The original documents are located in Box 20, folder "Maritime Legislation - Third Flag Bill (1)" of the John Marsh Files at the Gerald R. Ford Presidential Library.

AUG 13 1975

THE WHITE HOUSE

WASHINGTON

August 12, 1975

MEMORANDUM FOR: JACK MARSH

FROM: CHARLES LEPPERT, JR. CLJr.

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

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

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

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

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

94TH CONGRESS
1ST SESSION

H. R. 7940

IN THE HOUSE OF REPRESENTATIVES

JUNE 16, 1975

Mrs. SULLIVAN (for herself, Mr. DOWNING of Virginia, and Mr. MCCLOSKEY) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To provide for minimum rate provisions by nonnational carriers in the foreign commerce of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 18 of the Shipping Act, 1916 (46 U.S.C. 817), is amended by—

(a) deleting from paragraph (2) of subsection (b) the clause: "which results in an increase in cost to the shipper,";

(b) deleting the second sentence of said paragraph (2), which reads: "Any changes in the rates, charges,

or classifications, rules, or regulations which result in a decreased cost to the shipper may become effective upon the publication and filing with the Commission."; and

(c) inserting at the end thereof a new subsection (c), as follows:

"(c) From and after 90 days following enactment of this section, no nonnational flag carrier in any given trade in the foreign commerce of the United States shall maintain rates or charges in its tariffs filed with the Federal Maritime Commission in that trade that are lower than the lowest corresponding rate or charge of any national flag carrier in that trade unless said rate or charge is first determined by the Commission as provided herein to be compensatory on a commercial cost basis. Whenever after said 90-day period there shall be on file or newly filed with the Commission by any nonnational flag carrier a rate or charge effective in that given trade and whenever such rate or charge in the given trade is lower than the lowest corresponding rate or charge of any national flag carrier, then such filing shall be rejected if newly filed, or deemed newly filed and rejected if on file pending a final determination by the Commission, after hearing, concerning the lawfulness of said rate or charge if the Commission, in its discretion, determines that such rate is probably not compensatory on a commerical cost basis either through its own investigation or upon a reasonable

showing by a national flag carrier. However, the Commission may stay any such rejection at any time within 30 days after the filing of such complaint or issuance of such order, upon a good cause showing by the nonnational flag carriers that there is a reasonable probability that the nonnational flag carrier will be able to prove after hearing, that the rejected matter is not in violation of this subsection. When any such rejection is stayed or when any such rate or charge is approved after hearing, the rate or charge of the nonnational flag carrier may then become effective upon the date specified by the Commission but not earlier than its originally filed effective date. At any hearing under this subsection, the burden of proof to show that the rate or charge is not lower than the lowest corresponding rate or charge of any national flag carrier or that such rate or charge is compensatory on a commercial cost basis, shall be upon the publishing nonnational flag carrier. Rates or charges which have been rejected by the Commission are void and their use other than during a stay of rejection is unlawful unless authorized by the Commission after hearing as provided in this subsection. For the purposes of this subsection—

"(i) the term 'national flag carrier' means a common carrier by water operating vessels on regular berth services to and from United States ports of call that are

documented under the laws of the United States or the other country in the given trade;

"(ii) the term 'nonnational flag carrier' means any common carrier by water operating in the given trade, other than a national flag carrier; and

"(iii) the term 'given trade' means the trade between the United States and another country.".

94TH CONGRESS
1ST SESSION

H. R. 7940

A BILL

To provide for minimum rate provisions by nonnational carriers in the foreign commerce of the United States, and for other purposes.

By Mrs. SULLIVAN, Mr. DOWNING of Virginia, and Mr. MCCLOSKEY

JUNE 16, 1975
Referred to the Committee on Merchant Marine and Fisheries

STATEMENT

HELEN DELICH BENTLEY, CHAIRMAN
FEDERAL MARITIME COMMISSION
BEFORE THE MERCHANT MARINE SUBCOMMITTEE
OF THE HOUSE COMMITTEE ON
MERCHANT MARINE AND FISHERIES

July 22, 1975

Thank you Mr. Chairman. I am pleased to have this opportunity to testify before your Committee on H.R. 7940, a bill which would provide for minimum rate provisions by nonnational flag carriers in the foreign commerce of the United States, or as it is popularly known, the "third-flag bill."

I am accompanied this morning by our Managing Director Robert S. Hope and N. Thomas Harris, Director of our Bureau of Compliance.

It gives me a particular satisfaction to testify on this measure before this distinguished Committee, for it is the Federal Maritime Commission's first opportunity to directly tell the House of Representatives of the vital need for swift passage of H.R. 7940. The Commission has appeared and formally commented on

third-flag legislation before the Senate Commerce Committee's Merchant Marine Subcommittee no less than three times in the last two years. When Chairman Sullivan, you Mr. Chairman, and Congressman McCloskey introduced H.R. 7940 I was pleased to note that the House of Representatives would promptly consider this matter of paramount importance.

H.R. 7940 is the companion measure to S. 868 which the Senate Commerce Committee has just recently favorably reported. These bills are the direct successors to S. 2576, on which I testified in the 93rd Congress. The problems to which we directed our attention at that time have grown more serious. The heart of the problem is rate cutting in our foreign commerce, and this practice is not limited to the state-subsidized carriers. There is little doubt the problem exists on all major trade routes. There is also little doubt in my mind that H.R. 7940 will enable the Commission to attempt to cure it.

Rate cutting is not a new problem. In the late 1960's there was turmoil on the North Atlantic trade routes. Malpractices were taking place and unwarranted rate reductions were being made. The advent of the containership added to the problems. The rate at which these ships were put into service tended to create overtonnaging. This is not to say that containerization

was or is bad for the trade, but rather to indicate that when the amount of cargo carrying capacity multiplied beyond the needs of the trade, rate cutting resulted and chaos ensued.

Much has been done by the carriers, where possible, with the help of the Commission, to alleviate the situation in the North Atlantic. The carriers have introduced, with Commission approval, a new and viable self-policing system in the North Atlantic designed to put an end to previously rampant malpractices. The North Atlantic, however, even with an up-to-date self-policing system, is still occasionally plagued by the results of rate war and related malpractices.

The crisis which existed in the North Atlantic also spread to the trans-Pacific trades. Overtonnage in the Pacific, both in the inbound and outbound trades, became a serious reality. Not only was there an over-abundance of cargo space available but there also entered into these trades new carriers anxious to compete for available cargoes. The entry of new carriers in the trade combined with increased cargo could lead to "skimming" of good cargo by selective rate reductions. In addition, some carriers in the trans-Pacific trades have offered rates from 10 to 40 percent below conference levels.* The stage is thus set for the shipper and carrier alike to resort to practices which generally lead to violent

trade eruptions.

The Federal Maritime Commission, in supporting H.R. 7940, is not opposed to low rates per se. As a matter of fact, we advocate rates which are as low as feasible in order that our importers and exporters are enabled to successfully compete in our international trade. We encourage carriers to offer good and efficient transport services at rates which contribute to an economically healthy steamship industry capable of meeting the present and long-term needs of our commerce. We recognize that third-flag carriers often offer necessary services without which some U.S. exports might not move because conference or independent national-flag carriers do not provide such services. But, we are opposed to rates which are so low as to disrupt the stability of our international trades. Those parties which the Commission, and I'm certain, the Congress, are most concerned about --- the importer, the exporter, the shipper and most importantly, the American people --- are being hurt and in the end will pay the price for dealing with cut-rate operators.

H.R. 7940 will not eliminate competition from trades that American vessels ply nor do we seek to drive the independent operators out of the trades as some critics charge. This legislation will not support artificially high rates. H.R. 7940 will provide United

States carriers or foreign flag carriers in the given trade, an insurance, of sorts, that they will face fair competition from other carriers.

If we can effectively deal with the rate predators, all segments of the American economic system involved with international trading will be put on notice that they will receive reliable and efficient services, at prices dictated by the trade. This briefly is the problem. We firmly believe H.R. 7940, with small modifications (Appendix A) I shall discuss later, is one step towards resolving that problem.

H.R. 7940, as introduced, forbids nonnational flag carriers in any given trade in the foreign commerce of the United States from maintaining rates or charges in their tariffs filed with us which are lower than the lowest corresponding rate or charge of any national flag carrier in that trade unless the rate was first determined by the Commission to be compensatory on a fully distributed commercial cost basis. Whenever such a rate shall be filed by a nonnational carrier in that trade, the Commission upon its own order or upon complaint shall refect the rate, pending a determination after hearing, concerning the lawfulness of the rate. The Commission may rescind such rejection at any time within the thirty days after the filing upon a showing that the rejected rate is not in violation of the statute.

The burden of proof in all such hearings that the rate in question was compensatory on a fully distributed commercial cost basis would be upon the publishing carrier.

In addition to certain definitional terms provided in H.R. 7940, Section 18 of the Shipping Act, 1916, is amended to eliminate the immediate effectiveness of any change in rates, charges, classifications, rules, or regulations which result in a decreased cost to the shipper when published and filed with the Commission.

This amendment to Section 18 is, in my opinion, long overdue and should have been included in the Act at the time it was amended in 1961. During the hearings on H.R. 4299 (the steamship conference/dual rate bill), the Commission endorsed a provision contained in that measure which would have required that no changes be made in filed rates except on publication and 30 days' notice. This requirement met strong objections, particularly from conference members, who claimed that such a procedure would handicap them in meeting the emergency needs of shippers. They argued that this was an unfair notice provision which would divert traffic from the conferences and American interests would suffer. Thus, when the final version of the bill was agreed on and introduced by the Merchant Marine and Fisheries Committee as H.R. 6775, the 30-day notice requirement

was eliminated as to decreases in rates.

So long as there are procedures that allow the Commission in its discretion and for good cause shown to advance the effective date of a rate filing, we cannot envision a situation brought about by the amendment, which would disrupt the operations of the carriers nor be detrimental to our foreign commerce. Where the need is genuine and supportable, the carrier's rates would be permitted to become effective on less than 30 days required under H.R. 7940. The resultant stability throughout the entire industry will be a most desirable effect of this new procedure.

In my view, existing special permission procedures should allow timely reductions in bona fide circumstances. Carriers may be assured that any request to advance an effective date will be handled fairly and expeditiously. The Commission is convinced that the benefits of added notice far outweigh alleged disadvantages.

Competing lines will be afforded an opportunity to be aware of rate actions of their competitors and examine their own rates with resulting strengthening of market forces. Shippers also will be able to know of rate changes and make more informed selections of carriers. The Commission will have the opportunity to adequately analyze rate filings and determine their acceptablility prior to the stated effective date.

As it is now the Commission cannot mechanically fulfill its obligation to analyze the rate reductions prior to their effective date since some time necessarily occurs between the date a reduction may be received and the period of time when the Commission's staff has an opportunity to review the filing. The 30-day period will be better suited to a review of the filed rate and will allow the Commission to take note of what is occurring in a given trade and to take steps when warranted to ward off rate cutting which might result in the outbreak of a rate war.

There is ample precedent for the 30-day requirement for rate reductions. Domestic carriers in interstate and foreign commerce have been required under the Interstate Commerce Act to file reduced rates on 30 days' notice. Similarly, carriers serving our domestic offshore trades are subject to such a requirement pursuant to the Intercoastal Shipping Act, 1933.

I would now like to discuss the part of H.R. 7940 which in previous testimony has engendered considerable controversey --- the provision in the bill as introduced which would require the Commission to determine whether a rate by a nonnational flag carrier would be compensatory on a "commercial cost basis." As I explained to the Senate, this task would be very difficult. The use of national flag rates as the yardstick for the non-

national flag carriers to meet in justifying lower rates presents a problem when a non-conference national flag line already has much lower rates in certain trades. We want to prevent a situation where exceptionally low rates could be the standard for the Commission determining the propriety of rates of other carriers, including those conference lines who would be classified as non-national flag carriers. Our proposed amendments to the bill as introduced (contained in Appendix A) would tie the reasonableness of a nonnational carrier's rate to the contract rates of the conference or rate agreement in a given trade rather than those of the lowest rated national flag carrier. It is vitally important that the standard of rate reasonableness be tied to conference rates or rate agreements, for our experience has shown that in certain trades national flag independents (i.e., non-conference) are not only well below the conference rate, but even below state-subsidized carriers. When there is no conference or rate agreement in a specific trade the lowest rate of any national flag line could be the standard; if a trade employs a dual rate system, the rate standard to be applied would be those rates published at the lower contract rate level. The 15% contract differential leeway we propose in our amendment would lessen the anticompetitive charge since this is often the lower published rate range of independent

operators.

Once again I feel the resultant stability in our trades --- both import and export --- will mollify the critics of the use of the conference system as the axis of H.R. 7940. The conference system is good for all carriers since it allows them to compete at equal rates under equal practices. Quality and efficiency of service provide the competitive incentive within the conference framework, while rate and service competition exists between the conference and the non-conference lines in a given trade.

During the past few years the Commission has not idly stood by and allowed rate cutting to run rampant. In efforts to achieve stability in our trades I have met with representatives of a number of foreign countries. For instance, I have met with various officials of the Japanese government in an effort to find ways to eliminate predatory rate cutting and other forms of malpractices existing in the trans-Pacific trades. As you are also aware, I have entered into discussions with officials of the Soviet Union concerning the maritime policies of both of our governments and competitive practices existing in those trades served by Soviet state-owned lines.

We are making use of the statutory powers we already possess to combat unfriendly or discriminatory maritime policies of foreign governments. On July 3 the Commission

officially adopted a rule which seeks to spell out more clearly procedures which the Commission would follow in exercising its authority under Section 19(1)(b) (46 USC 876) of the Merchant Marine Act, 1920. That section empowers the Commission to "make rules and regulations affecting shipping in the foreign trade not in conflict with law and order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade . . . ."

The rule is officially entitled "Regulations to Adjust or Meet Conditions Unfavorable to Shipping in the Foreign Trade of the United States", which I will submit for the record (General Order 33; Docket No. 72-62; Appendix B). It will become effective on August 8, 1975. The new rule lists specific countervailing action the Commission might take against foreign governments or owners, operators or masters of foreign vessels. The term "conditions unfavorable to shipping in the foreign trade" includes all forms of malpractices, such as direct and indirect rebating which is alleged to be occurring in the Far East Trades. Discriminatory practices take a variety of forms --- exorbitant fines, preferential tax treatment, systematic rebating --- which are all traditionally corrosive of ocean commerce. The Commission could react to these practices by limiting sailings of the offender to and from U.S. ports, placing

ceilings on cargo in amounts or types for specified periods, and the imposition of equalizing fees or charges as well as the suspension --- in whole or part --- of the tariffs of the offending entity, thereby excluding him from U.S. trade. Finally the new rule would allow "any other action the Commission finds necessary and appropriate . . . ."

As important as this new rule is, the Commission still looks to the Congress for passage of H.R. 7940. This bill would arm us with statutory authority and procedure to act at the outset of a potentially crippling situation. Critics may argue that Section 18(b)(5) of the Shipping Act, 1916 (46 USC 817) which grants us the authority to ". . . disapprove any rate or charge filed by a common carrier by water in the foreign commerce of the United States or conference of carriers, which, after hearing, it finds to be so unreasonably high or low as to be detrimental to the commerce of the United States" or the rule I just described are adequate deterrents to predatory practices. I strongly disagree, Mr. Chairman, for this reason. Both Section 18(b)(5) and Section 19(1)(b) contemplate case by case handling of serious problems. While valuable and effective for isolated instances, action under them serves only as an example to carriers that they had better be alert in their own actions. We would urge the Committee not

to be misled by those who state existing authority is adequate or unused by the Commission. H.R. 7940 would amend the Shipping Act in a form to deal with expanding merchant fleets and rate cutting as it exists in 1975 --- not as it was envisioned by the Congress over half a century ago. H.R. 7940 would give the Commission the power to act at the time a rate which threatens the stability of a trade is filed. Armed with the powers of H.R. 7940, the Commission could have prevented the development of the serious problems in the trans-Pacific trades.

I urge the Congress to enact legislation to insure that we have fair trade and that American flag vessels will be able to fully participate in the carriage of cargoes in U.S. commerce. Current records show that only 28% of U.S. liner imports and exports move on American flag vessels. The Congress must not let predatory rate cutters deprive American flag carriers of our own trade. Accordingly, we urge prompt passage of H.R. 7940.

Legislation along the lines proposed by H.R. 7940 will incur additional staffing and expenditures for the Commission. However, any estimate prior to determining the final form this bill takes, especially as it pertains to the standards by which the fairness of the rate is to be determined, will be furnished to

the Committee at such time as final language is agreed upon.

The Office of Management and Budget advises that the Administration feels there are many difficult questions which have not been addressed concerning the impact of this bill on competition in our foreign trade and on our relations with other nations.

If I might be allowed to close on a personal note, as you know I asked President Ford not to be reconsidered for renomination. I have tried for the past 5 3/4 years to be an effective regulator - Chairman of the Federal Maritime Commission, while at the same time recognizing the plight which our merchant fleet faces. It is very appropriate that H.R. 7940, a bill which I feel is so desperately needed if our merchant marine is to survive the world trading challenges of the 1970's and beyond and at the same time preserve the regulatory integrity of the Commission, is perhaps the last measure I shall formally testify on. I want to thank you Mr. Chairman, Mrs. Sullivan, and other members of the Committee for your many kindnesses and spirit of cooperation you have given to me, my staff and the entire Commission during my chairmanship.

Thank you very much. I will now be glad to answer any questions you may have, or to supply additional information for the record.

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* In the 1975 U.S.-Japan trade, rates of U.S. and Japanese flag carriers were cut 16 to 20 percent by the Far Eastern Steamship Company (FESCO) on the carriage of T.V. sets, toys and bicycles. On June 19, 1975, FESCO announced extensive schedule adjustments and services from Long Beach, Oakland, Seattle, Portland and Vancouver, B.C., as part of their growing California-Japan/Hong Kong service.

Also, in the trans-Pacific, the New York Freight Bureau - Hong Kong #5700 and Trans-Pacific Freight Conference - Hong Kong #14 are experiencing many resignations by carriers who are alleging they must resign to remain competitive.

APPENDIX A

"(c) (1) Not later than ninety days following enactment hereof, every carrier in any given trade in the foreign commerce of the United States shall adjust the rates and charges in its tariffs filed with the Federal Maritime Commission in that trade so that they are not lower by more than 15 percent of the lowest corresponding rate or charge effective in that trade filed by an approved conference unless said rate or charge is justified by such carrier to the satisfaction of the Commission to be compensatory on a fully distributed commercial cost basis. If there is no approved conference in the given trade, the carrier shall adjust its rates and charges so that they are not lower by more than 15 percent of the lowest corresponding rate or charge on file with the Commission by a national flag carrier.

"(2) Whenever there shall be filed with the Commission by any carrier a rate or charge which is lower by more than 15 percent of the lowest effective corresponding rate or charge filed by an approved conference or if there is no approved conference in that given trade, by more than 15 percent of the lowest effective corresponding rate or charge filed by any national flag carrier, upon complaint that such rate or charge is lower by more than 15 percent of the lowest corresponding rate or charge of the approved conference or national flag carrier rate or charge, as applicable, or upon the Commission's own order so alleging, such filing shall be rejected pending a determination by the Commission, after hearing, that such

rate or charge is compensatory on a fully distributed commercial cost basis: Provided, however, That the Commission may rescind such rejection at any time within thirty days after the filing of such rate or charge, upon a showing by the carrier that the rejected rate or charge is compensatory on a fully distributed commercial cost basis. The rate or charge of the carrier may then become effective on the date provided by the Commission in its notice of recision. If after hearing, the rate is determined by the Commission to be compensatory on a fully distributed commercial cost basis, the rejection shall be rescinded and the rate or charge permitted to become effective at the date specified in an order of the Commission.

"(3) At any hearing under paragraph (2), the burden of proof to show that the rate or charge is not lower by more than 15 percent of the lowest corresponding rate or charge of the approved conference or national flag carrier or that such rate or charge is compensatory on a fully distributed commercial oost basis, shall be upon the publishing carrier. Rates or charges which have been rejected by the Commission are void and their use is unlawful unless authorized by the Commission as provided in this subsection.

"(4) For the purpose of this subsection—

"(1) the term 'national flag carrier' means a common carrier by water providing services to and from

United States ports of call with vessels that are registered in the United States or the other country in the given trade but shall not include a common carrier by water if that carrier or any affiliate operates vessels in the given trade or any other United States trade, that are registered in a country other than the United States or the other country in the given trade;

"(ii) the term 'given trade' means the trade between the United States and another country;

"(iii) the term 'approved conference' means a conference of common carriers by water operating in the 'given trade' pursuant to a freight conference agreement approved pursuant to section 15 of this Act as provided in the Commission's General Order No. 24 (46 C.F.R. Part 522). If there is no such approved conference operating in the 'given trade' the term 'approved conference' shall mean a 'Rate Agreement' in the given trade approved by the Commission as provided in the Commission's General Order No. 24 (46 C.F.R. Part 522)."

APPENDIX B

(S E R V E D)
(JULY 3, 1975)
(FEDERAL MARITIME COMMISSION)

Title 46 - Shipping

CHPATER IV - FEDERAL MARITIME COMMISSION

SUBCHAPTER A - GENERAL PROVISIONS

General Order No. 33; Docket No. 72-62]

PART 506 - REGULATIONS TO ADJUST OR MEET CONDITONS UNFAVORABLE TO SHIPPING IN THE FOREIGN TRADE OF THE UNITED STATES

General Order No. 33 was published by the Commission on November 1, 1974 and was to become effective on November 31, 1974. However, since General Order No. 33 prompted numerous requests to delay the effective date and extend the time for filing petitions for reconsideration, the Commission on November 21, 1974 stayed the effective date of the rule and invited interested parties to file their views and arguments regarding the reconsideration thereof.

Comments on reconsideration have been submitted by or on behalf of a number and variety of interested parties including Hearing Counsel. The Commission has carefully considered the position of all the parties and the final rules promulgated herein have been drafted with the parties' comments and arguments in mind. The bulk of the comments submitted concern themselves with matters which have been argued before the Commission in this proceeding before and which have already been fully considered and properly disposed of by the Commission. We will not address ourselves to those matters further. We are limiting our discussion here to those comments and arguments which have prompted changes in the final rules promulgated herein. A section by section discussion of these changes is therefore appropriate.

Section 506.1 Purpose

The word "may" has been substituted for "will" in the last sentence of this section to make it clear that Commission action under these section 19 regulations is discretionary.

506.2 Scope

This section was likewise revised to indicate the discretion of the Commission in invoking these regulations. A change was also made in the wording to make this section consistent with the wording of the Merchant Marine Act, 1920.

506.3 Findings - Conditions unfavorable to shipping in the foreign trade of the United States

Paragraph (c) of this section was amended to indicate that the Commission was not concerned with mere differences in treatment to the vessels in the foreign trade of the United States but is concerned with the effect those differences and treatments have upon the foreign trade of the United States. One party wished the Commission to add to this section and other sections explicit provisions relating to the use of rebates in the foreign trade. Since rebating is covered in section 18(b)(3) of the Shipping Act, 1916 and may be covered under the general terms of these regulations, the Commission does not think it necessary to make any such amendment. The wording of the first sentence of this section has been changed to make it clear that these regulations are to apply to the acts of foreign governments or of foreign owners, operators, agents, or masters.

506.4 Petitions for section 19 relief - General - Who may file

The wording of this section has been changed to indicate that the Commission is not, in any way, limiting the application of this section

by specifically naming some of the persons who may file petitions.

506.8 Initial action to meet apparent conditions unfavorable - Resolution through diplomatic channels

This section was changed to give foreign countries notice that the Commission will notify the Secretary of State when conditions unfavorable to shipping in the foreign trade of the United States apparently exist and that it may request that he seek resolution of the matter through diplomatic channels.

506.9 Actions to meet conditions unfavorable to shipping in the foreign trade of the United States

Commentators to this section asserted that tariff suspension would not be a lawful exercise of section 19 powers. While it is true that sections 18(b)(4) and (5) set out the circumstances when the Commission may suspend tariffs under the Shipping Act, 1916, the powers of the Commission under section 19 of the Merchant Marine Act of 1920 are much broader. Therefore, this section remains unchanged.

506.11 Production of information

Paragraphs (b) and (c) of this section were changed to make it clear that the Commission was not restricting the scope of information to be produced by listing some of the types of information which could be ordered to be produced.

506.12 Production of information - Failure to produce

Objection was directed to section 506.12 because it required the Commission to find conditions unfavorable to shipping in the foreign trade of the United States when there was a failure to produce any information ordered by the Commission to be produced under section 506.11. There was an apparent conflict with the wording of this section

and the explanation which was given to it in the preamble to the regulations published on November 1, 1974. In the preamble, the Commission stated that this section would not necessarily apply to situations where there was a bona fide effort to comply. This explanation was in conflict with the clear wording of the section. Many parties asserted that the word "will" should be changed to "may". Such a change has been made in order to make this section consistent with the intent of the Commission. This section has also been amended so that appropriate findings of fact may be made when there is a failure to produce as well as the option of a deemed admission.

Other nonsubstantive changes were made to these final rules to conform with the amendments discussed herein. This discussion has not dealt with those comments which we viewed as being either irrelevant or immaterial to the matters at issue.

As a final matter, we would point out for the edification of all concerned, and lest there be any misunderstanding, that the rule promulgated herein is not to be construed in any way whatsoever as a substitute vehicle by which agreements approved by the Commission under section 15 of the Shipping Act, 1916, might be contested. Likewise, the new rule is not intended in any way to replace, modify, or limit the traditional criteria considered in connection with applications under section 15.

Therefore, pursuant to the authority of section 19 (1)(b) of the Merchant Marine Act, 1920 (46 U.S.C. §876 (1)(b)), section 4 of the Administrative Procedure Act (5 U.S.C. §553), sections 21 and 43 of the Shipping Act, 1916 (46 U.S.C. 820, 841(a)), and Title V of the Independent Offices Appropriation Act of 1952 (31 U.S.C. §483(a)) and Reorganization Plan No. 7 of 1961 (75 stat. 840), Part 506 of Title 46 CFR is hereby revised to read as follows:

PART 506 - REGULATIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE FOREIGN TRADE

Section

Authority: Part 506 is issued under the Authority of section 19(I)(b) of the Merchant Marine Act, 1920 (46 U.S.C. §876(1)(b)), section 4 of the Administrative Procedure Act (5 U.S.C. §553), sections 21 and 43 of the Shipping Act, 1916 (46 U.S.C. §820, 841(a)), and Title V of the Independent Offices Appropriation Act of 1952 (31 U.S.C. §483(a)), and Reorganization Plan No. 7 of 1961 (75 Stat. 840).

§506.1 Purpose

It is the purpose of the regulations of this Part to declare certain conditions resulting from governmental actions by foreign nations or from the competitive methods or practices of owners, operators, agents, or masters of vessels of a foreign country unfavorable to shipping in the foreign trade of the United States and to establish procedures by which persons who are or can reasonably expect to be adversely affected by such conditions may petition the Federal Maritime Commission for the issuance of regulations under the authority of section 19 of the Merchant Marine Act of 1920. It is the further purpose of the regulations of this part to afford notice of the general circumstances under which the authority granted to the Commission under section 19 may be invoked and the nature of the regulatory actions contemplated.

§506.2 Scope

Regulatory actions may be taken when the Commission finds, on its own motion or upon petition, that a foreign government has promulgated and enforced or intends to enforce laws, decrees, regulations or the like, or has engaged in or intends to engage in practices which presently have or prospectively could create conditions unfavorable to shipping in the foreign trade of the United States, or when owners, operators, agents or masters of foreign vessels engage in or intend to engage in, competitive methods or practices which have created or could create such conditions.

§506.3 Findings - Conditions unfavorable to shipping in the foreign trade of the United States

For the purposes of this part, conditions created by foreign governmental action or competitive methods of owners, operators, agents or masters of foreign vessels which:

(a) impose upon vessels in the foreign trade of the United States fees, charges, requirements, or restrictions different from those imposed on other vessels competing in the trade, or which preclude or tend to preclude vessels in the foreign trade of the United States from competing in the trade on the same basis as any other vessel;

(b) reserve substantial cargoes to the national flag or other vessels and fail to provide, on reasonable terms, for effective and equal access to such cargo by vessels in the foreign trade of the United States;

(c) are otherwise unfavorable to shipping in the foreign trade of the United States;

(d) are discriminatory or unfair as between carriers, shippers exporters, importers, or ports or between exporters from the United States and their foreign competitors and which cannot be justified under generally-accepted international agreements or practices and which operate to the detriment of the foreign commerce or the public interest of the United States;

are found unfavorable to shipping in the foreign trade of the United States.

§506.4 Petitions for section 19 relief - General - Who may file

Any person, including, but not limited to, any importer, exporter, shipper, consignee, or owner, operator or charterer of a liner, bulk, or tramp vessel, who has been harmed by, or who can reasonably expect harm from existing or impending conditions unfavorable to shipping in the foreign trade of the United States, may file a petition for the relief under the provisions of this Part.

§506.5 Petitions - How filed

All requests for relief from conditions unfavorable to shipping in the foreign trade shall be by written petition. An original and fifteen copies of a petition for relief under the provisions of this part shall be filed with the Secretary, Federal Maritime Commission, Washington, D.C. 20573.

§506.6 Petitions - Contents

Petitions for relief from conditions unfavorable to shipping in the foreign trade of the United States shall set forth the following:

(a) a concise description and citation of the foreign law, rule, regulation, practice or competitive method complained of;

(b) a certified copy of any law, rule, regulation or other document involved and, if not English, a certified English translation thereof;

(c) any other evidence of the existence of such practice or competitive method;

(d) a clear description, in detail, of the harm already caused or which may reasonably be expected to be caused petitioner, including:

(1) statistics for the representative period showing a present or prospective cargo loss if harm is alleged on that basis, such statistics shall include figures for the total cargo carried or projected in the trade for the period;

(2) statistics or other evidence for the representative period showing increased costs, inferior services or other harm to cargo interest if injury is claimed on that basis; and

(3) a statement as to why the period is representative.

(e) A recommended regulation, the promulgation of which will in view of the petitioner, adjust or meet the alleged conditions unfavorable to shipping in the foreign trade of the United States.

§506.7 Petitions - Amendment or dismissal of

Upon the failure of a petitioner to comply with the provisions of this part, the petitioner will be notified by the Secretary and afforded reasonable opportunity to amend his petition. Failure to timely amend the petition will result in its dismissal. For good cause shown additional time for amendment may be granted.

§506.8 Initial action to meet apparent conditions unfavorable Resolution through diplomatic channels

Upon the filing of a petition, or on its own motion when there are indications that conditions unfavorable to shipping in the foreign trade of the United States may exist, the Commission will notify the Secretary of State that such conditions apparently exist, and may request he seek resolution of the matter through diplomatic channels. If request is made the Commission will give every assistance in such efforts, and the

Commission may request the Secretary to report the results of his efforts at a specified time.

§506.9 Actions to meet conditions unfavorable to shipping in the foreign trade of the United States

Upon a submission of a petition filed under the rules of this Part, or upon its own motion, the Commission may find that conditions unfavorable to shipping in the foreign trade of the United States do exist, and may, without further proceeding, issue regulations. Such regulations may effect the following:

(a) imposition of equalizing fees or charges;

(b) limitation of sailings to and from United States ports or of amount or type of cargo during a specified period;

(c) suspension, in whole or in part, of any or all tariffs filed with the Commission for carriage to or from United States ports; and

(d) any other action the Commission finds necessary and appropriate in the public interest to adjust or meet any condition unfavorable to shipping in the foreign trade of the United States.

§506.10 Participation of interested persons

In the event that participation of interested persons is deemed necessary by the Commission, notice will be published in the *Federal Register* and interested persons will then be allowed to participate in this procedure by the submission of written data, views or arguments, with or without opportunity to present same orally.

§506.11 Production of information

In order to aid in the determination of whether conditions unfavorable to shipping in the foreign trade of the United States exist, or in order to aid in the formulation of appropriate regulations subsequent to a finding that conditions unfavorable to shipping in the foreign trade of the United States exist, the Commission may, when it deems necessary or appropriate, and without further proceedings, order any owner, operator, or charterer in the affected trade to furnish any or all of the following information:

(a) statistics for a representative period showing cargo carried to and from the United States in the affected trade on vessels owned, operated or chartered by him by type, source, value and directions;

(b) information for a representative period on the activities of vessels he owns, operates, or charters, which shall include sailings to and from United States ports, costs incurred, taxes or other charges paid to authorities, and subsidies or other payments received from foreign authorities; and such other information that the Commission considers relevant to discovering or determining the existance of general or special conditions unfavorable to shipping in the foreign trade of the United States.

(c) information for a specified future period on the prospective activities of vessels which he owns, operates or charters or plans to own, operate or charter, to and from United States ports, which shall include projected sailings, anticipated costs, taxes or other charges to be paid to authorities, and expected subsidies or other payments to

be received from foreign authorities; and such other information that the Commission considers relevant to discovering or determining the existence of general or special conditions unfavorable to shipping in the foreign trade of the United States.

§506.12 Production of information - Failure to produce

The Commission may, when there is a failure to produce any information ordered produced under section 506.11, make appropriate findings of fact or deem such a failure to produce as an admission that conditions unfavorable to shipping in the foreign trade of the United States do exist.

§506.13 Postponement, discontinuance, or suspension of action

The Commission may, on its own motion or upon petition, postpone, discontinue, or suspend any and all actions taken by it under the provisions of this part. The Commission shall postpone or discontinue any or all such actions if the President informs the Commission that postponement, discontinuance, or suspension is required for reasons of foreign policy or national security.

§506.14 Content and effective date of regulation

The Commission shall incorporate in any regulations adopted under the rules of this part a concise statement of their basis and purpose.

Regulations shall be published in the *Federal Register*. Except where conditions warrant and for good cause, regulations promulgated under the rules of this Part shall not become effective until 30 days after the date of publication.

Effective date. The provisions of this Part 506 will become effective 30 days after publication in the *Federal Register*.

By the Commission.

Francis C. Hurney
Secretary

(SEAL)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

U.S. FOREIGN TRADE
AVERAGE ANNUAL GROWTH RATE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

We urge speedy approval of the proposed legislation.

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

TRANSPORTATION

The rate war with Russia

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

of United States Lines, say
duced the rates on TV sets
to the U. S. by 15%, toy rat
and bicycles by 13.8%. Thes
were put into effect as so

AN

ARGUMENT

FOR FAIR

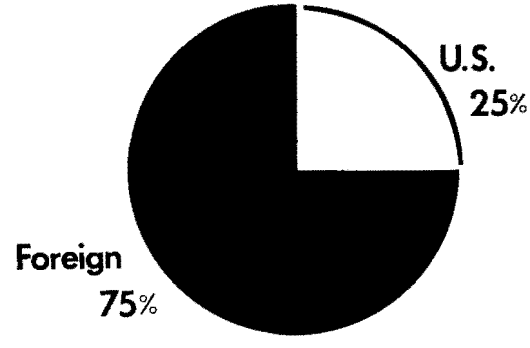
COMPETITION

Produced on Behalf of the
American Flag Liner Industry

AN ARGUMENT FOR FAIR COMPETITION

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

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



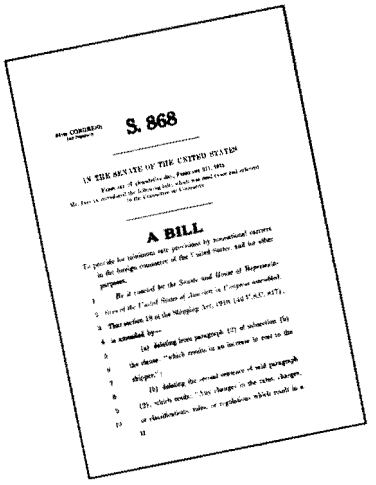
The proliferation of state-owned non-national carriers which charge rates that do not cover their fully distributed costs and their growing encroachment upon liner trade routes of the United States and its trading partners come as the result of subsidies far exceeding those which other governments make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

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

Solving a Serious Inequity

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

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



S. 868

IN THE SENATE OF THE UNITED STATES

A BILL

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

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

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

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

Rate Destruction for Political Profit

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

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

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

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

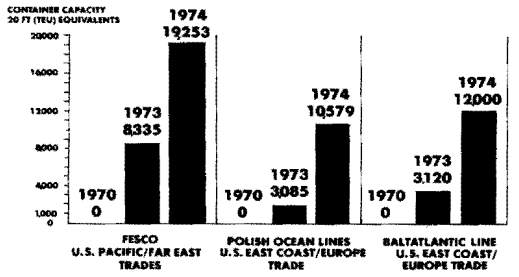
The Bill is intended to create a compromise. It does not dictate that non-national competition be forced to establish rate parity with the national lines serving trading nations in their own trade, but rather it requires that any proposed rate or rate structure lower than the lowest national flag line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

Alarming Cross Trader Growth

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

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

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



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

Undercutting

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

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

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

RATES
U.S./JAPAN TRADE

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

RATES/REVENUE TON

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

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

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

RATES/REVENUE TON

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

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

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

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

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

RATES/REVENUE TON

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

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

Commission Report

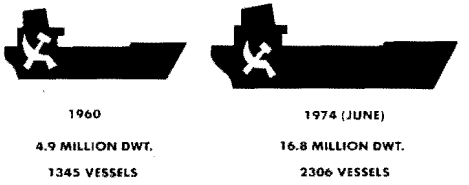
In the Report of the Commission on American Shipbuilding (an entity created by the Congress under Public Law 91-469)

it was stated:

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

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

SOVIET MERCHANT FLEET AND GROWTH IN TONNAGE

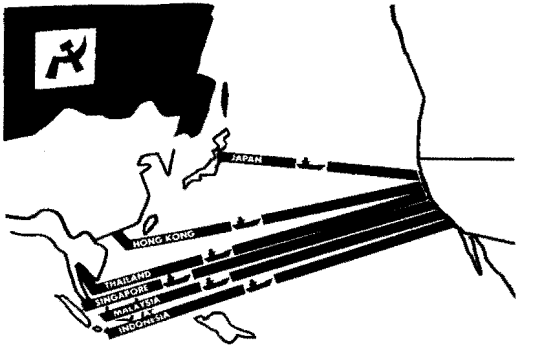


The Report continues:

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

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

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



And the Report goes on to say:

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

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

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

USSR MERCHANT LINER TYPE VESSELS ON ORDER AUGUST 1974

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

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

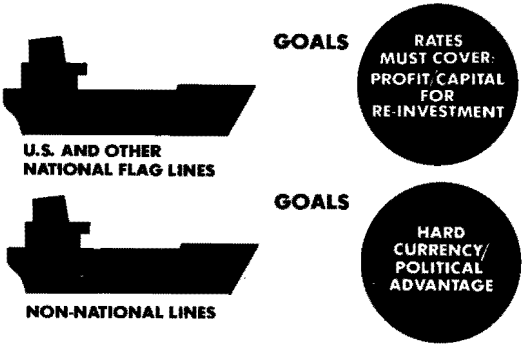
This is but one example of the growth and scope of state-owned competition that faces us.

Restoring Fair Competition

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

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

GOALS OF NATIONAL VS. NON-NATIONAL LINES



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

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

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

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

Grave Alternatives

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

American seamen will have fewer and fewer ships to sail.

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

And American shipyards will have less and less to build.

The strongest, most powerful nation in

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

FUTURE RATES ?
U.S. TRADE ROUTES

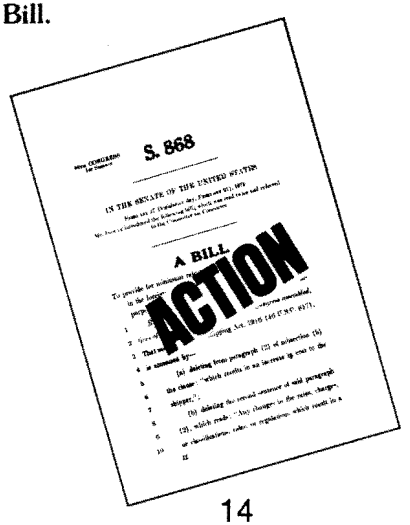
	CURRENT NATIONAL FLAG RATES	FUTURE NON-NATIONAL FLAG RATES
TOBACCO	$75.75	$100-$200 -$?
RAGS	$70.00	$100-$200 -$?
PLASTIC SHEETS	$55.00	$100-$200 -$?
ASPHALT SHINGLES	$58.50	$100-$200 -$?

RATES/REVENUE TON

Action

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

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



QUESTIONS AND ANSWERS ON S.868

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

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

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

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

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

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

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

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

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

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

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

   A. No—only those that are challenged.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. The lack of an automatic suspension.

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

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

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

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

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

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

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

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