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THE WHITE HOUSE

WASHINGTON

October 28, 1975

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR:

JIM LYNN

FROM:

JIM CONNOR *JEC*

SUBJECT:

Status Report on H. R. 7940 and
S. 868, The "Third Flag Bills"

The President reviewed your memorandum of October 23rd on the above subject and made the following notation:

"I'm not satisfied. We could be getting in same bind as on Cargo Preference."

Please follow-up with appropriate action.

cc: Don Rumsfeld



THE WHITE HOUSE
WASHINGTON

John Lyman

I'm not satisfied.

We could be getting in
some kind as on

Cargo Preference.





THE PRESIDENT HAS SEEN.....

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

OCT 23 1975

INFORMATION

MEMORANDUM FOR: THE PRESIDENT

FROM: JAMES T. LYNN

SUBJECT: Status Report on H.R. 7940 and
S. 868, The "Third Flag Bills"



Earlier this year, the Administration testified before the Senate Commerce Committee in opposition to S. 868, the so-called "Third Flag Bill." H.R. 7940, a companion bill, is the subject of hearings to receive testimony by Administration witnesses (State and Transportation) on October 23. After consultations with concerned agencies, we have "cleared" testimony that continues our earlier position of opposition to these bills.

Under existing law (Sections 15-19 of the Shipping Act of 1916) the Federal Maritime Commission (FMC) has the authority to alter international rates which it finds to be discriminatory, prejudicial, preferential, unreasonably high or low, or detrimental to commerce. These findings can be made in reference to ports, shippers, carriers, localities or the public interest in general. However, for most cases, the FMC can only act upon a rate pending notice and hearings. Unlike the CAB and ICC, the FMC is not empowered to suspend rates temporarily prior to the time that the record is complete and its final decision reached. Formal hearings at the FMC are time consuming, and cases may take two-three years or more for resolution. Ultimately, FMC can act by limiting sailings of the offender to and from U.S. ports, placing ceilings on cargo in amounts or types for specified periods, imposing equalizing fees or charges, and altering -- in whole or in part -- rates of the offending party, thereby excluding it from U.S. trade.

S. 868 and H.R. 7940 would amend the Shipping Act of 1916 by giving the Federal Maritime Commission broad new powers to regulate a portion of the maritime industry, third flag

lines. The bills would forbid third flag carriers (e.g., a Norwegian carrier plying a U.S. to Japan route) from charging rates which are lower than the lowest corresponding rate of any national flag carrier (in the above example, a Japanese or U.S. carrier) and grant the FMC authority to suspend any lower rates unless the third flag carriers can show that their rates are compensatory at the lower level. Hence, the burden of proof would be on the third flag carriers to show that their rates are justified at lower levels.

Not surprisingly, the U.S. flag carriers and maritime labor unions vigorously support the bill. They have seen this bill as a way to deal with Soviet-flag competition and rate-cutting, particularly in the Pacific trades, e.g., the operations of the Soviet Flag Far Eastern Shipping Company (FESCO). Proponents of the bill argue that State-owned carriers, like FESCO, are not necessarily operated on a profit basis, and that consequently, these carriers can underprice their services to gain a larger share of the international shipping market.

However, FESCO's conduct has not been the only concern. In the past several months, the maritime industry's argument for the bill has shifted somewhat away from dealing with alleged FESCO rate-cutting specifically and more towards third flag carrier competition generally. Although FESCO has indicated some willingness to cooperate with the established freight carriers on freight rate levels, a larger rate war has broken out in the trans-Pacific trades involving a number of national flag and third flag carriers. The rate war has greatly worried the maritime industry.

Shippers generally oppose the bill on the grounds that the FMC, armed with new powers, would invariably act against the lower rates being provided by third flag carriers and thereby add to their overall costs. They foresee an unfavorable impact on the U.S. balance of trade and higher U.S. consumer prices for foreign goods.

The Senate Commerce Committee has ordered S. 868 reported out, but final printing and floor action are pending. Senator Inouye (D-Hawaii) is the sponsor and main proponent of the bill in the Senate. Chairwoman Leonor Sullivan (D-Mo), together with Representative Downing (D-Va) and Representative McCloskey (R-Calif), introduced the House version but their commitment is uncertain.

In recent days and weeks, we have received and discussed suggestions from various agencies ranging from stiffening our opposition to offering specific amendments. Because of uncertainty about the course of further Congressional action and because time has not permitted a thorough review of suggested amendments, no change in our earlier position was recommended.

At the same time, we will be reviewing this and other proposals in the near future in order to develop new recommendations on the full range of maritime issues.



THE WHITE HOUSE
WASHINGTON

October 27, 1975

Phil Buchen
Jim Cannon
Max Friedersdorf
Jack Marsh
Brent Scowcroft
Bill Seidman

The original of this memo has been
forwarded to the President. The
Attached copy is for your information.

Jim Connor

THE WHITE HOUSE
WASHINGTON

Jim -

This is the information type memo OMB said they would send after they pulled back their previous decision memo (papers attached for your information).

I would like to send FYI copies to all I staffed and pulled back the other memo from. OK?

Trudy





EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

OCT 23 1975

INFORMATION

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THE WHITE HOUSE
WASHINGTON



Jim -

Roger Porter called this morning to say that OMB will be withdrawing their memo on "The Third Flag Bills" following a meeting late yesterday of all parties concerned --- Lynn, Commerce, Labor, Seidman. Since testimony is being taken today they all decided to withdraw the decision memo -- continue with Option 1 --- and OMB will write an information memo for the President.

I have called all the individuals we staffed to -- who have not as yet responded.

Roger confirmed that Secretary Morton's comments in the letter received yesterday were taken into consideration in making this decision.

Trudy 10/22/75

*President
did not see*



THE SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

OCT 21 1975



MEMORANDUM FOR THE PRESIDENT

SUBJECT: Administration's Position on H.R. 7940
and S. 868, The "Third Flag Bills"

OMB has provided you with a memorandum of October 20 on this subject. The memorandum does correctly set forth the Commerce position to seek to delay Congressional action on these bills, (Option 3) while OMB recommends that a veto signal be sent to the Hill, (Option 2).

I do not believe the action recommended by OMB would be appropriate prior to your review of the findings and recommendations of the committee you have appointed to review maritime policies. This effort should be completed in the next thirty days. Therefore, if you disagree with Option 3, I propose that Option 1 be adopted at least for the near future, which continues Administration opposition without a veto signal.

[Signature]
Secretary of Commerce

CC:

Honorable William E. Simon
Honorable John T. Dunlop
Honorable James T. Lynn
Honorable L. William Seidman

Jim -

I have staffed this to

Buchen
Cannon
Marsh
Friedersdorf
Seidman
Scowcroft

asking for it back by Noon
on the 22nd ---

OK?

Trudy



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

President did not see

OCT 19 1975



ACTION

MEMORANDUM FOR:

THE PRESIDENT

FROM:

JAMES T. LYNN

SUBJECT:

Administration's Position on H.R. 7940
and S. 868, The "Third Flag Bills"

RL

I. BACKGROUND

Under Sections 15-19 of the Shipping Act of 1916, the Federal Maritime Commission (FMC) has the authority to alter international rates which it finds to be discriminatory, prejudicial, preferential, unreasonably high or low, or detrimental to commerce. These findings can be made in reference to ports, shippers, carriers, localities or the public interest in general. However, for most cases, the FMC can only act upon a rate pending notice and hearings. Unlike the CAB and ICC, the FMC is not empowered to suspend rates temporarily prior to the time that the record is complete and its final decision reached. Formal hearings at the FMC are time consuming, and cases may take two-three years or more for resolution. Ultimately, FMC can act by limiting sailings of the offender to and from U.S. ports, placing ceilings on cargo in amounts or types for specified periods, imposing equalizing fees or charges, and altering -- in whole or in part -- rates of the offending party, thereby excluding it from U.S. trade.

H.R. 7940 and its companion bill, S. 868, would amend the Shipping Act of 1916 by giving the Federal Maritime Commission broad new powers to regulate a portion of the maritime industry, third flag lines. The bills would forbid third flag carriers (e.g., a Norwegian carrier plying a U.S. to Japan route) from charging rates which are lower than the lowest corresponding rate of any national flag carrier (in the above example, a Japanese or U.S. carrier) and grant the FMC authority to suspend any lower rates unless the third flag carriers can show that their rates are compensatory at the lower level. Hence, the burden of proof would be on the third flag carriers to show that their rates are justified at lower levels.

Not surprisingly, the U.S. flag carriers and maritime labor unions vigorously support the bill. They have seen this bill as a way to deal with Soviet-flag competition and rate-cutting, particularly in the Pacific trades, e.g., the operations of the Soviet Flag Far Eastern Shipping Company (FESCO). Proponents of the bill argue that State-owned carriers, like FESCO, are not necessarily operated on a profit basis, and that consequently, these carriers can underprice their services to gain a larger share of the international shipping market.

However, FESCO's conduct has not been the only concern. In the past several months, the maritime industry's argument for the bill has shifted somewhat away from dealing with alleged FESCO rate-cutting specifically and more towards third flag carrier competition generally. Although FESCO has indicated some willingness to cooperate with the established freight carriers on freight rate levels, a larger rate war has broken out in the trans-Pacific trades involving a number of national flag and third flag carriers. The rate war has greatly worried the maritime industry.

Shippers generally oppose the bill on the grounds that the FMC, armed with new powers, would invariably act against the lower rates being provided by third flag carriers and thereby add to their overall costs. They foresee an unfavorable impact on the U.S. balance of trade and higher U.S. consumer prices for foreign goods.

The Departments of State, Transportation and Justice have expressed qualified opposition to the legislation. While State has testified against the bill because it would violate a number of maritime agreements, it has also endorsed the purpose of preventing alleged predatory rate practices in the U.S. foreign trades. Transportation and Justice have offered written comments in opposition to the legislation because it is contrary to the Administration supported program of regulatory reform and would lead to higher international freight rates. Outgoing Chairperson of the FMC, Helen Bentley, has urged prompt passage of the legislation on the basis that "predatory rate-cutters deprive American-flag carriers of our trade." Also, she has argued that the legislation would permit the FMC to act more quickly on an across-the-board basis, rather than case-by-case. FMC Vice-Chairperson Clarence Morse has disagreed with Mrs. Bentley, however.

Current Status Of The Legislation

The Senate Commerce Committee has ordered S. 868 reported out, but final printing and floor action are pending. The House Merchant Marine Subcommittee of the House Committee on Merchant Marine and Fisheries is in the process of holding hearings on the bill (H.R. 7940). House hearings were last held September 18 at which time shippers testified, and the Committee intends to hold additional hearings on October 23 at which time DOT and State are scheduled to testify. Because of the strong opposition of shipper groups, the legislation is likely to be altered in both the House and Senate Committees, but the final form it will take is unknown.

Senator Inouye (D-Hawaii) is the sponsor and main proponent of the bill in the Senate. Chairwoman Leonor Sullivan (D-Mo), together with Representative Downing (D-Virginia) and Representative McCloskey (R-California), introduced the House version but their commitment is uncertain.

II. OPTIONS

1. Continue to oppose the bills because they are inconsistent with regulatory reform and U.S. foreign policy goals, but do not give a veto signal (current Administration position).
2. Continue to oppose the bills and inform the Hill that if enrolled, you will veto the legislation. (Justice and Transportation view).
3. Seek to delay action on the legislation (without either opposing or supporting it) by informing the Committee that the Administration is working with the Soviets and others to resolve maritime issues and problems. (Commerce and Labor view).
4. Seek to alter the legislation to make it more consistent with the Administration's regulatory reform goals and foreign policy concerns (State view).

The reasons for option 1 (continue to oppose the bill -- no veto signal) are:

- The proposed legislation runs contrary to your desire to reduce transportation regulatory activities, namely:

- ... The bills would restrict competition by independent third flag shipping lines by subjecting them to minimum rate controls. Such anti-competitive rate regulation would likely increase ocean freight rates to the United States and strengthen the ocean shipping conference system. The conferences would thereby lose a major existing challenge to their monopoly-like powers.
- ... The bills would force third flag carriers to "prove" the validity of their rate structures, but would not place any burden for data on the national carriers and conference members.
- The bills are in violation of various agreements with our trading partners and could result in similar restrictive shipping policies by other nations.
- The FMC already has authority to rule on a case-by-case basis against rates allegedly below cost. Additionally, under section 301 of the Trade Act of 1974, the U.S. Special Trade Representative is authorized to take steps when foreign nations engage in discriminatory, unjustifiable or unreasonable trade actions.
- If FESCO's conduct were the only concern, other alternative approaches could be pursued such as bilateral negotiations with the Soviets. However, as previously indicated, the arguments in favor of the bill (especially FMC's) have recently shifted towards third flag competition in general.
- In opposing the legislation, the Administration would retain a consistent approach with its previous testimony and comments.

The reasons for option 2 (continue to oppose the bills -- give a veto signal) are:

- In addition to those reasons under option 1, your veto signal would add a strong personal commitment consistent with your stated policies on regulatory reform. Opposition without a veto threat may not be sufficient to stop passage of the legislation. For example, the Administration's opposition to oil cargo preference legislation was not sufficient to stop congressional enactment of that legislation last session.

The reasons for option 3 (Seek to delay action on the legislation) are:

- It would not pit the Administration against the interests of the maritime unions and management at a time when relations are sensitive.
- If the legislation were successfully delayed (which at this point in the legislative process may not be possible), it would give the Government the opportunity to approach and perhaps reach understandings with the Soviets regarding their alleged "predatory practices." Furthermore, with the legislation under active consideration, the U.S. bargaining position with the Soviets would be strengthened.
- It would retain the Administration's flexibility in dealing with all parties -- the committee, the maritime unions and management, shipping groups, and foreign flag carriers.

Option 4 entails seeking alteration of the legislation to mitigate the Administration's objections. As proposed by State, this would include the following general principles:

- limit the scope of the bill to state-owned or controlled merchant vessels of nations with which we do not have "friendship, commerce and navigation" treaties, rather than have the bill apply to all third-flag carriers;
- permit FMC to suspend a rate filed by state-owned or controlled carriers for a maximum of 90 days while it determines if the rate is lawful. If, after 90 days, FMC has not made a determination, the filed rate would go into effect.

Other issues -- such as criteria for determining what an "unlawful" rate would be, and upon whom the burden of proof would fall in proving or disproving "lawfulness" -- have not

yet been addressed by State and would have to be worked out after discussions within the Administration, with the committees, and with the involved shipper and merchant marine interest groups.

The reasons for option 4 are:

- Like option 3, it would not pit the Administration against the maritime interests and would retain some flexibility in the Administration's position. U.S. shipping lines have already expressed interest in the State approach.
- Because state-flag carriers (such as FESCO) do not need to earn profits to stay in business, they can resort to predatory rate-cutting practices. Although FMC and U.S. Special Trade Representative have authorities to deal with cases of discrimination or unfair practices, their processes are time-consuming and may lead to subsequent court action. Action is needed to shorten the time frame for decisions.
- such a compromise measure might be designed to be only marginally inconsistent with regulatory reform. If the committees can be convinced of its validity, it would avert the enactment of a more undesirable bill.

OMB Recommendation

That you approve Option 2, which provides for opposing the legislation and signalling that if enrolled, it will be vetoed. Although there is general uncertainty as to the course of congressional action on the bill, we believe that a veto threat will be the most effective means for establishing the credibility of the Administration's previously-expressed opposition to the measure. If you disagree with Option 2, we would propose that Option 1 be adopted -- this would simply continue the position the Administration has already taken. We believe it is premature to propose a compromise now. More work is needed to develop a compromise proposal, and it is not yet clear that a compromise will be necessary to avoid enactment of the bill. If it appears that the Administration's

opposition (with or without veto threat) is not effectively halting enactment of the bill, a compromise proposal along the lines proposed by State (Option 4) could be discussed with the Congress at a later date.

Approve Option 1 _____

Approve Option 2 _____

Approve Option 3 _____

Approve Option 4 _____

See Me _____

THE WHITE HOUSE

WASHINGTON

October 22, 1975

MEMORANDUM FOR: JIM CONNOR

FROM: MAX FRIEDERSDORF *M.F.*

SUBJECT: James Lynn's memo 10/19/75 re
Administration's Position on H.R. 7940 and
S. 868, The "Third Flag Bills"

Office of Legislative Affairs recommends Option 3. We understand Senator Magnuson is holding it up in Senate committee. The powerful Members will do utmost to kill bill at committee level.

NATIONAL SECURITY COUNCIL

October 21, 1975

MEMORANDUM FOR: JAMES CONNOR

FROM: *fn* Jeanne W. Davis *MMH*

SUBJECT: The "Third Flag" Bills:
H. R. 7940 and S. 868

The NSC Staff favors Option 4 of Mr. Lynn's October 19 memorandum to the President on this subject.

We believe a veto signal is premature at this point and is final, once given. The bill has a strong emotional appeal similar to the 200-mile fisheries bill. We should, therefore, try to compromise while the bill is still in the committee process to see if we can get an acceptable bill which meets our interests and give us some leverage with the Soviet Union. If we cannot get such a compromise we can always signal a veto when the bill comes to the House floor, which is the most effective time to use a veto signal.

Jack —
RECOMMEND
Option #1

WHITE HOUSE
WASHINGTON



FYI, this is the
legislation that Bob
Mayer (States Steam-
ship Company) has
been lobbying us
on —
Luce

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

OCT 20 1975

due: 10/22 noon

Date: October 20, 1975

Time:

FOR ACTION: Phil Buchen
Jim Cannon
Max Friedersdorf
Jack Marsh
~~Brent Scowcroft~~
Bill Seidman

cc (for information):

FROM THE STAFF SECRETARY

DUE: Date: Wednesday, October 22

Time: Noon

SUBJECT:

James Lynn's memo 10/19/75 re
Administration's Position on H.R. 7940
and S. 868, The "Third Flag Bills"



ACTION REQUESTED:

☐ For Necessary Action

☒ For Your Recommendations

☐ Prepare Agenda and Brief

☐ Draft Reply

☒ For Your Comments

☐ Draft Remarks

REMARKS:

DOT and State are scheduled to testify on this
subject on October 23 - your comments are requested
before that date.

[Handwritten signatures: "John" and "Jim"]

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

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

Jim Connor
For the President

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

OCT 19 1975

ACTION

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OMB Recommendation

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Approve Option 1 _____

Approve Option 2 _____

Approve Option 3 _____

Approve Option 4 _____

See Me _____

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: October 20, 1975

Time: .

FOR ACTION: -Phil Buchen
-Jim Cannon
-Max Friedersdorf
✓Jack Marsh
✓Brent Scowcroft
-Bill Seidman

cc (for information):

FROM THE STAFF SECRETARY

DUE: Date: Wednesday, October 22

Time: Noon

SUBJECT:

James Lynn's memo 10/19/75 re
Administration's Position on H.R. 7940
and S. 868, The "Third Flag Bills"

ACTION REQUESTED:

☐ For Necessary Action☒ For Your Recommendations☐ Prepare Agenda and Brief☐ Draft Reply☒ For Your Comments☐ Draft Remarks

REMARKS:

DOT and State are scheduled to testify on this
subject on October 23 - your comments are requested
before that date.

Marsh - option #1, plus comments
Scowcroft - option #4, plus comments
Friedersdorf - option #3 plus comments

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

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

Jim Connor
For the President

Date: October 20, 1975

Time:

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For the President

12

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

OCT 19 1975

ACTION

MEMORANDUM FOR:

THE PRESIDENT

FROM:

JAMES T. LYNN

SUBJECT:

Administration's Position on H.R. 7940
and S. 868, The "Third Flag Bills"



RL

I. BACKGROUND

Under Sections 15-19 of the Shipping Act of 1916, the Federal Maritime Commission (FMC) has the authority to alter international rates which it finds to be discriminatory, prejudicial, preferential, unreasonably high or low, or detrimental to commerce. These findings can be made in reference to ports, shippers, carriers, localities or the public interest in general. However, for most cases, the FMC can only act upon a rate pending notice and hearings. Unlike the CAB and ICC, the FMC is not empowered to suspend rates temporarily prior to the time that the record is complete and its final decision reached. Formal hearings at the FMC are time consuming, and cases may take two-three years or more for resolution. Ultimately, FMC can act by limiting sailings of the offender to and from U.S. ports, placing ceilings on cargo in amounts or types for specified periods, imposing equalizing fees or charges, and altering -- in whole or in part -- rates of the offending party, thereby excluding it from U.S. trade.

H.R. 7940 and its companion bill, S. 868, would amend the Shipping Act of 1916 by giving the Federal Maritime Commission broad new powers to regulate a portion of the maritime industry, third flag lines. The bills would forbid third flag carriers (e.g., a Norwegian carrier plying a U.S. to Japan route) from charging rates which are lower than the lowest corresponding rate of any national flag carrier (in the above example, a Japanese or U.S. carrier) and grant the FMC authority to suspend any lower rates unless the third flag carriers can show that their rates are compensatory at the lower level. Hence, the burden of proof would be on the third flag carriers to show that their rates are justified at lower levels.

Not surprisingly, the U.S. flag carriers and maritime labor unions vigorously support the bill. They have seen this bill as a way to deal with Soviet-flag competition and rate-cutting, particularly in the Pacific trades, e.g., the operations of the Soviet Flag Far Eastern Shipping Company (FESCO). Proponents of the bill argue that State-owned carriers, like FESCO, are not necessarily operated on a profit basis, and that consequently, these carriers can underprice their services to gain a larger share of the international shipping market.

However, FESCO's conduct has not been the only concern. In the past several months, the maritime industry's argument for the bill has shifted somewhat away from dealing with alleged FESCO rate-cutting specifically and more towards third flag carrier competition generally. Although FESCO has indicated some willingness to cooperate with the established freight carriers on freight rate levels, a larger rate war has broken out in the trans-Pacific trades involving a number of national flag and third flag carriers. The rate war has greatly worried the maritime industry.

Shippers generally oppose the bill on the grounds that the FMC, armed with new powers, would invariably act against the lower rates being provided by third flag carriers and thereby add to their overall costs. They foresee an unfavorable impact on the U.S. balance of trade and higher U.S. consumer prices for foreign goods.

The Departments of State, Transportation and Justice have expressed qualified opposition to the legislation. While State has testified against the bill because it would violate a number of maritime agreements, it has also endorsed the purpose of preventing alleged predatory rate practices in the U.S. foreign trades. Transportation and Justice have offered written comments in opposition to the legislation because it is contrary to the Administration supported program of regulatory reform and would lead to higher international freight rates. Outgoing Chairperson of the FMC, Helen Bentley, has urged prompt passage of the legislation on the basis that "predatory rate-cutters deprive American-flag carriers of our trade." Also, she has argued that the legislation would permit the FMC to act more quickly on an across-the-board basis, rather than case-by-case. FMC Vice-Chairperson Clarence Morse has disagreed with Mrs. Bentley, however.

Current Status Of The Legislation

The Senate Commerce Committee has ordered S. 868 reported out, but final printing and floor action are pending. The House Merchant Marine Subcommittee of the House Committee on Merchant Marine and Fisheries is in the process of holding hearings on the bill (H.R. 7940). House hearings were last held September 18 at which time shippers testified, and the Committee intends to hold additional hearings on October 23 at which time DOT and State are scheduled to testify. Because of the strong opposition of shipper groups, the legislation is likely to be altered in both the House and Senate Committees, but the final form it will take is unknown.

Senator Inouye (D-Hawaii) is the sponsor and main proponent of the bill in the Senate. Chairwoman Leonor Sullivan (D-Mo), together with Representative Downing (D-Virginia) and Representative McCloskey (R-California), introduced the House version but their commitment is uncertain.

II. OPTIONS

1. Continue to oppose the bills because they are inconsistent with regulatory reform and U.S. foreign policy goals, but but do not give a veto signal (current Administration position).
2. Continue to oppose the bills and inform the Hill that if enrolled, you will veto the legislation. (Justice and Transportation view).
3. Seek to delay action on the legislation (without either opposing or supporting it) by informing the Committee that the Administration is working with the Soviets and others to resolve maritime issues and problems. (Commerce and Labor view).
4. Seek to alter the legislation to make it more consistent with the Administration's regulatory reform goals and foreign policy concerns (State view).

The reasons for option 1 (continue to oppose the bill -- no veto signal) are:

- The proposed legislation runs contrary to your desire to reduce transportation regulatory activities, namely:



- ... The bills would restrict competition by independent third flag shipping lines by subjecting them to minimum rate controls. Such anti-competitive rate regulation would likely increase ocean freight rates to the United States and strengthen the ocean shipping conference system. The conferences would thereby lose a major existing challenge to their monopoly-like powers.
- ... The bills would force third flag carriers to "prove" the validity of their rate structures, but would not place any burden for data on the national carriers and conference members.
- The bills are in violation of various agreements with our trading partners and could result in similar restrictive shipping policies by other nations.
 - The FMC already has authority to rule on a case-by-case basis against rates allegedly below cost. Additionally, under section 301 of the Trade Act of 1974, the U.S. Special Trade Representative is authorized to take steps when foreign nations engage in discriminatory, unjustifiable or unreasonable trade actions.
 - If FESCO's conduct were the only concern, other alternative approaches could be pursued such as bilateral negotiations with the Soviets. However, as previously indicated, the arguments in favor of the bill (especially FMC's) have recently shifted towards third flag competition in general.
 - In opposing the legislation, the Administration would retain a consistent approach with its previous testimony and comments.

The reasons for option 2 (continue to oppose the bills -- give a veto signal) are:

- In addition to those reasons under option 1, your veto signal would add a strong personal commitment consistent with your stated policies on regulatory reform. Opposition without a veto threat may not be sufficient to stop passage of the legislation. For example, the Administration's opposition to oil cargo preference legislation was not sufficient to stop congressional enactment of that legislation last session.

The reasons for option 3 (Seek to delay action on the legislation) are:

- It would not pit the Administration against the interests of the maritime unions and management at a time when relations are sensitive.
- If the legislation were successfully delayed (which at this point in the legislative process may not be possible), it would give the Government the opportunity to approach and perhaps reach understandings with the Soviets regarding their alleged "predatory practices." Furthermore, with the legislation under active consideration, the U.S. bargaining position with the Soviets would be strengthened.
- It would retain the Administration's flexibility in dealing with all parties -- the committee, the maritime unions and management, shipping groups, and foreign flag carriers.

Option 4 entails seeking alteration of the legislation to mitigate the Administration's objections. As proposed by State, this would include the following general principles:

- limit the scope of the bill to state-owned or controlled merchant vessels of nations with which we do not have "friendship, commerce and navigation" treaties, rather than have the bill apply to all third-flag carriers;
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See Me _____

ACTION MEMORANDUM

WASHINGTON

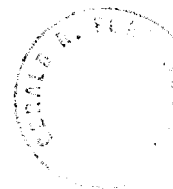
LOG NO.:

Date: October 20, 1975

Time:

FOR ACTION: Phil Buchen
Jim Cannon
Max Friedersdorf
Jack Marsh
Brent Scowcroft
Bill Seidman

cc (for information):



FROM THE STAFF SECRETARY

DUE: Date: Wednesday, October 22

Time: Noon

SUBJECT:

James Lynn's memo 10/19/75 re
Administration's Position on H.R. 7940
and S. 868, The "Third Flag Bills"

ACTION REQUESTED:

☐ For Necessary Action☒ For Your Recommendations☐ Prepare Agenda and Brief☐ Draft Reply☒ For Your Comments☐ Draft Remarks

REMARKS:

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Jim Connor
For the President

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

OCT 19 1975

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FROM: JAMES T. LYNN

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