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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

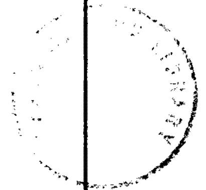
ON

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



U.S. GOVERNMENT PRINTING OFFICE
38-010 O WASHINGTON : 1974

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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 essen-

tial 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

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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 multinational 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

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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 require-

ment 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 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 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 seafaring 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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