA) concerning the legislation. That group stated in part:

> "Thus, CENSA supports any legislation directed solely at preventing non-commercial practices by non-national lines resulting from measures taken by their government agencies or authorities."

This group of shipowners represents almost 50% of the world's gross registered tonnage. Its members are domiciled in virtually every major free world trade country, including Belgium, Denmark, Finland, France, Germany, Greece, Italy, Japan, Holland, Norway, Sweden and the United Kingdom. This 50% does not include the United States carriers, as none

are members of CENSA. The membership of CENSA comprises both conference and non-conference lines, nearly 60 of which would be nonnational flag carriers under the bill. Additionally, it should be noted that the President of the Common Market Shipping Association has also publicly stated he hopes other nations will follow the lead of this legislation. This can hardly be called retaliatory.

We of the panel sitting before you today hope that other nations will enact similar legislation.

United States flag shipping companies are making inroads into some of the cross trades where we are ourselves third flag carriers. U.S. operators have joined the conferences in those foreign-to-foreign trades and have abided by their rates. Even where we have been denied conference membership, or where conferences do not exist, U.S. flag carriers have generally followed the prevailing rates in the trade. If other nations enact similar stabilizing legislation it will be to our advantage and will have our support.

5. The legislation is not intended to, and would not, affect the equal access pooling arrangements that have been approved in certain trades by the Federal Maritime Commission. It would not in any way restrict or modify the authority or flexibility of the FMC to approve such agreements in the future.

6. The bill does not discriminate between shippers. The legislation applies only to liner service common carriers who must file tariffs under Section 18 of the Shipping Act of 1916. It will not affect the full spectrum of nonliner services (including tramp operators and charters), nor will it affect those liner movements presently excluded from tariff filing requirements under Section 18(b)(1) of the aforementioned Shipping Act; that is, cargo loaded or carried in bulk without mark or count, or softwood lumber products as defined in that particular statute.

Now, Mr. Chairman, as to the necessity for the legislation.

The U.S. foreign trade is the largest single foreign trade in the world. The value of U.S. exports and imports in 1974 were 198.9 billion dollars and in 1975 is likely to be in excess of 200 billion dollars. The annual growth rate has been an ever increasing percentage since 1961 as extracted from the International Economic Report of the President transmitted to Congress March 1975 as shown below:

U.S. FOREIGN TRADE
AVERAGE ANNUAL GROWTH RATE

YEAR	IMPORT	EXPORT
1961-1965	7%	6%
1966-1970	13%	10%
1972	22%	13%
1973	25%	44%
1974	48%	38%

Keeping in mind this growth and the present volume of foreign trade of approximately 200 billion dollars, let us look at what has happened over the last twenty to twenty-five years to our Merchant Marine.

In 1960 the dollar volume of our combined import and export trades was approximately twenty billion dollars. The two hundred billion dollar plus figure for the present is a ten-fold increase. Back in 1950 over-all U.S. flag participation in our foreign trade was 50% of the tonnage moved. Today, U.S. flag participation in the liner segment of the trade is only 25% and over-all U.S. flag participation is down to 6%.

Our liner fleet consists of only 302 vessels, of which 140 are modern, technologically advanced, intermodals; that is, containerships, Ro-Ro types, LASH and Seabee types.

Our seagoing employment of approximately 103,000 men in 1965 has dropped to approximately 56,000 men today.

We do not raise these figures in a sense of complaint. There are many factors that contributed to the situation. For example, there was the natural post-war surge of other nations rehabilitating their merchant marine after World World II. However, we do point out that America's Merchant Marine is now

just hanging on by its fingertips to a pitifully small portion of our foreign trade and lacks opportunity to fully employ the skilled manpower pool available.

We are facing the most threatening combination of third flag carriers that our Merchant Marine has ever confronted. That we have been able to survive until now is due to American technological developments and advances, great cooperation by labor, and the help, within the legal limitations, of the concerned officials of our Government; such as the Maritime Administration, the Federal Maritime Commission and even the Department of State.

Our technological and management innovations in intermodalism and advanced vessels and systems placed us in a position of leadership in modern liner cargo movement. However that leadership position has been eroded by the entry of predatory operators who have adopted similarly technologically advanced vessels. Where once we led the world in intermodal shipping we have now fallen from the lead in tonnage of technologically advanced vessels and our position is being even further eroded.

A recent article analyzing the Soviet Merchant Marine authored by Major J. E. Barrie, who is a Soviet Affairs Analyst for the Defense Intelligence Agency, published in the National Defense Transportation Association's Transportation Journal

of June 3, 1975, noted that prior to World War II the Soviet was 23rd in ranking among the world's merchant marine tonnage and today is in 6th place while the U.S. is only in 7th place. (The Committee will recall that the U.S. was in 1st place after World War II.) Today the Soviet has 16 companies operating nearly 7,000 ships of 1,000 deadweight tons or more on 65 lines, 33 of which lines publish common carrier schedules. Ninety new vessels will be added to their merchant marine in 1975. He reports that there are now 9,000 students attending 5 Soviet merchant marine academies.

The Soviet container fleet did not exist in 1970. By 1980 the Soviet will be the largest intermodal operator in the world with in excess of 300 container vessels. It has been estimated that the Soviet container fleet by 1980 will be large enough to totally monopolize the entire U.S. Atlantic foreign trade or the entire U.S. Pacific foreign trade. Additionally, the Soviet has the ability to utilize and control the Council of Economic and Mutual Assistance (COMECON) consisting of Poland, Czechoslovakia, Hungary, Rumania, Bulgaria, East Germany and Cuba COMECON is used to provide a unified front for competing with the free world merchant marine in implementation of what appears to be a Soviet long-range plan for control of the seas.

We American carriers welcome fair and open competition; knowing we can and will compete effectively and efficiently. But we and other legitimate carriers, both national and third

flag, are facing a crisis; a crisis that is upon us now--that is why we support and urge prompt enactment of this legislation. That crisis is the intrusion into our foreign trade of predatory carriers who for one reason or another will destroy existing legitimate competition if not checked.

These predatory carriers are really two in type. The first is the independent third flag carrier, who, for want of a better name, we shall call the "opportunistic carrier". The second is the state-owned or state-controlled carrier.

The first carrier, the opportunistic carrier, in the technical sense of the word literally "dumps" his tonnage into the U.S. foreign trade and remains there only so long as he sees it to his immediate and short-term advantage. He uses the trade for fast profit and drops the rate on some commodities as much as 25 or even 40% to fill his ships at the expense of those who have been serving the trade. He makes limited or no capital investment in shoreside facilities and avoids permanent ties in the trade. At the slightest sign that a trade elsewhere may seem more lucrative he cuts and runs. By the time he deserts the trade, opportunistic carrier's tactics will have weakened and could well have destroyed national flag carriers, and indeed, legitimate third flag competition as well. The sudden void created in many cases may cause shippers to lose their markets.

The recent rate wars in the Atlantic and the ever increasing price instability in the Pacific find much of their roots in the tactics of these opportunistic carriers. The history of the Atlantic trade will bear out the dangers that this type of practice creates.

The single restraint upon the opportunistic carrier is that somewhere along the line he must consider a profit motivation or fail. Thus for him there is some restraint, albeit minimal. The second type of carrier is even more dangerous for there is no such restraint inherent in or acting upon the state-owned or state-controlled carrier not operating for profit. It is of course not axiomatic that every state-owned or state-controlled carrier is predatory; and we do not wish to leave that impression. But the most predatory of all the third flag carriers are those certain state-owned carriers that operate not for profit, but either for the amassing of hard currency for state or political purposes or for control of the seas and the ability that they would have, if they got that control, to cripple the international commerce of the United States and other nations.

We should note that while we have focused on the Communist-block merchant marine, there are other nations beginning to follow their lead. The Arab nations are all now developing their own merchant marines, and not just tankers.

The OPEC nations have recently announced plans to spend four to six billion dollars on new ships between now and 1980 or 1982. Venezuela has recently announced contracts for ten new vessels.

Seventeen nations in the Caribbean, including Cuba, a member of COMECON, have announced plans to sponsor a state-owned multi-national fleet.

Thus there is a current proliferation of state-owned fleets in the world. With the U.S. having the world's largest trade and the world's largest free trade, it is not difficult to envision where much of this fleet will be operated.

The history of Communist-block carrier practices in recent years will demonstrate both the dangers faced by the United States and the salutory effect that the pending legislation can have.

Prior to 1970 the Far Eastern Shipping Company, a Soviet-owned line whose acronym is FESCO, did not have a single vessel calling in U.S. West Coast ports. Today they operate on six U.S./Far East trade routes with sufficient vessels and capacity for the practical equivalent of a sailing every other day from West Coast ports. In their five years of operations prior to this July they did not call at a single Soviet port in those services.

The FESCO rate picture prior to commencement of efforts to achieve a legislative solution to the predatory third flag carrier problem is also educational. FESCO in 1973 undercut the national flag rates on TV sets from Japan to the United States by 15%. They undercut the rates on toys by 21.4% and undercut the rates on bicycles by 13.8%. In electrical commodities from Japan to the United States the prevailing national flag rate was $49.50. FESCO's rate was $43.50; a 12% differential. To counter that situation the national flag carrier rate was reduced to $45.00. FESCO immediately dropped its rate to $38.25 constituting a rate slash of 20% from the original national flag carrier rate. The impact of rate cuts of this sort is obvious.

Only recently the Government of the Philippines announced that it was entering into a joint venture with FESCO (note that the Philippines does not even have diplomatic relations with the Soviet) to enter into trades between the Philippines and the United States, Japan and Europe. The announcement said that the rates to be published by the new service to Europe and Japan would be 15% lower than those presently in existence with other carriers and in the trade to the United States would be 10% below the existing rates.

In the European/U.S. trade the situation is much the same. In 1970 Polish Ocean Lines had no sailings of

containerships. Today they offer 10,000 20-foot container spaces annually in 18 different vessels. In 1970 BaltAtlantic Line, a Soviet state-owned company, had an East Coast to Europe trade participation of zero. Today that company is operating 12 ships with weekly voyages to the East and Gulf Coasts of the United States. As an example of the rate tactics of this carrier we point out that in the last several months BaltAtlantic offered to carry wines and spirits from the United Kingdom at 17% below the national carrier rates. This offer was made at a time when BaltAtlantic did not have a single vessel in that particular service.

Polish Ocean Lines since entering the trade had slashed rates by 25.9% on tobacco, 20.4% on rags, and 27.7% on plastic sheets and as much as 38.8% on asphalt shingles. These are but a few illustrations of the past rate practices of this company.

With the exceptions of the announcement concerning a Philippine service and the effort of BaltAtlantic Line to capture the wine and spirits trade from the United Kingdom, the rate practices which I have highlighted for you all took place prior to the commencement of legislative efforts to solve the problem.

Since the introduction of S. 2576 in the 93rd Congress and S. 868 and H.R. 7940 in this Congress, the Communist carriers have taken limited steps to bring themselves somewhat more in line with normal and reasonable competitive practices. For instance, FESCO has announced that it will start making calls at Russian ports in the Pacific trades and have already made one such call during July. Additionally, they have somewhat moderated their rate practices. However there is no doubt in our minds, and I trust no doubt in your minds, that these displays of light and reason were entirely motivated by the pendancy of the bills and in the hope that the displays would discourage enactment of legislation. We are certain that if this remedial legislation is not enacted the Communist carriers will resume all of their predatory practices and increase them.

We would like to submit for the record a copy of an article from the June 30, 1975 issue of Business Week which reflects the necessity for this legislation.

Mr. Chairman, some question has been raised as to whether the legislation would be in conflict with existing treaties of Friendship, Commerce and Navigation. We firmly believe that there would not be any such conflict. I was pleased to hear just recently that a study performed by the Congressional Research Service of the Library of Congress has arrived at the same conclusion.

Now, Mr. Chairman, to briefly touch on some of the technical highlights of the legislation, specifically referring to H.R. 7940, and with your permission, we will highlight some of the changes between H.R. 7940 as it is now and the Senate bill with some of the amendments that have been suggested to the Committee and which are acceptable to this panel. We, of course, understand that this Committee may or may not accept any such changes.

After the enacting clause, Section 2(a) and (b) amend the existing provision of Section 18(b)(1) and (2) as follows.

While it does not appear in the House bill, the Senate has suggested an amendment which broadens the present lumber exemption to include certain other forest products from Alaska.

The new Section (c) of H.R. 7940 would alter Section 18(b)(2) so as to put rate decreases under the same notice and effectiveness requirements as presently apply to rate increases. That is, while under current law a rate increase may not become effective until thirty days after the date of publication and filing with the Commission, rate reductions may go into effect upon filing. The amendment would provide for the thirty-day notice to apply both to increases and

decreases. This amendment is critical in order to give the Commission and competing carriers an opportunity to analyze rate reduction filings and to take appropriate action prior to a given rate reduction going into effect.

The Commission would have the discretion--as it currently has in respect of rate increases--to permit an earlier effective date for reductions on a case-by-case basis upon application of the publishing carrier.

Subparagraph (c) of H.R. 7940 corresponds to a new Section 3 of the Senate version. The various subparts of the new subsection (c) constitute the substantive provisions designed to cure the problem that gives rise to S. 868 and H.R. 7940. These subparts are next described in sequence.

Generally speaking, both bills in this area are the same, requiring that commencing ninety (90) days after enactment the nonnational flag carrier, as later defined, may neither maintain nor put into effect any rate or charge, or structure of rates or charges (hereafter referred to as "rates") below those of a comparable nature published by the lowest "national flag carrier" rates in the "given trade" (which terms are also later defined) unless the test of "compensatory on a commercial cost basis" is met by the maintaining or filing nonnational flag carrier.

At any time in respect of rates maintained by a nonnational flag carrier, and within thirty (30) days after filing of new rates by a nonnational flag carrier, the Commission is empowered to reject such rates (that is, rates which are lower than the lowest corresponding national flag carrier rates) if it is determined by the Commission--either upon its own investigation or upon a reasonable showing by a national flag carrier--that such rates may not be compensatory on a commercial cost basis.

However, the Commission has discretion to stay any such rejection within thirty (30) days after the rejection was ordered when the nonnational flag carrier or any other person establishes upon good cause that there is a reasonable probability that the nonnational flag carrier would be able to prove after hearing that the rejected rate is not in violation of the subsection.

Where there has been a rejection and subsequent stay of rejection the rates shall become effective on the date specified by the Commission when it issues the stay; but not sooner than the original effective date.

Where there has been rejection and no stay of rejection, use of the rejected rates is unauthorized unless

and until the Commission, after hearing, determines that the rates are lawful.

Where the rates have been rejected and the rejection subsequently stayed, implementation of the rates is authorized pending completion of the hearing and ultimate determination as to whether the rates are lawful. If the rates are found to be unlawful in that situation, their use thereafter is unlawful whether or not they have been previously stayed.

The word "showing" is used twice in this subpart (1). In the first context "showing", relates to a reasonable showing by a national flag carrier that the matter challenged may not be compensatory on a commercial cost basis. We understand that such a showing should be "reasonable" if the national flag carrier is able to establish, for example, that a nonnational flag carrier's new rate is a further reduction of that nonnational flag carrier's current rate that is already below the lowest national flag carrier rate. Such a "reasonable showing" would also be established by the national flag carrier by means of, for instance, a suitably documented cost affidavit establishing that his own higher rate is marginally compensatory or less than compensatory. The just stated two guidelines are not meant to be all inclusive, but rather only examples.

The word "showing" is used later in subpart (1) in the context of a good cause showing by a nonnational flag carrier or any other person that there is a reasonable probability that the contested matter will ultimately be proven, after hearing, lawful. By way of example, a suitably documented cost affidavit that the challenged matter does in fact meet costs would constitute such a "showing". On the other hand, a mere comparison of the given rate with the comparable rate of the national flag carrier so as to establish that the challenged rate is "only" a given percentage less than the comparable national flag rate would not constitute such a showing. Again, these are only examples.

In each of the above "showing" contexts, the data submitted to the Commission would be made available to adversary parties. That is, the data underlying the "reasonable" showing by the national flag carrier and the data underlying a "good cause" showing by the nonnational flag carrier or other person should, to the extent feasible, be made available to the adversary party in both instances in order to give him the opportunity to challenge or rebut.

As we understand the amendments suggested to the Senate Committee, the phrase "rate or charge or structure of rates or charges" is introduced. H.R. 7940 presently applies

only to a given rate or a given charge and we would recommend the Senate language applying the bill to "rate or charge or structure of rates or charges." A structure of rates or charges includes not only single rates or charges, but structures of them as well as the classifications, rules and regulations related thereto. This eliminates the possibility of evasion of the legislation through utilization of various pricing devices.

The phrase "compensatory on a commercial cost basis" is used in both bills. We understand the meaning of this phrase to mean that a rate or charge or structure of rates or charges in a given trade to or from the United States covers all direct and indirect costs, including depreciation, interest and reserves for operating asset replacement, plus producing profit after taxes such as would be acceptable to a prudent business investor in common carriage by water in foreign commerce.

If a nonnational flag carrier is not subject to income tax in the country of its nationality or domicile it should be deemed, for purposes of determining whether its rates or charges, or structure of rates or charges, are compensatory on a commercial cost basis, subject to a hypothetical tax at the lowest rates applied by the United States or its trading partner in the given trade to its national flag carriers.

If a nonnational flag carrier does not actually incur a cost normal to commercial operations or does not account for or consider such a cost in its record keeping or in its pricing

> because of direct or indirect government subsidy not received by national flag carriers in the given trade,
>
> or because policy or practice of the country of its nationality or domicile shifts the burden of such costs from the carrier to another segment of the national economy for political or diplomatic gain or consideration, or because of economic or social or political philosophy alien to one or the other of the trading partners,

then the nonnational flag carrier shall be deemed to have incurred such costs for the purposes of the analysis covered by this legislation.

The Senate version, we understand, will contain language to protect against diversion by nonnational flag carriers from United States ports to foreign ports in the same area. We recommend this language to the Committee.

Both bills contain language requiring the burden of proof to be on the publishing carrier. This is absolutely essential to give any substance to the bill since it will be impossible for national flag carriers under most circumstances to supply cost figures of its nonnational flag competitors.

The Senate bill also has further language to protect stevedores, port authorities and marine terminal operators. We commend this amendment to the Committee.

Both bills contain the definitions of national flag carriers, nonnational flag carriers, and given trades.

Mr. Chairman, again, I am grateful for the opportunity to have appeared here today and present these views in behalf of all of the American liner industry interests for whom I have spoken.

We urge speedy approval of the proposed legislation.

I would be happy to respond to any questions which the Committee may have.

The rate war with Russia

U. S. ship operators are sending an SOS for a law to regulate charges

A full-blown rate war is raging among Pacific steamship companies, and the two dozen operators all seem to be pointing at a Russian freight line as the instigator and principal offender. Some rates have been cut more than 20%, attempts to meet the Soviets' rates have led to illegal rebating, and the whole ferment may result in Congressional action to regulate a trade that up to now no one has wanted regulated.

The scheduled ocean-freight business—the so-called liner trade—is a rarity in transportation. It is an open trade, without restriction on entry or exit and, in effect, without regulation of rates. A kind of regulation is achieved on most major trade routes by trade conferences, which set rates for conference members, but carriers are not required to belong to these groups. Where there is a lucrative market, freedom of entry tends to bring too many carriers into the market and thus create overcapacity. That leads nonconference members to seek business by offering rates well below conference rates. Conference members cannot give discount rates, but in a rate war they often match the low rates by giving cash rebates or free services, both of which are illegal under U. S. law.

Losing out. Right now, Far Eastern Shipping Co. (FESCO), a steamship operating arm of the Soviet government, and other nonconference carriers are filling their ships by deeply undercutting conference rates between the Far East and U. S. West Coast. From December, 1973, to December, 1974, trade from Japan, Korea, Taiwan, and Hong Kong increased 18%. During the same period, cargo handled by U. S.-flag carriers decreased 14% eastbound and 12% westbound.

This year, the situation has become even more serious for the conference carriers, most of which fly the U. S. or Japanese flag. FESCO has added new containerships, as have other nonconference carriers, and still others are coming on the route. FESCO began service to the West Coast in 1971 with three ships. It now has 18.

Helen Delich Bentley, chairman of the Federal Maritime Commission, says bluntly: "The Pacific is not in good shape." Edward J. Heine, Jr., president of United States Lines, says FESCO "reduced the rates on TV sets from Japan to the U. S. by 15%, toy rates by 21.4%, and bicycles by 13.8%. These reductions were put into effect as soon as FESCO entered the trade." Heine adds that on electrical commodities from Japan to the U. S., the national-flag carriers' rate was $49.50; FESCO cut this to $43.50. The national-flag carriers countered with a $45 rate, and FESCO responded with a $38.25 rate—a 20% reduction from the original rate.

Predatory practices. "The impact of this is obvious," Heine says. "Our ability to compete is neutralized by predatory rate practices of carriers motivated by politically inspired objectives. National-flag lines have invested hundreds of millions of dollars in the West Coast trades and must be able to earn a return on their investment. FESCO needs to show no such return, no matter what its investment might be, so long as it can capture hard currency and achieve political gain." Another steamship man says: "The difficulty of competing with the Russians is that you can't prove whether they are operating above or below cost. It's like proving cost to the U. S. Navy."

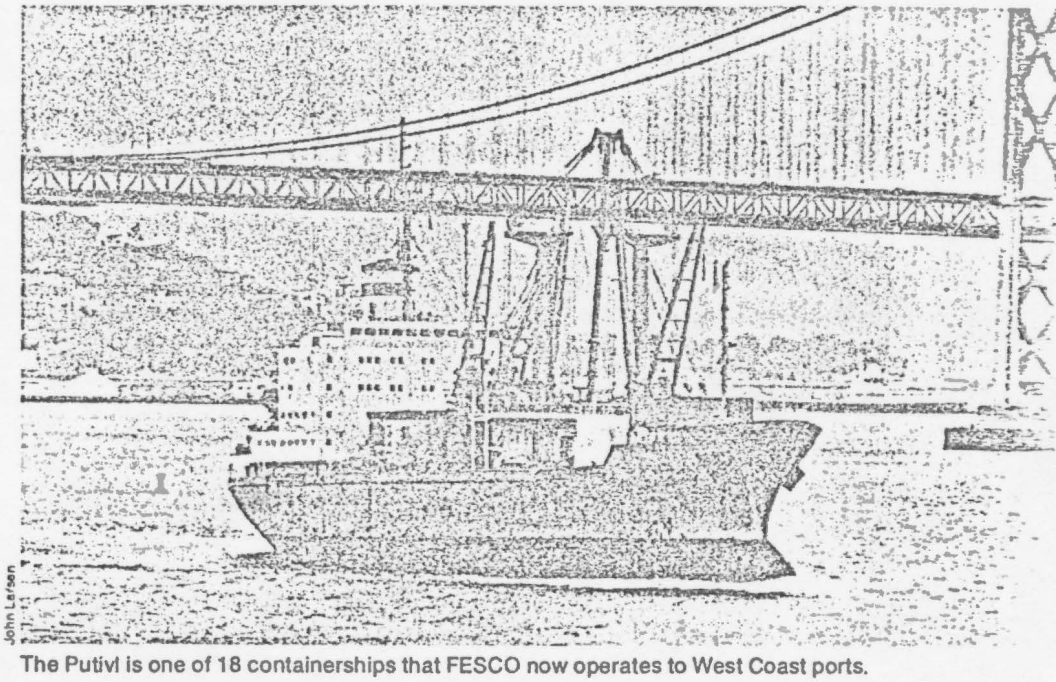
Although some conference members abide by the law, and lose business as a result, others do not. The main problem is in eastbound shipments, where cash rebates, free drayage and storage, absorption of container costs, and predated bills of lading are prevalent. One steamship company vice-president members are doing it."

Fighting back. The Maritime Commission last week levied a $75,000 fine against Miami-based Topp Electronics, Inc., a major importer of electronic equipment from the Far East. Topp had pleaded guilty on 15 counts of accepting rebates from Blue Sea Line, a pool of British and Swedish operators. So far this year, by either negotiated settlement or legal action, the commission has levied $132,000 in fines on 13 shippers or shipping companies for violations ranging from rebating to failure to file tariffs. "Rebating is a very widespread practice in the Pacific trade," says an FMC lawyer.

The FMC can take action against malpractices such as rebating, but it has no power against discounting, which is the other major weapon in rate wars. A pooling agreement in the Pacific similar to one in effect in the Atlantic could be effective against both discounting and rebating. A number of nonconference carriers, including FESCO, have agreed to discuss how such an agreement could be made to work. But no one expects a workable pooling agreement to be signed soon.

So U. S. carriers are somewhat reluctantly asking to be relieved of a part of their freedom from rate regulation. A bill sponsored by Senator Daniel K. Inouye (D-Hawaii) would give the FMC the power to force carriers to demonstrate that all rates are compensatory on a normally accepted commercial basis. Hearings have been held on the Inouye bill, and it is expected to reach the Senate floor by the end of the month.

Controversy. The bill is strongly supported by U. S.-flag carriers and some shippers. In support of it, Curt Marx,



John Larsen

The Putivl is one of 18 containerships that FESCO now operates to West Coast ports.

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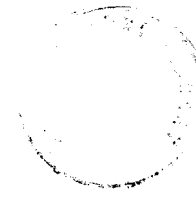
ARGUMENT

FOR FAIR

COMPETITION

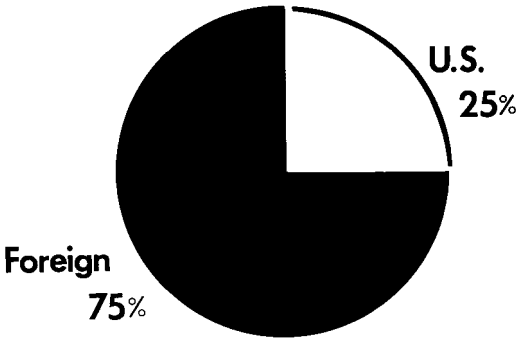


Produced on Behalf of the
American Flag Liner Industry

AN ARGUMENT FOR FAIR COMPETITION

The ability of U.S. flag liner vessels and of liner vessels of our nation's trading partners to survive in the trades between our countries is gravely threatened by predatory pricing policies of non-national cross-trading vessels.

Records show that of all U.S. liner imports and exports, only 25 percent move on American flag vessels; and an ever-increasing share of our liner trade is moving on non-national cross trading vessels, vessels carrying flags of third nations in trades other than their own.



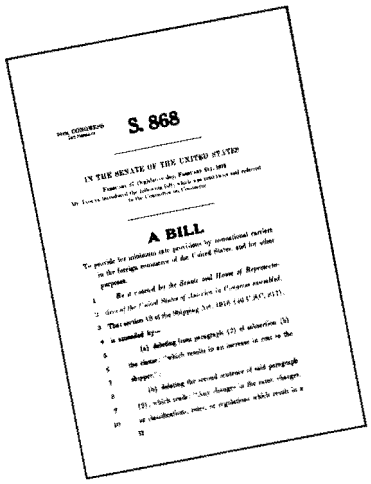
The proliferation of state-owned non-national carriers which charge rates that do not cover their fully distributed costs and their growing encroachment upon liner trade routes of the United States and its trading partners come as the result of subsidies far exceeding those which other governments make available to permit their fleets to operate competitively.

There are also privately owned non-national cross-traders who enter U.S. trades with noncompensatory pricing policies for short term advantage and without commitment to the long term interests of the United States or its exporters and importers and without commitment to such interests of our trading partners.

Solving a Serious Inequity

Several possible solutions that would limit this encroachment are being discussed in both U.S. and world forums, including the United Nations—but such solutions will be a long time in coming.

However, there is an immediate solution—and that is legislation as is currently before the 94th Congress, S.868. But it's a solution only if such a Bill is passed and signed into law.



S. 868

IN THE SENATE OF THE UNITED STATES

A BILL

This legislation seeks to rectify a situation that has existed for far too long, the situation being that the U.S., virtually alone among the major maritime nations of the world, lacks the machinery for protecting our economy against the "dumping" of excess ship capacity by non-nationals in our trade routes.

The Non-National Carrier Bill does not inhibit in any way freedom of the seas, a doctrine fundamental to America. It is simply designed to give American flag carriers—and those of nations with whom we trade—a fair chance to compete for cargoes in their own trades.

The Bill does not bring under regulation non-regulated bulk or tramp carriers. Nor does it in any way affect the ships of any nation in its own trade routes with the United States. Nor will it adversely affect the legitimate pricing practices of traditional non-national carriers.

The Bill is fundamentally nothing but a rate bill. It calls for criteria under which non-national cross traders would have to prove their rates or rate structures are commercially compensatory. Non-nationals would be prohibited from maintaining rates or rate structures lower than the lowest corresponding rate or rate structures among the national flag fleets in a given trade with the U.S., unless they first justified that a lower rate or rate structure covers their fully distributed costs on a commercial basis.

Rate Destruction for Political Profit

Why any carrier would choose to operate at a deficit at first glance defies reason. But many state-owned carriers are not motivated by a need to return a profit on shipping revenues; their goal is political advantage.

Most countries subsidize their merchant navies. They do so to underpin them in their own trades or to make them competi-

tive in world trade. But some governments use huge subsidies basically to support their fleets in "raiding" trades other than their own for political purposes.

The Non-National Carrier Bill would only prevent non-national cross traders from setting rates so low as to injure fleets, both subsidized and unsubsidized, of trading partners in their own trade.

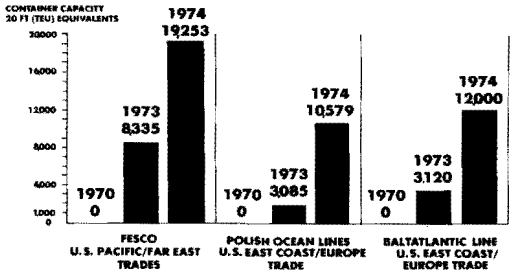
The Bill is intended to create a compromise. It does not dictate that non-national competition be forced to establish rate parity with the national lines serving trading nations in their own trade, but rather it requires that any proposed rate or rate structure lower than the lowest national flag line rate be justified as commercially compensatory based on fully distributed costs.

Alarming Cross Trader Growth

What are the alternatives if the Non-National Carrier Bill is not passed?

Current figures show us that some "cross traders"—the Russians, the Polish, and others—are growing at an alarming rate and are seriously affecting the maritime fleets of normal trading partners.

GROWTH IN STATE OWNED NON-NATIONAL FLAG CAPACITY— BY TRADE ROUTE, 3 EXAMPLES ONLY



Just three examples in three separate trade routes serve to underscore this point. The Far Eastern Steamship Company (FESCO), just one of 16 Soviet state-owned ocean shipping companies, in the U.S. Pacific trades alone has increased its container capacity from none in 1970 to nearly 20,000 twenty-foot equivalents annually on six different service routes in 1974. These routes run between various U.S. Pacific ports and Japan, Hong Kong, Malaysia, Singapore, Thailand, and Indonesia—not one Russian port being served in either direction. In the U.S. East Coast European trade from 1970 to 1974, container capacity of the Polish Ocean Lines has risen from none to over 10,000 twenty-foot equivalents annually, and its fleet in this route is comprised of 18 different vessels. Similarly, in the U.S. East Coast European trade, Baltatlantic Line, another Soviet state-owned ocean carrier, had increased in just one year, 1973-1974, its number of sailings by 200 percent and its trailer capacity by 300 percent to 12,000 twenty-foot equivalents annually. And, as of March the fifth, 1975, five new vessels have added an additional 17,000 twenty-foot equivalents annually to this same trade.

Undercutting

Such increased share of markets by the cross traders is attributable to one thing and one thing only, rates. Rates far lower than those which would cover their fully distributed costs on a commercial basis.

Let's examine some of those rates that are in the record.

In 1973, in the U.S./Japan trade, rates of U.S. and Japanese flag carriers on TV sets, toys, and bicycles were $45.00, $42.00, and $36.00 respectively; FESCO's rates on

RATES
U.S./JAPAN TRADE

	NATIONAL LINES	FESCO	UNDERCUTTING
TV SETS	$45.00	$38.25	15%
TOYS	$42.00	$33.00	21.4%
BICYCLES	$36.00	$31.00	13.8%

RATES/REVENUE TON

those commodities were $38.25, $33.00, and $31.00 respectively—undercutting from 13.8 percent to 21.4 percent.

1973 FESCO ELECTRONIC RATE SLASHING
EASTBOUND JAPAN/U.S.

ORIGINAL NATIONAL FLAG RATE	ORIGINAL FESCO RATE	FESCO DISCOUNT	REDUCED NATIONAL FLAG RATE	NEW FESCO RATE	NEW FESCO DISCOUNT
$49.50	$43.50	12%	$45.00	$38.25	15%

RATES/REVENUE TON

One might properly wonder whether the non-national operators are merely reducing selected rates that are on the high side to begin with. Events point in quite another direction. In early 1973, FESCO had been operating for about six months in the Japan/U.S. trade, with the eastbound electronics rate 12 percent below the applicable rate of national carriers. Feeling the adverse effects of that reduced rate, the national carriers reduced their rate to a level of $1.50 per revenue ton above the FESCO rate, which was 3.4 percent above the FESCO rate. Effective six days later,

FESCO slashed its electronics rate by yet another 12 percent, to a level 15 percent below the reduced rate of the national lines.

But what holds true for FESCO in the U.S./Far East trades, of course holds true for other government owned and operated carriers such as the Russians, the Polish, and others in the U.S./West German trade.

RATES
U.S./WEST GERMAN TRADE
(EASTBOUND)

	NATIONAL FLAG	POLISH OCEAN LINES	UNDERCUTTING
TOBACCO	$75.75	$56.00	25.9%
RAGS	$70.00	$55.75	20.4%
PLASTIC SHEETS	$55.00	$39.75	27.7%
ASPHALT SHINGLES	$58.50	$38.75	33.8%

RATES/REVENUE TON

While national flag operators in this trade had established rates on eastbound movements of tobacco, rags, plastic sheets, and asphalt shingles at $75.75, $70.00, $55.00, and $58.50 respectively, the rates of a Polish carrier, a non-national operator in this trade, were $56.00, $55.75, $39.75, and $38.75 respectively for the same commodities—or undercutting from 20.4 percent to 33.8 percent.

Obviously, state-owned and state-controlled cross trading merchant fleets represent an area of grave concern.

Commission Report

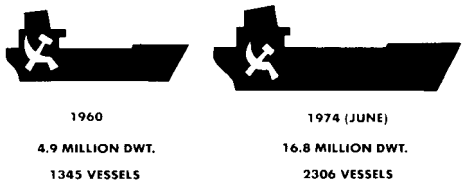
In the Report of the Commission on American Shipbuilding (an entity created by the Congress under Public Law 91-469)

it was stated:

"The state-owned and state-controlled Soviet merchant marine is an extreme example of direct government intervention in maritime activities. During the past 12 years the Soviet government, in pursuit of a strong maritime policy, saw its merchant marine increase from 4.9 million deadweight tons in 1960, and thirteenth place among the world's merchant fleets, to 15.4 million deadweight tons and fifth place early in 1973."

From early 1973 through June of 1974, the Soviet merchant fleet grew by nearly another one and a half million deadweight tons.

SOVIET MERCHANT FLEET AND GROWTH IN TONNAGE



1960
4.9 MILLION DWT.
1345 VESSELS

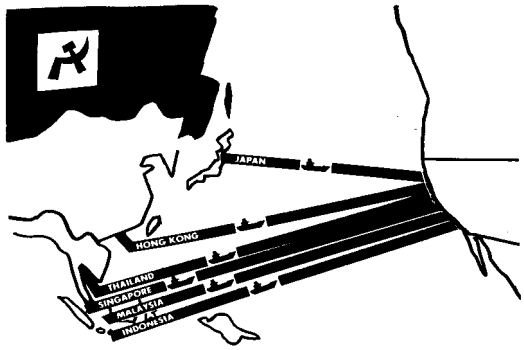
1974 (JUNE)
16.8 MILLION DWT.
2306 VESSELS

The Report continues:

"The fleet's activities have been expanded to serve 905 ports in 105 countries. In fiscal 1969, one of its largest steamship companies, the Far Eastern Steamship Company, recorded one voyage to U.S. West Coast ports. In fiscal 1973, five container ships and eight freighters recorded 137 voyages in FESCO's California and Pacific Northwest services."

Since that time, FESCO has instituted non-national service between Southeast Asia and the United States West Coast and

now has 17 ships engaged in U.S. West Coast Transpacific service, and not one of those vessels calls at a Russian port. Along with some 40 other U.S. and foreign flag shipping companies, FESCO-Pacific operates outside every existing Transpacific Conference.



And the Report goes on to say:

"As an Independent line, its rates are 10 to 35 percent below the Conference tariff rates; and, according to an analysis by the Federal Maritime Commission... FESCO's tariffs follow no consistent pattern. The line's vigorous growth apparently does not arise from profits but rather from a directed national policy."

Elsewhere in that report, it was estimated that the size of the liner segment alone of the Soviet merchant marine would increase to over 10 million deadweight tons by 1975, but this proved to be a conservative estimate—that figure was reached in June of 1974, moving the Soviet Union from ninth to first in world liner tonnage.

At the present level of Russian ship construction, by 1980 the Soviets will have a liner capacity sufficient to monopolize either the entire U.S. Transatlantic or U.S. Transpacific trades.

USSR MERCHANT LINER TYPE VESSELS ON ORDER AUGUST 1974

DRY CARGO VESSELS NUMBER 210
WORLD RANK 1st
(By Tonnage)

CONTAINER VESSELS NUMBER 29
WORLD RANK 2nd
(By Tonnage)

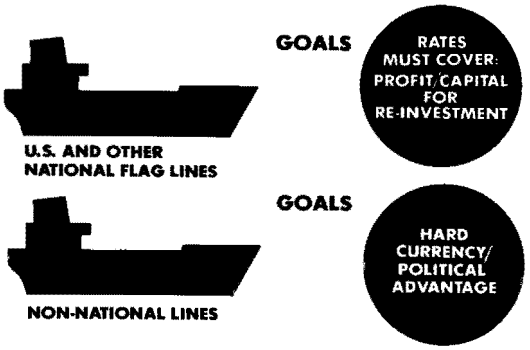
This is but one example of the growth and scope of state-owned competition that faces us.

Restoring Fair Competition

Almost every nation, including the United States, has its Cabotage laws, protecting the legitimate interests of its domestic water-borne shipping industry; but the United States virtually alone imposes no restriction upon vessel entry into its markets in its foreign trades.

Without some limitation, without enactment of legislation to prohibit "dumping" of ship capacity by non-nationals, the American merchant marine is going to suffer materially. It obviously cannot exist solely on domestic trade, and it certainly could not provide the capital funding so necessary to stay competitive in foreign trade routes. And the same holds true, of course, for our trading partners.

GOALS OF NATIONAL VS. NON-NATIONAL LINES



With non-national carriers continuing to seek control of the seas, the only logical outcome, if they receive shipper support and remedial legislation is not passed, in addition to the disappearance of many national flag lines, would be the complete dependence of American exporters and importers upon non-national carriers for all ocean going commerce. It would mean the dominance of the seas by the FESCO's and their counterparts.

America has shown that it has the capability to compete in any market on a fair and equitable basis. Our maritime workers are the highest paid in the world because they are the most productive in the world. We have developed the technology; the Container, Ro-Ro, LASH, and the SEABEE; and we have perfected them to such a degree that we can compete in any marketplace except where unfair conditions exist. We have innovated and, despite the fact that we have been emulated, we have succeeded. But we cannot compete if cross trader predatory pricing is permitted to continue.

Legitimate cross traders seeking to provide reliable service at fair commercial profits support the Non-National Carrier Bill.

Passage of the Non-National Carrier Bill is already late, but not too late. If passage comes in the current session of Congress, it will establish a climate of fair competition that the American maritime industry can accept as a challenge to American ingenuity and skill.

Grave Alternatives

But if it is not passed, we may expect the continual erosion of our merchant fleet.

American seamen will have fewer and fewer ships to sail.

American longshoremen will have virtually nothing but foreign flag vessels to stevedore.

And American shipyards will have less and less to build.

The strongest, most powerful nation in

the world, the world's leading maritime trading nation, will be subject to whatever terms and rates predatory cross traders dictate, or else become an economic island isolated from the other trading nations of the world.

FUTURE RATES ?
U.S. TRADE ROUTES

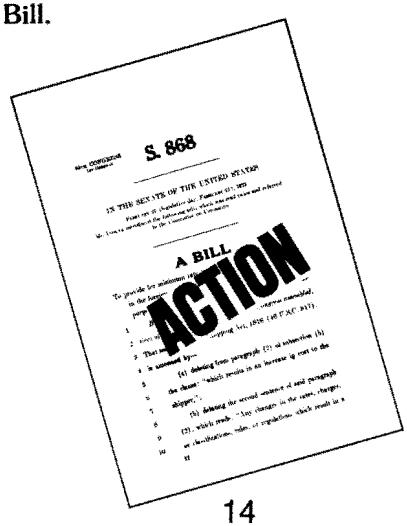
	CURRENT NATIONAL FLAG RATES	FUTURE NON-NATIONAL FLAG RATES
TOBACCO	$75.75	$100-$200 -$?
RAGS	$70.00	$100-$200 -$?
PLASTIC SHEETS	$55.00	$100-$200 -$?
ASPHALT SHINGLES	$58.50	$100-$200 -$?

RATES/REVENUE TON

Action

Not only must we all, as a part of the American business community, recognize these consequences, but the threat under which our maritime industry operates must be brought fully to the attention of all segments of our economy which benefit directly or indirectly from our foreign commerce.

Action must be taken immediately and must start with the passage of legislation as called for in the Non-National Carrier Bill.


S. 868

A BILL

ACTION

QUESTIONS AND ANSWERS ON S.868

1. Q. What is the meaning of the phrase "compensatory on a commercial cost basis?"

   A. The meaning of this phrase will be determined by usage and practical interpretation of existing transportation law, one definition could be: "covering all direct and indirect costs, including depreciation, interest, and reserves for operating asset replacement, of earning a rate or charge plus producing profit after taxes such as would be acceptable to a prudent business investor in common carriage by water in foreign commerce."

2. Q. How will the FMC choose to define and use the term "compensatory on a commercial cost basis?"

   A. The FMC will hold a public rulemaking proceeding. It has experience in setting rules as to the compensatoriness of U.S. carrier rates for military cargoes.

3. Q. Is it fair to place upon the non-national carrier the burden of proving that the lower rate which he has initiated is not unlawful?

   A. Yes, because the cost a carrier incurs in performing a service is a fact that is peculiarly within the possession and control of that carrier. In the case of non-national carriers, that evidence is located abroad, outside the reach of the subpoena power of the United States. Therefore, the burden of proof is placed upon the only entity having the knowledge of proof.

4. Q. Will the FMC in passing a non-national carrier rate apply a certain rule of thumb in every case? (i.e. everything that is not less than 10% of the national flag rate.)

   A. No. It will be the duty of the non-national operator whose rate or structure is challenged to bring in preliminary evidence that will make an obvious case that their rate is legal.

5. Q. Will lower rates currently in tariff or on file be affected by the bill?

   A. Yes, any rate in effect when the new law becomes operative can be challenged upon complaint.

6. Q. Would all rates on file be reviewed for reasonableness?

   A. No—only those that are challenged.

7. Q. How can the FMC realistically review all the rates now on record?

   A. They can't and they won't have to since all rates won't be challenged.

8. Q. Would open rates in conference tariffs for other than U.S. flags be subject to challenge?

   A. Rates set by non-nationals under "open rates" rules would be subject to the same cost justifications applicable to any other non-national rate.

9. Q. What happens to relationship of rates in traditional port ranges? (i.e. U.S. to Taiwan; Japan and Hong Kong).

   A. The relationship of rates in traditional port ranges will not be affected.

10. Q. What happens when a shipper needs a certain rate and can't afford the risk of litigation with third flag carrier—and then is locked into conference or national line rate?

    A. Shipper retains opportunity to seek rate from conference, national carrier or non-national carrier and to use best rate available under the circumstances.

11. Q. What happens to third flag rates when national or conference lines publish a rate increase or bunker increase?

    A. Third flag rates will still be subject to challenge on the same basis—that is, if it is felt they are non-compensatory by the FMC staff or carrier, the rules of reason would prevail in such a circumstance but they would not be automatically rejected.

12. Q. How can the FMC determine that rates are compensatory when they are limited to garnering foreign information in 90 days?

    A. It is not mandatory that all supportive information be submitted within any statutory time period. Even if a rate is rejected, the FMC can suspend the rejection and allow interim effectiveness of the rate if the publishing carrier brings in enough data to show a reasonable probability that the rate is compensatory.

13. Q. What will keep the ocean rates from going higher if the non-national competition is removed?

    A. Non-national competition will not be removed if they can justify their lower rates. In fact, foreign carriers representing almost 50% of the world's tonnage have informed the Congress of their support for third flag legislation even though those carriers may themselves be called upon to justify their rates. Once proven compensatory, their lower rates will offer plenty of competition in the U.S. trade.

14. Q. Won't the conferences be unduly strengthened or enlarged by the passage of S. 868?

A. No. S.868 is not keyed to conference rates but to the rate of the lowest priced "national flag carrier" in the trade; there are many national flag nonconference lines in the U.S. foreign commerce.

15. Q. Will non-national rates be suspended without notice before it is ruled noncompensatory? Will it affect cargo booked against that rate?

A. The carrier will be given notice of a rate suspension and he will notify the shippers. Cargo booked against a suspended rate will be affected since the cargo must use the rate in effect on the day it is shipped.

16. Q. Can the suspension power of the bill be modified so that third flag rate competition won't be jeopardized entirely?

A. Third-flag carriers who apply normal pricing practices will be able to compete without handicap. (Indeed, they support the Bill.) There is a provision for lifting the suspension of a rate—furthermore, in the language of S.868, suspension is not automatic.

17. Q. Will this bill eliminate non-conference lines...
a) by making them join the conconference?
b) by making them meet conference rate levels?
c) by putting them out of business?

A. No. See Answer 14.
No. See Answer 14.
No. See Answer 13 and 16.

18. Q. What prevents a conference (national) carrier from filing a protest on a rate whenever they want and having the FMC suspend it immediately for 30 days to decide whether a permanent rejection should be given and thus taking third flag cargo whenever they want?

A. The lack of an automatic suspension.

19. Q. Why can't the bill be directed at that non-national third flag carrier that is creating the unfair competitive condition?

A. Because there is more than one non-national third flag carrier dumping capacity in U.S. trade routes and the identities of such dumpers may change.

20. Q. Will the bill affect "detente?"

A. The bill should have no effect on "detente" because the U.S. is only trying to institute rules to protect national flag carriers in the U.S. trade with its partners. In the Russian trade, the Russian lines are national flag carriers.

21. Q. Will the bill invite foreign retaliation which will injure U.S. flag carriers?

A. U.S. flag carriers would welcome similar legislation in any country; as it would assure fair competition.

22. Q. What should I do if I am in favor of the bill and would like to see it pass Congress?

A. Write your congressman or senator and support the passage of S. 868.