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THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: 614

Date: September 30, 1974 Time: 10:00 a.m.

FOR ACTION: Roy Ash

cc (for information): Michael Duval
Warren K. Hendriks
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Thursday, October 3, 1974 Time: 2:00 p.m.

SUBJECT: Department of Commerce's position as to veto of the Cargo Preference legislation

H.R. 8193

ACTION REQUESTED:

___ For Necessary Action

_xx_ For Your Recommendations

___ Prepare Agenda and Brief

___ Draft Reply

___ For Your Comments

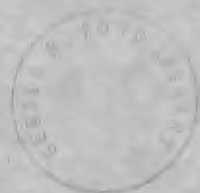
___ Draft Remarks

REMARKS:

Would you please prepare an appropriate transmittal letter to the Congress.

Please return to Kathy Tindle - West Wing

No transmittal needed; Duval working on this 9/30 per WKH



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

THE WHITE HOUSE
WASHINGTON

9/28

TO: M. Hendricks

For appropriate handling.

John J. Ratchford

THE SECRETARY OF COMMERCE
Washington, D.C. 20230

September 28, 1974

The President
The White House
Washington, D. C. 20500

Dear Mr. President:

Mike Duval reported to Bill Rountree, our Assistant General Counsel for Legislation, the results of his discussions with Mr. Hall and inquired what the Department of Commerce's position as to veto of the Cargo Preference legislation would be if the following paragraph were included, i. e.:

> "The requirement of paragraph one may be temporarily waived by the President upon his determining that an emergency exists justifying such waiver in the national interest."

Mr. Duval said the legislative history of the conference report would indicate that the waiver language above is intended to convey "broad authority".

Mr. Duval also indicated to Mr. Rountree that the quoted language replaces the present waiver provision in the Senate bill which restricts the waiver to a 180 day period, and the waiver provision of the House bill.

Our answer is as follows:

1. The quoted language in the conference bill plus the language proposed for the conference report would be a satisfactory waiver provision, in the opinion of the Department of Commerce, <u>if</u> the conference report and history indicated

that embraced in the phrase "national interest" are "the national defense, national security, foreign policy, and economic difficulties from all causes, including prolonged work stoppages".

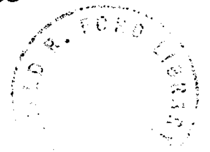
2. However, the objections of the Department of Commerce to the Cargo Preference Bill are not satisfied by the presence or absence of a satisfactory waiver position. The Department of Commerce believes that the Senate bill, the House bill, and the conference bill as we understand it to presently be proposed (now permitting ships of any age to benefit from the monopoly provisions of the bill) is exorbitantly inflationary and contradicts the prime objective of the President and the nation at this time, i.e., to combat inflation.

It is inflationary because the bill eliminates the duty of American vessels to compete in the world market for the opportunity to carry oil cargoes into the United States, and, on the contrary, assures any vessel, however inefficient, however old, however overmanned, of a "fair and reasonable rate" to carry a specified percentage of oil imports to the United States.

3. The Merchant Marine Act of 1970 assists the growth of our Merchant Marine, while at the same time requiring our carriers to compete in world markets. This is the anti-inflationary method of enlarging our fleet. It has been successful and is the proper method for this country to continue to pursue in gaining a larger share of all commerce, including all oil imports.

4. Because of its interest in reducing barriers to trade, the Department of Commerce also finds the action of the United States in establishing this preference, for private cargoes, to be contrary to our international trade and foreign policy objectives, and in direct violation of numerous treaties.

5. The bill is also an administrative nightmare. The administrative provisions are extremely vague and imprecise. There is little guidance to the Maritime Administration as to



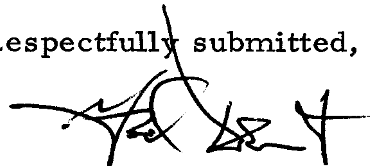
the "classes" of vessels to which various rates and provisions are to apply, and there is no basis provided for determining "a fair and reasonable rate" which carriers are assured. Even the legislative history is so vague that whatever standards are established by the Maritime Administration, by regulation, will invite extensive litigation which will be expensive, time consuming and generate prolonged uncertainty.

6. The so-called Mondale Amendment assures a 10% setaside, for the Great Lakes, for construction differential subsidies (CDS). This will, in all probability, result in that portion of the annual appropriation being unused and reverting to the general Treasury. (This is so because the lack of Great Lakes construction and use of the differential subsidy is not the result of administrative denials of applications but the result of an absence of applications from the private sector. This, in turn, is the consequence of pure economics, i.e., the weight and size restrictions necessary to transit the Great Lakes and St. Lawrence Seaway, make vessels built to conform to them unable to compete effectively in the international market.)

7. Neither the bill in the Senate or House provides for an appropriate enforcement procedure to enable the Secretary of Commerce to administer and enforce the legislation as enacted.

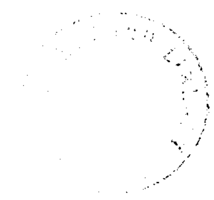
For the above reasons, despite the improved waiver provision, the Department of Commerce recommends that you veto the Cargo Preference legislation in the Senate version, the House version or in any conference bill version now expected to be reported. We request the opportunity to review and comment on the final Conference bill to confirm or modify the above views in the light of modifications to the legislation.

Respectfully submitted,



Secretary of Commerce

cc: Honorable William Timmons
Mr. Mike Duval



THE SECRETARY OF COMMERCE
WASHINGTON, D. C. 20230

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The President
The White House
Washington, D. C. 20500

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1974 SEP 28 PM 4 11

RECEP. AND SECURITY UNIT
THE WHITE HOUSE
WASHINGTON

THE WHITE HOUSE

WASHINGTON

ACTION MEMORANDUM

LOG NO.: 614

Date: September 30, 1974

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___ Draft Remarks

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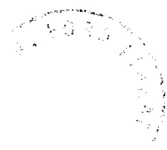

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: 835

Date: December 26, 1974 Time: 9:00 a.m.

FOR ACTION: Mike Duval [illegible]
NSC/S Veto-
Max Friedersdorf Veto
Phil Areeda
Paul Theis Geoff Shepard

cc (for information): Warren Hendriks
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Thursday, December 26 Time: 3:00 p.m.

SUBJECT:

Enrolled Bill H.R. 8193 - Energy Transportation Security Act of 1974

ACTION REQUESTED:

____ For Necessary Action __x__ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

__x__ For Your Comments ____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: 835

Date: December 26, 1974 Time: 9:00 a.m.

FOR ACTION: Mike Duval
NSC/S
Max Friedersdorf
Phil Areeda
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____ ~~Draft Reply~~

__x For Your Comments

____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

Veto

P. Areeda

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

THE WHITE HOUSE

WASHINGTON

December 26, 1974

MEMORANDUM FOR: WARREN HENDRIKS

FROM: MAX L. FRIEDERSDORF

SUBJECT: Action Memorandum - Log No. 835
Energy Transportation Security Act of 1974
Enrolled Bill H.R. 8193

The Office of Legislative Affairs concurs in the attached proposal and has no additional recommendations.

Attachment

GERALD R. FORD LIBRARY

THE WHITE HOUSE
WASHINGTON

DATE: 12-26

TO: ~~VL~~ / PO'D

FROM: Max L. Friedersdorf

Please handle ______________

Please see me ______________

For your information ______________

Other Comments, pls

VETO - VL

NSC vehemently opposed to this bill, strongly recommends veto

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: 835

Date: December 26, 1974 Time: 9:00 a.m.

FOR ACTION: Mike Duval
NSC/S
Max Friedersdorf
Phil Areeda
Paul Theis Geoff Shepard ✓

cc (for information): Warren Hendriks
Jerry Jones

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____ ~~Draft Reply~~

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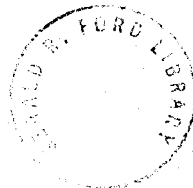
____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

Disapprove GS



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Warren K. Hendriks
For the President

THE WHITE HOUSE
WASHINGTON

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Date: December 26, 1974

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Max Friedersdorf
Phil Areeda
Paul Theis ✓ Geoff Shepard

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Jerry Jones

DEC 26 PM 1 43

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___x For Your Comments

___ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

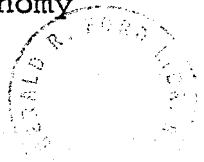
Warren K. Hendriks
For the President

MEMORANDUM OF DISAPPROVAL

I am withholding my approval from H.R. 8193, the Energy Transportation Security Act of 1974.

The ~~basic thrust of the~~ bill ~~is that it~~ would initially require that 20 percent ~~specified percentages~~ of the oil imported into the United States be carried on U.S. flag tankers. The percentage would increase to 30 percent after June 30, 1977.

This bill would have the most serious consequences. It would have ~~a serious~~ an adverse impact on the United States economy and on our foreign relations. ~~without helping to assure the availability of imported oil.~~



It would create serious inflationary pressures by increasing the cost of oil and raising the prices of all products and services which depend on oil. It would ~~also~~ stimulate further inflation in the ship construction industry and cut into the industry's ~~and jeopardize the~~ ability to meet ship construction for the U.S. Navy ~~ability of that industry to construct ships needed by the Navy for national defense.~~

In addition the bill would serve as a precedent for other countries to increase protection of their industries, resulting in a serious deterioration in beneficial international competition and trade. This is directly contrary to the objectives of the trade bill which the Congress has just passed. In addition, it would violate a large number of our treaties of Friendship, Commerce, and Navigation.

Although this bill would undoubtedly benefit a limited group of our working population, ~~but that~~ such benefit would entail disproportionate costs and ~~have other~~ ~~effect~~ produce undesirable effects which could extend into other areas and industries. The waiver provisions which the Congress included ~~certain findings and waiver provisions in the bill~~ in an effort to meet a few of my concerns ~~but they do not~~ fail to overcome the serious objections I have to the legislation. ~~do the job.~~

added

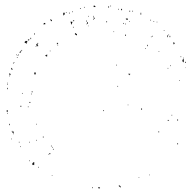
I wish to take this opportunity to reiterate my commitment to maintaining a strong U.S. Merchant Marine. I believe we can and will do this under our existing statues and programs such as those administered by the Maratime Administration in the Department of Commerce.

Accordingly, I am not approving this bill because of the substantial ~~and serious~~ adverse ~~impact~~ effect on the Nation's economy and international interests.

(Added para here)

THE WHITE HOUSE

December , 1974



FOR IMMEDIATE RELEASE DECEMBER 30, 1974

Office of the White House Press Secretary
(Vail, Colorado)

THE WHITE HOUSE

MEMORANDUM OF DISAPPROVAL

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The bill would initially require that 20 percent of the oil imported into the United States be carried on U. S. flag tankers. The percentage would increase to 30 percent after June 30, 1977.

This bill would have the most serious consequences. It would have an adverse impact on the United States economy and on our foreign relations. It would create serious inflationary pressures by increasing the cost of oil and raising the prices of all products and services which depend on oil. It would further stimulate inflation in the ship construction industry and cut into the industry's ability to meet ship construction for the U. S. Navy.

In addition, the bill would serve as a precedent for other countries to increase protection of their industries, resulting in a serious deterioration in beneficial international competition and trade. This is directly contrary to the objectives of the trade bill which the Congress has just passed. In addition, it would violate a large number of our treaties of Friendship, Commerce, and Navigation.

Although this bill would undoubtedly benefit a limited group of our working population, such benefit would entail disproportionate costs and produce undesirable effects which could extend into other areas and industries. The waiver provisions which the Congress included in an effort to meet a few of my concerns fail to overcome the serious objections I have to the legislation.

Accordingly, I am not approving this bill because of the substantial adverse effect on the Nation's economy and international interest.

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GERALD R. FORD

THE WHITE HOUSE,
December 30, 1974

# # #

THE WH

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THE WHITE HOUSE,
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This bill would have the most serious consequences. It would have a serious adverse impact on the United States economy and on our foreign relations without helping to assure the availability of imported oil.

It would create serious inflationary pressures by increasing the cost of oil and raising the prices of all products and services which depend on oil. It would also stimulate further inflation in the ship construction industry and jeopardize the ability of that industry to construct ships needed by the Navy for national defense.

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December , 1974

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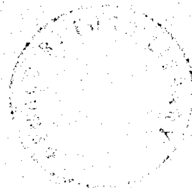

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GERALD R. FORD

THE WHITE HOUSE,
December 30, 1974

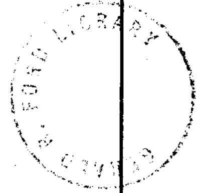
# # #

93d Congress
2d Session

HOUSE OF REPRESENTATIVES

Report
No. 93–1003

ENERGY TRANSPORTATION SECURITY ACT OF 1974



REPORT

Together With

SUPPLEMENTAL VIEWS AND MINORITY VIEWS

ON

H.R. 8193

A BILL TO REQUIRE THAT A PERCENTAGE OF UNITED STATES OIL IMPORTS BE CARRIED ON UNITED STATES-FLAG VESSELS

April 24, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

99-006 WASHINGTON : 1974

COMMITTEE ON MERCHANT MARINE AND FISHERIES

LEONOR K. (MRS. JOHN B.) SULLIVAN, Missouri, *Chairman*

FRANK M. CLARK, Pennsylvania
THOMAS L. ASHLEY, Ohio
JOHN D. DINGELL, Michigan
THOMAS N. DOWNING, Virginia
PAUL G. ROGERS, Florida
FRANK A. STUBBLEFIELD, Kentucky
JOHN M. MURPHY, New York
WALTER B. JONES, North Carolina
ROBERT L. LEGGETT, California
MARIO BIAGGI, New York
GLENN M. ANDERSON, California
E (KIKA) DE LA GARZA, Texas
PETER N. KYROS, Maine
RALPH H. METCALFE, Illinois
JOHN B. BREAUX, Louisiana
FRED B. ROONEY, Pennsylvania
BOB ECKHARDT, Texas
PAUL S. SARBANES, Maryland
BO GINN, Georgia
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PIERRE S. (PETE) DU PONT, Delaware
WILLIAM S. COHEN, Maine
TRENT LOTT, Mississippi
DAVID C. TREEN, Louisiana
JOEL PRITCHARD, Washington
EDWARD YOUNG, South Carolina
DON YOUNG, Alaska
ROBERT E. BAUMAN, Maryland

ERNEST J. CORRADO, *Chief Counsel*
FRANCES STILL, *Chief Clerk*
LEN SUTTER, *Counsel*
MARY C. MCDONNELL, *Counsel*
RICHARD N. SHAROOD, *Minority Counsel*

CONTENTS

		Page
I.	Purpose of the bill	2
II.	Background of the legislation	2
III.	General statement	4
IV.	Committee amendments	8
V.	Benefits of H.R. 8193	11
	Summary statement	12
	Discussion:	
	National security	13
	Consumer benefits	23
	Cost monitoring system for ocean transportation costs	28
	Balance of payments	29
	Environmental protection	30
	Relationship to the Merchant Marine Act, 1970	31
VI.	Questions raised with respect to H.R. 8193	32
	Costs	32
	Administration	32
	Free trade and possibility of retaliation	40
VII.	Conclusion	42
VIII.	Cost of the legislation	42
IX.	Departmental reports	42
X.	Changes in existing law	47
XI.	Additional views	51
XII.	Supplementary views	53
XIII.	Dissenting views	57

93d Congress, 2d Session } HOUSE OF REPRESENTATIVES { Report No. 1003

ENERGY TRANSPORTATION SECURITY ACT OF 1974

April 24, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed.

Mrs. Sullivan, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

together with

SUPPLEMENTAL VIEWS AND MINORITY VIEWS

[To accompany H.R. 8193]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 8193) to require that a percentage of U.S. oil imports be carried on U.S.-flag vessels, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

1. On page 2, lines 3 and 4, strike the words "all petroleum and petroleum products" and insert the following words in lieu thereof:

> all liquid petroleum and liquid petroleum products carried in bulk referred to as crude oil, unfinished fuels, gasoline, kerosene, aviation fuels, naphtha, cracking stocks, distillate heating oil, diesel oil and residual oils.

2. On page 2, line 21, strike the word "quantity" and insert the following words in lieu thereof:

> quantity: *And provided further*, That with respect to the percentage of petroleum and petroleum product required to be imported on United States flag commercial vessels, the Secretary of Commerce may by rule establish reasonable classifications of persons and imports subject thereto, and persons in the same classification shall be treated in substantially the same manner; any person alleging that he is incorrectly classified under such rule, or that there is no

reasonable basis in fact for such classification, or that he is by any agency action thereunder treated differently from other persons in the same classification, may obtain agency review of such incorrect classification or agency action pursuant to the provisions of Title V United States Code, Section 554, with review to the United States Court of Appeals for the District of Columbia. The scope of such review shall be in accordance with Title V United States Code, Section 706, including the contention that the action of the agency was unsupported by substantial evidence:

3. Add a new section to the bill to read as follows:
"SEC. 2. This Act may be cited as 'The Energy Transportation Security Act of 1974'."

I. PURPOSE OF THE BILL

The purpose of the bill is to reduce the nearly complete dependence of the United States on foreign-flag vessels for its oil imports by requiring that a percentage of certain liquid petroleum products be imported on United States-flag vessels. The bill is intended to strengthen our merchant marine while providing benefits to our national security, to consumers, to our balance of payments, and to our marine environment.

II. BACKGROUND OF THE LEGISLATION

For some time, the Merchant Marine and Fisheries Committee has viewed with grave concern the increasing dual dependency of the United States on both foreign oil and foreign-flag tankers to import such oil. Our increasing dependence on foreign sources of oil has been widely publicized and is well known. Less well recognized, is our increasing dependence on foreign tanker capability to transport our oil requirements.

Historically, the United States-flag tanker fleet provided virtually all the capability necessary to transport our water-borne requirements. This was true because such movements were in domestic trade (e.g. from Texas and Louisiana to the Northeast) and were all required by law to be carried on United States-flag vessels (46 U.S.C. 883). However, United States-flag tankers carry only about 4 per cent of our water-borne oil imports. As the source of consumed U.S. oil has shifted from domestic to foreign production, U.S.-flag tanker capability has declined in its ability to meet our requirements.

From a relatively small portion of U.S. consumption, foreign production has increased dramatically to 20 percent today and it is anticipated that it will increase to approximately half of our requirements by the 1980–85 time period. The Middle East is a case in point. In 1970, only about 1 percent of our consumption of oil came from the Middle East. The Department of Interior testified in the Committee's hearings that by 1985, about 27 per cent of total U.S. consumption will come from the Middle East.

This shift in source has had a dramatic and not very widely considered effect on the ability of the U.S.-flag tanker fleet to carry our national requirements. Only about 4 percent of our oil imports are carried on U.S.-flag vessels. Thus, from an historic position

where the U.S.-flag tanker fleet carried nearly all our water-borne oil requirements, it will soon be able to carry only a very small portion of our requirements. This development has been unintended and has generally escaped public notice. Maintenance of a U.S.-flag tanker fleet, indisputedly under U.S. control, is vital. The recent Arab oil embargo underlines the necessity. In the event of an embargo in any part of the world, it is essential that a U.S.-flag fleet be available to seek alternative sources of petroleum and to carry petroleum from such sources to the United States.

During the 92nd Congress, your Committee held comprehensive hearings on this problem. Your Committee concluded from these hearings that: (a) the national security of the United States requires that a significant percentage of our oil imports be carried in United States-flag vessels; (b) Accomplishment of that objective requires that the Merchant Marine Act of 1970 be supplemented with legislation mandating use of United States-flag vessels for a portion of our imported oil requirements; and (c) Such legislation, in addition to providing for our national security requirements, would have beneficial impact on our balance of payments and domestic employment, could benefit the consumer, and result in other benefits as well. Such a bill was ordered reported by your Committee, but no further action was taken, largely because of the opposition of the Administration which requested additional time to evaluate alternatives to the legislation.

In the early days of the 93rd Congress, it became increasingly clear that the concerns of your Committee were not without merit. Legislation was again introduced to require a percentage of our oil imports to be carried on United States-flag vessels. H.R. 8193, introduced by the Honorable Leonor K. Sullivan, Chairman of your Committee, for herself and others, and 46 similar bills with 226 co-sponsors, were introduced. H.R. 8193 would amend section 901(b)(1) of the Merchant Marine Act of 1936, as amended (46 U.S.C. 1241(b)(1) to provide that:

> The appropriate agency or agencies shall also take such steps as may be necessary and practicable to assure that at least 20 per centum of the gross tonnage of all petroleum and pertoleum products imported into the United States on ocean vessels, including movements (i) directly from original point of production and (ii) from such original point to intermediate points for transshipment or refinement and ultimate delivery into the United States, shall be transported on privately owned United States-flag commercial vessels to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels, in such manner as will insure fair and reasonable participation of United States-flag commercial vessels in such cargoes by geographical areas: *Provided*, that the quantity required so to be carried in United States-flag commercial vessels shall be at least 25 per centum after June 30, 1975, and at least 30 per centum after June 30, 1977, if the Secretary of Commerce shall on December 31 preceding each such date determine that United States tonnage existing or on order and scheduled to be delivered by such date would be adequate to carry such quantity.

The Subcommittee on Merchant Marine held 15 days of hearings over a six month period, during which 19 witnesses testified on the proposed legislation. Witnesses included the Departments of Commerce, Defense, Interior, State and Treasury, the Shipbuilders Council of America, the President's Commission on American Shipbuilding, the Transportation Institute, the American Maritime Association, the Labor Management-Maritime Committee, Mr. Norman Polmar, U.S. editor of Jane's Fighting Ships, the American Petroleum Institute, the Committee for a National Trade Policy, Gulf Oil Corporation, the Federation of American Controlled Shipping, Mr. Stanley Ruttenberg, a noted economist, the Marine Engineers Beneficial Association, the Seafarers International Union, and others. In addition, numerous statements were submitted with respect to the proposed legislation. Finally, various parties were requested to submit written answers to questions propounded by your Committee. The hearings, and the above additional information, are contained in the Hearing Record on H.R. 8193. The bill was opposed by the Administration and oil company and foreign-flag vessel spokesmen, and was generally endorsed by the other witnesses listed above. The various arguments raised by the witnesses are treated throughout this report. Numerous amendments were also proposed for the Committee's consideration.

On March 27, 1974, the Merchant Marine Subcommittee favorably reported H.R. 8193, with amendments, to your Comimttee, by a vote of 13 to 3. The amendments were technical and perfecting in nature. On April 9, 1974, your Committee considered the bill, adopted the amendments recommended by the Subcommittee, and ordered the bill favorably reported by an overwhelming voice vote.

H.R. 8193 was reported out of the Merchant Marine Subcommittee on March 27, 1974 by a roll call vote of 13 to 3. The bill was reported out of the Full Committee on April 9 on a voice vote. The strongest opponent to H.R. 8193 called for a roll call vote but fell far short of the necessary support for a roll call vote. Rule III F of the Merchant Marine and Fisheries Committee Rules states: "A roll call vote may be ordered by one-fifth of the Members present." As evidenced by the Subcommittee action, the majority would have been content with a roll call vote except the requisite support in accordance with Committee Rules was lacking.

III. GENERAL STATEMENT

As mentioned above, H.R. 8193 is concerned with the importation of certain percentages of petroleum and petroleum products into the United States on United States-flag vessels. In light of the obvious thrust of this legislation, the hearings on the bill generally related to the ocean transportation of our vital oil imports. This ocean transportation oil import problem, of course, must be considered in context of the immense energy problem confronting the nation. It would appear, unfortunately, that the United States has never really attempted to control petroleum policy. In light of this policy vacuum, your Committee concluded that it has been the multi-national oil companies which have shaped the energy policy of the United States. When your Committee views the actions of these multi-national oil companies resulting from the recent war in the Middle East and the so-called Arab

oil embargo, it would appear that the multi-national oil companies have demonstrated a certain indifference to the interests of the United States and the American consumer.

Our entire national energy policy, to date seems to have been a matter of following the multi-national oil companies to wherever they could find the greatest profits. We have followed them to diminishing production of crude oil in the United States. We have followed them to declining United States refining capability. We have followed them to a quietly growing dependence on imported oil at a time when they were publicly denouncing such dependence. In the same way, we have followed them into transporting oil and petroleum products almost exclusively in foreign-flag vessels.

At the present time, a number of Committees of the Congress are attempting to formulate a national energy policy that is not dominated by the multi-national oil companies, but operates in the best interests of the national security of the United States and the American consumer. Your Committee on Merchant Marine and Fisheries has concentrated on the ocean transportation of oil imports aspects of our overall national energy policy. That is what H.R. 8193, the Energy Transportation Security Act of 1974, is all about.

It is abundantly clear that the dual dependency of the United States on foreign produced oil and its ocean transportation in foreign-flag tankers constitutes a clear and present danger to the economic, commercial, and national security of the United States. It is obvious that the best interests of the United States can no longer tolerate dependence on foreign-flag tankers to the extent that over 95 percent of our petroleum product imports are carried in these foreign-flag vessels over which we exercise questionable and, at best, tenuous control.

It is an obvious and unfortunate fact that the United States must remain dependent on foreign sources of oil for our energy requirements for many years to come. There is little we can do about these unhappy oil source circumstances, but we need not rely on foreign-flag vessels for the transportation of these petroleum imports to the unreasonable and unnecessary extent that over 95 percent of these petroleum imports are carried on foreign-flag bottoms. The United States can and must become less dependent on foreign and foreign-oriented entities for the transportation of these vital petroleum supplies. H.R. 8193 would ameliorate this dependence to a reasonable degree. Probably the most basic and best reason for supporting the passage of H.R. 8193 is the fact that it will decrease our dependence on foreign-flag interests for transporting our vital petroleum supplies and will provide our own national, United States-flag capability—with all collateral benefits.

Set out below are charts which illustrate the ineffective nature of United States-flag tanker capability in relationship to foreign-flag capability by showing relative numbers of ships, deadweight tonnage, and average ages. It must be noted, too, that in the numbers of ships listed for the United States, most of these are used in the domestic trades and not in the United States-foreign trades. Also as set out in the charts, it can be seen that there is only about a four percent capability for importation of petroleum products in privately-owned U.S.-flag vessels. H.R. 8193 would raise this pitiful four percent figure to

99-006—74——2

20 percent initially, and to 30 percent by 1977. Your Committee submits that this is not an unreasonable goal.

	June 30, 1973		
	Number of ships	Deadweight tons	Average age
1. United States[1]	239	7,792,000	20
2. Greece	286	11,436,000	14
3. Italy	213	5,583,000	15
4. Japan	447	24,663,000	6
5. Liberia	833	55,098,000	12
6. Norway	357	20,758,000	8
7. Panama	210	7,986,000	16
8. United Kingdom	435	25,008,000	9
9. U.S.S.R	448	5,451,000	9

[1] Almost all is in domestic coastwise trade and only about 4 percent is in U.S. foreign trade.

Note: World deadweight tons tanker tonnage:

	Percent
1. Foreign owned—Foreign flag	73
2. Privately owned U.S. flag	4
3. U.S. effective control	9
4. U.S. owned foreign flag	14

If the United States were operating unilaterally in this desire to control some of its petroleum carriage capability, one might raise reasonable questions with respect to the propriety of such unilateral action. However, the realities of the world tanker situation today are just the opposite. Recently, there was an article in one of the business newspapers to the effect that Nigeria's State-owned National Oil Corporation is in the process of acquiring its own fleet of tankers for the overseas transportation of its crude oil. In justification of acquiring its own flag tanker capability, Nigeria's secretary for the Federal Ministery of Mines and Power stated, "that the Federal Government was anxious to insure its oil shipments were not disrupted by an international crisis." Similarly, another newspaper recently ran an article to the effect that the Arab Maritime Petroleum Transportation Company has ordered four large tankers, two in France and two in West Germany. These French-built vessels will be 278,100 DWT tankers, and the two German-built vessels will be 318,000 DWT tankers. The Arab Maritime Petroleum Transportation Company was formed on January 7, 1973, under the auspices of OAPEC, by the Governments of the following eight Arab oil producing nations: Abu Dhabi, Algeria, Bahrein, Iraq, Kuwait, Libya, Qatar, and Saudi Arabia. The article stated that the eventual aim of the Arab Maritime Petroleum Transportation Company was to assemble "a substantial tanker fleet capable of lifting a large portion of the exports of the members' oil fields." In this same vein, there was an article in the March 1974 issue of *Sea Trade Magazine*, a prestigious and authoritative British shipping magazine, which describes the stepped-up activities of Arab nations to increase the development of their tanker fleets.

The article points to the fact that the objective is to carry "forty percent of Arab crude exports." The article further goes on to point out that the Arab nations are being advised in these matters by members of American oil companies, among others, and that the Arabs are training maritime personnel at the U.N. Maritime School in Alexandria, Egypt.

There have been other international developments in related areas which must be mentioned. For several years now, the United Nations Commission on Trade and Development (UNCTAD) has been working on a Code of Conduct for Liner Conferences. UNCTAD recently completed a month-long conference on this Code of Conduct for Liner Conferences. The impetus for this has come from the so-called "Group of 77" Less Developed Countries (LDC's). Among other things, the LDC's insisted that the Code have a provision to the effect that 40 percent of the cargo must be carried by the national flag lines of each of the two trading partners in a trade, with 20 percent left to so-called third flag countries. This insistence on a percentage of cargo allocation in this Code, of course, applies only to liner or so-called non-bulk cargoes. It is abundantly clear, however, that in the event this Code of Conduct is ratified by the necessary 24 countries with the necessary 25 percent of the world liner and container tonnage, it will be a very short time before the Less Developed Countries push for the imposition of similar cargo allocation percentages on bulk commodities.

The examples set out above, your Committee feels, are the best arguments possible for the passage of H.R. 8193, which would mandate increased capability of petroleum import carriage in U.S.-flag tankers. It is perfectly obvious what the trend is in the world today and what other nations are doing with respect to producing their own flag vessel transport capability. The energy producing and other trading nations of the world are not dormant and sitting idly by with respect to this problem. The United States can no longer afford to remain inert, carrying a negligible portion of its energy requirements in its own U.S-flag vessels. Further U.S. inaction in this area would be negligent and certainly contrary to the best interests of the nation as a whole. We must keep pace with the energy producing and trading nations of the world and assure at least a certain percentage of our own U.S.-flag transportation capability. H.R. 8193 meets this compelling, necessary, and long overdue national need.

H.R. 8193 is much more than a merchant marine bill. It is legislation which goes to the heart of the national security and commercial trading interests of the United States. As mentioned above, enactment of this legislation would go a long way toward reversing our dangerous dependency on foreign-flag, foreign crewed ships, for the almost exclusive carriage of our oil imports. This is not the only reason for seeking enactment of this worthwhile legislation, however. H.R. 8193 will provide many additional other benefits to the American people and to the nation. It will, for example, provide thousands of jobs for American workers on board ships, in the nation's shipyards and in the related service industries. It will help improve the U.S. balance of payments position by decreasing our expenditures for foreign shipping which are presently at a high level. The bill will also increase America's tax revenues by increasing the amount of money paid to the U.S. Treasury by American workers and American companies building and operating U.S.-flag ships. The passage of H.R. 8193 would guarantee the growth of the U.S.-flag tanker fleet.

The Merchant Marine Act of 1970 was landmark maritime legislation and has increased U.S. vessel capability through its ship construction and operating subsidy provisions. However, it has become increasingly apparent since the passage of the 1970 Act that availability

of cargo is essential to the survival and growth of the U.S.-flag merchant fleet. H.R. 8193 should provide a reasonable share of cargo for our tankers.

Certain environmental benefits will accrue to the Nation through the passage of H.R. 8193. As mentioned above, oil imports will increase in the next five to ten years and an increase in tankers plying our waters will necessarily result. Potential harm to our marine environment will be greater if most of these vessels are of foreign registry since U.S.-flag vessels are generally subject to more stringent vessel and manning standards than are foreign-flag vessels. Moreover, our ability to specify and enforce anti-pollution standards on foreign vessels is extremely limited.

With all the benefits which will accrue to the Nation from enactment of H.R. 8193, it is important to note that passage of this legislation will not result in additional cost to the Government, or require additional appropriations.

Because of its great concern for the consumer, your Committee carefully examined the impact of this legislation on consumer prices. There will be a thorough exposition of this problem later in the report but it should be stated here that it is clear that *if* any increased cost results from the use of U.S.-flag vessels required by the bill, such cost would be less than one cent a gallon at most, and some testimony indicated the measure could actually result in decreased ocean transportation costs being paid by the American consumer.

With respect to the proposed alternative to the H.R. 8193, i.e., use of the so-called "effective U.S. control" fleet, your Committee carefully evaluated it and found it wanting. Indeed, your Committee finds that the present reliance on it was never intended and that over-reliance on the concept is extremely dangerous and generally inimical to the economic, commercial and national security interests of the United States.

IV. COMMITTEE AMENDMENTS

H.R. 8193 was amended in Committee but was not changed substantially as introduced. Your Committee amended the bill in three respects.

H.R. 8193, as introduced, would have applied to all petroleum and petroleum products. As it was never the intention of your Committee to include LNG, asphalt, resins, plastics and other products that find their genesis in petroleum, the bill was amended to specifically state what petroleum and petroleum products would be covered. In this regard, the words "petroleum and petroleum products" on page 2, lines 3 and 4, were struck and the folllowing words inserted in lieu thereof:

> .... liquid petroleum and liquid petroleum products carried in bulk referred to as crude oil unfinished fuels, gasoline, kerosene, aviation fuels, naphtha. cracking stocks, distillate heating oil, diesel oil and residual oils.

The hearing record on H.R. 8193 clearly demonstrates the national security need for the proposed legislation in context of the general economic, political and commercial benefit to the U.S. of H.R. 8193. Indeed, your Committee is of the opinion that this general need should be underscored by an appropriate title. Therefore, the bill was further amended by a new section to read as follows:

"SEC. 2. This Act may be cited as 'The Energy Transportation Security Act of 1974.' "

Finally, your Committee concluded that it should be very clear that persons affected by the Act should have equitable treatment and the full advantages of the procedures provided by the Administrative Procedure Act. In this regard, H.R. 8193 was amended by striking the word "quantity" on page 2, line 21, and inserting the following words in lieu thereof:

> . . . quantity, and provided further, that with respect to the percentage of petroleum and petroleum product required to be imported on United States-flag commercial vessels, the Secretary of Commerce may by rule establish reasonable classifications of persons and imports subject thereto, and persons in the same classification shall be treated in substantially the same manner; any person alleging that he is incorrectly classified under such rule, or that there is no reasonable basis, in fact, for such classification or that he is by any agency action thereunder treated differently from other persons in the same classification, may obtain agency review of such incorrect classification or agency action pursuant to the provisions of Title V, United States Code, Section 554, with review to the United States Court of Appeals for the District of Columbia. The scope of such review shall be in accordance with Title V, United States Code, Section 706, including the contention that the action of the agency was unsupported by substantial evidence.

This amendment, offered by Congressman Eckhardt, arose at the Subcommittee mark-up on March 27, 1974 as an alternative to the Anderson amendment which would have exempted small refiners from the provisions of H.R. 8193. After the Anderson amendment was defeated, Mr. Eckhardt offered his amendment stating that its effect would be to require that everyone who is similarly situated under the administration of the bill would be treated in the same manner.

Although this amendment followed the defeat of the Anderson amendment, and was intended to provide equitable treatment to the small refiner which might otherwise be put in the same category yet treated differently, the Eckhardt amendment, in fact, would have a broad general application to the administration of the bill. This amendment provides that with respect to the percentage import requirement of petroleum and petroleum product the Secretary of Commerce by rule may establish classifications of persons and imports and persons in the same classification shall be treated in substantially the same manner. Under the amendment, an affected person may complain that he is incorrectly classified, or that there is no reasonable basis for such classification, or that he is being discriminated against in that he is being treated differently from other persons in the same classification.

It is clear that the Eckhardt amendment provides considerable administrative protection to anyone in a classification established by the Secretary of Commerce. Your Committee believes that the protection

provided by this amendment is necessary because of the potentially great commercial impact of decisions assigning responsibility for transporting petroleum imports on U.S.-flag vessels. Such a classification, for example, could relate to an exemption of small refineries or it could relate to amounts of petroleum imported by particular persons. At any rate, the Eckhardt amendment gives the affected person the right to receive due notice once the Secretary has decided to assign him to a particular category for purposes of enforcing the Energy Transportation Security Act requirements. If the affected person wishes to contest such an assignment, or the category itself, or disparate treatment under the classification, he has a right to a hearing subject to the provisions of Sections 554, 556 and 557 of Title V of the United States Code. At such a hearing the affected person has a right "to present his case by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts." 5 U.S.C., Section 556(d). The Secretary may not issue a final order assigning a person to a particular category "except on consideration of the whole record or those parts thereof cited by such person and supported by and in accordance with the reliable, probative, and substantial evidence." Ibid. H.R. 8193 provides that an aggrieved person may appeal the Secretary's decision to the Court of Appeals for the District of Columbia, and such review shall be in accordance with 46 U.S.C., Section 706, including the allegation that the action of the agency was unsupported by substantial evidence.

Since H.R. 8193 relates only to 20 percent of oil imported into the United States in its initial steps, your Committee was opposed to exempting small refiners or any other categories from the provisions of the bill because it was felt that such amendment would quickly nullify the legislation. However, it was your Committee's feeling that the Eckhardt amendment was a useful amendment to the bill since it provided administrative machinery for the Secretary to consider pertinent categories of persons and operations. It was your Committee's further view that this amendment provided substantial administrative protection to parties falling within the categories under the administration of this oil import legislation. Admittedly, there is great latitude on the part of the Secretary of Commerce in administering this percentage oil import program. Your Committee was of the view that the amendment in question provides not only administrative relief but standards and operating machinery to be used in the administration of the program mandated by this law.

Your Committee considered a number of other suggested amendments to H.R. 8193. Only one of these proposed amendments would appear to warrant further comment.

The Honorable Glenn M. Anderson of California, as mentioned above, offered an amendment that would exempt from the provisions of the bill "refineries whose total refinery capacity (including the refinery capacity of any person who controls, is controlled by, or is under control with such refiner) does not exceed 30,000 barrels per day." In short, it would exclude the so-called small refineries in the United States. During the years that Mr. Anderson has been a member of both the Subcommittee on Merchant Marine, and the Merchant Marine and Fisheries Committee, he has consistently made significant contributions to the United States-flag merchant marine. Therefore,

after careful consideration, it was with regret that your Committee was compelled to vote it down.

It would appear that there are a number of small refiners in the United States as well as in Mr. Anderson's District. Apparently one refiner in Mr. Anderson's District, for example, has a contract to purchase Indonesian crude oil. This contract provides that the purchased oil must be transported in Indonesian-flag tankers. Therefore, unlike the powerful multi-national oil companies, the application of H.R. 8193 to this small refiner could cause serious problems. As has been pointed out by your Committee in this report, with respect to shipping at least, International Free Trade is far from a reality. The problem faced by this small refiner in California is just one small element of the very serious overall problem faced by the United States. Some countries require by law that 100 percent of their oil imports be carried in national flag vessels. The oil producing countries, such as Indonesia, are rapidly expanding their sphere of influence to include the ocean transportation of exported oil. Ineed, a number of these countries already require by law that a certain percentage of their oil exports be carried in national flag vessels.

Your Committee has concluded that the existing reliance of the United States on foreign-flag tankers for over 95 percent of our oil imports poses a dire threat to our national security. Your Committee has further concluded that one of the benefits of H.R. 8193 is that it will permit the appropriate government agencies to negotiate with the oil producing countries such as Indonesia so that the United States will be assured of the right to carry part of such oil in our own tankers. Without such legislation, the oil producing countries eventually would be able to take over, directly or indirectly, the entire transportation function with respect to our oil imports—to the peril of the national security of the United States!

With respect to the problem faced by the small refiner in California, and others like him, your Committee believes that H.R. 8193, as reported, has the flexibility to permit the Secretary of Commerce to deal with such problems on an ad hoc basis. In this regard, the bill provides that "such steps as may be necessary and practicable," may be taken by the Secretary. H.R. 8193, as reported, further provides for "reasonable classifications of persons and imports." It is the intent of your Committee that The Energy Transportation Security Act of 1974 should be applied by the Secretary of Commerce in a fair and reasonable manner. In sum, as mentioned previously, your Committee was of the opinion that excluding small refiners or any other category of affected person would gut the bill. Moreover, your Committee felt the so-called Eckhardt amendment provided substantial and reasonable protection to affected persons.

V. BENEFITS OF H.R. 8193

As noted above, H.R. 8193 would provide that the Secretary of Commerce take appropriate steps to assure that at least 20 per centum of the gross tonnage of liquid petroleum and certain liquid petroleum products carried in bulk that are imported into the customs territory of the United States be carried on privately owned United States-flag commercial vessels, to the extent such vessels are available at a fair

and reasonable rate for such vessels. The bill would apply to movements directly from the original point of production and from such original point to intermediate points for transshipment or refinement and ultimate delivery into the United States. The quantity required to be carried on United States-flag vessels would increase to at least 25 per centum after June 30, 1975, and to at least 30 per centum after June 30, 1977, if the Secretary determines that United States tonnage existing or on order and scheduled to be delivered would be adequate to carry such quantities.

The reasons for the Committee's action in reporting out the bill, preceded by a summary explanation, are set forth hereafter.

Summary Statement

National Security.—The primary benefit of the legislation will be to halt our dangerously increasing dependence on foreign-flag vessels, owned by foreign companies, and manned by foreign nationals. Until recent years, nearly all our vital oil requirements were carried on United States-flag vessels since they were moving from one U.S. port to another and were required by law to be carried on United States vessels. That situation is changing dramatically. Only 4 percent of our increasing oil imports are carried on American ships. Recent events demonstate the need for a secure American tanker capability. For example, if one source of oil is embargoed, we need a United States-flag tanker capability unequivocally under our control to carry oil to us from alternative sources. An analysis of the so-called foreign-flag "effective control fleet" indicates that total reliance on that fleet would be misplaced. Enactment of the bill would create a U.S. nucleus fleet capable of carrying 20 percent of our oil import requirements in the near future, and 30 percent thereafter.

Consumer Benefits.—The enactment of H.R. 8193 will lead to direct and tangible benefits to the American consumer. Some of the testimony and data presented to the Committee indicated that a savings to the consumer of at least one cent per gallon on imported oil could result from the enactment of this legislation. Opponents of the bill, primarily the multi-national oil companies, estimated the legislation could result in a one cent a gallon cost increase.

Your committee concluded that many of the opponents' contentions were speculative and unpersuasive. Even if any cost increase should, in fact, result from the use of United States-flag tankers over foreign-flag tankers, the increase would be minimal.

The Committee also received evidence quantifying the benefits to the consumer-taxpayer that would result from the increased ability of the United States Government to tax oil company shipping profits and the increases in domestic employment that would result from the bill.

Cost Monitoring System for Ocean Transportation Costs.—H.R. 8193 will provide for the first time a system of monitoring the shipping costs of multi-national oil companies. Currently, no one but the oil companies themselves know what those costs are. Many suspect that these companies enjoy windfall profits because the price the American consumer pays for oil import transportation bears no relation to the actual costs involved. By its terms, H.R. 8193 will provide an opportunity for us to judge the inflationary import of these pricing practices.

Balance of Payments.—Enactment of H.R. 8193 will have a favorable impact on our balance of payments situation both in the near future and over the long term. Estimates by government officials calculated that this benefit would approximate $11 billion over the lives of the ships to be built. This savings would be generated both on the construction and operation of ships. Viewed in the context of a huge outflow of United States dollars for energy, accelerating over time, H.R. 8193 can make a significant contribution to our balance of payments.

Environmental Protection.—Yet another collateral benefit resulting from enactment of H.R. 8193 would be increased environmental protection. The increase over the next decade in oil imports and tankers plying our waters will necessarily result in increased potential harm to our marine environment. If these vessels are all of foreign registry, the problem is magnified. United States-flag vessels are generally subject to more stringent vessel and manning standards than their foreign counterparts. The impact of H.R. 8193 would permit us to assure that the safest standards would be maintained consistent with our own national environmental and shipping policies.

Relationship to the Merchant Marine Act, 1970.—The Merchant Marine Act, 1970 (P.L. 91–469) recognized the need to build and operate a bulk cargo fleet to carry raw materials and petroleum. The Act represented broad recognition of the vital importance of creating a tanker fleet to our national security and commerce. However, the Act did not assure the availability of cargoes to United States flag vessels necessary as a prerequisite to construct such a fleet. H.R. 8193 will supplement and complement the 1970 Act by guaranteeing that the United States attains a secure energy transportation fleet capable of carrying a minimum percentage of its requirements as was intended in the 1970 Act.

Discussion

National Security

The primary benefit of the proposed legislation is to assure that oceanborne transportation capability for the specified percentages of petroleum and petroleum products would always be available to United States military forces, the American people and our industry. The recent war in the Middle East, and the reaction of our allies to the Arab Oil Embargo, has clearly demonstrated that the United States must become more self-sufficient. Project Independence has given recognition to this, but we will not achieve complete self-sufficiency for at least 20 years, and then self-sufficiency will not mean the exclusion of all energy imports.

1. *Review of Recent Events.*—A brief review of recent events would appear to be in order. On February 6, 1974, Mr. Alfred Maskin of the American Maritime Association, testified in strong support of H.R. 8193. His testimony reads, in part, as follows:

> . . . the history of the American effort following October 13 to re-supply Israel in order, in the words of the Secretary of State, to maintain the military balance in the Middle East against the flow of Russian arms to the Arab side.
>
> According to public statements of the Secretaries of State, Treasury and Defense, our re-supply aircraft were refused

both refueling and overflight privileges by all Mediterranean allies of the United States, specifically Spain, France, Italy, Greece and Turkey; they were refused permission to land on, or to be refueled from, air bases constructed by the United States at a cost of many billions. Three of those countries alone, Greece, Turkey and Spain, have received over the years about $7 billion in military aid. While our aircraft were denied overflights by our allies, and were obliged to refuel in the air and on aircraft carriers strung down the Mediterranean, it appears that Turkey permitted Russian overflights to restock their Arab clients.

In the meantime, Germany in effect prohibited use of its ports to transfer arms to Israel, and challenged possible troop movements out of Germany during the special alert of October 24. According to recent press reports, German companies supplied Arab belligerents with electronic equipment said to be based on American military licenses.

Continuing to the present time, virtually all of the 12 to 15 countries that previously had sold fuel to American military units overseas have ceased to do so, expressly to avoid offending Arab oil producers; Japan and the Philippine Islands are reported to have refused to sell oil to our 7th Fleet and Spain to our vital Sixth Fleet in the Mediterranean.

In a month, our World-wide system of bases have become of ambiguous utility, particularly along the north shore of the Mediterranean, designed especially to permit domination of the eastern Mediterranean, and the more important because of the alienation of the countries bordering the southern shore. Relations with our principal allies are, at present, so strained that it is openly speculated in the press here and abroad whether NATO can or ought to survive. . . .

It is clear that the United States must now become more self-sufficient in a number of areas. In few areas are we so dependent upon others than with respect to the oceanborne transportation of petroleum and petroleum products. Foreign-flag vessels carry approximately 95 percent of our water-borne imports. The proposed legislation would ameliorate this national security vulnerability to some degree.

2. *"Effective U.S. controlled"* (*EUSC*) *Fleet.*—The opponents of H.R. 8193 contended that the bill is not required, because in times of national emergency the United States can rely on the so-called EUSC Fleet. These foreign-flag vessels are for the most part owned by the multi-national oil companies. They presently transport about 20 percent of our oil imports, and have reserve capacity alleged to be adequate to meet our national security requirements. It was contended that the EUSC Fleet offers the United States two distinct advantages: (a) cheap foreign-flag transportation costs for importing oil, and (b) ready availability should the occasion arise. With respect to the dual dependency of the United States on foreign oil and foreign transport to import that oil, so the argument goes, there is no reason to be concerned with the latter so long as the United States has access to the EUSC Fleet.

Youor Committee would like to address itself to the assumption that the EUSC Fleet would be readily available to the United States in times of national emergency.

When the doctrine of EUSC was first established over a generation ago, virtually all our petroleum needs were met by domestic production. For our water-borne oil transportation needs, we relied almost exclusively on a fleet of U.S.-flag tankers. Since the vessels were carrying our oil requirements from one United States port to another, they were required by law to be built by Americans, operated by Americans, crewed by American seamen and fly the American flag (46 U.S.C. 883). These vessels were subject to immediate, continuous and unequivocal control by the United States. At that time, the EUSC fleet represented a *surplus* transportation capacity to be called upon—surplus to a U.S.-flag fleet carrying our vital requirements. The law requiring domestic carriage to be on U.S. vessels still exists. Unfortunately, with a change of circumstances, it is no longer by itself adequate to secure our vital energy transportation requirements.

Today, we are faced with a radically different situation. As noted elsewhere in this report, the supply of domestic oil has not kept pace with demand. Imports have increased dramatically. Since U.S. vessels carry only a tiny part of our oil imports, an increasing percentage of our vital petroleum requirements are carried in foreign-flag vessels that are manned by foreign crews. This is not the result of a conscious policy by our government, but of a change in circumstances.

Your Committee has concluded that the EUSC concept, conceived at a time when United States petroleum needs were largely met by domestic supplies, was never intended to and is not sufficient by itself to provide an adequate oil transportation capability to the United States in the event of a national security crisis.

Your Committee's conclusion is based, first, upon an analysis of the role played by the major oil companies and their foreign flag vessels in the world today.

Throughout this report, your Committee has not referred to the major oil companies, such as Exxon, Texaco, Standard Oil of California, Gulf Oil and Mobil Oil as American oil companies. This is in no way meant to cast any doubt as to the integrity and strong allegiance to the United States held by the American citizens who manage the world-wide affairs of these giant enterprises from home offices located in this country. Rather, it is the belated recognition that if they are to compete in the international market, then they must operate as multi-national companies and not as American companies. Your Committee heard testimony to the effect that Mr. William Tavoulareas, President of the Mobil Oil Corporation, expressed the view on nationwide N.B.C. television to the effect that "I've never been faced with the situation where I'd say to myself, 'I'm only going to be a good citizen of one country because if I do that I am no longer being a multinational oil company'." This would appear to be a very businesslike approach to operating a multi-national company. Your Committee recognizes that these major oil companies have a duty to their stockholders. The duty of your Committee is not so limited, for we have been elected to represent the people of the United States. Therefore, the question arises whether the best interests of the multi-national oil companies are always in the best interests of the United States.

For the most part, it is these multi-national oil companies who own and operate through foreign-based subsidiaries the foreign-flag vessels in the EUSC Fleet. For over two years, your Committee has attempted

to get hard facts from the organization that represents the EUSC Fleet, now known as the Confederation of American Controlled Shipping. It would appear that the shroud of secrecy surrounding oil industry operations includes their operation of foreign-flag vessels in the EUSC Fleet.

Nevertheless, your Committee made careful inquiry into the status of the EUSC Fleet. The "doctrine of effective control" is based upon contracts and agreements between the United States Government and the owners of vessels flying certain "flags of convenience"; namely, Liberia, Panama, and Honduras. These contracts or agreements are the legal basis for effective U.S. control. They have been derived solely from the domestic law of the United States, namely, section 902 of the Merchant Marine Act of 1936. This section provides the authority to requisition or purchase any vessel for government service owned by citizens of the United States. Requisitioning can only be used to obtain ships in the event of a national emergency proclaimed by the President.

The Maritime Administration of the Department of Commerce testified in opposition to H.R. 8193. However, with respect to the EUSC Fleet, the Assistant Secretary of Commerce for Maritime Affairs gave a clear warning that the United States should not place complete reliance on these vessels when he testified:

> . . . First, most of this fleet is not employed in the U.S. foreign trade. In fact, the share of total U.S. waterborne petroleum imports carried by EUSC vessels has steadily dropped from 32.2 percent in 1963 to 20.2 percent in 1971. Almost all of the remaining EUSC tanker capacity is employed in shipping vitally needed petroleum to Western Euope and Japan. Thus, it appears unlikely that in an emergency the U.S. could exercise its option to withdraw very many of these tankers from this service without creating serious economic and political consequences. Further, any withdrawal of tankers from Europe could have an adverse impact on the petroleum supplies which would support military and civilian needs of the European countries of the NATO Alliance.
>
> A second factor suggesting caution in relying on EUSC vessels to carry U.S. imports is the physical size of many of these ships. Many of the newer EUSC tankers have drafts in excess of the channel depths of all existing U.S. Atlantic and Gulf Coast ports. This incompatibility between tanker draft and channel depth will remain a limiting factor until adequate deepwater facilities are provided.
>
> A final consideration in determining the likely reliability of the EUSC Fleet is the concept of "effective control" itself. Although owners of EUSC vessels have pledged that in an emergency their vessels will revert to the U.S. flag, this concept has never been tested. Whether these ships are "effectively U.S. controlled" is a function of where they are registered, the nationality of the crew, the nature and type of emergency, and their location at the time of the emergency. The "doctrine of effective control" is based upon contracts and agreements between the U.S. Government and the owners of vessels flying certain "flags of convenience". These contracts or agreements are the so-called "legal" basis for effective U.S. control and have been derived solely from the *domestic law* of the United States, namely Section 902 of the Merchant Marine Act, 1936. This section provides the authority to requisition or purchase any vessel for government service owned by citizens of the United States. Requisitioning can only be used to obtain ships in the event of a national emergency proclaimed by the President.
>
> Generally recognized principles of international law dictate, however, that only the state of registry has the right to requisition and control vessels flying its own flag, unless the vessel is lying idle within the territorial waters of another requisitioning state. There is, therefore, an apparent conflict between U.S. domestic law and international practice concerning the "doctrine of effective control."
>
> Because the Effective U.S. Controlled tanker fleet is a large and important part of the world tanker fleet and is wholly U.S.-owned, it cannot be disregarded as a transportation asset. However, since the EUSC Fleet is largely committed to other trades, consists substantially of vessels too large for most existing American ports, is predicated upon domestic rather than international law, and has never been tested, the certainty of its availability and control in an emergency is less than complete.

In short, the Assistant Secretary of Commerce for Maritime Affairs questioned the availability and control of the EUSC Fleet in an emergency for the following reasons:

(*a*) Only about 20 percent of this foreign-flag Fleet is engaged in transporting our oil imports, and the remainder is largely committed to shipping vitally needed petroleum to Western Europe and Japan. Any attempt by the United States to requisition these foreign-flag vessels could cause serious economic and political consequences, including the needs of our NATO allies.

(*b*) The EUSC Fleet consists substantially of foreign-flag vessels too large for most existing American ports.

(*c*) The doctrine of "effective U.S. control" is based upon domestic law, so that there is a serious question whether the doctrine could be upheld under International Law.

(*d*) The doctrine of "effective U.S. control" has never been tested. Whether these foreign-flag ships are "effectively U.S. controlled" is a function of where they are registered, the nationality of the crew, the nature and type of emergency, and their location at the time of the emergency.

The warning by the Assistant Secretary of Commerce for Maritime Affairs that the vast preponderence of the EUSC Fleet is not only committed to other trades, but consists of vessels too large for most existing American ports, requires little further comment on the part of your Committee. If we assume that such vessels can be directed to serve the best interests of the United States, as a practical matter, the United States would not derive any significant benefit from them.

The question under International Law, as to whether the United States has the authority under section 902 of the Merchant Marine Act

of 1936, domestic law, to requisition foreign-flag vessels of the EUSC Fleet, requires further comment.

The witnesses from the American Petroleum Institute and the Federation of American Controlled Shipping were of the strong opinion that the United States had such authority. They cited as authority for their position the twelve year old legal treatise by Boleslaw Boczek, "*Flags of Convenience—An International Legal Study*" (Harvard University Press—1962), where he considered various principles of international law in terms of the right to control the movements and requisition of Liberian, Panamanian and Honduran vessels in time of war. These witnesses stressed that Mr. Boczek had concluded that the United States, the state of ultimate ownership, could exercise its rights upon agreement or acquiescense of the flag state. Your Committee was informed that informal understandings with respect to the U.S. effective control do exist between the United States and Liberia and also with Panama, and that there are appropriate Liberian Maritime Regulations in this regard. These opponents to H.R. 8193 laid great stress on the following exerpt from Mr. Boczek's work:

> In conclusion, the following general propositions are submitted on the right to control the movement of the flag-of-convenience ships and to requisition them in case of war:
>
> Under the general principles of international law, the right to control and requisition the flag-of-convenience ships rests with their countries of registry. With their consent or acquiescence, the country of ultimate ownership is fully entitled to control and requisition the vessels in question in time of emergency. Without the consent of the state of registry, the state of ultimate ownership may requisition citizen-owned vessels finding themselves within its territorial domain. The requisition of the vessels on the high seas and in ports of third states could be justified by the motive of providing the ships with necessary protection, which the flags of convenience are unable to afford.
>
> Of decisive practical importance in the whole issue is the fact that the flag-of-convenience vessels in their bulk never put in at the ports of registry, and that the flag-of-convenience countries would be unable in case of emergency to enforce their control over the ships flying their flags on the high seas.

Your Committee has carefully studied the work of Mr. Boczek. It would appear that it is directed more to theoretical considerations of International Law, rather than the actuality of providing for the national security of the United States. Your Committee also notes that the opponents of H.R. 8193 failed to point out the following passage from Boczek (page 203):

> If a vessel is on the high seas, it may in principle be seized only by the Navy of its registry. In practice, the success of the control would depend to a high degree on the behavior of the master, the crew and the actual owners of the ship, who would probably give an order to set course for the country of actual control of the vessel. That is why the crews of the flag-of-convenience ships are considered by the defense agencies of the United States an important element in the implementation of the effective control . . . .

Your Committee was of the view that a matter of this importance required further consideration. Therefore, after the witnesses for the American Petroleum Institute had testified, and prior to the appearance of the witness for the Federation of American Controlled Shipping, the Honorable Bob Eckhardt requested Charles L. Black, Jr. Luce Professor of Jurisprudence at Yale Law School, and an acknowledged authority of Admiralty and International Law, for his views on the subject. As Professor Black's letter is relatively brief, it follows in its entirety:

YALE LAW SCHOOL,
New Haven, Conn., February 25, 1974.

Hon. BOB ECKHARDT,
U.S. House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN ECKHARDT: You have asked me for my opinion concerning the question whether the difference between American and foreign-flag registration could make a difference in the amenability of vessels to sailing orders emanating either from their American owners or from some public authority of the United States.

I understand that, in testimony before a Committee of Congress, certain representatives of American oil companies have asserted that the masters of foreign flag vessels, owned by American oil companies, would in fact obey the orders of the American owners, and that there is therefore no advantage in American registration. I have no way of knowing whether this would be true as a matter of fact; as a matter of law, the question of bare legal duty seems to me a doubtful one. I have had no opportunity as yet to research it. I do think that it is necessary to point out at once that a serious conflict-of-laws situation might arise. If a Liberian flag vessel of American ownership were, for example, in a Venezuelan port, the question whether that vessel would be cleared at that port for a voyage to the United States, against objection by the flag government, would depend in the first instance not on our law, but on the law of Venezuela—and so on through the countries of the world. Diplomatic reclamation, even if available, would usually be too late for taking care of the kind of emergency which would lead to an order that the master of a Liberian-flag tanker proceed at once to an American port. Even on the high seas, the master of such a vessel might be in a very serious position if, in the doubtful state of the law, he received conflicting orders from his American owners and from the government or courts of the flag country. It seems to me preposterous to put reliance for the taking care of emergencies on such debatable and conflicting norms as might emerge from a full analysis of this cluster of questions.

I desire, however, to turn the coin around and to look at the other side, because it seems to me that the positive advantages of American flag registry are very great, when one considers the present and probably continuing oil crisis. It seems to me plain that American nationality would constitute an entirely sufficient affirmative jurisdiction ground for the ordering of a vessel to repair to a named American port, for the purpose of the institution there of condemnation proceedings against her cargo, on behalf of the United States, in case of public need. I would refer here to the large and variegated group of authorities in which nationality has been held a sufficient

basis for many sorts of jurisdiction. See *Blackmer* v. *U.S.*, 284 U.S. 421 (1932) (Foreign-resident American citizens may be compelled to return home to testify); *U.S.* v. *Flores*, 289 U.S. 137 (1933) (Criminal jurisdiction based on nationality of vessel); *Steele* v. *Bulova Watch Co.*, 344 U.S. 280 (1952), and Areeda, Antitrust Analysis pp. 63, 68–9 (1967). (Extensive liability under the antitrust laws for conduct taking place outside the United States, but affecting American commerce.) On the special subjection of vessels to this theory, see *Skiriotes* v. *Florida*, 313 U.S. 69, at 77 (1940). After World War II, special proceedings were held in Germany to condemn vessels as prize under the authority of the United States District Court for the Southern District of New York. On the whole, it seems out of doubt that American flag registration would furnish ample grounds for an order directing the bringing of a vessel to a port in this country, where its cargo might be taken, with "just compensation", for the public need. I do not think the master of an American-flag vessel would have any colorable grounds for hesitation if this situation arose.

I do not know that legislative or other authority for such orders *now* exists, though I am not at all sure it does not, but the important thing is that American registry would furnish a *basis* for such action whenever Congress deemed it wise. I know also that, at this time, it is not practicable to bring a large proportion of tankers under American registry, but even a small number might make a great difference in an emergency.

It ought also to be mentioned that it is an advantage that this power would exist as a consequence of American registration quite aside from any policy followed by, or any subjection to *in personam* legal process of, the American (or, for that matter, foreign) corporate owner. If anyone doubts that this is an advantage, then he ought to look at column one, page one of the New York Times for February 22, 1974, where it is reported that the oil companies are cutting down importation of oil because they do not exactly like the policy of the Government of the United States. The United States has got to be in a position to go clear over the heads of such people, and to issue orders to the masters of vessels, without the possibility of that footdragging which obviously might occur if one had to deal with corporate owners.

I hope that the above will be helpful.

Sincerely,

CHARLES L. BLACK, JR.,
Luce Professor of Jurisprudence.

Professor Black's letter of February 25, 1974, was of particular interest to your Committee's consideration of the EUSC Fleet for it contained three basic points:

(*a*) Under the doctrine of "effective U.S. control," a serious conflict-of-laws situation might arise.

(*b*) One of the positive advantages of United States-flag registry would be that it would constitute an entirely sufficient affirmative jurisdiction ground for the ordering of a vessel to repair to a named American port for the purpose of the institution there of condemnation proceedings against her cargo, on behalf of the United States in the case of public need.

(*c*) In those instances where the interests of the multi-national oil companies do not coincide with the interests of the United States, it would permit the United States to issue orders to the masters of vessels without the possibility of that footdragging which obviously might occur if one had to deal with corporate owners.

With respect to the question of International Law, the Honorable Bob Eckhardt resumed this line of questioning with the witness from the Federation of American Controlled Shipping:

> Mr. ECKHARDT. Now, you point out in your supplementary statement that questions involving international law do not create real dangers because . . . that first the vessels we are talking about are U.S.-owned and chartered and in an emergency they are subject to requisition under U.S. law because of their ownership and not with respect to their flag; that the crews are essentially loyal to the owners because this is where they make their living and that they are therefore responsive to the orders of the United States Government in case of an emergency.
>
> Mr. LOREE. That is a fair statement.

* * * * * * *

After a discussion with respect to the qualifications and positions of Mr. Boczek and Professor Black, the witness for the Federation of American Controlled Shipping requested that the discussion be centered on what he termed the "real world". Mr. Eckhardt obliged.

* * * * * * *

> Mr. ECKHARDT. I understand that primarily you are saying here that irrespective of what this theoretical situation would be, that these countries are friendly countries to the United States and, of course, they are largely dependent with respect to their maritime operations, not in the United States, but on United States nationals.
>
> Mr. LOREE. And other foreign nationals who would be as equally careful as U.S. nationals would be if they had reason to believe that the Government was going to do something irresponsible . . .

* * * * * * *

> Mr. ECKHARDT. So what you are really saying is that there are a cluster of large oil companies . . .
>
> Mr. LOREE. And large independent shipping companies.
>
> Mr. ECKHARDT. Yes. With ships owned by United States interests flying friendly nation flags, manned by crews loyal to those companies so that this group of companies actually operates in effective control of these ships almost like a sovereignty.
>
> Mr. LOREE. This country.
>
> Mr. ECKHARDT. No, these companies.
>
> Mr. LOREE. Act like a sovereignty?
>
> Mr. ECKHARDT. Well, it has Spanish and Italian masters on the ships, crews that include all nationalities from all over the globe . . .
>
> The flag is of that of a country that is more or less dependent on their contacts with that country with respect to all their maritime operations, so this cluster of companies that owns the ships is pretty free in directing these ships.

Mr. LOREE. No, I would not go that far.

Mr. ECKHARDT. Perhaps you would not. I think I would . . .

Based on available information, your Committee generally concurs with Mr. Eckhardt's position.

As the American Petroleum Institute testified that their members control most of the tanker tonnage in the EUSC Fleet, it would appear that the multi-national oil companies have been exercising some sort of quasi-sovereign role with respect to these vessels. In addition to the dangers pointed out by the Assistant Secretary of Commerce for Maritime Affairs, and as pointed out by Professor Black in his letter, the interests of these multi-national oil companies may not always coincide with the best interests of the United States.

The Assistant Secretary of Commerce for Maritime Affairs further cautioned your Committee that whether these foreign-flag ships are "effectively U.S. controlled" is a function of where they are registered, the nationality of the crew, the nature and type of emergency and their location at the time of the emergency.

Additionally, the proposed legislation would obviate problems such as when the President of Liberia issued Executive Order No. IV, on November 2, 1973. That Order prohibited any vessel flying the Liberian flag, regardless of the nationality of the vessel's owner, from carrying "any cargo of arms, armaments or implements of war to countries in the Middle East involved in the conflict," so long as a state of war existed in that region. President Tolbert did exactly what the United States has done in the past. He put certain Mideast countries on a blacklist with respect to vessels flying his nation's flag. He, as did the United States, took an action that is perfectly legal under International Law. One hundred and eighty of the 250 tankers in the EUSC Fleet are under the Liberian flag. If the United States should have required EUSC Fleet vessels to assist in any one of these blacklisted Middle East countries, your Committee questions whether the multi-national oil companies could, as a matter of law, have provided the required oceanborne transportation. Assuming the multi-national oil companies somehow had the legal right to provide such transportation, your Committee questions whether they would have provided it, or would instead have yielded, as Aramco did, to the wishes of the government of Saudi Arabia and withheld oil from American military forces in Europe. If we assume that the multi-national oil companies had the legal right and did not yield to the wishes of Liberia, or of Saudi Arabia, then there would remain the very serious questions whether those foreign-flag vessels could be spared from other essential trades and whether vessels of a suitable size would respond to the orders of the multi-national oil companies and enter a war zone.

3. *Summary and Conclusion as to the Issues of National Security.*—Your Committee concludes that although there may have been good reason for the doctrine of "effective U.S. control" a generation ago, it is a concept that has limited utility today. It was developed at a time when U.S. vessels carried U.S. oil requirements because these moved in domestic trade, and was intended to provide a capacity surplus to vital U.S. requirements; but circumstances have changed. Complete U.S. reliance on EUSC today presents a clear and present danger to the national security of the United States. As noted above, the interests of the multi-national oil companies which control the EUSC Fleet are not always in accord with the best interests of the United States. Additionally, the doctrine of "effective U.S. control" has never been tested, and has already created serious questions of International Law as to the requisitioning authority of the United States.

Your Committee concludes that the EUSC Fleet cannot, and should not, be relied on by the United States for emergency oceanborne transportation requirements of petroleum and petroleum products.

Even conceding a degree of reliability with respect to the EUSC fleet notwithstanding the weight of the evidence presented during our hearings, your Committee would still question the wisdom of relying solely on foreign flag vessels to fulfill all of our energy transportation needs. Even after enactment of H.R. 8193, the United States would still be forced to rely heavily on foreign tanker tonnage. The bill initially requires that only 20 percent, not all, of our oil imports be carried on U.S. vessels.

The percentage requirements are minimal, but they would provide a degree of energy transportation security to our nation in times of crisis. We believe those who oppose the establishment of these minimal percentage requirements must be prepared to prove beyond a shadow of a doubt that the EUSC vessels will be available when needed to meet our emergency needs. Your Committee is convinced that such a case cannot be made. For this reason as much as any other, we have concluded that enactment of H.R. 8193 is necessary to remove at least some of our eggs from the foreign-flag basket.

Consumer Benefits

Your Committee has concluded that enactment of H.R. 8193 would result in direct and tangible benefits to the American consumer. A great deal of testimony and data was received by your Committee on this subject, much of it contradictory. Opponents of the bill, primarily the multi-national oil companies, estimated that enactment of legislation could result in consumer price increases as high as one cent per gallon on oil imports. As is discussed in detail hereafter, an analysis of the assumptions and figures on which their estimate was predicated, reveals it to be highly speculative and unpersuasive.

Other testimony and data presented to the Committee indicated that a *savings* to the consumer of at least one cent per gallon could result from enactment of the legislation. This would result from elimination of certain abuses in the pricing of transportation that appear now to be occurring. In addition, this testimony quantified the benefits to the consumer-taxpayer that would result from the increased ability of the United States Government to tax oil company shipping profits and the increases in domestic employment that would result from the bill.

1. *Oil industry claims concerning the cost of importing oil on United States-flag vessels.*—Your Committee is well aware that constructing tankers in this country and operating them with American crews under the United States-flag is more expensive than comparable foreign-built, foreign-flag vessels. However, as tank vessels get larger, their productivity increases and the operating cost difference between comparable American and foreign-flag vessels decreases appreciably. To date, however, American-flag tankers are still somewhat more ex-

pensive to operate so that in the normal course of events their transportation costs will be higher than comparable foreign-flag vessels.

In this regard, a number of witnesses testified with respect to the cost impact on the American consumer that would result from the proposed legislation.

The highest cost estimate was made by the representatives of the American Petroleum Institute, which testified on behalf of the oil industry. They testified that the estimated total cumulative cost of the bill between now and 1985 would be about $22 billion. The American Petroleum Institute went on to inform your Committee that if this $22 billion is spread over all tankerborne imports, then it would represent a cost increase of 45c a barrel, or about 1c a gallon that would be passed on to the American consumer. The basis for this estimate was their "Analysis of Proposed Cargo Preference Legislation". Your Committee made careful inquiry into this "Analysis". Without commenting on some of the assumptions used by the American Petroleum Institute in their calculations, such as vessel trades, the annual capital recovery factor and other technical elements that could significantly affect the result, your Committee notes that more than two-thirds of this estimated cost increase would appear to result from three "market oriented factors". The first is the so-called "U.S. Market Premium Cost" that would result from premium rates that would be charged by United States-flag operators, because the bill would give them a protected market. The second is the so-called "Foreign Imitation Cost" that would result from other countries, including the oil exporting nations, imposing similar flag restrictions in retaliation to H.R. 8193. This, so the argument goes, would have the effect of increasing transportation rates to above normal levels for the foreign-flag component of United States oil imports. Third, and finally, is the so-called "Vessel Inflexibility Cost".

The rationale for this cost is that as flag restrictions by both importing and exporting nations proliferate and vessels become fixed and limited to certain trade routes, supply systems would become inflexible, thereby creating transportation inefficiencies that would raise costs. Your Committee is forced to conclude that these three so-called "market oriented factors" are highly speculative. As they make up more than two-thirds of the one cent a gallon increased transportation costs, the American Petroleum Institute estimates will result from the bill and therefore be passed on to the American consumer, your Committee concludes that this figure is less than firm.

2. *A Broader Analysis—Cost vs. Price to the American Consumer.*—A broader analysis was submitted by Mr. Stanley H. Ruttenberg, former Assistant Secretary of Labor and now head of his own consulting firm in Washington, D.C. Mr. Ruttenberg testified that enactment of H.R. 8193 should result in decreased costs for the American consumer. Giving recognition to the fact that United States-flag vessels cost more than foreign-flag vessels to construct and operate, Mr. Ruttenberg pointed out that this differential in *cost* cannot be directly related to the differential cost to the consumer since the cost to the consumer is dependent upon the differential *pricing* of shipping in United States versus foreign-flag vessels. It was his view that cost can be calculated relatively easily, but to predict the price of shipping one must be able to understand and predict the pricing policies

of the international oil companies who own or control about one-half of the World's tanker tonnage. In short, the transportation price of imported oil is whatever price the oil companies decide to use as a bookkeeping entry for the shipping services they have provided themselves through their foreign subsidiaries.

Mr. Ruttenberg calculated that the *price* the American consumer would pay for the transportation of imported oil, as opposed to the *cost* of shipping that oil, would be decreased about one cent a gallon by the enactment of H.R. 8193. This saving would result from the correction of what he considered long-standing abuses perpetrated on the American consumer by the international oil companies because they import oil almost exclusively in foreign-flag vessels:

a. *Transfer Pricing of Shipping.*—As discussed below, the United States tax law has provided an incentive for the major oil companies to transfer as much profits as possible to the companies' foreign shipping subsidiaries. This can be accomplished by the companies charging themselves as high a price as possible for the shipment of oil. This would create a larger profit in shipping where there are tax advantages and a smaller profit in other operations that are subject to U.S. taxes, such as refining and marketing.

The price the oil companies charge themselves for oil is not known, as most of their operations are shrouded in secrecy. However, Mr. Ruttenberg presented three cases to demonstrate how they could inflate the price of transporting imported oil on foreign flag tankers. The most conservative case assumed that the oil companies price all their shipping at the AFRA rate, which is a monthly index averaging all freight rates paid in a given month; weighting voyage, short term and long term charters. Mr. Ruttenberg believes that this index is used by the oil companies for pricing purposes during the following month. This would appear to be borne out by the hearing record on H.R. 8193:

> Mr. SHAROOD . . . I wonder if you could explain to us how Gulf Oil Company prices its own tanker services within the company. . .
>
> Mr. BLACKLEDGE . . . Our normal practice is to use the rates published by a London Broker's Panel.
>
> These rates are considered to be official in many areas of the World, and we use those rates for our intercompany movements.
>
> Mr. SHAROOD . . . Then you are saying, in effect, that there is no fundamental difference between the cost of delivering oil to a U.S. subsidiary of Gulf on a Gulf tanker, whether it is registered in Liberia or England, versus moving it on a ship that you might have under long term charter perhaps, an independent tanker.
>
> Mr. BLACKLEDGE. That would be correct. These rates are published monthly in London, and are used very widely throughout the marine industry.
>
> We are not the only company that uses it.
>
> * * * * * * *
>
> Mr. CLARK. Mr. Blackledge, of the Gulf Oil Company, informed us that his company uses a rate published by a

London Broker's Panel to calculate the cost of their inter-company movements. Mr. Blackledge informed us that these rates are published monthly and are used widely throughout the marine industry. Is this the AFRA rate you referred to?

Mr. RUTTENBERG. Yes, it is.

Using the AFRA rate, Mr. Ruttenberg demonstrated how the oil companies could be inflating the price of foreign-flag tanker transportation in order to repatriate income from foreign subsidiaries. Since AFRA is an index or average of all freight rates paid, it will invariably tend to understate or overstate any particular company's shipping cost. If a company uses many more short term or voyage charters than the average, AFRA would understate that company's price. On the other hand, if a company has a very large proportion of owned ships and long term charters, AFRA would seriously overstate that company's price. As the major oil companies own, or control on long term charter of up to 20 years, enough tonnage to cover about 85 percent of their shipping needs, using AFRA, they seriously overprice their shipping cost. Mr. Ruttenberg estimated this to be over 52 cents a barrel. If oil is carried in United States-flag tankers pursuant to H.R. 8193, the United States Government will have some control over the foreign-flag transportation prices charged by the oil companies.

b. *Taxation.*—The second way the consumer saves on every barrel of oil imported on a United States-flag ship is through the Government's ability to tax shipping profits which are not repatriated tax free. Mr. Ruttenberg estimated this tax benefit to be somewhere between 6 and 29 cents a barrel.

Since 1950, the United States oil companies have been able to call most of their payments to the oil producing nations an income tax rather than a royalty. These payments are credited, dollar for dollar, against United States tax liability as a foreign tax credit and all the oil companies have much more tax credit than they can possibly apply to earnings from just crude oil production. This tax credit can be applid as a dollar for dollar offst to taxes which would be owed on repatriated income from foreign subsidiaries; to shelter the profits made by the foreign subsidiaries of the United States oil companies on the shipment of oil in foreign flag vessels.

The operation of United States-flag vessels, as provided by the bill, would result in the payment of United States taxes now avoided by the multinational oil companies through the use of foreign-flag tankers. In this regard, your Committee was informed by the Treasury Department:

> We do not presently have detailed data concerning the amount of United States taxes paid by United States owners of foreign-flag tankers on the income from the operation of these tankers. This is because in most cases these foreign-flag vessels are owned by foreign corporations which are controlled by U.S. persons. As foreign corporations, they are not United States taxpayers and ordinarily do not file United States income tax returns or pay any U.S. tax.

The Treasury Department informed your Committee that it could not calculate the tax benefits that would result from H.R. 8193. However, they estimated that the amount of tax loss resulting from all U.S.-

owned foreign shipping affiliates at about "$150 million in 1973, all under so-called flags of convenience".

c. *Domestic Employment.*—The third way the consumer saves on every barrel of oil imported on a United States-flag ship is through the provision of jobs for U.S. citizens. Mr. Ruttenberg estimates the benefits from increased domestic employment at about 10 cents a barrel.

Using methods adopted by the President's Commission on American Shipbuilding, Mr. Ruttenberg estimated each new tanker built in United States shipyards would produce 246 new jobs in shipbuilding, ship repair and support industries, in addition to 55 new jobs for seamen for each year the vessel was in operation. Thus, each U.S.-flag ship, built in U.S. yards and operated with U.S. crews, provides about 300 new jobs per year. Applying these figures to Department of Commerce estimates as to the number of ships necessary for carriage of 30 per cent of our oil imports, Mr. Ruttenberg concluded that, if enacted, H.R. 8193 will provide 10,500 jobs per year by 1975, 22,500 jobs per year by 1980, and 30,900 jobs per year by 1985.

To value the worth of each of these new jobs to the American consumer, Mr. Ruttenberg referred to figures that were used in support of the Comprehensive Employment and Training Act of 1973. That Act provides funding for the provision of public service employment. Each public service employment job has been deemed "worth" $7,500 to the American consumer-taxpayer. Valuing each of the 10,500 jobs provided in 1975 by H.R. 8193 as a public service employment job, the total worth to the consumer would be $79 million per year. Dividing this figure by 30 per cent of projected oil imports for 1975, Mr. Ruttenberg concluded that the benefit to the consumer from employment of U.S. citizens would be 10 cents for each barrel of oil carried on U.S. flag ships pursuant to the requirements of H.R. 8193.

Your Committee feels Mr. Ruttenberg's estimates of the savings from domestic employment have a great deal of validity. But whether or not his precise figures are accepted, it is clear that the bill would result in substantial employment opportunities aboard United States-flag vessels and in American shipyards, and in supporting industries for both. It is also clear to your Committee that the skilled Americans who would fill these jobs would represent a national asset in times of peace as well as in an emergency.

In conclusion, it was Mr. Ruttenberg's position that if we assume a 32 cents a barrel increased cost resulting from the use of a United States-flag tanker over a foreign-flag tanker, when one considers the elimination of Transfer Pricing and the benefits of United States taxes and employment, the consumer will have a net benefit of from 36 to 59 cents a barrel, or about one cent a gallon. On the basis of eliminating transfer pricing alone, the net benefit to the American consumer would be about 20 cents a barrel, or about one-half cent a gallon.

3. *MARAD Estimate.*—Your Committee received a number of additional estimates on the increased ocean transportation costs that would necessarily result from the use of United States-flag vessels, as required by H.R. 8193. All these estimates fell within the increased cost of about one cent a gallon, estimated by the American Petroleum Institute, and the saving to the American consumer of about 1 cent a gallon

estimated by Mr. Ruttenberg. As a number of these estimates were based on information furnished by the Maritime Administration of the Department of Commerce at different times, your Committee requested update cost estimates from that Agency. Based on the assumptions listed in the footnote [1], the Maritime Administration estimated that the average increased cost resulting from the use of United States-flag vessels for 20 percent of our oil imports in the year 1974 would be 0.35 cents per gallon; and, if this amount is averaged over all our imports for that year, the cost would be 0.07 cents per gallon.

Comparable figures for 25 percent United States-flag carriage in 1975 would be 0.4 cents per gallon and 0.1 cents per gallon respectively. For 30 percent in 1980 the cost would be 0.6 cents per gallon and 0.18 cents per gallon; and for 30 percent United States-flag carriage in 1985 the cost would be 0.84 cents per gallon and 0.25 cents per gallon.

The Maritime Administration estimated that the impact these costs would have on our total gasoline consumption (the price increase that could show up at the pump) as follows: 1974, 0.02 cents per gallon; 1975, 0.04 cents per gallon; 1980, 0.08 cents per gallon; and 1985, 0.13 cents per gallon. This is the best estimate of the Maritime Administration of the price increase that could show up at the pump for the American motorist from the use of United States-flag vessels as required by H.R. 8193.

4. *Conclusion as to Consumer Benefits.*—Your Committee concluded that the use of United States-flag tankers, as required by H.R. 8193, could well result in decreased costs for the American Consumer. In the event there was a cost increase, even the highest estimates of the opponents of the legislation indicate that increase will not exceed one cent a gallon on imported oil, When such an increase is distributed over the full range of liquid petroleum products, it is equivalent currently to about 0.2 cents per gallon.

Your Committee concluded, therefore, that if any cost increase should, in fact, result from the use of United States-flag tankers over foreign-flag tankers, it would be de minimis. When compared to the skyrocketing prices that have already occurred without use of United States-flag vessels, any increase would be negligible.

Cost Monitoring System for Ocean Transportation Costs

As has been mentioned above, a serious question has been raised with respect to the ocean transportation pricing policies of the multi-national oil companies.

[1] Assumptions Utilized in Calculations of Shipment Cost of Crude Oil:

(1) No port constraints.

(2) 90,000 DWT tankers used for Venezuela runs to U.S. East Coast; 265,000 DWT tankers used for all other runs.

(3) 5.5 percent return on capital for U.S. flag ships; 8.3 for foreign flag ships. The lower U.S. rate of return is a representative lease rate and reflects all tax advantages.

(4) 16 year capital write-off for foreign ships; 20 years for U.S.

(5) 345 operating days per year for all ships.

(6) Yearly cost escalation for operations equals 7.5 percent for U.S. flag ships, 8.0 percent for foreign-flag ships.

(7) Yearly cost escalation for voyage expenses equals 13.0 percent for all ships.

(8) Cargo stowage factor equals 42.

(9) 1974 price of Bunker C equals 72.90/Ton or $11/BBL (Cost figures presented to the Committee in both the testimony of October 9, 1973. and in answer to question 34 submitted to you recently. assumed $22/Ton or $3.32/BBL.).

(10) Vessel speeds (in Knots/Hr.): 90,000 DWT, Loaded, 16.50; Ballast, 17.50. 265,000 DWT, Loaded, 14.20; Ballast, 15.60.

One of the principal collateral benefits of H.R. 8193 is that it will provide for the first time a cost monitoring system. Because the multi-national oil companies operate in almost complet secrecy, no one but these giant companies know for sure whether there is any relation between the ocean transportation price charged the American consumer, and the foreign-flag ocean transportation cost incurred by these same companies. As is explained elsewhere in this Report, testimony received at the Committee's hearings indicated that the multi-national oil companies price their transportation in a manner unrelated to actual cost which results in a windfall payment from the American consumer. This hypothesis received inadvertent support from the responses of the oil companies themselves.

H.R. 8193 requires that certain percentages of our oil imports be carried in United States-flag tankers at "fair and reasonable rates". In these circumstances, we will know the ocean transportation cost of these American vessels. It is quite possible that these United States-flag costs will demonstrate that the foreign-flag ocean transportation costs now charged the American energy consumer to be highly inflated.

Balance of Payments

In the course of the hearings, your Committee received detailed and carefully prepared balance of payments estimates covering the long-term impact of H.R. 8193. These estimates revealed that there is no question that enactment of H.R. 8193 would have a favorable impact on the balance of payments position of the United States.

Generally, the substitution of an American-flag tanker for a foreign-flag ship in the United States Oil trade would contribute to this country's balance of payments, on an operational level, in an amount equal to the revenue previously generated by the foreign ship minus both the additional expenses incurred abroad by the United States ship and expenses formerly incurred here by the foreign tanker. Moreover, additional large payments advantages would arise from the displacement of tanker construction from foreign to domestic yards.

The cumulative effect of these factors is reflected in future payments predictions offered for your Committee's consideration by Administration witnesses, testifying against the bill. For example, Assistant Secretary of Commerce Blackwell provided the following significant data. He noted first that for every 90,000 dwt tanker the United States builds in foreign trade that replaces a foreign flag ship, a $41 million balance of payments advantage will be realized over the life of the ship. For 265,000 dwt tankers, this benefit would rise to $114 million, again over the life of the ship. Assuming successful 30% United States-flag penetration into the domestic oil shipping market the contribution to our balance of payments, over the lives of the ships built to meet this goal, would be $11 billion. On the other side of the coin, if foreign flag ships are used exclusively for carriage of our oil, the balance of payments deficit from use of these ships alone would reach $856 million in 1975, $1,585,000,000 in 1980, and $2,216,000,000 in 1985.

A Treasury Department official also testified to the improvement in our payments situation H.R. 8193 would achieve. He informed us that it could result in an annual savings of about $315 million, between

1976 and 1980; about 3.4 per cent of the 1972 balance of payments deficit.

The predictions vary, but this is understandable. More important than the variations, we believe, is the overall consensus that the legislation carries with it guaranteed balance of payments contributions. Furthermore, we take note that the Administration figures are scaled down due to an assumption that H.R. 8193 will trigger adverse trade reaction and retalation by other countries. This assumption is rebutted successfully, we think, in other portions of this discussion.

It is generally clear that the trend for the future is an accelerating balance-of-payments deficit in the energy field for non-producing energy consumer nations. This is a product, in part, of the reality that the volume and cost of tanker transportation required in the coming years will be a function of (1) the quantity of water-borne imports, (2) the sources of the oil and the distance from the source to our markets, and (3) the cost of constructing, financing and operating new tanker tonnage. Each of these is, and will continue to be, on the rise in the coming years. Probably little can be done to stem the outflow with respect to payments for the petroleum itself. The same is not true, however, with respect to dollar outflows for tanker transportation. Granted that energy products will cost more and be imported from more distant sources, we can at least guarantee that the rising revenues issuing out of this commerce will go to American business, American labor and American tax coffers. This is one of the primary goals of H.R. 8193.

We have reached the stage where all national policies and actions must be carefully scrutinized for their balance of payments implications. Viewed in this light, balance of payments considerations are another important reason for enactment of H.R. 8193.

Environmental protection

An important benefit resulting from enactment of H.R. 8193 would be the increased protection afforded our waters and beaches and the resources they contain such as fish, shell fish and wildlife. As oil imports increase over the next decade an increase in tankers plying our waters will necessarily result. Potential harm to our marine environment will be greater if most of these vessels are of foreign registry since U.S.-flag vessels are generally subject to more stringent vessel and manning standards than are foreign flag vessels. Moreover, our ability to specify and enforce anti-pollution standards on foreign-flag vessels is extremely limited.

Marine pollution from oil tankers is caused not only by accidents but also by normal tanker operations such as bilge pumping and tank cleaning. Thus, strict standards for ship maintenance and operation and comprehensive training and skills for crews are crucial for clean and safe tankers. Foreign tankers, including vessels owned by subsidiaries of multi-national companies flying flags of convenience, maintain ship construction, maintenance and inspection standards well below the requirements applied to U.S.-flag vessels. Even when stricter standards have been adopted they are enforced by nations which have considerably less concern about the marine environment than our own Nation. Countries offering "flags of convenience" to ship operators

generally have maximum tax advantage and minimum standards and controls.

In contrast, U.S.-flag vessels are totally subject to U.S. control. Strict, effective enforcement is maintained by the Coast Guard. American crews are better trained and screened than their foreign counterparts.

Arguments advanced during the consideration of H.R. 8193 to the effect that U.S.-flag shipping has ranked below the world fleet in terms of its casualty and pollution record are misleading because older U.S.-flag ships are compared to their generally younger foreign counterparts. A more accurate and reliable test would be to compare American and foreign-flag ships of the same age. Newer vessels built in the United States can incorporate environmental protection systems and procedures far superior to most of those now used in foreign vessels. Moreover, a clear purpose of H.R. 8193 is to encourage modernization and improvement of the older U.S.-flag tankers, including their environmental protection systems. Indeed, in a report of March 13, 1974 entitled Environmental Improvement of the Maritime Administration Tanker Construction Program, the Maritime Administration indicated that enactment of legislation such as H.R. 8193 could make possible higher environmental standards without disadvantaging our U.S. merchant fleet.

Seen in this light, enactment of H.R. 8193 could help assure that the safest marine environmental standards would be maintained consistent with our own national shipping policies.

Relationship to the Merchant Marine Act, 1970

The Merchant Marine Act, 1970 (P.L. 91–469), which was overwhelmingly adopted by the Congress, recognized the need for more emphasis on the creation of a bulk cargo fleet to carry raw materials and petroleum. The Act represented broad recognition of the vital importance of creating a tanker fleet to our national security and commerce. However, the Act did not fully take into account the tremendous increase that would occur in our oil imports. Nor did it assure the availability of cargoes to United States-flag vessels necessary as a prerequisite to construct such a fleet.

Substantial progress has been made under the Merchant Marine Act, 1970. Over thirty new tankers have been contracted for under its provisions. The purpose of H.R. 8193 is to supplement and reinforce the Merchant Marine Act, 1970, to assure that the Congressional objectives expressed in that act are attained, and to provide the United States with a tanker fleet capable of meeting the needs of its security and commerce.

Several of the opponents of H.R. 8193, and most notably the multinational oil companies, have argued that enactment of H.R. 8193 was inconsistent with the Merchant Marine Act, 1970. While "supporting" the objective of a larger United States-flag tanker fleet as necessary in the interests of our national security and commerce, these oil companies and their affiliates stress that the vehicle for obtaining that objective should be the 1970 Act, rather then enactment of H.R. 8193. Indeed, a fundamental contradiction was noted in the implicit

primary argument advanced by these witnesses that the foreign-flag fleet presently carrying oil imports is fully adequate and safe, but that it is in the best interest of the United States to foster development of a substantial U.S.-flag fleet for the carriage of crude oil by using the 1970 Act.

While paying substantial lip servic to the 1970 Act, the record of the multi-national oil companies with respect to that Act, is in general, not very impressive. With some excptions, they have refused to let the charters necessary to construct U.S.-flag vessels, and have persisted in building, registering and manning their vessels in foreign countries. They have been unswerving in the pursuit of foreign tax and cost advantages, even though subsidies have been available under the 1970 Act intended to create parity between the U.S. and foreign costs of constructing and operating vessels.

The most frequent response of the multi-national oil companies to the 1970 Act has been to demand a variety of changes that would, in effect, make the Act tantamount to a system of cash grants without any restrictions whatsoever. In general, their suggestions would overturn protections carefully built into the statute over the years to prevent abuses. However, even if their suggestions were adopted, it is questionable whether operation of U.S.-flag vessels would be as attractive to the multi-national oil companies as their foreign-flag operations currently are. In response to a question, one representative of such a company candidly referred to foreign-flag shipping as a "taxless world". It is also a world in which these companies are subject to no sovereignty but their own. Certainly, there should be little Congressional interest in duplicating that very favorable set of circumstances for the multi-national oil companies in the United States.

In general, H.R. 8193 will supplement and complement the 1970 Act and assure that the United States attains a secure energy transportation fleet capable of carrying a minimum percentage of its requirements as was intended in the 1970 Act.

VI. QUESTIONS RAISED WITH RESPECT TO H.R. 8193

Costs

Opponents of this legislation claimed that H.R. 8193 could lead to a cost increase of one cent a gallon for liquid petroleum products imported into the United States. As discussed in detail in the *Consumer Benefits* Section of this report, your Committee believes this bill, if enacted, could lead to an actual decrease in the price paid by the consumer. Even the strongest critics concede that any cost increase would be less than one cent a gallon on imported oil or 0.20 cents per gallon on total U.S. consumption. The Maritime Administration has cited potential cost increases of only about one-third that amount. The possibility of such a minimal cost increase is not a significant factor when compared to the clear benefits of this bill. This is particularly the case when the possibility of any cost increase is as speculative as it appears to be here.

Administration

It was alleged by some witnesses that administrative problems might arise which could prevent efficient implementation of H.R. 8193. Your Committee found such objections to be without weight. Problems of administration will be discussed in more detail later in the report. In this connection, however, H.R. 8193 speaks in terms of the "appropriate agency or agencies' taking the necessary steps to insure that the percentage requirements of the bill are compiled with. It is the intent of your Committee that such agency or agencies shall mean the Department of Commerce, and such other agency or agencies as the Secretary of Commerce determines are required in order to carry out the terms of this legislation. With respect to the administration of H.R. 8193, your Committee reached the following general conclusions:

A. The general applicable statutory and administrative provisions would allow for wide latitude on the part of the Secretary of Commerce and his delegated officials in administering H.R. 8193.

B. H.R. 8193 provides the opportunity for the establishment of a program of oil import cargo preference for energy transportation security sufficiently flexible to deal with rapidly changing circumstances but with adequate safeguards to protect those subject to the Act from uncontrolled and arbitrary regulatory discretion.

C. Flexibility is provided by regulatory authority in current maritime law and H.R. 8193 itself.

D. Safeguards are provided within the framework of the Administrative Procedure Act.

1. The Secretary of Commerce may issue interpretative rules subject to rigorous judicial review. The Secretary has not abused his interpretative rule making powers in similar cargo preference programs.
2. The Secretary must issue certain legislative rules subject to the safeguards in 5 U.S.C., Section 553. The Secretary has issued legislative rules in similar programs with satisfactory results.
3. When the Secretary assigns individual affected persons to categories for purposes of enforcing the oil import cargo preference tonnage requirements, H.R. 8193 as amended by the Eckhardt amendment discussed in the amendments section of this report provides such affected persons with the safeguards of adjudicatory procedure contained in Sections 554, 556, and 557 of Title 5 of the U.S. Code.

Furthermore, it was your Committee's view that utilizing the licensing system of the Office of Oil and Gas in conjunction with the Bureau of Customs, the administrative mechanisms for an oil preference program already exist. Your Committee feels that the determination of available tonnage in the absolute, and in relation to fair and reasonable rates, while not a science, is certainly not an insurmountable task. The imposition of whatever percentage is found to be susceptible of this U.S.-flag carriage can be apportioned among different categories of affected persons, according to some reasonable classification which takes into account their ability to charter tonnage and/or the frequency upon which they import.

Those in opposition to H.R. 8193 contended that the bill would be difficult to administer. In this regard, a number of issues were raised:

a. from such original point to intermediate points for transshipment or refinement and ultimate delivery into the United States.

The percentage requirements of the bill apply not only to oil imported directly from the original point of production, but also from such original point to intermediate points for transshipment or refinement and ultimate delivery into the United States. A number of the witnesses who testified in opposition to the bill contended that it would be impossible to administer such a provision. The standard example soon became a shipment of crude oil from the Persian Gulf to Rotterdam where it is refined, and then imported into the United States as refined products. How would the United States police the shipment of crude oil from the Persian Gulf to Rotterdam? However, one witness in opposition to the bill, the Gulf Oil Corporation, one of the major integrated oil companies testified:

> Mr. CLARK. From your comments on pages seven and eight of your statement, I take it you do not object to the language in the bill: "From such original point to intermediate points for transshipment or refinement and ultimate delivery into the United States." Am I correct in this?
>
> Mr. BLACKLEDGE. No, sir, we think the language is good. We only wanted to point out that there is a problem in tracing the oil back to the source, but we think that is the intent of the legislation, and we would support doing that. We believe that if that wording changed it would encourage refineries building outside of the United States. We would favor leaving it there. My comments were directed more to pointing out some of the problems that would be associated with trading the oil, and carrying further the concept of the barrel mile use of ships would assist in allowing the language to stay as it is presently drafted.

Your Committee was impressed with the candor of the Gulf Oil Corporation. Although opposed to the proposed legislation, representatives from Gulf appeared to make a good faith effort to assist your Committee in resolving some of the administrative problems associated with the bill. The barrel mile concept mentioned above by Mr. Blackledge was one of their suggestions that was not adopted by your Committee as an amendment to H.R. 8193. To do so would have restricted the flexibility of the Secretary of Commerce in the efficient administration of the bill. The important point with respect to the particular provision under discussion is that the Gulf Oil Corporation, a major integrated oil company, thought it was sound and that it could be effectively implemented and administered. Further, your Committee received other statements, and detailed memoranda that demonstrated the feasibility of administering such a requirement. These analyzed the existing oil import program, as well as other programs such as Export Control, Foreign Assets Control and the Sugar Import Program, all of which require analagous foreign-to-foreign trade monitoring. Your Committee is convinced that the legislation can be effectively administered with respect to its foreign-to-foreign trade monitoring provisions.

b. *Privately owned United States-flag commercial vessels*

The bill provides that the percentage requirements "shall be transported on privately owned United States-flag commercial vessels." The bill would amend section 901(b)(1) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1241(b)(1)), that provides:

> For the purposes of this section, the term "privately owned United States-flag commercial vessels" shall not be deemed to include any vessel which, . . . shall have been either (a) built outside the United States, (b) rebuilt outside the United States, or (c) documented under any foreign registry, until such vessel shall have been documented under the laws of the United States for a period of three years:

As has been commented on elsewhere in this report, the opponents to H.R. 8193 took the strong position that the American Shipbuilding Industry could not construct the tankers required by the proposed legislation in the foreseeable future. The Gulf Oil Corporation agreed with this position, and as a viable alternative suggested that the bill should be amended to provide a five-year moratorium on the above definition of "privately owned United States-flag commercial vessels."

A number of the proponents of the legislation took issue with this suggestion. For example, the President of the AFL–CIO Maritime Trades Department testified as follows:

> Mr. HALL. . . . If the people who claim we will not have sufficient U.S. built tonnage to meet the provisions of H.R. 8193 are correct, although I am not sure they are, then it is all the more reason why this legislation must be passed. It is essential that the United States have the capacity to carry its oil imports. It is equally important that this fleet be built in this country so American workers and the nation receive the benefits. This legislation, and not an increased use of foreign-built ships, will spur the growth of the American merchant marine.
>
> During the period when the U.S. tanker fleet is being built up, the Secretary of Commerce, under the provisions of H.R. 8193, is empowered to determine if sufficient tonnage exists. If he decides there is not, he may grant waivers to allow the use of foreign-flag ships.
>
> Why then does Gulf propose such an amendment? The answer is simple: To wipe out the U.S. flag merchant marine. If the Committee approved such a moratorium, it is highly unlikely that anyone would build in the United States. Investors would undoubtedly hold back and see if further moratoriums and delays were granted. The fact is, such an amendment would allow the oil companies to bring in all their foreign-built, foreign-flag ships under the U.S. flag to compete with U.S. tank ships. Controlling the product as they do, as well as the transportation, the oil companies would carry the oil on their own ships to the exclusion of the independent tank ships.

In addition to Mr. Hall's concern, your Committee considered this proposal by the Gulf Oil Corporation with their proposal that credit be given under the bill on a barrel-mile basis for vessels trading foreign-to-foreign. If your Committee accepted both the suggestion for a five year moratorium on the definition of "privately owned United States-flag commercial vessels", and the foreign-to-foreign, barrel-mile concept, that company could take a few of their largest, foreign built vessels, much too large for our ports and conceivably larger than could be handled by our proposed superports, put them under the United States flag, and operate them between the Persian Gulf and deepwater ports in Ireland or Japan. It would only take one, or a very few ultra large crude carriers in this long distance service to provide foreign-to-foreign credits as a substitute to the import percentage requirements of the bill. Your Committee concludes that such action would defeat the whole purpose of the bill.

c. *to the extent such vessels are available.*

The bill provides that the percentage requirements shall be transported on privately owned United States flag commercial vessels "to the extent such vessels are available". Under section 901(b)(1) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1241(b)(1)), as amended by the bill, it would be the Secretary of Commerce who would make this determination.

The opponents of H.R. 8193 generally took the position that the American Shipbuilding Industry could not construct the tankers necessary to import the percentages of oil required by the bill in the foreseeable future, and that any crash program could lead to excess tanker capacity. For example, the Assistant Secretary of Commerce for Maritime Affairs testified:

> Mr. BLACKWELL. . . . In order to carry 30 percent by 1980, we would require immediate construction of a new shipyard producing four VLCC's a year by 1977. By the early 1980's, however, present shipbuilding capacity could provide enough tankers to carry 30 percent of our imports. Therefore, this new shipyard would quickly lead to capacity in excess of that required by the bill. After reviewing these fundamental facts regarding shipyard capacity, it seems clear to me that the goals of the proposed cargo preference legislation cannot be met and could have objectionable consequences.

The proponents of the bill generally took the position that the American Shipbuilding Industry could meet the challenge of the proposed legislation. For example, the President of the Shipbuilders Council of America testified:

> Mr. HOOD. On the basis of the present orderbook, and the existing tanker fleet, it is fully evident that American shipyards will have no difficulty in meeting their part of a 20 percent requirement. But if 25 percent and 30 percent milestones are to be reached, within a reasonable time frame, it is equally evident that additional tanker building contracts must be placed with American shipyards—and soon.
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> * * * * * * *
>
> Mr. CLARK. Assistant Secretary Blackwell said the bill will lead to excessive shipbuilding capacity by the early 1980's. Do you see this as a problem?

> Mr. HOOD. The possibility of overcapacity is ever present in any type of industrial activity depending upon the vicissitudes of the marketplace. However, facilities for the construction of VLCC's, once in being, could be adapted to the economic construction of other types of ships. Historically, let me say that when you reckon with the possibility of overcapacity, it must be recognized that past forecasts of long-term requirements for ships have fallen short of needs when the actual point in time arrived. Hence, it is possible that VLCC demand could exceed current concepts of output in 1980 and 1985.

The Commission on American Shipbuilding testified in a similar vein. After an exhaustive study of the American Shipbuilding Industry, Admiral Albert G. Muma, USN (Ret.), Chairman of that Commission testified as follows:

> Chairman SULLIVAN. . . . Admiral, if H.R. 8193 is enacted, do you believe that the American shipbuilding industry could meet the challenge of the tonnage that would be required by the legislation?
>
> Admiral MUMMA. Yes, I believe that the start is already here. A number of shipyards are already producing a reasonable number of ships. The series production is only to follow. And if we let others on a reasonable early basis, I am sure that the capacity would not only be available, but that it would not be excessive.

Your Committee wishes to point out that the so-called Arab Oil Boycott and Project Independence will affect to some unknown degree, the amount and source of our future petroleum imports. Additionally, there is the open question when superports will become operational off the coasts of the United States. These considerations will have a direct bearing on the number and type of United States-flag tankers that will be required to import the percentage requirements in the bill. It would appear that the classic chicken and egg question has been raised as to the availability of sufficient tanker lifting capacity under the United States-flag to meet the requirements of the pending legislation. In this regard, your Committee is convinced that, in keeping with accepted supply/demand principles, shipbuilding capacity will expand in direct proportion to the volume of firm tanker construction contracts placed with U.S. shipyards.

Placement of orders promptly is necessary to assure the availability of the United States-flag tanker fleet envisioned by the proposed legislation. As the purpose of the bill is to insure that the United States has tankers under our direct control for a certain minimum percentage of vital oil imports, your Committee is of the strong opinion that the objections of the opponents to the proposed legislation in this regard are without weight. The bill specifically provides that it would apply only to the extent such vessels are available. This would give the Secretary of Commerce the flexibility he requires to insure that the orderly importation of oil is not impeded in any way by the bill. It should also be noted that H.R. 8193 further provides that the percentage amounts will not increase to 25 and 30 per centum unless the Secretary of Commerce shall, in the December 31 preceding the speci-

fied dates, determined that the United States tonnage existing or on order and scheduled to be delivered by such dates would be adequate to carry such quantity.

d. *fair and reasonable rates for United States-flag commercial vessels.*

The bill provides that the percentage requirements shall be transported on privately owned United States-flag commercial vessels to the extent such vessels are available "at fair and reasonable rates for United States-flag commercial vessels." Under section 901(b)(1) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1241(b)(1)), as amended by the bill, it would be the Secretary of Commerce who would make this determination.

The Committee has received comments in connection with the method of establishing fair and reasonable rates under this bill. The tanker market is replete with various rate arrangements. It has been suggested that a Commission, similar to the Shipbuilding Commission, could be legislatively established to assist the Secretary of Commerce in establishing the rates. The Committee notes that Section 901 (b)(2) of the Merchant Marine Act of 1936, as amended, gives the Secretary of Commerce the right to issue regulations governing Section 901, the section the proposed bill will amend. The Committee feels there is adequate authority with the Secretary of Commerce under that section to establish an Advisory Committee, from all branches of management and labor, to assist in reaching a method for establishing the fair and reasonable rates. The Committee suggests that this latitude remain with the Secretary who may seek such assistance if he deems it advisable rather than be restrained by another legislatively established commission.

Your Committee recognizes the difficulty the Secretary may encounter in arriving at what constitutes a "fair and reasonable rate" in the tanker market and suggests that the Secretary might find it helpful to utilize an industrywide Advisory Committee in making these determinations.

The opponents of H.R. 8193 generally took the position that would be fair and reasonable for a United States-flag tanker in a captive market would necessarily be much higher than comparable foreign-flag tanker rates. In addition to resulting in increased costs that would have to be passed on to the American consumer, the provision would be difficult to administer.

The proponents of the bill generally took the position that it is the major oil companies who transport most of the oil imported into the United States. These companies use foreign-flag vessels almost exclusively, and because their operations are shrouded in secrecy, there is no way of knowing whether the price they charge the American consumer for this ocean transportation is fair and reasonable. Therefore, this provision in the bill would initiate a much-needed transportation cost monitoring system.

As pointed out by your Committee in its discussion on Consumer Benefits there would indeed appear to be serious reason to question the foreign-flag ocean transportation pricing policy of the major oil companies. It is clear that the time has arrived when the United States must exercise greater control over the now secret practices of these large, integrated oil companies. Nor does your Committee believe that

the so-called captive market for United States-flag tankers would necessarily result in inflated "fair and reasonable" rates. H.R. 8193 is quite clear that it applies only to the extent United States-flag vessels are available at fair and reasonable rates for United States-flag commercial vessels. The Secretary of Commerce would make this determination. Indeed, when your Committee considers the very small fractions of a cent per gallon cost increase possibly resulting from the use of United States-flag vessels under the bill, it well may be that the major integrated oil companies will have to lower the foreign-flag ocean transportation price charged the American consumer at least to the level of the fair and reasonable rate authorized United States-flag vessels by the bill.

e. geographical areas

The bill provides that the percentage requirements shall be transported "in such manner as will insure fair and reasonable participation by United States-flag commercial vessels in such cargoes by geographical areas." During the hearings on H.R. 8193, the meaning of the words "geographical areas" was thrown into question. In this connection, one witness suggested the adoption of a barrel mile concept. In the event that the Secretary views such a concept as administratively desirable, he shall take care to assure that the U.S.-flag fleet resulting from enactment of H.R. 8193 is not significantly different in numbers, sizes or types of vessels as would result from a flat geographic area requirement.

H.R. 8193 would generally require that certain percentages of our waterborne oil imports be carried in United States-flag vessels. At the present time the United States imports petroleum and petroleum products from geographical areas that can be generally described as the Western Hemisphere, Europe, the Middle East, Southeast Asia, and Africa. If the requirements of the bill were only applied to our petroleum imports from Venezuela, for example, the intent of the proposed legislation would be defeated. It is the intent of your Committee that the national security of the United States requires that we have the tanker capacity to import the percentage requirements of the bill from the areas of foreign petroleum. As these areas change, adjustments in the mix of United States-flag tankers should be made accordingly.

One witness suggested that credit within the quota should be given for American flag tankers employed in the foreign-to-foreign trade. Advocates of the legislation strongly objected to this proposal on the ground that such amendment could frustrate the very intent of the bill. Your Committee agrees that an unfettered right to trade foreign-to-foreign could destroy the purpose of the legislation. Your Committee has, however, noted that there may be times that a foreign-to-foreign voyage comes about for causes beyond the control of the carrier when it was intended that that particular voyage would be to a U.S. port. As an example, the witness pointed out that certain crude mixes or grades may not be acceptable in a U.S. refinery. The carrying tanker, because of delays for many reasons, may miss its appointment for a particular crude lifting at the loading terminal; and rather than spend an indefinite time lying at anchor at extremely high daily costs, may take the crude mix then being delivered—a mix unacceptable to a U.S. refinery, but suitable to a foreign refinery.

It seems to your Committee that to absolutely refuse to recognize this possibility would be unfair. On the other hand, for the legislation to give a blanket sanction could destroy the effectiveness of the bill.

Your Committee feels that the Secretary, under existing law, has sufficient authority to determine whether or not such situations should be considered within the quota. The carrier could request such consideration, and the Secretary, after reviewing the pertinent facts, could grant or deny such a request. In this way, there would be sufficient control to prevent any pattern of such activity, or any attempt to subvert the purposes of the proposed legislation.

Free Trade and Possibility of Retaliation

Throughout the hearings on H.R. 8193, the opponents of the bill constantly reiterated that it could result in retaliation by other governments and that it constituted a bad precedent in violation of the principles of international free trade and treaties of friendship, commerce and navigation signed by the United States. Usually these objections were couched in general terms. Little effort was made to define exactly what fundamental principles were being violated or what form or when such retaliation was to be anticipated.

Your Committee has made a careful inquiry into these questions. Problems addressed have included the actual content and meaning of the above-mentioned treaties, international precedent on reservation of cargo to national fleets and other related matters. Your Committee has concluded these objections to the legislation are unfounded.

At the outset, it is very clear that the reservation of a certain proportion or type of cargo for national fleets is a common phenomenon which may be applied either generally or in bilateral agreements with other countries.

Bilateral shipping agreements, generally with the encouragement of governments, are on the increase and practically every nation has some form of preference arrangement in operation. Other forms include the reservation for national ships of imports qualifying for preferential credit facilities, preferential fiscal treatment and special tariff concessions. Minor tax advantages are granted, and berth priorities and differentials in port charges are maintained.

Unilateral action also occurs often. Direct legislation can reserve a percentage of the countries' trade to national carriers. Preference can also be practiced by manipulating exchange controls or finance for trade, in order to give national carriers advantageous rates. Import and export licenses can be controlled. Various harbor fees and dues can be adjusted. Domestic shippers are pressured by official sources to ship national.

Specific examples of such international precedent for cargo reservation for national shipping were provided for your Committee. Bolivia requires that 30 percent of its oceanborne trade be carried in its vessels; 50 percent of all Chilean imports and exports must be carried on Chilean vessels; 40 percent of Morocco's imports move on Moroccan ships; 30 percent of the exports and imports of the United Arab Republic move on its own vessels.

In addition, several nations specifically require that oil be carried on their flag vessels. France guarantees the French fleet the equivalent of two-thirds of her imports. The policy of Japan is to carry at least

50 percent of its oil imports. Venezuela requires that 50 percent of its oil be carried on its own vessels. Ecuador, Chile, Spain, and Peru require 100 percent.

Perhaps even more significant in terms of American energy concerns, the oil and gas producing nations are moving very rapidly to either nationalize or acquire majority control of production facilities within their boundaries. It is very likely that their success in this endeavor will be followed by the acquisition of their own tanker fleets. Fleet ownership would increase their bargaining leverage considerably. They would not only control a large share of the world's oil and gas, but would also be able to control the movement and freight cost of these vital commodities.

Thus, the members of the Organization of Arab Petroleum Exporting Countries formed the Arab Maritime Company for Oil Transportation. Nigeria, Kuwait, and other oil producers are actively planning to operate their own flag vessels. Your Committee is unaware that the major oil corporations have opposed such measures as vigorously as they have opposed H.R. 8193.

Your Committee concludes several things from this evidence. First, absolute "Free Trade" in the area of energy transportation is more of a theoretical concept than a practical reality. This is particularly the case where national flag fleets are concerned. Second, the possibility of retaliation is no longer a valid objection to H.R. 8193. Indeed so-called "retaliation" is no longer a possibility; it is a reality of the kind envisioned in H.R. 8193. Finally, United States reservation of oil cargoes to its fleet in the context of the above precedents is not only a safe "precedent" for the United States' commerce; but is an absolute necessity to permit the United States to bargain from a position of strength in future negotiations with energy producers. As Congressman Sarbanes pointed out in the hearings, we are rapidly approaching the point where, if w don't reserve some portion of our energy import cargoes to American shipping, we will "end up being the chump in the business".

Much comment has been made during the hearings on H.R. 8193 concerning an alleged inconsistency between the bill's purpose and Treaties of Friendship, Commerce and Navigation signed by the United States. This allegation is not borne out by an examination of those treaties and their practical application.

The Friendship, Commerce and Navigation Treaties deal with (1) national treatment of vessels and (2) most-favored nation treatment by other nations. That they are not seen as mandating absolute free trade between the signatories is amply illustrated by the aforementioned behavior of many countries who are signatories of such treaties with the United States.

Secondly, your Commitee has taken note that none of these treaties distinguish between government-generated cargo and commercial private cargo. Since the United States has had a statute on the books since 1954 which reserves a percentage of government-generated cargo to United States-flag ships, it is clear that Congress' understanding of the treaties has never been inconsistent with a cargo reservation concept.

Finally, as additional evidence that Friendship, Commerce and Navigation agreements are not inconsistent with encouragement of national fleets, we need only look to the recent bilateral shipping ar-

rangements between this country and the U.S.S.R. This agreement gives preference for national carriers of the two countries for fixed percentages of trade between the two countries. Again, no objection (similar to those now being raised against H.R. 8193) was raised by the opponents to this bill in that instance.

Finally, the actions of an overwhelming majority of the world's nations in recently endorsing a form of cargo preference in the Code of Liner Conference Practices has already been discussed in another section.

Under the circumstances, it seems clear that arguments against H.R. 8193 based on free trade and the possibility of retaliation are without merit.

VII. CONCLUSION

The hearings on H.R. 8193 covered a period of six months. No interested party was denied the right to present his views to your Committee with respect to the bill. In addition, a substantial number of written statements and requested information were submitted for the Hearing Record. This comprehensive record was thoroughly studied by your Committee, and resulted in H.R. 8193 being amended in three respects.

After full and careful consideration of the entire record, your Committee concludes that H.R. 8193, as amended and reported by your Committee, the so-called *Energy Transportation Security Act of 1974*, is required if we are to be assured that at least some of our desperately needed oil imports are to be transported in United States-flag vessels, and not left to the vagaries of foreign-flag vessel transportation indirectly controlled or chartered by the multi-national oil companies.

COST OF THE LEGISLATION

Pursuant to Clause 7 of Rule XIII of the Rules of the House of Representatives, the Committee estimates that there will be no additional cost incurred by the Government, as a result of the enactment of the legislation.

DEPARTMENTAL REPORTS

H.R. 8193 was the subject of several departmental reports. These reports follow herewith:

General Counsel,
of the Department of Defense,
Washington, D.C., October 9, 1973.

Hon. Leonor K. Sullivan,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

Dear Madam Chairman: This is in response to your request for the views of the Department of Defense on H.R. 7304 and H.R. 8193, identical bills to require that a percentage of United States oil imports be carried on United States-flag vessels.

The purpose of the bills is to restrict a portion of the ocean transportation market to the employment of United States-flag tankers to encourage the development of a larger United States-flag tanker fleet.

The growing dependence of the United States on foreign oil is a matter of great concern to the Department of Defense. That dependence poses a threat to the security and well-being of the nation in the event that foreign oil should be denied at some future date, whether for political, economic or military reasons. One of the key factors in ensuring the continued availability of foreign oil is an adequate and reliable tanker fleet, with assured availability in time of political or economic stress, or in time of war. United States-flag vessels with American crews are of course the most reliable source of ocean transport, and on that ground the Department of Defense is in agreement with the ultimate purpose of H.R. 7304 and H.R. 8193, an expanded United States-flag tanker fleet.

We believe however that there are off-setting disadvantages in the bills which warrant serious consideration. The United States has now entered a period of domestic shortages in both crude oil and refined petroleum products. For the foreseeable future the nation will be heavily dependent on petroleum imports from multiple sources throughout the world. Given the existing and prospective narrow balance between world oil supply and demand, any action which might impede the access of all prospective importers, both large and small, to foreign oil supplies, could impact adversely on the supply and demand balance in the United States, with deleterious effect on the economy and well-being of the populace.

H.R. 7304 and H.R. 8193 would appear to require that a foreign refinery from which a domestic importer sought to purchase products would be required to obtain a portion of its feedstock supply by means of United States-flag vessels. Such a requirement might be attainable by the larger, fully integrated oil companies in connection with the long-term fixed-quantity contracts, but it appears highly unlikely that foreign refiners other than those whose primary market is the United States, could or would be inclined to routinely employ higher-cost United States-flag tankers against the possibility of short-term or seasonal purchases by United States customers. The result could be the denial of otherwise available foreign oil supplies, particularly to the smaller non-integrated importers upon whom we are critically dependent at the margin, and the further deterioration of the supply situation in the United States. This nation is already encountering oil shortages which may grow larger in the next few years, and those shortages have impacted adversely on the ability of the Department of Defense to provide fuel support to the military departments and civil agencies of the Government. We believe enactment of H.R. 7304 or H.R. 8193 would aggravate this situation.

The enactment of legislation which would restrict the exercise of a free market in the employment of tankers in international trade would establish a precedent for similar legislation by other seafaring nations as well as oil producing nations. The resultant compartmentalizing of the international tanker fleet could adversely affect the ready availability of tankers in time of tension or war and would thus be inimical to the security of the United States.

We believe that the Merchant Marine Act of 1970 provides an adequate instrument for the development of a fleet of United States-flag tankers, without the disadvantages which would result from enactment of H.R. 7304 or H.R. 8193.

For the reasons set forth above the Department of Defense opposes enactment of H.R. 7304 or H.R. 8193.

The Office of Management and Budget advises that there is no objection to the presentation of this report for the consideration of the Committee and that enactment of these bills would not be in accord with the Program of the President.

Sincerely yours,

L. NIEDERLEHNER,
Acting General Counsel.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., October 9, 1973.

Hon. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: This responds to your request for this Department's views on H.R. 7304 and H.R. 8193, identical bills To require that a percentage of United States oil imports be carried on United States-flag vessels.

We recommend against enactment of these bills for the reasons stated herein.

Section 901 of the Merchant Marine Act of 1936 as amended, 49 Stat. 2015, 46 U.S.C. § 1241(b)(1), requires that 50 percent of any cargo procured by the United States from a foreign nation or furnished by the United States to a foreign nation without reimbursement, shall be transported in United States-flag commercial vessels. For the purposes of the Act, United States-flag vessels must be documented under United States laws and must have a United States crew. If the ship was built or rebuilt outside of the United States, or if it had been documented under a foreign flag, to qualify as a United States-flag vessel it must be documented under United States laws for three years.

H.R. 7304 and H.R. 8193 would amend the Act to require that 20 percent of all petroleum products imported into the United States on ocean vessels be transported in privately owned United States-flag commercial vessels to the extent such vessels are available at fair and reasonable rates. The requirement would be increased to 25 percent in 1975 and 30 percent in 1977 if the United States tonnage is adequate to carry that quantity.

We oppose both bills for several reasons. First, while the United States and many other nations now have cabotage laws restricting trade between domestic ports to vessels of their own flag, very few countries impose these flag restrictions on their imports. The United States has traditionally favored international free trade for private shipping. Enactment of these bills is therefore contrary to that tradition and might prompt similar restrictions by other countries on their imports or restrictions by oil producing nations on their exports.

Second, the bills would substantially increase the cost of imported oil to consumers. American crews are two to three times more costly than foreign crews. The increased cost of imported oil would be borne mostly by east coast consumers. Assuming that this country's dependence on foreign oil increases at the current rate, the bills could raise the cost of imported oil by hundreds of millions of dollars annually by 1985.

While we recognize the importance to the nation's security and economy of a strong domestic shipping industry, we note that there are presently a number of Federal programs designed to revitalize the domestic shipping industry on both the building and operating levels. Moreover, in time of emergency the United States can call upon ships from the "effective control fleet." This fleet is comprised of ships sailing under Panamanian, Honduras and Liberian flags and owned by the United States citizens who agree to transfer control of the ships to the United States in the event of a national emergency. Moreover, many United States owned vessels sailing under foreign flags of convenience never sail into ports controlled by countries of the flag they are flying. The ties these vessels maintain with such countries are often minimal and for appearance only. Any danger of these vessels coming under exclusive control of the foreign country where they are registered is thus remote.

Therefore, we do not feel that the national security benefits these bills are intended to achieve justify the conflict with free trade policies, and the unavoidable increase in costs to consumers of imported oil.

The Office of Management and Budget has advised that there is no objection to the presentation of this report and that enactment of H.R. 7304 or H.R. 8193 would not be in accord with the program of the President.

Sincerely yours,

STEPHEN A. WAKEFIELD,
Assistant Secretary of the Interior.

DEPARTMENT OF STATE,
Washington, D.C., October 9, 1973.

Hon. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MRS. SULLIVAN: The Secretary has requested me to respond to your request for the views of the Department of State on H.R. 7304 and H.R. 8193, identical bills which "require that a percentage of United States oil imports be carried on United States-flag vessels."

The Department continues to support the objectives of the Merchant Marine Act of 1970—the encouragement of the construction and maintenance of a privately-owned fleet of such composition as is necessary to carry a substantial portion of the foreign commerce of the country in essential trades and to serve as a naval and military auviliary in time of war. We consider the incentives of the 1970 Act as the best mechanism for promoting the bulk cargo-carrying segment of the U.S. merchant fleet. It is because of our support for a strong U.S. merchant marine and national economy that the Department cannot support H.R. 7304 or H.R. 8193. We believe that these bills would result in unnecessarily higher costs to the American consumers of imported petroleum and petroleum products. Higher costs would result from the building of ships in this country and from operating U.S.-flag vessels

as compared to foreign flag vessels. Additionally, costs would also increase due to higher charter rates. The Department believes that these bills would have an adverse effect on the availability and security of the supply of petroleum and petroleum products. Reduction in flexibility in chartering tankers for our petroleum imports would not only affect security of supply, but, as noted, would also affect cost of supply due to the nature of the vessel charter market.

Finally, the Department opposes the adoption of H.R. 7304 or H.R. 8193 because we feel an extension of U.S. cargo preference policies to commercial cargoes such as petroleum imports would be an undesirable precedent in U.S. shipping policy and would be counter to our long-established economic policies. Additionally, the passage of this legislation would cause our violation of many "Friendship, Commerce and Navigation" treaties in which these policies were embodied through the use of national treatment clauses.

The Office of Management and Budget advises that there is no objection to the submission of this report and that enactment of H.R. 8193 or H.R. 7304 would not be in accord with the program of the President.

Sincerely yours,

MARSHALL WRIGHT,
Assistant Secretary for Congressional Relations.

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., October 18, 1973.

Hon. LEONOR W. SULLIVAN,
Committee on Merchant Marine and Fisheries,
House of Representatives,
Washington, D.C.

DEAR MADAM CHAIRMAN: Reference is made to your request for the views of this Department on H.R. 7304 and H.R. 8193, similar bills to require that a percentage of United States oil imports be carried on United States flag vessels.

The proposed legislation would amend section 901(b)(1) of the Merchant Marine Act of 1936, as amended, (46 U.S.C. 1241) to require that U.S. flag commercial vessels carry 20 percent of the gross tonnage of all petroleum and petroleum products imported into the United States on ocean vessels, to the extent such vessels are available at fair and reasonable rates. The gross tonnage requirement would increase to at least 25 percent after June 30, 1975 and at least 30 percent after June 30, 1977.

The bills are contrary to the traditional U.S. position favoring international free trade for private shipping and their passage might be expected to provoke similar actions by other countries, especially oil producing countries.

Enactment of the bills would have an immediate effect on costs for imported oil since crews of U.S. flag vessels are two to three times more costly than foreign crews. These increased costs would be borne by consumers.

While we recognize the importance of having a strong domestic shipping industry, we do not feel that this proposed legislation will improve upon the Federal aid already enacted for the maritime industries. The four most important of these aids are operating-differential subsidy, construction-differential subsidy, various cabotage laws, and tax subsidies administered through the Federal tax system. Provisions of the Merchant Marine Act of 1970 call for a sizable increase in the form of construction subsidies and yet there exists considerable uncertainty over how much construction may take place, when it might be completed and how much it might cost. Current estimates are that 300 new vessels or their productive equivalent may be built over the next ten years.

In consideration of the limited capacity of U.S. shipyards, the present utilization of U.S. flag tankers, and the projected increases in tanker capacity needed to carry imported and Alaskan oil through 1985, it seems unlikely that U.S. flag carriers operating at full capacity would be able to achieve a 20 percent carriage rate. We, therefore, conclude that the bills would have little positive effect on the U.S. maritime industry at this time, but that there well may be severe negative impacts concerning our ability to maintain an uninterrupted flow of imported oil.

For these reasons, the Department is opposed to the enactment of H.R. 7304 and H.R. 8183.

The Department has been advised by the Office of Management and Budget that there is no objection to the submission of this report to your Committee and that enactment of the proposed legislation would not be in accord with the program of the President.

Sincerely yours,

EDWARD C. SCHMULTS,
General Counsel.

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., October 29, 1973.

Hon. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: This is in further reply to your request for the views of this Department concerning H.R. 8193, a bill to require that a percentage of United States oil imports be carried on United States-flag vessels.

The Department of Commerce is opposed to the enactment of H.R. 8193 for the reasons set forth by Assistant Secretary Blackwell in his testimony before your Committee on October 9, a copy of which is enclosed for your convenient reference.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of this report to your Committee and further that enactment of H.R. 8193 would not be in accord with the program of the President.

Sincerely,

KARL E. BAKKE,
General Counsel.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, as amended, changes in existing law made by the

bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 901(B) OF THE MERCHANT MARINE ACT, 1936, AS AMENDED (46 U.S.C. 1241)

Sec. 901. * * *

(b)(1) Whenever the United States shall procure, contract for, or otherwise obtain for its own account, or shall furnish to or for the account of any foreign nation without provision for reimbursement, any equipment, materials, or commodities, within or without the United States, or shall advance funds or credits or guarantee the convertibility of foreign currencies in connection with the furnishing of such equipment, materials, or commodities, the appropriate agency or agencies shall take such steps as may be necessary and practicable to assure that at least 50 per centum of the gross tonnage of such equipment, materials or commodities (computed separately for dry bulk carriers, dry cargo liners, and tankers), which may be transported on ocean vessels shall be transported on privately owned United States-flag commercial vessels, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels, in such manner as will insure a fair and reasonable participation of United States-flag commercial vessels in such cargoes by geographical [areas:] *areas. The appropriate agency or agencies shall also take such steps as may be necessary and practicable to assure that at least 20 per centum of the gross tonnage of all liquid petroleum and liquid petroleum products carried in bulk referred to as crude oil, unfinished fuels, gasoline, kerosene, aviation fuels, naphtha, cracking stocks, distillate heating oil, diesel oil and residual oils imported into the United States on ocean vessels, including movements (i) directly from original point of production and (ii) from such original point to intermediate points for transshipment or refinement and ultimate delivery into the United States, shall be transported on privately owned United States-flag commercial vessels to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels, in such manner as will insure fair and reasonable participation of United States-flag commercial vessels in such cargoes by geographical areas: Provided, That the quantity required so to be carried in United States-flag commercial vessels shall be at least 25 per centum after June 30, 1975, and at least 30 per centum after June 30, 1977, if the Secretary of Commerce shall on December 31 preceding each such date determine that United States tonnage existing or on order and scheduled to be delivered by such date would be adequate to carry such quantity: And provided further, That with respect to the percentage of petroleum and petroleum product required to be imported on United States flag commercial vessels, the Secretary of Commerce may by rule establish reasonable classifications of persons and imports subject thereto, and persons in the same classification shall be treated in substantially the same manner; any person alleging that he is incorrectly classified under such rule, or that there is no reasonable basis in fact for such classification, or that he is by any agency action thereunder treated differently from other persons in the same classification, may obtain agency review of such incorrect classification or agency action pursuant to the provisions of Title V, United States Code, Section 554, with review to the United States Court of Appeals for the District of Columbia. The scope of such review shall be in accordance with Title V United States Code, Section 706, including the contention that the action of the agency was unsupported by substantial evidence: Provided*, That the provisions of this subsection may be waived whenever the Congress by concurrent resolution or otherwise, or the President of the United States or the Secretary of Defense declares that an emergency exists justifying a temporary waiver of the provisions of section 901(b)(1) and so notifies the appropriate agency or agencies: *And provided further*, That the provisions of this subsection shall not apply to cargoes carried in the vessels of the Panama Canal Company. Nothing herein shall repeal or otherwise modify the provisions of Public Resolution Numbered 17, Seventy-third Congress (48 Stat. 500), as amended. For purposes of this section, the term "privately owned United States-flag commercial vessels" shall not be deemed to include any vessel which, subsequent to the date of enactment of this amendment, shall have been either (a) built outside the United States, (b) rebuilt outside the United States, or (c) documented under any foreign registry, until such vessel shall have been documented under the laws of the United States for a period of three years: *Provided, however*, That the provisions of this amendment shall not apply where, (1) prior to the enactment of this amendment, the owner of a vessel, or contractor for the purchase of a vessel, originally constructed in the United States and rebuilt abroad or contracted to be rebuilt abroad, has notified the Maritime Administration in writing of its intent to document such vessel under United States registry, and such vessel is so documented on its first arrival at a United States port not later than one year subsequent to the date of the enactment of this amendment, or (2) where prior to the enactment of this amendment, the owner of a vessel under United States registry has made a contract for the rebuilding abroad of such vessel and has notified the Maritime Administration of such contract, and such rebuilding is completed and such vessel is thereafter documented under United States registry on its first arrival at a United States port not later than one year subsequent to the date of the enactment of this amendment.

(2) Every department or agency having responsibility under this subsection shall administer its programs with respect to this subsection under regulations issued by the Secretary of Commerce. The Secretary of Commerce shall review such administration and shall annually report to the Congress with respect thereto.

* * * * * * *

XI. ADDITIONAL VIEWS

Certainly, the Committee's efforts to increase employment opportunities for American seamen, curb the outflow of U.S. currency, and reduce our dependence on foreign ships for the transport of imported oil are commendable and we endorse such objectives—but not at the risk of putting the small, independent refiners out of business.

And since H.R. 8193, as reported, would not assure the degree of freedom needed by the small refiners to compete with the major oil companies, we will offer an amendment to exempt those refineries which have a total refinery capacity of 30,000 barrels per day or less. This would represent an exemption for only 5.9 percent of the oil imported into our country.

Historically, as you know, the small refiners are dependent on two sources for their product: imported oil purchased directly from the major oil companies or a foreign government, and the excess, higher-priced, "new" oil owned by the major companies.

COST OF DOMESTIC OIL

Because the price of "new" domestic oil is uncontrolled, the majors can sell it to the independents for $2 to $3 a barrel higher than the "old" oil which they keep for themselves. As a result, the major oil companies have the power to price the small refiners out of business, unless the independents can import oil at competitive prices.

DEPENDENCE ON IMPORTED OIL

Thus, the small, independent refiners, which represent only 6 percent of our total refining capacity, are forced to rely more heavily on imported oil than the major companies. While the majors import about 10 percent of their product, the small independents, in 1973, imported about 41 percent of their product.

HIGHER SHIPPING COSTS

In addition, the major oil companies own foreign subsidiaries who, in turn, own the foreign-flag tankers, and thus enjoy tremendous flexibility in the assignment of costs and prices to various operations. Because the price of shipping is nothing more than an internal entry on the company books, the majors are free to juggle shipping costs to maximize profits. In fact, seven major oil companies (Gulf, Exxon, Standard Oil of California, Texaco, Mobil, Shell, and BP) own well in excess of 50 percent of the world's tanker fleet, and control an additional portion of the world tanker fleet by means of long-term charters. Therefore, they can importa their own foreign production at cost, while independent refiner-importers must pay the higher market price.

The small refiners, however, do not own shipping lines, and must depend on short-term, higher-priced contracts for the shipment of oil, again, increasing their costs, and effectively limiting their ability to compete with the major oil companies.

SUMMARY

Thus, the small refiners are already in trouble on all fronts—

Paying higher prices for imported oil than the majors,
Paying higher shipping costs than the majors, and
Paying higher prices for domestic oil than the majors.

While increasing the shipping costs for the major oil companies would have little effect on their operation, increased shipping costs for the small independents—who rely heavily on imported oil—would further jeopardize their already precarious economic status, thus threatening to eliminate one of the only true vestiges of competition remaining in the oil industry.

The amendment follows:

At the end of the Eckhardt Amendment, strike the period and the quotation marks and insert after "evidence" the following:

> *provided*, That the provisions of this section shall not apply to refineries whose total refinery capacity (including the refinery capacity of any person who controls, is controlled by, or is under common control with such refiner) does not exceed 30,000 barrels per day.

GEORGE A. GOODLING,
EDWIN B. FORSYTHE,
GLENN M. ANDERSON,
Members of Congress.

XII. SUPPLEMENTARY VIEWS

I support the enactment of H.R. 8193, and I concur in the analysis of this legislation set forth in the Committee Report. However, for the benefit of my Republican colleagues who may be urged to oppose this bill, I will endeavor to set forth some of the basic considerations which have persuaded me to support this legislation. Additionally, the support given by several major oil companies to the principle of mandatory U.S.-flag quotas deserves mention.

The Merchant Marine Act of 1970 was enacted in large measure to correct a dangerous imbalance in the composition of our merchant marine. While roughly 20 percent of our liner trade was being carried in a fleet of modern ships built with government aid under the Merchant Marine Act of 1936, virtually none of our essential imports and exports of bulk commodities were carried in U.S.-flag ships. The lack of statutory authority to assist in the development of a strong U.S.-flag bulk carrier fleet was remedied in 1970. Yet today, almost four years later, the number of tankers under construction for the account of major oil companies can be listed on one hand. While a growing number of tankers are under construction in U.S. yards, they are owned principally by banks and are chartered to foreign oil transport companies. The sad fact is that for more than a year following the removal of statutory bars to the subsidized construction of tankers, only foreign interests came forward to take advantage of the very favorable terms offered in the United States, and in the last 2½ years only token efforts have been made by the U.S. petroleum industry.

The tankers which have been built are flying the U.S. flag and are manned by American seamen. There is no question but that these ships are a great national asset regardless of where they trade in the world or whose products they carry. Nevertheless, it was the primary purpose of the Merchant Marine Act of 1970 to increase the carriage of *U.S. trade* in U.S. ships. Oil is the principal component of our bulk trades. It is almost totally controlled by the major integrated oil-producing companies. These are mostly American companies.

They determine absolutely what ships will transport oil to the United States and whether these ships will be company-owned or chartered from independent tanker operators. With few exceptions they have chosen to use foreign-built, foreign-manned ships.

The reasons cited by the oil companies are legion, but none are compelling. The pertinent reasons are never acknowledged. The higher cost of building and operating U.S. flag ships seems to be the most popular excuse for this general failure to fly the American flag. This is followed by the alleged instability of U.S. labor compared to Italian, Spanish or Greek crews, who apparently consider themselves lucky to sail on a U.S.-owned Liberian flag ship. The facts do not support these contentions, however. No one has suggested that tankers be built for foreign trade without construction subsidy—a subsidy to the shipyard, not the operator of the vessel—which is intended to permit the

sale of the ship to the American operator at a price competitive with foreign quotations. There has been no lack of funds—only a lack of applicants. In addition to construction subsidy, the financing terms available in the United States are generally conceded to be more favorable than abroad.

So far as operating costs are concerned, a subsidy is available to offset higher U.S. labor rates, but the increased cost is negligible on ships of over 200,000 tons, the most economical size range, and operating subsidy for such vessels cannot be justified. Finally, the oil companies would have one believe that U.S. maritime labor is still in the throes of 1930 vintage organizational strikes. Seamen's unions have, in fact, offered no strike contracts.

It is difficult to reconcile the oil industry objections to the American flag when at the same time a variety of foreign concerns have been willing to enter into long term charters for U.S.-built and manned tankers under the 1970 Act. Why do not these same arguments dissuade foreigners in need of ships to ply the trade routes from the Persian Gulf to Japan and Europe?

There are, I believe, two answers for this paradox: tradition and taxes. The American oil industry has, for more than 30 years, relied upon their foreign-flag subsidiary fleets for the transportation of oil throughout the world. Established ways of doing business which work and produce a profit are not easily dismantled. A myriad of ties between domestic and foreign subsidiaries has arisen which maintain the status quo. Yet change is needed. The national interest must prevail over the corporate interest.

The tax structure favors the continuation of the status quo and may be the overriding consideration. Concrete data is so sparse, however, that a great deal of conjecture is necessary. The Treasury Department cannot provide any meaningful data on the extent of the tax advantages which flow from U.S.-owned foreign-flag shipping, since there is no statutory reporting requirement for this foreign source income so long as earnings are not repatriated to the U.S. parent company as dividends.

It is sufficient to say that the operation of tankers by a U.S. oil company under the Liberian flag—the most popular foreign flag—is an essentially tax-free transaction. The profits generated may be plowed back into new tankers built in Japan or invested in service stations in France or refineries in Holland. How much profit is generated by these operations is as much a mystery as the tax loss to the Treasury. It is reasonable to assume, however, that there is a strong incentive to maximize profits where they are tax free and minimize them in the U.S. at the distribution level. The policy of intracompany pricing is discussed in the body of the Committee report, and I urge my colleagues to familiarize themselves with it.

I do not question the merits of this tax-free climate so far as purely foreign operations are concerned. United States firms are competing with foreign enterprises for markets abroad and must be able to compete on the same footing. Yet in the carriage of oil to the United States, a market which they totally dominate, there seems to be little justification for such treatment. It is clearly a disincentive to investment in American flag ships.

The facts elicited during many days of hearings lead me to the reluctant conclusion that the goal set in the Merchant Marine Act of

1970 will not be realized so long as the oil industry totally controls the transportation of U.S. petroleum imports. Continuation of this absolute control is not in the best interest of the United States and cannot be justified.

It is indeed heartening that a number of U.S. oil companies have come forward and endorsed the concept of mandatory U.S. flag quotas. While they have not accepted the terms of H.R. 8193, as reported, I am confident that their enlightened self-interest will contribute substantially to the success of this program.

The Mobil Oil Corporation and Gulf have suggested alternative approaches which would provide an incentive to the construction of more U.S.-flag tankers. Both companies obviously have invested considerable effort in devising systems which would achieve positive results and at the same time have less impact upon their current operational patterns.

While the Committee has rejected these proposals as the basis for a statutory mandate, many of their operational concepts may be implemented administratively by the Secretary of Commerce. The legislation is deliberately vague in regard to its implementation just as were many sections of the 1970 Act which dealt with bulk-carrier subsidy in order to permit maximum flexibility. The petroleum industry undoubtedly will have considerable expertise to offer as the operational regulations are built upon this broad statutory framework.

One issue which these companies have raised deserves special comment. There is now pending before the Congress a number of proposals for the construction of deepwater terminal facilities off the coasts of the United States. The enactment of such legislation and the prompt construction of the facilities as called for by the President is a vital corollary to H.R. 8193. Unfortunatley, there is considerable dispute among the coastal states over the question of their right to veto proposed sites, their rights to tax products entering the states from such terminals, and the question of who should hold a federal license—private industry or the states. These issues will not be resolved overnight, and deepwater terminals will not be available to discharge very large tankers for three to five years after the enactment of authorizing legislation.

In the meantime, it has been suggested that the enactment of H.R. 8193 will foster the construction of small, uneconomical tankers to life the oil reserved for U.S.-flag carriage. Therefore, H.R. 8193 should be held in abeyance until deepwater facilities are ready.

There are several reasons why I cannot support such a moratorium. In the first place, what size tankers will be carrying our imports in the absence of H.R. 8193? If a U.S.-flag VLCC cannot be employed in U.S. trade today, how can its foreign-flag counterpart? Clearly, the oil will move in smaller, uneconomical foreign-flag ships just as it does today.

Until deepwater terminals are built, the United States will not enjoy the economics of scale inherent in VLCCs regardless of flag.

Secondly, the construction of large tankers is a multi-year undertaking. Enactment of H.R. 8193 should result in an immediate increase in U.S.-flag carirage, but it will not equal or even approach 20 percent of our imports. There are simply not enough ships available. New construction will be undertaken as each importer determines its needs

to meet the goals set by the legislation. Waivers will be granted where they are justified to insure that no oil fails to move for want of a U.S.-flag ship.

In the meantime, the ships needed to ultimately reach the statutory goals will be building. Many of these will be VLCCs destined for long-haul routes from the Persian Gulf. If they begin to enter service before deepwater terminals are ready, and if it is demonstrated to the satisfaction of the Secretary of Commerce that they cannot be employed to fulfill the requirements of H.R. 8193 on intermediate voyages to foreign ports for product refining or transshipment, then further waivers can be granted until the terminals are ready. The likelihood that there will be any meaningful delay in the employment of newly-built VLCCs in U.S. trade is, however, very slight.

Waiting to impose a U.S.-flag quota until offshore terminals are built would simply delay for several years *beyond* the time required for terminal construction any meaningful effort to build U.S.-flag tankers. Such delays, given the administrative flexibility inherent in this legislation, cannot be justified. The oil industry record over the past 3½ years does not provide any basis for assuming that tanker construction will begin during such a moratorium.

JAMES R. GROVER, Jr.,
Member of Congress.

XIII. DISSENTING VIEWS

SUMMARY

The majority and minority agree that it is in the national interest to promote the expansion of our merchant fleet and thereby return the U.S. flag to a position of importance in world shipping. The disagreement is over how such expansion should be achieved.

Just 3½ years ago, by virtually unanimous vote, Congress enacted the Merchant Marine Act of 1970 as the means of achieving orderly expansion of an internationally competitive merchant fleet. The new program provided for direct subsidies and other aids, and promised substantial benefits in terms of improved balance of payments and added seafaring and shipbuilding jobs.

We are now supporting the 1970 program with construction and operating subsidies totaling about ½ billion dollars each year. The program is already producing results and has revitalized the maritime industry to the point where U.S. shipyards are now building modern tankers and other vessels at record peacetime capacity. The outlook for the U.S. flag fleet has never been better. Despite these achievements the majority now seems prepared to repudiate the approach of the 1970 Act in favor of a mandatory quota allocation of commercial cargo.

We believe that mandated tanker cargoes under H.R. 8193 should be rejected for the following reasons:

It would, as the majority concedes, saddle consumers with added costs, with estimates ranging to well over one dollar for every barrel of oil imported by tankers.

It would create a captive market as well as an artificial imbalance between U.S. flag tanker supply and demand, thereby generating additional inflationary pressures.

It would put consumers in those regions of the country heavily dependent upon imported oil (New England, Middle Atlantic, the West Coast and Hawaii) in the unfair position of having to bear a disproportionate share of the added costs.

It could intensify the energy shortage by impeding the importation of badly needed crude oil and petroleum products and yet do nothing to guarantee the uninterrupted flow of oil from overseas sources.

It would cause the United States to violate more than 30 treaties and would invite retailiation by our trading partners.

It would establish the far-reaching precedent of subjecting privately owned commercial cargoes in U.S. foreign commerce to allocation on the basis of flag, a concept readily extendible to other imports as well as our agricultural exports.

In addition, we have doubts about the drafting of the bill itself and believe many issues were not adequately considered. We are particularly concerned with the following aspects:

Faced with politically sensitive issues inherent in this bill which would have pervasive international and economic effects, the Committee chose to duck all the tough decisions. Instead, they simply abdicated to the executive branch virtually unlimited power to make the fundamental policy determinations which rightfully belong to the Congress.

In abdicating this responsibility, Congress would also unintentionally create a new regulatory agency without standards or guidelines. This agency would resemble an international ICC governing tanker movements and would even regulate the transportation of pertoleum between foreign nations.

After avoiding all the tough issues in the bill itself, we believe it unfortunate that the Committee majority refused to go on record in support of the bill by declining a roll call vote.

Introduction

We firmly believe that it is in the national interest to foster the development of an American flag tanker fleet capable of transporting a significant portion of our U.S. oil imports. The nation is already moving toward that goal on an orderly basis as a result of the Merchant Marine Act of 1970. The imposition of a flag quota on privately owned commercial petroleum cargoes as proposed by H.R. 8193 would be unwarranted and unnecessary.

Less than four years after passage of the Merchant Marine Act of 1970, the nation's first major maritime legislation since 1936, a majority of the Committee was unjustifiably concluded that the way to build and maintain an American flag tanker fleet is to ban foreign competition in at least 30 percent of our petroleum import trades.

By such action, the majority would effectively abandon the basic concept of the 1970 Act, which was to create an internationally competitive American flag tanker fleet capable of carrying a substantial share of cargoes in our foreign commerce. The philosophy underlying the 1970 Act was direct subsidy. It made construction and operating subsidies available for the first time to build and maintain tankers and other bulk carriers, so that American shipowners could operate on the same cost levels as foreign shipowners. The whole thrust of the 1970 Act was and is to make American flag vessels competitive with foreign vessels.

The ink was hardly dry on the statute books, however, before the Committee was first told that it is not enough to place American tankers on the same cost parity as their foreign counterparts. We were told that something more was needed: a protected market assuring cargoes for American flag tankers. This plea for guaranteed cargoes has never been adequately justified.

Certainly if direct subsidies place American flag operators on the same cost level as their foreign counterparts, there is no reason why they must also have guaranteed cargoes to compete in international shipping. This is borne out by the fact that there are tankers totaling more than 4.5 million deadweight tons now on order in the nation's shipyards. In addition, the Committee was advised that as of September, 1973 there were construction subsidy applications pending under the 1970 Act for 98 tankers totaling 19.3 million deadweight tons and having a value over 6 billion dollars.

If all pending applications were approved and shipyard capacity were available to build the vessels by 1980, the new tonnage alone would provide coverage for well over 30 percent of our projected oil imports. However, the fact is that shipyards are already operating at capacity with orders in hand for at least the next three or four years. How, then would H.R. 8193 possibly contribute anything more to the existing program of expanding the U.S. fleet? Since the bill can have no practical effect in fostering further fleet growth, Congress should have even more concern over the following undesirable effects:

Cost to Consumer.—Two years ago the Senate Commerce Committee reported out similar legislation which was ultimately defeated. The Senate Committee took such action only because the oil import allocation program then in effect gave rise to the argument that the added costs would not be passed on to consumers. That bill had a provision which would have made it inoperative if at any time the oil import allocation program was discontinued.

In May 1973, the allocation program was terminated. Today there is no valid argument which can be advanced to suggest that consumers will not have to underwrite the additional costs of cargo preference legislation. In fact, almost every witness before the Committee acknowledged that H.R. 8193 would result in added costs for already beleaguered consumers.

The estimates of the added costs to consumers varied. They ranged from a few cents to well over one dollar for every barrel of oil imported by tankers.

In terms of total added costs, one estimate placed a "conservative" price tag on the legislation of 22 billion dollars through 1985, but warned that this figure could rise to as much as 60 billion dollars over the same period. The Committee was further advised that the very same fleet expansion could be achieved under the Merchant Marine Act of 1970 at a cumulative cost of 7 billion dollars—and with a more favorable effect on balance of payments.

An additional consideration concerns the potential impact of the bill on the cost of domestic oil. The Department of Interior advised the Committee that H.R. 8193 could result, in the absence of controls, "in drawing up" the cost of domestic oil which, in effect, would double the cost impact of the bill.

Inflationary Pressures.—Because U.S. shipyards are already heavily booked and operating at unprecedented peacetime levels, the artificial demand which would be created under H.R. 8193 could cause shipyard demand, but not necessarily shipyard production, to escalate in an abnormal fashion. The ongoing expansion of the U.S. fleet would be effected at premium prices, a result which would be needlessly inflationary.

Further inflationary pressures would be generated by the creation of an artificial demand in the U.S. tanker market at a time when there would be a general shortage of U.S. flag tankers. As the hearing record shows, previous experience with the captive market created by the Cargo Preference Act of 1954 (which applies only to government sponsored cargoes and which H.R. 8193 seeks to amend) clearly shows that a 50 percent premium is normally paid for U.S. flag vessels compared to foreign vessels. This premium is strictly attributable to the effect of the captive market and not to the difference in construction

or operating costs between U.S. and foreign flag vessels. The premium has been exacted despite the apparent limitation in the Cargo Preference Act of 1954 (identical to the provision in H.R. 8193) that such rates be "fair and reasonable rates for United States—flag commercial vessels". While the majority suggests that this prophylactic language is all that is needed to protect the consumer against the inflationary pressures of a captive market, historical evidence shows this to be illusory.

Unfair Regional Impact.—Because H.R. 8193 would directly affect the cost and availability of imported oil, it follows that the impact of the bill would be felt primarily by consumers in regions of the country heavily dependent on imported oil. For example, most of the oil consumed in the New England states, the Middle Atlantic states, and Hawaii is now imported from abroad. Some other regions of the country, such as the West Coast states, rely in varying degrees on imported oil, but not to the same extent. What this means is that the added costs of H.R. 8193 would be borne disproportionately by consumers on a regional basis. In effect, citizens of some states would be unfairly forced to underwrite a major portion of the added costs under H.R. 8193. By way of illustration, a family in New England could find an additional $50 tagged on to its annual energy bill, while a family in a non-oil importing state would escape such a penalty.

Intensify the Energy Shortage.—Cargo preference would impede the shipments of crude oil and petroleum products to the United States by imposing artificial and counterproductive requirements and restrictions. At the same time it could provoke foreign governments to retaliate with protective measures of their own, with the result that the worldwide tanker transportation system would lose flexibility as tankers became locked into specific trades. At a time when the United States is taking every possible action to ensure the uninterrupted flow of imported oil to meet the countinuing shortfall, the imposition of additional barriers inherent in H.R. 8193 would be self-defeating.

To the extent the Committee is concerned over excessive reliance on foreign flag vessels for the importation of petroleum and other commodities, the fact remains that the Merchant Marine Act of 1970 provides the means to develop an adequate U.S. flag capability.

The availability of U.S. flag tankers to import foreign oil provides no assurance whatsoever of dependable petroleum supplies. The only way to assure an uninterrupted flow of energy is to have secure energy sources, and this can only be accomplished by reducing dependency upon foreign energy supplies.

International Repercussions.—The Department of State has pointed out that cargo preference is by no means an internationally accepted means of promoting fleet expansion in the open and highly competitive bulk cargo trades. Only one nation of any size in the free world (Spain) has a cargo preference requirement for oil imports. The Spanish regulation can be explained by the fact that the imported cargoes are apparently owned by the Spanish Government, and thus cannot be compared to private commercial cargoes. While France has a fleet size requirement enabling its vessels to trade in foreign commerce, it does not have a cargo preference law as such.

In addition, two oil exporting nations, Ecuador and Venezuela, have enacted cargo preference legislation. In each case, the legislation

permits imposition of cargo preference, but in fact has not been fully implemented.

The critical fact is that no major nation in the free world has unilaterally turned to cargo preference with respect to privately owned commercial cargoes. What this means is that H.R. 8193 would represent an unprecedented step by the United States to allocate international tanker transportation on the basis of flag. Such action would be a reversal of our broader policy of encouraging international free trade and elimination of trade barriers. Furthermore, it would violate treaties concluded with more than thirty nations under which the United States has guaranteed treatment to the vessels of our treaty partners equal to that accorded to our own flag vessels. As the same time, enactment of H.R. 8193 would encourage the oil exporting nations to take unilateral steps to require that a substantial portion of their oil exports be carried in their national flag vessels. This, in turn, could reduce the flexibility and availability of tanker transportation, and, as the Department of Defense has warned, harm national security interests of the United States.

Creation of a Precedent.—At present no privately owned commercial cargoes imported into, or exported from, the United States are subject to quota allocation. This is so despite efforts over the years to have such requirements enacted into law. H.R. 8193 would set a compelling precedent for extending cargo preference to other commercial imports such as bauxite, chromite, iron ore and approximately 35 other critical commodities. At the same time it would predictably increase pressures in Congress to have similar mandatory requirements placed on our exports, particularly agricultural products such as corn, wheat, rice and other commodities. Coal exports would be equally vulnerable. Stated simply, if the Committee believes that the principle of cargo preference is applicable to oil, why then should it not be applied to every other commodity in our import and export trades?

Inherent Defects of H.R. 8193

Aside from the liabilities associated with the import quota approach, the bill reported from the Committee is defective on its face, contains provisions which have not been adequately considered, and lacks provisions necessary to give congressional direction for the implementation of the bill. Without even having to reach the merits of the quota concept, Congress should reject the bill for the following reasons.

Delegation of Congressional Responsibility

There is no question that the mandating cargo preferences is a complicated business. Imposing a new government regulatory scheme on a complex competitive market, involving foreign competition and many levels of commerce is bound to involve numerous policy considerations. Yet this remarkably brief bill purports to impose this new regulatory mechanism on this international market, under the banner of stimulating U. S. flag participation, with virtually no attention given to how the act should be implemented. Certainly stimulation of the U. S. flag participation was the objective foremost in the Committee's mind, but what about the collateral effects of the bill? Who is

going to bear the burden of importing a greater percentage of importing oil under the U. S. flag? What do we do about the regions of the country which are heavily dependent upon imported oil while others are not? How can the burden be distributed evenly? Do all importers get treated the same or do some refiners receive different treatment than other users? Are big refiners going to be treated in the same manner as the small refiners? What types of economic dislocations can be expected because of the inevitable disparities? These are not just the routine administrative problems that should be left to the complete discretion of the Executive Branch. Nor are the problems necessarily insoluble. These are fundamental policy problems which should be investigated and resolved by the Congress.

Mr. Anderson from California made an attempt to bring to light some of these issues when he offered an amendment to exempt refineries whose capacity was less than 30,000 barrels per day from the provisions of the act. His point was a good one. This bill would probably put the small refiners in his district out of business. For starters, these refiners import crude oil from Indonesia and their contracts require the importation to take place on foreign flags. How many other refiners and their consumers who are not as fortunate to have such a vigilant representative are in the same predicament? Unfortunately, the committee did not come to grips with these problems and instead delegated complete responsibility for the administration of the act to the Secretary of Commerce.

In an attempt to place some units on the Secretary's authority the Committee adopted some cosmetic language which would permit those who thought they were being treated unfairly by the Secretary of Commerce to seek appellate review. That is hardly an improvement. After turning the matter over to the Executive Branch, the Committee conveniently passes the buck to the Judicial Branch. This is nothing but transparent sophistry. Tough policy problems like those that Mr. Anderson raised should be handled by the Congress, not by the Executive or Judicial Branches.

After all this preoccupation with the reassertion of Congressional prerogatives that were supposedly usurped by the Executive Branch, we find this total abdication of responsibility by the Committee ironic. We suggest that if the Congress is serious about their vow to play a more responsible role in the implementation of national policy, they start by rejecting this carte blanche to the Executive Branch. To do otherwise will make all this talk about the resurgence of Congressional authority a lot of hollow rhetoric.

Regulation Without Guidelines

For months we have labored over this bill on the assumption that the real issue was whether its provisions would stimulate the construction of more U.S. flag tankers and if so at what cost. Yet as we have indicated, the potential impacts of this bill could go far beyond the stimulation of the tanker construction market. The bill would effectively empower the Secretary of Commerce to act as broker in tanker charters and to set rates for a segment of the international tanker trade. Under the bill the Secretary would be given the authority to set "fair and reasonable" rates for the transport of oil into the United States on the U.S. flags and would also have the power to designate import quotas on a geographic basis. He would have to act as an intermediary between the tanker operators and the importers to meet his responsibilities under the bill. The real issue involved here is not whether or not the Secretary should be empowered with this responsibility, but whether the Congress should confer the power in one single phrase without any guidelines.

Little consideration was given to what limits should be on the Secretary's power or what could happen if his administration should cause dislocations in the tanker market. How should the rates be pegged? What are the consequences if the Secretary's rates are different from the world rates? These and other questions were never aired. The Committee in effect established this rate making and brokering power without having any idea how it would be used and without guidelines. In short a sort of international ICC has been created by legislative accident. This is a poor way of creating such important regulatory functions.

Avoidance of Roll Call Vote

After avoiding so many of these difficult questions we suppose it was only fitting that when a roll call vote was demanded, the majority declined to go on record individually in support of the measure. Perhaps this should put the Congress on notice that even the proponents of this measure are embarrassed by their defective product.

Pierre S. du Pont.
Edwin B. Forsythe.
Ed Young.
Phil Ruppe.
Charles A. Mosher.

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Calendar No. 991

93D CONGRESS 2d Session | SENATE | REPORT No. 93-1031

ENERGY TRANSPORTATION SECURITY ACT OF 1974

REPORT

OF THE

SENATE COMMITTEE ON COMMERCE

ON

H.R. 8193

TOGETHER WITH MINORITY VIEWS

TO REQUIRE THAT A PERCENTAGE OF UNITED STATES OIL IMPORTS BE CARRIED ON UNITED STATES-FLAG VESSELS

JULY 25, 1974.—Ordered to be printed

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CONTENTS

	Page.
Description and purpose	1
Background	1
Benefits of the bill	5
National security	5
Cost impact	11
Increased employment	16
Relationship to the Merchant Marine Act, 1970	18
Environment	19
The regional and industry impact of H.R. 8193	25
International trade	29
The balance of payments benefits of H.R. 8193	32
Section-by-section analysis	34
Estimated costs	43
Record vote in committee	44
Changes in existing law	46
Text of H.R. 8193, as reported	50
Agency comments	52
Minority views of Mr. Cotton	57
Minority views of Mr. Pearson	63

Calendar No. 991

93d Congress 2d Session | SENATE | Report No. 93-1031

ENERGY TRANSPORTATION SECURITY ACT OF 1974

July 25, 1974.—Ordered to be printed

Mr. Magnuson, from the Committee on Commerce, submitted the following

REPORT

Together with minority views

[To accompany H.R. 8193]

The Committee on Commerce to which was referred the bill (H.R. 8193) to require that a percentage of United States oil imports be carried on United States-flag vessels, having considered the same, reports favorably thereon with amendments and recommends that the bill do pass.

Description and Purpose

H.R. 8193 requires that 20 percent initially, and by June 30, 1977, 30 percent of the oil imported into the United States shall be transported on U.S.-flag commercial vessels to the extent that such vessels are available at fair and reasonable rates. The bill will improve our national security posture by reducing the Nation's nearly total dependence on foreign-flag vessels to meet our energy transportation needs. It will also significantly benefit the balance-of-payments position of the United States and provide increased protection to our marine environment. By creating a fleet of modern U.S.-flag tankers, the bill will provide thousands of jobs for American workers aboard ship and in shipbuilding, ship repair and support industries.

Background

It is apparent that the 1970's will be a decade of decision for the United States. The upheavals in our economy, as well as the economies of other nations, and the unsettled nature of international relations indicate that basic changes are taking place which will affect our well-being and national security for years to come. Courses we choose now will determine the quality and security of our lives into the next century.

In that context, H.R. 8193 might appear to be modest legislation, requiring that a percentage of petroleum imports be carried on U.S.-flag ships, if such vessels are available at fair and reasonable rates. Yet, the Committee has become convinced during the course of its hearings and deliberations that enactment of H.R. 8193 will go far toward solving serious problems by encouraging the construction and use of a substantial number of tankers under U.S. flag.

1. Previous legislative efforts

The U.S. tank ship fleet has declined sharply since World War II when there were 904 tank ships aggregating some 12.7 million deadweight tons. By 1970 there were only 262 American tankers totaling 7.4 million deadweight tons. This decline is more significant in light of the fact that oil imports into the United States increased dramatically during the same period. The use of U.S.-flag vessels is now restricted, for the most part, to the carriage of oil in the coastal trades which has constituted a declining part of our waterborne oil movements. Moreover, the U.S.-flag tanker fleet has not been able to substantially participate in the movement toward very large tanker sizes that developed throughout the world, starting in the 1960's.

To correct these disturbing trends, Congress passed the Merchant Marine Act, 1970 (P.L. 91–469) (the "1970 Act"), which provided for the first time substantial Federal support for the construction and operation of bulk carriers, including tankers. It was expected that the American tanker fleet, as a prime beneficiary of the new program, would expand its penetration into the U.S. oil imports trade.

Two years ago, it became apparent that, despite the new programs, tankers for U.S. registry were not being built or operated in the numbers necessary to adequately meet our needs. As a result of its 1972 hearings on this matter, the Committee concluded that the 1970 Act was not producing the necessary number of U.S.-flag tankers and was being thwarted because the multi-national oil companies were systematically diverting oil cargoes for import into the United States to foreign-flag tank ships, many of which are owned by foreign subsidiaries or affiliates of these same companies. Consequently, the Committee reported a measure requiring that at least 50 percent of our oil imports, (with certain exceptions required because of the operation of certain aspects of the now defunct mandatory oil import quota system), be carried on U.S.-flag vessels to the extent such vessels were available at fair and reasonable rates.

The measure was narrowly defeated on the floor of the Senate, primarily because of charges that it would (1) institutionalize the mandatory oil import quota system and (2) increase the price of oil. These arguments are no longer valid because: the quota system has been eliminated; the Committee has received testimony demonstrating that the price of oil will not be adversely affected by the preference legislation; and the international oil crisis has demonstrated the advisability of becoming transportation independent.

2. Continued dependence on oil imports

Despite efforts of the United States to become energy self-sufficient authorities agree that our dependence on foreign sources of oil will continue for some time. Our imports rose from 950,000 barrels a day (b/d) in 1952, representing 13% of our total oil consumption, to over 4.7 million b/d in 1972, nearly 30% of our total consumption. Despite the expected opening of Alaskan resources, imports are expected to rise further to nearly 12 million b/d by 1980, which would constitute 50% of anticipated requirements for that year. This proportion is expected to remain more or less constant through 1985, when total needs may increase to perhaps 28–30 million b/d, apart from all other energy sources that may be developed and exploited in the meantime.

Recent events have demonstrated the problems of being dependent on foreign oil supplies. The lessons learned apply with equal force to transportation dependency. Consequently, we must examine the implications of the fact—That we are almost entirely dependent on foreign tonnage for the importation of oil. The small quantity of oil shown in the record as having moved in American bottoms, approximately 5 percent of our waterborne imports, reflected ships diverted from the domestic trade (including some new vessels awaiting construction of the Alaska pipeline) by the extraordinarily high freight rates in the foreign market during the first part of 1973.

It is obvious that this condition cannot be accepted. Not a single witness adverse to the proposed legislation purported to defend it before the Committee.

3. Legislative history of the bill

On June 27, 1973, Senators Magnuson and Beall introduced S. 2089, legislation identical to H.R. 8193 which was introduced in the House of Representatives on May 29, 1973 by Representative Leonor K. Sullivan, Chairman of the House Committee on Merchant Marine and Fisheries. Subsequently Senators Jackson and Mathias joined as co-sponsors of S. 2089. In the House of Representatives 226 Members introduced or co-sponsored 46 bills identical to H.R. 8193.

Over the six month period between October, 1973, and March, 1974, the House Committee on Merchant Marine and Fisheries' Subcommittee on Merchant Marine held 15 days of public hearings on H.R. 8193 and companion measures. On March 27, 1974, the Merchant Marine Subcommittee favorably reported H.R. 8193 to the full Committee on Merchant Marine and Fisheries. The bill was favorably reported by the Committee on April 9, 1974. On May 8, 1974 the bill was passed by the House of Representatives by a roll call vote of 266–136.

The Merchant Marine Subcommittee of this Committee held public hearings on S. 2089 and H.R. 8193 on May 20, 21, 22, and 30, 1974. Testimony was received from 15 witnesses which included officials from the Departments of State and Commerce, the Federal Energy Administration, a number of petroleum and shipping company and trade association representatives, as well as economics scholars and labor union officials.

A number of written statements concerning this legislation were also submitted to the Subcommittee.

On June 26, and 27, 1974 the Committee considered H.R. 8193 in executive session. During those deliberations the Committee adopted a number of amendments modifying the House-passed measure. These

are all explained in detail in the Section by Section Analysis portion of this report.

Several amendments proposing exemption from the requirements of the bill were rejected by the Committee. These included: exemption of the fuel and oil used for heating purposes—rejected by a roll call vote of 10 to 5; exemption of aviation fuel—rejected by a roll call vote of 12 to 3; exemption of oil imported for use as petrochemical feedstock—rejected by a roll call vote of 10 to 5: exemption of oil imported for electric power generation because of environmental requirements—rejected by a roll call vote of 11 to 3; and exemption of oil imports into the insular territories and possessions of the United States—rejected by a voice vote.

The effect of these amendments would have been to seriously reduce the effectiveness of the legislation in favor of special interest exemptions. As explained in detail in other sections of this report, the Committee concluded that there should not be any cost increases resulting from the requirements of the bill and the Secretary of Commerce has ample authority to administratively grant appropriate relief to importers or persons subject to the Act on an emergency basis.

The Committee also defeated, on a roll call vote of 12 to 3, an amendment to include in the bill a provision similar to the first proviso of section 901(b)(1) of the Merchant Marine Act, 1936, as amended. (46 U.S.C. 1241(b)(1)), which would have granted temporary waiver authority of the proposed cargo preference requirements to the President, Congress, or the Secretary of Defense. The Committee felt that the Congress can respond adequately should circumstances warrant a temporary suspension of the bill's requirements.

An amendment calling for a Federal Trade Commission investigation of the structure, conduct, and performance of the petroleum tanker industry was also proposed. The current anticompetitive aspects of the tanker industry because of its control by major oil companies make a compelling case for such a study of the FTC, and the Committee expressed support for such an undertaking. However, the Committee felt that this legislation was not the appropriate vehicle for such an amendment.

On June 27, 1974, the Committee voted 14–2, with 2 abstentions, in favor of the motion of the Chairman to order H.R. 8193 reported as amended.

4. Committee amendments meet opponents' objections

The Committee feels that the bill as reported is much stronger than the 1972 bill and the House-passed bill. For example, what little remained of the argument that the bill would result in increased costs to the consumer has been mooted because of an amendment the Committee added waiving a portion ($0.15 per barrel) of the oil import license fee for crude oil imports transported on U.S.-flag vessels, and applying the savings from the waiver so as to reduce ultimate consumer costs. Even before that amendment, some witnesses testified that the bill would actually produce a cost savings for consumers. Other Committee improvements in this bill include (1) a requirement that a portion of vessel profits be reinvested in new vessels, (2) vessel age limitations that will result in utilizing new efficient tonnage rather than perpetuating less efficient overage tonnage, (3) a requirement

that the vessels incorporate the best available pollution prevention technology, including segregated ballast capacity and double bottoms, so as to protect our marine environment.

Benefits of the Bill

NATIONAL SECURITY

During the past few years there have been alarming and rapid changes in the status of this nation's energy supply and energy transportation capability. Taken together, these changes have grave implications for the national security of the United States. The Committee is convinced that Congress must act in a decisive and positive manner to avoid a serious and chronic condition of defense unpreparedness. The Energy Transportation Security Act of 1974 represents a bold initiative by Congress to control and direct a national security factor without further exacerbating those factors that are essentially beyond our control. The Act would establish a program to insure that the United States has the ocean-borne transportation capability to supply our petroleum needs in a time of international crisis.

The Committee recognizes that in the short run we can do little about our increasing dependency on foreign oil for our domestic and defense needs. We support the goals of Project Independence, but despite these efforts, it appears that the Department of Interior was not far wrong when it estimated our oil imports would increase by 300% in the next 10 years.

In the area of energy transportation, however, the Committee feels we can take a significant step to guarantee that in a period of international crisis, our nation has a sufficient number of U.S.-flag tankers to supply our armed forces and meet the needs of our basic domestic industries. Currently, the number of such vessels is totally insufficient, and we would be forced to rely on a group of foreign-flag tankers alleged to be under effective U.S. control (the EUSC fleet). After careful study, the Committee has determined that our control over those foreign-flag vessels is illusory rather than actual, and our present reliance on a EUSC fleet without a sufficient nucleus of U.S.-flag vessels constitutes a direct threat to the national security of the United States.

1. The importance of a U.S.-flag tanker fleet to our national defense

Under the Merchant Marine Act, 1936, as amended, Congress charged the privately-owned civilian merchant marine with the defense mission of serving as a "naval and military auxiliary in time of war or national emergency". However, the Committee recognizes that for some time to come, the ever increasing flow of foreign oil into this nation will depend in a large part on the availability of foreign-flag vessels manned by officers and crews with no allegiances to the United States. The Energy Transportation Security Act was drafted for the narrow purpose of insuring that at least a nucleus of U.S.-flag tankers carrying a fair share of our oil imports will be under our unequivocal control in a national emergency. To that end, the bill provides that 20 percent of petroleum products imported into this country be carried on U.S.-flag vessels, rising to 25 percent after 1975 and 30 percent after 1977.

From the standpoint of national security the advantages of having a sound nucleus of tankers under U.S. registry include:

(a) Flexibility—A U.S.-flag tanker fleet can give us the flexibility to transport oil from alternative sources if a military or political crisis forecloses our access to more traditional sources.

(b) Crew Reliability—A U.S.-flag tanker fleet will be manned by U.S. seamen with a long tradition of devotion to the United States and heroism in every hostile action since the Revolutionary War.

(c) Defense Design Features—A modern U.S.-flag tanker fleet can more easily incorporate design features particularly suited to serving the needs of our defense apparatus. When tankers are constructed in U.S. shipyards with a Construction Differential Subsidy (CDS) under the Merchant Marine Act, the Department of Defense may require that such design features be incorporated in the construction plan.

(d) Shipyard Capacity—To the extent American shipyards must expand to build a sufficient number of U.S.-flag tankers to meet the requirements of H.R. 8193.

(e) Merchant Marine Development—An expanded U.S.-flag fleet will require a larger and better-trained United States Merchant Marine capable of serving our maritime trade on the high seas.

2. Current status of the U.S.-flag fleet

Progress has been made under the ship construction and operating subsidy provisions of the Merchant Marine Act of 1970, but it has become very apparent in recent years that more must be done to provide a sufficient number of U.S.-flag tankers to transport foreign oil to our shores in the event of a world crisis. The Department of Defense has estimated that we would need a tanker capacity of 12.6 million deadweight tons to support military operations in the event of a major emergency. The requirements for defense support industries and essential domestic needs would raise this figure substantially.

In his testimony on H.R. 8193, before the House Committee on Merchant Marine and Fisheries, Assistant Secretary of Commerce for Maritime Affairs, Robert J. Blackwell stated "To summarize, there is a strong demand for additional tankers to serve U.S. markets that will continue to grow well into the 1980's. If a substantial portion of these tankers are under the U.S.-flag, the United States can expect to derive impressive economic and national security advantages."

However, as of December 31, 1973, our U.S.-flag tanker fleet consisted of 239 vessels totaling only 7.8 million deadweight tons, less than 4% of the world's total tonnage. Most of the ships are small, averaging only 32,600 deadweight tons per ship.

Even these figures understate the gravity of the situation, since most of our fleet is obsolete. At the end of 1972, there were 246 tankers of U.S. registry, of which 96 were over 25 years old, 72 more were over 15 years old, and only 39 were 10 years old or newer. As of December 31, 1972, the average age of our fleet was 20 years. Of the top 33 world tanker fleets, the United States has an older fleet than all but one nation—Argentina.

The obsolecence of our fleet would be a major factor even if we considered only its peacetime capabilities. But the state of many of the tankers is an item of critical concern when we realize they could well be called upon to serve most of our energy transportation needs.

The Merchant Marine Act, 1936, as amended, requires vessels built with Construction Differential Subsidy (CDS) to incorporate Department of Defense recommended features into their designs. Of course, this provision is of little value when the major oil companies ignore the CDS program and place most of their orders for new vessels in foreign shipyards. By the middle of 1973, only 9 U.S.-flag VLCC's were scheduled to be built in American shipyards under the 1970 Act while foreign-flag shipyards had 394 pending orders, many of them from the major oil companies that import oil to our shores.

Altogether, there were 50 tankers of 4.4 million deadweight tons on order or under construction in U.S. shipyards as of November 1, 1973, of which 26 were using CDS. But the average deadweight tonnage for these vessels is only 87,400 dwt. compared to an average of 136,500 dwt. for 1,286 tankers being built for foreign registry in world shipyards. Construction of more VLCC's is vital to our national security since these are the vessels that can transport the largest quantities of oil over the longest distances at the cheapest prices. Likewise it is necessary for the U.S. to expand our production of smaller tankers that may be used by the military in the diverse tactical situations that arise in modern warfare.

At the Committee's hearings on H.R. 8193, Department of Commerce officials testified that the immediate prospects for increased U.S.-flag tanker construction were excellent since there were CDS applications pending with the Maritime Administration for 107 tank ships totaling 31.6 million deadweight tons and costing in excess of $10 billion. The Committee does not doubt that such applications are pending, but we seriously question their significance to our future defense needs. As valuable as the CDS program is, anyone familiar with the administration of the program and the nature of CDS applications knows that only a small percentage of these vessels will ever be built.

In the first place there are funds available to finance only a fraction of such vessels. The annual CDS expenditures for all types of vessels, including tankers, has been less than $200 million since 1971.

Moreover, many of the applications themselves are speculative. Very few applicants have settled their charter arrangements or financing requirements at the time they submit their applications. Furthermore, few will be successful in signing charter or financing agreements as long as the major oil companies continue to divert their petroleum import cargoes to foreign-flag vessels. No matter how many CDS applications are on file, the fact remains that few vessels will be built if no cargoes are available. This legislation would solve that problem by guaranteeing that a significant percentage of oil imported into this country be carried on U.S.-flag ships.

3. The EUSC fleet

At present, U.S.-flag vessels carry only about 5 percent of our oil imports. To make matters worse, the U.S.-flag vessels are mostly engaged in transporting oil over the shorter, less profitable trade routes, receiving only the crumbs of a lucrative trade monopolized by the major oil companies and their foreign-flag subsidiaries.

Approximately 95% of our oil imports are now carried on foreign-flag tankers, some of which are counted as part of the EUSC fleet.

In the event that a great many of these foreign-flag tankers are not available in a world crisis, we will be forced to rely on vessels supposedly under our effective control to meet our oil import requirements. The Committee finds that the reliability and availability of the EUSC fleet under such circumstances is highly questionable. For that reason, we have concluded that a clear need exists for more U.S.-flag tankers that are unequivocally subject to our control.

Today, the EUSC tanker fleet consists of 301 vessels with a total capacity of nearly 20 million deadweight tons. The vessels fly certain "flags of convenience", namely those of Liberia, Panama, and Honduras. The tankers are owned by foreign subsidiaries and affiliates of the large multi-national oil companies. The basis of our supposed control over the EUSC ships is section 902, Merchant Marine Act, 1936, as amended (46 U.S.C. 1242) under which the government is authorized to requisition or purchase for government service any vessel owned by a citizen of the United States in the event a national emergency is declared. Under section 1201 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1283) the Secretary of Commerce is authorized to issue U.S. interim war risk insurance to EUSC fleet owners.

The policy of effective control was developed in the early days of World War II before America entered that conflict. Acting at the request of the United States government, American companies made available their Panamanian, Honduran and Venezuelan flag ships for the purpose of resupplying Great Britain and France with material vital to their war effort. Such trade was barred to American-flag ships by the Neutrality Act of 1939. The government actually encouraged U.S. owners to transfer their vessels to Panamanian registry for the purpose of resupplying the allies while still maintaining technical neutrality. After the war, the government was anxious to dispose of the huge wartime fleet and encouraged many operators to buy these ships.
wartime fleet and encouraged many operators to buy these ships.

Thus, the concept of effective U.S. control was born under circumstances unique to a particular period in our history. At that time, the U.S.-flag fleet was strong and versatile. We could afford a policy of encouraging foreign registry for a limited number of American-owned vessels, particularly when the success of our own preparations for war depended on a continued state of neutrality and resupply of the existing allied resistance.

After the United States entered World War II, the national security justification for the EUSC concept ceased to exist. There was no longer the need to maintain the facade of neutrality by shipping supplies to our allies on foreign bottoms. Yet, the concept did not die, and, in fact, the EUSC fleet grew and prospered while our own fleet withered away as more and more vessels were transferred to foreign registries.

In 1941 there were 88 EUSC tankers totaling 952,000 deadweight tons. By 1948 there were 141 vessels with a total deadweight tonnage of 1,950,000 dwt. The EUSC fleet continued to grow until in 1972 there were 282 EUSC tankers totaling over 18 million deadweight tons.

Originally the EUSC vessels represented a surplus capacity over and above a strong U.S.-flag fleet fully capable of meeting our essential needs by itself. But now, our domestic fleet cannot begin to meet our needs, particularly in the area of oil transportation. The EUSC fleet began as a creature of necessity, but as world conditions have changed, so have the demands of our national security. Today, events have forced us to reconsider our almost total reliance on foreign-flag vessels for transporting our oil imports.

a. No unequivocal control.—Since our control over the EUSC fleet is based upon domestic law, serious questions may legitimately be raised concerning the extraterritorial impact of the EUSC agreements. The Committee has noted with interest that the Administration's opposition to requiring greater reliance on U.S.-flag tankers has not been matched by confidence in our potential control over foreign-flag vessels now transporting our oil imports. In response to questions submitted by Congressman Frank M. Clark, Chairman of the Subcommittee on Merchant Marine of the House Committee on Merchant Marine and Fisheries; Robert J. Blackwell, Assistant Secretary of Commerce for Maritime Affairs; sounded these words of caution against relying on the EUSC fleet: "As I noted in my testimony, there is no basis in international law for 'effective control'. For this reason the availability of EUSC vessels remains essentially a promise which, like any promise, may or may not be fulfilled when it becomes due."

Witnesses from the American Petroleum Institute and the Federation of American Controlled Shipping maintain that our government does have sufficient authority to gain control over the EUSC vessels in an emergency. But the Committee has found the legal authority for such contention meager, at best, especially in light of the established principle of international law that allows only the country of registry to seize a vessel on the high seas. Under certain circumstances, it appears that any nation may seize a foreign-flag vessel when it is in that nation's territorial waters. However, tankers spend most of their useful lives on the high seas. Moreover, most of the EUSC vessels never enter our territorial waters at all, since they serve European or Far Eastern countries exclusively. The Committee feels that in a crisis, circumstances could well arise where we would be forced to wait for EUSC tankers to enter our waters if they chose while our critical petroleum needs went unmet.

Some have claimed that the nations offering "flags of convenience" would never exercise their right under international law to control vessels of their registry. However, the Government of Liberia issued a proclamation on November 2, 1973 which put this theory to rest. President William Tolbert issued an executive order prohibiting any vessels flying a Liberian flag from participating in the carriage of arms to the Middle East, regardless of the ownership. President Tolbert's decree, occurring at a time when our country was involved in the resupply of Israel, was perfectly valid under the principle of international law which states that the nation of registry controls the vessel and not the nation of the vessel's owner.

Aside from the purely legal questions of international law, there are other practical factors that cast serious doubt on the availability of the EUSC vessels in a crisis. Not the least of these is the fact that almost all the officers and crews of these vessels are foreign nationals whose loyalty to the United States may be negligible. The record contains

S. Rept. 1031 O - 74 - 2

incidents where foreign crews have refused to sail or sailed under violent protest with cargo bound for our military forces in South Korea or South Vietnam.

Testifying before the Special Subcommittee on Sea Power of the House Committee on Armed Services towards the end of the Vietnam conflict (October 8, 1968), Admiral Lee Ramage stated: "These ships (EUSC vessels) cannot really be counted on. . . . In every case we have to poll the crew to see if they are all going into the war zone, and if one doesn't then we cannot use them."

A similar view was expressed in 1969 by Captain Richard J. Godek in Defense Department testimony before the House Appropriations Committee: "So long as there are adequate numbers of American ships, there should be no logistical problems. If the magnitude of the military effort exceeds the capability of American ships and combat supplies have to be moved by ships other than of American registry, the probability of personnel refusals to sail ships to support an unpopular military operation appears to be substantial."

In answer to these criticisms, the Federation of American Controlled Shipping representing the EUSC owners has claimed that 85 percent of the officers and 67 percent of the unlicensed crew on these vessels are from friendly West European nations. While we have no doubt that our alliance with Western Europe remains strong and viable, it should be no secret to the EUSC owners that oil shortages are more critical in those nations than they are in this country. Given a volatile crisis where a world-wide shortage of oil is a prime element, who is to say a West European crew would willingly deliver a cargo of crude oil to the United States military when the security of their own nation was directly threatened? We cling to a slender reed when we assume the patriotism of foreign seamen manning EUSC vessels is somehow less fervent than that of our own seamen.

b. The leverage of petroleum suppliers.—Recent events have indicated that the countries controlling the world's oil may be willing in certain circumstances to use their strategic advantage to make our EUSC fleet worthless. Countries that offer "flags of convenience" need oil, too, so we can expect that in a period of tension, such nations may be forced to obey orders to restrict the operations of vessels under their registry, subject to the approval of the oil-producing nations.

Even more threatening than that, however, is the vulnerable position of the oil companies themselves. Without questioning the patriotism of the United States citizens who operate these companies from home offices in this country, it is to be expected that their corporate interests may not always coincide with the interests of our national security. Most recently, the oil companies importing oil to our country from Arab nations were ordered to embargo shipments to the United States and stop supplying our military forces in Europe with needed petroleum products. Since the Arab countries know these same oil companies own most of the EUSC tankers supplying our needs, the Arabs themselves could well assume effective control over these vessels by threatening a cut-off of product to any or all of these oil majors. In this connection, we take note that the Arab countries have formed their own ocean transportation company and are now building tankers with the announced goal of requiring that at least 40 percent of Arab oil exports be carried on ships of the Arab company.

Under H.R. 8193, our nation would, at least, have a nucleus of U.S.-flag tankers available to seek out alternate sources of supply in a national emergency.

c. Availability of the EUSC vessels.—Many of the EUSC vessels supposedly at our immediate disposal are not even employed in U.S. foreign trade. The Committee has noted that in 1971 only 20 percent of our waterborne petroleum imports were carried on these tankers while the rest were employed in shipping vitally needed petroleum to Western Europe and Japan. According to Assistant Secretary of Commerce Blackwell, "It appears unlikely that in an emergency the U.S. could exercise its option to withdraw very many of these tankers from this service without creating serious economic and political consequences. Further, any withdrawal of tankers from Europe could have an adverse impact on the petroleum supplies which would support military and civilian needs of the European countries of NATO alliance."

Assistant Secretary Blackwell's fears are now more than theoretical. When the Suez Canal was closed in June of 1967, we found it necessary to call upon the EUSC tankers, but only a few were available. According to Admiral Ramage, "We went to the owners of the U.S.-controlled tankers and asked them to offer as many tankers as they could. We got a total of around 130, and when we screened these ships, ascertained their location, sizes, conditions of the offered ships, we found there were only about 11 which we could immediately use."

4. Summary as to national security

After careful consideration of the testimony presented to the Committee and events of the recent past that have been called to our attention, we have concluded that tankers of U.S. registry are the most reliable vessels to meet our energy transportation needs.

Furthermore, we have concluded that H.R. 8193 will provide a sufficient number of U.S.-flag ships engaged in the foreign trade of the United States to form a nucleus of oil transportation capability in an emergency.

Finally, we have rejected the claims of those who feel we can simply rely on effective U.S.-controlled vessels when our national security is threatened. These ships, with their foreign officers and crews, are dispersed all over the globe and only a few are engaged in transporting oil to our shores. To make matters worse, we probably lack authority under international law to seize these ships on the high seas or in another country's territorial waters.

COST IMPACT

During the Committee hearings on this legislation, no other issue prompted as much conflicting evidence as the probable cost impact of H.R. 8193 on the American consumer. After carefully analyzing the testimony and exhibits submitted by the various witnesses, the Committee has concluded that there should not be any increase in the prices of oil attributed to the enactment of the Energy Transportation Security Act.

That conclusion is strengthened by an amendment the Committee added which waives $0.15 per barrel of the oil import fee when crude

oil is carried on U.S.-flag vessels, provided the cost savings are passed on to the ultimate consumer. This amendment will reduce the overall costs of U.S.-flag shipping below that for foreign-flag vessels on many trade routes, even when offsetting factors not directly related to shipping costs are disregarded.

During its deliberations on H.R. 8193, the Committee was mindful of the tremendous increases that have occurred in oil prices over recent months. To be sure, a portion of the increase may be attributed to higher prices charged by oil producing countries for their product and a small portion is due to slightly increased demand. However, evidence suggests that a large portion of the increase has led to huge profits for the major oil companies which, with only one exception, oppose this bill as being too costly to the consumer. During the first three quarters of 1973, the seven largest oil companies operating in the United States increased their profits by 46 percent although they sold only 6 percent more of their products than the year before. During the fourth quarter, Standard Oil of California increased its profits by 194.5 percent, Phillips Petroleum by 127.5 percent, Texaco by 70 percent, and Exxon, the world's largest company, by 59 percent.

Given these levels of profitability in a period when the rest of the United States is locked in an energy crisis, we are understandably skeptical about the professed concern of the major oil companies for the pocketbooks of the American consumer.

We agree with those witnesses who cited figures to show that much of the oil price increase had not been tied to increasing costs of production or levels of demand. The Committee has been forced to conclude that the major oil companies are charging the highest price traffic will bear under a system of government regulation that has not dealt adequately with their nearly unlimited discretion in this area.

1. Cost estimates

The Committee received a wide variety of estimates during its hearings as to the cost of this legislation to the consumer of oil products. The oil companies opposing the bill estimated a cost increase of $0.79 per barrel in 1975 while an economist testifying in support of the legislation estimated a cost savings of $0.68 a barrel in 1975.

The Committee noted that the Maritime Administration, while testifying in opposition to the legislation, estimated the cost increase under this bill to be $0.0035 per gallon for 1974, a figure so small as to be insignificant when compared to the high prices Americans are now paying at the fuel pump. For 1975 the estimate was $0.004 per gallon; for 1980 $0.006 per gallon; and for 1985, $0.0084 cents per gallon. However, the Committee questions whether the accelerating Marad estimate for years to come adequately accounts for the proportionately higher inflation rate in foreign countries. Moreover, the Marad estimates do not take into account the expected cost savings from superports. Government estimates project at least a 20% savings when superports are in operation.

As for the higher cost estimates submitted by the major oil companies, we have concluded they are based upon self-serving assumptions that are unlikely to occur, and that no cost increase should result.

First, the oil companies recently revised their cost estimate upward based on the impact of inflation, but it appears the revision should have been downward. The U.S. inflation rate that will affect the construction and operation of U.S.-flag tankers is high due to general economic factors, but, as noted above, not nearly as high as that in other countries of the world. We fully expect the gap between construction and operating costs of foreign-flag and U.S.-flag vessels will decrease rather than increase over the years.

Second, the oil companies relied heavily on the impact of foreign government retaliation in response to passage of H.R. 8193. The possibility of such retaliation is speculative at best, and as is explained in other sections of this report, other nations are already reserving cargoes for ships of their national registry without reference to the success or failure of this legislation.

Third, the oil companies based their cost estimate on the supposition that a captive, non-competitive market would be created for U.S.-flag vessels and such vessels could charge a captive market premium. This seems a strange argument for those who now own a near monopoly on transportation of our oil imports and whose pricing practices for that transportation are questionable, at best. In any case the use of the term "non-competitive" is erroneous. There will be free entry and free competition among all U.S.-flag carriers, subject to reasonable rate limitations fixed by the Secretary of Commerce. Moreover, H.R. 8193 would reserve only 20 percent of our oil imports for vessels of U.S. registry, with the percentage rising to 25 percent after 1975 and 30 percent after 1977. Foreign-flag vessels owned by the oil companies would be available to carry the rest. The oil companies have now captured a much greater percentage of the market for their own foreign-flag tankers, yet they do not talk of a captive market premium under current conditions.

Finally, opponents of the bill have apparently failed to recognize that U.S. tankers in the VLCC class are nearly equal in operating costs to foreign-flag vessels of that size, particularly when such vessels are given their fair share of long-term charters and more distant trade routes. Since many of the ships expected to be built in response to the enactment of this legislation will be VLCC's, we can expect the total cost differential to be less.

An economist testifying in support of the bill quantified the benefits of increased employment, balance-of-payment credits, elimination of transfer pricing, and more effective taxation of oil company profits under the proposed program, which more than offset any cost differential now existing. We have dealt with each of these factors more thoroughly elsewhere in this report, but it is worth noting here that this analysis seems far less speculative and more persuasive than many of the arguments used by the oil majors to reach their conclusions. The conclusion reached under this broader analysis was that the American consumer would experience a real savings of $0.68 a barrel on imported oil if H.R. 8193 were enacted into law.

2. Transfer pricing and a cost monitoring system

Throughout its deliberations on this legislation, the Committee was genuinely dismayed at the lack of candid information on the true prices charged for trans-oceanic petroleum shipping. While relying

heavily on estimated increases in consumer prices if H.R. 8193 becomes law, the major oil companies and other opponents of the bill never revealed facts and figures about their current pricing practices, even though this issue was repeatedly raised by numerous witnesses at the hearings on this legislation.

Proponents of the bill went virtually unanswered when they charged that prices that American consumers now pay for oil transportation bear little, if any, relation to the cost of that transportation service. We know that the major oil companies have wholly-owned foreign subsidiaries which, in turn, own the foreign-flag ships used to import the parent companies' oil to the United States. We also know that at this time the cost of shipping oil on U.S.-flag vessels may be slightly higher in most instances. However, what we do not know is whether the price the American consumer is paying for oil transportation on vessels owned by the oil companies actually reflects the lesser costs of constructing and operating the tankers of foreign registry.

Cost figures are totally irrelevant to any discussion of the consumer impact of this bill unless the oil companies can give us proof that cost savings will mean lower prices at fuel pumps in the United States. No such evidence has been forthcoming, but we do have substantial evidence to the contrary.

The Committee realizes, first of all, that when a major oil company charters a vessel from one of its subsidiaries to import a load of oil, the purchase price is paid when an accountant makes a bookkeeping entry transferring the price from one account to another. That price is then passed on to the American consumer. If the amount of such a transfer reflected only the costs of wages, capital recovery, bunkers and port charges, insurance, maintenance, and other miscellaneous costs, plus a reasonable profit, then the oil company analysis of increased consumer costs might be valid. However, we suspect the oil companies charge themselves much more than that amount and pass much more than that amount on to the American consumer as a component of higher oil prices.

To understand why, one must realize that profits made by the foreign subsidiaries are taxed at a lower rate than those of the domestic parent company or they are taxed not at all. Moreover royalties paid to foreign governments for the purchase of oil are often disguised as tax payments that may be credited against repatriated income from foreign subsidiaries. Thus, the Internal Revenue Code actually encourages the oil majors to transfer windfall profits to foreign subsidiaries by a process of transfer pricing and the American consumer must pay the bill.

The Internal Revenue Service does require the oil companies to show the price they charge themselves was determined "at arm's length", but they have been able to meet this requirement by charging the average freight rate assessment or AFRA rate. AFRA rates are compiled by averaging all freight rates paid in a given month, including spot and short term charters over shorter distances. Since the oil companies usually charter their vessels over a longer term and for the long routes, the AFRA rates can be far in excess of the actual shipping costs. Moreover, the companies purchase many of the components of the AFRA rate, such as bunkerage, from themselves at cost. This contributes to the overstatement of actual shipping costs. As has been

conceded by oil company witnesses, under the system of pricing using AFRA rates, it makes no difference what registry a vessel is (including United States) since the vessels are priced on an index basis rather than on the basis of their own cost.

This legislation will discourage excessive use of transfer pricing by establishing a cost monitoring system for trans-oceanic freight rates. U.S.-flag ships need only be used if their rates are fair and reasonable. To determine the fairness of trans-oceanic rates, the Secretary of Commerce must make periodic investigations of the actual cost of such shipping. For the first time, the American consumer will have the opportunity to compare the price they are paying for oil transportation with accurate and current cost figures, and judge for themselves whether the huge oil company profits are justified.

3. Tax savings

Once accurate cost figures for trans-oceanic shipping are systematically made available by the Secretary of Commerce, we can expect more accurate determinations of the proper price the oil companies may charge themselves for shipping. We believe that price may be substantially less in most instances than the AFRA rate now used. Consequently, the amount of profit the oil companies are now able to repatriate tax free will be less.

This is important to the American consumer since nearly all of them are taxpayers who must pay the portion of the overall Federal tax bill not paid by the oil majors. Some witnesses at our hearings attempted to quantify the amount of savings to the consumer due to the increased ability of the Federal government to tax shipping profits, but we feel the resulting figures are speculative since much depends on the reaction of the Internal Revenue Service to the new information. Nevertheless, the Committee feels substantial savings are possible.

In a letter to the Chairman of the Subcommittee on Merchant Marine, the Director of the IRS expressed reservations about use of the AFRA rate by the oil majors, and noted that it is hampered by a lack of information about transfer pricing practices. Under the fair and reasonable rate provisions of H.R. 8193, full and accurate cost data will be available under certain circumstances from the Secretary of Commerce so that fresh determinations may be made about the legitimacy of using the AFRA rate for the purposes of repatriating excess profits from foreign subsidiaries tax free.

4. Fee waiver

Finally, the Committee adopted an amendment allowing a waiver of $0.15 per barrel of the oil import fee when crude oil is carried on U.S.-flag vessels, provided the cost savings are passed on to the ultimate consumer. The amendment eliminates much of the cost advantage of importing oil on tankers of foreign registry by providing a cost cushion for U.S.-flag tankers. In some instances, shipping by U.S.-flag will produce a savings (without reference to transfer pricing arguments).

In his energy message of April 18, 1973, President Nixon terminated the oil import program as of May 1, 1973. Instead, crude oil importers must pay as of that date a set license fee for each barrel of imported crude. The fee will rise in a series of steps from $0.10½ per barrel as of May 1, 1973 to $0.21 per barrel starting May 1, 1975.

The amendment added by the committee provides for a rebate of $0.15 per barrel of the oil import fee. Thus, a U.S. vessel carrying crude oil under H.R. 8193 would pay only $0.06 of this fee, compared to $0.21 for a foreign-flag vessel as of May, 1975.

Following is an example of the application of the fee waiver on crude imports from Venezuela and North Africa.

	Crude imports from Venezuela		Crude imports from North Africa	
	U.S. flag	Foreign flag	U.S. flag	Foreign flag
Oil cost	$10.10	$10.10	$10.05	$10.05
Transportation	.59	.49	.77	.65
Oil import fee (May, 1975)	.06	.21	.06	.21
Total	10.75	10.80		
Savings passed on to the consumer	.05	0	.03	0

Sources: U.S. Department of Commerce Data, 1974, Oil and Gas Journal, Apr. 29, 1974.

5. Summary as to cost impact

After studying the testimony and estimates submitted with regard to the cost impact of H.R. 8193 on the American consumer, the Committee concluded that there should be no cost increases. In most cases the fee waiver provision now contained in the bill will offset any cost differences for oil imports transported on U.S.-flag and foreign-flag tankers, providing a cost savings to the consumer in many instances.

INCREASED EMPLOYMENT

Even the strongest opponents of H.R. 8193 agree that it will provide thousands of jobs for American workers aboard ship, in shipyards, and in numerous support industries. Many countries of the world have a shortage of maritime labor. Witnesses have reported that Greece, a nation with strong seafaring traditions, has trouble finding young men who are willing to sign on as crew members. Some of the Scandinavian countries have had to import Hong Kong seamen for vessels registered under their flags because of sagging crew enlistments. However, in the United States we do have a substantial number of well-trained but unemployed seamen, stranded by the exodus of vessels from the U.S. flag. The Committee feels one of the most positive benefits of this bill will be the substantial increase in maritime and maritime related employment for U.S. citizens.

As of December 31, 1972, foreign affiliates of U.S. companies owned 419 foreign-flag tankers. The Maritime Administration has estimated that if each of those ships were operated under U.S.-registry and employed U.S. crews, there would be 17,179 new jobs for American seamen. The hypothetical U.S. crews would earn $43.4 million in wages and fringe benefits each month. Moreover, if each of the 101 foreign-flag ships now on order or under construction for U.S. companies or their foreign affiliates were crewed by Americans, there would be 4,141 new jobs and $10.4 million in wages each month for U.S. seamen. This bill would not recapture all those lost jobs and wages, but it would brighten the dismal maritime employment record that we now have.

The Maritime Administration estimates that the incremental employment generated by the construction of new ships necessary to carry 30% of U.S. oil imports by 1985, considering the constraints imposed by present shipyard capacity, would be about 225,000 man-years providing about $4 billion to the U.S. economy in the form of wages. This is in addition to the current Marad program providing 340,800 man-years of employment with $36.1 billion in wages.

Put in another way, witnesses estimated that each of the 103 tankers needed to fulfill the requirements of the bill by 1985 would account for 246 new jobs per year in shipbuilding, ship repairs, and support industries. In addition, each of the new vessels will provide 55 new jobs per year in operations. Thus, these witnesses concluded that the legislation could provide new jobs a year by 1985, a tremendous boost to this country's sagging maritime employment posture.

The Committee feels strongly that the men and women of America's labor force should be allowed a fair participation in the bonanza expected to accrue to the oil companies as a result of our increased reliance on imported oil. We are convinced much of the vessel owners' flight to foreign flags may be attributed to an unjustified reluctance to deal with organized labor in the maritime trade. As much as any sectors of American labor, the maritime unions have placed a premium on continuity of operations. There have been some brief work stoppages at contract time, but these are insignificant compared with the disintegrating labor relations in many of the foreign-flag fleets, most notably the Japanese fleet. While it is true American seamen are paid more than the near subsistence wages paid the crews on many of the foreign-flag vessels, crew wages were never directly placed at issue in the hearings on this legislation. This is probably because crew costs have become a negligible factor on modern, highly-automated tankers. The *TT Brooklyn*, a new 225,000 ton tanker with a speed of 18 to 22 knots, carries a crew of 27 men. On the other hand the old 14,000-ton, T-2 tankers of World War II fame carried a crew of from 37 to 45.

Of course, with all the new technology in the shipping industry, greater skills and technical expertise are required to operate the modern tanker. Fortunately, the skill of our American seamen is unsurpassed by any others in the world and we have several merchant marine academies, State, Federal, and privately-operated to insure that trained personnel are always available. The Committee expects that if H.R. 8193 becomes law most of these skilled graduates can find jobs. As it stands now, we are wasting much of this talent, since many are forced to seek employment outside their chosen profession, or are unemployed.

Finally, the Committee has considered and rejected the Administration's contention that increased employment in the maritime industry should be accomplished solely by use of the subsidy program enacted in 1970 as amendments to the Merchant Marine Act, 1936. The accomplishments of the CDS and ODS programs have been significant. However, more needs to be done to insure that our skilled seamen participate in the oil transportation industry.

The Administration suggests we increase employment in the maritime industry by using our tax dollars for subsidies, to the exclusion

of any other program. We feel, however, that this end can better be achieved by legislatively requiring that operators use American labor, rather than relying exclusively on expenditures from the Federal Treasury. This bill would accomplish that by requiring that an increasing percentage of oil imports be carried on U.S. flag tankers, built by American shipyard workers, and crewed by American seamen.

RELATIONSHIP TO THE MERCHANT MARINE ACT, 1970

The Merchant Marine Act, 1970, which was overwhelmingly adopted by the Congress, recognized the need for more emphasis on the creation of a bulk cargo fleet to carry raw materials and petroleum. The Act represented broad recognition of the vital importance to our national security and commerce of creating a U.S.-flag tanker fleet. However, the Act did not fully take into account the tremendous increase that would occur in our oil imports. Nor did it assure the availability of cargoes to United States-flag vessels, a prerequisite necessary to foster the construction of such a fleet.

Substantial progress has been made under the Merchant Marine Act, 1970. Over thirty new tankers have been contracted for under its provisions and it is anticipated that these vessels will play a significant role in carrying the cargoes provided by this bill. The purpose of H.R. 8193 is to supplement and reinforce the Merchant Marine Act, 1970, to assure that the Congressonal objectives expressed in that Act are attained, and to provide the United States with a tanker fleet capable of meeting the needs of its security and commerce.

Several of the opponents of H.R. 8193, and most notably the multi-national oil companies, have argued that enactment of H.R. 8193 would be inconsistent with the Merchant Marine Act, 1970. While "supporting" the objective of a larger United States-flag tanker fleet as necessary in the interests of our national security and commerce, these oil companies and their affiliates stress that the vehicle for attaining that objective should be the 1970 Act, rather than enactment of H.R. 8193. Indeed, a fundamental contradiction was noted in the implicit primary argument advanced by these witnesses that the foreign-flag fleet presently carrying oil imports is fully adequate and safe, but that it is in the best interest of the United States to foster development of a substantial U.S.-flag fleet for the carriage of crude oil by using the 1970 Act.

While paying substantial lip service to the 1970 Act, the record of the multi-national oil companies with respect to that Act, is in general, not very impressive. With some exceptions, they have refused to let the charters necessary to construct U.S.-flag vessels, and have persisted in building, registering and manning their vessels in foreign countries. They have been unswerving in the pursuit of foreign tax and cost advantages, even though subsidies have been available under the 1970 Act intended to create parity between the U.S. and foreign costs of constructing and operating vessels.

The most frequent response of the multi-national oil companies to the 1970 Act has been to demand a variety of changes that would, in effect, make the Act tantamount to a system of cash grants without

any restrictions whatsoever. These have included elimination of the foreign-flag holding prohibition for operating differential subsidy contractors and other suggestions that would overturn protections carefully built into the statute over the years to prevent abuses. However, even if their suggestions were adopted, it is questionable whether operation of U.S.-flag vessels would be as attractive to the multi-national oil companies as their foreign-flag operations currently are. In response to a question, one representative of such a company candidly referred to foreign-flag shipping as a "taxless world." It is a world in which these companies are subject to no sovereignty but their own. Certainly, there should be little Congressional interest in duplicating that very favorable set of circumstances for the multi-national oil companies in the United States.

Nothing in this bill or report is intended to affect the issues under judicial review in Maritime Subsidy Board Docket S. 244, American Maritime Association v. Peterson currently pending before the U.S. Court of Appeals.

The Committee intends that the Secretary undertake immediate rulemaking regarding the relationship between Titles V and VI of the Merchant Marine Act, 1936, as amended (46 USC 1151 et seq.) (46 USC 1171 et seq.) and the provisions of H.R. 8193. The Committee has explored various alternatives ranging from elimination or adjustment of assistance under those titles when preference cargo is carried to providing such assistance in full. While leaving the final determination to the Secretary in the rulemaking proceeding, the Committee is concerned that the availability of ODS and CDS for some vessels and not others might negatively impact the stimulation of tanker construction which is the major objective of this bill, because enterpreneurs not receiving ODS and CDS might fear a competitive disadvantage at some future date when demand for tankers might level off or begin to decline. Thus the Secretary, in his rulemaking proceeding, might consider methods for equalizing any unfair competitive advantage between those U.S. flag vessels with ODS or CDS and those without especially when there are future changes in transportation demands.

In general, H.R. 8193 will supplement and complement the 1970 Act and assure that the United States attains a secure energy transportation fleet capable of carrying a minimum percentage of its requirements as was intended in the 1970 Act.

ENVIRONMENT

One of the primary benefits resulting from the enactment of the Energy Transportation Security Act will be the increased protection afforded our marine environment.

There is a continuing and growing concern in the United States over the risks facing our waters, coastlines and sea-life from the carriage of oil in tankers. As the United States accelerates its reliance on imported oil, the potential for damage will likewise increase. Not only will the probability of accidents in our ports and harbors be higher as the total number of tankers increases, but intentional pollution of the

marine environment from normal tanker operations, which already accounts for more than half of the oil pollution problem will similarly increase.

It is significant, therefore, that the Committee make a special effort to incorporate effective and broad environmental protection measures in this bill. H.R. 8193, as amended, goes further than any maritime legislation yet enacted to insure that America's marine environment will be protected against both intentional and accidental oil pollution.

As noted above, approximately half of all oil pollution is caused by the intentional discharge of oil into the water as part of the normal tank cleaning operations of the vessel. After discharging its cargo at a refinery, a tanker must take in sufficient sea water into her cargo tanks to facilitate handling at the berth, to insure proper propeller immersion and to provide suitable sea-keeping characteristics. The amount of sea water or ballast that a tanker takes aboard at the unloading point depends on weather conditions, the distance and route of the necessary ballast voyage, the vessel's displacement and the light ship weight of the vessel.

The ballast water, which was put directly into the cargo tanks upon cargo discharge, becomes oily ballast when it comes into contact and mixes with the oil that adheres to the tank surfaces or rests in shallow puddles at the bottom of the tanks. The ballast water, including the oily ballast, must be disposed of before the tanker can reload.

The most common method of disposal—and the method of H.R. 8193 as amended would eliminate for U.S.-flag tankers—is to first wash down the cargo tanks and then pump the cleaning residue and oily ballast overboard. The result: intentional oil pollution.

This legislation requires that U.S.-flag tankers contracted for construction after December 31, 1974, or delivered after December 31, 1978, be constructed and operated using the best available pollution prevention technology including a segregated ballast double bottom system.

The segregated ballast double bottom system has long been advocated by the United States Coast Guard as the best means for eliminating intentional oil pollution. Under the authority given to it by the Ports and Waterways Safety Act (Public Law 92-340), the United States Coast Guard undertook a review of the various design alternatives for achieving pollution abatement. Its report, as presented by Rear Admiral W. F. Rea, III, Chief, U.S. Coast Guard Office of Merchant Marine Safety to the House Merchant Marine and Fisheries Committee Coast Guard and Navigation Subcommittee on June 6, 1973, concluded:

> . . . ships incorporating the segregated ballast double bottom feature were definitely the best alternative from a pollution abatement/cost point of view.

The United States Government submitted the double bottom concept to the International Conference on Marine Pollution of the Intergovernmental Maritime Consultative Organization (IMCO) in October, 1973. The importance of this international meeting, whose task was to develop a new "International Convention for the Prevention of Pollution from Ships," was underscored by Chairman Warren Magnuson. He said:

> The outcome of this Conference is critically important to the environmental condition of our vessel transportation system. The content of these standards will directly affect the amount of oil intentionally discharged from vessels into the world's oceans and the potential pollution, both accidental and intentional, in our coastal waters.

The new Convention which does not take effect until ratified by the participating countries, rejected the United States proposal to make mandatory the use of double bottoms to effect segregated ballast. The position advanced by the United States representatives to the Convention, led by Russell Train, Administrator, Environmental Protection Agency, was that double bottoms would make a significant contribution to the protection of the marine environment because:

1. The double bottom has an incremental cost increase which is half that of the next best approach;
2. A double bottom tanker with an inner bottom has no bottom structural members within it and has its pump suctions below that of the tank bottom, making it easier and more efficient to pump out the tanks;
3. The double bottom tanker is able to turn around more quickly because there is less sludge in the tanks;
4. The frequency of tank cleaning and the time spent in port are reduced by the efficiency and protection of double bottoms, thereby decreasing operating costs; and
5. As concluded by the Coast Guard, the use of double bottoms to achieve segregated ballast could reduce operational or intentional pollution by 95 percent, accidental pollution by 35 percent and total pollution by 67 percent.

In his article, *Supertankers*, appearing in *New Yorker Magazine*, Noel Mostert notes that "There is no enforceable international law against dumping oil at sea;" that such laws depend ". . . upon the zeal of individual members." In this regard, it is significant but not suprising that the United States, as evidenced by its advocacy of the double bottom concept and the rejection of the concept by other maritime nations, was unsurpassed in its zeal to protect the marine environment of the world.

And it is equally noteworthy that the Senate Commerce Committee amended H.R. 8193 to incorporate the proposals advanced by U.S. officials from the Environmental Protection Agency and the Coast Guard representing our government at last year's IMCO Convention.

The Committee has concluded that if our country is in fact going to preserve and protect its marine environment, then it will have to act unilaterally, since the rest of the world's maritime nations apparently are unwilling to adopt strict standards. It is also a fact that the standards and safeguards necessary to eliminate effectively intentional oil pollution are expensive and would, in and of themselves, place U.S.-flag vessels at a competitive disadvantage in the world shipping market.

The decision reached by the Committee as being the fairest and most practical was to compensate the U.S.-flag tankers for the expensive

safeguards through the reservation of a percentage of America's oil imports for U.S.-flag tankers. This method has been recognized by the U.S. Maritime Administration of the Department of Commerce although Marad testified in opposition to H.R. 8193. In a report entitled *Environmental Improvement of the Maritime Administration Construction Program*, prepared pursuant to the stipulated settlement of *Environmental Defense Fund, Inc., et al v. Peterson, et al.* (1972), The Maritime Administration stated:

> One final approach which should also be discussed as a potential solution to the implementation of desired pollution abatement features is the use of cargo preference. . . .

Marad further stated,

> The advantage of such an approach would be that the U.S. oil import needs could be satisfied and the U.S. tanker trade fleet would be environmentally upgraded.

It is important for us to enact vessel construction and operating standards to protect the environment, but to make such standards effective, we must also insure that ships meeting the standards carry America's cargo. Nothing is accomplished when the government requires U.S.-flag tankers to employ specific pollution abatement devices if almost all of our oil imports are transported on foreign-flag tankers over which we have virtually no control.

Only if a foreign-flag offender of an environmental law puts into a U.S. port can he be penalized under our national laws. If the tanker dumps oil and then proceeds into international waters, the only recourse is to make a complaint to the nation whose flag the violating vessel flies. But, as stated in *Supertankers*,

> . . . a large proportion of the world's tankers fly one or another of the so-called flags of convenience, and the masters of any of these ships who choose to dump sludge are probably not much concerned about punishment at their home ports— in Panama, Honduras, Lebanon, or Cyprus.

The enactment of H.R. 8193 as amended, and the resultant use of U.S.-flag tankers to carry a portion of our oil imports, would significantly reduce the threat to our marine environment from accidental pollution. The most catastrophic tanker accident occurred in early 1967, when the Torrey Canyon, a 118,285 dwt. Liberian-flag tanker owned by the Barracuda Tanker Corporation (an affiliate of Union Oil Company of California) and leased to a subsidiary of British Petroleum, and crewed by Italians, ran onto rocks off the Sicily Isles with devastating results for the adjacent coasts of the English Channel.

As noted in *Supertankers*, most accidental oil spills have resulted from ships that have collided or gone aground and that,

> A very large number of mistakes seem to be made by ships flying one or other of the flags of convenience.

The United States now receives over half of its oil imports in the flag of convenience vessels of Panama and Liberia. Figures compiled by the Organization for Economic Cooperation and Development

(OECD) demonstrate that when compared to OECD fleets, including the United States, losses for Liberian-flag vessels are twice as high and three times as high for Panamanian vessels.

This is in spite of the fact that average age for Liberian vessels was only 8.7 years, compared to 12.0 years for OECD vessels. Furthermore, according to the OECD study,

> A large part of the Liberian shipping, particularly tankers and bulk carriers, is employed permanently on long hauls and spends relatively little time in congested waters in comparison with considerable sections of the fleets of OECD member countries which are employed in their domestic trades.

These factors, according to the OECD, should combine to lower the Panamanian- and Liberian-flag vessels accident rates, but they have not.

The American oil companies who own and operate flag of convenience tankers have argued in their opposition to H.R. 8193 that their foreign-flag ships are among the best equipped and most modern in the world and that it would be poor economic policy to construct an unsafe tanker.

Assuming that this is true, it is also a fact that as stated in *Supertankers*, "ships are only as good as the men who run them, and here the record [of the flag of convenience vessels] is not impressive."

In February, 1970, the first sizable oil spill in North America occurred when the Liberian-flag tanker, Arrow, ran ashore in Chedabucto Bay, Nova Scotia, discharging 10,000 tons of oil. A three member commission of inquiry, led by Dr. P. D. McTaggart-Cowan, executive director of the Science Council of Canada, found that the ships had been "operating with almost none of its navigation equipment serviceable." The commission said none of the crew had any navigational skills except the master but that "there are even doubts about his ability," In addition, the officer on watch at the time of the accident, the ship's third officer, had no license. In its final report, the commission said,

> We are well aware of the fact that no form of transportation can be 100 percent safe but from the record available to us the standard of operation of the world's tanker fleets, particularly those under the flags of convenience, is so appalling and so far from the kind of safety which science, engineering and technology can bring to those who care, that the people of the world should demand immediate action.

In October, 1970, two fully laden tankers, the 77,648 dwt. Pacific Glory and the 110,108 dwt. Allegro, both flying the Liberian flag and carrying 170,215 tons of crude oil between them, collided off the Isle of Wright. On both, the third officers were on watch at the time; the Allegro's third officer had no certificate whatever. Two engineers on both ships also had no certificates.

In August, 1972, two Liberian-flag supertankers, the 95,608 dwt. American-owned Oswego Guardian and the 100,613 dwt. Greek-owned Texanita collided in the Indian Ocean. An inquiry showed that both ships were traveling at full speed through extremely dense fog and that, although the two vessels had observed each other on radar,

neither reduced speed. In addition, the Texanita made only two attempts to plot the course of the approaching ship and the Oswego Guardian made no attempt whatsoever. Immediately after the collision, the master of the Oswego Guardian ordered his ship away from the scene at full speed, making no attempt to pick up survivors from the Texanita which had broken in two. In all, thirty-two men died with the Texanita.

Noel Mostert, in *Supertankers*, states that,

> Even where well-qualified men are commanding ships of the highest standards, as was the case with the Torry Canyon, the masters' judgment, responsibility and seamanship can be impaired in the long run by terms of service that would not be tolerated on any ship flying the American flag or the flag of any of the other major maritime powers.

He goes on to point out that between October, 1970, and April, 1971, ten tankers carrying some 300,000 tons of crude oil among them were involved in serious accidents in the English Channel area alone, and that half of them were Liberian.

The U.S. Coast Guard is not able to regulate these foreign-flag vessels as strictly as it does the U.S. fleet. In a letter to the Committee, the U.S. Coast Guard indicated that it has little control over the activities or standards aboard these flag of convenience and other foreign-flag vessels. In this reply the Coast Guard points out:

> As a practical matter, there is, at present, no way for the Coast Guard to assess the standards used by foreign governments to measure the level of crew competency as compared with U.S. standards . . .

The Coast Guard's reply also indicates that it has "no jurisdiction over the manning on foreign vessels" or the inspection of foreign vessels, which is a requirement that U.S. vessels must meet.

In contrast, U.S.-flag vessels are manned by crews which are highly trained and stringently and frequently tested by the United States Coast Guard. Adding to this and the already strict Coast Guard construction standards, the provisions of H.R. 8193 as amended make U.S.-flag tankers among the most environmentally safe vessels in the world.

In addition to requiring that U.S. vessels which will carry oil under this legislation be constructed using the best available pollution technology to eliminate intentional pollution, the legislation also serves to decrease accidental pollution in our waters.

Specifically, the legislation excludes from its provisions U.S.-flag vessels older than 20 years or reconstructed vessels beyond their economic lives. In so doing, tankers with deteriorating equipment and poor safeguards will be systematically replaced by U.S.-flag tankers containing the equipment necessary to protect our environment.

Finally, the Committee has noted with approval that Congress is rapidly moving toward the enactment of legislation authorizing the construction of deepwater ports off the coasts of the United States. The Committee believes that such ports, which free our coastlines and harbor areas from direct threats of pollution, can achieve even greater environmental results if utilized by U.S.-flag supertankers containing pollution abatement requirements of H.R. 8193. It would be contradictory for the United States to encourage deepwater ports but then have them used exclusively by mammoth foreign-flag tankers with poorly trained crews and few or no pollution control devices.

Secretary of the Interior Rogers C. B. Morton, in a letter to Congress in April, 1973, stated that if the United States does not receive its oil in U.S. tankers "that comply with U.S. requirements, oil will probably be imported in foreign-flag tankers that are built and operated to much lower standards."

The enactment of H.R. 8193 as amended would assure the citizens of our country that at least a percentage of our oil imports were being carried on tankers employing the safest and strictest manning and construction standards of any vessels in the world, and in a manner consistent with the overwhelming national desire to protect and preserve our nation's marine environment.

THE REGIONAL AND INDUSTRY IMPACT OF H.R. 8193

1. Introduction

During the hearings on this legislation and in subsequent deliberations, the Committee systematically reviewed not only the bill's many benefits and strengths, but also its potential effect on the major geographical sections of the nation and various industries that are particularly dependent on some imported oil products.

As is noted in more detail in the section of this report entitled "Cost Impact", the effect on consumer prices of using U.S.-flag vessels will be negligible. The Maritime Administration of the Department of Commerce, which opposed the bill, stated that the impact would be to increase prices by $0.0035 per gallon, possibly growing to as much as $0.008 in the future. Even if these figures were correct, and persuasive economic testimony presented to the Committee indicated that to the contrary a consumer *saving* would result, such a cost would be more than justified by the favorable impact of the bill on national security, balance of payments, environmental and employment. Nonetheless, as is discussed elsewhere in this report, the Committee amended the bill to provide a waiver of $0.15 per barrel of import license fees on crude imports carried on U.S.-flag vessels provided that the Secretary of the Treasury determines that this cost saving is passed on the the ultimate consumer. Thus, any conceivable argument that the bill could disadvantage the consumers of any particular region, or adversely affect any industry has been mooted.

We are confident that the bill we have acted upon is legislation that will benefit the entire nation, without injury or added cost to any part of the nation or its industry.

2. Impact on various regions

(a) *Northeast United States.*—As is discussed elsewhere in this report, the Northeast United States, because it imports proportionately more oil than the rest of the nation, will be the prime beneficiary of the increased security and other benefits of H.R. 8193. Also, located in the Northeast are three major tanker shipyards and a fourth is planned for the site of the old Boston Naval Yard. Much of the ship construction generated by H.R. 8193 will thus take place in Northeast

shipyards. Thousands of new jobs will be created for Northeastern maritime trades.

The same is true for ship crews and the U.S. companies involved in this trade. Because their homes and companies are concentrated in the Northeast, the economic benefits of the bill will tend to be expended in this region. Traditionally, the Northeast United States has benefited first from a healthier U.S.-shipping industry.

Because consumers in the Northeast are so heavily dependent on imports, and imported residual fuel in particular, they must rely to a greater extent on the major oil companies to supply their needs. Therefore, H.R. 8193 will be of particular advantage to Northeast consumers by providing a U.S. shipping capability to serve as an alternative to the foreign-flag fleet of the major oil companies, thus insuring transportation of oil to this region of the United States in the event of an emergency. The bill will also set in motion a price monitoring system to determine the fair price for shipping which could result in a saving to the consumer.

Furthermore, this bill will substantially reduce the Northeast's total dependence on foreign-flag ships owned by the major oil companies. Experience has shown that this dependence can indeed be costly to the Northeast consumer as was the case when Standard Oil of California refused to honor commitments to North Eastern Petroleum Corporation to supply Libyan oil to NEPCO. According to estimates by Senators Church and Case in a hearing before the Subcommittee on Multi-National Corporations of the Senate Foreign Relations Committee, this refusal by Standard Oil of California required NEPCO to enter into costly spot charter arrangements for ships to procure Libyan oil, resulting in an increased cost to the consumer of about $50 million.

And with the environmental safeguards under the Act, it will mean that at least the U.S. vessels serving the New England area are as safe and free from the danger of oil pollution as possible.

(*b*) *Territories*.—The territories and possessions, including the Virgin Islands, Guam and American Samoa, were excluded from the bills' definition of the United States. In each case, the Committee wished to avoid the possibility that oil shipped into these areas from foreign sources might be required to be carried in U.S. ships, even though it was not destined for ultimate shipment to the United States. This would have been inconsistent with the Committee's intent that a percentage of oil shipped through midpoints be carried on U.S. ships only when the oil is ultimately destined for the United States.

However, by excluding these areas from the definition of the United States, U.S. vessels would still have the opportunity to carry oil into these areas for refining or transshipment, and on to the United States, when that was the oil's ultimate destination. This is due to the fact that if these islands are mid-point for oil shipments to the United States, they are treated like any other intermediate point under the bill.

To have totally exempted refineries located in the territories and possessions from the requirements of the bill, as was suggested to the Committee, would have given them an undue preference over other refiners and also would have created a serious deficiency and loophole in the national security protections afforded by the bill.

(c) *General Statement*.—The only witness before the Committee to specifically raise the issue of the disparate economic effect of H.R. 8193 on various regions of the nation was Under Secretary of Commerce John K. Tabor. He noted that the 17 states in PAD District I, "imported more than 70 percent of all U.S. petroleum imports."

Yet as the Committee noted above, the fee waiver amendment added to this legislation has the effect of concentrating the savings from the use of U.S.-flag tankers in those very areas, such as PAD I, that are large importers. Hawaii, another major oil importer, would be in an equally strong position to benefit from the enactment of H.R. 8193.

The Committee requested further data from Secretary Tabor on exactly how the fuel prices in the various sections of the nation would be effected by H.R. 8193. The Secretary sent the Committee a reply which reiterated his testimony and was unresponsive to the particular questions which we raised.

Finally, the Committee has repeatedly attempted to make the point that it is for the very reason that the New England and East Coast states are so dependent on imported oil that H.R. 8193 must be enacted. Almost all of the oil for this region is now imported on high risk, unreliable foreign-flag tankers. In a future crisis it is the Northeast which will be in the most exposed position should a blacklisting of U.S. ports occur. For this reason, the Northeast, which is more import dependent than other parts of the nation, will benefit substantially more from assured shipping services, which H.R. 8193 would provide.

3. Industry impact

(a) America's farm industry is one of the nation's most essential export industries. The Committee, in its consideration of H.R. 8193, carefully reviewed all aspects of this legislation to be positive that nothing in this legislation would adversely affect this vital industry. We are convinced that U.S. farmers will in fact benefit from H.R. 8193.

United States farmers would benefit from the potential market of U.S. vessels available at attractive rates to carry farm commodities as backhauls to Europe and other points in the return voyage to oil producing nations. Since U.S. flag vessels will have earned their primary revenue on the foreign to the United States voyage carrying oil, they will be able to charge rates on the backhaul sufficient only to cover their voyage costs. While not all U.S. vessels will be able to carry dual cargoes, many operators may do so to increase their return. At the present time, U.S. farmers have little opportunity to use U.S.-flag vessels, because these vessels are not available or are engaged in other trades. They are restricted mainly to foreign-flag vessels who look upon U.S. farm exports as their main profit producing cargo. Thus, the passage of H.R. 8193 would enhance the export market for U.S. farm commodities.

In addition, because U.S. farm industries are major users of imported oil and petroleum derivatives, U.S. farmers would also benefit from the bill's provision which would require that the savings from the waiver of $0.15 per barrel of import license fees for crude oil carried on U.S.-flag vessels be passed on to ultimate consumers. By

passing through this saving to the end user, the farmer, H.R. 8193 could produce a tangible saving to farmers over the current system involving largely foreign-flag vessels.

(b) The petrochemical industry is another industry that has made claims for special consideration from the Committee under H.R. 8193. The Committee did not feel that the case for exempting these producers was a strong or compelling one.

At present, only a small fraction of oil imports are for the direct consumption of the petrochemical industry. Most of the oil the industry consumes is from domestic sources. This industry is dominated by a number of large and highly competitive companies, among them several chemical manufacturers and the major oil companies. None of these companies requires special consideration.

For small petrochemical producers, the same recourse is available as for small refiners under H.R. 8193. At any time when a petrochemical producer feels that he is not being fairly treated under the Act, he can appeal to the Secretary and ultimately to the Courts, under the terms of the Administrative Procedure Act.

(c) Some public utilities are large users of imported oil, particularly low sulphur crude oil. Some of these receive their crude in large shipments from distant oil sources such as Indonesia.

The fact that the utilities must depend on low-sulphur oil imports is by itself no justification for special consideration under this bill. Every type of oil import is covered by H.R. 8193 and in the future it is likely that low-sulphur imports will decline as public utilities take advantage of production from Alaska, thus reducing their needs for foreign imports.

Some public utilities have also contended that their imports are carried on foreign vessels they have hired on long-term charters because of requirements imposed by foreign governments that vessels of their own registry be used. This is a curious argument from persons who oppose a similar American preference. For companies in this situation, it will be necessary to merely switch charter parties, so that a portion of their foreign-flag vessels which they have fixed for long periods are relet to other charterers, to the extent U.S. vessels are available for comparable periods. If this is impossible, then the utility would have an additional recourse to Department of State for assistance and to the Secretary of Commerce for exemption under the administrative procedures. Utilities in the position of being tied to the use of foreign-flag tankers demonstrate why H.R. 8193 must be enacted to break the foreign stranglehold on U.S. oil import trades.

With respect to utilities, the most persuasive statement in connection with the bill was made by the National Association of Rural Electric Cooperatives:

> The electric utility market is dependent on imported oil for a good deal of its primary energy requirements. As such, any disruption in the normal flow of this supply creates problems not only for industry but for the nation as a whole.
>
> It is for precisely this reason that the enactment of the Energy Transportation Security Act is a matter of vital importance. The United States, if it is to avoid economic chaos of the type experienced during the Arab oil embargo, must be assured of a secure and uninterrupted flow of oil imports.
>
> In the event of another cut-off of supply to the United States, alternate sources of supply will have to be reached quickly so as to minimize disruptions to our nation. Foreign-flag and foreign-manned vessels, over which the United States has no control, cannot be relied upon to act and respond in our best interests. Only U.S.-flag vessels, which are manned by American citizens and under the control of our country, can be shifted from source to source and from route to route, all in furtherance of the well-being of the United States.

In conclusion, the Committee has no reason to believe that the bill will have undue adverse impact on any region or industry in the country.

INTERNATIONAL TRADE

The Committee has devoted much attention to the question of what effect, if any, the Energy Transportation Security Act will have on United States international trade. After a great deal of deliberation, the Committee concluded that H.R. 8193 is consistent with existing national and international trade policies and practices.

The Committee believes that the enactment of H.R. 8193 is necessary to ensure that the U.S. flag merchant marine and the interests of the United States will be protected in light of the growing international trend towards government control, management and participation in the field of international shipping. This development has manifested itself in a wide range of laws, policies and agreements, including bilateral, pooling and trade sharing arrangements between nations, cargo preference and flag restrictions, and the practices of the multinational corporations dominating the world's economy.

International precedents.—The precedent for reserving all or part of a nation's trade for its flag vessels has been set time and time again by many nations. These nations have recognized that their interests can be strengthened through the maintenance of a strong merchant fleet. This realization has, for example, led to the following actions by nations of the world:

Argentina requires 50 percent of all its cargo under international commercial agreements to be shipped on its flag vessels;

Brazil requires 50 percent of its coffee and cocoa to be transported on Brazilian-flag vessels;

Chile reserves 50 percent of its export-import trade for its vessels:

Morocco requires 40 percent of its imports and 30 percent of its exports to move on its vessels;

Pakistan requires that 50 percent of its trade with the United States be carried on Pakistan vessels; and

Peru requires 20 percent carriage of Peruvian vessels, with the percentage rising to 50 percent.

The recently concluded "Code of Conduct for Liner Conferences," developed in the United Nations' Conference for Trade and Develop-

ment, requires that liner cargo be shared on a 40–40–20 basis between vessels of the exporting and importing nations and third flag vessels. A number of major maritime nations supported this agreement.

In addition to these general cargo reservation measures which reflect the growing belief that trading nations should participate in the carriage of their trade, several nations have taken action with specific reference to oil.

Spain requires that all its oil imports be carried on its flag vessels;

Algeria requires a 50 percent carriage clause in its export contracts for both oil and liquefied natural gas;

Venezuela recently enacted legislation providing for an eventual 50 percent carriage of its oil on its flag vessels;

France has enacted a fleet size law which guarantees to the French fleet the equivalent of two-thirds of her oil imports;

Japan, which is almost 100 percent dependent on oil imports, has a national policy of carrying at least 50 percent of these imports on its flag vessels.

The Committee took careful note of the argument raised by the opponents of H.R. 8193 to the effect that the action taken by France and Japan, for example, do not constitute cargo preference, and should not be considered as precedent setting measures by major nations. The Committee concluded that regardless of what the measure is called, whether it be a cargo preference law, a fleet size law or a national policy, it is the effect that is important. The Committee further concluded that the means taken to achieve the desired goal of reserving cargo for a national fleet must be suited to the particular and unique economic circumstances of each country.

In Japan, for example, the economy is managed in a way much different from the United States. There, the cohesiveness and cooperation of all branches of the economy make a national policy coupled with economic incentives a practical and workable means for achieving the desired result. Goals are set for each industry in Japan, and the whole economy is geared to each segment reaching its goal.

Because of the peculiar characteristics of a foreign nation's economy, these devices may prove far more effective than H.R. 8193, in channeling a nation's cargo into its own vessels. In the United States economy, many of the same measures would not be effective.

On the other hand, the Committee noted that H.R. 8193 is needed for the very reason that our own national policy together with economic incentives has not worked to provide cargo for the U.S. merchant fleet. The policy embodied in the Merchant Marine Acts of 1936 and 1970 and the subsidy provisions of the 1970 Act, while leading to the construction of new ships, have not resulted in the use of U.S. ships to carry a significant portion of America's oil imports.

Today, while U.S. cargo opportunities grow, the U.S. fleet's share of this trade hovers at five percent. This realization, coupled with the fact that there is no immediate prospect for improvement because the owners of the cargo—the multinational oil companies—prefer to employ foreign-flag shipping, makes the enactment of H.R. 8193 the only practical solution to the problem of obtaining cargo for U.S.-flag ships. The economic inducements which have proven effective in other nations simply do not and will not work in an economy such as are based upon competition and individualistic enterprise.

Free Trade.—Similarly, the Committee rejected the argument advanced by the legislation's opponents that H.R. 8193 is a violation, on the part of the United States of the principle of "free trade" and should therefore not be enacted into law. However, exceptions have been made dating to the turn of the century where national security is involved, for example, 100% of military cargoes must move in U.S.-flag ships.

It is true that the United States has traditionally been committed to the concept that vessels of all nations should be able to compete for the carriage of cargo. It is also true, as outlined above, that the practices of many other nations to guarantee their flag vessels some of their international trade, has rendered the free trade concept in shipping increasingly less meaningful. It is impossible, however, for the United States flag vessels to compete with vessels supported by their respective governments or with vessels owned and used by the multinational oil companies.

In fact, the United States has itself acted, with the approval of those now opposing this legislation, in a manner that at first seems to be inconsistent with the so-called free trade concept. The United States-Soviet Union Trade Agreement of 1972 is one such example.

This agreement included a bilateral shipping arrangement among its provisions. It provided that United States and Russian vessels would be entitled to 33 percent each of the trade between these nations, with the remainder going to third-flag vessels. It was designed to provide the merchant fleet of each nation the opportunity to participate equally and substantially in the carriage of all cargoes moving by sea between the two countries.

The bilateral shipping agreement with the Soviet Union has been hailed as "landmark" by the Department of Commerce, an opponent of H.R. 8193. The State Department, which opposes H.R. 8193 because it violates "free trade," did, however, support the U.S.-U.S.S.R. bilateral shipping agreement. When asked to explain the apparent contradiction, the State Department expressed the opinion that the realities of dealing with the Soviet Union necessitated some form of an agreement to ensure that we participate in the carriage of this cargo.

The Committee took special note of the State Department's reasoning and concluded that the same reasoning should be applied in this case. And the realities of the situation necessitate some form of protection for the U.S.-flag fleet to ensure that it participates in the carriage of our oil imports. For reasons previously mentioned, the most efficacious means of obtaining the objectives is enactment of H.R. 8193.

Finally, with respect to "free trade," the Committee recognized that enacting H.R. 8193 would have the practical effect of creating a free trade situation in that no-oil company U.S.-flag tankers would be able to compete on an open basis for a percentage of the oil coming to the United States. For the first time, the virtual oil industry monopoly over oil production, refining, transportation, and marketing would be broken. A new, competitive force would be involved in the crucial business of providing the United States with vitally needed oil imports. The Committee feels that independent tanker competition with the major oil companies would be a healthy development for the U.S. fleet and U.S. oil consumers.

Retaliation.—The Committee has concluded that there is no basis in fact for believing that H.R. 8193 would precipitate similar action on the part of other nations.

As noted earlier, many of the world's nations, including most of the developing nations of the world that are rich in raw materials needed by industrialized nations, have already acted to reserve cargo for their national fleets. Inaction in this regard on the part of the United States has not deterred this world trend. Rather, it has only had the effect of putting our own merchant fleet at a severe competitive disadvantage in the world shipping market, thereby threatening the very existence of the merchant marine.

The Committee noted that the Arab oil exporting nations have already formed the Arab Maritime Transport Company for the express purpose, as stated in *Seatrade* magazine, of having "a fleet large enough to carry 40 percent of Arab crude exports." The Committee concluded that if the United States is going to have leverage to deal with these countries, it is best to have a law on the books which reflects to the exporting nations the express commitment on the part of our government for the use of U.S.-flag tankers to carry a portion of our oil imports.

Other nations in the world have shown that they will act in a manner they believe to be in the best interests of their national shipping policy, without any regard to what others might think. The Committee strongly believes that it is time for the United States, in a matter as vitally related to national security as energy, to likewise act to make its policies and goals a reality and to not submit to impractical and outdated theories and doctrines.

The Committee was skeptical of the fear expressed by the opponents of this legislation that its enactment would result in retaliation against the United States. The Committee rejected this argument, noting that no opponent of H.R. 8193 was able to provide any evidence of retaliation by any nation against those countries which already reserve large shares of their cargo for their flag vessels than H.R. 8193 would provide. The Committee concluded that there was no reason to believe otherwise with respect to the United States, especially when considering the dependency of other nations on trade with this country. Where vital national security considerations are involved, the United States should not allow its national policies to be determined by fears of the reactions of other nations, particularly when they are as speculative as is here the case.

Thus, by passing the Energy Transportation Security Act, Congress has the opportunity to act in a manner consistent not only with our previously stated national policies but with the trend developing today in the field of international shipping as well. It will provide the first U.S. initiative in an area vital to the nation's security at a time when the survival of the U.S. fleet is already endangered by the nationalistic shipping policies of other nations.

THE BALANCE OF PAYMENTS BENEFITS OF H.R. 8193

The Committee was deeply impressed with the opportunity provided by H.R. 8193 to significantly alter the payments position of the United States on oil import transactions without any corresponding requirement to alter U.S. monetary or fiscal policies or without the need of instituting national policies that would further disrupt the international financial situation. H.R. 8193 provides the means to reduce the balance of payments deficit now being created by the use of foreign-flag tankers, which carry approximately 95% of U.S. oil imports. Because of increasing oil imports, the payments deficit produced by our nearly exclusive use of foreign-flag tankers is so severe that it has thrown shipping as a whole into deficit, despite the major advances made by the U.S. liner fleets in penetrating U.S. trade.

1. Direct balance of payments savings

In May 1974, the U.S. fuel bill which had been steadily rising as the effects of the oil embargo dissipated, stabilized at $2.3 billion a month. If this rate is maintained throughout the year, this nation will have an oil import bill of over $27 billion for 1974, a figure three times higher than that for last year. The Department of Interior has indicated the figure will continue to grow well into the 1980's.

Since the negative impact of this foreign oil bill on our balance of payments has been staggering, the Committee was naturally impressed by the Department of Commerce estimate indicating that this bill would lead to a balance of payment savings in the oil transportation segment of $3.1 billion between 1975 and 1985. Over the life of the first generation of ships constructed under the bill, the savings would be in excess of $11.5 billion. The Commerce Department figures are contained in an excerpt from a Maritime Administration chart shown below:

BALANCE-OF-PAYMENTS IMPACT FROM SUBSTITUTING U.S.-FLAG FOR FOREIGN-FLAG VESSELS

[In millions of 1973 dollars]

Year	100 percent foreign carriage	H.R. 8193[1]	H.R. 8193,[2] constrained by shipyard capacity
1975	798.8	165.9	
1980	1,517.6	405.1	288.7
1985	2,094.5	580.5	579.4
Cumulative, 1975–85	16,267.5	4,285.5	3,132.8
Cumulative over life of ships in operation in 1985[3]	41,889.2	11,608.1	11,588.2

[1] Assumes that required new U.S. shipping capacity is available.
[2] Assumes foreign-owned, foreign-flag, and foreign-constructed vessel.
[3] Assumes the use of 4 yards to construct VLCC's, and 1 yard to construct 90,000 DWT tankers.

One witness found this estimate inconsistent with Commerce Department figures on the cost of shipping oil by foreign-flag and projected oil imports. He stated the total balance of payment saving could be double that of the estimate.

2. Supplemental balance of payment benefits

Finally, the Committee is convinced that this legislation will make available several supplemental balance of payment gains in related shipping areas. Because the U.S. fleet will be larger and operate in more trades due to H.R. 8193, it will be able to take advantage of opportunities not present today.

The U.S.-Soviet Trade Agreement has already demonstrated how a cargo promotion program can produce side benefits. In this case,

U.S. vessels carrying grain to Russia were able to obtain backhauls of oil from the Mediterranean area.

Similarly, under H.R. 8193, the construction of versatile U.S. vessels such as OBO's will be encouraged, so that after carrying oil imports to the United States, American vessels can offer attractive backhaul rates to U.S. farm and bulk product exporters. Now most of these products are carried on foreign-flag vessels.

Because U.S. vessels will rely on oil imports for their main revenue, the rates they can charge for backhauls will be near their break-even level. In contrast, foreign-flag vessels, many of which are dependent on U.S. farm exports for their main revenue source, must allow for substantial return in figuring their rates. Thus, the U.S. fleet may be able to capture a share of the backhaul business, benefiting U.S. farmers and bulk exporters and the balance of payments. While no exact figures are available, it is likely that revenues from these backhaul cargoes for U.S. ships could exceed several hundred million dollars a year by 1980, all of which would have formerly gone to foreign-flag vessels and crews, to the detriment of the U.S. balance of payments.

Section-by-Section Analysis

Sec. 1. Section one of the bill provides the Act may be cited as the "Energy Transportation Security Act of 1974".

Sec. 2. This section is a Committee amendment. It does not relate to oil imports but rather to existing preference cargoes under section 901(b)(1) of the Merchant Marine Act, 1936, as amended, (46 U.S.C. 1241(b)(1), which are largely export cargoes.

The section is intended to correct a long-standing grievance of the Great Lakes region. Under section 901(b) of the Act, government agencies are required to take steps to assure that at least 50 percent of certain government generated cargoes are transported on privately owned United States-flag commercial vessels "to the extent such vessels are available." There is currently no regularly scheduled U.S.-flag vessel service between the Great Lakes and other continents to which the subject cargoes move. Therefore, U.S.-flag vessels are infrequently "available" at ports on the Great Lakes. Under various administration interpretations, cargoes originating in the Great Lakes area are therefore diverted to other ranges of ports (Atlantic, Gulf and Pacific) solely because U.S.-flag vessels are not available on the Great Lakes but are available at these other ranges of ports.

This section is intended to end this problem which long has been viewed by the Great Lakes region as discriminatory. Under this section, the shipping agency would look to the range of ports nearest to the point where the equipment, materials or commodities being shipped are manufactured, in order to initially determine whether U.S.-flag vessels are "available". If a U.S.-flag vessel were not available at that range of ports (i.e., Great Lakes-St. Lawrence Seaway ports), the agency would be free to use foreign flag vessels at that range of ports.

Another important purpose of the amendment is to encourage U.S.-flag operators to provide service to Great Lakes ports, thereby furthering the objectives of the Merchant Marine Act, 1936, to assure U.S.-flag service on all essential trade routes including the Great

Lakes-St. Lawrence Seaway. This is consistent with the provisions of section 809 of the 1936 Act, as amended in 1970, (46 U.S.C. 1213), which accord Great Lakes ports independent status as a fourth seacoast for purposes of assuring that Federal financial assistance to the maritime industry is provided on an equitable basis for the benefit of all port areas in the United States.

It should be noted that the section is not primarily a cargo routing statute. It does not require that cargo move through the nearest range of ports. Rather, it simply means that the nearest range of ports is where the shipping agency initially looks to determine U.S.-flag availability. Whether or not there is a U.S.-flag vessel at the nearest range of ports, the agency can still route the cargo through any range of ports it chooses based on normal factors determining cargo routing, such as rates, sailing schedules, etc. The section only means that cargo will not be diverted from a range of ports *solely* because a U.S.-flag vessel is not available there, but is available elsewhere.

For purposes of this section, a range of ports is a seacoast, i.e., Atlantic, Pacific, Gulf and Great Lakes.

As was noted above, the section is not intended to be a cargo routing statute. Whether or not a U.S.-flag vessel is available at the nearest range of ports, the shipping agency can still route the cargo through any port it chooses based on normal factors governing routing. Of course, it is intended that if a U.S.-flag vessel is available at the range of ports over which the cargo actually moves, whether or not such a vessel is available at the nearest port range, it will be given the statutory preference in carrying the government generated cargos subject to section 901(b).

Sec. 3. This section is the heart of the Energy Transportation Security Act of 1974. It outlines the basic requirements to use U.S.-flag commercial vessels for the importation of oil; provides for the increase of the U.S.-flag percentage over time upon certain findings by the Secretary of Commerce; establishes certain procedural safeguards for persons subject to the Act; defines the oil imports subject to the Act, and sets forth certain requirements with respect to U.S.-flag commercial vessels that will participate in the carriage of the cargoes subject to the Act. It also sets forth a requirement to comply with the Act and the regulations thereunder, and provides for annual reports by the Secretary of Commerce to the Congress on the implementation of the provisions of the Act.

As passed by the House of Representatives, H.R. 8193 was basically an amendment to section 901(b)(1) of the Merchant Marine Act, 1936, as amended. The Committee revised this to make the new Act a new section 901(d) rather than amend existing section 901(b)(1). This was done to provide more clarity in drafting; it also has the effect of avoiding certain provisions in section 901(b)(1) that should be applicable to the government-generated cargoes subject to that section, but which should not have application to the oil imports covered by the Energy Transportation Security Act.

Paragraph (1) of new subsection (d) set forth the basic cargo preference requirement that a quantity equal to not less than 20% of the gross tonnage of all oil transported on ocean vessels for import into the United States be carried on U.S.-flag commercial vessels, and pro-

vides that the Secretary of Commerce shall take such steps as are necessary to assure that result. While H.R. 8193 as passed by the House of Representatives did not specifically name the Secretary of Commerce as the official responsible for administering the bill, the Committee has revised the bill to so indicate. It was clear from the legislative history that this result was intended by the House and by all the parties testifying on the bill. Further, since the Act is a means of promoting the U.S. Merchant Marine, and since the Secretary of Commerce is charged with that responsibility, it seems clear that this is where the responsibility for administering this Act should reside.

The requirement for using U.S.-flag commercial vessels applies not only to direct shipment from the original point of production, but to both (or all) legs of a voyage where indirect shipment occurs, i.e. from the point of production to and from any intermediate points used for storage, refining, processing, packaging, unloading, or reloading of oil. The language of the bill, in this regard, was slightly revised by the Committee for purposes of clarity, but has the same intention as the bill that was passed by the House of Representatives.

In another technical revision, the Committee modified the language in this section to provide that the requirement applies to "oil transported on ocean vessels . . . for import into the United States". This differs slightly from the language in the House passed bill: "oils imported into the United States on ocean vessels." The purpose of this amendment was to assure that oil transported on vessels for import into the United States, but which may ultimately enter the United States other than on vessels, is covered by the bill e.g. oil transported to Canada by vessel that subsequently enters the United States by pipeline.

Paragraph (1) also provides that the 20% requirement to transport oil on privately owned United States-flag commercial vessels only applies "to the extent that such vessels are available". In this context, the fact of whether a vessel is "available" is a factual determination to be made in each given instance. Unlike the provisions to be discussed later relating to the increase in the U.S.-flag percentage after 1975 and 1977, it does not relate to an overall determination by the Secretary as to the adequacy of the fleet to carry a given percentage of our oil imports. Thus, in this provision, the importer or person subject to the Act, in the event that he asserts that a U.S.-flag commercial vessel was not available for his specific shipments and that he has therefore not complied with the 20% requirement, has the burden of demonstrating that fact to the satisfaction of the Secretary.

Paragraph (1) of subsection (d) also provides that U.S.-flag commercial vessels need only be used to the extent they are available at "fair and reasonable rates for such vessels". Longstanding administrative interpretation has established that fair and reasonable rates are to be determined based on capital and operating costs of vessels and must be set at a rate which returns the efficient operator a reasonable profit. Since this bill clearly anticipates, and indeed requires, a suitable replacement program for vessels, rates under the bill should clearly take into account the need to provide adequate profits to finance replacement vessels.

Under the bill, it is intended that the fair and reasonable rates established for U.S.-flag commercial vessels will be the highest rate at which the *government* can *require* the use of the vessel. In other words, the Secretary may not require a shipper to use a U.S.-flag vessel at more than a fair and reasonable rate.

Subject to assuring compliance with the statutory requirement, the Committee intends that generally the Secretary shall restrict administrative intervention in market decisions to the extent possible and will give as large a role as possible to the free market and competition. It is anticipated that as soon as H.R. 8193 is enacted, the Secretary will promulgate regulations imposing carriage requirements on importers and will establish procedures for periodic reporting and proof of compliance with such regulations. In these reports, the importer would either demonstrate compliance or assert that no U.S.-flag commercial vessels were available. In the latter case, the importer would have the burden of showing that there was physically no ship available; that any available ship did not meet the requirements of a U.S.-flag commercial vessel under subsection (d)(4)(B) (e.g., that it was not U.S. built); or that the available U.S.-flag commercial vessel was not available at fair and reasonable rates. Once the Secretary has more experience and cost data on vessels subject to the Act, he might also consider publishing guideline rates, if he deems it advisable to do so.

As a practical matter, the Secretary's determinations of fair and reasonable rates are likely to be more frequently required on short term than on longer term arrangements. The latter are more likely to be negotiated between shipper and carrier and normal competitive market factors will likely be determinative, subject to compliance with the preference requirement. To the extent that intermediate and long-term arrangements can be encouraged by the Secretary, this will reduce some of the problems involved in making fair and reasonable rate determinations. This would also appear to be in accord with the policy of this Act, and the Merchant Marine Act, 1970, since such charters would provide vessel operators the assurances of cargo needed to revitalize and expand the U.S. flag merchant fleet.

In any event, in determining fair and reasonable rates, it is anticipated that the Secretary will take into account the interest of consumers as well as the need to revitalize and expand the U.S. tanker fleet in accord with the purposes and policies of this Act.

Paragraph (1) of subsection (d) also provides that the Secretary is "to ensure fair and reasonable participation of such vessels and such transportation from all geographical areas in which such oil is produced or refined or both". Here again, the Secretary has considerable flexibility. One means by which he could assure such fair and reasonable participation by geographic area would be to define a number of geographic areas (e.g. Persian Gulf, Indonesia, Mediterranean, West Africa, Caribbean and South America) from which U.S. imports are, directly or indirectly, carried, and to apply the applicable percentage to each such area. Another means suggested during the Committee's consideration was the adoption of a "barrel-mile" or "ton-mile" standard. While such a method could be adopted by the Secretary, and would give importers or persons subject to the Act,

more flexibility, it would also require adoption of safeguards by the Secretary to assure that it would not result in a fleet of U.S.-flag commercial vessels different in numbers, types, or sizes of vessels from what would otherwise result. For example, the adoption of such a concept, without safeguards, could well result in an abuse in the form of all the Act's requirements being covered by a very few ultra large crude carriers utilized on long hauls. This is not in accord with the policy of the Act which is to create a broadly representative fleet capable of carrying a designated percentage of *all* our oil imports from all sources and to all destinations in the United States to which oil is normally imported. Thus, for example, if a barrel-mile concept were adopted, the Secretary would probably have to apply the designated percentage requirements separately to the various kinds of oil covered by the bill (e.g. crude, residual fuels and heating fuels, and clean products) in order to assure that the United States obtained a balanced fleet of crude and different sized product carriers necessary to service its needs during a national emergency.

Finally, the first paragraph of subsection (d) provides for increases in the percentage of oil imports to be transported on U.S.-flag commercial vessels to not less than 25% for any period beginning after June 30, 1975 and 30% beginning after June 30, 1977, provided that the Secretary finds six months prior thereto that the tonnage of privately owned U.S.-flag commercial vessels, including vessels on order and scheduled to be ready for commercial service, will be adequate to carry such quantities. This provision, while established in principle in the bill passed by the House of Representatives, was somewhat modified by the Committee. The intent of the language as modified by the Committee is that the Secretary shall annually, after the dates specified, review the adequacy of available tonnage until the percentum requirements are reached. This is important not only to permit a build-up of the fleet, but also if the absolute level of oil imports diminish in the future. Also, the provisions adopted by the Committee provides for lesser increases in the U.S.-flag percentages in the event that inadequate tonnage is available for the 25% and 30% levels, but is available for levels above the basic 20%, for example, 23%.

As will be discussed in more detail hereafter, the bill provides the Secretary of Commerce considerable flexibility and discretion in the means by which he is to obtain the Congressionally determined mandate in subsection (d)(1). While the Secretary is required to establish a system of cargo preference whereby the designated percentages of our oil imports are carried on U.S.-flag vessels, he is given considerable discretion in determining the exact type of regulations required, the persons who will be made subject to the Act, and means of reporting and enforcing compliance. Although administration of the new Act will surely not be free from complexities, various existing tools at the Secretary's disposal, coupled with long experience in administering similar provisions of the existing cargo preference statute, should facilitate the new Act's administration. For example, the Office of Oil and Gas in the Department of Interior and the Bureau of Customs have developed systems of documentation for licensing of oil imports. Indeed, the current forms for documentation require information as to the vessel on which imports are carried, as well as its flag of registry. Presumably, these forms of documentation could be

modified pursuant to regulations issued by the Secretary of Commerce and be used in connection with reporting and compliance under the new Act. Further, experience with several of the areas subject to the prior preference laws, which have involved assuring compliance of commercial interests with the statutory mandate, including private shipments under loans and guarantees of the Export-Import Bank, and shipments under different foreign aid programs managed by the Departments of Agriculture and State, should be valuable in administering the new subsection.

The legislative history of H.R. 8193 contains a number of suggestions which the Secretary may consider as helpful in administering the new Act. Although the Committee rejected the suggestion of making credits for the use of U.S.-flag vessels transferable because it viewed this as being subject to abuse, a suggestion that the Secretary establish a limited system of carry-forwards for the obligation to use U.S.-flag vessels (e.g., three months) would seem to have considerable merit, since it would allow a person subject to the Act a short make-up period before being subject to sanctions. Similarly, a limited system of carry-backs of credits for using U.S.-flag ships might facilitate administration.

Finally, administration of the new Act should be made somewhat simpler by the fact that the number of companies whose operations will fall under the new law is relatively small. The exemption for small refiners leaves only about 40 refining companies within the bill, not all of which import significantly by sea. Others figuring as importers, including utilities, petrochemical companies, terminal operators and the like, raise the total number of subject companies to only about 140, judging from recent importing data. The Secretary of Commerce is, moreover, empowered to invoke the assistance of other affected agencies of government in carrying out his functions.

Paragraph (2) of subsection (d) provides that the Secretary may by rule establish a system of reasonable classification of persons and imports subject to the provisions of the subsection. It also provides a system of judicial review for persons aggrieved. The paragraph is not intended to preclude the applicability of the Secretary's general rule-making authorities under the Merchant Marine Act, 1936, as amended, and indeed such authorities will be fully applicable to amended Section 901(d).

The Committee recast this provision somewhat, eliminating a prefatory clause ("That with respect to the percentage of petroleum and petroleum products required to be imported in United States-flag commercial vessels") which might seem to imply an administrative power to modify the minimum statutory percentage.

It is under this paragraph that the Secretary may grant full or partial exemptions to importers or persons subject to the Act from the cargo preference requirements established in H.R. 8193. During the course of the Committee's hearings, several groups, including petrochemical producers, utilities importing low-sulphur crude, territorial refineries, small refiners, independent refiners and others who asserted special circumstances or peculiar hardships, sought exemption from the Act's requirements. Other than small refiners with capacities not exceeding 30,000 b/d, the Committee did not believe that any of these groups made a persuasive case for legislative exemptions. The pro-

vision adopted by the Committee in section 5, waiving $0.15 of the import license fee for crude oil carried on U.S.-flag vessels makes it even less likely that such a case could be made. However, under paragraph (2) of subsection (d) these interests or any other person able to show special circumstances and good cause, or peculiar hardship, could be administratively exempted. Just as in the case of the legislative exemption for small refiners, the statutorily designated percentages of overall imports (including any imports exempted) to be carried by U.S.-flag commercial vessels would be unaffected.

Other word changes in this section are designed to bring the right to an administrative hearing and judicial review into closer conformity with modern practice under the Administrative Procedure Act.

Paragraph (3) is a Committee amendment. It authorizes the Secretary to grant credits toward the fulfillment of the requirements in paragraph (1) in the case of oil transported by privately owned U.S.-flag commercial vessels, over 100,000 deadweight tons, between foreign ports, until such time as an oil discharge facility, capable of discharging fully laden vessels of over 200,000 deadweight tons, is in operation on any coast of the United States. This provision was made necessary by the fact that there are currently no port facilities in the United States capable of discharging full-laden very large crude carriers and ultra large crude carriers of the type now being built under the Merchant Marine Act, 1970, and, presumably, more of which will be built. A somewhat analogous authority for the Secretary to permit foreign-to-foreign carriage for vessels built with construction differential subsidy under Title V of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1151–1161) or utilizing capital construction funds under section 607 of the Act, is contained in section 905 of the Act (46 U.S.C. 1244). However, in this instance, the Secretary's authority terminates as soon as the first oil discharge facility, capable of discharging fully laden vessels of over 200,000 deadweight tons, is in operation on any of our coasts. Credit for such foreign-to-foreign carriage is to be available only to the extent that the percentage cargo preference requirements of the Act are not met without such credits by available U.S.-flag vessels.

Paragraph (3) also contains safeguard language to assure that this special authority provided the Secretary will not be permitted to result in abuse by encouraging the construction, operation, or maintenance of a fleet of privately owned U.S.-flag commercial vessels different in numbers, types, or sizes of vessels than the fleet that would otherwise result from this Act. The reasons for this language are similar to those set forth in connection with the discussion of the "barrel-mile" concept earlier in this report.

Paragraph (4) of subsection (d) contains the definitions of terms used in the Act, including the commodities covered and the ships eligible to participate. The Committee modified the House-passed bill by creating a separate paragraph for definitions, both for drafting clarity and to incorporate certain substantive modifications of the House bill.

(a) The House term "liquid petroleum and liquid petroleum products" has been altered to "oil", which is then defined as crude oil, unfinished fuels, gasoline, kerosene, aviation fuels, naphtha, cracking stocks, distillate heating oil, diesel oil, and residual oils. This covers the same items as the bill passed by the House, but allows the main text to be simplified to the single word "oil".

(b) This paragraph, by way of a definition, sets forth the requirements which a vessel must meet in order to qualify for the carriage of cargoes under H.R. 8193. The paragraph thus defines "privately owned United States-flag commercial vessels" as (1) built in the United States, (2) if at any time documented under the laws of any foreign nation, then documented under the laws of the United States for not less than the three previous years, (3) not more than 20 years old (or reconstructed and within its extended economic life as determined by the Secretary of Commerce), (4) the subject of a capital construction fund agreement under section 607 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1147), which provides that the vessel shall be replaced at the end of its economic life, and includes a mandatory deposit schedule to finance such replacement, and (5) if constructed after specified dates (all contracts after December 31, 1974 or deliveries after December 31, 1978), incorporating the best available pollution prevention technology, and specifically segregated ballast capacity and double bottoms.

The purpose of these provisions is to assure that the preference afforded shall be efficacious in procuring new construction rather than merely extending the economic life of existing tonnage, and at the same time to assure that all new construction shall proceed in full consciousness of the highest demands of environmental protection.

The bill as reported by the Committee requires that the vessels be built in the United States in order to qualify. This was done because the Committee believes that generation of business for domestic shipyards, and the employment opportunities and balance of payments benefits resulting therefrom, are important secondary benefits of H.R. 8193. However, in order to prevent abuses and monitor the performances of U.S. shipyards under the new Act, a requirement for annual review of shipyard performance is set forth in paragraph (6) and will be discussed hereafter.

This paragraph also provides that if at any time a vessel has been documented under the laws of any foreign nation, it must wait three years after being documented under the laws of the United States before it is eligible to participate in the carriage of preference cargoes under H.R. 8193. A similar requirement is set forth in existing law in section 901(b) for cargoes covered by that section, and is intended to prevent easy transfers to or from United States registry to suit the convenience of a vessel's owner or operator.

The requirement that an eligible vessel be (a) not more than 20 years old, or (b) reconstructed and within its extended economic life is a Committee amendment. It is intended to assure that H.R. 8193 will accomplish its purpose of creating a modern expanded fleet of U.S.-flag vessels rather than merely perpetuating overage tonnage. Determinations as to what constitutes reconstruction and whether a vessel is within its economic life are within the discretion of the Secretary of Commerce, and it is anticipated that he will utilize that discretion in accord with the policy heretofore noted.

The requirement that an eligible vessel be subject to a capital construction fund agreement is likewise a Committee amendment and, again, is intended to assure that the purposes of H.R. 8193 are ef-

fectuated; in this instance, by requiring reinvestment of profits in U.S.-flag merchant vessels.

It should be noted that it is intended that the Secretary shall have considerable flexibility under this provision, for example, in determining a suitable replacement program. It is not intended that such a replacement program necessarily require the re-creation of carbon copies of depositing vessels under section 607 (46 U.S.C. 1147), since that would involve needless rigidity and could result in requiring the construction of obsolete or otherwise commercially undesirable vessels. Rather, it is intended that the Secretary have broad discretion and flexibility in determining suitable replacement programs in accord with the policies of H.R. 8193 and section 101 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1101).

Finally, while the statutory provisions of section 607 (46 U.S.C. 1147) (including for example, treatment of qualified and non-qualified withdrawals, ceilings on deposits and required deposits, etc.) will apply, it is recognized that the purposes and needs under the instant provision are somewhat different than those governing section 607 generally, and will probably require the promulgation of separate and distinct regulations by the Secretary under this general rule making authority.

Finally, a requirement is set forth that vessels carrying cargoes under H.R. 8193, and constructed after the dates noted above, shall be constructed and operated using the best available pollution prevention technology, and shall be equipped with segregated ballast capacity and double bottoms. The difficulties encountered in achieving effective environmental protection standards for tankers are discussed elsewhere in this report. Enactment of legislation such as H.R. 8193 is one of the few means by which U.S.-flag vessels can effectively be required to adopt pollution prevention technology more costly than that agreed to internationally. Of course, in requiring new technologies, the Secretaries of Commerce and Transportation will have to take into account economic feasibility and cost-effectiveness, but need not be strictly governed by the minimum standards that other nations find acceptable.

Paragraph (3) (c) defines the United States as meaning the several states, the District of Columbia and the Commonwealth of Puerto Rico.

Paragraph (5) sets forth the requirement that each department, agency or other instrumentality of the United States take appropriate action to assure compliance with obligations under H.R. 8193 and the regulations issued thereunder by the Secretary of Commerce. It also provides that citizens of the United States and persons subject to the jurisdiction of the United States shall comply with obligations by the law and any applicable regulations issued by the Secretary. Failure to comply with such regulations would subject the violator to the provisions of section 806(d) of the Merchant Marine Act, 1936, as amended (46 USC 1224). By implication, it might also subject the violator to private enforcement in the form of a suit for damages, e.g., in an instance where an importer or person subject to H.R. 8193 refused the tender of an available U.S.-flag commercial vessel at fair and reasonable rates, and did not meet the percentage requirements imposed upon him by regulations promulgated under H.R. 8193.

Paragraph (6) of subsection (d) requires the Secretary to review, evaluate, and report annually to the Congress and the President on the implementation of the provisions of this subsection and their effectiveness. The report is to include a study of the adequacy and availability of shipyard facilities and an assessment of the reasonableness of the performance of American shipyards with respect to prices charged and delivery dates for the construction and reconstruction of vessels carrying H.R. 8193 cargoes. While the Secretary has broad discretion in determining what standards he will utilize to assess "reasonableness", presumably, with respect to costs, the percentage standards set forth in section 502 of the 1936 Act (46 USC 1152) will provide some guidance for purposes of his report.

Sec. 4. This section provides that H.R. 8193 will not apply to any refiner whose total refinery capacity (including the refinery capacity of any person who controls, is controlled by or is under common control with such refiner) does not exceed 30,000 barrels per day. This is a provision which was adopted by the House of Representatives and is intended to eliminate certain administrative difficulties that such refiners might experience in complying. As is noted elsewhere in this report, the exemption of this group should substantially simplify administration of H.R. 8193, but will have no impact on the statutorily mandated percentages contained in the bill. The Committee has added a provision that the exemption shall not apply if the imports for such refiner during any year exceed his rated refining capacity. The purpose of this amendment is to preclude exempt refiners from importing on a large scale for non-exempt refiners, whose own imports would be subject to the Act. The exemption is intended for imports used in the small refinery itself, and not to create a loophole for evasion of H.R. 8193.

Sec. 5. This section is a Committee amendment. It provides that license fees payable pursuant to Presidential proclamation for imports of crude oil imported into the United States shall be reduced by $0.15 per barrel for a period of five years from the date of enactment of H.R. 8193, if the Secretary of the Treasury determines that the crude oil is transported on privately owned United States-flag commercial vessels, and the amount resulting from non-payment of such license fee is passed on to ultimate consumers. It is the Committee's belief that this amendment obviates any possible impact on consumer prices resulting from the use of U.S.-flag commercial vessels as is discussed in more detail in the section of this report dealing with that issue. Under the section, the person claiming reduction of the import license fee will not only have to demonstrate that the crude oil was transported on U.S.-flag commercial vessels, but must demonstrate to the satisfaction of the Secretary of the Treasury that the savings is or will be passed on to ultimate consumers of the oil. Presumably, such persons will have an incentive to do so since waiver of the license fee will provide him a competitive advantage in ultimately selling to consumers.

In a final change, the Committee amended the title of the bill to more adequately reflect its purpose.

Estimated Costs

Pursuant to section 252 of the Legislative Reorganization Act of 1970 (Public Law 91–510), the Committee estimates that the cost of implementing H.R. 8193 will be less than $1 million per year.

In responding to an inquiry by Senator Cotton, Under Secretary of

Commerce John K. Tabor estimated that 150 additional personnel would be required by the Maritime Administration to administer the cargo preference program at a cost of $3 million per year. However, the Secretary envisioned a complicated rate-making process which the Committee does not believe to be necessary. By minimizing administrative intervention into market decisions and by utilizing the expertise and existing documentation and reporting systems of the Office of Oil and Gas in the Department of the Interior and the Bureau of Customs in the Department of the Treasury, the Committee is confident that the costs of administering this legislation will be considerably less than the Department of Commerce estimate.

Record Vote in Committee

In compliance with sections 133 (b) and (d) of the Legislative Reorganization Act of 1946, as amended by P.L. 91-510, the following is a tabulation of votes cast in Committee:

1. Amendment offered by Senator Cotton to exempt residual fuel oil to be used as fuel and No. 2 fuel oil from the cargo preference requirement.

Yeas—5	*Nays—10*
Hart	Magnuson
Inouye	Hartke
Cotton	Cannon
Pearson	Long
Griffin	Moss
	Hollings
	Tunney
	Stevenson
	Stevens
	Beall

2. Amendment offered by Senator Cotton to exempt aviation fuel from the cargo preference requirement.

Yeas—3	*Nays—12*
Cotton	Magnuson
Pearson	Hartke
Griffin	Hart
	Cannon
	Long
	Moss
	Hollings
	Inouye
	Tunney
	Stevenson
	Stevens
	Beall

3. Amendment offered by Senator Cotton to exempt any oil imported into the United States by or for direct or indirect delivery and sale to producers, converters, and fabricators of petrochemicals (as such term is defined in the Federal Energy Administration Act of 1974), from the cargo preference requirement.

Yeas—5	*Nays—10*
Hart	Magnuson
Cotton	Hartke
Pearson	Cannon
Griffin	Long
Stevens	Moss
	Hollings
	Inouye
	Tunney
	Stevenson
	Beall

4. Amendment offered by Senator Cotton to exempt oil (including low sulfur residual fuel oil) imported into the United States which is required by law because of environmental considerations for electric power generation, from the cargo preference requirement.

Yeas—3	*Nays—11*
Cotton	Magnuson
Pearson	Hartke
Griffin	Hart
	Cannon
	Long
	Moss
	Hollings
	Inouye
	Stevenson
	Stevens
	Beall

5. Amendment offered by Senator Cotton to provide for a waiver provision identical to the provision in the first proviso to section 901 (b)(1) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1241(b)(1)).

Yeas—3	*Nays—12*
Cotton	Magnuson
Pearson	Hartke
Griffin	Hart
	Cannon
	Long
	Moss
	Hollings
	Inouye
	Tunney
	Stevenson
	Stevens
	Beall

6. Motion offered by Senator Magnuson to order the bill reported as amended.

Yeas—14	*Nays—2*	*Not recorded—2*
Magnuson	Cotton	Griffin
Pastore	Pearson	Baker
Hartke		
Hart		
Cannon		
Long		
Moss		
Hollings		
Inouye		
Tunney		
Stevenson		
Cook		
Stevens		
Beall		

Changes in Existing Law

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

MERCHANT MARINE ACT, 1936, AS AMENDED

SEC. 901. (a) Any officer or employee of the United States traveling on official business overseas or to or from any of the possessions of the United States shall travel and transport his personal effects on ships registered under the laws of the United States where such ships are available unless the necessity of his mission requires the use of a ship under a foreign flag: *Provided*, That the Comptroller General of the United States shall not credit any allowance for travel or shipping expenses incurred on a foreign ship in the absence of satisfactory proof of the necessity therefor.

(b)(1) Whenever the United States shall procure, contract for, or otherwise obtain for its own account, or shall furnish to or for the account of any foreign nation without provisions for reimbursement, any equipment, materials, or commodities, within or without the United States, or shall advance funds or credits or guarantee the convertibility of foreign currencies in connection with the furnishing of such equipment, materials, or commodities, the appropriate agency or agencies shall take such steps as may be necessary and practicable to assure that at least 50 per centum of the gross tonnage of such equipment, materials or commodities (computed separately for dry bulk carriers, dry cargo liners, and tankers), which may be transported on ocean vessels shall be transported on privately owned United States-flag commercial vessels, to the extent such vessels are available *at the range of ports nearest the point where such equipment, materials, or commodities are manufactured or produced* at fair and reasonable rates for United States-flag commercial vessels, in such manner as will insure a fair and reasonable participation of United States-flag commercial vessels in such cargoes by geographic areas: *Provided*, That the provisions of this subsection may be waived whenever the Congress by concurrent resolution or otherwise, or the President of the United States or the Secretary of Defense declares that an emergency exists justifying a temporary waiver of the provisions of section 901(b)(1) and so notifies the appropriate agency or agencies: *And provided further*, That the provisions of this subsection shall not apply to cargoes carried in the vessels of the Panama Canal Company. Nothing herein shall repeal or otherwise modify the provisions of Public Resolution Numbered 17, Seventy-third Congress (48 Stat. 500), as amended. For purposes of this section, the term "privately owned United States-flag commercial vessel" shall not be deemed to include any vessel which, subsequent to the date of enactment of this amendment, shall have been either (a) built outside the United States, (b) rebuilt outside the United States, or (c) documented under any foreign registry, until such vessel shall have been documented under the laws of the United States for a period of 3 years: *Provided, however*, That the provisions of this amendment shall not apply where, (1) prior to the enactment of this amendment, the owner of a vessel, or contractor for the purchase of a vessel, originally constructed in the United States and rebuilt abroad or contracted to be rebuilt abroad, has notified the Maritime Administration in writing of its intent to document such vessel under United States registry, and such vessel is so documented on its first arrival at a United States port not later than 1 year subsequent to the date of the enactment of this amendment, or (2) where prior to the enactment of this amendment, the owner of a vessel under United States registry has made a contract for the rebuilding abroad of such vessel and has notified the Maritime Administration of such contract, and such rebuilding is completed and such vessel is thereafter documented under United States registry on its first arrival at a United States port not later than 1 year subsequent to the date of the enactment of this amendment.

(2) Every department or agency having responsibility under this subsection shall administer its programs with respect to this subsection under regulations issued by the Secretary of Commerce. The Secretary of Commerce shall review such administration and shall annually report to the Congress with respect thereto.

(c) That notwithstanding any other provision of law, privately owned American shipping services may be utilized for the transportation of motor vehicles owned by Government personnel whenever transportation of such vehicles at Government expense is otherwise authorized by law.

"*(d)(1) The Secretary of Commerce shall take such steps as are necessary to assure that a quantity equal to not less than 20 per centum of the gross tonnage of all oil transported on ocean vessels (whether transported directly from the original point of production or indirectly from such point to and from any intermediate points used for storage, refining, processing, packaging, unloading, or reloading of oil) for import into the United States shall be transported on privately owned United States-flag commercial vessels (to the extent that such vessels are available at fair and reasonable rates for such vessels), and to insure fair and reasonable participation of such vessels in such transportation from all geographical areas in which such oil is produced or refined or both. With respect to any period beginning after*

June 30, 1975, the quantity of such oil required to be transported on privately owned United States-flag commercial vessels shall be equal to not less than 25 per centum of the gross tonnage of all oil transported on ocean vessels for import into the United States, and for any period beginning after June 30, 1977, such quantity shall be equal to not less than 30 per centum of such gross tonnage: Provided, That (1) the Secretary of Commerce finds and determines 6 months prior thereto, in the exercise of his sole discretion, that the tonnage of privately owned United States-flag commercial vessels, including vessels on order and scheduled to be ready for commercial service by such date, will be adequate to carry such quantity; and (2) in the event that such tonnage is not found to be adequate to carry such quantity, there shall be carried on such vessels the basic 20 per centum requirement together with any excess over such requirement, but not to exceed the applicable per centum requirement, for which such Secretary finds that adequate tonnage will be available.

"(2) The Secretary of Commerce may by rule establish a system of reasonable classification of persons and imports subject to the provisions of this subsection, and such Secretary shall treat all persons in the same such classification in substantially the same manner. If any person alleges (A) that he has been incorrectly classified under any such rule; (B) that there is no reasonable basis in fact for any such classification; or (C) that as a consequence of any agency action, he is or may be treated substantially differently from any other person in the same classification, such person may request, and, upon a reasonable showing, obtain, a hearing in accordance with section 554 of title 5, United States Code. Upon an agency decision, such person may request judicial review in the United States Court of Appeals for the District of Columbia. The scope of such review shall be governed by section 706 of title 5, United States Code.

"(3) The Secretary of Commerce is authorized to grant credits toward the fulfillment of the requirements of paragraph (1) of this subsection in the case of oil transported by privately owned United States-flag commercial vessels, over 100,000 deadweight tons, between foreign ports until such time as an oil discharge facility, capable of discharging fully laden vessels of over 200,000 deadweight tons, is in operation on any coast of the United States: Provided, That the Secretary of Commerce shall take all reasonable steps to assure that the authority provided in this paragraph not encourage, directly or indirectly, the construction, operation, or maintenance of a fleet of privately owned United States-flag commercial vessels different in numbers, types, or sizes than the fleet that would otherwise result.

"(4) As used in this subsection—

"(A) 'oil' means crude oil and the following products refined or derived from crude oil: unfinished fuels, gasoline, kerosene, aviation fuels, naphtha, cracking stocks, distillate heating oil, diesel oil, and residual oils;

"(B) 'privately owned United States-flag commercial vessels' are vessels of United States registry (or if at any time documented under the laws of any foreign nation, then documented under the laws of the United States for not less than the three previous years), built in the United States, which are not more than 20 years old or which have been reconstructed and are not beyond

their economic lives (as determined by the Secretary of Commerce), and with respect to which the owner or lessee thereof has entered into a capital construction fund agreement with such Secretary pursuant to which such vessel shall be replaced at the end of its 20 year life, or at the end of its extended economic life in case of reconstruction, and such agreement includes a mandatory deposit schedule to finance such replacement: Provided, That any such vessel in excess of 20,000 deadweight tons, the construction of which is contracted for after December 31, 1974, or the delivery of which is made after December 31, 1978, shall be constructed and operated using the best available pollution prevention technology, and shall be equipped with a segregated ballast capacity determined appropriate by the Secretary of Transportation which shall be achieved in part by fitting, throughout the cargo length, a double bottom of a minimum height of one-fifteenth of the beam or such other appropriate height as determined by the Secretary of Transportation; and

"(C) 'United States' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico.

"(5) Each department, agency, or other instrumentality of the United States which is affected by any obligation imposed under this subsection, and any officer or employee thereof, shall take all appropriate action to assure compliance with such obligation and with regulations which shall be issued by the Secretary of Commerce to implement and enforce the provisions of this subsection. Each citizen of the United States and each person subject to the jurisdiction of the United States shall comply with such obligation and any applicable regulation issued by such Secretary under this subsection.

"(6) The Secretary of Commerce shall review, evaluate, and report annually to the Congress and the President on the implementation of the provisions of this subsection and the effectiveness of such provisions. Each such report shall include, but not be limited to, a study of (1) the adequacy and availability of construction and reconstruction facilities in the United States for the vessels needed to meet the provisions of paragraph (1) of this subsection, and (2) the reasonableness of the prices charged and delivery dates for the construction and reconstruction of such vessels."

SEC. 4. The provisions of this Act shall not apply to any refiner whose total refinery capacity (including the refinery capacity of any person who controls, is controlled by, or is under common control with such refiner) does not exceed 30,000 barrels per day: Provided, That the total quantity of such oil imported by or for such refiner does not in any year exceed the rated refining capacity of such refiner.

SEC. 5. License fees payable pursuant to Presidential proclamation for imports of crude oil imported into the United States shall be reduced by 15 cents per barrel for a period of 5 years from the date of enactment of this Act if the Secretary of the Treasury determines—

(a) such crude oil is transported by privately owned United States-flag commercial vessels; and

(b) the amount resulting from the nonpayment of such license fees is passed on to the ultimate consumers of such crude oil in whatever form it is when ultimately consumed.

TEXT OF H.R. 8193, AS REPORTED

AN ACT To regulate commerce and strengthen national security by requiring that a percentage of the oil imported into the United States be transported on United States-flag vessels

That this Act may be cited as the "Energy Transportation Security Act of 1974".

SEC. 2. Section 901(b)(1) of the Merchant Marine Act of 1936 is amended by inserting after the words "to the extent such vessels are available", the following: "at the range of ports nearest the point where such equipment, materials, or commodities are manufactured or produced".

SEC. 3. Section 901 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1241), is amended by adding at the end thereof the following new subsection:

"(d)(1) The Secretary of Commerce shall take such steps as are necessary to assure that a quantity equal to not less than 20 per centum of the gross tonnage of all oil transported on ocean vessels (whether transported directly from the original point of production or indirectly from such point to and from any intermediate points used for storage, refining, processing, packaging, unloading, or reloading of oil) for import into the United States shall be transported on privately owned United States-flag commercial vessels (to the extent that such vessels are available at fair and reasonable rates for such vessels), and to insure fair and reasonable participation of such vessels in such transportation from all geographical areas in which such oil is produced or refined or both. With respect to any period beginning after June 30, 1975, the quantity of such oil required to be transported on privately owned United States-flag commercial vessels shall be equal to not less than 25 per centum of the gross tonnage of all oil transported on ocean vessels for import into the United States, and for any period beginning after June 30, 1977, such quantity shall be equal to not less than 90 per centum of such gross tonnage: *Provided*, That (1) the Secretary of Commerce finds and determines 6 months prior thereto, in the exercise of his sole discretion, that the tonnage of privately owned United States-flag commercial vessels, including vessels on order and scheduled to be ready for commercial service by such date, will be adequate to carry such quantity; and (2) in the event that such tonnage is not found to be adequate to carry such quantity, there shall be carried on such vessels the basic 20 per centum requirement together with any excess over such requirement, but not to exceed the applicable per centum requirement, for which such Secretary finds that adequate tonnage will be available.

"(2) The Secretary of Commerce may by rule establish a system of reasonable classification of persons and imports subject to the provisions of this subsection, and such Secretary shall treat all persons in the same such classification in substantially the same manner. If any person alleges (A) that he has been incorrectly classified under any such rule; (B) that there is no reasonable basis in fact for any such classification; or (C) that as a consequence of any agency action, he is or may be treated substantially differently from any other person in the same classification, such person may request, and, upon a reasonable showing, obtain, a hearing in accordance with section 554 of title 5, United States Code. Upon an agency decision, such person may request judicial review in the United States Court of Appeals for the District of Columbia. The scope of such review shall be governed by section 706 of title 5, United States Code.

"(3) The Secretary of Commerce is authorized to grant credits toward the fulfillment of the requirements of paragraph (1) of this subsection in the case of oil transported by privately owned United States-flag commercial vessels, over 100,000 deadweight tons, between foreign ports until such time as an oil discharge facility, capable of discharging fully laden vessels of over 200,000 deadweight tons, is in operation on any coast of the United States: *Provided*, That the Secretary of Commerce shall take all reasonable steps to assure that the authority provided in this paragraph not encourage, directly or indirectly, the construction, operation, or maintenance of a fleet of privately owned United States-flag commercial vessels different in numbers, types, or sizes from the fleet that would otherwise result.

"(4) As used in this subsection—

"(A) 'oil' means crude oil and the following products refined or derived from crude oil: unfinished fuels, gasoline, kerosene, aviation fuels, naphtha, cracking stocks, distillate heating oil, diesel oil, and residual oils;

"(B) 'privately owned United States-flag commercial vessels' are vessels of United States registry (or if at any time documented under the laws of any foreign nation, then documented under the laws of the United States for not less than the three previous years), built in the United States, which are not more than 20 years old or which have been reconstructed and are not beyond their economic lives (as determined by the Secretary of Commerce), and with respect to which the owner or lessee thereof has entered into a capital construction fund agreement with such Secretary pursuant to which such vessel shall be replaced at the end of its 20 year life, or at the end of its extended economic life in case of reconstruction, and such agreement includes a mandatory deposit schedule to finance such replacement: *Provided*, That any such vessel in excess of 20,000 deadweight tons, the construction of which is contracted for after December 31, 1974, or the delivery of which is made after December 31, 1978, shall be constructed and operated using the best available pollution prevention technology, and shall be equipped with a segregated ballast capacity determined appropriate by the Secretary of Transportation which shall be achieved in part by fitting, throughout the cargo length, a double bottom of a minimum height of one-fifteenth of the beam or such other appropriate height as determined by the Secretary of Transportation; and

"(C) 'United States' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico.

"(5) Each department, agency, or other instrumentality of the United States which is affected by any obligation imposed under this subsection, and any officer or employee thereof, shall take all appropriate action to assure compliance with such obligation and with regulations which shall be issued by the Secretary of Commerce to implement and enforce the provisions of this subsection. Each citizen of the

United States and each person subject to the jurisdiction of the United States shall comply with such obligation and any applicable regulations issued by such Secretary under this subsection.

"(6) The Secretary of Commerce shall review, evaluate, and report annually to the Congress and the President on the implementation of the provisions of this subsection and the effectiveness of such provisions. Each such report shall include, but not be limited to, a study of (1) the adequacy and availability of construction and reconstruction facilities in the United States for the vessels needed to meet the provisions of paragraph (1) of this subsection, and (2) the reasonableness of the prices charged and delivery dates for the construction and reconstruction of such vessels."

SEC. 4. The provision of this Act shall not apply to any refiner whose total refinery capacity (including the refinery capacity of any person who controls, is controlled by, or is under common control with such refiner) does not exceed 30,000 barrels per day: *Provided*, That the total quantity of such oil imported by or for such refiner does not in any year exceed the rated refining capacity of such refiner.

SEC. 5. License fees payable pursuant to Presidential proclamation for imports of crude oil imported into the United States shall be reduced by 15 cents per barrel for a period of 5 years from the date of enactment of this Act if the Secretary of the Treasury determines—

(a) such crude oil is transported by privately owned United States-flag commercial vessels; and

(b) the amount resulting from the nonpayment of such license fees is passed on to the ultimate consumers of such crude oil in whatever form it is when ultimately consumed.

AGENCY COMMENTS

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., October 9, 1973.

Hon. WARREN B. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Defense on S. 2089, a bill "To require that a percentage of United States oil imports be carried on United States-flag vessels."

The purpose of the bill is to restrict a portion of the ocean transportation market to the employment of United States-flag tankers to encourage the development of a larger United States-flag tanker fleet.

The growing dependence of the United States on foreign oil is a matter of great concern to the Department of Defense. That dependence poses a threat to the security and well-being of the Nation in the event that foreign oil should be denied at some future date, whether for political, economic or military reasons. One of the key factors in ensuring the continued availability of foreign oil is an adequate and reliable tanker fleet, with assured availability in time of political or economic stress, or in time of war. United States-flag vessels with American crews are of course the most reliable source of ocean transport, and on that ground the Department of Defense is in agreement

with the ultimate purpose of S. 2089, an expanded United States-flag tanker fleet.

We believe however that there are off-setting disadvantages in the bill which warrant serious consideration. The United States has now entered a period of domestic shortages in both crude oil and refined petroleum products. For the forseeable future the Nation will be heavily dependent on petroleum imports from multiple sources throughout the world. Given the existing and prospective narrow balance between world oil supply and demand, any action which might impede the access of all prospective importers, both large and small, to foreign oil supplies, could impact adversely on the supply and demand balance in the United States, with deleterious effect on the economy and well-being of the populace.

S. 2089 would appear to require that a foreign refinery from which a domestic importer sought to purchase products would be required to obtain a portion of its feedstock supply by means of United States-flag vessels. Such a requirement might be attainable by the larger, fully integrated oil companies in connection with long-term fixed-quantity contracts, but it appears highly unlikely that foreign refiners other than those whose primary market is the United States, could or would be inclined to routinely employ higher-cost United States-flag tankers against the possibility of short-term or seasonal purchases by United States customers. The result could be the denial of otherwise available foreign oil supplies, particularly to the smaller non-integrated importers upon whom we are critically dependent at the margin, and the further deterioration of the supply situation in the United States. This nation is already encountering oil shortages which may grow larger in the next few years, and those shortages have impacted adversely on the ability of the Department of Defense to provide fuel support to the military departments and civil agencies of the Government. We believe enactment of S. 2089 would aggregate this situation.

The enactment of legislation which would restrict the exercise of a free market in the employment of tankers in international trade would establish a precedent for similar legislation by other seafaring nations as well as oil producing nations. The resultant compartmentalizing of the international tanker fleet could adversely affect the ready availability of tankers in time of tension or war and would thus be inimical to the security of the United States.

We believe that the Merchant Marine Act of 1970 provides an adequate instrument for the development of a fleet of United States-flag tankers, without the disadvantages which would result from enactment of S. 2089.

For the reasons set forth above the Department of Defense opposes enactment of S. 2089.

The Office of Management and Budget advises that there is no objection to the presentation of this report for the consideration of the Committee and that enactment of S. 2089 would not be in accord with the Program of the President.

Sincerely,

L. NIEDERLEHNER,
Acting General Counsel.

GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., October 18, 1973.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on S. 2089, "To require that a percentage of United States oil imports be carried on United States flag vessels."

The proposed legislation would amend section 901(b)(1) of the Merchant Marine Act of 1936, as amended, (46 U.S.C. 1241), to require that U.S. flag commercial vessels carry 20 percent of the gross tonnage of all petroleum and petroleum products imported into the United States on ocean vessels, to the extent such vessels are available at fair and reasonable rates. The gross tonnage requirement would increase to at least 25 percent after June 30, 1975 and at least 30 percent after June 30, 1977.

The bill is contrary to the traditional U.S. position favoring international free trade for private shipping and its passage might be expected to provoke similar actions by other countries, especially oil producing countries.

Enactment of the bill would have an immediate effect on costs for imported oil since crews of U.S. flag vessels are two to three times more costly than foreign crews. These increased costs would be borne by consumers.

While we recognize the importance of having a strong domestic shipping industry, we do not feel that this proposed legislation will improve upon the Federal aid already enacted for the maritime industries. The four most important of these aids are operating-differential subsidy, construction-differential subsidy, various cabotage laws, and tax subsidies administered through the Federal tax system. Provisions of the Merchant Marine Act of 1970 call for a sizable increase in the form of construction subsidies and yet there exists considerable uncertainty over how much construction may take place, when it might be completed and now much it might cost. Current estimates are that 300 new vessels or their productive equivalent may be built over the next ten years.

In consideration of the limited capacity of U.S. shipyards, the present utilization of U.S. flag tankers, and the projected increases in tanker capacity needed to carry imported and Alaskan oil through 1985, it seems unlikely that U.S. flag carriers operating at full capacity would be able to achieve a 20 percent carriage rate. We, therefore, conclude that the bills would have little positive effect in the U.S. maritime industry at this time, but that there well may be severe negative impacts concerning our ability to maintain an uninterrupted flow of imported oil.

For these reasons, the Department is opposed to the enactment of S. 2089.

The Department has been advised by the Office of Management and Budget that there is no objection to the submission of this report to your Committee and that enactment of the proposed legislation would not be in accord with the program of the President.

Sincerely yours,

EDWARD C. SCHMULTZ,
General Counsel.

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., December 18, 1973.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for Departmental comments on S. 2089, a bill "To require that a percentage of United States oil imports be carried on United States-flag vessels."

This bill would amend Section 901(b) of the Merchant Marine Act of 1936 to insure that at least 20% of the gross tonnage of all petroleum and petroleum products imported into the United States on ocean vessels shall be transported in privately owned United States-flag vessels. The bill would require that the amout of oil so carried to be 25% by June 30, 1975, and 30% by June 30, 1977. if the Secretary of Commerce determines that there will be adequate United States tonnage available to carry those quantities of oil.

The impact of the bill on this Department would be at the secondary level of responding with an adequate commercial vessel safety program in the event that enactment of the legislation results in an increase in tanker vessel construction in the United States. The primary impact would be upon programs administered by the Department of Commerce. We, therefore, defer to Commerce as to the merits of the legislation.

The Office of Management and Budget advises that while there is no objection to the submission of this report for the Committee's consideration, enactment of S. 2089 would not be in accord with the program of the President.

Sincerely,

J. THOMAS TIDD,
Acting General Counsel.

MINORITY VIEWS OF MR. COTTON

I oppose vigorously the bill, H.R. 8193, which carries the short title the "Energy Transportation Security Act of 1974".

The most vital point, in my opinion, to which the Senate should be alerted at the very outset is that with the bill, H.R. 8193, we are embarking upon a new and probably endless course by virtue of the precedent it would set in extending by Federal statute a cargo preference requirement to other than government-owned or government-financed cargoes, *to privately-owned commercial cargoes* of oil and products refined or derived from oil. The significance of this precedent is addressed in greater detail later in these views, but because of its importance I wish to emphasize it at the outset.

WHOSE "SECURITY" IS AT STAKE?

Essentially, the basic issue presented by this legislation, as characterized by the grossly misleading short title to the bill—the "Energy Transportation Security Act of 1974"—is just whose "security" is at stake—the maritime unions or the major international oil companies?

Press accounts of this bill, not without some justification, have characterized it as a battle between competing special interests. On the one hand, there are the proponents of the legislation, consisting largely of seafaring maritime unions and other maritime interests who have a substantial economic stake in its passage and enactment. On the other hand, there are the opponents, consisting of the major international oil companies and those American citizens operating tanker vessels under foreign registry with lower operating costs, avoiding both United States taxation and bargaining with American seafaring labor unions. Both of these special interest groups have been characterized as wearing "black hats"! Yet, it is the *public interest* which is being subsumed in the heat of battle between these two special interest groups, and which, in my opinion, will ultimately have to bear the cost of whichever group emerges as the victor in this arena of battle.

For myself, my principal concern is the public interest, especially that of my constituents in the State of New Hampshire, and its sister New England States, which lack petroleum refining capacity and which are heavily dependent upon oil imported from foreign sources and refined for consumption in the markets in that region. I hold no brief for either of the two special interest groups.

First, insofar as concerns the domestic seafaring unions and domestic maritime interests, the Congress passed and the President signed into law the Merchant Marine Act of 1970 as a vehicle to bring into existence a competitive American Merchant Marine. And, for the first time under the provisions of that Act, we provided for both construction-differential and operating-differential subsidies for privately-owned United States commercial tanker vessels. Exemplifying the

vigor of the expenditure of public funds resulting from implementation of that 1970 Act is the fact that during the 5 years preceding its enactment there was appropriated $500 million to provide construction-differential subsidies for privately-owned United States-flag commercial vessels, whereas in the ensuing 5 years *after* the date of enactment of the 1970 Act, appropriations for construction-differential subsidies have almost tripled to some $1.5 billion! In addition to this, the government presently subsidizes wages, including fringe benefits, for American seamen on the magnitude of in excess of 70% of such total wage cost. For example, of an average annual salary for an American licensed merchant marine officer amounting to $53,000, the American taxpayer pays $38,319 of this amount; for unlicensed American seamen of a total annual wage cost of $26,000, the American taxpayer pays $18,928. All H.R. 8193 would serve to accomplish is to compound further the cost burden on the American taxpayer in his role as a consumer of oil and refined oil products.

As for the major international oil companies and those American citizens who operate tanker vessels under foreign registry, it was these groups who over a period of several years consistently imposed an unwarranted cost burden upon the citizens of the New England and Midwestern States with their vigorous support for the then existing oil import quota program, and who vigorously opposed each and every attempt by myself and fellow New England colleagues to obtain relief, however minimal, from this onerous burden. And, these are the same groups who have enjoyed and continued to enjoy special privileges under the provisions of our tax laws, especially with regard to the earnings of vessels under foreign registry.

Certainly no one should feel any compulsion whatsover to pause for one moment of reflection upon any alleged "plight" of either of these two special interest groups. *But, each and every one of us should be deeply concerned about the plight of the American citizen in his dual role as a taxpayer and as a consumer if misguided legislation, such as H.R. 8193, should ever be enacted into law. It is for this forgotten group—the American public—for whom I am deeply concerned and for whom I intend to do all in my power to insure that the bill, H.R. 8193, meets the fate which it so richly deserves—a resounding defeat!*

WHO IS THE TRUE BENEFICIARY OF H.R. 8193 WITH REGARD TO EMPLOYMENT OPPORTUNITIES AND AT WHAT COST TO THE AMERICAN TAXPAYERS?

The proponents of H.R. 8193 will advocate strenuously that this legislation is needed to assist the poor American seamen because the major international oil companies which control the bulk of the world tanker fleet refuse to register such vessels under the United States flag in order to avoid negotiating with American seamen. But, even if H.R. 8193 is enacted into law, it will assist only that segment of the American maritime industry, namely the shipbuilding industry, which is experiencing a business boom second only to that experienced during World War II. It will be of little assistance whatsoever to any American seafaring personnel because, as the legislation presently is drafted, it virtually precludes any transfer of that foreign flag tanker tonnage to United States registry which might thereby afford near-term employment opportunity to under-employed American sea-

faring personnel. On the contrary, it would require stringent standards for vessels to qualify for the proposed oil import cargo preference which are even higher than those required under existing law to qualify for the preference to carry government-owned or government-financed cargoes! It would, for example, require that the vessel be built in the United States, while at this time American shipyards have such a heavy backlog of orders that tanker vessels presently contracted for construction will not be able to be delivered until 1978 or thereafter.

According to estimates made by the Department of Commerce, which assume realistic constraint on shipyards, H.R. 8193 would create approximately 2,200 incremental man-years of seafaring employment and 143,200 incremental man-years of shipyard and support industry employment through 1980, or a total of approximately 145,400 incremental man-years of employment through 1980. The realistic cost of this program is very difficult to estimate, since it would be certain to have a strong inflationary effect on the U.S. shipbuilding industry. But, the excess demand for new tanker tonnage, given the fact that our shipyards are already operating at high capacity levels, would bid up the cost of ships built to meet the needs of the program contemplated by H.R. 8193, and also those to be built under the existing maritime program, without this added cargo preference legislation. Under the most optimistic assumption (i.e., no impact on shipbuilding costs resulting from H.R. 8193), the combined *minimum cost* of construction-differential subsidy (not taking into account the double bottom requirement which could add 5–11% to tanker vessel costs) and operating-differential subsidy through 1980 to produce this incremental seafaring, shipyard, and support industry employment is estimated to be approximately *$800 million!* In other words, the minimum average cost to the American taxpayer will be about $5,500 per man-year of employment, which is almost one-half the median income of $12,051 for all American families in 1973!

Thus, in the final analysis, the recipient of the biggest employment benefit from H.R. 8193 is the shipbuilding industry which least needs it; the seafearers, who need it most, would receive the smallest benefit!

This estimated minimum cost will be compounded further by the administrative costs associated with the complex program required by H.R. 8193. The Under Secretary of Commerce has stated that "Based on an estimated requirement of at least 150 additional personnel to administer the complicated cargo preference program, administrative expenses for salaries, space and related costs would be approximately *$3 million per year.*" (Emphasis supplied)

I think that the American taxpayer and the American consumer no longer should be called upon to bear the burden of costs such as this which clearly are not in the public interest, but rather constitute an unwarranted raid upon the funds of the American Treasury!

WHAT EFFECT WILL H.R. 8193 HAVE UPON DEVELOPING COMPETITIVE AMERICAN SHIPPING UNDER THE MERCHANT MARINE ACT OF 1970?

I have supported in the past, legislative programs and appropriations to promote the American Merchant Marine. I fully intend to do so in the future, unless legislation such as H.R. 8193 is enacted into

law, in as much as it provides not one "bite at the apple" of Federal assistance, but two and possibly three bites, which should outrage the sensibility of any legislator in the Congress of the United States.

For example, I was a vigorous supporter for enactment of the Merchant Marine Act of 1970, which since its enactment has served as a vehicle of generous public support for the promotion of the American Merchant Marine. But, that Act was enacted with the objective of building a *competitive* merchant marine. H.R. 8193 could only serve to provide an opiate to our merchant marine, providing competition not with other foreign shipping companies, but rather among American shipping companies. Its only incentive to such American-flag operators would be to employ their *least* efficient vessels in the cargo preference trade based as it is upon "fair and reasonable" rates for other privately-owned United States-flag commercial vessels. In this connection, perhaps the greatest admission against self-interest was the following comment by an avid proponent of H.R. 8193 in response to a written interrogatory submitted by me:

> * * * When you ask whether "operators will be able to compete effectively", it must be remembered that the bill excludes foreign-flag competition for the cargo reserved, for which American operators would therefore be competing with other American operators, at a level of expenses pitched to American standards. * * *

WHERE WILL THE PRECEDENT OF H.R. 8193 LEAD US?

The most serious infirmity with H.R. 8193, as a matter of public policy, and the one which I sought to emphasize at the very outset of these views, is that if enacted it will represent the *first time* that the United States government has extended a statutory cargo preference requirement to other than government-owned or government-financed cargoes, to *privately-owned cargoes*. And, this, in the words of at least two proponents of this legislation, represents but the first of possibly several steps to extend the same preference requirement to other private commercial cargoes, such as ores and other mineral resources for which we, as a nation, are dependent upon foreign supply. In response to questions during consideration of this legislation before the Committee on Merchant Marine and Fisheries of the House of Representatives, these two proponents responded in the following manner:

1. *Mr. Alfred Maskin, Executive Director, American Maritime Association:*

> Of course, we import many other bulk commodities besides oil—ores and other dry bulk commodities which are of strategic importance to the United States, and which again are being carried almost entirely by foreign-flag ships. *Off the top of my head, I can see no reason why a preference requirement should not be applied to these commodities, or to liquefied natural gas which we're just beginning to export.* * * * (Emphasis supplied.) (See hearings before House Committee on Merchant Marine and Fisheries, Serial No. 93-26, at pages 362-363.)

2. *Mr. Shannon J. Wall, President, National Maritime Union of America, AFL-CIO:*

> Mr. DuPont. Let me ask a second question.
>
> If this is good for all oil, why is it not good for chromite and Volkswagens, and Swiss watches?
>
> Why not require everything that comes into the United States to have 30 percent of it come in on American-flag ships?
>
> Mr. Wall. I think we have to take one step at a time. Let us see if we can get the 20 percent on the tankers.
>
> Mr. DuPont. So this is the first time you are coming up, and you intend to come back and ask us to extend it to other products?
>
> Mr. Wall. The United States is dependent on its importations from overseas, and *I would see no reason why all commodities could not be so treated.* * * * (Emphasis supplied.) (Ibid. at pages 408-409.)

Thus, this same imprudent precedent, if adopted for oil imports, might be imposed upon *agricultural exports* at this most inopportune point of time in our Nation's history when it is being called upon to supply a substantial portion of the food needs of the world. Such action could result in a substantial adverse effect upon our balance of payments, at the very crucial moment when we are seeking with our agricultural exports to offset a growing trade imbalance resulting from increased costs for imported petroleum. Moreover, our farm economy, with total fuel needs estimated at about 15% of our total daily rate of consumption, will be required to pay the increased fuel costs resulting from H.R. 8193, which, according to estimates by the National Council of Farm Cooperatives, will increase by "at least $175 million per year". This increased cost, of course, ultimately would be paid by the American consumer!

H.R. 8193 PROVIDES FOR REDUNDANT STATUTORY AUTHORITY FOR THE PREVENTION OF MARINE POLLUTION; CAN THE BILL REALLY PROVIDE TRANSPORTATION SECURITY?

One should not be mislead by the stimulating rhetoric concerning any "red herring" during any debate on H.R. 8193, whether it be the alleged increased environmental protection by a provision in the bill requiring double bottoms in tanker vessels, or the ready availability of United States-flag tanker vessels. The authority for protecting the marine environment from pollution already resides in the Secretary of Transportation by virtue of Title II of the Port and Waterways Safety Act of 1972, and based upon this authority the Secretary of Transportation has recently issued proposed regulations. And, if such a double bottom requirement even were to survive a conference with the House, you can rest assured that, since it would invoke tanker design and construction standards more severe than those applicable to foreign tanker vessels, American shipyards would, in rather short order, seek to be paid additional Federal construction-differential subsidy to cover the costs of such stricter construction requirements!

As for any so-called "transportation security", we in the Senate would simply be "sticking our head in the sand" if we failed to recognize H.R. 8193 for what it is—an onerous, non-tariff trade barrier, which the Arab Organization of Petroleum Exporting Countries (AOPEC), constructing as they are their own tanker vessel capacity, will recognize and conceivably take retaliatory action. Then, of what avail will have been the expenditure of billions of dollars of public funds to construct several million deadweight tons of tankers vessel capacity which, upon arrival at foreign sources of oil, will find that the spigot has been turned off to us? Their usefulness to our Nation will be as illusory as the ghostly ship, the "Flying Dutchman"!

If, in fact, there is a true desire to have major international oil companies register their vessels under the United States flag and employ American seamen, the means for accomplishing this meritorious objective is *not* H.R. 8193, but rather an amendment to the Internal Revenue Code denying to American-owned foreign flag tanker vessels the current tax haven of evading United States taxes until such vessel earnings are repatriated to the United States. This, then, is where the burden should rest and not upon the American taxpayer and the American consumer.

IS H.R. 8193 IN THE INTEREST OF EITHER THE AMERICAN CONSUMER OR THE AMERICAN TAXPAYER?

As I observed with respect to earlier and similar legislation (H.R. 13324 of the 92d Congress), it is inconceivable to me that legislation such as H.R. 8193 could ever emanate from the Committee on Commerce which long has prided itself as being the champion of the American consumer. Passage of this legislation, in my opinion, can only serve to tarnish the armor of this "shining knight" of consumer interest.

H.R. 8193 would give the American consumer nothing! It even fails to provide any relief by temporary waiver in a declared emergency ". . . whenever the Congress by concurrent resolution or otherwise, or the President of the United States or the Secretary of Defense . . ." so declare. Yet, this authority does exist in the present law applicable to government-owned and government-financed cargo, since as stated in the House Report (No. 2329), accompanying S. 3233, 83rd Congress, which was approved as P.L. 83–644, ". . . the need for some *flexibility* was recognized in *extraordinary situations*. . . ." (Emphasis supplied.) No such flexibility is provided for in H.R. 8193, notwithstanding the fact that in this instance such need is even greater, involving as it does a vital energy resource of oil and products refined from oil.

In conclusion, H.R. 8193 can only serve to hang about the neck of the American consumer and taxpayer like the albatross in *The Ancient Mariner*. Thus, in the parlance of seafaring men, I earnestly solicit the support of all of my colleagues to join with me in giving the bill, H.R. 8193, the "deep six"!

NORRIS COTTON.

MINORITY VIEWS OF MR. PEARSON

I. PROLOGUE

The President on June 29, 1973, directed the Chairman of the Atomic Energy Commission to undertake a review of energy research and development activities. The President subsequently on November 8, 1973, launched a bold initiative, Project Independence, and called all Americans to participate in a determined national effort to become energy self-sufficient by 1980.

In announcing Project Independence, the President alluded to John F. Kennedy's call to harness the nation's diverse resources in achieving a manned landing on the moon within the decade. President Kennedy's dream was realized in the priority Apollo program. President Nixon's goal also can be achieved if the nation responds with comparable resources and accords Project Independence the priority which it so clearly merits.

AEC Chairman Dixie Lee Ray published on December 1, 1973, the report requested by the President in his June 29 energy massage. Entitled "The Nation's Energy Furture," this document outlines not only a proposed FY 1975 energy research and development program, but also an action plan to accomplish self-sufficiency within this decade. The report recommends an expenditure of $22.5 billion in a national energy R&D program, FY 1975–1979. The total includes projections of both federal and private spending.

The proposed R&D program would decrease projected 1980 demand for energy imports by half, to 5.9 million barrels per day of oil-equivalent. In order to replace by 1980 the other half of the import demand, Dr. Ray has recommended a reduction in energy usage; that is, a national energy conservation program, as well as extraordinary measures to stimulate a dramatic increase in domestic energy production.

I would urge the Senate to embrace the goals of Project Independence. I would urge the Senate to determine at the outset of debate whether an energy-related bill is consistent with the national policy objective. If such a bill has little effect on Project Independence, then it is probably of little merit, or irrelevant.

If a bill, on the other hand, is counter-productive in the quest for diminished reliance upon foreign energy, I would then urge the Senate to reject it. Because energy self-sufficiency is so central to national defense and entirely consistent with the American consumer interest, Congress should have little difficulty in characterizing bills which obstruct or delay this goal as bad legislation. It may be that Project Independence cannot be realized; nevertheless, affirmative Congressional action to frustrate energy self-sufficiency impedes whatever progress that otherwise could be made.

The "Energy Transportation Security Act of 1974", H.R. 8193, is bad legislation for many reasons. It is fatally defective, however, not only because it ignores Project Independence, but because it actually defies Project Independence and would force billions of dollars to be spent upon the premise that progress toward energy self-sufficiency cannot be achieved within this century.

II. THE NATIONAL SECURITY INTEREST

The proponents of H.R. 8193 have contended that its enactment is important to the national security interest. Because tanker fleets owned by the international oil companies are registered under flags of convenience, this bill is advanced as a hedge against the prospect of official intervention by Liberia, Panama, and/or Honduras in a manner inconsistent with U.S. security interests. Notwithstanding the provisions of section 902 of the Merchant Marine Act of 1936, a provision which authorizes foreign flag vessels owned by U.S. nationals to be impressed for service in time of national emergency, the advocates of H.R. 8193 conclude that only with a sizeable tanker fleet under U.S. flag can America be assured of an uninterrupted supply of foreign oil.

It is regrettable, at this time of energy inflation, that H.R. 8193 should be advanced under the guise of the "national security interest." All of us must surely recognize, in the wake of recent events, that the real threat to national security is embargo against shipments to U.S. ports by the cartel of oil producing countries. The Arab Organization of Petroleum Exporting Countries (AOPEC), apparently, can with impunity act to curtail the U.S. supply, at least for the short term. It is patently absurd to suggest that small countries, who merely provide tax shelters for the registration of in-house company fleets could, in time of travail, successfully interfere with the sailing orders of U.S. owned vessels requisitioned to serve U.S. interests.

The President in his November 8 energy message identified the key national security issue and formulated an appropriate national response. He said that "This new effort to achieve self-sufficiency in energy . . . is absolutely critical to the maintenance of our ability to play our individual role in international affairs."

It is wholly inappropriate for Congress to enact legislation such as H.R. 8193 when the principal effect will be to institutionalize the current U.S. dependence upon foreign petroleum and to launch a massive new capital investment program based upon the dangerous premise that such dependence will be maintained in perpetuity.

III. THE CONSUMER INTEREST

The American Petroleum Institute has estimated that H.R. 8193 could cost U.S. consumers up to $60 billion between 1975 and 1985. This estimate of cost, of course, is suspect because the international oil companies have a special interest in opposing the bill for reasons wholly unrelated to consumer cost. The cost estimate at the other extreme, as provided by witnesses closely identified with shipbuilding interests and the maritime unions, has shown the bill to entail no increased cost to the energy consuming public. This cost estimate is even more suspect than that of the oil industry, not only because it is based upon elusive criteria such as balance of payment benefits and increased employment in already overburdened shipyards, but also because it ignores the entire history of maritime rates, Congressional findings upon which the operating differential subsidy program is based, and the traditional inflationary effect of artificial restraints on competition in transportation.

The fact is that this bill has costs which are potentially enormous; although, admittedly, they cannot be quantified at this time. I share Senator Cotton's deep concern over the impact upon consumers which H.R. 8193 would entail. Depending upon the actual level of petroleum imports, H.R. 8193 could inflate energy costs initially to the consumer by $500 million–$1 billion per year and much more in the long term if the drive for energy selfsufficiency collapses under an assault by those special interests, including both the principal opponents and proponents of this bill, who stand to profit from the continued vulnerability of the U.S. to foreign energy supplies.

The enactment of H.R. 8193 would force additional expenditures for construction differential subsidy and operating differential subsidy under the terms of the 1970 Merchant Marine Act. The taxpayers would underwrite this dual subsidy program in order to secure a fleet of U.S-flag ships which are not needed now and certainly will not be needed in the future if reasonable gains can be made toward the goals of Project Independence.

After the unneeded tankers are constructed with taxpayers' money, they will be put to sea at taxpayers' expense to serve no legitimate national purpose. They will become part and parcel of a world-wide surplus of ocean transportation capacity.

IV. PRECEDENTIAL EFFECT OF H.R. 8193

Senator Cotton and the Executive departments have opposed this legislation vigorously because it entails a precedent that is destructive to U.S. trade policy. Although the U.S. has maintained a cargo preference on federally subsidized and owned exports, this legislation for the first time would impose such preferences by statute upon commercial imports. That such countries as Chile, Morocco, Ecuador, Spain and Peru have embraced this non-tariff barrier to trade is not a legitimate argument in behalf of comparable U.S. action. That major trading nations, such as France and Japan, have approved comparable regulations is significant only to underscore the need for intensive diplomatic initiatives seeking their recision.

The problem is that the specious national security argument can be extended to the import or export of almost any commodity by almost any country. The mandate that products be exported on U.S. vessels inflates the purchase cost of our products and diminishes sales abroad. The mandate to import commodities on U.S.-flag vessels contributes to the staggering problem of inflation at home.

American farmers are concerned about H.R. 8193 because they consume petroleum products. The bill would inflate the cost of their production. But they are even more concerned that enactment would establish a cargo preference precedent to which the huge trade in farm

commodities would be subject eventually. I share their concern, and recognize that the intensely competitive trade in wheat, oilseeds and feed grains could be jeopardized by the high cost of U.S.-flag ocean transportation.

V. CONCLUSION

I have supported the landmark legislation, the Merchant Marine Act of 1970. That act is designed to promote the construction and operation of a viable U.S.-flag fleet. It will cost us billions of dollars, but the 1970 Act will accomplish its purpose. The shipyards are now operating at full capacity; there is a shortage of skilled manpower to build more U.S.-flag ships; and the decline of the U.S. maritime industry industry has been reversed.

It has been U.S. policy to facilitate registry of vessels owned by U.S. citizens under flags of convenience. The American oil companies, obviously, have taken advantage of this policy. As my distinguished senior colleague, Senator Cotton, has observed in his companion Minority Views:

> If, in fact, there is a true desire to have major international oil companies register their vessels under the United States flag and employ American seamen, the means for accomplishing this meritorious objective is not H.R. 8193, but rather an amendment to the Internal Revenue Code denying to American-owned foreign flag tanker vessels the current tax haven of evading United States taxes until such vessel earnings are repatriated to the United States. This, then, is where the burden should rest and not upon the American taxpayer and the American consumer.

If there was ever a time when Congress should not impose inflationary pressures upon the cost of energy to American consumers, that time must surely be now. The American people are tolerant of federal action inconsistent with their short-term interests if a legitimate case can be made for a long-term gain or overriding considerations of national security need. The irony of the "Energy Transportation Security Act of 1974" is that the arguments of transcending national need are misguided and based upon misconceptions. The inflationary effect of the bill remains as the singular, dubious accomplishment upon enactment.

The special interests supporting this bill are simply asking the American people to suffer more inflation and potential inconvenience without holding out any hope of relief from the problems and real hazards of these difficult times. I share with Senator Cotton the view that H.R. 8193 should be defeated decisively when the bill is debated on the Senate floor.

JAMES B. PEARSON.

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93d Congress 2d Session } HOUSE OF REPRESENTATIVES { Report No. 93-1437

ENERGY TRANSPORTATION SECURITY ACT OF 1974

October 7, 1974.—Ordered to be printed

Mrs. Sullivan, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 8193]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 8193) to require that a percentage of United States oil imports be carried on United States-flag vessels, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That this Act may be cited as the "Energy Transportation Security Act of 1974".

Sec. 2. Section 901 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1241), is amended by adding at the end thereof the following new subsection:

"(d)(1) The Secretary of Commerce shall take such steps as are necessary to assure that a quantity equal to 20 per centum of the gross tonnage of all oil transported in bulk on ocean vessels (whether transported directly from the original point of production or indirectly from such point to and from any intermediate points used for storage, refining, processing, packaging, unloading, or reloading of oil) for import into the United States shall be transported on privately owned United States-flag commercial vessels (to the extent that such vessels are available at fair and reasonable rates for such vessels), and to insure fair and reasonable participation of such vessels in such transportation from all geographical areas in which such oil is produced or refined or both. With respect to any period beginning after June 30, 1975, the quantity of such oil required to be transported on privately owned United States-flag commercial vessels shall be equal to 25 per centum of the gross tonnage of all oil transported in bulk on ocean

vessels for import into the United States, and for any period beginning after June 30, 1977, such quantity shall be equal to 30 per centum of such gross tonnage: Provided, That (1) the Secretary of Commerce finds and determines 6 months prior thereto, in the exercise of his sole discretion, that the tonnage of privately owned United States-flag commercial vessels, including vessels on order and scheduled to be ready for commercial service by such date, will be adequate to carry such quantity; and (2) in the event that such tonnage is not found to be adequate to carry such quantity, there shall be carried on such vessels the basic 20 per centum requirement together with any excess over such requirement, but not to exceed the applicable per centum requirement, for which such Secretary finds that adequate tonnage will be available.

"(2) The Secretary of Commerce may by rule establish a system of reasonable classification of persons and imports subject to the provisions of this subsection, and such Secretary shall treat all persons in the same such classification in substantially the same manner. If any person alleges (A) that he has been incorrectly classified under any such rule; (B) that there is no reasonable basis in fact for any such classification; or (C) that as a consequence of any agency action, he is or may be treated substantially differently from any other person in the same classification, such person may request, and, upon a reasonable showing, obtain, a hearing in accordance with section 554 of title 5, United States Code. Upon an agency decision, such person may request judicial review in the United States Court of Appeals for the District of Columbia. The scope of such review shall be governed by section 706 of title 5, United States Code, including the contention that the action of the agency was unsupported by substantial evidence.

"(3) The Secretary of Commerce is authorized to grant credits toward the fulfillment of the requirements of paragraph (1) of this subsection in the case of oil transported by privately owned United States-flag commercial vessels, over 100,000 deadweight tons, between foreign ports until such time as an oil discharge facility, capable of discharging fully laden vessels of over 200,000 deadweight tons, is in operation on any coast of the United States: Provided, That the Secretary of Commerce shall take all reasonable steps to assure that the authority provided in this paragraph not encourage, directly or indirectly, the construction, operation, or maintenance of a fleet of privately owned United States-flag commercial vessels different in numbers, types, or sizes than the fleet that would otherwise result.

"(4) As used in this subsection—

"(A) 'oil' means crude oil and the following products refined or derived from crude oil: unfinished fuels, gasoline, kerosene, aviation fuels, naphtha, cracking stocks, distillate heating oil, diesel oil, and residual oils;

"(B) 'privately owned United States-flag commercial vessels' are vessels of United States registry (or if at any time documented under the laws of any foreign nation, then documented under the laws of the United States for not less than the three previous years), built in the United States, and are not beyond their economic lives (as determined by the Secretary of Commerce), and

with respect to which the owner or lessee thereof has entered into a capital construction fund agreement with such Secretary pursuant to which such vessel shall be replaced at the end of its economic life, and such agreement includes a mandatory deposit schedule to finance such replacement; and

"(C) 'United States' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico.

"(5) Each department, agency, or other instrumentality of the United States which is affected by any obligation imposed under this subsection, and any officer or employee thereof, shall take all appropriate action to assure compliance with such obligation and with regulations which shall be issued by the Secretary of Commerce to implement and enforce the provisions of this subsection. Each citizen of the United States and each person subject to the jurisdiction of the United States shall comply with such obligation and any applicable regulations issued by such Secretary under this subsection.

"(6) The Secretary of Commerce shall review, evaluate, and report annually to the Congress and the President on the implementation of the provisions of this subsection and the effectiveness of such provisions together with his recommendations concerning such requirements. Each such report shall include, but not be limited to, a study of (1) the adequacy and availability of construction and reconstruction facilities in the United States for the vessels needed to meet the provisions of paragraph (1) of this subsection, and (2) the reasonableness of the prices charged and delivery dates for the construction and reconstruction of such vessels.

"(7) The requirements of paragraph (1) may be temporarily waived by the President upon determination that an emergency exists justifying such a waiver in the national interest."

SEC. 3. The provisions of this Act shall not apply to any refiner whose total refinery capacity (including the refinery capacity of any person who controls, is controlled by, or is under common control with such refiner) does not exceed 30,000 barrels per day: Provided, That the total quantity of such oil imported by or for such refiner does not in any year exceed the rated refining capacity of such refiner.

SEC. 4. License fees payable pursuant to Presidential proclamation for imports of oil imported into the United States shall be reduced by 15 cents per barrel of oil other than residual fuel oil and shall be reduced by 42 cents per barrel for residual fuel oil for a period of 5 years from the date of enactment of this Act if the Secretary of the Treasury determines—

(a) such oil is transported by privately owned United States-flag commercial vessels; and

(b) the amount resulting from the nonpayment of such license fees is passed on to the ultimate consumers of such oil in whatever form it is when ultimately consumed.

SEC. 5. Section 809 of the Merchant Marine Act, 1936 (46 U.S.C. 1213), is amended to read as follows: "Contracts under this chapter shall be entered into so as to equitably serve, insofar as possible, the foreign-trade requirements of the Atlantic, Gulf, Great Lakes, and Pacific ports of the United States. In order to assure equitable treatment for each range of ports referred to in the preceding sentence, and

to the extent that subsidy contracts are approved by the Secretary of Commerce, not less than 10 per centum of the funds appropriated or otherwise made available for the foreign-trade requirements of the United States pursuant to this Act or any law authorizing funds for the purposes of such Act shall be allocated for the foreign-trade requirements of each such port range. Furthermore, in awarding contracts under this chapter, preference shall be given to persons who are citizens of the United States and who have the support, financial and otherwise, of the domestic communities primarily interested. Not later than March 1, 1975, and annually thereafter the Secretary shall submit to Congress a detailed report (1) describing the actions that have been taken pursuant to this Ace to assure, insofar as possible, that direct and adequate service is provided by United States-flag commercial vessels to each range of ports referred to in this section and (2) including any recommendations for additional legislation that may be necessary to achieve the purposes of this section."

SEC. 6. Any self-propelled vessel of more than 70,000 deadweight tons, designed for the carriage of oil in bulk, documented under the laws of the United States, the construction of which is contracted for after December 31, 1975, shall be constructed and operated using the best available pollution prevention technology.

If engaged in the carriage of oil in bulk to United States west coast ports situated on internal waters or straits, a self-propelled vessel of more than 20,000 deadweight tons, documented under the laws of the United States, the construction of which is contracted for after December 31, 1974, shall be equipped with a segregated ballast capacity determined appropriate by the Secretary of the Department in which the Coast Guard is operating, which shall be achieved in part by fitting, throughout the cargo length, a double bottom.

And the Senate agree to the same.

That the House recede from its disagreement to the Senate amendment to the title of the bill and agree to the same.

LEONOR K. SULLIVAN,
FRANK M. CLARK,
THOMAS N. DOWNING,
JAMES R. GROVER, Jr.,
GEO. A. GOODLING,
Managers on the Part of the House.

WARREN G. MAGNUSON,
RUSSELL B. LONG,
ERNEST F. HOLLINGS,
DANIEL K. INOUYE,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 8193) to require that a percentage of United States oil imports be carried on United States-flag vessels, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

TITLE OF THE ACT

The House bill provides that it is an Act "To require that a percentage of United States oil imports be carried on United States-flag vessels, whereas the title of the Senate amendment provides that it is an Act "To regulate commerce and strengthen national security by requiring that a percentage of the oil imported into the United States be transported on United States-flag vessels." The conferees agreed to the title in the Senate amendment.

OIL IMPORT REQUIREMENTS

The House bill amends section 901(b)(1) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1241(b)(1)). Section 2 of the Senate amendment adds a new subsection (d) to section 901 of the Merchant Marine Act, 1936, as amended, generally containing most of the provisions set forth in the House bill. The conferees agreed to the Senate approach as it avoids certain provisions in section 901(b)(1) that should be applicable to the Government-generated cargoes subject to that section, but which should not be applicable to the oil imports covered by the Energy Transportation Security Act.

Acceptance of the Senate approach by the conferees, generally required the following technical amendments:

a. The House bill directs the "appropriate agency or agencies" to implement the provisions of the bill. Section 2 of the Senate amendment would direct the "Secretary of Commerce" in this regard. The conferees accepted the Senate language, as this was the clear intent of the House bill.

b. The conferees accepted the language in section 2 of the Senate amendment that the Secretary of Commerce shall "take such steps as are necessary to assure that", in lieu of the language in the House bill which provided "also take such steps as may be necessary and practicable to assure that".

c. The House bill applies to "at least 20 per centum of the gross tonnage", whereas section 2 of the Senate amendment applies to "a

quantity equal to 20 per centum of the gross tonnage". The conferees accepted the language in the Senate amendment, as the intent of both the House and Senate that the stated percentages are to be implemented as the amount of imported oil to be subject to the provisions of the Act.

d. The House bill applies to "all liquid petroleum and liquid petroleum products carried in bulk referred to as crude oil, unfinished fuels, gasoline, kerosene, aviation fuels, naphtha, cracking stocks, distillate heating oil, diesel oil, and residual oils imported into the United States on ocean vessels". Section 2 of the Senate amendment applies to "all oil transported on ocean vessels . . . for import into the United States". Proposed section 901(d)(4)(A) set forth in section 2 of the Senate amendment defines "oil" in accordance with the language of the House bill. The conferees accepted the language in the Senate amendment, but inserted the clarifying words "in bulk" from the House bill, after the words "of all oil transported".

e. The House bill includes "movements (i) directly from original point of production and (ii) from such original point to intermediate points for transshipment or refinement and ultimate delivery into the United States", whereas section 2 of the Senate amendment speaks in terms of "(whether transported directly from the original point of production or indirectly from such point to and from any intermediate points used for storage, refining, processing, packaging, unloading, or reloading of oil)". The conferees accepted the language in the Senate amendment.

f. The House bill requires that such oil "shall be transported on privately owned United States-flag commercial vessels to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels", whereas section 2 of the Senate amendment provides: "shall be transported on privately owned United States-flag commercial vessels (to the extent that such vessels are available at fair and reasonable rates for such vessels)". The conferees accepted the language in the Senate amendment.

g. The House bill requires that the Act be implemented "in such manner as will insure fair and reasonable participation of United States-flag commercial vessels in such cargoes by geographical areas", whereas section 2 of the Senate amendment provides "and to insure fair and reasonable participation of such vessels in such transportation from all geographical areas in which such oil is produced or refined or both". In both instances, the intent is the same, i.e., the creation of a broadly representative fleet capable of carrying a designated percentage of all our oil imports from all sources. It is anticipated that the Secretary of Commerce will give serious consideration to utilizing the barrel-mile concept commented on in both the House and Senate reports in implementing this provision. The conferees accepted the language in the Senate amendment.

h. The House bill requires "*Provided*, That the quantity required so to be carried in United States-flag commercial vessels shall be at least 25 per centum after June 30, 1975, and at least 30 per centum after June 30, 1977", whereas the Senate amendment provides: "With respect to any period beginning after June 30, 1975, the quantity of such oil required to be transported on privately owned United States-flag

commercial vessels shall be equal to 25 per centum of the gross tonnage of all oil transported on ocean vessels for import into the United States, and for any period beginning after June 30, 1977, such quantity shall be equal to 30 per centum of such gross tonnage". The conferees accepted the language in the Senate amendment, but inserted the clarifying words "in bulk" from the House bill, after the words "of all oil transported".

i. The increases contemplated by the Act are contingent upon certain findings. The House bill provides "if the Secretary of Commerce shall on December 31 preceding each such date determine that United States tonnage existing or on order and scheduled to be delivered by such date would be adequate to carry such quantity", whereas the Senate amendment specifies "*Provided*, That (1) the Secretary of Commerce finds and determines six months prior thereto, in the exercise of his sole discretion, that the tonnage of privately owned United States-flag commercial vessels, including vessels on order and scheduled to be ready for commercial service by such date, will be adequate to carry such quantity; and (2) in the event that such tonnage is not found to be adequate to carry such quantity, there shall be carried on such vessels the basic 20 per centum requirement together with any excess over such requirement, but not to exceed the applicable per centum requirement, for which such Secretary finds that adequate tonnage will be available." The conferees accepted the language in the Senate amendment as it clarifies the intent of the Congress.

j. Both the House and Senate bills generally provide that the Secretary of Commerce may by rule establish a system of reasonable classification of persons and imports subject to the provisions of the Act, and for a system of judicial review for persons aggrieved. The conferees accepted the language contained in section 2 of the Senate amendment, but added the following language from the House bill: "including the contention that the action of the agency was unsupported by substantial evidence," in order to insure review as provided in section 706(2)(E) of title 5 of the United States Code.

k. The House bill provides "That the provisions of this section shall not apply to refineries whose total refinery capacity (including the refinery capacity of any person who controls, is controlled by, or is under common control with such refiner) does not exceed 30,000 barrels per day", whereas section 3 of the Senate amendment provides that "The provisions of this Act shall not apply to any refiner whose total refinery capacity (including the refinery capacity of any person who controls, is controlled by, or is under common control with such refiner) does not exceed 30,000 barrels per day: *Provided*, That the total quantity of such oil imported by or for such refiner does not in any year exceed the rated refining capacity of such refiner." The conferees accepted the language of the Senate amendment since it clarifies the intent of the Congress.

l. The House bill and the Senate amendment speak in terms of the "United States". Section 2 of the Senate bill goes on to define the term "United States" in proposed section 901(d)(4)(C). The conferees accepted the Senate definition.

m. The House bill does not contain the provisions set forth in section 2 of the Senate amendment as proposed section 901(d)(5) and

section 901(d)(6). However, as the House bill amends section 901(b)(1), existing section 901(b)(2) would apply: "(2) Every department or agency having responsibility under this subsection shall administer its program with respect to this subsection under regulations issued by the Secretary of Commerce. The Secretary of Commerce shall review such administration and shall annually report to the Congress with respect thereto." The conferees accepted the more explicit Senate language.

In addition to the above technical amendments, the conferees reached agreement on the following:

1. The House bill does not contain a provision such as proposed section 901(d)(3) set forth in section 2 of the Senate amendment. This provision authorizes the Secretary of Commerce to grant credits towards the fulfillment of the requirements of the Act in the case of oil transported by privately owned United States-flag commercial vessels, over 100,000 DWT, between foreign ports, until such time as an oil discharge facility, capable of discharging fully laden vessels of over 200,000 DWT is in operation on any coast of the United States. The conferees accepted this amendment as there are currently no port facilities in the United States capable of discharging fully-laden Very and Ultra Large Crude Carriers of the type now being constructed. The conferees wish to emphasize that in this instance the Secretary's authority terminates as soon as the first oil discharge facility, capable of discharging fully laden vessels of over 200,000 DWT, is in operation on any of our coasts, and such credit for foreign-to-foreign movements is to be available only to the extent that the percentage cargo preference requirements of the Act are not met without such credits by available United States-flag vessels.

2. The House bill amends section 901(b)(1), which provides that "the term 'privately owned United States-flag commercial vessels' shall not be deemed to include any vessel which, subsequent to the date of enactment of this amendment, shall have been either (a) built outside the United States, (b) rebuilt outside the United States, or (c) documented under any foreign registry, until such vessel shall have been documented under the laws of the United States for a period of three years."

The Senate amendment defines "privately owned United States-flag commercial vessels" in section 2, as proposed section 901(d)(4)(B). The Senate amendment requirements for a vessel to qualify are much more stringent than the House bill.

There are four basic differences between the House bill and the Senate amendment:

a. The Senate amendment requires that such vessels be constructed in the United States, whereas the House bill does not. The conferees agreed to the Senate amendment as the generation of business for domestic shipyards, and the employment opportunities and balance of payments benefits resulting therefrom, are important secondary benefits of H.R. 8193.

b. The Senate amendment requires that such vessels be not more than 20 years old or which have been reconstructed and are not beyond their economic lives (as determined by the Secretary of Commerce), whereas the House bill contains no such restrictions. While the conferees are in agreement with the basic objective of creating a modern expanded fleet of United States-flag vessels, it was concluded that the 20 year requirement could be arbitrary and not in the best interests of the Act. Therefore, the conferees amended this provision in proposed section 901(d)(4)(B), after the words "built in the United States", and prior to the proviso, to read as follows: "and are not beyond their economic lives (as determined by the Secretary of Commerce), and with respect to which the owner or lessee thereof has entered into a Capital Construction Fund Agreement with such Secretary pursuant to which such vessel shall be replaced at the end of its economic life, and such agreement includes a mandatory deposit schedule to finance such replacement:". Age would be only one factor to be considered by the Secretary in this regard. For example, whether the U.S. Coast Guard would certificate a vessel would be another such factor. The determination as to whether a vessel is within its economic life would be within the discretion of the Secretary of Commerce based on the factors he sees fit to consider.

c. The Senate amendment requires the owner or lessee of the vessel to enter into a Capital Construction Fund Agreement with the Secretary of Commerce to finance replacement vessels, whereas the House bill does not. The conferees agreed to the requirement of a Capital Construction Fund Agreement with a mandatory deposit schedule for a vessel to qualify under this Act. As in the case of vessels receiving construction subsidy and operating subsidy under the Merchant Marine Act of 1936, it is only reasonable that these vessels securing a preference be required to comply with obligations for vessel replacement. It is contemplated that this Act will not be used to phase out construction and operating subsidy programs for tankers. Tankers heretofore or hereafter built with construction-differential subsidy, and operated with operating-differential subsidy, or both, qualify as privately owned United States-flag commercial vessels for the carriage of petroleum imports under this Act. The conferees agreed to this Senate amendment, as further amended in conference and set forth in item "b", above. This provision would insure the replacement of such privately owned United States-flag commercial vessels at the end of their economic life as determined by the Secretary of Commerce.

d. The Senate amendment requires that vessels in excess of 20,000 DWT, contracted for after December 31, 1974, or delivered after December 31, 1978, shall be constructed and operated with the best available pollution prevention technology, and shall be equipped with a segregated ballast capacity determined appropriate by the Secretary of Transportation which shall be achieved in part by fitting, throughout the cargo length, a double bottom of a minimum height of one-fifteenth of the beam or such other appropriate height as determined by the Secretary of Transportation. The House bill contains no such requirements. The conferees agreed to the deletion of the proviso set forth in proposed section 901(d)(4)(B), containing these requirements. These matters are now set forth in section 7, renumbered section 6, of the bill, and discussed below.

3. The Senate amendment provides in proposed section 901(d)(7), set forth in section 2, that "The requirements of paragraph (1) may

be waived by the President upon determining that an emergency exists justifying a temporary waiver of such requirements. Any such waiver shall not exceed 180 days unless authorized by law." The House bill would amend section 901(b)(1) which provides "That the provisions of this subsection may be waived whenever the Congress, by concurrent resolution or otherwise, or the President of the United States or the Secretary of Defense declares that an emergency exists justifying a temporary waiver of the provisions of section 901(b)(1) and so notifies the appropriate agency or agencies".

The conferees further amended this Senate amendment to read as follows:

"(7) The requirements of paragraph (1) may be temporarily waived by the President upon determination that an emergency exists justifying such a waiver in the national interest.

It should be noted that the waiver provision agreed upon by the conferees is more restrictive than the provision that would apply to the House bill. The conferees gave serious consideration to establishing a specific time limitation, but concluded that such an approach was not feasible. It is the intent of the conferees that the temporary duration of the waiver referred to in the provision is to exactly coincide with the duration of the emergency which triggered the waiver.

4. Section 4 of the Senate amendment provides for the remission of certain import fees where United States-flag vessels are used to transport the oil, and the saving is passed on to the American consumer. The House bill did not contain a comparable provision. The conferees agreed to this Senate amendment.

OTHER REQUIREMENTS

1. Section 5 of the Senate amendment would amend section 809 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1213), to generally require that 10 per cent of construction and operating subsidy funds, as well as research and other funds, be allocated to serve the foreign trade requirements of ports on each of the four seacoasts. The House bill does not contain a comparable provision.

This provision was added by the Senate in recognition of unique problems confronting the Great Lakes. The condition of United States-flag service on the Great Lakes has long been of grave concern to Members of both the House of Representatives and the Senate. However, the conferees could not agree to legislation that would require 10 per cent of subsidy funds to be allocated to the Great Lakes, with no assurance that it could ever be effectively utilized. Such a procedure could seriously disadvantage existing United States-flag services. Therefore, the conferees agreed on the following language:

"SEC. 5. Section 809 of the Merchant Marine Act, 1936 (46 U.S.C. 1213), is amended to read as follows: "Contracts under this chapter shall be entered into so as to equitably serve, insofar as possible, the foreign-trade requirements of the Atlantic, Gulf, Great Lakes and Pacific ports of the United States. In order to assure equitable treatment for each range of ports referred to in the preceding sentence, and to the extent that subsidy contracts are approved by the Secretary of Commerce, not less than 10 per centum of the funds appropriated or otherwise made available for the foreign-trade requirements of the United States pursuant to this Act or any other law authorizing funds for the purposes of such Act shall be allocated for the foreign-trade requirements of each such port range. Furthermore, in awarding contracts under this chapter, preference shall be given to persons who are citizens of the United States and who have the support, financial and otherwise, of the domestic communities primarily interested. Not later than March 1, 1975, and annually thereafter the Secretary shall submit to Congress a detailed report (1) describing the actions that have been taken pursuant to this Act to assure, insofar as possible, that direct and adequate service is provided by United States-flag commercial vessels to each range of ports referred to in this section and (2) including any recommendations for additional legislation that may be necessary to achieve the purpose of this section."

The insertion of the phrase "to the extent that subsidy contracts are approved by the Secretary of Commerce" will insure that if reliable proposals for United States-flag service to the Great Lakes are submitted and approved and contracts executed, the funds to support such services will be made available.

The reporting requirement inserted by the conferees should insure that the Great Lakes receive greater attention by the Secretary of Commerce than they have in the past.

2. Section 6 of the Senate amendment would generally permit foreign-flag cruise vessels to extend from 24 to 48 hours the length of time they could call at United States ports. The House bill does not contain a comparable provision.

The conferees rejected this Senate amendment.

3. Section 7 of the Senate bill provides that the same safety and pollution prevention requirements and standards shall be applicable to all privately-owned United States-flag commercial vessels employed in the transportation of oil either in the foreign commerce of the United States or between ports of the United States. The House bill does not contain a comparable provision. The legislative history of the Senate bill is clear that double bottoms were contemplated in this regard.

The conferees could not reach agreement on the effectiveness of double bottoms. Therefore, it was concluded that a pilot project should be instituted so that the effectiveness of double bottoms can be better evaluated. The conferees reached agreement on substituting the following provision for the proviso to proposed section 901(d)(4)(B), set forth in section 2 of the Senate amendment and section 7 of the Senate amendment:

"SEC. 6. Any self-propelled vessel of more than 70,000 deadweight tons, designed for the carriage of oil in bulk, documented under the laws of the United States, the construction of which is contracted for after December 31, 1975, shall be constructed and operated using the best available pollution prevention technology. If engaged in the carriage of oil in bulk to United States west coast ports situated on internal waters or straits, a self-propelled vessel of more than 20,000 deadweight tons, documented under the laws of the United States, the construction of which is contracted for after December 31, 1974, shall be equipped with a segregated ballast capacity determined appro-

priate by the Secretary of the Department in which the Coast Guard is operating, which shall be achieved in part by fitting, throughout the cargo length, a double bottom."

The committee of conference views this new section 6 as accomplishing two objectives. The first sentence establishes an antipollution construction standard for general applicability to all self-propelled vessels in excess of 70,000 deadweight tons designed for the carriage of oil in bulk and documented in the United States, including vessels qualifying for cargo under this Act. All U.S. vessels of that category, if contracted for after December 31, 1975, must be constructed using the best available pollution prevention technology. It is the conferee's intention that the Coast Guard, in deciding on the best available pollution prevention technology, would follow the procedures and criteria contained in the Ports and Waterways Safety Act of 1972 (P.L. 92-340).

In addition, the second sentence of section 6 carries out the Conferee's desire to establish a pilot project to evaluate, by actual practice, the pros and cons of double bottom tankers. If a self-propelled vessel of more than 20,000 deadweight tons, documented under the laws of the United States and contracted for after December 31, 1974, is engaged in the transport of oil in bulk to United States west coast ports located on straits or internal waters, such vessels must be equipped with a segregated ballast capability to be accomplished in part by a double bottom fitted throughout the cargo length of the vessel. The actual size and configuration of the double bottom is to be determined by the United States Coast Guard, which possess the technical expertise in this regard.

The term "internal waters" is interpreted to mean all waters on the landward side of the baseline by which the territorial sea is measured. The formula for this measurement is contained in the Convention on the Territorial Sea and the Contiguous Zone. (15 UST 1606; TIAS 5639). The term "straits" was included because of disagreement between the various agencies of Federal Government as to whether the Strait of Juan de Fuca, where considerable tanker traffic is expected, is considered to be internal waters.

LEONOR K. SULLIVAN,
FRANK M. CLARK,
THOMAS N. DOWNING,
JAMES R. GROVER, Jr.,
GEO. A. GOODLING,
Managers on the Part of the House.
WARREN G. MAGNUSON,
RUSSELL B. LONG,
ERNEST F. HOLLINGS,
DANIEL K. INOUYE,
Managers on the Part of the Senate.

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93D CONGRESS } SENATE { REPORT
2d Session } { No. 93–1242

ENERGY TRANSPORTATION SECURITY ACT OF 1974

OCTOBER 7, 1974.—Ordered to be printed

Mr. LONG, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 8193]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 8193) to require that a percentage of United States oil imports be carried on United States-flag vessels, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That this Act may be cited as the "Energy Transportation Security Act of 1974".

SEC. 2. Section 901 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1241), is amended by adding at the end thereof the following new subsection:

"(d)(1) The Secretary of Commerce shall take such steps as are necessary to assure that a quantity equal to 20 per centum of the gross tonnage of all oil transported in bulk on ocean vessels (whether transported directly from the original point of production or indirectly from such point to and from any intermediate points used for storage, refining, processing, packaging, unloading, or reloading of oil) for import into the United States shall be transported on privately owned United States-flag commercial vessels (to the extent that such vessels are available at fair and reasonable rates for such vessels), and to insure fair and reasonable participation of such vessels in such transportation from all geographical areas in which such oil is produced or refined or both. With respect to any period beginning after June 30, 1975, the quantity of such oil required to be transported on privately owned United States-flag commercial vessels shall be equal to 25 per centum of the gross tonnage of all oil transported in bulk on ocean

38–010 O

vessels for import into the United States, and for any period beginning after June 30, 1977, such quantity shall be equal to 30 per centum of such gross tonnage: Provided, That (1) the Secretary of Commerce finds and determines 6 months prior thereto, in the exercise of his sole discretion, that the tonnage of privately owned United States-flag commercial vessels, including vessels on order and scheduled to be ready for commercial service by such date, will be adequate to carry such quantity; and (2) in the event that such tonnage is not found to be adequate to carry such quantity, there shall be carried on such vessels the basic 20 per centum requirement together with any excess over such requirement, but not to exceed the applicable per centum requirement, for which such Secretary finds that adequate tonnage will be available.

"(2) The Secretary of Commerce may by rule establish a system of reasonable classification of persons and imports subject to the provisions of this subsection, and such Secretary shall treat all persons in the same such classification in substantially the same manner. If any person alleges (A) that he has been incorrectly classified under any such rule; (B) that there is no reasonable basis in fact for any such classification; or (C) that as a consequence of any agency action, he is or may be treated substantially differently from any other person in the same classification, such person may request, and, upon a reasonable showing, obtain, a hearing in accordance with section 554 of title 5, United States Code. Upon an agency decision, such person may request judicial review in the United States Court of Appeals for the District of Columbia. The scope of such review shall be governed by section 706 of title 5, United States Code, including the contention that the action of the agency was unsupported by substantial evidence.

"(3) The Secretary of Commerce is authorized to grant credits toward the fulfillment of the requirements of paragraph (1) of this subsection in the case of oil transported by privately owned United States-flag commercial vessels, over 100,000 deadweight tons, between foreign ports until such time as an oil discharge facility, capable of discharging fully laden vessels of over 200,000 deadweight tons, is in operation on any coast of the United States: Provided, That the Secretary of Commerce shall take all reasonable steps to assure that the authority provided in this paragraph not encourage, directly or indirectly, the construction, operation, or maintenance of a fleet of privately owned United States-flag commercial vessels different in numbers, types, or sizes than the fleet that would otherwise result.

"(4) As used in this subsection—

"(A) 'oil' means crude oil and the following products refined or derived from crude oil: unfinished fuels, gasoline, kerosene, aviation fuels, naphtha, cracking stocks, distillate heating oil, diesel oil, and residual oils;

"(B) 'privately owned United States-flag commercial vessels' are vessels of United States registry (or if at any time documented under the laws of any foreign nation, then documented under the laws of the United States for not less than the three previous years), built in the United States, and are not beyond their economic lives (as determined by the Secretary of Commerce), and with respect to which the owner or lessee thereof has entered into a capital construction fund agreement with such Secretary pursuant to which such vessel shall be replaced at the end of its economic life, and such agreement includes a mandatory deposit schedule to finance such replacement; and

"(C) 'United States' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico.

"(5) Each department, agency, or other instrumentality of the United States which is affected by any obligation imposed under this subsection, and any officer or employee thereof, shall take all appropriate action to assure compliance with such obligation and with regulations which shall be issued by the Secretary of Commerce to implement and enforce the provisions of this subsection. Each citizen of the United States and each person subject to the jurisdiction of the United States shall comply with such obligation and any applicable regulations issued by such Secretary under this subsection.

"(6) The Secretary of Commerce shall review, evaluate, and report annually to the Congress and the President on the implementation of the provisions of this subsection and the effectiveness of such provisions together with his recommendations concerning such requirements. Each such report shall include, but not be limited to, a study of (1) the adequacy and availability of construction and reconstruction facilities in the United States for the vessels needed to meet the provisions of paragraph (1) of this subsection, and (2) the reasonableness of the prices charged and delivery dates for the construction and reconstruction of such vessels.

"(7) The requirements of paragraph (1) may be temporarily waived by the President upon determination that an emergency exists justifying such a waiver in the national interest."

SEC. 3. The provisions of this Act shall not apply to any refiner whose total refinery capacity (including the refinery capacity of any person who controls, is controlled by, or is under common control with such refiner) does not exceed 30,000 barrels per day: Provided, That the total quantity of such oil imported by or for such refiner does not in any year exceed the rated refining capacity of such refiner.

SEC. 4. License fees payable pursuant to Presidential proclamation for imports of oil imported into the United States shall be reduced by 15 cents per barrel of oil other than residual fuel oil and shall be reduced by 42 cents per barrel for residual fuel oil for a period of 5 years from the date of enactment of this Act if the Secretary of the Treasury determines—

(a) such oil is transported by privately owned United States-flag commercial vessels; and

(b) the amount resulting from the nonpayment of such license fees is passed on to the ultimate consumers of such oil in whatever form it is when ultimately consumed.

SEC. 5. Section 809 of the Merchant Marine Act, 1936 (46 U.S.C. 1213), is amended to read as follows: "Contracts under this chapter shall be entered into so as to equitably serve, insofar as possible, the foreign-trade requirements of the Atlantic, Gulf, Great Lakes, and Pacific ports of the United States. In order to assure equitable treatment for each range of ports referred to in the preceding sentence, and

to the extent that subsidy contracts are approved by the Secretary of Commerce, not less than 10 per centum of the funds appropriated or otherwise made available for the foreign-trade requirements of the United States pursuant to this Act or any law authorizing funds for the purposes of such Act shall be allocated for the foreign-trade requirements of each such port range. Furthermore, in awarding contracts under this chapter, preference shall be given to persons who are citizens of the United States and who have the support, financial and otherwise, of the domestic communities primarily interested. Not later than March 1, 1975, and annually thereafter the Secretary shall submit to Congress a detailed report (1) describing the actions that have been taken pursuant to this Ace to assure, insofar as possible, that direct and adequate service is provided by United States-flag commercial vessels to each range of ports referred to in this section and (2) including any recommendations for additional legislation that may be necessary to achieve the purposes of this section."

SEC. 6. Any self-propelled vessel of more than 70,000 deadweight tons, designed for the carriage of oil in bulk, documented under the laws of the United States, the construction of which is contracted for after December 31, 1975, shall be constructed and operated using the best available pollution prevention technology.

If engaged in the carriage of oil in bulk to United States west coast ports situated on internal waters or straits, a self-propelled vessel of more than 20,000 deadweight tons, documented under the laws of the United States, the construction of which is contracted for after December 31, 1974, shall be equipped with a segregated ballast capacity determined appropriate by the Secretary of the Department in which the Coast Guard is operating, which shall be achieved in part by fitting, throughout the cargo length, a double bottom.

And the Senate agree to the same.

That the House recede from its disagreement to the Senate amendment to the title of the bill and agree to the same.

WARREN G. MAGNUSON,
RUSSELL B. LONG,
ERNEST F. HOLLINGS,
DANIEL K. INOUYE,
Managers on the Part of the Senate.

LEONOR K. SULLIVAN,
FRANK M. CLARK,
THOMAS N. DOWNING,
JAMES R. GROVER, Jr.,
GEO. A. GOODLING,
Managers on the Part of the House.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 8193) to require that a percentage of United States oil imports be carried on United States-flag vessels, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

TITLE OF THE ACT

The House bill provides that it is an Act "To require that a percentage of United States oil imports be carried on United States-flag vessels, whereas the title of the Senate amendment provides that it is an Act "To regulate commerce and strengthen national security by requiring that a percentage of the oil imported into the United States be transported on United States-flag vessels." The conferees agreed to the title in the Senate amendment.

OIL IMPORT REQUIREMENTS

The House bill amends section 901(b)(1) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1241(b)(1)). Section 2 of the Senate amendment adds a new subsection (d) to section 901 of the Merchant Marine Act, 1936, as amended, generally containing most of the provisions set forth in the House bill. The conferees agreed to the Senate approach as it avoids certain provisions in section 901(b)(1) that should be applicable to the Government-generated cargoes subject to that section, but which should not be applicable to the oil imports covered by the Energy Transportation Security Act.

Acceptance of the Senate approach by the conferees, generally required the following technical amendments:

a. The House bill directs the "appropriate agency or agencies" to implement the provisions of the bill. Section 2 of the Senate amendment would direct the "Secretary of Commerce" in this regard. The conferees accepted the Senate language, as this was the clear intent of the House bill.

b. The conferees accepted the language in section 2 of the Senate amendment that the Secretary of Commerce shall "take such steps as are necessary to assure that", in lieu of the language in the House bill which provided "also take such steps as may be necessary and practicable to assure that".

c. The House bill applies to "at least 20 per centum of the gross tonnage", whereas section 2 of the Senate amendment applies to "a

quantity equal to 20 per centum of the gross tonnage". The conferees accepted the language in the Senate amendment, as the intent of both the House and Senate that the stated percentages are to be implemented as the amount of imported oil to be subject to the provisions of the Act.

d. The House bill applies to "all liquid petroleum and liquid petroleum products carried in bulk referred to as crude oil, unfinished fuels, gasoline, kerosene, aviation fuels, naphtha, cracking stocks, distillate heating oil, diesel oil, and residual oils imported into the United States on ocean vessels". Section 2 of the Senate amendment applies to "all oil transported on ocean vessels . . . for import into the United States". Proposed section 901(d)(4)(A) set forth in section 2 of the Senate amendment defines "oil" in accordance with the language of the House bill. The conferees accepted the language in the Senate amendment, but inserted the clarifying words "in bulk" from the House bill, after the words "of all oil transported".

e. The House bill includes "movements (i) directly from original point of production and (ii) from such original point to intermediate points for transshipment or refinement and ultimate delivery into the United States", whereas section 2 of the Senate amendment speaks in terms of "(whether transported directly from the original point of production or indirectly from such point to and from any intermediate points used for storage, refining, processing, packaging, unloading, or reloading of oil)". The conferees accepted the language in the Senate amendment.

f. The House bill requires that such oil "shall be transported on privately owned United States-flag commercial vessels to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels", whereas section 2 of the Senate amendment provides: "shall be transported on privately owned United States-flag commercial vessels (to the extent that such vessels are available at fair and reasonable rates for such vessels)". The conferees accepted the language in the Senate amendment.

g. The House bill requires that the Act be implemented "in such manner as will insure fair and reasonable participation of United States-flag commercial vessels in such cargoes by geographical areas", whereas section 2 of the Senate amendment provides "and to insure fair and reasonable participation of such vessels in such transportation from all geographical areas in which such oil is produced or refined or both". In both instances, the intent is the same, i.e., the creation of a broadly representative fleet capable of carrying a designated percentage of all our oil imports from all sources. It is anticipated that the Secretary of Commerce will give serious consideration to utilizing the barrel-mile concept commented on in both the House and Senate reports in implementing this provision. The conferees accepted the language in the Senate amendment.

h. The House bill requires "*Provided*, That the quantity required so to be carried in United States-flag commercial vessels shall be at least 25 per centum after June 30, 1975, and at least 30 per centum after June 30, 1977", whereas the Senate amendment provides: "With respect to any period beginning after June 30, 1975, the quantity of such oil required to be transported on privately owned United States-flag commercial vessels shall be equal to 25 per centum of the gross tonnage of all oil transported on ocean vessels for import into the United States, and for any period beginning after June 30, 1977, such quantity shall be equal to 30 per centum of such gross tonnage". The conferees accepted the language in the Senate amendment, but inserted the clarifying words "in bulk" from the House bill, after the words "of all oil transported".

i. The increases contemplated by the Act are contingent upon certain findings. The House bill provides "if the Secretary of Commerce shall on December 31 preceding each such date determine that United States tonnage existing or on order and scheduled to be delivered by such date would be adequate to carry such quantity", whereas the Senate amendment specifies "*Provided*, That (1) the Secretary of Commerce finds and determines six months prior thereto, in the exercise of his sole discretion, that the tonnage of privately owned United States-flag commercial vessels, including vessels on order and scheduled to be ready for commercial service by such date, will be adequate to carry such quantity; and (2) in the event that such tonnage is not found to be adequate to carry such quantity, there shall be carried on such vessels the basic 20 per centum requirement together with any excess over such requirement, but not to exceed the applicable per centum requirement, for which such Secretary finds that adequate tonnage will be available." The conferees accepted the language in the Senate amendment as it clarifies the intent of the Congress.

j. Both the House and Senate bills generally provide that the Secretary of Commerce may by rule establish a system of reasonable classification of persons and imports subject to the provisions of the Act, and for a system of judicial review for persons aggrieved. The conferees accepted the language contained in section 2 of the Senate amendment, but added the following language from the House bill: "including the contention that the action of the agency was unsupported by substantial evidence," in order to insure review as provided in section 706(2)(E) of title 5 of the United States Code.

k. The House bill provides "That the provisions of this section shall not apply to refineries whose total refinery capacity (including the refinery capacity of any person who controls, is controlled by, or is under common control with such refiner) does not exceed 30,000 barrels per day", whereas section 3 of the Senate amendment provides that "The provisions of this Act shall not apply to any refiner whose total refinery capacity (including the refinery capacity of any person who controls, is controlled by, or is under common control with such refiner) does not exceed 30,000 barrels per day: *Provided*, That the total quantity of such oil imported by or for such refiner does not in any year exceed the rated refining capacity of such refiner." The conferees accepted the language of the Senate amendment since it clarifies the intent of the Congress.

l. The House bill and the Senate amendment speak in terms of the "United States". Section 2 of the Senate bill goes on to define the term "United States" in proposed section 901(d)(4)(C). The conferees accepted the Senate definition.

m. The House bill does not contain the provisions set forth in section 2 of the Senate amendment as proposed section 901(d)(5) and

section 901(d)(6). However, as the House bill amends section 901(b)(1), existing section 901(b)(2) would apply: "(2) Every department or agency having responsibility under this subsection shall administer its program with respect to this subsection under regulations issued by the Secretary of Commerce. The Secretary of Commerce shall review such administration and shall annually report to the Congress with respect thereto." The conferees accepted the more explicit Senate language.

In addition to the above technical amendments, the conferees reached agreement on the following:

1. The House bill does not contain a provision such as proposed section 901(d)(3) set forth in section 2 of the Senate amendment. This provision authorizes the Secretary of Commerce to grant credits towards the fulfillment of the requirements of the Act in the case of oil transported by privately owned United States-flag commercial vessels, over 100,000 DWT, between foreign ports, until such time as an oil discharge facility, capable of discharging fully laden vessels of over 200,000 DWT is in operation on any coast of the United States. The conferees accepted this amendment as there are currently no port facilities in the United States capable of discharging fully-laden Very and Ultra Large Crude Carriers of the type now being constructed. The conferees wish to emphasize that in this instance the Secretary's authority terminates as soon as the first oil discharge facility, capable of discharging fully laden vessels of over 200,000 DWT, is in operation on any of our coasts, and such credit for foreign-to-foreign movements is to be available only to the extent that the percentage cargo preference requirements of the Act are not met without such credits by available United States-flag vessels.

2. The House bill amends section 901(b)(1), which provides that "the term 'privately owned United States-flag commercial vessels' shall not be deemed to include any vessel which, subsequent to the date of enactment of this amendment, shall have been either (a) built outside the United States, (b) rebuilt outside the United States, or (c) documented under any foreign registry, until such vessel shall have been documented under the laws of the United States for a period of three years."

The Senate amendment defines "privately owned United States-flag commercial vessels" in section 2, as proposed section 901(d)(4)(B). The Senate amendment requirements for a vessel to qualify are much more stringent than the House bill.

There are four basic differences between the House bill and the Senate amendment:

a. The Senate amendment requires that such vessels be constructed in the United States, whereas the House bill does not. The conferees agreed to the Senate amendment as the generation of business for domestic shipyards, and the employment opportunities and balance of payments benefits resulting therefrom, are important secondary benefits of H.R. 8193.

b. The Senate amendment requires that such vessels be not more than 20 years old or which have been reconstructed and are not beyond their economic lives (as determined by the Secretary of Commerce), whereas the House bill contains no such restrictions. While the conferees are in agreement with the basic objective of creating a modern expanded fleet of United States-flag vessels, it was concluded that the 20 year requirement could be arbitrary and not in the best interests of the Act. Therefore, the conferees amended this provision in proposed section 901(d)(4)(B), after the words "built in the United States", and prior to the proviso, to read as follows: "and are not beyond their economic lives (as determined by the Secretary of Commerce), and with respect to which the owner or lessee thereof has entered into a Capital Construction Fund Agreement with such Secretary pursuant to which such vessel shall be replaced at the end of its economic life, and such agreement includes a mandatory deposit schedule to finance such replacement:". Age would be only one factor to be considered by the Secretary in this regard. For example, whether the U.S. Coast Guard would certificate a vessel would be another such factor. The determination as to whether a vessel is within its economic life would be within the discretion of the Secretary of Commerce based on the factors he sees fit to consider.

c. The Senate amendment requires the owner or lessee of the vessel to enter into a Capital Construction Fund Agreement with the Secretary of Commerce to finance replacement vessels, whereas the House bill does not. The conferees agreed to the requirement of a Capital Construction Fund Agreement with a mandatory deposit schedule for a vessel to qualify under this Act. As in the case of vessels receiving construction subsidy and operating subsidy under the Merchant Marine Act of 1936, it is only reasonable that these vessels securing a preference be required to comply with obligations for vessel replacement. It is contemplated that this Act will not be used to phase out construction and operating subsidy programs for tankers. Tankers heretofore or hereafter built with construction-differential subsidy, and operated with operating-differential subsidy, or both, qualify as privately owned United States-flag commercial vessels for the carriage of petroleum imports under this Act. The conferees agreed to this Senate amendment, as further amended in conference and set forth in item "b", above. This provision would insure the replacement of such privately owned United States-flag commercial vessels at the end of their economic life as determined by the Secretary of Commerce.

d. The Senate amendment requires that vessels in excess of 20,000 DWT, contracted for after December 31, 1974, or delivered after December 31, 1978, shall be constructed and operated with the best available pollution prevention technology, and shall be equipped with a segregated ballast capacity determined appropriate by the Secretary of Transportation which shall be achieved in part by fitting, throughout the cargo length, a double bottom of a minimum height of one-fifteenth of the beam or such other appropriate height as determined by the Secretary of Transportation. The House bill contains no such requirements. The conferees agreed to the deletion of the proviso set forth in proposed section 901(d)(4)(B), containing these requirements. These matters are now set forth in section 7, renumbered section 6, of the bill, and discussed below.

3. The Senate amendment provides in proposed section 901(d)(7), set forth in section 2, that "The requirements of paragraph (1) may

be waived by the President upon determining that an emergency exists justifying a temporary waiver of such requirements. Any such waiver shall not exceed 180 days unless authorized by law." The House bill would amend section 901(b)(1) which provides "That the provisions of this subsection may be waived whenever the Congress, by concurrent resolution or otherwise, or the President of the United States or the Secretary of Defense declares that an emergency exists justifying a temporary waiver of the provisions of section 901(b)(1) and so notifies the appropriate agency or agencies".

The conferees further amended this Senate amendment to read as follows:

"(7) The requirements of paragraph (1) may be temporarily waived by the President upon determination that an emergency exists justifying such a waiver in the national interest.

It should be noted that the waiver provision agreed upon by the conferees is more restrictive than the provision that would apply to the House bill. The conferees gave serious consideration to establishing a specific time limitation, but concluded that such an approach was not feasible. It is the intent of the conferees that the temporary duration of the waiver referred to in the provision is to exactly coincide with the duration of the emergency which triggered the waiver.

4. Section 4 of the Senate amendment provides for the remission of certain import fees where United States-flag vessels are used to transport the oil, and the saving is passed on to the American consumer. The House bill did not contain a comparable provision. The conferees agreed to this Senate amendment.

OTHER REQUIREMENTS

1. Section 5 of the Senate amendment would amend section 809 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1213), to generally require that 10 per cent of construction and operating subsidy funds, as well as research and other funds, be allocated to serve the foreign trade requirements of ports on each of the four seacoasts. The House bill does not contain a comparable provision.

This provision was added by the Senate in recognition of unique problems confronting the Great Lakes. The condition of United States-flag service on the Great Lakes has long been of grave concern to Members of both the House of Representatives and the Senate. However, the conferees could not agree to legislation that would require 10 per cent of subsidy funds to be allocated to the Great Lakes, with no assurance that it could ever be effectively utilized. Such a procedure could seriously disadvantage existing United States-flag services. Therefore, the conferees agreed on the following language:

"SEC. 5. Section 809 of the Merchant Marine Act, 1936 (46 U.S.C. 1213), is amended to read as follows: "Contracts under this chapter shall be entered into so as to equitably serve, insofar as possible, the foreign-trade requirements of the Atlantic, Gulf, Great Lakes and Pacific ports of the United States. In order to assure equitable treatment for each range of ports referred to in the preceding sentence, and to the extent that subsidy contracts are approved by the Secretary of Commerce, not less than 10 per centum of the funds appropriated or otherwise made available for the foreign-trade requirements of the

United States pursuant to this Act or any other law authorizing funds for the purposes of such Act shall be allocated for the foreign-trade requirements of each such port range. Furthermore, in awarding contracts under this chapter, preference shall be given to persons who are citizens of the United States and who have the support, financial and otherwise, of the domestic communities primarily interested. Not later than March 1, 1975, and annually thereafter the Secretary shall submit to Congress a detailed report (1) describing the actions that have been taken pursuant to this Act to assure, insofar as possible, that direct and adequate service is provided by United States-flag commercial vessels to each range of ports referred to in this section and (2) including any recommendations for additional legislation that may be necessary to achieve the purpose of this section."

The insertion of the phrase "to the extent that subsidy contracts are approved by the Secretary of Commerce" will insure that if reliable proposals for United States-flag service to the Great Lakes are submitted and approved and contracts executed, the funds to support such services will be made available.

The reporting requirement inserted by the conferees should insure that the Great Lakes receive greater attention by the Secretary of Commerce than they have in the past.

2. Section 6 of the Senate amendment would generally permit foreign-flag cruise vessels to extend from 24 to 48 hours the length of time they could call at United States ports. The House bill does not contain a comparable provision.

The conferees rejected this Senate amendment.

3. Section 7 of the Senate bill provides that the same safety and pollution prevention requirements and standards shall be applicable to all privately-owned United States-flag commercial vessels employed in the transportation of oil either in the foreign commerce of the United States or between ports of the United States. The House bill does not contain a comparable provision. The legislative history of the Senate bill is clear that double bottoms were contemplated in this regard.

The conferees could not reach agreement on the effectiveness of double bottoms. Therefore, it was concluded that a pilot project should be instituted so that the effectiveness of double bottoms can be better evaluated. The conferees reached agreement on substituting the following provision for the proviso to proposed section 901(d)(4)(B), set forth in section 2 of the Senate amendment and section 7 of the Senate amendment:

"SEC. 6. Any self-propelled vessel of more than 70,000 deadweight tons, designed for the carriage of oil in bulk, documented under the laws of the United States, the construction of which is contracted for after December 31, 1975, shall be constructed and operated using the best available pollution prevention technology. If engaged in the carriage of oil in bulk to United States west coast ports situated on internal waters or straits, a self-propelled vessel of more than 20,000 deadweight tons, documented under the laws of the United States, the construction of which is contracted for after December 31, 1974, shall be equipped with a segregated ballast capacity determined appro-

priate by the Secretary of the Department in which the Coast Guard is operating, which shall be achieved in part by fitting, throughout the cargo length, a double bottom."

The committee of conference views this new section 6 as accomplishing two objectives. The first sentence establishes an antipollution construction standard for general applicability to all self-propelled vessels in excess of 70,000 deadweight tons designed for the carriage of oil in bulk and documented in the United States, including vessels qualifying for cargo under this Act. All U.S. vessels of that category, if contracted for after December 31, 1975, must be constructed using the best available pollution prevention technology. It is the conferee's intention that the Coast Guard, in deciding on the best available pollution prevention technology, would follow the procedures and criteria contained in the Ports and Waterways Safety Act of 1972 (P.L. 92–340).

In addition, the second sentence of section 6 carries out the Conferee's desire to establish a pilot project to evaluate, by actual practice, the pros and cons of double bottom tankers. If a self-propelled vessel of more than 20,000 deadweight tons, documented under the laws of the United States and contracted for after December 31, 1974, is engaged in the transport of oil in bulk to United States west coast ports located on straits or internal waters, such vessels must be equipped with a segregated ballast capability to be accomplished in part by a double bottom fitted throughout the cargo length of the vessel. The actual size and configuration of the double bottom is to be determined by the United States Coast Guard, which possess the technical expertise in this regard.

The term "internal waters" is interpreted to mean all waters on the landward side of the baseline by which the territorial sea is measured. The formula for this measurement is contained in the Convention on the Territorial Sea and the Contiguous Zone. (15 UST 1606; TIAS 5639). The term "straits" was included because of disagreement between the various agencies of Federal Government as to whether the Strait of Juan de Fuca, where considerable tanker traffic is expected, is considered to be internal waters.

WARREN G. MAGNUSON,
RUSSELL B. LONG,
ERNEST F. HOLLINGS,
DANIEL K. INOUYE,
Managers on the Part of the Senate.

LEONOR K. SULLIVAN,
FRANK M. CLARK,
THOMAS N. DOWNING,
JAMES R. GROVER, Jr.,
GEO. A. GOODLING,
Managers on the Part of the House.

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H. R. 8193

Ninety-third Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the twenty-first day of January, one thousand nine hundred and seventy-four

An Act

To regulate commerce and strengthen national security by requiring that a percentage of the oil imported into the United States be transported on United States-flag vessels.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Energy Transportation Security Act of 1974".

Sec. 2. Section 901 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1241), is amended by adding at the end thereof the following new subsection:

"(d)(1) The Secretary of Commerce shall take such steps as are necessary to assure that a quantity equal to 20 per centum of the gross tonnage of all oil transported in bulk on ocean vessels (whether transported directly from the original point of production or indirectly from such point to and from any intermediate points used for storage, refining, processing, packaging, unloading, or reloading of oil) for import into the United States shall be transported on privately owned United States-flag commercial vessels (to the extent that such vessels are available at fair and reasonable rates for such vessels), and to insure fair and reasonable participation of such vessels in such transportation from all geographical areas in which such oil is produced or refined or both. With respect to any period beginning after June 30, 1975, the quantity of such oil required to be transported on privately owned United States-flag commercial vessels shall be equal to 25 per centum of the gross tonnage of all oil transported in bulk on ocean vessels for import into the United States, and for any period beginning after June 30, 1977, such quantity shall be equal to 30 per centum of such gross tonnage: *Provided*, That (1) the Secretary of Commerce finds and determines 6 months prior thereto, in the exercise of his sole discretion, that the tonnage of privately owned United States-flag commercial vessels, including vessels on order and scheduled to be ready for commercial service by such date, will be adequate to carry such quantity; and (2) in the event that such tonnage is not found to be adequate to carry such quantity, there shall be carried on such vessels the basic 20 per centum requirement together with any excess over such requirement, but not to exceed the applicable per centum requirement, for which such Secretary finds that adequate tonnage will be available.

"(2) The Secretary of Commerce may by rule establish a system of reasonable classification of persons and imports subject to the provisions of this subsection, and such Secretary shall treat all persons in the same such classification in substantially the same manner. If any person alleges (A) that he has been incorrectly classified under any such rule; (B) that there is no reasonable basis in fact for any such classification; or (C) that as a consequence of any agency action, he is or may be treated substantially differently from any other person in the same classification, such person may request, and, upon a reasonable showing, obtain, a hearing in accordance with section 554 of title 5, United States Code. Upon an agency decision, such person may request judicial review in the United States Court of Appeals for the District of Columbia. The scope of such review shall be governed by section 706 of title 5, United States Code, including the contention that the action of the agency was unsupported by substantial evidence.

"(3) The Secretary of Commerce is authorized to grant credits toward the fulfillment of the requirements of paragraph (1) of this subsection in the case of oil transported by privately owned United States-flag commercial vessels, over 100,000 deadweight tons, between

foreign ports until such time as an oil discharge facility, capable of discharging fully laden vessels of over 200,000 deadweight tons, is in operation on any coast of the United States: *Provided*, That the Secretary of Commerce shall take all reasonable steps to assure that the authority provided in this paragraph not encourage, directly or indirectly, the construction, operation, or maintenance of a fleet of privately owned United States-flag commercial vessels different in numbers, types, or sizes than the fleet that would otherwise result.

"(4) As used in this subsection—

"(A) 'oil' means crude oil and the following products refined or derived from crude oil: unfinished fuels, gasoline, kerosene, aviation fuels, naphtha, cracking stocks, distillate heating oil, diesel oil, and residual oils;

"(B) 'privately owned United States-flag commercial vessels' are vessels of United States registry (or if at any time documented under the laws of any foreign nation, then documented under the laws of the United States for not less than the three previous years), built in the United States, and are not beyond their economic lives (as determined by the Secretary of Commerce), and with respect to which the owner or lessee thereof has entered into a capital construction fund agreement with such Secretary pursuant to which such vessel shall be replaced at the end of its economic life, and such agreement includes a mandatory deposit schedule to finance such replacement; and

"(C) 'United States' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico.

"(5) Each department, agency, or other instrumentality of the United States which is affected by any obligation imposed under this subsection, and any officer or employee thereof, shall take all appropriate action to assure compliance with such obligation and with regulations which shall be issued by the Secretary of Commerce to implement and enforce the provisions of this subsection. Each citizen of the United States and each person subject to the jurisdiction of the United States shall comply with such obligation and any applicable regulations issued by such Secretary under this subsection.

"(6) The Secretary of Commerce shall review, evaluate, and report annually to the Congress and the President on the implementation of the provisions of this subsection and the effectiveness of such provisions together with his recommendations concerning such requirements. Each such report shall include, but not be limited to, a study of (1) the adequacy and availability of construction and reconstruction facilities in the United States for the vessels needed to meet the provisions of paragraph (1) of this subsection, and (2) the reasonableness of the prices charged and delivery dates for the construction and reconstruction of such vessels.

"(7) The requirements of paragraph (1) may be temporarily waived by the President upon determination that an emergency exists justifying such a waiver in the national interest."

SEC. 3. The provisions of this Act shall not apply to any refiner whose total refinery capacity (including the refinery capacity of any person who controls, is controlled by, or is under common control with such refiner) does not exceed 30,000 barrels per day: *Provided*, That the total quantity of such oil imported by or for such refiner does not in any year exceed the rated refining capacity of such refiner.

SEC. 4. License fees payable pursuant to Presidential proclamation for imports of oil imported into the United States shall be reduced by 15 cents per barrel of oil other than residual fuel oil and shall be reduced by 42 cents per barrel for residual fuel oil for a period of 5

years from the date of enactment of this Act if the Secretary of the Treasury determines—

(a) such oil is transported by privately owned United States-flag commercial vessels; and

(b) the amount resulting from the nonpayment of such license fees is passed on to the ultimate consumers of such oil in whatever form it is when ultimately consumed.

SEC. 5. Section 809 of the Merchant Marine Act, 1936 (46 U.S.C. 1213), is amended to read as follows: "Contracts under this chapter shall be entered into so as to equitably serve, insofar as possible, the foreign-trade requirements of the Atlantic, Gulf, Great Lakes, and Pacific ports of the United States. In order to assure equitable treatment for each range of ports referred to in the preceding sentence, and to the extent that subsidy contracts are approved by the Secretary of Commerce, not less than 10 per centum of the funds appropriated or otherwise made available for the foreign-trade requirements of the United States pursuant to this Act or any law authorizing funds for the purposes of such Act shall be allocated for the foreign-trade requirements of each such port range. Furthermore, in awarding contracts under this chapter, preference shall be given to persons who are citizens of the United States and who have the support, financial and otherwise, of the domestic communities primarily interested. Not later than March 1, 1975, and annually thereafter the Secretary shall submit to Congress a detailed report (1) describing the actions that have been taken pursuant to this Act to assure, insofar as possible, that direct and adequate service is provided by United States-flag commercial vessels to each range of ports referred to in this section and (2) including any recommendations for additional legislation that may be necessary to achieve the purposes of this section."

SEC. 6. Any self-propelled vessel of more than 70,000 deadweight tons, designed for the carriage of oil in bulk, documented under the laws of the United States, the construction of which is contracted for after December 31, 1975, shall be constructed and operated using the best available pollution prevention technology. If engaged in the carriage of oil in bulk to United States west coast ports situated on internal waters or straits, a self-propelled vessel of more than 20,000 deadweight tons, documented under the laws of the United States, the construction of which is contracted for after December 31, 1974, shall be equipped with a segregated ballast capacity determined appropriate by the Secretary of the Department in which the Coast Guard is operating, which shall be achieved in part by fitting, throughout the cargo length, a double bottom.

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

December 18, 1974

Dear Mr. Director:

The following bills were received at the White House on December 18th:

S.J. Res. 224	S. 3191
S.J. Res. 260	S. 4013
S. 425	H.R. 7978
S. 939	H.R. 8193
S. 2343	H.R. 8864

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D. C.