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LICENSING OF INDEPENDENT OCEAN FREIGHT FORWARDERS

HEARING BEFORE A SUBCOMMITTEE OF THE COMMITTEE ON COMMERCE UNITED STATES SENATE EIGHTY-SEVENTH CONGRESS

FIRST SESSION

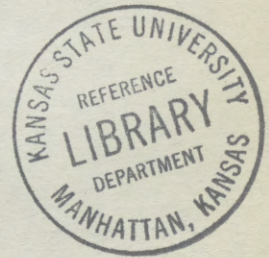
ON

S. 1368

A BILL TO AMEND THE SHIPPING ACT, 1916, TO PROVIDE
FOR LICENSING INDEPENDENT OCEAN FREIGHT
FORWARDERS, AND FOR OTHER PURPOSES

JULY 27, 1961

Printed for the use of the Committee on Commerce



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LICENSING OF INDEPENDENT OCEAN
FREIGHT FORWARDERS

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LICENSING OF INDEPENDENT OCEAN FREIGHT FORWARDERS

THURSDAY, JULY 27, 1961

U.S. SENATE,
COMMITTEE ON COMMERCE,
SPECIAL SUBCOMMITTEE ON S. 1368,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 457, Old Senate Office Building, the Honorable Ralph Yarborough presiding.

Senator YARBOROUGH. Gentlemen, the special subcommittee of the Commerce Committee to consider S. 1368, the freight forwarders bill, will come to order.

The bill before us today is S. 1368, to provide for the licensing of independent ocean freight forwarders, and to authorize payment to them, and receipt by them, of compensation from ocean carriers for certain work done in connection with the dispatch of export cargoes.

The purposes of the bill are of major significance to a great number of businessmen and businesses whose continued operation in the ocean forwarding field is seriously threatened by the June 29 decision of the Federal Maritime Board. By this decision ocean freight forwarding operations as conducted over the years by and large have been declared to be in violation of the 1916 Shipping Act, and payment and receipt of brokerage for most of these operations have been declared illegal by this order and opinion of the Federal Maritime Board.

The bill before us would remove the stigma of illegality from ocean forwarding functions while at the same time providing safeguards against certain objectionable practices which have developed over the years. An industry as important as this to the economy of the Nation should not be permitted to go down the drain without serious effort to preserve it. In the highly qualified cross section of the maritime industry scheduled to testify on the bill it is our hope that we may find the expert guidance needed to resolve the difficulties which have continually plagued ocean forwarders over recent years.

In my own State this has been an honored occupation and has been a part of the transportation and commercial activities of our cities and our seaborne traffic for decade after decade has served with distinction and honor the business of the community. I think it would be greatly disruptive of the international commercial transactions of the country if it is suddenly abolished.

I know that the freight forwarders themselves have sought this legislation. We introduced similar legislation at the last session of the Congress, the 86th. It was heard and passed by this committee

and became entangled with legislation from the House and died. I know the freight forwarders have sought to have abuses corrected without action from the Federal Maritime Board by having this legislation introduced. I know the honest freight forwarding segment of the forwarders is not driven by the decision of the Maritime Board of June 29, 1961, but for years have been trying to eliminate objectionable practices and have been unable to get legislation passed which they themselves sponsored and which would give the Federal Maritime Board this power to license freight forwarders and to see that their business was conducted in a manner that would be beneficial to the whole transportation industry of the United States.

I say that because this bill was introduced by me on the 16th of March. It was introduced through similar legislation by me in the 86th Congress.

I want to say, on behalf of the freight forwarders, that they are not driven to this by the Maritime Board's opinion. They have been trying for years to correct the abuses that a few might practice simply because the overwhelming majority of the freight forwarders have been unable to get through the Congress legislation to prohibit any abuses by the few who might abuse the business of freight forwarding.

(The bill follows:)

[S. 1368, 87th Cong., 1st sess.]

A BILL To amend the Shipping Act, 1916, to provide for licensing independent ocean freight forwarders, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first section of the Shipping Act, 1916 (46 U.S.C. 801), is amended by adding at the end thereof the following new paragraphs:

"The term 'carrying on the business of forwarding' means the dispatching of shipments by any person on behalf of others, by oceangoing common carriers in commerce from the United States, or its possessions to foreign countries, or between the United States and its possessions, or between such possessions, and handling the formalities incident to such shipment.

"An 'independent ocean freight forwarder' is a person carrying on the business of forwarding for a consideration who is not a shipper or consignee or a seller or purchaser of shipments to foreign countries, nor has any beneficial interest therein other than a lien, nor directly or indirectly controls or is controlled by such shipper or consignee or by any person having such a beneficial interest."

SEC. 2. The Shipping Act, 1916, is further amended by inserting before section 44 a new section 43 as follows:

"SEC. 43. (a) No person shall engage in carrying on the business of forwarding as defined in this Act unless such person holds a license issued by the Federal Maritime Board to engage in such business: *Provided, however,* That a person whose primary business is the sale of merchandise may dispatch shipments of such merchandise without a license.

"(b) A forwarder's license shall be issued to any qualified applicant therefor if it is found by the Board that the applicant is a citizen of the United States and is, or will be, an independent ocean freight forwarder as defined in this Act and is fit, willing, and able properly to carry on the business of forwarding and to conform to the provisions of this Act and the requirements, rules, and regulations of the Board issued thereunder, and that the proposed forwarding business is, or will be, consistent with the National maritime policies declared in the Merchant Marine Act, 1936; otherwise such application shall be denied. Any independent ocean freight forwarder who, on the effective date of this section, is carrying on the business of forwarding under a registration number issued by the Board may continue such business for a period of one hundred and twenty days thereafter without a license, and if application for such

license is made within such period, such forwarder may, under such regulations as the Board shall prescribe, continue such business until otherwise ordered by the Board.

“(c) The Board shall prescribe reasonable rules and regulations to be observed to regulate the licensing of independent ocean freight forwarders and no such license shall be issued or remain in force unless such forwarder shall have furnished a bond or other security approved by the Board, in such form and amount as in the opinion of the Board will insure financial responsibility and the supply of the services in accordance with contracts, agreements, or arrangements therefor.

“(d) Licenses shall be effective from the date specified therein, and shall remain in effect until suspended or terminated as herein provided. Any such license may, upon application of the holder thereof, in the discretion of the Board, be amended or revoked, in whole or in part, or may upon complaint, or on the Board's own initiative, after notice and hearing, be suspended or revoked for willful failure to comply with any provision of this Act, or with any lawful order, rule, or regulation of the Board promulgated thereunder.

“(e) A common carrier by water may compensate a person carrying on the business of forwarding, and such person may receive compensation, not to exceed 5 per centum of the freight cost, from such carrier, in connection with any shipment dispatched by such person on behalf of others when, and only when, such person is licensed hereunder and has performed with respect to such shipment at least three of the following services:

“(1) The solicitation and securing of the cargo for the ship or the booking of, or otherwise arranging for space for, such cargo;

“(2) The coordination of the movement of the cargo to shipside;

“(3) The preparation and processing of the ocean bill of lading;

“(4) The preparation and processing of dock receipts or delivery orders;

“(5) The preparation and processing of consular documents or export declarations; and

“(6) The payment of the ocean freight charges on such shipments.

Before any such compensation is paid to or received by any person carrying on the business of forwarding, such person shall, if he is qualified under the provisions of this subsection to receive such compensation, certify in writing to the common carrier by water by which the shipment was dispatched that he is licensed by the Board as an independent ocean freight forwarder and that he performed at least three of the services enumerated in this subsection with respect to such shipment. Such carrier shall be entitled to rely on such certification unless it knows that the certification is incorrect.”

Senator YARBOROUGH. We have a lengthy list of witnesses. It is not too long for the importance of the industry and not too long when you consider that the order would virtually eliminate the whole industry.

The first witness this morning is Mr. William A. Stigler, Chief, Office of Regulations, Federal Maritime Board.

STATEMENT OF WILLIAM A. STIGLER, CHIEF, OFFICE OF REGULATIONS, FEDERAL MARITIME BOARD; ACCOMPANIED BY JAMES L. PIMPER, GENERAL COUNSEL

Mr. STIGLER. Good morning, Mr. Chairman.

Senator YARBOROUGH. We suggest that you condense your statement on what the bill does, but that you not condense it as to what the Federal Maritime Board has found. The bill has been pending for several years.

Mr. STIGLER. Mr. Chairman, I am accompanied by Mr. James L. Pimper, General Counsel of the Federal Maritime Board.

Pursuant to your request, sir, I will condense my remarks. I will not address myself in general to what the bill provides, nor will I quote from the opinion of the Federal Maritime Board unduly.

Senator YARBOROUGH. Do you have any copies for the witnesses?

Mr. STIGLER. I believe we do.

Senator YARBOROUGH. Gentlemen, I will explain. I am condensing this part to try to save time, because at 4 o'clock yesterday afternoon an executive committee meeting was called for 10 o'clock on labor and public welfare. The executive committee is for voting bills out and voting them down. I must go there at any minute. That meeting will stop at 11 o'clock. Then I am coming back here. So the minute they get a quorum down there I will have to leave here and go to that meeting and we will recess until 11.

We want to make as much progress as we can, and I want you gentlemen to study that statement in the meantime before we have this enforced recess. This came about 4 o'clock yesterday afternoon, too late to notify you.

You may proceed.

Mr. STIGLER. Mr. Chairman, the Department and the Board favor the licensing provisions of S. 1368, but oppose the provision of the bill relating to compensation of licensed freight forwarders.

The bill would amend the Shipping Act, 1916 (46 U.S.C. 801) so as to make it illegal for any person to engage in "carrying on the business of forwarding" without a license issued by the Federal Maritime Board. The Board would be authorized to issue a license to any qualified applicant which it finds to be a citizen of the United States and fit, willing, and able properly to carry on the business of forwarding and to conform to the provisions of the Shipping Act, 1916, and the requirements, rules, and regulations issued by the Board thereunder, provided the Board also finds that the applicant is, or will be, an "independent ocean freight forwarder," and that the proposed forwarding business is, or will be, consistent with the national maritime policies declared in the Merchant Marine Act, 1936.

The term "carrying on the business of forwarding" is defined to mean the dispatching of shipments by any person on behalf of others, by oceangoing common carriers in commerce from the United States or its possessions to foreign countries, or between the United States and its possessions, or between such possessions, and handling the formalities incident to such shipments. The bill also provides, however, that a person whose primary business is the sale of merchandise may dispatch shipments of such merchandise without a license.

The term "independent ocean freight forwarder" is defined in the bill as a person carrying on the business of forwarding for a consideration who is not a shipper or consignee or a seller or a purchaser of shipments to foreign countries, nor has any beneficial interest therein other than a lien, nor directly or indirectly controls or is controlled by such shipper or consignee or by any person having such a beneficial interest.

The Board would be authorized to prescribe reasonable rules and regulations to regulate the licensing of independent ocean freight forwarders. Each forwarder would be required to post a bond to insure his financial responsibilities and the supplying of services in accordance with his contracts, agreements, and arrangements.

The Board would have authority to suspend or revoke a license, after notice and hearing, for willful failure to comply with any provision of the Shipping Act, 1916, or any lawful order, rule, or regulation issued by the Board thereunder.

Under the proposed law, any independent ocean freight forwarder who was engaged in carrying on the business of forwarding under a registration number issued by the Board would be permitted to continue in business for a period of 120 days without a license, and to continue in business thereafter, under regulations prescribed by the Board, if an application for a license is filed with the Board within the 120-day period.

The bill further provides that:

A common carrier by water may compensate a person carrying on the business of forwarding, and such person may receive compensation, not to exceed 5 percentum of the freight cost, from such carrier, in connection with any shipment dispatched by such person on behalf of others when, and only when, such person is licensed hereunder and has performed with respect to such shipment at least three of the following services: (1) The solicitation and securing of the cargo for the ship or the booking of, or otherwise arranging for space for, such cargo; (2) the coordination of the movement of the cargo to shipside; (3) the preparation and processing of dock receipts or delivery orders; (5) the preparation and processing of consular documents or export declarations; (6) the payment of the ocean freight charges on such shipments. Before any such compensation is paid to or received by any person carrying on the business of forwarding, such person shall, if he is qualified under the provisions of this subsection to receive such compensation, certify in writing to the common carrier by water by which the shipment was dispatched that he is licensed by the Board as an independent ocean freight forwarder and that he performed at least three of the services enumerated in this subsection with respect to such shipment. Such carrier shall be entitled to rely on such certification unless it knows that the certification is incorrect.

The Federal Maritime Board, under the Shipping Act, 1916, and court decisions interpreting it, has authority to regulate the activities of persons carrying on freight forwarding in connection with common carriers by water in foreign and offshore domestic commerce. Business practices of these freight forwarders, particularly those pertaining to brokerage, have recently been the subject of an extensive investigation and hearing by the Board. The Board on June 29, 1961, issued its report and prescribed regulations which it found necessary to correct Shipping Act violations shown by the investigation and hearing. The following excerpts from the Board report indicate the basis for its conclusion that the receipt by forwarders and payment by carriers of brokerage in connection with shipments as to which the forwarders have performed forwarding services is violative of the statute and should be prohibited:

* * * The record discloses in detail the various services provided by forwarders. While not all of them are necessary with regard to each export shipment, the principal ones enumerated above must be performed in every instance, either by a forwarder or by the shipper. The forwarders' services include the following: (1) Preliminary to movement of the cargo, advising the shipper as to the best port to use, based on a consideration of inland freight rates, frequency of vessel services, congestion at the various ports, and the availability at a particular port of heavy-lift equipment or other special equipment required; securing an export license if required, or reviewing the export license obtained by the shipper; and examination of the letter of credit to insure that compliance therewith can be effected. (2) Tracing the movement of the cargo to the port, and taking action to expedite it if necessary. (3) Reserving vessel space. (4) Preparation of a dock receipt, an export declaration, a delivery order directing the movement of the cargo to the pier and delivery thereof to the inland carrier, and an ocean bill of lading in the number of copies required for the use of the shipper and carrier. (5) Clearing the export declaration with the Customs Bureau, delivering the bill of lading and copy of the export declaration to the carrier, preparing and processing through

consular officials the consular invoice, and making a complete set of the documents to conform with the letter of credit. (6) Coordinating the movement of the cargo to shipside to coincide with the loading schedules of the carrier. (7) Consolidating separate cargo lots for one shipment or consolidating several small shipments for movement on one bill of lading to avoid minimum charges. (8) Arranging for accessorial services, such as the placement of marine insurance, cartage on small shipments, coeprage to repair damaged packages or for export packing or crating at the port city, and storage or warehousing to await the arrival of additional cargo lots or to accommodate cargo missing the vessel. (9) Payment of the ocean freight to the carrier on behalf of the shipper. (10) Assembling the documents in compliance with the letter of credit and delivering them to the bank.

With respect to a substantial portion of the shipments handled by forwarders, they are authorized by their shipper clients to arrange for the booking of the cargo, and to select the carrier over whose line the shipment will move. In performing this function, the forwarder testimony of record is unanimously to the effect that the forwarder's primary obligation is to the shipper, and that selection of the carrier is generally made with the view of securing the earliest possible delivery at destination consistent with good service. It is clear, however, that the forwarders are in a position with respect to shipments for which they have booking authority to favor one carrier over another where there is competitive service to the destination port.

* * * As previously stated, in almost every instance shown of record, the services of forwarders are engaged by the shippers or consignees of the cargo, and there is no indication that any contractual relationships exist between the forwarders as such and carriers. The rates of ocean carriers generally apply at ship's tackle, and it is the duty of the shipper to bring the cargo alongside the vessel ready for shipment, and not that of the ship. See *American Union Transport v. River Plate & Brazil Confs.*, *supra*, at page 223. The services of forwarders detailed above are almost entirely directed toward performance of the shipper's duty. Much stress is laid, in the briefs and in the testimony, upon the fact that it is the duty of the carrier under the Harter Act (46 U.S.C. 193), and the Bills of Lading Act (49 U.S.C. 100), to issue bills of lading, and that in preparing bills of lading the forwarders are acting on behalf of the carriers. See *In re Gulf Brokerage and Forwarding Agreements*, *supra*, at pages 534-535, and *Puerto Rican Rates* (2 U.S.M.C. 117, 133). This duty of the carriers is accomplished, however, by the issuance of an original bill of lading for each shipment. The record here discloses, on the other hand, that for the use of the shipper a number of copies of the bill of lading are required, as many as 25 or 30, that the bills of lading are prepared at the request of the shipper, that a charge for this service is ordinarily made to the shipper, and that in no instance are the forwarders employed by the carriers to perform this function. The benefits to the carriers from this service are therefore merely incidental to the needs of the shippers.

* * * It must be concluded that brokerage does not constitute compensation by the carriers for any of the services of the forwarders, since the services of the latter must necessarily be performed for the shippers in order to bring shipments into position for export.

The overwhelming conclusion drawn from the record as a whole, as found by the examiner, is that brokerage is primarily a competitive device, utilized by the carriers to attract to themselves as much as possible of the traffic as to which the forwarders, by authorization of their shipper clients, control the routing. It is apparent that, to the extent that brokerage payments by all members of carrier conferences are generally limited to 1¼ percent, the competitive impact of brokerage is largely nullified. It comes into play only in preventing any one carrier, by individual action, from refusing to pay brokerage, since such a carrier would immediately be faced with diversion away from it of all traffic controlled by the forwarders to the maximum extent possible.

* * * Section 16 First of the act makes it unlawful for forwarders, as persons subject to the act, directly or indirectly, to make or give any undue or unreasonable preference or advantage to any particular person or description of traffic in any respect whatsoever, or to subject any person or description of traffic to any undue or unreasonable prejudice or disadvantage. Section 17 of the act, which is particularly applicable to the activities of forwarders as found by the Supreme Court in *U.S. v. American Union Transport*, *supra*, requires that forwarders shall establish, observe, and enforce just and reasonable regulations and prac-

tices relating to or connected with the receiving, handling, storing, or delivering of property, and provides that whenever the Board finds that any such regulation or practice is unjust or unreasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice.

The record compels the conclusion that, in the assessment of charges by forwarders to their shippers, the practice of discrimination, preference, and prejudice is the rule rather than the exception. The charges vary from shipper to shipper for identical services, some shippers receive forwarding services free of charge or at nominal charges, and in billing for accessorial services, such as insurance and carting, most New York forwarders, who constitute the majority by far, practice unlimited discrimination in that disguised markups in some cases are added in varying amounts and in others are not added, with no apparent regard for cost of service or any other factors which should enter into the establishment and maintenance of just and reasonable charges. Such practices are prima facie discriminatory, *Contract Rates—Japan/Atlantic-Gulf Freight Conf.* (4 F.M.B. 706, 735 (1955)), and *Contract Routing Restrictions* (2 U.S.M.C. 220, 225 (1939)), and are thus unreasonable in the absence of justification therefor.

* * * This record discloses that the payment by carriers of so-called brokerage to forwarders who render freight forwarding service to shippers of the cargo leads the forwarders into the practices of discrimination, preference, and prejudice as found above, that such payments almost always result in indirect rebates to the shippers through the performance by forwarders of forwarding services free or at noncompensatory rates or charges, that consequently the payment of brokerage by carriers is an unjust and unreasonable practice related to or connected with the receiving, handling, storing or delivering of property prohibited by section 17 of the act. It follows that the payment of any fees or commissions to forwarders in connection with cargo with respect to which they render freight forwarding service by carriers must be prohibited. As to the inevitability of rebating under the present practices of forwarders, it has previously been found that at present in the forwarding industry as a whole, forwarding fees charged by forwarders to shippers do not fully cover the costs of performance by the forwarders of their forwarding services for the shippers. This is tacitly recognized in the brief of one forwarder, Universal Transport Corp., which states:

"For many years commission on freight, paid by carriers to forwarders compensated forwarders for their services to shippers, consignees, and carriers. The practice is an open one, known to all parties concerned and connected with the export of goods. It has reduced to a nominal sum and, in part, completely eliminated forwarding as a cost in the export of American products."

* * * Safeguards included in the prior decisions to insure that an individual carrier should be free to pay or not to pay brokerage as it sees fit are, according to this record, generally of no avail, in view of the competitive pressures which prevail in the event that any brokerage is paid in a trade.

* * * The report of the examiner contains a comprehensive discussion of the rules originally proposed by us, the positions of the parties with respect thereto and amendments proposed by them, the rules proposed by public counsel, and those recommended to us by the examiner. It is clear that the examiner, because of his view that the prohibition of brokerage constitutes a drastic remedy which should not be resorted to until all other measures have failed, attempted to devise rules which in his opinion would, with the cooperation of the forwarding industry, eliminate the violations of law which have been shown to stem from the payment of brokerage by the carriers. We are convinced that such half measures will not suffice, and are of the opinion that the widespread rebating and discrimination here shown cannot reasonably be expected to cease without the total prohibition of brokerage payments to forwarders in connection with cargo with respect to which they render forwarding service. The nature of the brokerage practices and the practices of the forwarders in connection therewith, and the obvious attractions of inherently unearned compensation require this conclusion.

The examiner proposed a rule requiring the establishment of minimum freight forwarding fees by forwarders, in order that such fees should not fall below remunerative levels with resulting indirect rebates of brokerage received by forwarders from carriers, and to eliminate discrimination, preference, and prejudice as found to exist in the charges of forwarders to shippers. These practices stem almost entirely from the brokerage practices, and elimination of the latter as found by us to be necessary should result in the establishment by the forwarders of realistic forwarding fees. We feel that the forwarders should, in their managerial discretion, be free to recast their charges to their clients,

after discontinuance of brokerage, without prejudice to further action by us with respect thereto, upon complaint or upon our own initiative, should it be brought to our attention that the discriminations have not been eliminated.

* * * The record has been searched in vain for any probative evidence indicating that the prohibition of brokerage payments would have any adverse or detrimental effect upon the foreign commerce of the United States, limiting the definition of "foreign commerce" to the actual movement of goods in the export trades, and the promotion and development of such trades. There are numerous general assertions in the record, by forwarders and others, that if brokerage is eliminated entirely the forwarders will perforce need to increase their charges to shippers in order to recoup the lost revenues, that numerous commodities move in export on which the profit margins are narrow which could not stand the imposition of increased forwarding charges, and that the movement of such commodities would thus be adversely affected. No shipper testimony to this effect was adduced, and the shipper testimony of record, from shippers who perform their own forwarding services and do not receive brokerage, indicates to the contrary.

The record, in fact, supports the conclusion that increased forwarding charges, to the extent necessary to provide full compensation to the forwarders and a reasonable profit, should have no substantial deleterious effect upon the movement of goods in export. Such increases in forwarder charges, if established to compensate for the loss of brokerage, would not have an adverse effect on our export commerce. In all trades in recent years, increased costs of the carriers have compelled substantial increases in ocean freight rates in excess of 1 percent, without noticeable decreases in traffic attributable to this cause along. There are, in this connection, numerous statements on the record by carriers and conference officials that brokerage payments, as such, are not reflected in the ocean freight rates, and that the cessation of such payments would not induce an immediate concurrent decrease in the rates. They recognize, however, that brokerage payments are items of expense to the carriers, and it is reasonable to assume that, if relieved of this expense, the impact of other cost increases would be minimized, and that ultimately the savings realized by the carriers from the cessation of brokerage payments would be reflected in rates which would be lower relatively. This assumption is borne out by the position of the carriers in the Puerto Rican trade, who show that increased expenses by reason of brokerage payments would necessitate rate increases in that trade.

* * * We conclude and specifically, find, in the light of the foregoing:

(1) That the performance by forwarders of forwarding services free of charge or at noncompensatory charges on shipments moving in the commerce of the United States, subject to the act, and the receipt of so-called brokerage from common carriers by water subject to the act on such shipments, constitute a violation of section 16 of the act.

(2) That forwarders, in assessing varying charges for like forwarding services to their shippers, in adding disguised markups to charges for accessorial services procured for their shippers, and in performing forwarding services free of charge or at noncompensatory charges for some shippers and not for others, thereby give undue and unreasonable preference or advantage to some of their shippers, and subject others of their shippers to undue and unreasonable prejudice or disadvantage, in violation of section 16 first of the act, and engage in unjust and unreasonable practices relating to or connected with the receiving, handling, storing, or delivering of property, in violation of section 17 of the act.

(3) That forwarders have failed to establish, observe, and enforce just and reasonable regulations and practices relating to and connected with the receiving, handling, storing, and delivering of property; and that the practices of forwarders as found in this record relating to and connected with the receiving, handling, storing, and delivering of property are unjust and unreasonable practices in violation of section 17 of the act.

(4) That the performance by common carriers subject to the act of forwarding services free of charge or at noncompensatory charges on shipments transported by such carriers constitutes a violation of section 16 second of the act.

(5) That payments by carrier to forwarders of brokerage relating to and in connection with the receiving, handling, storing, and delivering of property result in indirect rebates to shippers through the performance by forwarders of forwarding services free or at noncompensatory rates or charges, in violation of section 16 of the act, and that the payment of brokerage by carriers to forwarders in connection with cargo with respect to which the forwarders render

freight forwarding services is an unjust and unreasonable practice in violation of section 17 of the act.

(6) That violations of the act found herein have occurred regularly and unjust and unreasonable practices exist relating to and in connection with the receiving, handling, storing, and delivering of property, as found above, and that the rules and regulations shown in the appendix hereto are just and reasonable in connection therewith, and are determined, prescribed, and ordered enforced to prevent the continuance and recurrence of such violations.

The Board regulations provide in section 244.3 (a) that—

No common carrier by water shall pay to a freight forwarder, and no freight forwarder shall charge or receive from any common carrier by water, either directly or indirectly, any compensation or payment of any kind whatsoever, whether called brokerage, commission, fees, or by any other name, in connection with any cargo as to which the freight forwarder has performed any forwarding service * * *.

The Federal Maritime Board does favor licensing provisions for the freight forwarding industry. We believe that there should be sufficient rulemaking authority vested in the Federal Maritime Board to implement and to effectuate a licensing program.

The Department and the Board recommend against enactment of the provision of S. 1368 authorizing common carriers by water to compensate independent ocean freight forwarders for specified services. In the context of competitive pressures in this area, the provision, subsection (e) on pages 4 and 5 of the bill, would make difficult, if not impossible, correction of the unjust, unreasonable, and discriminatory practices which have been found by the Board. There is every reason to believe that existing law and the Federal Maritime Board regulations promulgated thereunder will result in fair and reasonable freight forwarder fees and practices. It is therefore recommended that subsection (e) on pages 4 and 5 of S. 1368 be deleted from the bill.

Senator YARBOROUGH. Isn't that the very heart of the bill?

Mr. STIGLER. To our mind, Senator, the licensing provisions are the heart of the bill. However, I can recognize that equally as important to the industry is the question of remuneration. We recognize that this is a controversial area, sir, and I would be glad to answer the questions of the committee on that subject.

Senator YARBOROUGH. Go ahead. We will want to develop that fully.

Mr. STIGLER. If I may go a little bit further, sir.

With respect to the licensing provisions of S. 1368, the Board's authority to regulate licenses should be made clear. It is accordingly recommended that the word "by" be substituted for the words "to regulate the licensing of" on line 13 of page 3 of the bill.

The bill defines "independent ocean freight forwarder" so as to exclude any person having a beneficial interest, other than a lien in the shipment being dispatched. A lien on a shipment could give a freight forwarder sufficient beneficial interest in the shipment to cause payments thereon by the carrier to the forwarder under some circumstances to be a form of indirect rebate of the freight. It is therefore recommended that the words "other than a lien" be deleted from line 7 of page 2 of the bill.

The Board also suggests that if S. 1368 is enacted into law, its legislative history should show that it is not intended to affect any regulation of foreign freight forwarder activities by the Department

of Commerce under authority of the Export Control Act (50 U.S.C. App. 2021).

I am sure that it is not the intent of the bill to affect that act.

With respect to expenditures involved if the bill is enacted, the only additional expenditures would be for salaries and expenses of administration and this should not occasion more than a nominal increase in budgetary requirements.

If the bill is amended as herein recommended, the Department and the Federal Maritime Board favor the enactment thereof.

Due to the urgency of the matter we have not been able to obtain the advice of the Bureau of the Budget as to the relationship of this legislation to the program of the administration.

That concludes our suggestions with regard to the bill, Senator. With the changes that we have recommended, we would recommend passage of the bill.

Senator YARBOROUGH. As you go back to about page 4—I may be called out at any time, but I want to explore this as far as we can until I do get that call—I want to go back to page 4 where you have finished analyzing the bill and start with your reasons for the final recommendations.

I believe you analyzed the bill on pages 1, 2, and 3 of your statement.

Mr. STIGLER. Yes.

Senator YARBOROUGH. On page 4 you described the Board's actions and findings.

I have just received a call that the Labor and Public Welfare Committee on those bills is ready for the executive session. I will have to leave.

We will recess and stand at ease until 11 o'clock.

Mr. Gus Bourbon, the committee staff member will generally stay in charge, but I am not authorized to delegate him to continue with the hearing.

There are three Senators on the committee. The others are trying to arrange their schedule so that they will be able to come. If any of the others come in, the hearing can proceed with them as soon as they come in. Senator Butler of Maryland and Senator Scott of Pennsylvania might come. They also have other commitments. I am leaving for the executive session. If they get here the hearing can resume before 11.

(Recess.)

Senator BUTLER (presiding). The committee will come to order.

Mr. Stigler, you may proceed. But before you do so, may I say that I just got the message 5 minutes ago and hurried right over here.

Mr. STIGLER. Senator, before the committee recessed I had just stated the objections of the Federal Maritime Board to the bill before us today. Those objections, sir, are summarized on pages 16, 17, and 18 of the statement. I had then been requested by the chairman to review some of the expositions of the Board's position which begins on page 4 of the statement, and is quoted from the decision of the Federal Maritime Board on June 30, 1961, from dockets 765 and 831.

I don't know how far you wish me to go along that line.

Senator BUTLER. To bring me up to date, would you go to the material starting on page 16 and briefly outline your objections to the pending legislation.

Mr. STIGLER. Very good, sir.

The Board regulations provide, section 244.13(a) that—

No common carrier by water shall pay to a freight forwarder, and no freight forwarder shall charge or receive from any common carrier by water, either directly or indirectly, any compensation or payment of any kind whatsoever, whether called brokerage, commission, fees, or by any other name, in connection with any cargo as to which the freight forwarder has performed any forwarding service * * *.

The Department and the Board recommended against enactment of the provision of S. 1368 authorizing common carriers by water to compensate independent ocean freight forwarders for specified services. In the context of competitive pressures in this area, the provision, subsection (e) on pages 4 and 5 of the bill, would make difficult, if not impossible, correction of the unjust, unreasonable, and discriminatory practices which have been found by the Board. There is every reason to believe that existing law and the Federal Maritime Board regulations promulgated thereunder will result in fair and reasonable freight forwarder fees and practices. It is therefore recommended that subsection (e) on pages 4 and 5 of S. 1368 be deleted from the bill.

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With respect to expenditures involved if the bill is enacted, the only additional expenditures would be for salaries and expenses of administration and this should not occasion more than a nominal increase in budgetary requirements.

If the bill is amended as herein recommended, the Department and the Federal Maritime Board favor the enactment thereof.

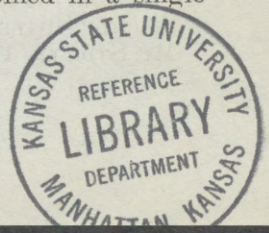
Due to the urgency of the matter we have not been able to obtain the advice of the Bureau of the Budget as to the relationship of this legislation to the program of the administration.

Senator BUTLER. You refer, in your testimony, to the rules and regulations promulgated by the Federal Maritime Board, and they have risen out of hearings held by the Board and experience in this field?

Mr. STIGLER. Yes, sir; that is correct.

Senator BUTLER. What were some of those cases?

Mr. STIGLER. The rulemaking proceeding which was recently concluded was dockets 765 and 831, which were combined in a single hearing.



Senator BUTLER. That was your purpose for referring to that? The cases are enumerated in those two dockets?

Mr. STIGLER. Those two dockets represent a factfinding investigation and a rulemaking proceeding in which a great deal of testimony was taken and everybody who desired was given an opportunity to appear.

The recommended decision of the examiner was issued in March of 1960 and the opinion of the Board was issued on June 30, 1961.

Senator BUTLER. These were adversary proceedings before the Federal Maritime Board?

Mr. STIGLER. These were rulemaking proceedings.

Senator BUTLER. And who were parties to those proceedings?

Mr. STIGLER. All registered freight forwarders, I believe, were named as respondents.

Senator BUTLER. And they were adversaries?

Mr. STIGLER. Yes.

Senator BUTLER. Is it your opinion, Mr. Stigler, that under the rulings of the Maritime Board the industry could survive?

Mr. STIGLER. Yes, it is my opinion, Senator.

Senator BUTLER. Has it not been historically true that they have collected these fees from the ocean carriers?

Mr. STIGLER. Yes, that is correct.

Senator BUTLER. Has there also been a charge in years past to the consignee of the carriage?

Mr. STIGLER. I beg your pardon?

Senator BUTLER. Has there been a charge made by the freight forwarder to the consignee of the goods being carried?

Mr. STIGLER. Not to the consignee, Senator; to the shipper, in some instances. That is one of the things that the Board pointed up and found to be an unfair and unjust practice, the fact that some shippers were charged a service fee whereas other shippers were not, and that there seemed to be little if any uniformity in the fee charged.

Senator BUTLER. So that historically some shippers were charged a fee prior to carriage. During the carriage all ocean freight carriers were charged a fee by the freight forwarders?

Mr. STIGLER. The ocean freight carriers customarily pay brokerage to freight forwarders.

Senator BUTLER. They pay the brokerage?

Mr. STIGLER. Yes.

Senator BUTLER. And also the shipper?

Mr. STIGLER. And the shipper in many instances, but not all instances, paid a few, a forwarding fee.

Senator BUTLER. But in no cases was the consignee of the goods charged a brokerage fee?

Mr. STIGLER. No, sir; none that I know of.

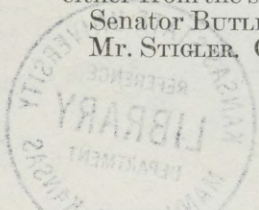
I am not sure that I quite understand the question, Senator. The arrangement is made—

Senator BUTLER. What I am trying to get at is this: Where does the industry get its compensation?

Mr. STIGLER. Industry gets its compensation from two sources; either from the shipper—

Senator BUTLER. Or the carrier?

Mr. STIGLER. Or from the carrier.



Senator BUTLER. Never from the person who is the consignee of the goods?

Mr. STIGLER. No, sir; not to my knowledge.

Senator, Mr. Pimper, our General Counsel, tells me that he thinks that there are cases on record in which fees have been charged consignees. To that extent I would like to correct my answer to your question.

Senator BUTLER. Were any of those cases involved in these dockets, 765 or 831?

Mr. STIGLER. I don't think they were, Senator.

Senator YARBOROUGH (presiding). Mr. Stigler, how long have we had freight forwarders in the shipping industry?

Mr. STIGLER. Senator, I think freight forwarders have been traditional in the industry for years unnumbered.

Senator YARBOROUGH. Generation after generation.

Mr. STIGLER. Yes.

Senator YARBOROUGH. Who decided that the practice of the maritime industry and the shipping industry from time immemorial, who decided that it was morally wrong or economically wrong—I don't mean that it is good just because it is whole—who decided that it was morally and economically wrong for that practice that the shipping industry had used, and apparently as far as I know had approved of for generations, suddenly became economically and morally wrong and had to be abolished?

Mr. STIGLER. Senator, I think the decision of the Federal Maritime Board went further than that and said that it was illegal.

Senator YARBOROUGH. All right; it was illegal.

Of course, some things might be illegal and be neither morally nor economically wrong.

Mr. STIGLER. Yes.

Senator YARBOROUGH. A legislative body might ill-advisedly make something illegal.

Mr. STIGLER. Yes.

Senator YARBOROUGH. All right.

Illegal under what law? The act of 1916?

Mr. STIGLER. Yes.

Senator YARBOROUGH. Doesn't it seem rather peculiar that it took the regulatory agency 45 years after the act of 1916 was passed to determine that this was illegal under the act of 1916?

Mr. STIGLER. The regulation of freight forwarders as it has recently been administered by the Board, Senator, is of much more recent duration than that. Actually, the Board has been regulating forwarders only since about 1948 or thereabouts, as a result of an investigation by the Board into practices of freight forwarders in New York. That investigation was initiated in about 1944 and was enjoined by action of the freight forwarders claiming that the Board had no jurisdiction over them.

The matter was carried to the Supreme Court of the United States which ruled in favor of the Board's jurisdiction and then, about 1948 or thereabouts, the original General Order 72 under which the freight forwarders have since been regulated was promulgated.

Senator YARBOROUGH. What date was that?

Mr. STIGLER. I can give you the date more specifically, Senator. I will be glad to furnish the date for the record.

Senator YARBOROUGH. That's all right, Mr. Stigler. I think Senator Butler has already developed this, and I don't want to labor the point, but I was unavoidably absent.

This bill, S. 1368 is basically comprised of two parts, one providing for licensing of freight forwarders.

Mr. STIGLER. Yes.

Senator YARBOROUGH. Then on page 4, section (e), is described what the freight forwarders may do; is that correct?

Mr. STIGLER. Yes.

Senator YARBOROUGH. You recommend against—

Mr. STIGLER. Yes.

Senator YARBOROUGH. Isn't that a peculiar thing to license a freight forwarder and say that you can't practice the business of freight forwarding, we will make this practice illegal? What would the freight forwarder do under that? If you licensed him and he couldn't do these things enumerated in—What would he do?

Mr. STIGLER. The objection of the Board, Senator, is to the means of providing remuneration to the forwarder. The Board has no objection to the forwarder assessing a fee for his services. The objection of the Board is to the payment of brokerage.

Senator YARBOROUGH. To the payment of brokerage?

Mr. STIGLER. Yes.

Senator BUTLER. Do you mean by that who pays the brokerage?

Mr. STIGLER. As to the payment of the brokerage by the carrier to the freight forwarder.

Senator BUTLER. Who does the forwarder serve when he engages in the business of freight forwarding?

Mr. STIGLER. Senator, that is a philosophical question to a certain extent. The freight forwarder serves the shipper, he serves the carrier, he serves the consignee on the other side, he serves the foreign commerce of the United States.

Senator BUTLER. Then why wouldn't he have a reasonable right to charge any one of three people you have enumerated if he serves them, or charge all of them, if he renders a service?

Mr. STIGLER. The objection of the Board to the payment of brokerage is that it leads to a great number of abuses and that it constitutes an indirect rebate.

Senator BUTLER. Mr. Stigler, how could it be an indirect rebate if you render a legitimate service to a person for which you charge a reasonable fee? How could that ever be construed as being a rebate?

Mr. STIGLER. The reason the Board feels it becomes a rebate, Senator, is that there are many cases on record in which freight forwarding services have been performed without charge to the shipper, with the freight forwarder relying solely on the brokerage received for his remuneration. He therefore is making it possible for the particular shipper who is thus favored to get his forwarding work done at no charge, whereas the competitor of the same shipper may be charged a fee.

Senator BUTLER. Wouldn't it be better, instead of burning the barn down, to let everybody get in the barn and get the protection of the fee? If he is performing a service, why shouldn't he have a fee, pro-

vided the fee is uniform and everybody has to pay it upon the rendition of the service?

Mr. STIGLER. It goes basically, Senator, to the question of who is paying for what service. If the practices were uniform, and if the brokerage were paid freely—when I say “freely” I mean without coercion—I don’t believe that the Federal Maritime Board would have ruled as it did in this instance.

Senator BUTLER. Couldn’t we attack the problem by having the Federal Maritime Board lay down a schedule of fees and inspect the books of the carrier and all persons involved, if need be, to see that it is being carried out? If they are violating the law then they are in the toils of the law. I don’t see why you would destroy the business of freight forwarding and prevent freight forwarders from receiving a fee which is in every respect legitimate, simply because a couple of fellows have created dummy corporations and engaged in practices that are not right.

They may be immoral and illegal, but you don’t want to destroy a good profession just on that account. Let’s fix it so that we can have a schedule of fees, make it mandatory, and then it is up to the agency to see that that law is lived up to. If it isn’t, bring them into court.

Mr. STIGLER. I believe Mr. Pimper has a statement on that.

Mr. PIMPER. Are you talking about a statement of fees to be charged the shipper for freight-forwarding services?

Senator BUTLER. You say the carrier is performing a service for three people; the shipper, the carrier, and the consignee.

Mr. PIMPER. Are you talking about giving the Board authority to set a schedule of fees when the service he performs is a service for the carrier, or shall he be allowed to charge the carrier for a service which he is really performing for the shipper?

Senator BUTLER. As I understood Mr. Stigler’s testimony, he renders a service to the carrier.

Mr. PIMPER. In certain respects it can be argued he does.

Senator BUTLER. If he does, why shouldn’t he be compensated? As I read the statement on page 4:

The Federal Maritime Board under the Shipping Act of 1916, and court decisions interpreting it, has authority to regulate the activities of persons carrying on freight forwarding in connection with common carriers by water in foreign and offshore domestic commerce.

That certainly has the connotation to me if you have the authority to regulate the activities of these people, you certainly have the right to lay down a reasonable fee for the services they perform. Certainly the two of them could get together and arrive at what is a reasonable fee for services rendered.

Mr. PIMPER. The Board has several times held that the only service that the freight forwarder performs for the carrier is in effect what is set forth on page 4, paragraph 1, that the rest of the services that you have listed are services for the shipper.

Senator BUTLER. What are the services he performs for the carrier? Solicitation and securing of cargo for the ship, for the booking of or otherwise arranging for space for such cargo. What is more important than for a ship to ship cargo in? That is the whole business.

Mr. PIMPER. This bill provides if he performs, as I read it, assume he doesn't do 1, but does 2, 3, 4, 5, or 6—

Senator BUTLER. Then he would get a fee?

Mr. PIMPER. The bill provides he can get a brokerage fee.

Senator BUTLER. I am saying you ought not to strike out the whole thing. I am trying to make it so that if he performs a service he is entitled to compensation. Why strike out the whole thing and give him no consideration whatever?

I have been exposed to shipping for 10 years or more, and the most important thing to an operator of a ship is to have cargo in the hold. If these are the men who produce that cargo, I for one want to see them paid. I say that is a great service they are performing to American commerce, keeping the American flag on the high seas, employing thousands of men and doing other things that are good for industry and for the commerce of this country.

If that is a service they are performing for the shippers, they ought to be paid. I don't see how any reasonable man can say that that could in any way be considered a rebate if it is uniform.

I don't think you ought to strike out section (d). I think you ought to get together and find a reasonable way to charge a fee for a very valuable service rendered.

If they are rendering a service to the consignee, if they want to waive that, that is all right. But certainly there is some way to control this situation and arrive at a good bill.

I don't believe the Maritime Administration ought to say that we are just not going to do anything about this, we are going to strike it out and deprive them of a fee for the most valuable service that anybody could perform for American shipping.

Senator YARBOROUGH. Mr. Stigler, I have some other questions, but in the interests of time I would like to proceed with the other witnesses who have come here from other cities. We would like to recall you to further develop some points in this, but I believe in the interests of time and the people who have come from other cities and who would like to go home, we will ask you to please step aside and let us develop some of the other testimony.

Mr. STIGLER. Very good, Senator.

Senator YARBOROUGH. The next witness is Mr. Harry K. Barr, chairman, United Ocean Freight Forwarding Industry, New York.

Will you come forward, please.

Senator BUTLER. Mr. Stigler, before you leave the stand, let me say this to you: I have not read these dockets. I have not examined this bill as carefully as I would like to examine it. So the opinions that I have expressed, while they may seem harsh and very forcefully presented, don't take it that way; I am exploring, I am trying to learn what this is all about.

Mr. STIGLER. Very good, sir.

Senator BUTLER. When I learn what it is all about, I will make up my mind what I personally want to do as a Senator charged with duties on this subcommittee and with my duties on the full committee.

Mr. STIGLER. Thank you, Senator. We appreciate the interest and the sincerity of the Senator.

STATEMENT OF HARRY K. BARR, CHAIRMAN OF THE COMMITTEE ON LEGISLATION, UNITED OCEAN FREIGHT FORWARDING INDUSTRY, NEW YORK, N.Y.

Senator YARBOROUGH. Mr. Barr, you have a prepared statement.

Mr. BARR. Yes, sir. It is very short and I think it will take only about 3 minutes to read, and if you will permit me, I will.

Senator YARBOROUGH. Go ahead.

Mr. BARR. My name is Harry K. Barr, and I am chairman of the Committee on Legislation for the United Ocean Freight Forwarding Industry. This committee consists of 16 forwarder associations located in the major U.S. ports. Their names are attached to this statement. I am also engaged in the forwarding business in New York City.

(The above-mentioned organizations follow:)

- Customs & Forwarders Committee, Boston, Mass.
- Customs Brokers & Forwarders Association of America, New York.
- New York Foreign Freight Forwarders & Brokers Association, Inc.
- Steamship Freight Brokers Association of New York.
- Baltimore Custom House Brokers & Forwarding Association.
- Export & Import Forwarding Association of Virginia, Norfolk, Va.
- Forwarding Agents & Foreign Freight Brokers Association, New Orleans, La.
- Association of Forwarding Agents & Foreign Freight Forwarders, Mobile, Ala.
- Texas Ocean Freight Forwarders Association, Houston, Tex.
- The Los Angeles Customs & Freight Brokers Association, Inc., Los Angeles, Calif.
- Pacific Coast Customs & Freight Brokers, San Francisco, Calif.
- Custom House Brokers Association, Seattle, Wash.
- Chicago Freight Forwarders & Custom House Brokers, Chicago, Ill.
- The Northern Border Association of Forwarders & Custom Brokers, Rouses Point, N.Y.
- Freight Forwarders & Custom House Brokers Council, Miami-Dade County Chamber of Commerce, Miami, Fla.
- Philadelphia Freight Brokers, Forwarders & Custom Brokers Association, Inc., Philadelphia, Pa.

Mr. BARR. Our industry is in great peril. Just as we have predicted, the Federal Maritime Board has by decision decided June 29, 1961, adopted a rule denying forwarders the right to receive compensation from ocean carriers, traditionally known as brokerage. This will become effective in 120 days from publication in the Federal Register. In one fell swoop, a business which is conceded to be indispensable to the export commerce of the United States is to be deprived of revenue which has been paid for 100 years.

The consequences of this rule are most serious to our industry. Brokerage averages 31 percent of its gross revenue. In the case of many outstanding and long-established firms, brokerage is 40 to 50 percent of the gross receipts. In Baltimore it is 43 percent, Philadelphia 37 percent, Houston 42 percent, and in San Francisco 41 percent.

The sudden elimination of so substantial a portion of a forwarder's revenue is a crippling if not fatal blow. Unless congressional relief is immediately obtained, many forwarders will be required to reduce their staffs drastically. A goodly number will decide it is no longer worth the struggle and will close their doors.

Exporters will also feel the effects of this ban on brokerage. They may lose the services of their forwarders. At the very least, they will be asked to pay substantial increases in their forwarding fees and this at a time when their foreign competition is at the keenest. Many will be forced out of the export market because they cannot absorb any further additions in costs.

American carriers will also be adversely affected. Many exporters will seek to thrust the forwarding work on the carriers to avoid the extra expense. The carriers have stated under oath that they do not want this additional burden and that it is more expensive to maintain their own forwarding department than to pay brokerage.

There is the reasonable probability, too, that substantial cargo will be diverted from Atlantic to Canadian ports. Brokerage is paid from Canadian ports and it is just as easy for a Midwest exporter to ship by such ports if it means keeping his transportation costs down.

Furthermore, foreign domiciled ocean freight forwarders would be encouraged to engage freight space abroad and collect brokerage to the detriment of American-flag carriers and American-domiciled freight forwarders.

These detriments to all segments of our export commerce can be avoided with the prompt enactment of S. 1368. It provides for the licensing of forwarders and the terms under which they may receive compensation from steamship lines. The bill is substantially the same as the one which unanimously passed the Senate last year. The one important change is that the compensation section, 43(e), now requires that the forwarder perform three or more of the specified services, rather than the two or more of last year's bill.

The licensing provisions will enable the Board to weed out incompetents and those not financially or morally responsible. By confining licensing to "independent" forwarders, the "dummy forwarder" problem will be solved. These "dummies" are forwarding concerns organized by unscrupulous shippers to collect brokerage unlawfully. The requirement that a forwarder perform at least three basic services would end the practice, engaged in only by a handful of forwarders, of collecting brokerage when little or no work is done.

We suggest the following amendments to S. 1368:

1. The citizenship requirement in section 43(b), page 2, lines 19-20, should be deleted. The State Department has advised this committee last year that such a requirement is in violation of U.S. treaty obligations.
2. The maximum limitation of 5 percent in section 43(e), page 4, lines 8-9, which was not in last year's bill, may be stricken. Concern has been expressed by some carriers that this provision will be used by forwarders as a wedge to obtain higher brokerage. We have no such intention but seek only the traditional payments of brokerage.
3. The following proviso may be inserted in section 43(e), page 5, line 3, before the word "Before":

Provided, however, That where a common carrier by water has paid or has incurred an obligation to pay, separate compensation to an independent ocean freight forwarder for any of the services enumerated above, such carrier shall not be obligated to pay additional compensation to any other independent ocean freight forwarder for services rendered on the same shipment.

The purpose of this amendment is to prevent two forwarders from seeking compensation on the same shipment, an eventuality that the

Comptroller General thought might occur. The language of this proviso has been approved by the Comptroller General and he now has no objection to favorable consideration of the bill.

We do not come before you today seeking a handout. All that we ask is that the Congress recognize that forwarders may be compensated by carriers for services of substantial value, as they have been for more than a century.

With the prompt enactment of this bill the interminable litigation on the subject of brokerage will at long last be ended and our industry can get on with the business of helping to develop our foreign trade.

Thank you.

Senator YARBOROUGH. Mr. Barr, I think suggestion 3 on page 4 of the amendment, section 43, was a very apt suggestion. The thought occurred to me that the real estate brokers acted for many years in many States under licenses possessed by several different real estate brokers, each claiming to be, each conscientiously thinking that he was procuring the sale and entitled to the commission. Do you have that same problem in the brokerage industry? I believe you answered it. I assume you have had it in the past with the forwarders, each thinking that he had procured the shipment for the carrier.

Mr. BARR. Rarely. But the Comptroller General did think it could be a problem and therefore we decided to eliminate it.

Senator YARBOROUGH. I will offer that amendment to the bill as an author of the bill.

The proviso of the 5 percent was a limitation.

Mr. BARR. Yes, sir.

Senator YARBOROUGH. It could never be exceeded. It wasn't intended to set standards. We have a letter from the Comptroller General of April 12, 1961. He questioned whether, under that, one might pay 5 percent plus one and a quarter. That could be assessed.

Mr. BOURBON. Are you familiar with that?

Mr. BARR. Yes, I am. This proviso that I just mentioned on page 4, paragraph 3, takes care of that objection. And I believe that the Comptroller General on a similar bill that is before the House has written to them and stated that with this provision he would approve the bill. It was the reason that we put this proviso in because of that April letter.

He thought that possibly one forwarder would get 5 percent commission and another might come along and ask for one and a quarter. But under this proviso the forwarder can only get one commission and only one forwarder can get it.

Mr. BOURBON. Under his statement the same forwarder could not collect both of them?

Mr. BARR. No.

Mr. BOURBON. I got the suggestion that both of them might be claimed by one man.

Mr. BARR. No, sir. We have reviewed it with the Comptroller General. This proviso will take care of the matter.

Senator YARBOROUGH. Senator Butler, do you have any questions of Mr. Barr?

Senator BUTLER. I would like to ask a question in connection with the citizenship requirement on page 2, lines 19-20, that you referred to. Do I understand that under this a license could be granted to a foreign freight forwarder?

Mr. BARR. Yes, sir.

Senator BUTLER. Would he be subject, then, to the provisions of this bill?

Mr. BARR. Yes, he would.

Senator BUTLER. How would his obligations be accounted for? How would you get at him?

Mr. BARR. I believe the State Department disapproved of the requirement that the applicant for a license must be and only could be an American citizen on the theory that if we took that position in the international trade that we are in, then it would be perfectly right for, say, Holland or Germany or some other country to put in a restriction against our doing business over there. Therefore, by eliminating the citizenship requirement, it is possible for a foreigner to come over here and after he has proved that he is capable to obtain a license go into the forwarding business. We in the forwarding industry have no objection to that.

Senator YARBOROUGH. I want to insert in the record at this point a letter from the Department of State, dated February 4, 1960.

The staff secretary informs me that in response to an inquiry no communication has yet been received from the State Department this year. I assume, on previous State Department practices, changes in administration make a little difference in recommendations of that kind. I assume it will be the same. It is very unlikely that they would be different.

(The letter referred to above is as follows:)

AUGUST 1, 1961.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: I refer to your letter of March 20, 1961, acknowledged by the Department on March 23, inviting the comments of the Department on S. 1368, a bill to amend the Shipping Act, 1916, to provide for licensing independent ocean freight forwarders, and for other purposes.

If this bill is enacted into law, section 43 (b) of the Shipping Act, 1916, would deny licenses as independent ocean freight forwarders to persons who are not citizens of the United States. A substantial number of treaties of friendship, commerce, and navigation presently in force between the United States and other countries, including countries of major importance from the standpoint of international trade, provide that the citizens of either treaty partner shall be accorded national treatment with respect to engaging in commercial activities within the territories of the other treaty partner. Since ocean freight forwarding is a commercial activity within the meaning of such treaty provisions, the bill would place the United States in violation of outstanding international obligations.

The alienage restriction does not appear to be essential to the objectives of the legislation, and as a practical matter its inclusion in the bill would preclude the United States from assuming new commitments assuring U.S. citizens a treaty right to service American exports by acting as freight forwarders in foreign seaports. Accordingly, the Department of State strongly urges that the citizenship requirements be omitted from the bill.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely yours,

BROOKS HAYS,
Assistant Secretary
(For the Secretary of State).

Senator YARBOROUGH. Does the staff have any questions of Mr. Barr?

Mr. BOURBON. On page 3, where you refer to the foreign-domiciled ocean freight forwarders, how could they arrange for freight space abroad and collect brokerage?

Mr. BARR. What they would do, very easily, is to have an office over here that would simply do the forwarding. If no brokerage was payable on this end, they simply wouldn't collect the brokerage here. But over there, say, take Rotterdam, they would go to, say, a foreign carrier and say—

We have a shipment of 500 tons or 200 tons of machinery coming from the United States. We will book it on your vessel. We want so much brokerage. Our office in New York will handle the forwarding.

And they would collect the brokerage right there and the Federal Maritime Board couldn't do a thing about it. But it would deprive us of our brokerage and our clients and the American carriers who were controlled by the FMB wouldn't get the cargo.

Senator BUTLER. And there couldn't be any violation on their part, such as creating dummies on their side and having an advantage over us?

Mr. BARR. Sir, we found, and we know that the forwarders in Europe have been in business far longer than we, and they know how to do things and can do things under their laws that we simply can't do.

Senator BUTLER. I know that. That is why I wondered whether it would be a fair competitive situation to have one of their brokers under license of the Government of the United States.

Mr. BARR. They would be under license if they came over here. But yet they wouldn't have to worry about getting brokerage here because they would be collecting it on the other side on this question that Mr. Bourbon asked me.

Senator BUTLER. And they couldn't through that process, take any unfair advantage of an American forwarder by rebating or other things?

Mr. BARR. Yes, they could.

Senator BUTLER. And you would have no redress against them at all?

Mr. BARR. No, sir.

Senator BUTLER. And you still like that?

Mr. BARR. It is perfectly legal and there is no way that we can stop them.

Senator YARBOROUGH. Mr. Barr, you represent the United Ocean Freight Forwarding Industry, which is itself an association of certain organizations of freight forwarders by different ports in the country.

Mr. BARR. Yes, sir.

Senator YARBOROUGH. Your suggestion that the maximum limitation of 5 percent be deleted from the bill; does that have the support of the freight forwarders over the country?

Mr. BARR. Yes, sir, it does.

Senator YARBOROUGH. The purpose of putting it in the bill in the first place was not to up these brokers' fees but there have been complaints of abuses, and this was to set a top limit above which they couldn't go in any respect.

Mr. BARR. Yes, sir.

Senator YARBOROUGH. It was objected to, I believe, by the Government. The freight forwarders are willing to accept that. I will offer an amendment to strike that phrase on page 4, line 8.

Senator BUTLER. Do you have any machinery to police your organization?

Mr. BARR. Yes, sir, individual associations in each port, such as the port of Baltimore forwarders; they do police within their own organizations.

Senator BUTLER. Under the amendment suggested by the Comptroller General, would you undertake in such a situation to determine which freight forwarder was entitled to a fee, or would you let that be litigated in the usual way?

Mr. BARR. I think that really the industry takes care of that matter itself, because no steamship company that I have ever heard of would pay two people for just one piece of cargo.

Senator BUTLER. That is true, but they may pay one and be subject to fee by another. They can't interfere, can they?

Mr. BARR. No, sir.

Senator BUTLER. Does your industry seek to quiet the second claim, or determine who is right and who is wrong? How do you work it?

Mr. BARR. I have never heard of such a case coming up, where two forwarders were paid for the same shipment. But I think if it did come up it would be settled amicably.

Senator BUTLER. It would be settled within the industry?

Mr. BARR. Yes, sir.

Senator YARBOROUGH. A freight forwarder does not have to belong to your association, though?

Mr. BARR. No, sir.

Senator YARBOROUGH. You doubtless have freight forwarders who are not members of these associations?

Mr. BARR. We do. But I would say that the bulk of the forwarding done here in the United States is performed by forwarders who are members of these associations.

Senator YARBOROUGH. Haven't the cause of some of these complaints been the activity of some of what I have heard called fly-by-night operators?

Mr. BARR. Yes, sir.

Senator YARBOROUGH. Or by dummy forwarders who are not really freight forwarders at all?

Mr. BARR. Yes, sir, and that is why we would like this licensing provision and we hope that by the passage of the entire bill we, working with the regulatory body, will be able to take care of those problems. We think we will.

Senator YARBOROUGH. Thank you, Mr. Barr.

Mr. BARR. Thank you.

Senator YARBOROUGH. The next witness is Mr. Donald Wierda, vice president, United States Lines Co., 1 Broadway, New York.

STATEMENT OF DONALD F. WIERDA, VICE PRESIDENT, UNITED STATES LINES CO., NEW YORK, N.Y.

Mr. WIERDA. I have no prepared statement.

Senator YARBOROUGH. You represent one of the carriers?

Mr. WIERDA. Yes, sir. I represent the United States Lines Co. I am vice president in charge of freight traffic of that company, in New York City.

We operate 53 freight vessels from the United States, Atlantic and coast ports to Europe, and to the Far East and to Australia. The Australian service also touches at gulf ports. We sail on the average of about 30 ships a month. So that this bill, S. 1368, is a matter of great interest and concern to my company.

Senator YARBOROUGH. We would like to hear how it affects you and what the carriers think of it.

Mr. WIERDA. Well, sir—

Senator YARBOROUGH. Our committee is concerned along other lines with keeping the American flag on the seas. We are interested in freight forwarders, also.

Mr. WIERDA. We support the passage of S. 1368 and the provisions in the bill which require the licensing of freight forwarders. We feel that the present system of registration with the Federal Maritime Board is apparently inadequate, judging from the decision set down by the Board a few weeks ago, and that the licensing provisions which have been suggested in S. 1368 are an excellent way of providing minimum requirements for anyone to be in this industry, and also to meet the obligations and responsibilities which a freight forwarder has, not only to the shipper but also to the shipping companies and to the consignees overseas. So that we are enthusiastic about this proposal in this bill.

Insofar as the other area of the bill is concerned which has been a subject of discussion here this morning, we support the bill in its area where it calls for the payment of commission to forwarding agents by steamship companies. We are perfectly familiar with the Federal Maritime Board report. There is a little gray area which begins to exist in a forwarding business, it seems to me, when he is performing functions of course for his original client, the shipper, and while he is performing those functions for his shipper he is also performing functions for the carrier. The six points that were brought out in this bill on pages 4 and 5 are some of the elements of the services which a forwarder renders to a steamship company.

Those services to us are valuable services. While the Board has stated in its decision, in its rulemaking proceeding, that the benefits are incidental to the carriers from the steamship carriers' point of view, I must point out that they are essential to us for our successful operation, our economical operation of our vessels.

These services are performed by freight forwarders for us every day of the week and we certainly feel that they deserve reasonable compensation for performing those services on our behalf.

Although they were not originally set out perhaps to perform them on our behalf, they eventually move over away from the shipper interest primarily, over into where we figure into the picture and where those services are performed for our benefit. We are the ones who are

benefiting the most from those services at that particular moment and we are more than willing and we are desirous of paying adequate compensation for those services which are performed.

Senator BUTLER. Do you speak only for your company?

Mr. WIERDA. Yes, sir.

Senator BUTLER. Is that the feeling generally with the operators?

Mr. WIERDA. I believe you will find that that is the feeling generally with the operators. However, I am speaking for my company at this particular moment.

I would like to mention one thing, if I may, in connection with the decision reached by the Board in this rulemaking proceeding, because I find it somewhat illogical and somewhat unrealistic.

The basic reason why freight forwarding commissions are being banned by the Board after an early November date is apparently because there are varying fees charged by forwarders to their shipper clients. But we in the steamship business, and we in the conferences especially, not only we as individual lines but if we are members of conferences, the conferences stipulate what the brokerage will be for the payment to forwarding agents. There is no variation whatever in the fees which are paid by steamship companies to one forwarder or another. The variance comes when one forwarder apparently is charging a different price than another forwarder would for the same services to his shipper. But how they can point to the brokerage as being the cause of it is something that I just can't quite understand because that is one flat rate which is paid by the steamship conferences to the forwarder in return for services rendered.

Senator BUTLER. Have you a copy of the bill before you?

Mr. WIERDA. Yes, sir.

Senator BUTLER. Will you refer to page 4, line 6, which says, "A common carrier by water may compensate a person carrying on the business of forwarding." That gives you the right to do it.

Mr. WIERDA. Yes, sir.

Senator BUTLER. Would you think that the bill should be amended to say that you shall do it; would that tighten it up, to make it mandatory?

Mr. WIERDA. There are so many varying trades from the United States, to and from the United States, differing practices, that I couldn't speak for all coasts of the United States with the same authority as I can speak for the North Atlantic and the South Atlantic area. But in that area we do pay, and we have no intention of stopping it unless we have to.

Senator BUTLER. Yes, but one of the objections to the bill is that if you don't do it then you are favoring one shipper over another. Should there be some language in here that would make it mandatory upon you to pay?

Mr. WIERDA. That if we do not do it we are favoring one shipper over another?

Senator BUTLER. Yes. Isn't that the claim that has been made?

Mr. WIERDA. The Board ruling on the details behind the Board ruling attributed the payment of brokerage as the reason why one shipper is favored over another. But basically forwarding agent commission by steamship companies and by conferences are the same. So all forwarders are on the same level insofar as their receipts from:

brokerage are concerned from the same shipment. So that I can't see that it is the payment of brokerage which has brought about these other questionable practices that were brought out in the Board's report.

I would also, Mr. Chairman, like to endorse the amendment made by Mr. Barr in the elimination of the 5-percent figure which is in the bill at the present time.

I feel that that is not a matter for legislation and should not be frozen in the bill.

Senator YARBOROUGH. I believe your last statement, Mr. Wierda, is that you approved this language that would not permit payment of brokerage to more than one broker?

Mr. WIERDA. I agree with that, that payment of brokerage should not be made to more than one forwarder. But the deletion on lines 8 and 9, on page 4, the deletion of the words "not to exceed 5 per centum of the freight cost", which was suggested by Mr. Barr, we endorse that.

Senator YARBOROUGH. You agree that should be deleted?

Mr. WIERDA. Yes, sir.

Senator YARBOROUGH. Thank you, Mr. Wierda.

Mr. WIERDA. Thank you, Mr. Chairman.

Senator YARBOROUGH. The next witness is Mr. Charles H. McGuire, vice president, Moore-McCormack Lines, Inc., 2 Broadway, New York.

**STATEMENT OF CHARLES H. MCGUIRE, VICE PRESIDENT,
MOORE-McCORMACK LINES, INC., NEW YORK, N.Y.**

Mr. MCGUIRE. Mr. Chairman, I am vice president of the Moore-McCormack Lines, 2 Broadway, New York City.

We are an American-flag steamship line, owning and operating 40 dry-cargo vessels, 2 passenger liners, and 1 tanker in the foreign commerce of the United States.

We operate services from the east coast of the United States to the east coast of South America. We operate a line, a common carrier line from the Atlantic coast of the United States to Scandinavia and Baltic ports. We operate from the Pacific coast of the United States to the east coast of South America. Finally, we operate a service from the Atlantic coast of the United States to South and East Africa and the Indian Ocean islands, principally Madagascar.

We believe the independent foreign freight forwarder to be vitally important to the export foreign commerce of the United States and to the ocean carriers such as ourself which transport that commerce.

We believe that the recent actions of the Federal Maritime Board culminating in the issuance early this month of their revised General Order No. 72 threaten the welfare if not the very existence of many of those now engaged in the freight forwarding industry.

Should this be permitted to come to pass, we feel that our export foreign commerce may be adversely affected and certainly that additional and unwanted burdens may be imposed on us ocean carriers.

For these and other reasons we urge prompt approval of S. 1368 and suggest only one change in that measure. We believe that the stipulation respecting maximum permissible compensation of 5 percent be eliminated as we think such details should be left to the normal

sources of negotiation between the carriers and the freight forwarders, which is traditional in the industry.

There are a great many, as Mr. Wierda the previous witness has stated, who believe that the foreign freight forwarder, the independent foreign freight forwarder, performs a great many services that are valuable to the steamship lines.

We have testified in the prior proceedings, Federal Maritime Board proceedings, on this very point. We have entered in the record of those proceedings our views as to a number of the elements that we believe are beneficial to the common carriers and that are performed by the freight forwarder.

Basically they may be said to be performed for the shipper rather than for the carrier, and that it is the duty of the shipper to bring his cargo to shipside and to deliver to us ready for shipment.

Actually, the freight forwarder does a great many services which benefit us directly or indirectly and which we would probably have to perform for ourselves at greatly increased cost if the regulations now promulgated by the Board remain effective.

For example, we have approximately 5,500 shipper clients throughout the United States, export shippers. Of that number, approximately 3,000 are in the North Atlantic area, mainly in the New York area.

On the average we handle 1,500 bills of lading per week, or a total of approximately 75,000 bills of lading per year on our vessels, covering shipments on our vessels; 75 to 80 percent of those shipments are handled by freight forwarders, and the bills of lading and dock receipts and other documents are prepared and delivered to us by the freight forwarders. If we were to do that for ourselves, if compelled to do that for ourselves, it would obviously result in us having to expand our staffs appreciably and it would cost us a great deal more money than is now the case.

We are perfectly content to pay the normal scale of freight brokerage to freight forwarders. We did not ask for the protection of the Federal Maritime Board in this field, nor do we now seek it.

Senator YARBOROUGH. I judge by that, with your size and experience, you have dealt with forwarders that you knew and knew were reliable, so you had no trouble with fly-by-night forwarders, so called?

Mr. McGUIRE. That is correct, sir. Obviously, we have known a few of these dummy forwarders that have existed in the past. They are exceedingly limited in number. By far the great majority of the freight forwarding industry we believe to be honest, capable, diligent people seeking to make their living in their own way, and we believe in this, as in other cases, the laborer is worthy of his hire. We are quite content to pay these modest fees which aggregate in virtually all trades in which we are engaged only $1\frac{1}{4}$ percent of the gross.

Senator YARBOROUGH. Mr. McGuire, in your experience as a carrier, with this 20-odd percent of the shipments you carry that are not sent to you by freight forwarders, what has your experience been? Do those shippers know how to prepare and process the bill of lading, prepare and coordinate the movement to shipside, prepare and process dock receipts and delivery orders, prepare and process consular documents or export declarations, and so forth?

Do you do that for those shippers where they do not use freight forwarders or do they know enough about it to do that themselves?

Mr. McGUIRE. They do that themselves. That applies basically to some of the very large exporting firms in the United States such as certain of the automobile manufacturers and the others of that nature. They have their own export traffic departments. By their own free choice they choose to handle all details of their shipments themselves and they have the staff and the experience to do it.

Senator YARBOROUGH. They are big enough to be able to run their freight forwarding business?

Mr. McGUIRE. Yes, sir, and I repeat it is their own free choice to do it in that fashion.

Senator YARBOROUGH. If this bill is passed they can still do it in that fashion. This bill doesn't require anybody to have a freight forwarder. It merely lists freight forwarders and sets out the customary duties of that profession.

As the author of that bill, I have a question. In these six points enumerated on pages 4 and 5—I got my information primarily from the shipping industry in my home State of Texas—are those the services that you have customarily found are customarily performed by freight forwarders?

Mr. McGUIRE. They are, Mr. Chairman, in virtually all instances.

They may be said, as I stated at the outset, to be performed basically for the account of the shipper client of the freight forwarder, it being his responsibility under law to bring the cargo to shipside within reach of our tackle.

Actually, these services, if properly performed, assist us in our operations greatly. The very coordination of the movement of cargo to shipside can in many instances save vessel time by assuring that we can sail our ships at the fixed times, rather than have to wait for cargo to arrive after the vessel is slated to sail.

Senator YARBOROUGH. This coordination allows maximum saving of time in loading cargo and is very important to the economical or profitable operation of the lines, is it not?

Mr. McGUIRE. It is highly important, yes, sir. And of course, No. 1, the solicitation and securing of cargo for the ship is of utmost benefit to us although again it may be said to be performed for the shipper. In many instances we have found that freight forwarders can, at our request, and I am sure this applies to other common carriers as well, can secure for us, if we urgently need it, cargo which we term "spot cargo" in the last days before sailing, if our ship is threatening to sail light of cargo.

We oftentimes appeal to our freight forwarder friends to aid us in expediting us getting cargo, which we wouldn't get otherwise.

Senator YARBOROUGH. That is to fully load your ship so it will be a profitable voyage?

Mr. McGUIRE. Yes, sir.

Senator YARBOROUGH. The statement has been made that many of these services are services that the shippers should perform.

Point 2, coordination of the cargo at shipside among your shippers, you couldn't expect one to coordinate his shipment with shipments of other exporters, could you?

Mr. McGUIRE. No, sir.

Senator YARBOROUGH. That would have to be done by the carrier or from the freight forwarder or somebody else?

Mr. McGUIRE. Yes, sir.

Senator YARBOROUGH. The exporter is interested in getting the cargo to you, and not interested in checking with your other customers. He wouldn't know who they are in the first place.

Mr. McGUIRE. That is exactly right, Mr. Chairman.

There are two items listed here that I personally believe to be the responsibility of the ocean carrier as a technical measure. That is the preparation of ocean bills of lading and the preparation of dock receipts. Traditionally our freight forwarders have performed those services.

Senator YARBOROUGH. And it has saved you time and expense and office staff to process those documents where the freight forwarders perform those services?

Mr. McGUIRE. That is correct, Mr. Chairman. I believe that if the existing revised General Order 72 is permitted to become effective in early November, we will be deluged with requests from shippers to perform many of these services that are now being performed by freight forwarders.

Senator YARBOROUGH. And at increased expense to the carriers?

Mr. McGUIRE. At greatly increased expense to us; yes, sir.

Senator YARBOROUGH. The freight forwarders witness, Mr. Barr, had a comment on page 2 of his statement which reads:

American carriers will also be adversely affected. Many exporters will seek to thrust the forwarding work on the carriers to avoid the extra expense. The carriers have stated under oath that they do not want this additional burden and that it is more expensive to maintain their own forwarding department than to pay brokerage.

There is the reasonable probability, too, that substantial cargo will be diverted from Atlantic to Canadian ports. Brokerage is paid from Canadian ports and it is just as easy for a Midwest exporter to ship by such ports if it means keeping his transportation costs down.

Do you, as a carrier, think that without the services of the freight forwarders—do you agree with that? Do you think it will cut down your cargo as any if the American freight forwarders are put out of business?

Mr. McGUIRE. I think, Mr. Chairman, exactly what Mr. Barr stated here; there is a reasonable probability that that will happen in respect of certain exports that can move from, shall we say, competitive territory, competitive as between Canadian-Atlantic or American-Atlantic ports. I believe that certain shippers, if faced with the alternative of paying higher freight forwarding costs, brought about by this Federal Maritime Board regulation, might choose to decline to pay those increased freight forwarding costs, dispensing entirely with their freight forwarders or getting freight forwarders operating out of Canadian ports who can and will perform the service at lower cost due to their ability to earn freight brokerage on the shipment.

Senator YARBOROUGH. You have said higher freight forwarding costs, Mr. McGuire, due to this Board order. The Board order would just prohibit all forwarding. There wouldn't be any freight forwarding cost, according to the Board order. Why would it be higher for the shipper? Do you mean when he went to hiring people to make out

these bills of lading, do all this for himself, it would cost him more than to get that done by a professional freight forwarder? Is that what you meant?

Mr. McGUIRE. What I meant, Mr. Chairman, was that if the General Order 72 of the Board becomes effective, we will be forbidden as a matter of regulation to pay freight brokerage to any freight forwarder who performs any of the forwarding functions listed in the order. That means that freight forwarders who now derive from 30 to 40 percent, approximately, of their income, their revenues, from freight brokerage paid to them by the common carriers, when they lose that revenue, as they inevitably will under the Board's order, they must seek other revenue or else go out of business. To replace the lost revenue obviously they will immediately seek to raise their freight forwarding charges to the shipper. That increases his cost, of course, of doing business in the foreign commerce of the United States. That is why I say I believe there might be some degree of adverse effect on our foreign commerce.

Senator YARBOROUGH. And freight forwarders are not prohibited in Canadian ports from charging and collecting the brokerage fees?

Mr. McGUIRE. They are not.

Senator YARBOROUGH. Thank you, Mr. McGuire.

Mr. McGUIRE. Thank you.

Senator YARBOROUGH. The next witness is Mr. John T. Carpenter, vice president, States Marine Corp., 90 Broad Street, New York City.

STATEMENT OF JOHN T. CARPENTER, VICE PRESIDENT, STATES MARINE CORP., NEW YORK, N.Y.

Mr. CARPENTER. Thank you, sir.

I did not have an opportunity to prepare a statement, but I would like extemporaneously to make a few remarks. I will be as brief as I can.

My name is John Tinley Carpenter. I am vice president in charge of the law department of States Marine Lines, Inc., which is a Delaware corporation. Our principal offices are at 90 Broad Street, New York. We have offices throughout the United States and we sail in the export commerce of the United States from every port on the Atlantic and gulf from Boston to Corpus Christi, and on the Pacific coast every port from Seattle to San Diego.

We are an American-owned line. We and our subsidiary, the Isthmian Line, together, own and operate 49 American-flag dry cargo ships, C-2, C-3, C-4, in worldwide trading.

We have consistently supported the efforts of the freight forwarding associations and their members to obtain the legal right to receive from us carriers compensation for the services that they render to us which are not only valuable but are essential for the progress of our commerce-carrying vessels. Historically the commission has been 1¼ percent—not invariably, but that has been the rule as far back as I can recall.

We support the bill and vigorously and urgently ask its passage, that is, S. 1368 with the amendments that have been discussed today.

Before I came down, one of our vice presidents expressed the fear to me that the naming of 5 percent might be used as a floor rather

than a ceiling. However, the important thing is that we ocean carriers be permitted to operate our business under proper and tolerant regulations and conduct it in such a manner as to serve the interests of our customers, the shippers, and of the rest of the people engaged in the transportation process.

The urgency of this matter is spelled out by this recent decision of the Federal Maritime Board which to me could be compared to a doctor who would rather kill his patient than effect a cure.

If it went into effect, Pandora's box of troubles would be a Swiss music box compared to the disastrous effects that would fall on the entire shipping industry, and I am not fooling.

One of the findings of the Board in its ruling makes it illegal for the carrier to perform any of these services which the Board thinks are primarily of benefit to the shipper. So we are both illegal and immoral. We can't perform these services for the shippers, of preparing dock receipts and bills of lading, because the Board says that is illegal. We can't pay the forwarder. What are we going to do? We are not going to get the business.

These are six items that are in paragraph (e) of the bill are services which benefit the carrier as much or perhaps more than the shipper. And what has run consistently through the entire witch hunt against the forwarders—and I say witch hunt because I have testified year-in and year-out on this matter—a consistent, and I won't say with the Board deliberate, fallacy of logic, and that is the idea that it is either wrong or immoral, or both, for A to select B and B to be paid by C.

I have been a lawyer for 44 years. I have had a little experience in commerce. The commercial world is full of instances where a man is selected by one and paid by another.

If I go to a real estate broker to buy a house, I select him. He is paid by the seller if it yields results. I go to a bank, or the company goes to a bank to arrange long-term financing under loan agreements. It may be a complicated matter. The would-be borrower has his lawyer. The bank has its lawyer. And a loan agreement and so forth is worked up. The borrower pays the bank's lawyer for the legal services, because they are of benefit to both parties.

There is a fallacy.

I carry with me a large diary which I receive every year, and nobody I think would accuse Lloyd's of London of doing shady or underhanded practices, or that they should be regulated out of business. Here is a little preamble to the diary, if I may read it:

○ Lloyd's, by an observer.

I won't read the whole thing—

First, regarding the broker—

If I may, parenthetically, the broker is employed by the assured. In other words, the broker is like the freight forwarder here and the assured is similar to the shipper; and the underwriter is similar to the ocean carrier—

First, regarding the broker, his duty is to represent the assured; to discover his needs; to put his risks before the underwriters in as favorable a light as possible; to obtain the best trends for him when the insurance is placed; and if there should be a claim, to arrange the settlement, collect the money from the underwriters, and pay it out in the right quarter.

I will skip a little bit—

And generally act as philosopher and friend to the clients who entrust him with their business.

You see there the customary—my word; time-honored, I will say—business at Lloyd's. The broker does far more for the assured than the foreign trade forwarder does for the shipper, and yet Lloyd's pays the broker the commission. Perfectly normal; perfectly honest.

Just to wind up, I can't naturally argue an appeal here from this decision of dockets 765 and 831 of the Federal Maritime Board referred to earlier this morning. It seems to me—and I have been a member of the bar of the U.S. Supreme Court for 40 years—that it is so full of illogics and loose throwing around of the dirty word "rebate," that this legislation is urgently needed.

The Board in its own light has been construing the Shipping Act of 1916. Here we are considering an amendment to that shipping act, not introduced since the Board's decision, but previous to the Board's decision. I can't see for the life of me why Congress cannot correct a situation which, if it exists at all, and needs correction, hasn't been corrected long ago.

However, this order, according to my calendar, this order of the Board making the ax fall on the shipping industry and the freight forwarders would become effective by its own term, I think, on November 4, 1961.

Perhaps it is not fitting, but I cannot help refrain from asking if in some way this committee could prevail upon the Board to extend the effective date of that order until some order can come out of this chaos.

Thank you, sir.

Senator YARBOROUGH. Thank you, Mr. Carpenter, for a very informed and helpful statement.

I will say to you that the committee has been discussing this. If we can't get this legislation passed this session, we have been discussing plans about the means of asking the Board to defer enforcement of this order until there is time to pass legislation. It is late in the session now. We are working on that from several angles.

Mr. CARPENTER. May I say that we have 26 offices throughout the United States and I am besieged by our people. The shippers are up in arms. They are all bewildered. What does it mean? What can we do after November 4? And I have to say that I don't know; just hold your hat and see.

But it is awfully, awfully urgent, your Honor.

Senator YARBOROUGH. Thank you, Mr. Carpenter, for that statement.

Mr. CARPENTER. Thank you.

Senator YARBOROUGH. Mr. Benjamin Bloomfield, president, Bloomfield Steamship Co., is our next witness.

STATEMENT OF BENJAMIN BLOOMFIELD, PRESIDENT, BLOOMFIELD STEAMSHIP CO., HOUSTON, TEX.

Mr. BLOOMFIELD. My name is Benjamin Bloomfield, president, Bloomfield Steamship Co., residing in Houston, Tex. We own and operate four so-called dry-cargo ships under the U.S. flag, trading across the gulf from Tampa, Fla., to Brownsville, Tex., and deliver-

ing cargo to the north of Europe, Holland, Belgium, Germany, and France. We also trade to Poland and to a certain area in the United Kingdom. We are the smallest of the small fry, but we are very energetic and today fairly healthy.

I have been familiar with the occupation and duties of an ocean freight broker and a forwarding agent for many years. I, after a lot of thought and study, and some background of knowledge, find that our company—and I speak only for our company—is altogether on the side of the freight brokers individually and their respective associations. I do not wish to make any lengthy statement covering a lot of ground that has already been covered. I am prepared and will be happy to answer any questions that may be asked of me.

I would like to state that we have known Mr. T. R. Spedden, who is here from New Orleans representing a group of freight forwarders and forwarding agents, and Mr. Henry Schurig, from Houston, Tex., representing a great many freight brokers in Texas across the State that do business at our many ports. My knowledge of these gentlemen and regard for them is such that we do not hesitate to state that we endorse and support their position in this matter and accept any statements or claims that they might make on behalf of their industry, which dates back, to my positive knowledge, some 80 years, and to continue rendering to steamship lines, ocean carriers, the valuable services that they do that they have outlined and set forth.

We will stand behind them 100 percent in their position to protect their industry.

Senator YARBOROUGH. Thank you, Mr. Bloomfield.

Does the staff have any questions?

Mr. BOURBON. No, sir.

Senator YARBOROUGH. Thank you, Mr. Bloomfield.

Mr. BLOOMFIELD. Thank you.

Senator YARBOROUGH. The next witness is Mr. Clifford Shields, Farrell Lines, 26 Beaver Street, New York.

**STATEMENT OF W. CLIFFORD SHIELDS, VICE PRESIDENT,
FARRELL LINES, INC., NEW YORK, N.Y.**

Mr. SHIELDS. Mr. Chairman, my name is W. Clifford Shields. I am vice president and director of Farrell Lines, Inc., located at 26 Beaver Street, New York.

My statement is very short, and I hope that it is clear. Copies of it were submitted yesterday.

Before reading it, I might like to say that Senator Butler asked a question of Mr. Wierda, whether his statement reflected the feelings and thinking of the industry. I cannot speak for the industry, but I can say that they do reflect the opinion of Farrell Lines.

Farrell Lines' predecessor company, American South-African Line, Inc., was established in 1925. Farrell Lines, since its inception, has been a subsidized American-flag operator on route 15-A from U.S. Atlantic coast ports to south and east Africa and on route 14-1 from U.S. Atlantic coast ports to west African ports.

Farrell Lines owns and operates 14 ships of American registry and is at present engaged in a fleet replacement program.

We would like to record our support of S. 1368 now pending before your committee. This bill, if enacted, will provide for the licensing

of foreign freight forwarders and will permit the payment of brokerage, as provided in section 43(e), by common carriers by sea to licensed foreign freight forwarders in compensation for three or more services rendered in behalf of such carriers.

It has been the practice of Farrell Lines to pay freight brokerage at the rate of 1¼ percent to accredited foreign freight forwarders for services performed by them in our behalf.

Such services include the booking of cargo; the expediting of delivery of cargo to alongside our vessels in a manner to permit orderly loading and to prevent delays in sailing; the processing of export declarations and the furnishing of export licenses in compliance with export control laws and to permit the timely filing of these documents with U.S. customs at the time of filing of ship's manifest. Forwarders also furnish service to our company by preparing and processing dock receipts and bills of lading, both of which documents are indispensable for the receipt and carriage of all export cargo.

Due to recent decisions of the Federal Maritime Board in dockets 765 and 831, it becomes urgently important that S. 1368 be enacted into legislation as otherwise Farrell Lines and other steamship lines may be compelled to establish special departments to perform the services now rendered by foreign freight forwarders. To establish such departments would be a matter of considerable cost to the steamship lines, probably far exceeding the annual freight brokerage payment made to foreign freight forwarders.

We have found foreign freight forwarders to be an honorable and dedicated part of the foreign trade industry. They are without any doubt an integral part of the export commerce of the United States of America.

We respectfully urge the enactment of S. 1368.

Senator YARBOROUGH. Mr. Shields, I compliment you on your condensed statement. You have packed a lot of statements in a few words.

On page 2, paragraph 2, where you outline the services performed by freight forwarders, Mr. Carpenter suggested that freight forwarders often procure insurance also on the cargo. That is not mentioned as one of the services in the law.

What has been your experience?

Mr. SHIELDS. That is a service which he performs in his capacity as agent of the shipper, and he does do that.

Senator YARBOROUGH. He does that for the shipper?

Mr. SHIELDS. Yes, sir.

Senator YARBOROUGH. Do you have any questions?

Mr. BOURBON. No, sir.

Senator YARBOROUGH. Thank you, Mr. Shields.

Mr. SHIELDS. Thank you, sir.

Senator YARBOROUGH. Gentlemen, if any of you desire to file your statements—if you have other engagements and desire to file your statements rather than take the time to testify, you may do that. They will be printed in the record and will be read by the members of the committee. If you desire to condense them, you may do that.

The next witness is Mr. A. T. DeSmet, vice president, American Export Lines, Inc., 39 Broadway, New York.

STATEMENT OF A. THEODORE DeSMET, VICE PRESIDENT,
AMERICAN EXPORT LINES, NEW YORK, N.Y.

Mr. DeSMET. My name is A. Theodore DeSmet, vice president of the Freight Traffic Department of American Export Lines.

American Export Lines operates approximately 180 freight sailings through the Mediterranean to Mediterranean ports and India from the east coast of the United States. They operate additional passenger sailings to the same destinations and have, additionally, a Great Lakes service from the U.S. Great Lakes ports to the Mediterranean.

I am not going to take a great deal of time of this committee to repeat what has been said very adequately by lines which preceded me. I do want to say that as far as the passage of the bill S. 1368 is concerned, it is not our purpose here to criticize the FMB. We feel that the fact that FMB has questioned the propriety of paying brokerage, and the fact that that is not answered immediately by some reference to law, indicates that there is a very definite requirement for a law to cover that factor.

We do not believe that the FMB had the intent to kill forwarders. If that is the intent of the FMB order, the intent doesn't matter much.

The bill appears to us to clarify the status of an industry whose right to claim compensation from carriers for their service to the carriers is in question. For that reason we heartily recommend the passage, and the swift passage, of this bill.

I will touch very briefly on some of the points.

The licensing status we agree is good.

We do not believe that the 5-percent limitation of brokerage should be named or mentioned or left in the bill, not only for reasons mentioned by Mr. Wierda and Mr. McGuire, but we feel that this compensation is a variable one. It has been established in almost every service, established solely by the conference lines, as a brokerage of generally $1\frac{1}{4}$ percent. There has not been any tendency except in very rare instances to have brokerage run away and become an economic factor either to the line or to the shipper.

Senator YARBOROUGH. Mr. DeSmet, that provision in the bill, the main purpose of this bill as you know, is to license freight forwarders, to permit the Federal Maritime Board under the Licensing Act to eliminate dummy freight forwarders or any fly-by-night, irresponsible operators, if the freight forwarders won't, and also to set up some standards of their duties.

The purpose of that was to fix an all-time maximum high. It was not the purpose to change the custom or to raise brokerage fees or freight forwarding fees or the expenses to either shippers or to the carriage of freight.

I will offer an amendment to take that clause out. It was not put in there with any thought of raising the costs to our export trade or to the bottoms in which it is carried.

Mr. DeSMET. That is so, sir. But as in the case of the FMB order—

Senator YARBOROUGH. I see that it might have that result. We don't want it to have that result and we will take that out.

Mr. DeSMET. Good.

One of the items I think that has been overlooked by my predecessors here is the fact that the elimination of freight forwarders, which to a considerable extent would follow such an order as proposed by FMB, would result in the steamship lines being forced in one way or another to provide the freight forwarding services, or many of the freight forwarding services.

In the case of an arrival, for instance, of a split shipment at the port of New York, it would place in the hands of a steamship company the responsibility of delivering a part of that shipment to another steamship company, or to a competitor.

I think that the most damaging factor involved in elimination of freight forwarders would be the elimination of a shipper's representative.

We need not kid ourselves that the freight forwarders will not be eliminated. If the freight forwarder is paid by the shipper to prepare a document, he will prepare the document. If he is paid by the shipper to telephone the railroad and make certain that the cargo is booked for routing to New York, he will do that.

The shipper is going to expect the steamship company to participate from that point on. The shipper is not going to pay for services which have normally been performed which we thoroughly believe to be performed today for the benefit of the carrier. He will expect the carrier to perform that service. And if the carrier does perform that service, the shipper deprives himself of representation in any dispute that may arise in regard to his cargo from the moment it leaves his hands and moves into what is now the foreign freight forwarder's hands and would then be in the steamship company's hands.

I might add one comment to Mr. Barr's remark that many east coast cargoes would be lost to Canadian ports. This is true. In many cases we have, in attempting to divert cargo away from, for example, the port of Montreal, we have found that the inland freight rates, rather, the port of Halifax, St. John, the inland port rates from a port such as Montreal, are almost the same to New York as they would be to Halifax or St. John, that is so far as east coast and Canadian ports are concerned. It is far more so in the case of Great Lakes shipments where we are now engaged in the trade.

It is a certainty that with Canadian and United States ports in close proximity, and freight forwarders being able to realize compensation for shipments from the Great Lakes-Canadian ports, and failing to realize that compensation from U.S. Great Lakes ports, much of that cargo, a great deal of that cargo, will be routed via Great Lakes ports.

That is all I have to say, sir.

Senator YARBOROUGH. The efforts the Canadians are making now to find some effort to free the St. Lawrence of ice up to Montreal in the wintertime, if successful, would operate to their advantage and to the disadvantage of competing American carriers.

Mr. DESMET. Yes. It must be said that would generally affect the east coast, anyway.

Senator YARBOROUGH. Thank you, Mr. DeSmet.

Mr. DESMET. Thank you.

Senator YARBOROUGH. Mr. W. L. Hamm, Alcoa Steamship Co., Ring Building, Washington, D.C.

**STATEMENT OF W. L. HAMM, ALCOA STEAMSHIP CO.,
WASHINGTON, D.C.**

Mr. HAMM. Mr. Chairman, I do not have a prepared statement. I will make what I do say extremely brief in view of the press of time.

I am William L. Hamm. I am special traffic representative for Alcoa Steamship Co., which owns 15 American-flag nonsubsidized vessels. We have been doing business with the freight forwarding industry for more than 45 years. We have found that their services are completely essential to the efficient operation of our company.

We endorse Mr. Barr's fears that the removal of the privilege of paying brokerage would result in a diversion of cargoes from not only American-flag ships but also from the stream of American commerce.

We concur in the recommendations made that the 5 percent ceiling be removed from the bill. We think putting it in the statute makes for far too rigid a situation.

We completely endorse the bill with that one exception.

Thank you, sir.

Senator YARBOROUGH. Thank you, Mr. Hamm. That is a very brief statement and it covers it.

That 5-percent provision I will take out of the bill.

Mr. HAMM. Thank you, sir.

Senator YARBOROUGH. The next witness of Mr. H. E. Schurig, Cotton Exchange Building, Houston, Tex.

**STATEMENT OF HENRY E. SCHURIG, PRESIDENT, H. E. SCHURIG
& CO., INC., HOUSTON, TEX.**

Mr. SCHURIG. My name is Henry E. Schurig. I am the chairman of the Committee on Legislation for the Texas Ocean Freight Forwarders Association, and president of H. E. Schurig & Co., Inc., Houston, Tex.

The purpose of appearing before you is to seek relief from the crippling effect that GO-72 revised, promulgated by the Federal Maritime Board, will have on the forwarding industry.

For a Government bureau to possess the power to virtually destroy an industry by cutting off approximately 50 percent of its revenue, by an order effective in 120 days from publication in the Federal Register, does not seem entirely in keeping with our concept of democratic government by the people. We, like other citizens, have a right to earn a livelihood. The fact that a large segment of the industry would be unable to continue operations has been brought out in the many hearings and is a matter of record.

Most conferences, particularly in the gulf and on the Atlantic coast, thousands of shippers, from the smallest exporter handling perhaps one or two shipments per year to some of the country's largest corporations, together with numerous trade associations all over the country are proponents in the payment of brokerage, as proven by the record and by letters addressed to the FMB by various individual companies and committees prior to hearings when GO-72 was first revised when published, March 11, 1957, and then withheld. We wonder why the reasoning of the minority is imposed on the reasoning of the majority?

Our industry may have some segments that can be accused of improper practices. There are other industries in our economy of which

certain segments have fallen to practices not considered ethical. Have such industries been destroyed? Were the stock exchanges or banks closed after being investigated? We simply ask for the same consideration, legislation in a framework enabling us to operate beneficially to both shippers and carriers, not extermination by regulation as promulgated by the Board. It may be noted that brokers, as defined in the order, are by no means affected, while forwarders are being denied this revenue.

Such legislation has been through both Houses before, but unfortunately died in joint committee because of adjournment. It does, however, indicate the will of Congress, which is certainly opposite to the present order, and also not in keeping with the decision rendered by the Board's own examiner, who conducted the actual hearings or rulings of the prior Maritime Commission. The elimination of brokerage, besides practically ruining our industry, will have several other effects, mainly adverse. It will increase costs to shipper without recourse, which some commodities, particularly agricultural products, already being subsidized by the Government, can hardly bear. Because of competition, should these new regulations become effective, forwarding will have to be done to a large degree by the carriers through the establishment of forwarding departments, which in the case of subsidized lines will mean no additional recovery under the Subsidy Act, besides placing carriers in competition with forwarders. Foreign lines could effect savings of no benefit to the economy of our country. The regulations could also have the effect of channeling freight bookings into foreign hands, with the result of booking cargo against American-flag carriers. As we interpret the decision the effect of same would be detrimental to our foreign commerce at a time when it is of the utmost, vital importance to the Nation, as indicated by the redoubled effort on the part of the Department of Commerce to expand this phase of our economy.

On behalf of my fellow members, as well as the entire industry, all of whom are small businessmen like myself, request your considered help in having the order set aside until your honorable body gives careful study to bill No. S. 1368 now before you or bill No. H.R. 2488 before the House, and for passage and enactment during the 87th Congress, enabling us to assist to our full ability in helping our export commerce move smoothly into foreign markets, at no additional expense to the exporting public and give us the right to pursue our vocation.

It has been a privilege to have been given the opportunity to appear before you gentlemen, and I want to express the thanks of my associates as well.

Senator YARBOROUGH. Thank you, Mr. Schurig.

I want to address a question, rather than to Mr. Schurig, to the carriers who testified: Would this order in force have any effect on the speed with which your shipments are received, or would it slow up shipments any if carried out?

Mr. SCHURIG. May I answer that as a forwarder?

Senator YARBOROUGH. You can answer it.

Mr. SCHURIG. As a forwarder, definitely.

Senator YARBOROUGH. It would?

Mr. SCHURIG. It would; because if a shipment did not make the port in time to meet a vessel, being consigned to a certain line, that

line is going to hold that cargo until the next sailing, where there may be a sailing the day after tomorrow of another line that would get it there quicker.

Senator YARBOROUGH. You started to say something, Mr. Carpenter?

Mr. CARPENTER. Yes. If the papers that are necessary before a cargo can be loaded on a ship are not in order, and the cargo arrives, it has to be held there until something is done to straighten it up. It may run up demurrage, warehousing charges. We have plenty of them.

Senator YARBOROUGH. I ask that question because as a member of the Commerce Committee I took part in the hearings in the past 2 or 3 years on the reason for the adverse balance of trade in America. One problem that manufacturers found in competing overseas were manufacturers primarily from Great Britain, West Germany, France, Holland, Sweden, Italy, in the lines of American manufactured goods; a lot of the heaviest competition came from those countries such as Belgium.

He found that speed with which credit could be arranged in foreign countries was a factor. They didn't complain of delays in shipping. Apparently the American steamship lines are doing a good job of getting the manufactured goods there. But slowness in credit arrangement was impeding American export trade.

We learned from those hearings that anything that would slow up shipments abroad would worsen American manufacturers' competitive position in competition with West European manufacturers who have become very efficient, as you gentlemen know well.

West German manufacturers have become very efficient since World War II in manufacturing goods that formerly the United States had dominated the world market on. I might mention typewriters and a number of household appliances, where foreign competition has become very tough.

Mr. SCHURIG. I might say one thing more. I can't emphasize too strongly that we get some relief from the order, because if the 120 days run out and we become a corpse, legislation will not help us a whole lot at that point.

Senator YARBOROUGH. After it has been eliminated?

Mr. SCHURIG. That is right.

Senator YARBOROUGH. In other words, you don't want to be revived after the trained personnel have been scattered and have sought other jobs.

Mr. SCHURIG. Yes, sir.

Senator YARBOROUGH. Thank you very much.

Mr. SCHURIG. Thank you, sir.

Senator YARBOROUGH. The next witness is Mr. T. R. Spedden, Whitney Bank Building, New Orleans.

STATEMENT OF T. R. SPEDDEN, PRESIDENT, FORWARDING AGENTS & FOREIGN FREIGHT BROKERS ASSOCIATION OF NEW ORLEANS

Mr. SPEDDEN. My name is T. R. Spedden, president, Forwarding Agents & Foreign Freight Brokers Association of New Orleans; vice president, New Orleans Board of Trade; sole owner of the forwarding firm of T. R. Spedden.

I might mention that there are 35 member companies of our association who have been doing business in New Orleans for many years.

When this order of the Maritime Board came out they were aghast at what could happen to it. It was the most stupid thing ever perpetrated on mankind in my opinion.

Senator YARBOROUGH. Mr. Spedden, I might say in defense of the Maritime Board that I get a good many letters that tell me my votes in the Senate—

[Laughter]

Mr. SPEDDEN. In any event, the forwarders of New Orleans concur in the thing that both Mr. Barr and Mr. Schurig have previously stated. We do hope that your committee will get this legislation enacted. But if you can't, we certainly must have a postponement of this order. Otherwise the steamship lines and everybody else involved will be over a barrel.

In the first place, while the steamship lines here have indicated that they would have to perform forwarding work, I think they would have a hard time finding the proper personnel to do that work.

Forwarding is something you don't learn overnight. It takes many years of hard study. I certainly hope that your committee will be able to get this thing through if it possibly can. If you can't, get us an extension.

That is about all I have to say, Mr. Chairman.

Senator YARBOROUGH. Thank you, Mr. Spedden.

I would certainly agree that forwarding is something that is not learned overnight. Knowing how to expedite shipments and handle all the documents in export trade to foreign countries takes a knowledge that is acquired only from experience and study.

Mr. SPEDDEN. Thank you, sir.

Senator YARBOROUGH. The next witness is Mr. M. J. McCarthy, of San Francisco.

STATEMENT OF M. J. McCARTHY, PRESIDENT, BERRY-McCARTHY SHIPPING CO., SAN FRANCISCO, CALIF.

Mr. McCARTHY. Mr. Chairman, time did not permit a prepared statement. I will make this very brief.

My name is M. J. McCarthy. I am president of the Pacific Coast Customs & Freight Brokers' Association, and also president of Berry-McCarthy Shipping Co., who have been in the forwarding business the past 42 years. I have myself been associated for 34 years in the freight forwarding business.

I would like to endorse the statement of Mr. Harry Barr and Mr. Henry Schurig, and Mr. T. R. Spedden, and I do hope that this committee will give consideration to the passage of this bill; and, if not, please help us from dying sometime around November 5 or 6.

Thank you very much.

Senator YARBOROUGH. Thank you, Mr. McCarthy.

I have a question. The 86th Congress passed this bill out of this committee and passed this bill in the Senate unanimously, and it died in the conference between the Houses. It was stated there—we were warned it would die in the House because of opposition of the Pacific coast carriers—that the freight forwarding business didn't exist on the

Pacific coast in the time-honored customary manner in which it had grown up and existed on the gulf and Atlantic coasts. We were told, we hear over and over, that that was a real stumbling block in the enactment of this legislation.

I notice that when Mr. Barr testified he listed the organizations that formed the Committee on Legislation of the United Ocean Freight Forwarding Industry. He had listed their Los Angeles Customs & Freight Brokers Association, Inc., Los Angeles, and the Pacific Coast Customs & Foreign Brokers, of San Francisco, and the Custom House Brokers Association of Seattle. I presume that you are speaking for the freight forwarders of the Pacific coast generally, you and Mr. Barr together?

Mr. McCARTHY. That is correct.

Senator YARBOROUGH. Does that represent also the wishes of the shipping industry of the Pacific coast? I noticed a number of the gentlemen who have already spoken stated that they had vessels sailing from the Pacific coast.

Mr. McCARTHY. May I make this statement—

Senator YARBOROUGH. I am advised by the staff that, further down, we have the American Steamship Association represented.

Mr. McCARTHY. I was going to say that.

They are in support of this bill.

With respect to the statement you made about the Pacific coast, I would like to have you bear in mind, sir, that the Pacific coast is a growing territory. We are shipping commodities out of there now that were not shipped even 15 or 20 years ago. So we are possibly 25 or 30 years behind the Atlantic or the gulf. And that is understandable because our commerce did not start to increase from the coast until the opening of the Panama Canal.

But the forwarders have been in existence a long time. There are some forwarders in San Francisco that have been there for 50 or 60 years.

So we are an old, established industry on the Pacific coast. But not as old as the Atlantic or the gulf.

Senator YARBOROUGH. Thank you.

The next witness is Mr. Charles M. Connor, of the Marine Bank Building, Baltimore, Md.

STATEMENT OF CHARLES M. CONNOR, PRESIDENT, JOHN S. CONNOR, CUSTOMS BROKER AND FREIGHT FORWARDER, BALTIMORE, MD.

Mr. CONNOR. My name is Charles M. Connor. I am a representative of the Baltimore Custom House Brokers & Forwarders Association, and president of John S. Connor, customs broker and freight forwarder, in Baltimore.

I concur entirely with the remarks made by Mr. Harry Barr, chairman of the legislative committee for our industry, concerning the effects of GO-72, and what would happen to our industry if we do not get a bill similar to the one proposed.

I also concur with the other contemporaries of our industry which have preceded me.

There are some 27 firms in Baltimore engaged in the freight forwarding business. Recent reports show that brokerage represents 43 percent of income. If this brokerage were lost, it would not be recouped in handling fees. All firms would be forced to cut down on their operations, lay off personnel, and some might even close down. Obviously such a condition should be prevented.

We know that you, Mr. Chairman and your fellow members upon mature consideration will see the necessity of the bill proposed and give it favorable recommendation.

Senator YARBOROUGH. Thank you, Mr. Connor. We appreciate your testimony.

Mr. CONNOR. Thank you, sir.

Senator YARBOROUGH. The next witness is John C. White, American Cotton Shippers Association, Memphis, Tenn.

STATEMENT OF JOHN C. WHITE, ESQ., MEMBER OF LAW FIRM, FULBRIGHT, CROOKER, FREEMAN, BATES & WHITE, WASHINGTON, D.C.; APPEARING FOR AMERICAN COTTON SHIPPERS ASSOCIATION, MEMPHIS, TENN.

Mr. WHITE. Mr. Chairman, I am appearing as counsel for the American Cotton Shippers Association. I myself am a member of the law firm of Fulbright, Crooker, Freeman, Bates & White, in the city of Washington.

The American Cotton Shippers Association is a national association of cotton merchants and exporters. Its federated members are the Texas Cotton Association, the Western Cotton Shippers Association, the Southern Cotton Shippers Association, the Atlantic Cotton Association, the Oklahoma State Cotton Exchange, and the Arkansas-Missouri Cotton Trade Association. Its individual members consist of 474 active merchants and 274 associate members engaged in activities closely allied to cotton merchandising. Based on a 5-year average, these members handled 10,657,000 bales each season and exported 4,097,000 bales, or approximately 87 percent of the annual average exports.

Cotton exporters regard the services of freight forwarders and brokers as essential to the business of exporting U.S. cotton. The position of the association is shown in the following resolution, which was adopted unanimously at the 1959 convention:

In harmony with action taken by the association last year, we endorse legislation which would provide for licensing of independent ocean freight forwarders and which would further provide for the continuance of brokerage payments by ocean carriers to qualified ocean freight forwarders. Without payment of such compensation, in the form of brokerage, for services which are also beneficial to carriers, it would mean increased costs to shippers and, to that extent, would be detrimental to our foreign commerce.

While General Order 72 of the Federal Maritime Board is aimed at possible discrimination and rebating, its effect, insofar as cotton exports are concerned, will be to impose higher costs upon the exportation of cotton. There are large firms in the export business but basically cotton merchandising is done by small firms and the problems of doing business for small firms will be particularly complicated if joint broker-forwarder activities are banned.

Among the services performed by cotton freight forwarders the following are important:

1. The tracing and coordination of movement to shipside.
2. The preparation and processing of dock receipts.
3. The preparation and processing of export declarations.
4. The preparation and processing of ocean bills of lading.
5. The preparation and processing of proof of export.
6. The preparation and processing of consular documents.
7. The payment of ocean freight charges when requested.
8. Arranging for reweighing, resampling, remarking, repairing, and attending to any other services needed after shipment has reached the port.

The Board's order prohibits a freight forwarder from receiving any brokerage payment from a carrier on cargo with respect to which he has performed any freight forwarding service. This would necessitate a complete reorganization of the business, and fragmentation of services which can be performed most economically in a single package.

No one complains about a reasonable general limitation of brokerage payments but insofar as cotton is concerned the payment amounts to $1\frac{1}{4}$ percent of the freight charge, which is not unreasonable compensation for the services rendered carriers.

Virtually all of the services rendered by freight forwarders on cotton are essential to getting cotton on board and the ship cleared. Most of them will have to be performed by any line that wants to carry cotton, and direct performance will likely cost them more than the present brokerage allowance.

At the same time the shipper will have to make arrangements for an agent to perform certain services for him and the result will be greater cost and less efficient service.

Cotton often moves to the ports in numerous small lots and must be assembled for loading into round shipping lots on one mark. Letters of credit do not permit partial shipment, and if the ship wants to carry it, the cotton must be there in a form ready for loading and with the documentation required to clear it for shipment. Basically the forwarder serves as a coordinator, an expeditor, serving both the carrier and the shipper.

This mandatory splitup of forwarder and brokerage services, however well-intentioned, is equivalent to a $1\frac{1}{4}$ percent increase in freight rates and will cause a total disruption of an essential coordinating and expediting service which will leave both carrier and shippers with major operating difficulties. Any accomplishment in avoiding minimal discriminating or rebating which it may achieve will be minor compared to the damage it will do to economical and efficient operation.

It certainly should not be allowed to go into effect until the Congress has had an opportunity to act upon S. 1368 introduced by Senator Yarborough.

Mr. Chairman, I might add that I think if this order went into effect 120 days from now, it might be the equivalent of a maritime strike so far as the exports of American cotton are concerned. It would stop things cold.

Senator YARBOROUGH. There are other channels of trade established, other methods of handling. This would result in delays and confusion. You say as far as cotton is concerned it would stop it cold?

Mr. WHITE. It would stop it cold.

Senator YARBOROUGH. You have a quite interesting statement here that the enforcement of this order would result in a splitup of forwarder-broker services which still in some way or other have to have the services, and the ultimate result would be an increase in the costs if performed separately.

Mr. WHITE. I think that is correct.

Senator YARBOROUGH. I think that is an interesting point there.

I think also worthy of note are the eight points you made, particularly No. 8—

Arranging for reweighing, resampling, remarking, repairing, and attending to any other services needed after shipment has reached the port.

Is that a part of the services rendered?

Mr. WHITE. It is. Furthermore, the Coast Guard regulations which control the status of cotton are the condition in which it must be before it can be loaded. The shipping line will be in trouble if it loads cotton that is not in the condition prescribed.

Senator YARBOROUGH. Of course, cotton now under modern marketing requires more than staple length. They make many other tests of cotton, such as tensile strength, color, and other factors, don't they?

Mr. WHITE. It has become intensely complicated so that a cotton classer simply performs an initial service. From the tests come determination of the quality of a particular bale to satisfy a particular mill.

Senator YARBOROUGH. Are all of those factors about that bale shown on the export cotton?

Mr. WHITE. No, sir, they would not be. They would be a matter of contract between the exporter and the foreign importer of the cotton.

Senator YARBOROUGH. Thank you, Mr. White.

Mr. WHITE. Thank you.

Senator YARBOROUGH. The next witness is Mr. J. Monroe Sullivan, vice president, Pacific-American Steamship Association, 1625 K Street NW., Washington, D.C.

STATEMENT OF J. MONROE SULLIVAN, VICE PRESIDENT, PACIFIC-AMERICAN STEAMSHIP ASSOCIATION, WASHINGTON, D.C.

Mr. SULLIVAN. My name is J. Monroe Sullivan, vice president of Pacific-American Steamship Association, a trade association representing a large majority of the American-flag dry cargo operators serving the trade routes of the world and the Pacific coast, and as such we are interested in this legislation.

Our association supports the basic principles of the licensing of independent ocean freight forwarders as contained in S.1368. How-

ever, our support of this legislation is contingent upon amending section (e), page 4, line 8, by deleting the figure "5" and substituting therefor the figure "1 $\frac{1}{4}$ " so that the compensation which can be paid to the forwarder will not exceed 1 $\frac{1}{4}$ percent of the freight cost.

Our amendment provides a ceiling for the payment by ocean carriers to foreign freight forwarders for services rendered. This ceiling conforms with the current practice of long standing in the common carrier trade. There is no reason in practice or in equity for a higher ceiling.

We realize that the 5 percent figure is intended to be a ceiling, but the fact remains that it would invite pressures upon carriers to pay the maximum. This is completely without merit in light of the services normally rendered by the freight forwarders.

Thank you.

Senator YARBOROUGH. Thank you, Mr. Sullivan.

Mr. Sullivan, some of the east coast carriers who previously testified have indicated that they preferred that that clause be left out and that the compensation be handled by them by their conferences and their contracts with forwarders. You have suggested in lieu of that, that it be left in, but that there be a specific limitation.

Mr. SULLIVAN. Yes, sir.

Senator YARBOROUGH. I believe you said your support of the legislation is conditioned on that. Do you mean that if that were taken out in its entirety, that clause, not to exceed 5 percent of freight costs, that your association would then oppose the legislation if that were left out without a smaller ceiling being placed in the bill?

Mr. SULLIVAN. The language I received to present to the committee today said to indicate that our support is contingent upon the amendment to 1 $\frac{1}{4}$ percent, yes.

Senator YARBOROUGH. Thank you.

Mr. SULLIVAN. Thank you, sir.

Senator YARBOROUGH. Mr. Sullivan, was there some discussion among the Pacific coast carriers to ask for an amendment that that be left in the bill, but not to exceed 2 $\frac{1}{2}$ percent of the freight cost?

Mr. SULLIVAN. To the best of my knowledge, the only discussion that I have been informed of dealt with 1 $\frac{1}{4}$ percent. I was under the impression that one or more carriers today at this hearing would propose 2 $\frac{1}{2}$ percent.

Senator YARBOROUGH. Somewhere I heard that there was some proposal that it be changed to 2 $\frac{1}{2}$ percent. But the overwhelming preponderance of the evidence here is that most of the forwarders and the carriers particularly preferred that it be left out entirely and that it be left to the practices of their conferences in their particular areas with their particular forwarders with whom they had contracts to handle it, rather than by regulation in the bill.

Mr. SULLIVAN. I was advised by my office that some of the forwarders on the Pacific coast felt that 1 $\frac{1}{4}$ percent should be in the bill also. But I am not sure who they were.

Senator YARBOROUGH. Thank you, Mr. Sullivan, for the statement.

The next witness is Mr. Alvin Shapiro, vice president, American Merchant Marine Institute, Inc., 919 18th Street NW., Washington, D.C.

STATEMENT OF ALVIN SHAPIRO, VICE PRESIDENT, AMERICAN
MERCHANT MARINE INSTITUTE, INC., WASHINGTON, D.C.

Mr. SHAPIRO. My name is Alvin Shapiro. I am vice president of the American Merchant Marine Institute, an association known to you as the largest trade association in this country, representing U.S. flag carriers. Among our membership there is constituted a vast majority of the American merchant marine.

You have heard from some of our individual members as to their views on this particular subject matter. All I want the committee to know, and you in particular, Mr. Chairman, as the introducer of the bill, that as an association we concur in these views and we urge, as they did before us, prompt enactment of the principles embodied in this legislation.

Senator YARBOROUGH. Mr. Shapiro, does your membership include Pacific coast carriers?

Mr. SHAPIRO. We have one member on the Pacific coast who is not in the common carrier field. He is a tanker operator. Our membership is confined almost exclusively to the Atlantic, Gulf, and in part Great Lakes insofar as this is operated by American-flag carriers.

Senator YARBOROUGH. Thank you for your statement.

We have a request for another witness, Mr. Gerald Ullman, counsel for the New York Freight Forwarders, who desires to make a brief statement.

Is Mr. Ullman here?

Mr. ULLMAN. Mr. Chairman, I thought that it might be necessary to rebut some of the testimony from the Federal Maritime Board. But after listening to the witnesses that you have heard, I am sure that you are thoroughly convinced that that Board decision is so illogical and so impractical and so absurd that I need not rebut it.

Senator YARBOROUGH. Mr. Ullman, of course the Federal Maritime Board may have an opportunity to be heard in rebuttal if they desire. Actually, the limitations of time are such that we didn't have time to question the Federal Maritime Board about the opinion. Frankly, I haven't had an opportunity to study it. I have just casually browsed through it, which isn't an adequate study.

This subcommittee, or the full committee, may desire to call the representatives of the Federal Maritime Board back later.

Mr. ULLMAN. If that should happen, Mr. Chairman, I know, speaking on behalf of the New York association, we may, if deemed advisable, ask for an opportunity to present a contrary position.

Senator YARBOROUGH. If any new matters are developed that haven't been developed today, or are not developed in the Board's opinion itself, or some new matters not developed anywhere yet, interested parties will be notified. Otherwise, we will take your expressions today as a statement of your opinion, because I know from your testimony that you gentlemen have had an opportunity to examine this opinion and order of the Federal Maritime Board.

Gentlemen, we have numerous communications here about this legislation. The opinion of the Comptroller General, of course, and of the Interstate Commerce Commission, and the General Services Administration, which will be placed in the record. We are still waiting for communications from the State Department, from the Treasury, and from Justice, normally requested in such cases, in such types of

legislation, to give them an opportunity to express their opinions if they desire.

We have a number of communications from Senators here that will be placed in the record at this time.

Senator J. Glenn Beall, of Maryland, and Kenneth B. Keating, of New York, both support this legislation and have attached statements in support of it.

Senator Jacob K. Javits, of New York, supports it, and has attached a statement.

Senator Case of New Jersey doesn't state his position, but transmits a communication from the W. R. Keating Co. in support of the legislation.

Congressman Victor L. Anfuso, of New York, has communicated with this committee and attaches a statement supporting the legislation.

There are many letters and telegrams in support of the legislation from different parts of the country. We will not take time now to read them, but I am ordering all of these placed in the record, and those against it also. We won't just put the favorable material in the record.

(The communications follow:)

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, April 12, 1961.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce, U.S. Senate.

DEAR MR. CHAIRMAN: Further reference is made to your letter dated March 20, 1961, requesting our comments on S. 1368, 87th Congress, a bill to amend the Shipping Act, 1916, to provide for licensing independent ocean freight forwarders, and for other purposes.

The legislation proposed by this bill is designed to correct various questionable practices of foreign freight forwarders brought to light by investigations conducted by this Office in 1955 and in subsequent hearings conducted by a special subcommittee of the House Committee on Merchant Marine and Fisheries. Foremost among such practices was the establishment by shippers of dummy subsidiaries who performed little or no forwarding functions except to bill carriers for brokerage and collect such fees.

In view of this and other questionable practices, we believe there is a definite need for specific regulatory control over this segment of the maritime industry and, to the extent that S. 1368 is designed to authorize the Federal Maritime Board to prevent unqualified persons from engaging in business as foreign freight forwarders and to regulate the activities of qualified foreign freight forwarders, we would favor its enactment.

However, we note that subsection 44(e), as proposed by S. 1368, authorizes common carriers by water to compensate foreign freight forwarders to the extent of 5 percent of the freight cost when the forwarder has performed three of the services specifically enumerated in subsection 44(e). In view of the traditional brokerage fee of 1¼ percent of the freight cost, and the apparent willingness of freight forwarders in the past to perform forwarding services without charge to the shipper in order to collect brokerage from the vessel, the justification for establishing a maximum fee of 5 percent for performing such services as are necessary to fulfill the requirements of subsection 44(e) would appear to be questionable. Additionally, subsection 44(e) as presently constituted would not require a certification from the freight forwarder that he had solicited or secured the cargo in question for the vessel. Under these provisions it would therefore appear that a total charge of 6¼ percent of the freight cost, consisting of 5 percent as freight forwarder charges and 1¼ percent as brokerage fee, could be assessed against the vessel.

We have no information relative to the effect, if any, which payment of such additional fees by U.S. flag vessels may have upon their competitive position with foreign flag vessels. However, it would appear to be a logical assumption:

that profits of U.S. flag subsidized vessels may be expected to decline in direct proportion to payments of such additional fees, and that the possibility of profit recapture from such operators by the Government under section 606 of the Merchant Marine Act, 1936, as amended, will be adversely affected in the same manner. In view thereof, and in the absence of evidence that the value to the carrier of the services listed in subsection 44(e), exclusive of the solicitation and securing of cargo for the ship listed in subsection 44(e)(1), approximates 5 percent of the freight cost, we are unable to recommend favorable consideration of this portion of the bill.

Sincerely yours,

FRANK H. WEITZEL,
Assistant Comptroller General of the United States.

INTERSTATE COMMERCE COMMISSION,
April 19, 1961.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.*

DEAR CHAIRMAN MAGNUSON: Your letter of March 20, 1961, addressed to the Chairman of the Commission and requesting comments on a bill (S. 1368) introduced by Senator Yarborough to amend the Shipping Act, 1916, to provide for licensing independent ocean freight forwarders, and for other purposes, has been referred to our Committee on Legislation. After consideration by that Committee, I am authorized to submit the following comments in its behalf:

S. 1368 would amend the Shipping Act of 1916 (46 U.S.C. 801 et seq.) so as to provide for licensing and regulation of independent ocean freight forwarders by the Federal Maritime Board. The forwarders affected would be those engaged in the dispatching of shipments on behalf of others by oceangoing common carriers in commerce from the United States or its possessions to foreign countries, or between the United States and its possessions, or between such possessions, and the handling of the formalities incident to such shipments.

This Commission has no jurisdiction over independent ocean freight forwarders engaged in dispatching shipments moving by oceangoing carriers to or between points not in the United States. Accordingly, we are not in a position to express a helpful opinion with respect to the merits of the bill.

Respectfully submitted.

EVERETT HUTCHINSON, *Chairman,*
HOWARD G. FREAS,
KENNETH H. TUGGLE,
Committee on Legislation.

GENERAL SERVICES ADMINISTRATION,
Washington, D.C., July 27, 1961.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: Your letter of March 20, 1961, requests GSA's comments concerning S. 1368, a bill to amend the Shipping Act, 1916, to provide for licensing independent ocean freight forwarders, and for other purposes. The bill would require independent ocean freight forwarders to be licensed by the Federal Maritime Board and would also authorize common carriers by water to compensate such forwarders under certain circumstances.

The matter of compensation to ocean freight forwarders by common carriers by water was the subject of an extensive investigative proceeding by the Federal Maritime Board in *Investigation of Practices, Operations, Actions, and Agreements of Ocean Freight Forwarders and Related Matters, and Proposed Revision of General Order 72* (46 CFR 244), docket No. 756, and *Investigation of Practices and Agreements of Common Carriers by Water in Connection With Payment of Brokerage or Other Fees to Ocean Freight Forwarders and Freight Brokers*, docket No. 831. The Board issued a consolidated report and order June 30, 1961, on these dockets which, among other things, prohibited the payment of brokerage to freight forwarders by common carriers by water. GSA is in accord with this decision.

GSA favors enactment of the licensing provisions of S. 1368 since it would further strengthen the powers of the Federal Maritime Board now prescribed in the Shipping Act of 1916 to regulate the activities of ocean freight forwarders. Consequently, many of the inequities disclosed in the Board's investigation may be eliminated.

In view of the Board's decision, it is believed that existing law, enactment of the proposed licensing provision, and the regulations promulgated by Federal Maritime Board in General Order 72 (revised) will result in the payment of fair and reasonable freight forwarder fees by shippers. Consequently, there appears to be little justification for the enactment of legislation designed to permit ocean carriers to compensate forwarders for forwarding services furnished shippers. Accordingly, GSA recommends the deletion of subsection (e) (pp. 4 and 5) of the bill.

The Bureau of the Budget has advised that from the standpoint of the administration's program there is no objection to the submission of this report to your committee.

Sincerely yours,

BERNARD L. BOUTIN, *Acting Administrator.*

U.S. SENATE,
COMMITTEE ON THE DISTRICT OF COLUMBIA,
July 26, 1961.

HON. RALPH W. YARBOROUGH,
U.S. Senate, Washington, D.C.

DEAR MR. YARBOROUGH: I am advised that your special subcommittee will meet on July 27, 1961, to hold hearings on S. 1368, the purpose of which is to license foreign freight forwarders.

I fully endorse this legislation and hope that your committee will act quickly and favorably to report the bill. I am enclosing for your information a copy of the statement submitted to the committee last year in support of a similar bill, S. 2300.

I would appreciate it if this letter and the attached statement may be included in the record.

With all good wishes, I am,
Sincerely yours,

J. GLENN BEALL.

STATEMENT OF SENATOR J. GLENN BEALL

I appreciate being afforded this opportunity to submit my views with reference to H.R. 5068, which amends the Shipping Act, 1916, to provide for the licensing of independent foreign freight forwarders.

While I support the principles of H.R. 5068 and recognize the need for legislation in this field, I do believe that there are certain deficiencies in H.R. 5068 which, if not corrected, will defeat the necessary purpose of this bill.

In this regard, I support S. 2300, introduced by the chairman of this committee, which provides the needed regulation without placing a stranglehold on an industry which, admittedly, is an integral part of the Nation's shipping complex.

Under section 2(e) of H.R. 5068, a common carrier by water may compensate an independent foreign freight forwarder when such forwarder has solicited and secured cargo for such carrier. In practice, this provision would have the effect of prohibiting the payment of brokerage in the majority of cases. The forwarder is usually engaged by the export shipper at a time when the carrier does not even know of the existence of the cargo. Yet under H.R. 5068, the forwarder would virtually be forced to seek agreements with carriers in order to obtain a fee. Such a trend could only lead to undesirable practices greater in degree than those which the bill seeks to prevent. Under such a restriction, phony agreements and sham practices would certainly be encouraged.

This deficiency is not present in S. 2300, which requires that the forwarder, in order to be eligible for a fee, must perform any two of the enumerated services—one of which I might add is the solicitation and securing of cargo.

In the same section (2(e)), H.R. 5068 provides that compensation is to be measured by the extent of the value rendered. But nowhere are the words "extent of value" defined. In this way, the bill presents a question which must

ultimately be answered by the courts. With each case being different, H.R. 5068 will, if passed, be the cause of an unlimited number of lawsuits.

Once again, this deficiency is not present in S. 2300.

Finally, in section 2(c), H.R. 5068 would give the Maritime Board authority to fix maximum brokerage fees. This has been attempted before, but without result. Since no two cases are alike in the services required, it is virtually impossible to predetermine a fee for all cases. This provision should be deleted from H.R. 5068.

In conclusion, I support and urge favorable consideration of S. 2300 which, if enacted, will put an end to the undesirable practices now in existence and will, at the same time, allow the forwarding industry to continue to operate as an integral and a desirable part of the shipping industry.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
July 25, 1961.

HON. RALPH W. YARBOROUGH,
U.S. Senate, Washington, D.C.

DEAR SENATOR YARBOROUGH: I am pleased to give my wholehearted endorsement to S. 1368, a bill clarifying the role and practices of freight forwarders, which is now being studied by your subcommittee.

As you know, a very similar bill was passed by the Senate in the last session of Congress. The bill now before your subcommittee is a somewhat perfected version of the measure to which the last Senate gave its approval.

Beside being a better bill, S. 1368 appears at a much more critical time. The recent decision by the Federal Maritime Board in effect dooms the freight forwarding industry unless some legislative remedy is immediately provided.

This decision is wholly inexplicable in light of the findings of the Maritime Board's own examiner. It is opposed by virtually all interested parties.

I request that you make this letter, as well as my testimony last year, a part of the record of the hearings that your subcommittee is currently conducting.

Very sincerely yours,

KENNETH B. KEATING.

TESTIMONY OF SENATOR KENNETH B. KEATING (REPUBLICAN, NEW YORK)

Mr. Chairman, I want to express my appreciation for this opportunity to appear this morning with regard to S. 2300 and H.R. 5068, legislation affecting the role and practices of freight forwarders. This legislation is of great importance to the State and city of New York and to the Port of New York Authority, which as you know is a self-supporting corporate agency of the States of New York and New Jersey.

There are two bills presently before this committee: S. 2300, introduced by Chairman Magnuson, and H.R. 5068. The latter was passed by the House on August 18, 1959.

I recommend that the committee report out favorably S. 2300, or in the alternative H.R. 5068 with amendments that would make it conform with S. 2300 and at the same time with the version of H.R. 5068 reported out last year by the Special Subcommittee on Freight Forwarding of the House Merchant Marine and Fisheries Committee. The latter bill was in many respects similar to S. 2300 introduced by Senator Magnuson.

However, there are significant differences between H.R. 5068 as finally passed by the House and S. 2300. H.R. 5068 in its present form would, I believe, foment litigation, shackle business, and cause wasteful, expensive, and protracted proceedings before the Federal Maritime Board.

Mr. Chairman, last year, the State of New York represented by its attorney general, the city of New York represented by its corporation counsel, and the Port of New York Authority by its own counsel, filed a joint brief with the Maritime Board on many of the important matters contained in the legislation under consideration today. This entire subject and all of its ramifications was then involved in proceedings pending before the Board.

The New York brief contains an excellent and forthright statement concerning all of the most important and most frequently discussed factors covered by the bills presently before this committee. I refer the committee to that brief and request that it be made part of the record at this point in my testimony.

(The brief in question is on file with the committee.)

Both S. 2300 and H.R. 5068 amend the Shipping Act of 1916, and are intended (and I quote) "to provide licensing for independent freight forwarders, and for other purposes." At the present time, forwarders merely register with the Maritime Board. To the best of my knowledge, all of the major interests involved; shippers, consignors, steamship companies, and the foreign freight forwarders themselves, favor licensing. It is the "other purposes" which these bills are designed to carry out that is the most important part of these bills, and it is this subject that I wish to discuss this morning in greater detail.

H.R. 5068 says that the Maritime Board shall prescribe "rules and regulations including maximum brokerage fees." S. 2300 wisely omits this prescription. The records of hearings available to this committee indicate clearly that ocean-going carriers have been paying brokerage fees to freight forwarders for generations. These fees are paid in honorable practice by one great segment of American commerce to another group of American businesses for valuable and essential services under agreements openly arrived at. The committee already has before it the statements of the majority of American steamship lines on this subject. They indicate that there is little controversy here and that freight forwarders definitely earn the fees which they receive for the valuable and indispensable services which they render. H.R. 5068 in calling for "rules and regulations including maximum brokerage fees" raises the prospect of a new limitation on American businesses in this important field. It would very likely lead to more bureaucracy, more expenses, and in general more of a burden on international and domestic commerce.

H.R. 5068 as passed by the House further provides that common carriers by water may compensate a freight forwarder only when the forwarder has "solicited and secured" cargo for such carrier and has performed one additional service as set out under the act "and has so certified" to this effect. The services listed are—

"(1) The solicitation and securing of the cargo for the ship or the booking of, or otherwise arranging the space for, such cargo;

"(2) The coordination of the movement of the cargo to shipside;

"(3) The preparation and processing of the ocean bill of lading;

"(4) The preparation and processing of dock receipts or delivery orders;

"(5) The preparation and processing of consular documents or export declarations; and

"(6) Relieving the carrier of bookkeeping and billing expense by advancing or arranging payment of freight and accessorial charges, if any, on all prepaid shipments handled by such forwarder on a particular vessel."

Notice the words, "and has so certified" with reference to the six services listed above. Certified to whom? On what kind of form? Filed with whom? Subject to review by whom?

Let me call attention also, to the phrase, "has solicited and secured cargo for such carrier" which appears in H.R. 5068 as passed by the House. It does not appear in S. 2300. What do these terms "solicit and secure" mean? Who shall interpret them? The Maritime Board? The courts? A real estate broker does not have to "solicit and secure." Neither does a stockbroker. S. 2300 admittedly prescribes but does not shackle commerce or create new hardships and burdens for American shippers and forwarders. The Senate bill simply says that compensations may be paid for any of the services which I have listed.

Mr. Chairman, these then in brief are some of the reasons that I favor S. 2300 or H.R. 5068 as amended to conform. This committee hardly needs to be told that foreign freight forwarders are a vital factor in the field of American commerce. There are about 1,200 of them in the principal ports and cities of the United States. The facts are all contained in reports and documents available to this committee. What the foreign freight forwarders do was well described in the excellent and informative brief filed jointly by New York State, New York City, and the Port of New York Authority, which I have asked to have inserted in the record.

Therefore, Mr. Chairman, I urge a favorable report on S. 2300, or, in the alternative, on H.R. 5068 with amendments to conform to S. 2300.

U.S. SENATE,
COMMITTEE ON LABOR AND PUBLIC WELFARE,
July 21, 1961.

Senator WARREN G. MAGNUSON,
Old Senate Office Building, Washington, D.C.

DEAR MAGGIE: I am writing to urge that prompt committee action be taken on S. 1368 to amend the Shipping Act of 1916.

S. 1368 deals with the licensing of ocean freight forwarders and the terms under which they may be compensated by ocean carriers for services rendered to them. The regulation and licensing of freight forwarders by the Federal Maritime Board is a matter of particular interest and importance to the State of New York because freight forwarding is an integral and vital part of the operation of the great port of New York.

The Federal Maritime Board recently rendered a decision with respect to ocean freight forwarding which will substantially disrupt commercial activity in all ports in the State and cripple the entire export industry. I refer to docket Nos. 765/831, in which the Board issued a rule, effective in early November, which would deny to forwarders any compensation from ocean carriers for services rendered as a middleman in bringing about the dispatch of an export shipment. This compensation, traditionally known as brokerage, has been paid to the forwarding industry for almost 100 years.

The Board's rule will have damaging and far-reaching effect on the operations of the port of New York. Approximately one-half of the forwarders presently registered with the Federal Maritime Board are in the New York area, and 75 percent of the cargo handled by forwarders throughout the United States passes through the port of New York. Forwarders derive approximately 30 percent of their revenue from brokerage. In dollar volume this amounts to \$7 million a year.

Exporters have always made use of ocean freight forwarders, for without the skilled services which the forwarder provides the steamship carriers would find it most difficult to obtain cargo in a timely and orderly manner and properly documented.

Legislation licensing forwarders and assuring their compensation for services rendered to carriers is necessary to preserve not only the freight forwarding industry but the role of the port of New York in the handling of general cargo. The bills now before the Congress would preserve the traditional commercial usage of payments by carriers to legitimate freight forwarders and, at the same time, correct the abuses which have in some cases arisen with respect to the payment of brokerage.

Enactment of S. 1368 is of urgent importance to the port of New York, and to our foreign commerce generally. I urge respectfully that this legislation receive the early and favorable consideration of your committee.

With best wishes,
Sincerely,

JACOB K. JAVITS.

WASHINGTON, D.C., July 26, 1961.

Hon. RALPH YARBOROUGH,
Chairman, Senate Commerce Subcommittee,
U.S. Senate, Washington, D.C.
(Attention of Mr. August J. Bourbon.)

DEAR MR. CHAIRMAN: I am sending you herewith a statement expressing my views on the bill, S. 1368, which is scheduled for hearings before your subcommittee on July 27, 1961.

Please bring this statement to the attention of the subcommittee and enter it in the official record of the hearings on the above measure.

Sincerely yours,

VICTOR L. ANFUSO,
Member of Congress.

STATEMENT BY CONGRESSMAN VICTOR L. ANFUSO, OF NEW YORK

Mr. Chairman and members of the committee, I appreciate this opportunity to present my views to your distinguished committee on the bill S. 1368, the so-called freight forwarders bill.

I had introduced a similar bill in the House on March 14, 1961, which is now before the House Merchant Marine and Fisheries Committee.

Foreign trade is one of our most important industries. It is estimated that some 4,500,000 Americans are employed in industries associated with our foreign trade, thus constituting about 7 percent of the total labor force of the Nation. Expanding our trade relations with other countries means strengthening our economy, and as such should be encouraged.

A significant part of our foreign trade picture is the freight forwarding industry, which is of vital importance to the economy of New York and other major ports of the country, as well as to the large shipping industry in those ports.

Freight brokerage and ocean freight forwarding is an ancient profession dating back to the early days of the sailing vessel. Brokerage and forwarding became an important service to both shipper and carrier, and in time developed into an integral part of our foreign commerce. This relationship between shipper, forwarder, and carrier continued satisfactorily and efficiently for many decades prior to World War II.

In 1943, the U.S. Maritime Commission entered the picture, and since then there developed a situation which is gradually driving the forwarding industry to the point of bankruptcy. In that year the Maritime Commission issued a questionnaire to the forwarders, resulting in a court challenge of the Commission's authority and a ruling by the Supreme Court in 1946 that forwarders were "other persons subject to the Shipping Act."

Subsequently, a series of investigations of New York freight forwarders was undertaken, followed by succeeding dockets and regulations regarding brokerage and its practices. Reams of testimony were accumulated from persons directly concerned with foreign commerce, and the overwhelming consensus was that forwarders are essential to the smooth flow of our foreign trade and that both shippers and carriers were willing to pay for their services. In March 1957 the Federal Maritime Board, successor to the Maritime Commission, issued a proposed revision of the forwarders' regulations which would have rendered impossible the continued existence of the forwarding industry and would have seriously affected the flow of our foreign trade.

A storm of protest then arose all over the country among shippers, State and local governments, port authorities, chambers of commerce, export groups, and others. Of some 500 comments received by the Maritime Board, all but two condemned the proposed regulations. By this time, the forwarding industry realized the futility of endless litigation and turned to Congress for help to avert bankruptcy. Bills were introduced to license, regulate, and protect the interests of the forwarders. One was passed by the House in 1958. Another was passed by both Houses in the 86th Congress, but adjournment intervened in working out a compromise of the two versions.

Early this year I introduced my bill, H.R. 5562, which contains the same or similar proposals as H.R. 5068 of the 86th Congress. My bill would—

1. Eliminate certain abuses and questionable practices with which the forwarding industry is being charged, such as the dummy forwarder and the collection of unearned brokerage fees.
2. Require the forwarder to certify the services performed as a condition for receiving compensation, thus providing the carrier with an adequate guide to proper brokerage fees and the administrative agency with a weapon for prosecution of violations.
3. Bring the ocean freight forwarding industry under strict but fair licensing and regulation.
4. Free the forwarding industry from the constant costs of litigation and the dire threats to its existence.
5. The clear and unambiguous language of the bill makes it an instrument for easy enforcement and inexpensive administration.

These changes and innovations are long overdue. This is the only and most logical way to save this industry. We cannot afford to destroy industries or to drive them to the edge of bankruptcy. It is for this reason that I support the bill, S. 1368, now under consideration by your committee.

WASHINGTON, D.C., July 26, 1961.

HON. WARREN G. MAGNUSON,
U.S. Senator, Senate Office Building,
Washington, D.C.

MY DEAR SENATOR: I understand that hearings are being held tomorrow on S. 1368 covering the licensing, etc., of foreign freight forwarders.

I have introduced a similar bill in the House, H.R. 5590, and I wish to highly endorse and recommend that the Senate version of this bill be reported out, which I believe is absolutely urgent and necessary for the survival of the freight forwarding industry.

With warm regards, I am,
Sincerely yours,

FRANK W. BOYKIN,
Member of Congress.

(Prior and subsequent to the hearing a large number of communications and statements were received supporting the bill, and four statements opposing. It was decided to print herewith the wires, et cetera, received from national and local associations, and to list in this hearing record the names of all individuals and businesses who sent in their views, which have been made part of the committee's files on the bill. The statements, letters, and wires follow:)

THE PORT OF NEW YORK AUTHORITY,
New York, N.Y., July 25, 1961.

HON. WARREN G. MAGNUSON,
Chairman, Subcommittee on Merchant Marine and Fisheries,
Senate Office Building, Washington, D.C.

MY DEAR MR. CHAIRMAN: It is my understanding that on July 27 the Subcommittee on Merchant Marine and Fisheries of the Committee on Commerce will hold hearings on a bill introduced by Senator Yarborough (S. 1368) to amend the Shipping Act of 1916 to provide for the licensing of independent ocean freight forwarders. As an agency of the States of New York and New Jersey, with responsibility for making recommendations on matters affecting the commerce of the port of New York, the port authority is extremely interested in this legislation. It would be appreciated if this letter were made a part of the record of the hearings.

The port of New York is basically a forwarder port, with more than 600 forwarders contributing to the efficient handling of the endless variety of goods which move across the aprons of its marine terminal facilities. The foreign freight forwarder plays a key role in the handling of these goods. He reserves space for the cargo on the steamer; sees to it that it arrives at ship-side at the proper time; prepares the necessary shipping documents, such as the ocean bill of lading, dock receipt, export declaration, and consular invoice; and arranges for various assessorial services, such as trucking, insurance, and warehousing. Clearly, forwarder operations are of vital importance to the water carrier, to the shipper and to the hundreds of thousands of residents of the New York-New Jersey port region who owe their livelihood directly or indirectly to the movement of waterborne commerce.

At the present time, the very existence of the forwarding industry is being threatened by overly restrictive rules and regulations recently promulgated by the Federal Maritime Board in its decision in FMB dockets 765 and 831 revising General Order 72. While we are seeking reconsideration of this order by the Board, it is our feeling that this matter is of sufficient importance to warrant congressional action.

Such action should take the form of legislation establishing Federal control over the forwarding industry to assure the shipping public that the forwarder with whom they deal will be competent and morally and financially responsible. It should not, however, be restrictive to a degree to lead to the eventual destruction of the forwarding industry as would the rules recently promulgated by the Federal Maritime Board.

It is our judgment that S. 1368 adequately fulfills these criteria. It provides for the licensing of independent forwarders and will thus eliminate the problem of the "dummy forwarder": that is, a forwarder under the control of

a shipper who uses the device as a means of unlawfully obtaining compensation from steamship lines. At the same time, it contains reasonable provision governing the compensation which a forwarder may receive for his services and specifies the conditions under which such compensation may be received.

Both the licensing and compensation provisions are long overdue. At the present time, the Maritime Board lacks authority to deny the right to do business as a forwarder to a person who is not qualified. The licensing will eliminate fly-by-nights and incompetents. The compensation section would constitute a congressional recognition of the steamship industry's century old practice of paying "brokerage" for services rendered to water carriers by a forwarder. Such compensation is essential to the economic health of the forwarding industry as it constitutes a significant portion of that industry's total income.

Enactment of this section will serve two worthwhile purposes. Firstly, it will eliminate the attempts by some forwarders to receive compensation where they do little or no work in connection with an individual shipment. Secondly, it will once and for all end 15 years of vexatious and expensive litigation before the Federal Maritime Board on the issue as to the terms under which carriers may compensate forwarders.

It is our firm conviction that the passage of legislation providing for reasonable regulation of the freight forwarding industry such as S. 1368, including provision for payment of brokerage fees by water carriers, is essential to the continued efficient operation of the port of New York and other ports of the Nation. Such legislation is supported by the entire forwarding industry, American-flag steamship operators, port and shipper groups, and the city and State of New York. It is our sincere hope that it be enacted into law during the current session of Congress.

Sincerely yours,

MATTHIAS E. LUKENS,
Assistant Executive Director.

NEW YORK BOARD OF TRADE, INC.,
New York, N.Y., June 30, 1961.

HON. WARREN G. MAGNUSON,
Chairman, Commerce Committee, Senate Office Building, Washington, D.C.

DEAR SENATOR MAGNUSON: The New York Board of Trade, Inc., is interested in healthy export commerce from the port of New York and the preservation of the ocean freight forwarders services now under consideration in H.R. 2488.

We earnestly reiterate our similar requests of July 1, 1957, and February 18, 1960, for speedy favorable action on the provisions which provide for the licensing of forwarders and the conditions under which they may continue this valuable service.

Your efforts on behalf of a healthy foreign trade and our merchant marine are widely appreciated.

Very sincerely,

PHILIP F. STEWART, *President.*

NATIONAL EXPORT TRAFFIC LEAGUE, INC.,
New York, N.Y., June 6 1961.

Re ocean freight forwarder legislation.

Senator WARREN MAGNUSON,
Chairman of the Senate Commerce Committee, Washington, D.C.

DEAR SENATOR MAGNUSON: Our membership consists primarily of exporters who ship a very substantial volume of goods throughout the world. In that connection, virtually all our members employ the services of ocean freight forwarders. Forwarders do a necessary, efficient, and economical job in the arranging for the exportation of traffic from the manufacturer's plant to the oversea consignee. If the forwarding industry is either crippled or destroyed, our export commerce will inevitably suffer.

H.R. 2488 and similar bills provide for the licensing of forwarders and the conditions under which they may continue to receive their traditional compensation from ocean carriers. The licensing provision will assure to the shipping public that forwarders will be competent and morally and financially responsible. The compensation section would constitute a congressional recognition of the

steamship industry's century-old practice of paying "brokerage." Without this customary revenue from carriers forwarding costs will be substantially increased, thereby placing American exporters at a disadvantage with their foreign competitors.

We support wholeheartedly the forwarder legislation and strongly recommend that the committee take appropriate action to bring about its speedy passage. At a time when our Nation is so urgently in need of expanding our exports we believe it imperative that the forwarding industry be maintained at full strength so that it may continue to function as an indispensable link in our foreign commerce. Any diminution in the ability of forwarders to handle shipments efficiently or any increase in their charges to exporters can only be detrimental to our Nation's efforts to increase its sales abroad.

Sincerely yours,

HENRY GRAEBNER, *President.*

AMERICAN PRESIDENT LINES,
San Francisco, Calif., July 31, 1961.

SENATOR CLAIR ENGLE,

Chairman, Special Subcommittee, Senate Committee on Commerce, New Senate Office Building, Washington, D.C.

DEAR SENATOR ENGLE: Distance and time precluded our making a direct statement during course of the hearing your subcommittee held July 27, 1961, on S. 1368, legislation introduced by Senator Yarborough that would provide for the licensing of independent freight forwarders and procedures for the payment of brokerage by ocean carriers. We understand the record in this matter is being left open for a few days and we would greatly appreciate having our views, as expressed by this letter, incorporated in the record.

The position of American President Lines has not altered during the extensive period various bills related to this subject matter have been before the Congress and provisions of the so-called Bland Forwarding Act expired. We made statements on this general subject to your committee during August 1958 and on other occasions. Additionally, our representatives have testified in freight forwarder proceedings conducted by the Federal Maritime Board.

We support the general principles of S. 1368. The licensing provisions appear to us as most desirable, in contrast to the simple registration system heretofore maintained by the Maritime Board, to the maintenance of a responsible and stable freight forwarding industry. The specific functions set forth in S. 1368 are a measure of the services performed for ocean carriers by freight forwarders, but not necessarily their only functions. Whether or not standards of performance of services to ocean carriers are spelled out in legislation or left to the Federal Maritime Board to establish is not particularly important from our viewpoint. The important thing is recognition that bona fide forwarders do render valuable services to ocean carriers. Such service, when rendered, is entitled to reasonable compensation. In that regard, our only objection of substance to S. 1368, as introduced, is the provision for brokerage of up to 5 percent of the gross ocean freight. Although intended as a ceiling, anything like this written into a statute generally becomes the "floor." Traditionally, brokerage to freight forwarders in this country has been 1¼ percent. Although there is merit to deleting from legislation any "ceiling" for this purpose, and leaving it to discretion of the carriers, on balance, we favor the legislation specifically establishing a limitation, but one that would be more reasonable and consistent with the historical pattern. Our principal reason for this is to avoid a situation where groups of carriers formed into conferences, approved by the Federal Maritime Board, establish a rate of brokerage for freight forwarder services, such as the traditional 1¼ percent, leaving non-conference and, generally speaking, transient-type operators unrestricted in this regard.

We greatly appreciate the opportunity of submitting these brief comments and trust that it will prove feasible to enact during the current session legislation that will accomplish the basic objectives sought by S. 1368.

Respectfully,

GEORGE KILLION.

STATEMENT OF ANTHONY F. ARPAIA

My name is Anthony F. Arpaia and I am vice president, international services, of REA Express, formerly known as Railway Express Agency, Inc., with its principal office in New York City.

Although it was impossible for me to appear personally before the committee on July 27, 1961, I would like to submit a statement for inclusion in the record concerning S. 1368.

REA Express is a registered foreign freight forwarder (FMB No. 941). It is engaged in extensive oversea operations of various kinds. It innovated a unique through bill service which offers American shippers, on a single bill of lading and a single responsibility, transportation from any inland point in the United States to inland points in approximately 50 countries overseas. In addition to this service it performs conventional foreign freight forwarding for shippers at every major Atlantic, gulf, Pacific, and lake port. These latter services have been in existence for many years.

As a preliminary to what I shall say, I would like to point out that a little over a year ago, in order to eliminate or at least reduce the dollar gap in our international balance of payments, the President initiated a national trade expansion program and appointed a national committee, headed by Mr. Leonard F. McCollum. Regional committees were set up throughout the United States for the purpose of inducing Americans who had previously done little or no exporting to do so. REA Express cooperated very closely with the Department of Commerce and the national and regional committees in promoting this program and I feel it contributed greatly toward the success which it has had. This has not only helped eliminate the dollar gap but has helped the economy of the United States.

The decision of the Federal Maritime Board of June 29, 1961, which adopted a rule denying forwarders the right to receive brokerage from ocean carriers, may neutralize all of the benefits which were accomplished by the expansion of our export trade. The reason for this is clear. If foreign freight forwarders are deprived of the revenues received from ocean brokerage, the only alternative for offsetting their costs will be to raise their charges. Since the American exporter is already handicapped in competing in foreign markets because of high costs of production, this may cause a serious effect on our economy. The advantages of mass production, which were formerly the exclusive domain of American manufacturers, are gone since foreign producers have, since the war, developed the same techniques with resulting economies and efficiency on a lower base rate of pay for labor.

Furthermore, since no other country has adopted a similar rule prohibiting the payment of ocean brokerage, the natural consequence is to promote devices to circumvent the rule by either diverting traffic to Canadian ports or putting the pressure on ocean carriers to pay "a commission" through foreign brokers. It is unwise to furnish an opportunity to those few who might seek to accomplish the same end through evasion at the expense of legitimate businessmen.

We support S. 1368 because we approve of licensing provisions for foreign forwarders as a measure of protection to the public and to keep dummy forwarders and incompetents out of the business.

The other sections of the proposed bill are entirely sound and we are heartily in favor of all of the provisions of the bill. Foreign freight forwarding service should be placed on a sound and legitimate footing and S. 1368 will achieve this result.

We therefore go on record as supporting S. 1368 in its entirety.

CATHOLIC RELIEF SERVICES,

NATIONAL CATHOLIC WELFARE CONFERENCE,

New York, N.Y., June 25, 1961.

HON. RALPH W. YARBOROUGH,
U.S. Senate, Washington, D.C.

DEAR SENATOR YARBOROUGH: This agency, one of the American voluntary agencies for foreign service engaged in the distribution of title III foodstuffs and other relief supplies to our needy neighbors in friendly lands, has viewed with some trepidation certain efforts to cripple the services rendered by legitimate freight forwarders handling oversea shipments by eliminating the broker-

age currently paid by shipping lines on the basis of cargo placed with them. The place of the freight forwarder in oversea traffic is, as you know so well, vitally important to both the shipper and the shipping line.

What makes the efforts of a relatively few who are, for some reason, determined to strike at the heart of the oversea freight forwarding industry even more difficult to understand when they insist that the full cost of forwarding be borne by the shipper is that, in essence, through the payment of freight charges the shipper is presently absorbing same.

While commercial shippers oppose the contemplated changes in the Federal Maritime Board regulations for other reasons, the voluntary agencies look with considerable apprehension at such changes as are being contemplated. Voluntary agency shipments to friendly countries are heavily subsidized by the International Cooperation Administration. In the past, freight forwarders have handled relief cargoes without charge of any kind to voluntary agencies as shippers. Were these changes to be put into effect a new and considerable financial burden—this agency moves overseas 600,000 tons of supplies a year—would thus be placed upon agencies already faced with the problem of expending every contributed dollar to the best possible advantage.

I am hopeful that you will vigorously oppose the bill which, I understand, is to be presented shortly if only in the best interests of the agencies which are trying to build a bridge of good will between the people of America and the peoples of other lands.

The freight forwarders utilized by this organization provide essential services which each year save considerable sums of money for this agency as a shipper. I would estimate that to duplicate such services through the employment of its own staff, or the purchase of similar professional services, would cost this agency a minimum of \$150,000 a year.

Thus our concern.

Sincerely yours,

EDWARD M. KINNEY,
Director, Purchasing and Shipping.

TRANS-ATLANTIC ASSOCIATED FREIGHT CONFERENCES,
New York, N.Y., August 2, 1961.

Hon. Senator WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.*

DEAR SENATOR MAGNUSON: I have been directed to advise you that the member lines of the North Atlantic Baltic Conference wholeheartedly support the passage of Senate bill 1368, designed to provide for licensing of independent ocean freight forwarders and authorizing payment of brokerage to such forwarders by our steamship member lines, except that the limitation of 5 percent on forwarding fees be deleted from the bill. The payment of brokerage on commercial cargoes in the transatlantic trades has been a recognized practice and custom for more than 80 years and should be left to normal negotiations between the carriers and forwarders. Traditionally in the Baltic trade, brokerage through the years has been paid on the basis of 1¼ percent. Under all circumstances, our member lines consider payment of brokerage on commercial cargoes reasonably necessary and required to insure the necessary flow of cargoes to their vessels.

Our member lines consider the services of forwarders not only of vital importance to the foreign commerce of the United States but also valuable and essential in the operation of vessels.

The economic value of forwarders does not end with the nomination or designation or securing or collaborating in securing, engaging, or booking cargo and the value of their service continues to be important in the long run as a commercial matter. Forwarders perform and render many valuable and essential services from time to time such as documentation (this involves many technical details and formalities requiring specialized skill and know-how); booking of cargo (arranging for space with ocean carrier); calling cargo forward (tracing and arranging transfer from inland carrier to ocean carrier); expediting delivery of cargo to alongside the vessels in a manner to permit orderly loading and to prevent delay in sailings; marking goods, if necessary; preparation and distribution of documents (bills of lading, dock receipts, export declarations, etc.);

supervision of goods at ports of loading and ports of discharge to final destination abroad; and taking care of all other matters incidental to effect export shipment.

Your acknowledgment of the safe receipt of this letter and that it has been placed in the record with respect to Senate bill 1368 will be appreciated.

With our great respects.

Very truly yours,

NORTH ATLANTIC BAL TIC FREIGHT CONFERENCE,
C. R. ANDREWS, *Chairman*.

INTERNATIONAL APPLE ASSOCIATION, INC.,
Washington, D.C., August 4, 1961.

HON. RALPH YARBOROUGH,
Senate Office Building, Washington, D.C.

DEAR SENATOR YARBOROUGH: This is to inform you that the membership of the International Apple Association is wholeheartedly in favor of S. 1368, the freight forwarders license bill.

Unless this legislation is passed, the cost of doing business in the export field will be substantially increased to our members and, in turn, we will be less competitive with foreign suppliers.

In these days when the administration is making every effort to have a balance of payments, it is essential that no obstacle be placed in the passage of the bill which will accomplish this goal.

We will appreciate your efforts in securing passage of this bill.

Kindest regards.

Sincerely,

FRED W. BURROWS,
Executive Vice President.

TRANSPORTATION ASSOCIATION OF AMERICA,
Washington, D.C., August 2, 1961.

HON. RALPH YARBOROUGH,
U.S. Senate, Washington, D.C.

DEAR SENATOR YARBOROUGH: On behalf of the board of directors of the Transportation Association of America, I should like to express the association's support of legislation to require the licensing of independent foreign freight forwarders.

S. 1368, which you introduced on March 16, would provide for such licensing, and we therefore support this bill in principle. While we are not in a position to express either support for or opposition to the specific language contained therein, we can state specifically that our board recognizes the need for legislation along the lines of this particular bill. We wish to emphasize however that it is our understanding that this legislation would apply only to independent foreign freight forwarders and not to manufacturing and other companies which do their own freight forwarding.

For the record, all three of the permanent advisory panels in the TAA cooperative project with a direct interest in such legislation—user, freight forwarder, and water carrier panels—approve the licensing of independent foreign freight forwarders. Our air transport, highway, pipeline, and investor panels all state they are not opposed to it, and our railroad panel takes no position.

We request that this letter be made part of the official record.

Sincerely,

HAROLD HAMMOND.

HOUSTON, TEX., *August 1, 1961.*

HON. RALPH YARBOROUGH,
Chairman, Subcommittee on Foreign Freight Forwarders Legislation, Interstate and Foreign Commerce Commission, Senate Office Building, Washington, D.C.:

The Houston World Trade Association strongly urges passage of Senate bill 1368. Your strenuous efforts in behalf of the world trade community of Texas and the United States are greatly appreciated.

HOUSTON WORLD TRADE ASSOCIATION,
BEN L. GOLUB, *President.*

HOUSTON, TEX., July 28, 1961.

Senator RALPH YARBOROUGH,
Chairman, Subcommittee on Forwarder Legislation, Interstate and Foreign
Commerce Committee, Senate Office Building, Washington, D.C.:

We oppose Federal Maritime Board decision and regulations which prohibit freight forwarders from collecting customary brokerage compensation from water carriers and ask that such regulation be withheld until forwarder legislation acted upon. We strongly favor Senate bill 1368 which provides licensing forwarders and authorizes carrier compensation when proper duties are performed.

HOUSTON COTTON EXCHANGE.

HOUSTON, TEX., July 28, 1961.

Senator RALPH YARBOROUGH,
Chairman, Subcommittee on Forwarder Legislation, Commerce Committee,
Senate Office Building, Washington, D.C.:

We urge Federal Maritime Board's decision and new regulations, GO-72, prohibiting payment brokerage commissions be withheld until Congress acts upon forwarder legislation now pending. We strongly support Senate bill S. 1368 and House bill H.R. 2488 which licenses freight forwarders and authorizes water carriers to continue to pay brokerage compensation to forwarders when certain services are performed and will appreciate your assistance.

HOUSTON MARITIME ASSOCIATION.

HOUSTON, TEX., July 28, 1961.

Hon. RALPH YARBOROUGH,
U.S. Senate, Washington, D.C.:

S. 1368 presently before your Subcommittee on Merchant Marine and Fisheries is of substantial concern to the general public. Ocean freight forwarders provide a particular and special service of unlimited value to the exporter. Without those services our foreign trade would suffer. We are hopeful that you will lend your good efforts to cause this bill to be reported favorably out of committee. Regards.

G. B. PERRY,

Houston Port Bureau, Inc.

DALLAS, TEX., August 1, 1961.

Senator RALPH YARBOROUGH,
Chairman, Subcommittee on Forwarder Legislation, Commerce Committee,
Washington, D.C.:

We strongly favor Senate bill S. 1368 providing for the licensing of freight forwarders and authorizing ocean carriers to compensate forwarders for duties performed. We are opposed to Federal Maritime Board regulations that would prohibit payment of brokerage. Urge your cooperation.

TEXAS COTTON GROWERS COOPERATIVE ASSOCIATION,
J. G. BURGEN, Executive Vice President.

GALVESTON, TEX., July 28, 1961.

Hon. RALPH YARBOROUGH,
Senate Office Building, Washington, D.C.:

Feeling that the freight broker plays an important part in the exportation of cotton since a large part of cotton exports are made by small firms who are unable to have port employees, we urge you to do your utmost in getting Senate approval your bill, S. 1368. We would also ask you to use your best efforts to have GO-72, revised, set aside.

GALVESTON COTTON EXCHANGE AND BOARD OF TRADE,
W. H. SANDBERG, President.

GALVESTON, TEX., July 31, 1961.

Hon. RALPH YARBOROUGH,
Senate Office Building, Washington, D.C.:

Reference to S. 1368 introduced by you. We are strongly in favor of its provisions and sincerely hope you will be successful in having the Senate approve.

Should action be impossible at this time we urge you to use all efforts to have GO-72, revised, canceled.

GALVESTON MARITIME ASSOCIATION, INC.,
E. W. ARLEDGE, *President.*

GALVESTON, TEX., July 29, 1961.

Senator RALPH YARBOROUGH,
Chairman, Subcommittee on Freight Forwarder Legislation, Foreign Commerce Committee, Senate Office Building, Washington, D.C.:

In best interest to Galveston's foreign trade and American shipping we favor passage of forwarders bill, S. 1368. Further urge delay in FMB proposed revision of GO-72 to permit time for legislation.

CHAS. B. SMITH,
President, Galveston Chamber of Commerce.

TRAFFIC CLUB OF GALVESTON-TEXAS CITY,
Galveston, Tex., July 28, 1961.

Senator RALPH YARBOROUGH,
Chairman, Subcommittee on Freight Forwarder Legislation, Foreign Commerce Committee, Senate Office Building, Washington, D.C.

DEAR SENATOR YARBOROUGH: It was a source of considerable satisfaction to those of us in the maritime industry in Texas to learn of your appointment as chairman of the Subcommittee on Freight Forwarder Legislation of the Foreign Commerce Committee.

We know that you will approach the problems facing you with an objective point of view. The foreign freight forwarding industry depends on ocean freight brokerage to the extent of 40 percent of their gross income and the companies thus involved in this legislation perform an essential service in the furtherance of our States' foreign trade effort.

In the opinion of our board of directors, it is urgently necessary that your subcommittee approve S. 1368 at the earliest possible moment so that it may be recommended by the full committee and gain subsequent approval on the Senate floor.

In the absence of such constructive action, it is considered essential to postpone the inception date of the latest Federal Maritime Board Order 72, as revised, to permit the Congress to rule on this matter.

It is urged that you do all within your power to alleviate this situation at the earliest possible moment.

Very truly yours,

STACEY BENDER, *President.*

DALLAS COTTON SHIPPERS ASSOCIATION,
Dallas, Tex., July 28, 1961.

HON. RALPH YARBOROUGH,
U.S. Senate, Washington, D.C.

DEAR SENATOR: We urge your support of S. 1368 which provides for the licensing of forwarders and authorizes carriers to pay compensation for duties performed.

We are opposed to the decision of the Federal Maritime Board which would prohibit forwarders from collecting their customary brokerage fees on ocean freight contracts. These forwarding agents perform a valuable service to both steamship companies and to shippers, and fully earn the brokerage paid. Should this brokerage be withheld, they would have to double their fees for services to the shippers only, in order to compensate for the loss. This would increase the costs to the shipper on already subsidized exports.

The Dallas Cotton Shippers Association is composed of some 28 firms engaged in the export of cotton to foreign countries, and we handle a large share of Texas exports. Your action in accordance with our request will be highly appreciated.

Yours very truly,

R. W. WILLIAMSON, *President.*

DALLAS COTTON EXCHANGE,
Dallas, Tex., July 28, 1961.

Hon. RALPH YARBOROUGH,
Chairman, Subcommittee on Forwarder Legislation,
Commerce Committee, Senate Office Building, Washington, D.C.

SIR: We wish to register our opposition to Federal Maritime Board decision and regulations which prohibit freight forwarders from collecting customary brokerage fees from water carriers. We ask that such regulations be withheld until forwarder legislation has been acted upon.

We strongly favor Senate bill 1368 which provides licensing of forwarders and authorizes carriers to pay compensation upon the performance of certain duties.

Very truly yours,

F. JAVIER ESTEVE, *President.*

St. Louis, Mo., July 24, 1961.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce, U.S. Senate,
Senate Office Building, Washington, D.C.:

Informed that Senate Committee on Commerce hearing July 27 will consider S. 1368 by Senator Yarborough. Respectfully request your favorable consideration and efforts to enact this or similar legislation with suitable safeguards. Federal Maritime Board Order 72 will invoke severe hardships and discrimination on freight forwarding businesses, most of whom are small business operators. Under Order FMB 72, steamship carriers may continue to pay brokerage to forwarders in foreign ports but not to forwarders in the United States. Senate 1368 should correct this discrimination and give proper policing powers to FMB or possible successor. We urge its enactment. Furthermore, in view of possible reorganization plan, FMB should defer or cancel this proposed order, particularly in view of subsequent legislation.

EVERETT T. WINTER,
Executive Vice President, Mississippi Valley Association.

NEW ORLEANS, LA., July 26, 1961.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate Office Building, Washington, D.C.:

On August 16, 1958, our conferences wired you and members of your committee urging passage of H.R. 8382 providing for licensing of independent freight forwarders and for other purposes as well as for payment of freight brokerage when services were performed. We understand Senate bill 1368 introduced by the Honorable Ralph Yarborough, of Texas, will be the subject of a hearing in Washington on July 27 and we desire to go on record as strongly favoring the enactment of this bill as we believe it is a sound piece of legislation and the licensing feature of same is exceptionally good as are other features. We urge that the Senate pass this bill at the present session of Congress if it is possible to do so and refer same to the House of Representatives for similar action. However, the consensus of opinion of members of our conferences is that it would be advisable to leave out that feature of the bill, on page 4, lines 8 and 9, "may receive compensation not to exceed 5 percent of the freight cost, etc.," and in lieu thereof insert "up to 2½ percent with a minimum of 1¼ percent." We have also considered the FMB's proposed revision of General Order 72 and we definitely feel that this order would be almost impossible to police and we are of opinion that freight forwarders/brokers should be compensated when they perform services not only for the shippers but also for the steamship lines and they do as a general rule perform such services and the Senate bill in question will see that this is done. We therefore feel the Board's proposed order should be indefi-

nately deferred or canceled until legislation is passed. Will appreciate your subcommittee making this a part of the record and we are also sending a copy of this telegram to Senators Butler, Engle, and Yarborough.

A. C. COCKE,

Chairman, Special Committee on Brokerage, Gulf Associated Freight Conferences.

LEON PAINE, Jr.,

Secretary, Gulf Associated Freight Conferences comprising following Gulf Conferences: Gulf/French Atlantic Hamburg Range Freight Conference, Gulf/Mediterranean Ports Conference, Gulf/Scandinavian and Baltic Sea Ports Conference, Gulf/South & East African Conference, Gulf/United Kingdom Conference.

NEW ORLEANS, LA., July 25, 1961.

Senator WARREN G. MAGNUSON,

Chairman, Senate Commerce Committee, Washington, D.C.:

This organization, whose membership comprises all interests of foreign trade, approve Senate bill 1368 covering foreign freight forwarder legislation. We believe legislation necessary to counteract recent regulations issued by Federal Maritime Board in their General Order 72 which would reverse long-established practice in payment of brokerage. This action would undoubtedly result in sufficient loss of forwarder revenues to force great majority to either discontinue their business or greatly increase their fees to American exporters and only add to problem of meeting foreign competition. Believe legislation necessary and urge immediate passage.

M. G. MAHER,

President, Export Managers Club.

NEW ORLEANS, LA., July 27, 1961.

Senator WARREN G. MANGUSON,

*Chairman, Committee on Interstate and Foreign Commerce,
U.S. Senate Office Building, Washington, D.C.:*

New Orleans Traffic and Transportation Bureau with an individual membership in excess of 150 members, desires to go on record in support of S. 1368, the objective of which is to continue practice steamship lines paying brokerage to forwarders for actual services rendered. Discontinuance of present practice will not only seriously affect revenues of freight forwarders but end result will be higher forwarder fees for handling foreign shipments which U.S. industry and shippers can ill afford at this time.

C. LAYTON MERRITT, Jr.,

President, New Orleans Traffic and Transportation Bureau.

BOARD OF COMMISSIONERS OF THE PORT OF NEW ORLEANS,

New Orleans, La., July 21, 1961.

Mr. T. R. SPEDDEN,
New Orleans, La.

DEAR MR. SPEDDEN: The board of commissioners of the port of New Orleans strongly disagrees with the recent action of the Federal Maritime Board which would outlaw the receipt of brokerage payments by foreign freight forwarders from steamship carriers.

By virtue of its authority and responsibility to facilitate the movement of foreign and domestic commerce through this great port, the board must be concerned with measures or actions which may hamper port commerce and traffic.

Federal Maritime Board General Order 72, as revised, and specifically, section 244.13, would, in our opinion, severely and unjustifiably hamper the important work of forwarding agents and foreign freight brokers in this and all other ports of the United States. The order in this respect appears unfair, and we believe will be a serious detriment to successful continuance of our country's essential export program.

This board is convinced that forwarding and freight brokerage firms constitute an important and essential part of the skilled talent necessary for carrying on the commerce of the port of New Orleans. The harm which will result from this order will seriously impede the flow of cargo through all ports, particularly here where the work of freight forwarding and brokerage firms has long been a part of our commerce and traffic.

We strongly urge cancellation of this Federal Maritime Board action. Several congressional measures, such as House bill 6124—aimed at correcting the harmful ruling—are now under consideration. Cancellation of the FMB ruling pending congressional action reflecting the will of the American people is recommended, and we hope will receive your full support.

By direction of the Board of Commissioners of the Port of New Orleans.

Sincerely,

W. J. AMOS, *Director of the Port.*

CHAMBER OF COMMERCE OF THE NEW ORLEANS AREA,
New Orleans, La., July 21, 1961.

Senator WARREN G. MAGNUSON,
Chairman, Interstate and Foreign Commerce,
Washington, D.C.

DEAR SENATOR MAGNUSON: Please make the attached copy of a letter that was sent out to all the Louisiana congressional delegation on July 17, 1961, as part of the record for the hearing in connection with Senate bill 1368, introduced by Senator Ralph Yarborough of Texas, regarding the licensing of foreign freight forwarders. We understand this hearing is to be held on July 27, 1961.

Thanking you in advance for your assistance in this matter, I am,

Yours sincerely,

W. F. RIGGS, Jr., *Executive Vice President.*

JULY 17, 1961.

HON. T. HALE BOGGS,
House of Representatives, Washington, D.C.

DEAR HALE: The Forwarding Agents and Foreign Brokers Association of New Orleans has advised our chamber that the Federal Maritime Board has issued an order making it unlawful for freight forwarders to receive brokerage payments from steamship carriers. We understand this decision is in the revised general order 72 which became effective on July 7, 1961. The order will permit forwarding agents 120 days from July 7, 1961, to change a system which has proven to be effective and practical for many years.

Furthermore, this order allows steamship carriers to pay brokerage to forwarders in foreign ports. This we believe to be very unfair to forwarding agents in the United States who are not permitted to do so under this order.

Based upon our observations, the immediate effect of eliminating the brokerage fees to steamship carriers will be an increase in shippers' charges and the landed cost of American goods abroad which would place American products at a disadvantage in the highly competitive world markets at a time when the United States is endeavoring to increase exports.

Our chamber urges you to do all you can to have general order 72, as revised, deferred until bill H.R. 6124 or any similar bill can be passed.

Your assistance in this matter will be greatly appreciated.

Sincerely,

W. F. RIGGS, Jr.,
Executive Vice President.

MOBILE, ALA., *July 25, 1961,*

HON. LISTER HILL,
HON. JOHN SPARKMAN,
Senate Office Building, Washington, D.C.
HON. FRANK W. BOYKIN,
House Office Building, Washington, D.C.:

Senate Merchant Marine Subcommittee, headed by Senator Ralph W. Yarborough, holding hearings on forwarder legislation at 10 a.m. Thursday, July 27, room 457, Old Senate Office Building.

Request all possible assistance to have bill introduced by Senator Yarborough calling for licensing of independent ocean freight forwarders reported out favorably.

Very important to us in view of recent FMB ruling on dockets 765 and 831 which is very detrimental to freight forwarding industry.

Unable to send representative and would therefore appreciate report of committee action and copy of proposed legislation. Many thanks for your help.

ASSOCIATION OF FORWARDING AGENTS AND
FOREIGN FREIGHT BROKERS OF MOBILE, INC.

STAPLE COTTON COOPERATIVE ASSOCIATION,
Greenwood, Miss., July 25, 1961.

Hon. JOHN C. STENNIS,
U.S. Senate, Washington, D.C.

DEAR SENATOR STENNIS: General order No. 72 of the Federal Maritime Board, published in the Federal Register on July 7, 1961, to become effective 120 days from date, prohibits the payment of brokerage by steamship carriers to forwarding agents who have performed services in connection with cargo.

Such action only increases the shipping costs of American exports as forwarding agents will be required to increase their charges to the exporters by the amount of the brokerage they have previously received from the steamship lines, which they have considered a part of their remuneration. The brokerage amounts to approximately 1¼ percent of the ocean freight charges and has always been willingly paid by the steamship lines.

There have been a number of bills introduced in the House by Congressmen from several parts of the country which, if successfully enacted, would solve this important matter for U.S. exporters.

As volume exporters of U.S. raw cotton to the markets of the world, we would greatly appreciate your influence in the enactment of legislation through one of the bills that would counteract the order.

Sincerely yours,

C. J. COLEMAN,
Assistant General Manager.

MIAMI, FLA., *July 26, 1961.*

Senator RALPH YARBOROUGH,
*Old Senate Building,
Washington, D.C.:*

Heartily endorse today's telegraphic message addressed to you by Customs Brokers and Forwarders Association of Miami, Inc., in support of your bill on behalf of the freight forwarding industry and U.S. exporters. Respectfully urge position this chamber be announced at Thursday subcommittee hearing.

MIAMI-DADE COUNTY CHAMBER OF COMMERCE.

MIAMI, FLA., *July 27, 1961.*

Senator RALPH YARBOROUGH,
*Old Senate Office Building,
Washington, D.C.:*

The entire membership of the Customs Brokers and Forwarders Association of Miami heartily supports the bill which you have introduced on forwarders legislation and which is up for subcommittee action July 27. We feel strongly that if the result of the Federal Maritime Board docket Nos. 765/831 are allowed to become regulatory that: (1) Consequent loss of ocean freight brokerage will cripple many forwarders to the extent that employees will have to be released from practically all organizations and in some cases long- and well-established firms of high professional standing will have to cease operations completely, (2) the indispensable functions of the forwarder will have to be assumed by currently unprepared and unstaffed exporters thus creating confusion and increased cost of shipping detrimental to our export and economy, (3) a condition will be introduced inviting collusion and malpractices by unethical elements in the shipping community to circumvent the FMB regulations, (4) the American forwarder will be placed at a disadvantage since the loss of brokerage will force increased fees again adversely effecting competitive status

of American export abroad. The shipping community and forwarders of south Florida have very directly suffered the loss of significant market in the Caribbean and Latin American areas and further financial losses will seriously affect the economy of our area. Favorable action by the subcommittee and early passage of your bill is respectfully encouraged by all segments of the shipping community in this area.

V. FRANK TEJEDOR,
President, Customs Brokers and Forwarders Association of Miami, Inc.

SEATTLE, WASH., July 27, 1961.

HON. WARREN G. MAGNUSON,
Senate Office Building, Washington, D.C.:

Sorry cannot appear at hearing on forwarder bill, S. 1368, relative forwarding agents' commission on ocean freight bookings. So hope this wire will be of assistance. We feel that the export sales program of our country would be hampered if the present system of the steamship companies in compensating independent forwarding agents for services rendered them by brokerage compensation is stopped. These forwarding agents with specialized knowledge do a fine and necessary service for the steamship lines by assembling cargo for various port and specific dock loadings, thus affecting savings for the ship operators as well as developing assembling tonnage for export loading opportunities that otherwise would be lost.

WORLD TRADE CLUB OF SEATTLE,
F. A. GOSSE, *President.*

SEATTLE, WASH., July 26, 1961.

HON. RALPH W. YARBOROUGH,
U.S. Senate, Washington, D.C.:

Washington and Oregon lumber exporters must rely on freight forwarders in foreign trade. Forwarders are essential to successful orderly marketing. Urge your active support of Bill S. 1368 to license and regulate freight forwarders and authorize compensation from steamship operators.

C. L. SPENCE,
*President, Pacific Lumber
Exporters Association.*

SPOKANE, WASH., July 26, 1961.

HON. RALPH W. YARBOROUGH,
Senate Office Building, Washington, D.C.:

Our small shipper members located inland need the efficient services provided by qualified independent foreign freight forwarders and ask your support for favorable reporting and passage of S. 1368 which provides for their licensing and regulation. We do not believe that carriers or shippers can substitute for that efficient service.

MERRILL SATHER,
*Executive Secretary, Pacific Northwest
Pea Growers and Dealers Association.*

YAKIMA, WASH., July 27, 1961.

HON. RALPH W. YARBOROUGH,
U.S. Senate, Washington, D.C.:

This association which represents growers and shippers of the Yakima Valley who annually grow and ship 20,000 carloads of apples, pears, and other fruits is vitally interested in passage of S. 1368 into law. Our members export considerable amounts of apples and pears and have found that freight forwarders provide services not attainable from other sources. We urge that your committee's recommendation to the Senate is in favor of this bill.

F. W. SHIELDS, Jr.,
*Section Manager,
Yakima Valley Traffic Association.*

SPOKANE, WASH., July 26, 1961.

RALPH W. YARBOROUGH,
Senate Interstate and Foreign Commerce Committee,
Washington, D.C.:

We as large users of ocean shipping believe Federal Maritime Board Order 72 will interfere with normal freight forwarding and increase shippers' costs materially. We believe favorable action on legislation such as S. 1368, House bill H.R. 6210 are necessary to protect our interests as shippers. We urge prompt and favorable consideration.

INLAND EMPIRE PEA GROWERS ASSOCIATION, INC.

WENATCHEE VALLEY TRAFFIC ASSOCIATION,
Wenatchee, Wash., July 26, 1961.

HON. WARREN G. MAGNUSON,
U.S. Senate, Washington, D.C.

DEAR SENATOR MAGNUSON: Our association respectfully requests your active support to S. 1368, the foreign freight forwarders bill, providing for licensing of forwarders and provisions for payment of fees for services rendered both shippers and steamship lines. Mr. Ernest Falk's letter to you on July 24 clearly stated our thinking on this legislation and I will not burden you by needless repetition.

In our opinion, enactment of this legislation in the current session is of vital importance to our industry and we will appreciate your support.

Sincerely,

MARTIN A. FOSTER, *Secretary-Manager.*

COMMERCE AND INDUSTRY ASSOCIATION OF NEW YORK, INC.
New York, N.Y., August 1, 1961.

HON. RALPH YARBOROUGH,
Senate Office Building, Washington, D.C.

DEAR SENATOR YARBOROUGH: I am enclosing a copy of our letter to the Federal Maritime Board respecting its recent action in dockets 765 and 831, pertaining to the operations of foreign freight forwarders.

I would be grateful if you would make this letter a part of the record respecting public hearings on S. 1368, which were held by your subcommittee on July 27, 1961.

Very truly yours,

RALPH C. GROSS, *General Manager.*

COMMERCE & INDUSTRY ASSOCIATION OF NEW YORK, INC., NEW YORK, N.Y.

[For release Friday morning, July 28, 1961]

Revision by the Federal Maritime Board of its General Order 72 eliminating the payment of brokerage by ocean carriers to foreign freight forwarders or, in the alternative, postponement of its November 4 effective date to give Congress opportunity to act on pending legislation that would resolve the problem by authorizing such payments for bona fide services is being urged by the Commerce and Industry Association of New York, Vincent J. Bruno, director of the association's world trade department, announced today.

In a letter to the Board, Mr. Bruno pointed out that the payment of brokerage "has become so intimately woven into the fabric of ocean shipping that its elimination at this time can only work an unreasonable hardship on all parties with the heaviest burden falling upon exporters, large and small alike."

He noted that Ralph C. Gross, general manager of the association, had sent telegrams on Wednesday and Thursday to Chairman Clair Engle of the Senate Merchant Marine Subcommittee and Herbert C. Bonner of the House Merchant Marine and Fisheries Committee recommending prompt and favorable consideration of pending measures to license foreign freight forwarders and authorize payment of brokerage, on which hearings currently are being held in Washington.

Mr. Bruno's letter to the Federal Maritime Board follows:

COMMERCE AND INDUSTRY ASSOCIATION OF NEW YORK, INC.,
New York, N.Y., July 27, 1961.

Re dockets 765 and 831.

FEDERAL MARITIME BOARD,
Washington, D.C.

GENTLEMEN: Commerce and Industry Association of New York, Inc., is the service chamber of commerce for the New York metropolitan area, a nonprofit membership organization of some 3,500 business firms, approximately 2,000 of which are engaged directly or indirectly in international trade. Most of these 2,000 members are export and import companies, although a good many are in the various fields providing necessary services in the sale and movement of goods in foreign trade.

The Board's arguments, regardless of their theoretical validity, in its June 30, 1961, decision to revise General Order 72, eliminating the payment of brokerage by ocean carriers to foreign freight forwarders, indicate an intent to abolish a relationship between them that has existed for decades and under which our Nation's foreign trade has expanded many times over.

The payment of brokerage has become so intimately woven into the fabric of ocean shipping that its elimination at this time can only work an unreasonable hardship on all parties, with the heaviest burden falling upon exporters, large and small alike.

One serious problem facing the American exporter today is how to keep costs down to a minimum in order to remain competitive in world markets. The mushroomlike growth of European and Far East suppliers has sorely tested the ability of American exporters—particularly the small- and medium-size firms—to continue selling to many markets due to the vigorous competition of foreign exporters in terms of price, delivery, and quality. Therefore, any development which has the effect of increasing this cost burden on American exporters is to be deplored and every consideration should be given to its elimination.

It has been proposed that forwarders increase their service charges to make up for the loss of brokerage. Such increases, however, would have to be much greater, across the board, than the 1¼ percent usually paid as brokerage. Furthermore, higher service charges by forwarders would result in higher export prices just when every effort is being put forth to make the U.S. exporter more competitive in oversea markets.

Export merchants will have to decide whether to absorb the added service charges—in some cases, as much as a 100 percent increase—or to handle their own freight forwarding work. This forced choice, in our opinion, means greater direct cost for the exporter, regardless of the decision finally made.

The Federal Maritime Board appears to have been needlessly drastic in its effort to abolish abuses connected with the payment of brokerage. We believe that conditions within the industry could have been improved by registering or licensing forwarders and requiring certain minimum services to qualify them to receive brokerage. The Board, however, evidently focusing on the abuses within the industry and overlooking the important role of the foreign freight forwarder in international trade, has gone to the extreme of prohibiting all payments. We seriously question the need for such extreme action, because it jeopardizes the very livelihood not only of the forwarders but also the industry they serve.

We respectfully recommend, therefore, that the Federal Maritime Board reconsider its decision in these two dockets and revise General Order 72 so that the undesirable aspects of present-day brokerage payments will be abolished and the payment of brokerage fees by carriers for bona fide services rendered by registered forwarders will be authorized under reasonable conditions. In the alternative, we urge the Board to postpone the effective date of revised General Order 72 to give Congress an opportunity to act on pending legislation which, if enacted, would resolve the problem.

Very truly yours,

VINCENT J. BRUNO,
Director, World Trade Department.

ELECTRONIC INDUSTRIES ASSOCIATION,
Washington, D.C., August 1, 1961.

Senator RALPH YARBOROUGH,
*Chairman, Subcommittee on Merchant Marine, Senate Commerce Committee,
New Senate Office Building, Washington, D.C.*

SENATOR YARBOROUGH: This letter is submitted on behalf of the International Department Traffic Committee, Electronic Industries Association, to urge that prompt and favorable consideration be given to S. 1368, a bill currently before your subcommittee to amend the Shipping Act of 1916, to provide for licensing of independent ocean freight forwarders, and for other purposes.

The Electronic Industries Association is the national association for American manufacturers of electronic equipment, tubes, and parts. It represents approximately 355 companies which account for about 80 percent of the electronic production in this country. Our members have a substantial interest in S. 1368 as the services of independent ocean freight forwarders are used extensively in connection with the exportation of electronic products which, in 1960, were valued at over \$480 million.

The electronics industry exports its products to all parts of the world. The services of foreign freight forwarders are employed extensively by small companies as well as large for the booking of freight, preparation of the many documents which are required, consolidation of shipments when possible and the mailing of necessary documents to banks and foreign distributors. The preservation of a strong, efficient, and financially sound forwarding industry is of major importance to electronic manufacturers who are striving to increase American exports in the face of severe foreign competition.

We hold that foreign freight forwarders are justly entitled to receive brokerage payments from the steamship lines. Foreign freight forwarders perform services which are of considerable value not only to American exporters, but to the steamship industry as well.

For instance, foreign freight forwarders have their messengers pick up at steamship offices all ocean bills of lading covering merchandise shipped on a given vessel on behalf of their many exporting clients. They pay the steamship lines with one check for the total of all freight charges due. If exporters have to handle the shipments directly with steamship lines, the lines will be forced to increase their staffs substantially to cope with the additional details connected with the handling of ocean bills of lading and freight charge billing. These personnel increases would be a natural outgrowth of the necessity of steamship lines dealing with a number of shippers rather than few freight forwarders.

Because of their experience and know-how, foreign freight forwarders prepare ocean bills of lading and dock receipts which are correct in all details. If this were left to individual exporters, many of whom have only occasional shipments, it is highly probable that many errors and omissions would occur which would make it necessary for the steamship lines to question the individual exporters by telephone, wire or letter; all of which would increase the office workload to the point where a substantial increase in staffs would be required. This, in turn, would be reflected in higher operating costs for the steamship lines.

A number of foreign governments have issued regulations governing consular invoices which have been enforced for a number of years. These generally tie ocean bills of lading to the respective country's consular invoice. Foreign freight forwarders, on the basis of their experience, handle such documents in due time and in the proper form. It should be noted that the aforementioned rules concerning consular invoices often are of a stringent nature and require, therefore, a high degree of experience, skill, and devotion to painstaking detail on the part of those preparing such documents for shippers. Late presentation of the required documents or nonpresentation will increase the workload of the steamship lines.

There are many other instances in the complex exporter-forwarder-steamship line relationship where the forwarder's activities insure not only proper delivery of merchandise to the piers, but also make for a smooth flow of the many documents which are involved. We feel, therefore, that the steamship lines as well as exporters benefit materially from not just some but many of the activities exercised by foreign freight forwarders.

We are sure you are aware of the regulations issued recently by the Federal Maritime Board, which become effective on or about November 1, prohibiting

the payment of brokerage to independent ocean freight forwarders by the steamship lines.

For the reasons outlined above, it is the feeling of the EIA International Department Traffic Committee that these regulations are not desirable and will not help to promote the vigorous development of American export trade. Accordingly, we urge favorable action on S. 1368.

It is respectfully requested that this letter be made part of the hearing record in connection with this legislation.

Respectfully,

PAUL E. ROMBERG,
Chairman, Traffic Committee, EIA International Department.

THE PROPELLER CLUB OF THE UNITED STATES,
Brownsville, Tex., July 31, 1961.

Hon. RALPH YARBOROUGH,
U.S. Senate, Washington, D.C.

Sir: I am enclosing for your consideration a copy of a resolution as passed by the local Propeller Club. The club feels that the Federal Maritime Board is penalizing the freight forwarders unjustly by their ruling on this matter.

The entire Propeller Club, as well as the local freight forwarders, would appreciate your serious consideration on this matter.

Very truly yours,

E. G. LANTZ,
Secretary, Propeller Club.

BROWNSVILLE, TEX.

THE STATE OF TEXAS,
County of Cameron:

Be it resolved by the Brownsville-Port Isabel Propeller Club, having 129 members and composed of representatives of the maritime, shrimping, cotton, shipping, and allied industries, acting herein by and through its board of governors, on motion duly made, seconded, and carried, that the club take the following stand on the following matters of interest to its members now pending before the national legislative bodies:

1. The club is opposed to the Federal Maritime Board ruling in their docket No. 765 and No. 831 concerning foreign freight forwarding practices, and that the club requests that the Federal Maritime Board rulings be deferred until legislation can be secured through Congress.

2. That the club supports Senate bill S. 1368.

Be it also resolved, That a copy of this resolution be sent to Senator Ralph Yarborough.

BROWNSVILLE-PORT ISABEL PROPELLER CLUB,
By ROBERT W. CYLEMAN, *President.*

Attest:

ERSEL G. LANTZ, *Secretary.*

NORFOLK, VA., *July 28, 1961.*

Hon. RALPH YARBOROUGH,
Chairman, Senate Commerce Subcommittee,
Senate Office Building, Washington, D.C.:

Hampton Roads Maritime Association, representing important maritime, commercial, industrial and business interests in the Hampton Roads, Va., area strongly endorses provisions of S. 1368, as amended, on which hearing was held before your committee in Washington on Thursday, the 27th instant, and strongly urges your best efforts to assure its passage.

H. M. THOMPSON,
Executive Vice President,
Hampton Roads Maritime Association.

NORFOLK PORT AND INDUSTRIAL AUTHORITY,
Norfolk, Va., July 28, 1961.

HON. RALPH W. YARBOROUGH,
*Chairman, Special Subcommittee on Freight Forwarders Activities of the Inter-
state and Foreign Commerce Committee, Senate Office Building, Washington,
D.C.*

DEAR SENATOR YARBOROUGH: This is with reference to your bill S. 1368, dealing with ocean freight forwarders legislation. I understand that you propose to amend this bill by eliminating the mention of the specific percentage amount of brokerage to be paid to the forwarder for service rendered.

Permit me to register strong support of your bill with the above amendment and express the hope for its early enactment.

Respectfully,

MICHAEL M. MORA, *General Manager.*

SAN FRANCISCO, CALIF., July 25, 1961.

HON. RALPH W. YARBOROUGH,
Senate Office Building, Washington, D.C.:

California Manufacturers Association, whose membership includes manufacturers who use services of steamship lines to export their products, is strongly opposed to provisions of S. 1638 authorizing payment of compensation by steamship lines to freight forwarders for services that are actually performed for shippers or exporters. It is duty of shippers or exporter to perform services described in bill or to employ forwarder to perform them and compensate him for the service. Passage of bill would make carriers helpless against demands of forwarders for compensation which carriers will be forced to pay to avoid loss of business as result of forwarders working one line against another. Respectfully urge these provisions be deleted from bill or that it not be favorably reported and ask that our views be made known to members of subcommittee that will hear bill.

EUGENE A. READ,
*Director, Freight Traffic Department,
California Manufacturers Association.*

MEMPHIS, TENN., July 26, 1961.

Senator RALPH YARBOROUGH,
Senate Office Building, Washington, D.C.:

The National Lumber Exporters Association, an organization of hardwood lumber exporters, vitally interested in S. 1368 and urge your approval. Because of the nature of the hardwood export business the forwarding agents services are essential. Present agents fees are reasonable but increases would be injurious and endanger important export volume. In view of this important function of the forwarding agent for us and for the steamship lines we ask your favorable action on S. 1368.

P. HOUSTON,
President, National Lumber Exporters Association.

NATIONAL BULK CARRIERS, INC.,
New York, N.Y., August 3, 1961.

Subject: Federal Maritime Board ruling—foreign freight forwarders brokerage.

HON. WARREN G. MAGNUSON,
*U.S. Senate, Senate Office Building,
Washington, D.C.*

SIR: At the present time the Senate has forwarder legislation (S. 1368) under consideration and we request that you press for prompt hearings and a favorable report on such legislation "without elimination of brokerage" during the present session.

The pending forwarder legislation efficiently covers this situation in that it provides for compensation of forwarders brokerage by carriers only if they certify that they have performed three or more of six specific services.

If the FMB revision is allowed to stand, and forwarders are denied brokerage from carriers, the Government will be forcing the forwarders to:

1. Form alliances and route cargo aboard foreign-flag, brokerage-paying carriers to the detriment of the American-flag fleet.
2. Or to increase their charges to U.S. Exporters to the detriment of export trade.

This firm exports very heavily and would turn to foreign-flag carriers for their own shipments wherever possible in the event legislation is unfavorable to the freight forwarders. This in the interest of economy.

Therefore, it would be appreciated if you would support favorable legislation for the freight forwarders.

Very truly yours,

C. E. ROEDER,
Manager, Equipment Procurement.

NATIONAL DISTILLERS & CHEMICAL CORP.,
New York, N.Y., August 7, 1961.

Re Federal Maritime Board, brokerage fees, licensing ocean freight forwarders, bill S. 1368.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Interstate and Foreign Commerce Committee,
Washington, D.C.

DEAR SIR: We noticed in the Federal Register, July 7 issue, publication of rules and regulations on action taken by the Federal Maritime Board part 244, proposing new rules and regulations concerning the business practice of freight forwarders and carriers in relation thereto, and ordering the elimination of payment of brokerage fees by steamship companies to said freight forwarders. It is our understanding that these rules and regulations are to become effective November 7, 1961.

We have been informed that bill is being considered by your committee at this time, and that such bill will clarify and legalize the relationship of ocean freight forwarders, steamship companies, and retain the brokerage fee which freight forwarders have been receiving for over 100 years.

We are definitely in favor of this bill, and trust you will do everything possible to have it recorded for action by Congress at this session, and before the Federal Maritime General Order No. 72 becomes effective. I am sure you appreciate the burden that will be placed on industry if the general order is permitted to become effective, and with no action taken by the Senate Interstate and Foreign Commerce Committee.

Yours very truly,

CARL P. GREELEY.

NORTHWEST HORTICULTURAL COUNCIL,
Yakima, Wash., July 24, 1961.

Re S. 1368, export forwarders' bill.

Hon. WARREN G. MAGNUSON,
U.S. Senate, Washington, D.C.

DEAR SENATOR: S. 1368 provides for the licensing and regulation of independent foreign freight forwarders and authorizes payment of compensation to them by ocean carriers. It is similar to H.R. 5068 (86th Cong.) which was passed by the House and passed by the Senate but failed of enactment into law because the conferees could not agree on the form of the bill within the limited time prior to the adjournment of the 86th Congress.

The fruit industry of Washington and Oregon utilizes the services of freight forwarders in offshore shipments. They perform a useful function providing a service which we need but cannot as satisfactorily perform for ourselves because our fruit-producing areas are inland from the ports.

The forwarders perform services for us such as customs clearances obtaining bills of lading promptly, etc. We compensate the forwarders for the service performed for us. At the same time the steamship lines compensate the forwarders for services performed for the steamship company. We believe that this is proper and should be legislatively authorized as is done in this bill.

This bill also provides for the licensing of forwarders and will tend to assure that only qualified persons engage in the business, whereas at the present time only a simple registration is required.

We believe this bill is meritorious and that it will provide protection for freight forwarders and also for shippers.

We are informed that the Federal Maritime Board has ruled that under existing law the steamship operators may no longer pay brokerage to the forwarders. This decision will become effective about November 8, 1961. It is important that legislation be passed at this session of Congress to remedy this situation; otherwise forwarders cannot continue to represent us as they have in the past.

We request you actively support S. 1368 and do all possible to assure that it is brought onto the floor, passed and enacted into law.

Yours very truly,

ERNEST FALK, *Manager.*

Communications favoring enactment of S. 1368 were received from the following:

The Ambrose Co., San Diego, Calif.
 W. C. Auger, president, W. C. Auger & Co., San Francisco, Calif.
 C. L. Andrews Cotton Co., Memphis, Tenn.
 George E. Bando, M. Aura & Co., Inc., Dallas, Tex.
 W. S. Rice, the Barteldes Seed Co., Denver, Colo.
 Al C. Venable, Jack W. Bobal & Co., Dallas, Tex.
 Mark Bentley, San Francisco, Calif.
 W. S. Bartz, president, Bartz Forwarding Co., Inc., Brownsville, Tex.
 Carlos R. Brito, Bartz Forwarding Co., Inc., Brownsville, Tex.
 Gerry Doyle, vice president, Beaumont Rice Mills, Beaumont, Tex.
 A. C. T. Beasley & Co., cotton, Memphis, Tenn.
 A. M. Burckard, foreign freight agent, American Express Co., San Francisco, Calif.
 George F. Doherty, vice president, American Express Co., New York.
 John L. Brito, Brito Forwarding Co., Brownsville, Tex.
 Charles F. Nims, George S. Bush & Co., Inc., Portland, Ore.
 L. L. Beall, Houston, Tex.
 James R. Bullard, 3516 Moore, Houston, Tex.
 Thelma L. Beal, Houston, Tex.
 Buhler Mills, L. R. Millison, traffic manager, Buhler, Kans.
 Nickolas S. Barrera, Houston, Tex.
 California Almond Growers Exchange, Sacramento, Calif.
 Consolidated Foods Corp., International Division, San Francisco, Calif.
 E. L. Caldwell & Sons, Inc., Corpus Christi, Tex.
 Cosdel International Co., San Francisco, Calif.
 Corrigan Dispatch Co., Brownsville, Tex.
 S. A. Chiarella, president, Chiarella & Grimers Forwarding Co., San Francisco, Calif.
 Cardwell Manufacturing Co., Wichita, Kans.
 Frank Tessitore, secretary, Connell Rice & Sugar Co., Inc.
 Charles W. Merritt, vice president, Commercial Metals Co., Dallas, Tex.
 W. Zucker, traffic manager, Consolidated Sewing Machine Corp., New York, N.Y.
 Pietro Crespi, president, Crespi Cotton Co., Memphis, Tenn.
 Cordes & Co., Dallas, Tex.
 Alvah L. Wyatt, traffic manager, the Chesapeake Corp. of Virginia, West Point, Va.
 Refugio Cortez, Jr., Houston, Tex.
 Andres Lopez Cavoza, Houston, Tex.
 Dee G. Holder, secretary-treasurer, R. L. Dixon & Bro., Inc., Dallas, Tex.
 Dyo Chemical Co., Dallas, Tex.
 Mr. M. R. Canavan, Jersey City, N.J.
 Henry De La Cruz, Brooklyn, N.Y.
 Delta Drilling Co., Box 2012, Tyler, Tex.
 Hardin Ellis, Houston, Tex.
 W. P. Neblett, president, Edmundson-Neblett & Co., Dallas, Tex.
 Frank A. Berselli, New York manager, Erlanger & Galinger, Inc., New York, N.Y.
 Estherwood Rice Sales Corp., Estherwood, La.

- A. C. Wendorf, vice president, Esteve Bros. & Co., Inc., Dallas, Tex.
Esteve Cotton Co., by B. T. Gibson, Dallas, Tex.
Arthur J. Fritz & Co., San Francisco, Calif.
Fred N. Sucher, president, F.N.S. Corp., International Forwarders & Shipping Agents, New York, N.Y.
Walter J. Garie, Inc., International Trade Mart, New Orleans, La.
H. F. Bommer, general traffic manager, Great Lakes Steel Corp., Detroit, Mich.
Rafael A. Cruz Ginorio, Roosevelt, P.R.
R. G. Gonzalez, Houston, Tex.
Grunow-Hogg & Co., Dallas, Tex.
W. H. Halfmann, Whitestone, N.Y.
P. A. Dunlap, vice president, traffic, Hawaiian Freight Forwarders, Ltd., and American Oceanic Forwarding Co., San Francisco, Calif.
Hoyt, Shepston & Sciaroni, Inc., San Francisco, Calif.
R. C. Robinson, president, Harper, Robinson & Co., San Francisco, Calif.
F. J. Herbelin, Bay Transfer Co., Houston, Tex.
A. A. Dunn, vice president, J. P. Harle Forwarding Co., Houston, Tex.
George U. Hind, Jr., Hind, Rolph & Co., San Francisco, Calif.
Thomas B. Sammons, Jr., chairman of the board and secretary, Hayes-Sammons International Corp., Mission, Tex.
A. Aerne, vice president, Hobart Laboratories, Inc., Chicago, Ill.
R. T. Hoover & Co., Inc., El Paso, Tex.
J. F. W. Hannay, Hannay Bros., Dallas, Tex.
Hohenberg Bros. Co., J. F. Duncan, Jr., assistant secretary, Memphis, Tenn.
M. S. Crinkley, executive vice president, Isbrandtsen Co., Inc., New York, N.Y.
Judson Sheldon, International Corp., Houston, Tex.
Kansas Milling Co., Wichita, Kans.
L. D. Kellogg Lumber Co., Inc., Alexandria, La.
M. H. Landers, Jr., traffic manager, C. Itoh & Co., Inc., Dallas, Tex.
Sidney J. Constantin, president, Independent Rice Mill, Inc., Crowley, La.
L. S. Isacks Lumber Co., Inc., New Orleans, La.
International Shipping Services, Inc., Houston, Tex., Nicholas Patton, president.
F. W. Kuhlke, Washington, N.Y.
Kimbell-Norris Cotton Oil Mills, Dallas, Tex.
H. Kempner Cotton Co., Galveston, Tex., Harris L. Kempner.
W. R. Keating & Co., New York, N.Y., P. S. Royals, vice president.
A. M. Lang, Los Angeles, Calif.
F. P. Lombardi, Islip, N.Y.
J. E. Lowden & Co., San Francisco, Calif.
Loretz & Co., Forwarders, Houston, Tex.
B. H. Lovelace Co., San Francisco, Calif.
Leupold & Stevens Instruments, Inc., Portland, Oreg., R. J. Stevens, sales manager.
M. H. Landes, Bellaire, Tex.
Lusk Shipping Co., Inc., New Orleans, La., P. B. Lusk, president.
Louisiana State Rice Milling Co., Inc., Abbeville, La., T. A. Smith, Traffic manager.
Manget Bros., Inc., Newnan, Ga., J. H. Neville, Jr., vice president.
The Milwhite Co., Inc., Houston, Tex., Max B. Miller, Jr., president.
Ray D. Murphy Cotton, Brownsville, Tex., Ray D. Murphy.
V. A. Maudr Co., Houston, Tex., V. A. Maudr, president.
Mermentau Rice Mill Co., Inc., Mermentau, La., Edmond D'Aquin, president.
B. A. McKenzie & Co., Inc., Tacoma, Wash., B. A. McKenzie, president.
J. R. Michels, Inc., Freight Forwarders, Houston, Tex.
R. G. McClung Cotton Co., Dallas, Tex.
F. E. McLendon, 1813 Leggett Drive, Galena Park, Tex.
Molloy H. Miller Co., Memphis, Tenn.
Robert R. Miller, Brooklyn, N.Y.
J. A. McNamara, New York (Brooklyn).
Newman Rice Mill, Alvin, Tex., P. H. Cambeilh, Jr.
H. A. Astlett & Co., Inc., New York, N.Y., H. P. Nordheimer, vice president.
Oppenheimer Intercontinental Corp., Mobile, Ala., James S. Oppenheimer, president.
Oceanic Forwarding Co., San Francisco, Calif.
W. E. Oates & Co., Memphis, Tenn.
Robert L. Owen & Co., Dallas, Tex., Robert L. Owen.
Same E. Olvera, Houston, Tex.

A. Owen, Dallas, Tex.
 Oneonta Trading Corp., Wenatchee, Wash., Paul F. Thomas, president.
 Merrill P. O'Neal, Bellaire, Tex.
 Lester L. Prud'homme, Texarkana, Tex.
 L. T. Burke, DBA, San Francisco, Calif.
 G. E. Posey Corp., Houston, Tex.
 Plibrico Co., Chicago, Ill., K. B. Wilt, secretary-treasurer and export manager.
 Philen Shipping Co., Brownsville, Tex.
 Patton Bros., Inc., Memphis, Tenn.
 Pacific Supply Cooperative, Portland, Oreg., Jack McGillis, Seed and Grain Division.
 A. L. Rankin Freight Broker, Corpus Christi, Tex.
 W. P. Rabb Cotton Co., El Paso, Tex.
 W. T. Russell Cotton Co., Inc., Dallas, Tex.
 Riegel Paper Corp., Milford, N.J., William H. Montgomery, director of traffic.
 J. Rodriguez, New York, N.Y.
 James V. Rizzo, Staten Island, N.Y.
 Russell Miller-King Midas Mills, W. J. DeWinter, vice president in charge of export.
 San Diego Traffic Services, San Diego, Calif., David E. Porter, vice president.
 The Supreme Rice Mill, Inc., Crowley, La., Gordon E. Dore.
 Seaport Shipping Co., Seattle Wash., A. J. Buckingham, president.
 Sternbert-Martin & Co., Inc., Dallas, Tex., Ed Martin, vice president.
 J. S. Stass Co., New York, N.Y., Doris Capp Stass, vice president.
 Sutton, Steele & Steele, Inc., Dallas, Tex.
 John D. Staben, Houston, Tex.
 Schofield Trading Co., Inc., New Orleans, La., E. A. Schofield, vice president.
 Starke Taylor & Son, Inc., Dallas, Tex.
 M. J. Sarli, Brooklyn, N.Y.
 Standard Milling Co., Kansas City, Mo.
 Textile Waste Association, Atlanta, Ga., D. Franklin Kell, executive secretary and general counsel.
 International Trade Association, Houston, Tex., Warren G. Brown, president.
 Trans-World Forwarding Co., E. B. Jones and R. P. Reese, San Francisco, Calif.
 Thornton Canning Co., Thornton, Calif.
 Texas West Indies Co., El Campo, Tex., J. Bruce Hancock.
 Terra Marine Shipping Co., San Francisco, Calif.
 Basil J. Rusovich, Jr., president, Transoceanic Shipping Co., New Orleans, La.
 Twin Disc Clutch Co., Rockford, Ill., J. B. Schubeler, manager.
 Powis F. Tarkington, cotton merchant, Cuero, Tex.
 R. S. Tapp & Co., cotton merchants, Lubbock, Tex.
 George H. Taylor, Jr., cotton merchant, Lubbock, Tex.
 Truett Hunt & Co., Kenedy, Tex.
 The U.S. National Bank of Galveston, Galveston, Tex.
 John F. Meredith, chairman, Traffic Advisory Committee, Tobacco Association of the United States; traffic manager, Universal Leaf Tobacco Co., Richmond, Va.
 John C. Weaver Cotton Co., Memphis, Tenn.
 The Weber Flour Mill Co., Salina, Kans.
 Weil Bros. Cotton, Inc., Brownsville, Tex., Jack L. Wilson.
 Oscar R. Whilden, New Orleans, La.
 Willich & Co., New York, N.Y.
 Winpower Manufacturing Co., Newton, Iowa, M. E. Brinton, vice president in charge of export sales.
 M. J. Wolf, Houston, Tex.
 John R. Weiler, Houston, Tex.
 W. R. Zanes & Co., R. D. Hancock, vice president, Houston, Tex.
 M. Zapata, New York, N.Y.
 Farris & Co., cotton merchants, Dallas, Tex.

Subsequent to the hearing, communications in support of S. 1368 were received also from the following:

Austin White Lime Co., R. V. Tate, Austin, Tex.
 Berkshire Knitting Mills, C. M. Seitzinger, export manager, Reading, Pa.
 Far East Conference, J. A. Dennean, chairman, 11 Broadway, New York.
 Foreign Traders Association of Philadelphia, Inc., Roland L. Kramer, executive secretary, Philadelphia, Pa.

Gallatin Redrying & Storage Co., Inc., Gallatin, Tenn.
 A. P. Green Fire Brick Co., Mexico, Mo.
 Duane M. Hart, 691 Louqueay Road, Pittsburgh, Pa.
 Samuel Jory, 1008 Pennsylvania Avenue, Irwin, Pa.
 Kilgore Bros., Charles Kilgore, president, Muskogee, Okla.
 Lubrizol Corp. and Lubrizol International, S.A., Wickliffe, Ohio.
 Manufacturing Chemists' Association, Inc., 1825 Connecticut Avenue, Washington, D.C.
 E. M. Sargeant Pulp & Chemical Co., 7 Dey Street, New York, N.Y.
 Charles Slanton, Inc., L. T. Spiegel, president, 39 State Street, Rochester, N.Y.
 Sparkler Manufacturing Co., D. A. Paisley, international sales division, Conroe, Tex.
 Texas-U.S. Chemical Co., post office box 667, Port Neches, Tex.
 Union Trading Co., Howard W. Lee, Rockefeller Plaza, New York, N.Y.
 Maisel, Gus L., Jr., 3806 Avenue P, Galveston, Tex.
 Eshelman & Sons, John W., Lancaster, Pa.

Communications opposing enactment of S. 1368 were received from the following:

U.S. Borax & Chemical Corp., Los Angeles, Calif., T. R. Stetson, director of exports.
 Sunkist Growers, Los Angeles, Calif.
 Libby, McNeill & Libby, Chicago, Ill., C. W. Duncan, vice president.
 Hymen I. Malatzky, Bergen Shipping Service, New York, N.Y.

Senator YARBOROUGH. All people who wish to testify and cannot appear in person, write letters or send telegrams. We ask for letters or telegrams, not telephone calls. Those telephone calls, we don't want to be responsible for the accuracy with which they are taken down. We want your statements to appear on the record, whether you are for or against the bill. (See p. 72 et seq.)

Mr. STIGLER. Mr. Chairman, the decision of the Federal Maritime Board in dockets 765 and 831 were made available to the members of the subcommittee. I recognize that this decision is voluminous and I don't request that it be spread upon the record; however, if it is in order, sir, I would like to request that it be considered an exhibit to my testimony.

Senator YARBOROUGH. I will order the Federal Maritime Board findings and order in dockets Nos. 765 and 831 printed in toto in the record.

(The Board's decision follows:)

(Served June 30, 1961, Federal Maritime Board)

FEDERAL MARITIME BOARD

No. 765

INVESTIGATION OF PRACTICES, OPERATORS, ACTIONS, AND AGREEMENTS OF OCEAN FREIGHT FORWARDERS AND RELATED MATTERS, AND PROPOSED REVISION OF GENERAL ORDER 72 (46 CFR 244)

No. 831

INVESTIGATION OF PRACTICES AND AGREEMENTS OF COMMON CARRIERS BY WATER IN CONNECTION WITH PAYMENT OF BROKERAGE OR OTHER FEES TO OCEAN FREIGHT FORWARDERS AND FREIGHT BROKERS

Decided June 29, 1961

1. Performance by forwarders of forwarding services free of charge or at non-compensatory charges to shippers, and receipt of brokerage from carriers on the shipments, found to violate section 16 of the Shipping Act, 1916, as amended.

2. Forwarders, in assessing charges to shippers in varying amounts, adding disguised markups to charges for accessorial services procured for their shippers, and performing forwarding services free or at non-compensatory charges for some shippers and not for others, found to give undue or unreasonable preference to some shippers and subject others to undue or unreasonable prejudice or disadvantage, in violation of section 16 First of the Act, and to engage in unjust and unreasonable practices in violation of section 17 of the Act.

3. Forwarders found to have failed to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property and the practices of forwarders in connection therewith found unjust and unreasonable, in violation of section 17 of the Act.

4. Performance by carriers of forwarding services free or at non-compensatory charges to shippers found to violate section 16 Second of the Act.

5. Payments by carriers to forwarders of brokerage, resulting in indirect rebates to shippers through the performance by forwarders of forwarding services free or at non-compensatory charges in violation of section 16 of the Act, found to be an unjust and unreasonable practice in violation of section 17 of the Act.

6. Violations of the Act as shown above found to have occurred regularly, and unjust and unreasonable practices relating to and in connection with the receiving, handling, storing, and delivering of property found to exist. Just and reasonable rules and regulations in connection therewith determined, prescribed, and ordered enforced.

7. Forwarders and carriers found to have entered into, and carried out, agreements or arrangements providing for the regulation of competition, pooling or apportioning of earnings, or cooperative working arrangements, without prior approval of the Board, in violation of section 15 of the Act.

8. Findings in prior decisions cited in order in No. 831 that agreements between carriers prohibiting payment of brokerage, or limiting brokerage to less than 1¼ percent of freight charges, are or would be detrimental to the commerce of the United States, found no longer valid.

Benjamin M. Altschuler for Customs Brokers and Forwarders Association of America, Inc., respondent and intervener, and International Expeditors, Inc., respondent.

J. Richard Townsend for Pacific Coast Customs and Freight Brokers Association and Los Angeles Customs and Freight Brokers Association, Inc., respondents and interveners.

Gerald H. Ullman for New York Foreign Freight Forwarders and Brokers Association, Inc., respondent and intervener, and Port of New York Ocean Freight Forwarders Conference, respondent.

G. M. Footner for Baltimore Custom House Brokers and Forwarders Association, respondent and intervener.

Robert Eikel and *E. C. Leutsch* for Texas Ocean Freight Forwarders Association, respondent.

Ramon S. Regan for United States Van Lines, Inc., respondent.

Paul J. Coughlin for Judson Sheldon International, Division of National Car-loading Corporation, respondent.

Edward M. Alfano for Pan American Van Lines, Inc., respondent.

Richard G. Green for Oxford Agency of N.Y., Ltd., respondent.

Frank G. Wittenberg for Universal Transport Corporation, respondent.

George F. Galland for American Union Transport, Inc., respondent.

Hyman I. Malatzky, respondent and intervener, *pro se*.

Paul A. Roge for D. B. Dearborn & Co., respondent.

Roger Roughton for Thomson & Earle, Inc., respondent.

Charles I. Rumi for Parker Commission Co., respondent.

J. Bertram Wegman and *Myron L. Shapiro* for D. C. Andrews & Co., Inc., respondent.

R. E. Johnson for Railway Express Agency, Inc., respondent.

Cyrus C. Guidry for Board of Commissioners of the Port of New Orleans, intervener.

Chas. R. Seal for Virginia State Ports Authority, intervener.

Charles B. Myers, *Robert N. Burchmore*, *John S. Burchmore*, and *Martin E. Coughlin* for National Industrial Traffic League, intervener.

T. W. Titsworth for Ebasco Services Incorporated, respondent.

G. M. Rebman for United Van Lines, Inc., respondent.

Arthur Lieberstein for Atlas Van Lines, Inc., respondent.

Leonard G. James for Capca Freight Conference, Pacific Coast/Caribbean Sea Ports Conference, Pacific Coast European Freight Conference, Pacific Coast/Mexico Freight Conference, Pacific Coast/Panama Canal Freight Conference, Pacific Coast/River Plate Brazil Freight Conference, Pacific Indonesian Conference, Pacific Straits Conference, and Pacific/West Coast of South America Conference, respondents.

Alex C. Cooke for Gulf/French Atlantic Hamburg Range Freight Conference, Gulf/United Kingdom Conference, Gulf/Scandinavian and Baltic Sea Ports Conference, Gulf/Mediterranean Ports Conference, and Gulf/South and East African Conference, respondents.

Odell Kominers, Mark P. Schlefer, J. Alton Boyer, and John Cunningham for United States Atlantic & Gulf-Puerto Rico Conference, respondent.

John R. Mahoney for Associated Latin American Steamship Conferences, respondent.

Allen E. Charles and Gilbert C. Wheat for Pacific Westbound Conference, respondent and intervener.

John Tilney Carpenter for States Marine Corporation, States Marine Corporation of Delaware, Isthmian Lines, Inc., Irish Shipping, Ltd., Mitsubishi Shipping Co., and South African Marine Corporation, respondents.

Herman Goldman, Elkan Turk, and Elkan Turk, Jr., for Wilhelmsens Dampskibsselskab; A/S Den Norske Afrika-Og Australielinie; A/S Tonsberg; A/S Tankfart I; A/S Tankfart IV; A/S Tankfart V; A/S Tankfart VI; Compagnie Maritime Belge, S.A. Compagnie Maritime Congolaise, S.C.R.L.; Skibsselskabet Varild; Skibsselskabet Marina; Skibsselskabet Sangstad; Skibsselskabet Solstad; Aktieselskabet Glitre; Dampskibsselskabet Garonne; Aktieselskabet Standard; Fearnley & Egers Befragtningsforretning A/S; Skibsselskabet Siljestad; Dampskibsselskabet International; Skibsselskabet Mandeville; and Skibsselskabet Goodwill, respondents.

William L. Hamm for Alcoa Steamship Co., Inc., respondent.

Alan B. Aldwell for Matson Navigation Company and The Oceanic Steamship Company, respondents.

Clarence J. Koontz, Malcolm D. Miller, F. W. Denniston, and J. H. Macomber, Jr., for Administrator of General Services, intervener.

Louis J. Lefkowitz and J. Bruce McDonald for State of New York, intervener.

William D. Rogers and John T. Rigby for Commonwealth of Puerto Rico, intervener.

Charles H. Tenney, Samuel Mandell, and Sidney Brandes for City of New York, intervener.

Walter J. Myskowski, Arthur L. Winn, Jr., Sidney Goldstein, F. A. Mulhern, Samuel H. Moerman, J. Stanley Payne, and Frank E. Mullen for Port of New York Authority, intervener.

Joseph A. Sinclair and Stephen Tinghitella for Commerce and Industry Association of New York, Inc., intervener.

T. R. Stetson, Edwin A. McDonald, Jr., F. Alan Lesser, Omar L. Crook, and Leonard G. James for United States Borax & Chemical Corporation, intervener.

Thomas F. Lynch for United States Steel Export Company, intervener.

Leonard G. James for Sunkist-Growers, Inc., intervener.

Elmer C. Maddy for witness George F. Foley appearing under subpoena.

C. Leonard Gordon for witness George H. Bernard appearing under subpoena.

Elliott B. Nixon for witness C. R. Andrews appearing under subpoena.

Richard J. Gage, Robert B. Hood, Frank W. Gormley, Edward Aptaker, and Robert E. Mitchell as Public Counsel.

REPORT OF THE BOARD

THOS. E. STAKEM, *Chairman*, SIGFRID B. UNANDER, *Vice Chairman*,
RALPH E. WILSON, *Member*

BY THE BOARD:

These proceedings were consolidated for hearing, present related issues, and will be disposed of in one report.

In No. 765, we instituted a general investigation into the practices of ocean freight forwarders by order of October 6, 1954, with the view of amending or supplementing General Order 72 regulating the business practices of such freight forwarders, 46 CFR Part 244, or taking such other action as might be warranted by the record. Subsequently, by notice of proposed rule making issued March 11, 1957, and published in the Federal Register of March 19, 1957, 22

F.R. 1779, we instituted a rule-making proceeding pursuant to section 4 of the Administrative Procedure Act, 5 U.S.C. 1003, proposing a revision of General Order 72.

Petitions were filed by interested ocean freight forwarder associations, requesting that the rule-making proceeding be dismissed for lack of jurisdiction. These petitions were denied, *Proposed Rules Governing Freight Forwarders*, 5 F.M.B. 328 (1957), on the ground, among others, that certain of the arguments advanced were premature. The jurisdictional issues were accordingly again raised at the outset of the hearings herein.

In an order of January 3, 1958, in No. 765, published in the Federal Register of January 15, 1958, 23 F.R. 277, we stated that the final form and scope of the rules and regulations which would ultimately be promulgated in the rule-making proceeding should properly await the conclusion of our investigation of forwarder practices, and that the rule-making proceeding should be consolidated with the investigation.

In No. 831, published in the Federal Register of January 15, 1958, 23 F.R. 278, we instituted an investigation of the practices and agreements of common carriers by water in connection with the payment of brokerage or other fees to ocean freight forwarders and freight brokers.

Hearings were held at New York, N.Y., San Francisco, Calif., and New Orleans, La., during the period November 5, 1958, through February 18, 1959. United States Steel Export Company and the Pacific Westbound Conference intervened in No. 765; Commerce and Industry Association of New York, Inc., the Administrator of General Services, National Industrial Traffic League, United States Borax and Chemical Corp., Sunkist Growers, Inc., Port of New York Authority, and Board of Commissioners of the Port of New Orleans intervened in Nos. 765 and 831; and Hyman I. Malatsky, doing business as Bergen Shipping Service, Baltimore Custom House Brokers and Forwarders Association, New York Foreign Freight Forwarders and Brokers Association, Inc., Customs Brokers and Forwarders Association of America, Inc., Pacific Coast Customs and Freight Brokers Association, Los Angeles Customs and Freight Brokers Association, Inc., and the Commonwealth of Puerto Rico intervened in No. 831. Subsequent to the hearing, the People of the State of New York through its Department of Commerce, the City of New York, and the Virginia State Ports Authority were permitted to intervene in both proceedings. Requested findings and conclusions pursuant to Rule 13(a) of the Board's Rules of Practice and Procedure, 46 CFR (1958 Supp.) sec. 201.221, were filed by Public Counsel, and opening and reply briefs were filed by the parties.

Our order in No. 765, including the consolidation therewith of the rulemaking proceeding, contemplated a broad investigation into the practices of the ocean freight forwarding industry as a whole, with the view of promulgating revised regulations pursuant to the Shipping Act, 1916 (the Act), as might be warranted by the record. The proceeding in No. 831, on the other hand, contemplated only a reappraisal of prior holdings to the effect that concerted action by common carriers in the foreign commerce of the United States which prohibits the payment of brokerage, or limits brokerage payments to less than 1¼ percent of the ocean freight charges, is detrimental to the commerce of the United States within the meaning of section 15 of the Act; and a determination of the extent to which we may control or limit the payment of brokerage by individual common carriers. This order was issued with the view of issuing rules or regulations which may be required in the public interest, or taking such other action as might be warranted by the record. While the application of prior decisions was limited to steamship conferences engaged in foreign commerce (see *Agreements and Practices Re Brokerage*, 3 U.S.M.C. 170, 172), the order in No. 831 includes as respondents carriers and conferences engaged exclusively in the domestic offshore trades, and a petition to discontinue the investigation as to them was denied.

In aid of the investigation in No. 765, questionnaires were promulgated by orders of February 17, 1958, to the ocean freight forwarder respondents, and to named steamship companies, and abstracts of the information thus secured were presented in evidence.

Ocean freight forwarders, hereinafter called forwarders, are persons subject to the Act, see *U.S. v. American Union Transport*, 327 U.S. 437 (1946). The Act does not require permission from the Board to enter into the business of ocean freight forwarding, and, accordingly, the present regulations provide merely for registration by forwarders with the Board, see 46 CFR, sec. 244.2, *et seq.* As a

consequence, it is easy for a person to open business as a forwarder, and the industry is overcrowded and extremely competitive. This makes it possible for employees of a forwarder to divert clients from their employer and to set up their own forwarding businesses. One forwarder located in New York has seen eight forwarding firms started by his ex-employees.

THE FORWARDING INDUSTRY

Forwarders are generally located in port cities, although some maintain offices in principal interior cities such as Denver, Colo., Minneapolis, Minn., and Washington, D.C., and there are forwarders registered with the Board at every port of commercial significance in the United States and its possessions. In essence, they act as the export departments for their shipper clients. In making export shipments, it is necessary that the cargo be booked aboard a carrier and moved to shipside, that shipping documents be prepared and processed, that in the case of foreign shipments export declarations be prepared and cleared through the United States Customs Bureau, that in some instances consular invoices required by the country of destination be prepared and processed, and in some cases accessorial services such as crating, recooling, and warehousing be furnished or provided at the port city.

In almost every instance shown of record, the services of forwarders are engaged by the shipper or consignee of the cargo, and there is no indication that any contractual relationship exist between the forwarders as such and carriers. A few large shippers, engaged extensively in foreign commerce, maintain their own export departments, and perform their own forwarding, but in the great majority of instances the volume of freight exported by the average exporter does not justify the maintenance by him of a full-time export traffic department at the ports. For example, there are more than 17,000 merchants who have executed exclusive service contracts with the Trans-Atlantic Associated Freight Conferences, but only about 20 of these maintain export departments at the port of New York.

Except in the instances noted above, exporters in the United States are dependent upon the forwarders to perform the essential services required to accomplish the exportation of their goods. For the most part, the exporters are themselves unfamiliar with the technical aspects of forwarding, and even when they are located in port cities, they rely upon forwarders to handle these matters. It can be said, therefore, as this record bears out, that the forwarding industry is an integral part of the commerce of the United States, and makes a valuable contribution to foreign trade through its function of relieving exporters from many details and formalities connected with export shipments. See *Agreements and Practices Re Brokerage, supra*, at pp. 173-4.

The record discloses in detail the various services provided by forwarders. While not all of them are necessary with regard to each export shipment, the principal ones enumerated above must be performed in every instance, either by a forwarder or by the shipper. The forwarders' services include the following: (1) Preliminary to movement of the cargo, advising the shipper-client as to the best port to use, based on a consideration of inland freight rates, frequency of vessel services, congestion at the various ports, and the availability at a particular port of heavy-lift equipment or other special equipment required; securing an export license if required, or reviewing the export license obtained by the shipper; and examination of the letter of credit to insure that compliance therewith can be effected. (2) Tracing the movement of the cargo to the port, and taking action to expedite it if necessary. (3) Reserving vessel space. (4) Preparation of a dock receipt, an export declaration, a delivery order directing the movement of the cargo to the pier and delivery thereof to the inland carrier, and an ocean bill of lading in the number of copies required for the use of the shipper and carrier. (5) Clearing the export declaration with the Customs Bureau, delivering the bill of lading and copy of the export declaration to the carrier, preparing and processing through consular officials the consular invoice, and making a complete set of the documents to conform with the letter of credit. (6) Coordinating the movement of the cargo to shipside to coincide with the loading schedules of the carrier. (7) Consolidating separate cargo lots for one shipment or consolidating several small shipments for movement on one bill of lading to avoid minimum charges. (8) Arranging for accessorial services, such as the placement of marine insurance, cartage on small shipments, cooerage to repair

damaged packages or for export packing or crating at the port city, and storage or warehousing to await the arrival of additional cargo lots or to accommodate cargo missing the vessel. (9) Payment of the ocean freight to the carrier on behalf of the shipper. (10) Assembling the documents in compliance with the letter of credit and delivering them to the bank.

With respect to a substantial portion of the shipments handled by forwarders, they are authorized by their shipper clients to arrange for the booking of the cargo, and to select the carrier over whose line the shipment will move. In performing this function, the forwarder testimony of record is unanimously to the effect that the forwarder's primary obligation is to the shipper, and that selection of the carrier is generally made with the view of securing the earliest possible delivery at destination consistent with good service. It is clear, however, that the forwarders are in a position with respect to shipments for which they have booking authority to favor one carrier over another where there is competitive service to the destination port. For this reason, the forwarders are regularly solicited for business by the carriers. On rare occasions, forwarders are requested by carriers to secure so-called "spot" cargo when a particular vessel is in danger of sailing light, and they are sometimes able to secure from their shipper clients such spot cargo, but specific instances cited of record are few. Shippers are likewise directly solicited for spot cargo.

Some forwarders also perform functions not directly related to the handling of specific shipments, which tend to develop foreign trade. In connection with the solicitation of business for their own account, they sometimes induce shippers to enter into the export business. Some of them prepare bulletins compiling the sailing schedules and rates of different carriers, port handling charges, and inland rates, for dissemination to their shipper clients. A few maintain representation abroad for the solicitation of business from foreign consignees, or travel abroad for the same purpose, and are sometimes instrumental in bringing together foreign consumers and domestic producers. The record indicates, however, that the growth and development of our foreign export trade depend primarily upon the sales efforts of the exporters themselves. Forwarders sometimes intercede on behalf of their shipper clients for rate adjustments by the carriers, both inland and ocean, in order to facilitate the movement of goods produced in the United States at landed costs competitive with goods produced elsewhere. Forwarders are also instrumental in securing from their shipper clients the execution of exclusive service contracts with steamship conferences, in order that their clients may be entitled to the lower contract rates in those situations where conferences maintain dual rate systems.

Forwarders generally receive their revenues from two sources. Except as noted below, they bill their shipper clients for the various services performed by them, as discussed in detail *infra*. In addition, on the great majority of the shipments handled by them, they receive so-called brokerage¹ payments from the ocean carriers. The importance of the brokerage payments to the revenue position of the forwarders is indicated by Table I below, which consists of a compilation of the data furnished by the forwarders responding to the questionnaires mentioned above. The brokerage received as shown in the table corresponds closely with the total amount of brokerage reported as paid by the carriers in 1957 of \$11,284,748.

TABLE I.—Activity and revenues of forwarders in 1957

	Number of forwarders	Number of shipments forwarded	Number on which brokerage received	Brokerage received	Forwarding fees collected
Atlantic coast.....	897	1,550,621	1,186,702	\$7,946,425	\$19,246,931
Gulf coast.....	150	238,790	163,411	2,105,758	2,963,560
Pacific coast.....	146	155,307	101,071	929,536	1,621,208
Nonocean.....	80	51,502	23,771	127,462	482,395
Total.....	1,273	1,996,220	1,454,955	11,109,181	24,314,094

¹ Whether "brokerage" as used in this report can be construed to mean brokerage fees in the strict sense of the latter term is doubtful, in view of the discussion *infra*.

There is substantial variation in the size and activity of the individual forwarders. More than 500 forwarders handled less than 100 shipments each in 1957, while several processed over 20,000 shipments. Of the 1,273 forwarders responding to the questionnaires, 283 or 22 percent handled no shipments at all in 1957, 221 or 17 percent handled between 1 and 99 shipments, and 219 or 17 percent handled between 100 and 499 shipments. Forwarders in order to function efficiently must keep abreast of changes in traffic patterns and in the regulations of our own and foreign governments. There is evidence of record to the effect that a forwarder should handle a substantial volume of traffic, 500 shipments or more annually, in order to maintain current acquaintance with changing conditions in the trades. Some of the larger forwarders employ persons specializing in the commercial practices of the various trade areas.

Table II below shows the extent of forwarder activity at the major ports of the United States in 1957, and the extent of the dependence of forwarders at the various ports and as a whole upon brokerage payments. Of the total of 919 forwarders reporting income from brokerage and forwarding fees separately, 124 received more than 50 percent of their income from brokerage.

TABLE II.—Forwarder activity at major ports in 1957

	Number of forwarders	Shipments handled	Percent of brokerage to total income
Boston, Mass.....	21	2,621	22
New York, N.Y.....	732	1,407,454	28
Philadelphia, Pa.....	25	31,798	37
Baltimore, Md.....	13	29,175	43
Norfolk, Va.....	12	10,358	56
New Orleans, La.....	77	113,680	40
Houston, Tex.....	16	71,369	42
Seattle, Wash.....	16	16,529	48
San Francisco, Calif.....	51	87,183	41
Los Angeles, Calif.....	61	39,493	23
Total, United States.....	1,273	1,996,220	31

As is indicated by the data shown in Table II, the port of New York is by far the leading center of activity in the forwarding industry. New York is the leading general cargo port in the United States, handling about 13 million tons annually in foreign trades. About 80 percent of the general cargo passing through the port of New York for export originates at interior ports, and the physical situation at the port requires complicated and exacting procedures to coordinate the arrival of the cargo at the port and its delivery to the pier. The tracks of most of the railroads terminate on the New Jersey side of the port, while most of the steamship piers are located on the New York side. Rail cargo therefore generally requires lighterage in order to effect delivery at shipside. In order to avoid congestion of lighters at the piers, the steamship companies require the issuance of loading permits and the railroads require that delivery orders and accompanying vessel permits be presented at least 48 hours prior to the time of lighterage delivery specified. There are also rail tariff provisions permitting split lighterage deliveries of individual shipments combined into a single carload, which necessitates close coordination at the port in order to effect delivery at shipside.

Because of their connections with shippers located in the interior, forwarders located at New York not only handle cargo passing through that port, but they also control a substantial amount of cargo moving through ports elsewhere in the United States. To a substantial degree, the New York forwarders through such control affect the operations of carriers and forwarders at ports other than New York, giving rise to arrangements which are discussed more fully hereafter. The influence of the New York forwarders extends even to the Pacific Coast. For example, the Pacific Coast European Conference requires that forwarders be specifically designated by their shippers before brokerage may be paid to the forwarders. At the time of the hearing, there were 308 such designations on file, and only 123 of these forwarders were located on the Pacific Coast, with the remaining 185 being located elsewhere, principally at New York.

PRACTICES OF FORWARDERS

Forwarding fees and billing.—The record in these proceedings, despite its size, discloses no discernable pattern of forwarding fees within the forwarding industry, or by any one forwarder individually. Apparently, the charges made by a forwarder to his shipper clients are established by negotiation, and vary from shipper to shipper. As testified by one forwarder, a fee of \$10 for a particular service may be charged one shipper, but another who "drives a hard bargain" may get the same service for \$7.50. There is intense competition within the forwarding industry, and this tends to drive the overt forwarding fees, labeled as such in the forwarder's billing, to the lowest possible levels. There are examples in the record of the printed billing forms used by several forwarders. One of these shows separate items covering inland freight; cartage, ocean freight; insurance; consular fees; preparation and/or presentation of consular documents, translations, blanks, etc.; preparation of bills of lading, forwarding fee; customs clearance; handling draft and collections; cables, telegrams and air mail postage; and storage and/or demurrage charges. This form includes a statement that inland freight, ocean freight, or consular fees, if included, are net disbursements.

Another billing form shows separate items for inland freight, cartage charges, ocean freight and charges, insurance charges, consular fees, cost of consular blanks, preparation of consular invoices, preparation of certificates of origin, preparation of bills of lading, forwarding fee, customs entry fee, customs duty, customs clearance, special services, postage, petties and taxes, and banking documents. This form includes the statement "Items appearing on our invoice are cash advances as an accommodation to you. We are obliged to insist upon immediate payment of our invoice of expenses otherwise it will be impossible for us to extend you credit facilities on future transactions."

A third billing form shows items of ocean freight; foreign port, government, surcharges, landing charges; consular fees and blank consular forms; preparation and handling consular invoices; certification; messenger service; inland freight and charges; insurance; arranging insurance under consignee's or shipper's policy; cartage; storage; arranging transportation, preparation and handling bill of lading and attendance; customs clearance, checking and verification for export control; cables, telegrams and telephone toll charges; postage and airmail; banking service and preparation of draft for collection; banking service, preparation of documents and handling against letter of credit; advancing ocean freight and charges; and arranging confirmation and payment to suppliers. This bill includes no forwarding fee as such, and it is the only bill form indicated of record which informs the shipper client that brokerage payments from the carriers might be received. This form includes the statement:

"The charges separately listed above for 'Ocean Freight', 'Inland Freight', 'Consular Fees', and 'Foreign Port, Government, Surcharges, Landing Charges' are the exact amounts actually paid out by us in each instance for your account. In accordance with our agreement with you, and as specified in the terms and conditions of our Acknowledgment of Shipping Instructions heretofore sent you, our profit, in addition to our direct costs, expenses and disbursements incurred for your account, is a component of the other items detailed in this Bill of Charges. As agreed as aforesaid, we are separately compensated for our services to the ocean carrier in respect of this shipment by the steamship company's payment to us of a commission at the rate of 1¼% of such carrier's charge (itemized above) for Ocean Freight."

The present regulations (46 CFR sec. 244.7²) require, among other things,

² This section provides:

"244.7 *Billing Practices.* All forwarders shall use invoices or other forms of billing which state separately and specifically, as to each shipment:

- "(a) the amount of ocean freight assessed by the carrier;
- "(b) the amount of consular fees paid to consular authorities;
- "(c) the amount of insurance premiums actually disbursed for insurance bought in the name of the shipper or consignee;
- "(d) the amount charged for each accessorial service performed in connection with the shipment;
- "(e) other charges.

Provided, however, that forwarders who offer to the public at large to forward small shipments for uniform charges available to all and duly filed with the Federal Maritime Board, shall not be required to itemize the components of such uniform charges on shipments as to which the charges shall have been stated to the shipper at time of shipment, and accepted by the shipper by payment; but if such forwarders procure marine insurance to cover such shipments, they must state their total charge for such insurance, inclusive of premiums and placing fees, separately from the aforementioned uniform charge."

that forwarders shall use invoices or other forms of billing which state separately the amount of insurance premiums actually disbursed for insurance bought in the name of the shipper or consignee, and the amount charged for each accessorial service performed. A common practice, particularly among the New York forwarders, is for the forwarder to mark up the charges for these accessorial services above the amounts actually disbursed in his billing to the shipper client. In numerous instances, marine insurance is secured by the shipper under his own policy, leaving the actual placement of the insurance upon specific shipments and the payment of the premiums to the forwarder. In these circumstances, there is no indication that the billing to the shipper includes markups in contravention of the regulation. In other cases, however, insurance is placed by the forwarder under his own open marine insurance policy, and the forwarder charges the shipper more than the cost of the insurance, generally without advising the shipper that the latter is paying more than the cost of the insurance alone. These markups, so far as this record shows, are imposed in a random fashion, vary from shipper to shipper and from shipment to shipment, and appear to bear no relation to the cost to the forwarder for his services of placing the insurance, despite the testimony of some forwarders that the markups represent legitimate service charges covering the work necessary to secure insurance coverage, preparation of insurance certificates, and handling of claims where necessary. Table III below illustrates the practices of the forwarders in this respect, showing the more extreme amounts of markup from among the instances shown of record.

TABLE III.—Markup of insurance charges by forwarders

Forwarder	Insurance premium	Markup	Percent of markup
Hasman Shipping Corp.....	\$26.25	\$36.75	140
Do.....	46.17	9.48	21
Cosmos Shipping Co., Inc.....	44.15	15.80	36
Do.....	22.47	None	0
Presto Shipping Agency.....	10.69	.20	2
Do.....	18.30	1.20	7
D. C. Andrews & Co., Inc.....	30.77	None	0
Do.....	144.40	115.52	80
M. Weisel & Co.....	221.87	53.15	24
Do.....	225.00	10.00	4
International Expeditors, Inc.....	32.43	23.53	73
Do.....	23.90	4.71	20

The extent of variation in the practice of marking up insurance charges as between different shippers by one forwarder is illustrated by evidence concerning D. C. Andrews & Co., Inc. During November 1957 this forwarder marked up the insurance charges on 9 shipments of one shipper 76 percent or a total of \$54.71, and on 4 shipments of another shipper 56 percent or a total of \$50.87, while on 16 shipments handled for two other shippers there was no markup at all. The alertness of shippers in dealing with forwarders is a factor in determining whether a markup will be imposed, and its amount. If a shipper is not aware of the practice, he is more likely to bear the added charge. There is testimony to the effect that the markup is based on what the traffic will bear, and that there is no standard basis for determining the amount of the markup. One forwarder testified that as a matter of policy he attempted to mark up the insurance charges on shipments to a particular area by one percent of the insured value of the shipments, but the evidence as to specific shipments shows wide variations from this policy. Because of their volume of shipments, forwarders under their own open policies are sometimes able to obtain insurance at lower costs, including the markups, to the shippers than could be obtained by the shippers themselves. In instances where shippers maintain their own marine insurance policies, they sometimes request the forwarders to place insurance under the forwarders' policies when the claim experience on particular types of shipments or to particular areas is unfavorable, in order to protect the loss ratio under the shippers' own policies which bears on the premium rates.

Forwarders are frequently requested to arrange for cartage within the port area on shipments. As in the case of insurance, it is common for the New York forwarders to mark up the cartage charges to the shippers above the amounts disbursed for this purpose. There is evidence that in one instance ocean freight

charges were also marked up, in contravention of the regulation, but no indication that this practice is widespread, since freight rates are generally readily ascertainable by the shippers.

The record leaves little doubt that the practice of marking up accessorial charges is induced by intense competition within the forwarding industry, which as indicated above tends to drive forwarding fees to unremunerative levels, and the markups provide a means for the forwarders to recover their costs of arranging for the accessorial services and of other forwarding services without endangering their competitive position, since the marked up charges are disguised and the amounts thereof unknown to the shippers.

The responses of the forwarders to the questionnaires show that of 1,273 forwarders responding, 226 or about 18 percent admitted doing some free forwarding during 1957. Under this practice, the forwarding services are provided without charge to the shipper. It is likewise caused by competition between forwarders, and is made possible by the receipt of so called brokerage payments from the carriers. Obviously, free forwarding services are furnished only to those shippers whose shipments earn sufficient brokerage to pay the cost of forwarding, others being charged fees even though brokerage is collected on their shipments. One Pacific coast forwarder provides free forwarding services for 11 of his shipper clients. During the last six months of 1958 the amount of brokerage received on these 11 accounts was \$19,073, and was \$29 on one account and ranged from \$465 to \$5,536 on the other 10 accounts. Generally only the larger shippers are favored with free forwarding services.

The General Services Administration handles export shipments for a number of Federal agencies. Until May 1958 it utilized forwarders registered with the Board and included in a special list, who applied for the privilege of performing free forwarding services. These free forwarding services were not actively solicited by the General Services Administration. During 1957, free forwarding services were offered by 128 forwarders, 96 on the Atlantic and Gulf coasts, and 32 on the Pacific coast. The shipments were rotated among the various forwarders every 30 days at New York, Philadelphia, and Baltimore, and every 60 days at other ports. In 1957, 82 such forwarders handled 3,274 shipments for the General Services Administration under their offers to perform free forwarding, and the total ocean freight charges on these shipments were \$4,364,870. If so called brokerage was received on all of these shipments by the forwarders at the usual rate of 1½ percent, it amounted to \$54,561, or an average of \$16.66 per shipment. Table I indicates that the average income per shipment from forwarding fees and brokerage combined in 1957 was \$17.75.

In March 1958 the Comptroller General ruled in *Transportation—Freight Forwarders—Free or Reduced Rates for Services*, 37 Comp. Gen. 601, that the acceptance by a Federal agency of free forwarding services or forwarding at rates reduced by the forwarder in contemplation of the receipt of brokerage, would be in violation of section 16 of the Act. Upon receipt of this ruling, the General Services Administration changed its policies regarding forwarding, and issued invitations to forwarders to bid for the performance of such services. The services sought included preparation and processing of export declarations; preparation and processing of ocean bills of lading, dock receipts, and delivery orders; and processing of consular invoices. The specifications included a condition that any bid submitted which stated that it is conditioned upon the receipt of a brokerage charge for performing, in part or in whole, the forwarding services outlined would be disqualified. On berth general cargo, the bids received from east coast forwarders and opened on September 23, 1958, ranged from no charge and 1 cent per shipment to \$25 per shipment, and one New York forwarder offered to pay the Government 25 cents per shipment for the privilege of handling the shipments. East coast bids accepted under this invitation were no charge at Savannah, 1 cent per shipment at New York, 10 cents per shipment at Baltimore, and ranged from \$5 to \$10 per shipment at other ports. Bids accepted at Gulf and Pacific coast ports ranged from no charge at Los Angeles and \$1.50 per shipment at New Orleans upward to \$7.50 per shipment.

While there is no definitive cost evidence of record, there is an indication that at some time prior to 1955 forwarder costs at New York averaged \$2.76 for preparation and processing of the export declaration, \$4.28 for preparation and processing of consular invoices, and \$8.89 for preparation and processing of ocean bills of lading and related dock receipts and delivery orders, or a total of \$15.93 per shipment for these services alone. There is also substantial evidence clearly indicating that as a whole, forwarding fees as such, including markups on acces-

social charges, do not fully cover the costs of performance by the forwarders of the services performed by them, and that the receipt of brokerage is necessary in order for them to recover their costs of operation and realize a profit.

Monarch Finer Foods,³ a west coast manufacturer of food products, located at San Francisco, exports from numerous ports throughout the country. It maintains its own export department in San Francisco and there performs all of its own forwarding services, and retains a forwarder in New York to handle shipments moving through the latter port. This shipper formerly paid its New York forwarder \$300 per month on a retainer basis. In December 1953, Gentry Shipping Co., a New York forwarder, was given the account for a retainer of \$150 per month, and a promise of brokerage on shipments moving through San Francisco. At the time, the shipper was still performing its own forwarding at San Francisco, and no forwarder was collecting brokerage on the shipments. In order to accomplish the arrangement, a fictitious branch office of the forwarder was set up in San Francisco, headed by the shipper's office manager, who received a fee from Gentry. Brokerage thereafter was collected from west coast carriers on west coast shipments, even though the forwarder performed no services thereon, and claims for brokerage were made upon the carriers, and paid by the latter, on shipments which moved prior to the date of certification of the forwarder to the west coast carriers by the shipper. In this instance, forwarding services at New York for the shipper were partially compensated for by the receipt of unearned brokerage on west coast shipments.

Agreements.—Frequently a forwarder in one port will control the traffic of a shipper who exports from other ports, and this situation is most prevalent among the New York forwarders. In these instances, the New York forwarders have entered into agreements or arrangements with forwarders at other ports, such as Baltimore, New Orleans, and San Francisco, under which the out port forwarders will handle the shipments. Compensation to the outport forwarder is usually made by a split of the brokerage payments received from the carriers. About 80 such agreements have been filed with and approved by the Board under section 15 of the Act, but the record indicates that there are numerous such agreements in existence which have not been submitted for approval.

In order to avoid, where possible, the necessity of splitting brokerage payments, the New York forwarders have also entered into arrangements with the ocean carriers under which the work necessary to complete forwarding services, such as clearance of the export declarations and processing of consular invoices, is accomplished by the ocean carriers without charge at ports such as Boston and Baltimore, and the South Atlantic ports of Charleston and Savannah. Pursuant to these arrangements, the New York forwarders have diverted cargo from New Orleans to Savannah and Charleston in order to avoid the splitting of brokerage with New Orleans forwarders, because carriers have refused to perform outport forwarding services or the completion thereof at New Orleans. The forwarders at Boston and Baltimore have requested that the carriers discontinue their performance of free forwarding services for the New York forwarders, or alternatively that like services be performed at New York on behalf of the Boston and Baltimore forwarders, but these requests have been refused. It has been estimated that the Baltimore forwarders are deprived of revenues amounting to about \$125,000 annually because of these practices.

Relationship between forwarders and shippers.—Several instances are shown of record wherein relationships exist between forwarders and shippers or employees and stockholders of shippers to the extent that the receipt by the forwarders of brokerage payments may constitute direct or indirect rebates in violation of section 16 of the Act, as found by the Board in *Samuel Kaye—Collection of Brokerage/Misclassification*, 5 F.M.B. 385 (1958), and *Luis (Louis) A. Pereira—Collection of Brokerage*, 5 F.M.B. 400 (1958). The Ford Motor Company employs a forwarder, the J. R. Willever Company, which prior to 1958 performed no services whatsoever, all of the forwarding work being performed by the Ford Motor Company, but which was permitted to collect brokerage payments on all of the shipments exported by Ford. Brokerage payments amounted to almost \$200,000 in 1957. Prior to 1956, 90 percent of the stock of Willever was held by members of the Ford family. The record does not disclose the present relationship between Willever and the Ford Motor Company, but Willever now books all Ford Motor Company shipments with the carriers and

³The name was changed to Consolidated Food Products during the course of the events here related.

collects brokerage thereon, without charge to the Ford Motor Company, and all other forwarding services are performed by the latter.

The situation with regard to Monarch Finer Foods has previously been detailed. Studebaker-Packard Corporation does practically all of its own forwarding work, and permits its forwarder, Commercial Shipping Company, to obtain brokerage on the shipments. From 1944 to 1955, an official of the Studebaker-Packard Corporation owned a partnership interest in Commercial Shipping Company. The Jahrett Shipping Co., Inc., a forwarder, is commonly owned, in part, with Henry R. Jahn & Son, Inc., and Cooper-Jahn, Inc., shippers. Brokerage is received by this forwarder on shipments of the commonly owned shippers. Similarly, Banho Shipping Corporation, a forwarder, has common stockholders with Banho Export Co., Inc., a shipper.

BROKERAGE

General.—The practice of the payment of brokerage by ocean carriers to forwarders is of long standing, going back 60 years or more. It is a matter of prime importance in these proceedings, since brokerage constitutes a substantial portion of the revenues of forwarders as previously detailed. Therefore, before making findings concerning brokerage practices, it is necessary to determine as precisely as possible the exact nature of the relationship between forwarders and carriers, and whether the brokerage payments here involved are actually brokerage fees. Past decisions of the Board and its predecessors and of the courts have accepted the premise that forwarders, in their dealings with carriers, act in the capacity of freight brokers. See, for example, *In re Gulf Brokerage and Forwarding Agreements*, 1 U.S.S.B.B. 533 (1936); *Agreements and Practices re Brokerage*, 3 U.S.M.C. 170 (1949); and *U.S. v. American Union Transport*, *supra*, at p. 442, f.n. 6. It has consistently been held by the Board and its predecessors that brokerage is compensation for securing cargo for a vessel, see *Pacific Coast European Conf.—Payment of Brokerage*, 5 F.M.B. 225, 233-4, and the proceedings there cited.

In none of these decisions, however, was there any reference to the accepted definition of a broker, and the elements necessary to establish a brokerage relationship. In *American Union Transport v. River Plate & Brazil Confs.*, 5 F.M.B. 216 (1957), upheld in *American Union Transport v. United States*, 257 F. 2d 607 (1958), cert. den. 358 U.S. 828, an attempt was made to distinguish between the forwarding and so-called brokerage activities of a forwarder, but this proceeding involved only the activities of a single forwarder with respect to a specific series of shipments, and the Board relied upon its prior definition of brokerage as securing cargo for the ship. The principles there enunciated are relevant, however, in determining the issues here.

A broker is an agent employed to make bargains and contracts between other persons in matters of trade, commerce, and navigation for a compensation, commonly called brokerage. 12 C.J.S. § 11. A broker may act as agent for his customer only where he has been engaged to do so by a contract of appointment or employment, which may be either express or implied. 12 C.J.S. § 12. The right of a broker to recover commissions or other remuneration for his services must be predicated on a contractual relation, he must have been employed to negotiate the contract or transaction in connection with which his services were rendered, and the employment must have been by the person from whom the commission is claimed or by some one acting for him. Where there is no employment or binding contract for the payment of commissions and the broker acts as a mere volunteer, he is not entitled to compensation for his services, although such services are the efficient cause of bringing the parties together and they result in a sale or other contract between them. 12 C.J.S. § 60.

The court in *American Union Transport v. United States*, *supra*, stated, at p. 613:

"The appointment of AUT [the forwarder] as a broker by Central [the shipper] could not create any liability on the part of the ocean carriers. There was no agreement by the carriers authorizing the appointment, and certainly no agreement by the members of the Conference to incur liability to AUT, with whom it had engaged in competition for the very business for which it now claims compensation by way of reparations. AUT was not the broker for the carriers to obtain the contract and there was no agreement at any time between AUT and the members of the Conference to pay brokerage."

As previously stated, in almost every instance shown of record, the services of forwarders are engaged by the shippers or consignees of the cargo, and there

is no indication that any contractual relationships exist between the forwarders as such and carriers. The rates of ocean carriers generally apply at ship's tackle, and it is the duty of the shipper to bring the cargo alongside the vessel ready for shipment, and not that of the ship. See *American Union Transport v. River Plate & Brazil Confs.*, *supra*, at p. 223. The services of forwarders detailed above are almost entirely directed toward performance of the shipper's duty. Much stress is laid, in the briefs and in the testimony, upon the fact that it is the duty of the carrier under the Harter Act, 46 U.S.C. 193, and the Bills of Lading Act, 49 U.S.C. 100, to issue bills of lading, and that in preparing bills of lading the forwarders are acting on behalf of the carriers. See *In re Gulf Brokerage and Forwarding Agreements*, *supra*, at p. 534-5, and *Puerto Rican Rates*, 2 U.S.M.C. 117, 133. This duty of the carriers is accomplished, however, by the issuance of an original bill of lading for each shipment. The record here discloses, on the other hand, that for the use of the shipper a number of copies of the bill of lading are required, as many as 25 or 30, that the bills of lading are prepared at the request of the shipper, that a charge for this service is ordinarily made to the shipper, and that in no instance are the forwarders employed by the carriers to perform this function. The benefits to the carriers from this service are therefore merely incidental to the needs of the shippers.

In the light of the comprehensive record made herein, it is concluded that, except in those rare instances in which forwarders are retained by carriers, under either express or implied agreements, to secure spot cargo, forwarders are not brokers. It is urged by some that the long accepted definitions of "broker" and "brokerage", as such, are no longer valid in relation to the services performed by forwarders. Brokers are specifically named in section 16 of the Act among those who are forbidden to obtain or attempt to obtain rebates, and there is no indication that this term was used by the Congress in any other than its accepted sense. Settled principles of law are not so lightly discarded.

Brokerage practices.—In the great majority of instances, steamship conferences limit, by agreement the payment of brokerage to $1\frac{1}{4}$ percent of the ocean freight charges, and all carriers members of such conferences pay brokerage at such rate. Only two instances of deviation from this rate are shown. The North Atlantic Continental Freight Conference tariff permits the payment of brokerage at $1\frac{1}{4}$ percent on rates up to and including \$19.99 per ton, $2\frac{1}{2}$ percent on rates of \$20 up to and including \$22.99 per ton, and 5 percent on rates of \$23 per ton or over.⁴ These higher rates of brokerage are required by severe competition from non-conference lines, which in this trade pay brokerage as high as 10 percent. The Pacific Coast European Conference tariff limits the payment of brokerage on grain and grain products to $\frac{3}{4}$ of 1 percent, on lumber and open rate commodities to 1 percent, and on certain commodities included in a net rate list prohibits the payment of brokerage. These tariff provisions were at issue in *Pacific Coast European Conf.—Payment of Brokerage*, *supra*, and the Board found that the prohibitions and limitations on brokerage to less than $1\frac{1}{4}$ percent were similar to those condemned in *Agreements and Practices re Brokerage*, *supra*, but withheld action with respect thereto pending the outcome of the instant proceedings.

In the trades from the Pacific Coast to East and South Africa, and to Australia, the carriers by individual action do not pay brokerage. The evidence is that, in the event any one of the carriers in those trades commenced the payment of brokerage, the others in order to remain competitive would need to do likewise. Non-conference carriers generally pay brokerage at the rate of $2\frac{1}{2}$ percent, although there are instances cited of record where brokerage payments as high as 16 percent were made, and the non-conference carriers consider their higher rates of brokerage as a competitive advantage.

Steamship conferences, as indicated above, generally fix the upper limits of brokerage rates. They recognize that brokerage payments are a competitive device to attract cargo to a particular steamship line, and that in the absence of agreed limits, if maximum rates of brokerage were left to the individual action of the carriers, brokerage would soon get out of hand.

Methods of payment of brokerage.—In the majority of instances, forwarders present invoices to carriers for brokerage claimed, and are paid by the carriers on the basis of these invoices. Generally, the carriers check only to insure that

⁴ Tariff No. 24 of the North Atlantic Continental Freight Conference, of which official notice is taken pursuant to Rule 13(g) of the Board's Rules of Practice and Procedure, 46 CFR § 201.227, increased the respective upper limits of the rates, effective January 1, 1960, to \$21.99, \$24.99, and \$25, or over.

the shipments invoiced actually moved, and that no more than one brokerage payment is made on any one shipment. The carriers make no effort to ascertain that the forwarders have performed any services with respect to any shipments, and do not attempt to determine whether there are any relationships between forwarders and their shipper clients which would make the payment of brokerage on the shipments of such shippers rebates in violation of section 16 of the Act. The carriers insist that they rely primarily upon the fact that a particular forwarder is registered with the Board, that it is impossible for them to inquire into any possible relationships of forwarders with the shipper and an onerous burden would be imposed upon them were they to be required to ascertain whether the forwarders actually performed any services on shipments on which brokerage is claimed, in view of the great number of shipments handled by the forwarders.

With the recent development of machine accounting systems, several carriers have instituted an automatic method of payment of brokerage. Under this method, all bills of lading showing on their face that a registered forwarder is in any way connected with the shipments are collected together, information showing the name of the forwarder, the bill of lading number, and the ocean freight charges are transcribed to machine records, computations as to the amount of brokerage due are automatically made and checks issued to the forwarders, all without requiring the forwarders to submit any claims or invoices for brokerage. This automatic method of payment results in cost savings to the carriers, in that it eliminates the necessity of checking numerous forwarder invoices against carrier records, and is regarded by some as a favorable competitive device in that it results in more prompt payment of brokerage to the forwarders.

The present regulations (46 CFR § 244.13⁵) prohibit forwarders from receiving brokerage in cases where payment thereof would constitute a rebate, or from sharing any part of the brokerage with a shipper or consignee. In an attempt to insure that, so far as possible, the carriers will be protected against inadvertent rebates, they generally require a certification on the invoices of forwarders to the effect that, in compliance with section 16 of the Act, payment by the carrier and acceptance of brokerage by the forwarder are on the strict understanding that no part of the brokerage shall revert to the shipper or consignee, and that the business of the forwarder is in no sense subsidiary to that of the shipper or consignee. In the case of automatic brokerage payments, the checks of the carriers include a similar certification as a part of the endorsement, which must be executed by the forwarders when negotiating the checks. The record leaves little doubt that these certificates are executed indiscriminately by the forwarders, and that the present regulation and the certificates are ineffective in preventing rebates, direct or indirect, in cases where forwarders provide forwarding services free of charge to their shipper clients, as in *American Union Transport v. River Plate & Brazil Confs.*, *supra*, or in cases where there is an identity of interest between a particular forwarder and his shipper clients, as in *Samuel Kaye—Collection of Brokerage/Misclassification*, *supra*, and *Luis (Louis) A. Pereira—Collection of Brokerage*, *supra*.

Some shippers have requested that the carriers of their shipments do not pay brokerage to the forwarders employed by them. So far as the record discloses, these requests are honored by the carriers. A number of shippers, as indicated above, perform on their own behalf all of the services normally provided by forwarders. Such shippers do not receive brokerage payments. Some of these shippers testifying of record herein, are of the opinion that in the performance of forwarding services, their activities redound to the benefit of the carriers in exactly the same manner as the normal operations of forwarders, and that if the forwarders are entitled to brokerage, the shippers are entitled to the same privilege. All parties of record recognize that the direct or indirect

⁵ This section provides:

"244.13 *Brokerage*. No forwarder, after the date on which he is required to register, shall accept brokerage from ocean carriers unless and until such forwarder has been assigned a registration number pursuant to these rules. Registration shall not entitle a forwarder to collect brokerage from a common carrier by water in cases where payment thereof would constitute a rebate—i.e., where the forwarder is a shipper or consignee or is the seller or purchaser of the shipment, or has any beneficial interest therein or where the forwarder directly or indirectly controls or is controlled by the shipper or consignee, or by any person having a beneficial interest in the shipment. A forwarder shall not share any part of the brokerage received from a common carrier by water with a shipper or consignee. No forwarder shall demand or accept brokerage during the period his registration number is under suspension or after his registration number has been cancelled pursuant to these rules."

payment by a carrier to a shipper of any portion of the ocean freight charges would constitute an unlawful rebate in violation of section 16 of the Act. See *Payments to Shippers by Wis. & Mich. Steamship Co.*, 1 U.S.M.C. 744 (1938), and *Rates, Charges, and Practices of L. & A. Garcia and Co.*, 2 U.S.M.C. 615 (1941). See also *Lehigh Valley R.R. Co. v. United States*, 243 U.S. 444 (1917), involving a similar situation under the Interstate Commerce Act.

Unearned brokerage.—The record discloses a number of instances in which brokerage, in substantial amounts, is paid by carriers to forwarders on shipments as to which the forwarders have done little or no work. The circumstances under which the forwarders employed by Ford Motor Company, Monarch Finer Foods, and Studebaker-Packard Corporation receive brokerage have previously been detailed. Anderson, Clayton and Company, the largest cotton shipper in the Gulf, performs all of its own forwarding services at New Orleans and Houston, and the annual ocean freight charges paid are about \$5 million. Forwarders perform no service whatever on the great majority of the shipments. However, Anderson Clayton certifies 10 forwarders in Houston and 20 in New Orleans on a rotating basis for the payment of brokerage.

Balfour Guthrie & Company, Ltd., exports shipments through the port of New York on which its annual freight charges are about \$1 million. It maintains an export department by which the forwarding services are largely performed. Since 1945 its freight forwarder has been Nyos Incorporated. From 1948 until about 1955 Nyos performed no services whatsoever on these shipments, but was furnished with a copy of all ocean bills of lading, on the basis of which Nyos collected brokerage from the carriers. Beginning in 1955 Nyos took over the function of performing messenger service for Balfour Guthrie in connection with the forwarding of shipments, with the remainder of the forwarding work still being performed by Balfour Guthrie. Nyos is paid for the messenger service an amount in excess of the cost to Balfour Guthrie for the same service. Nyos continues to receive brokerage on all the shipments. The vice president of Balfour Guthrie and the controlling stockholder of Nyos are husband and wife, respectively.

H. A. Gogarty, Inc., a forwarder, performs forwarding services for American Paper Exports, Inc., at New Orleans, for which it receives forwarding fees. At New York, forwarding services on shipments moving through that port are all performed by the shipper. After completion of the shipments, a list of the shipments and applicable freight charges are furnished to Gogarty on the New York shipments, in order that Gogarty may collect brokerage thereon, even though the forwarder has performed no services. American Cyanamid Company has an annual freight bill of from \$2 to \$3 million, and does all of its own forwarding, but certifies M. J. Corbett Co. as its forwarder for the payment of brokerage. Corbett's only service is that it occasionally gives information to the shipper about available carrier services, without charge. Nestles Products has an office at San Francisco which performs all of the forwarding on shipments moving through that port, but it certifies its New York forwarder, Fred P. Gaskell & Co., for payment of brokerage on the San Francisco shipments. Gaskell does not maintain an office on the West coast.

There is reference in the record to additional instances in which similar practices are followed. The shippers apparently permit the collection of unearned brokerage by their forwarders as a good will gesture or as a favor, although in some of the instances cited the receipt of unearned brokerage constitutes direct or indirect rebates. The record contains no direct evidence as to why the carriers continue the payment of unearned brokerage, but the inference is unavoidable that the forwarders to whom it is paid control the routing of important cargo of other shippers, and that these forwarders are in a position to divert such cargo away from any carrier who would refuse payment of brokerage.

Domestic trades.—Brokerage is not paid by the carriers in the domestic trades, such as those between the continental United States and Hawaii and Puerto Rico regulated by the Board, and the coastwise and intercoastal trades regulated by the Interstate Commerce Commission. In these trades rate regulation is much more comprehensive than in the case of foreign trades. Brokerage in the domestic off-shore trades subject to regulation by the Board is generally prohibited by the conference agreements.

Cargo documentation is generally less complicated in the domestic trades, in that no export declarations are required in the Hawaiian trade, and in the Puerto Rican trade need not be authenticated by the Customs Bureau prior to loading of the cargo; no consular invoices or export licenses are required; and

there are no currency exchange problems. There are a limited number of carriers in these trades, and their schedules and itineraries are widely known.

As a result of the non-payment of brokerage, the forwarders do not generally solicit traffic in the domestic trades, and there is evidence to the effect that forwarders will refuse to handle shipments in these trades except as an accommodation to those of their shippers who also export in foreign commerce. Bills of lading are generally prepared by the carriers, and other forwarding services are performed by the shippers themselves, or by the carriers at charges stated in their tariffs. For example, United States Atlantic & Gulf-Puerto Rico Conference Outward Freight Tariff No. 7, in item 18, names service charges covering the preparation and handling of extra copies of bills of lading, preparing and clearing export declarations, preparing and completing drafts or commercial invoices, arranging for transfer of cargo from terminal inland carrier to carrier's pier, and securing permits.

Competition and comprehensive regulation in the domestic trades tend to hold the freight rates to relatively low levels. The carriers engaged in the Puerto Rican trade, supported by the Commonwealth of Puerto Rico, express the fear that, were the carriers now to be prevented from prohibiting the payment of brokerage, the added expenses occasioned by brokerage payments to forwarders would require immediate increases in the freight rates. There is no indication that commerce in the domestic trades is adversely affected by the existing prohibitions against the payment of brokerage, and the forwarders have expressed little or no interest in these trades.

Positions of parties regarding brokerage.—There is a wealth of testimony from carriers, forwarders, and public bodies to the effect that brokerage payments constitute compensation by the carriers for the performance by forwarders of services of value to, or redounding to the benefit of, carriers, particularly the services of booking cargo or otherwise arranging cargo space, solicitation of traffic, coordination of cargo movement to shipside, preparation and processing of bills of lading, preparation and processing of dock receipts and delivery orders, preparation and processing of consular documents or export declarations, and payment of ocean freight charges. When pressed, however, none of the witnesses could specify with particularity any service which was performed for the carriers, with the exception of the preparation of the bills of lading. It has previously been found that, in the performance of this function, the forwarders are acting for their shipper clients. The carriers likewise testified unambiguously that the brokerage rate of $1\frac{1}{4}$ percent, solely by reason of its long standing, was fair and reasonable. In fact, no individual carrier, other than those engaged in the Pacific Coast/East and South Africa trade where no brokerage is paid, opposed on this record the payment of brokerage to forwarders.

Conference chairmen and officials on the Atlantic and Gulf Coasts generally support the payment of brokerage, except in those instances where, prior to the decision in *Agreements and Practices Re Brokerage supra*, the conference agreements had contained a prohibition against such payment. On the other hand, the conferences on the Pacific Coast which had, prior to that decision, generally prohibited the payment of brokerage except on overland shipments which were susceptible of movement by any coast, generally opposed the payment of brokerage. The majority of all conference officials, however, were of the opinion that rates of brokerage should be left to conference action, rather than be held to a stated minimum by Board action.

The testimony above summarized, which occupies a substantial portion of the record herein, lends little to a determination of the actual reasons for, and the nature of, brokerage payments. In our complex economy, the successful fruition of any particular business endeavor depends upon the efficient performance of many related activities. Thus, the carriers benefit as much from the efficient performance by inland carriers of port lighterage and port delivery services as they do from the efficient functioning of the forwarder industry. Brokerage, however, is paid only to the latter. It must be concluded that brokerage does not constitute compensation by the carriers for any of the services of the forwarders, since the services of the latter must necessarily be performed for the shippers in order to bring shipments into position for export.

The overwhelming conclusion drawn from the record as a whole, as found by the examiner, is that brokerage is primarily a competitive device, utilized by the carriers to attract to themselves as much as possible of the traffic as to which the forwarders, by authorization of their shipper clients, control the routing. It is apparent that, to the extent that brokerage payments by all members of carrier conferences are generally limited to $1\frac{1}{4}$ percent, the competitive impact of broker-

age is largely nullified. It comes into play only in preventing any one carrier, by individual action, from refusing to pay brokerage, since such a carrier would immediately be faced with diversion away from it of all traffic controlled by the forwarders to the maximum extent possible.

Effect of brokerage prohibitions upon commerce.—As stated in the order in Docket No. 931, it was held in *Agreements and Practices Re Brokerage, supra*, that conference agreements in foreign commerce which prohibit the payment of brokerage, or limit brokerage payments to less than 1¼ percent of the ocean freight charges, would be detrimental to the commerce of the United States within the meaning of section 15 of the Act, and this decision was thereafter followed by our predecessors until it was announced, in *Pacific Coast European Conf.—Payment of Brokerage, supra*, that action looking to a reconsideration thereof would be taken.

The record has been searched in vain for any probative evidence indicating that the prohibition of brokerage payments would have any adverse or detrimental effect upon the foreign commerce of the United States, limiting the definition of "foreign commerce" to the actual movement of goods in the export trades, and the promotion and development of such trades. There are numerous general assertions in the record, by forwarders and others, that if brokerage is eliminated entirely the forwarders will perforce need to increase their charges to shippers in order to recoup the lost revenues, that numerous commodities move in export on which the profit margins are narrow which could not stand the imposition of increased forwarding charges, and that the movement of such commodities would thus be adversely affected. No shipper testimony to this effect was adduced, and the shipper testimony of record, from shippers who perform their own forwarding services and do not receive brokerage, indicates to the contrary.

The record, in fact, supports the conclusion that increased forwarding charges, to the extent necessary to provide full compensation to the forwarders and a reasonable profit, should have no substantial deleterious effect upon the movement of goods in export. Such increases in forwarder charges, if established to compensate for the loss of brokerage, would not have an adverse effect on our export commerce. In all trades, in recent years, increased cost of the carriers have compelled substantial increases in ocean freight rates in excess of 1 percent, without noticeable decreases in traffic attributable to this cause alone. There are, in this connection, numerous statements on the record by carriers and conference officials that brokerage payments, as such, are not reflected in the ocean freight rates, and that the cessation of such payments would not induce an immediate concurrent decrease in the rates. They recognize, however, that brokerage payments are items of expense to the carriers, and it is reasonable to assume that, if relieved of this expense, the impact of other cost increase would be minimized, and that ultimately the savings realized by the carriers from the cessation of brokerage payments would be reflected in rates which would be lower relatively. This assumption is borne out by the position of the carriers in the Puerto Rican trade, who show that increased expenses by reason of brokerage payments would necessitate rate increases in that trade.

The carriers generally fear that, were the forwarding industry to be crippled, the necessary functions performed by the forwarders on behalf of their shippers would need to be performed in large part by the carriers themselves. In this connection, it is necessary to point out here that, as stated above, ocean freight rates generally apply at ship's tackle, and the carriers' obligations, in return for the freight charges, are limited to the receipt, transportation, and delivery of tendered shipments. It is the duty of the shipper, as pointed out in *American Union Transport v. River Plate & Brazil Confs., supra*, to perform all of the functions normally performed by a forwarder to bring cargo alongside a vessel ready for shipment, and this finding was expressly upheld in *American Union Transport v. United States, supra*, at p. 612. It necessarily follows, therefore, that if brokerage payments providing the sole compensation for the performance of forwarding functions constitute an indirect rebate to the shipper in violation of section 16 of the Act, the performance of such functions by the carriers for shippers free or at non-compensatory charges would result in direct rebates likewise in violation of the statute. Cf. *Propriety of Operating Practices—New York Warehousing*, 198 I.C.C. 134, 216 I.C.C. 291. The testimony of carriers upon this point generally recognizes that if carriers were required to perform forwarding services, they would be entitled to establish charges therefor, and the statute would require that such charges be compensatory.

Many forwarders testified at length concerning the probable impact upon their operations should they lose the revenues received from the carriers in the form of brokerage payments. This impact would undoubtedly be severe, since it has previously been found that as a whole in the forwarding industry, fees charged to the shippers do not fully cover the costs of forwarders for the services performed by them. The forwarders point to the efforts of some members of their industry directed to the promotion of foreign trades, which they contend will be hampered by losses in revenue from brokerage, but the impact of these efforts upon the foreign commerce of the United States has heretofore been found to be negligible, and stem largely from the sales efforts of the forwarders in the furtherance of their own pursuits, which can logically be expected to continue.

DISCUSSION AND CONCLUSIONS

Jurisdiction.—As indicated at the outset, several contentions relating to the jurisdiction of the Board have been raised by the forwarders. The first of these, to the effect that we have no statutory authority to institute a rulemaking proceeding per se, under section 4 of the Administrative Procedure Act, was specifically overruled in *Proposed Rules Governing Freight Forwarders, supra*, and has been rendered moot by the consolidation of the rulemaking proceeding with the proceeding in No. 765, an investigation to determine the lawfulness of the practices of forwarders with the view of amending or supplementing General Order 72 as may be warranted by the record. The forwarders agree that, upon findings of unlawfulness, we are authorized to issue rules under the Act prescribing corrective action for the future. See *California v. United States*, 320 U.S. 577.

The forwarders further contend that brokers are not persons subject to the Act, as held in *In re Gulf Brokerage and Forwarding Agreements, supra*, and that we have no authority to establish definitions for "broker", "brokerage", or "brokerage service". These contentions are based upon the premise that forwarders, in relation to carriers, are brokers, which premise was heretofore found to be erroneous in law and in fact. As was held by the court in *American Union Transport v. United States, supra*, at p. 613:

"Even if it be true that the Conference has heretofore paid brokerage wherever the broker forwarder was "identified with the cargo", no reason exists why the Board, under its broad power, should not have authority to distinguish between the services of a broker and those of a freight forwarder."

It is further contended that we lack jurisdiction under section 15 of the Act to review agreements by carriers prohibiting brokerage or limiting it to less than 1¼ percent of the freight charges, on the ground that such agreements are designed merely to prevent the expenditure of funds which, in the absence of such agreements, would be expended, and are therefore not the type of agreements contemplated by the statute. Section 15 of the Act specifically authorizes approval of agreements regulating competition between carriers, and this record establishes conclusively that the payments by carriers to forwarders are utilized by the carriers as a competitive device, and are recognized by them as such. In the circumstances, our jurisdiction is clear.

Discrimination, preference and prejudice, and unreasonable practices by forwarders.—Section 16 First of the Act makes it unlawful for forwarders, as persons subject to the Act, directly or indirectly, to make or give any undue or unreasonable preference or advantage to any particular person or description of traffic in any respect whatsoever, or to subject any person or description of traffic to any undue or unreasonable prejudice or disadvantage. Section 17 of the Act, which is particularly applicable to the activities of forwarders as found by the Supreme Court in *U.S. v. American Union Transport, supra*, requires that forwarders shall establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property, and provides that whenever the Board finds that any such regulation or practice is unjust or unreasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice.

The record compels the conclusion that, in the assessment of charges by forwarders to their shippers, the practice of discrimination, preference, and prejudice is the rule rather than the exception. The charges vary from shipper to shipper for identical services, some shippers receive forwarding services free of charge or at nominal charges, and in billing for accessorial services, such as insurance and carting, most New York forwarders, who constitute the majority by far, practice unlimited discrimination in that disguised markups in some cases

are added in varying amounts and in others are not added, with no apparent regard for cost of service or any other factors which should enter into the establishment and maintenance of just and reasonable charges. Such practices are *prima facie* discriminatory, *Contract Rates—Japan/Atlantic-Gulf Freight Conf.*, 4 F.M.B. 706, 735 (1955), and *Contract Routing Restrictions*, 2 U.S.M.C. 220, 225 (1939), and are thus unreasonable in the absence of justification therefor.

Rather than offer any justification for their practices as shown in the assessment of their charges, most forwarders opposed on the record any attempt to inquire into the levels of their charges, and the methods of assessment, on the ground that it would disclose the confidential relationships between the forwarders and their shipper clients. There can be nothing private or confidential in the operations of a carrier engaged in interstate commerce, *U.S. Atlantic and Gulf/Puerto Rico Rate Increase*, 5 F.M.B. 426 (1958), and the same is true with regard to any industry operating in a public calling and regulated by the Congress in the public interest, to the extent that the operations are made subject to regulation. *Smith v. Interstate Com. Comm.*, 245 U.S. 33.

Rebates.—It is now well settled that the performance by a freight forwarder of forwarding services free of charge to the shipper, and the concurrent receipt by the forwarder of brokerage from the carriers for the handling of the shipments, constitutes an indirect rebate to the shipper. *American Union Transport v. United States*, *supra*. The forwarders contend that the holdings of the court in that case should be narrowly construed, on the ground that it related to a specific set of facts surrounding specific shipments, and covered the operations of only one forwarder with respect to those particular shipments. To the contrary, this record discloses that the forwarding services performed in that case are the normal services performed by all forwarders, and that the relationship between forwarder and carrier there shown is the normal relationship between forwarders and carriers.

This record discloses that of the 1,273 forwarders responding, of which 283 did not actively engage in forwarding during 1957, 226 or almost 23 percent of the active forwarders in 1957 performed some free forwarding. Rebating of this type therefore cannot be said to occur only in isolated cases. Even more prevalent is the furnishing of forwarding services by forwarders to shippers at nominal charges, or at charges below the costs of such services. There is no real distinction, except in degree, between the furnishing of forwarding services free, and the furnishing of such services at nominal charges such as 1 cent and 10 cents per shipment in the case of the General Services Administration contracts shown or at charges lower than cost. If the former constitutes rebating, the latter does likewise, since the overall result is that the shipper, to the extent that brokerage payments subsidize the cost of forwarding services performed for him, receives his transportation for less than the rates and charges regularly established and maintained by the carriers. See *Lehigh Valley R.R. Co. v. United States*, *supra*.

The forwarders are generally agreed that the furnishing of forwarding services free or at non-compensatory rates is improper, and that some action should be taken to prohibit this practice, but they proposed no rules to accomplish this purpose, or suggested any other action than the exercise of our power, in situations of this character, to prescribe minimum charges for the forwarders.

The record also supports the conclusion that some carriers in the foreign export trades, though not identified of record, engage regularly in the performance of forwarding services for shippers, and for some forwarders, free of charge. As previously indicated, such practices constitute direct rebates.

Agreements.—The record leaves little doubt that there are numerous arrangements between forwarders under which a forwarder at one port who controls the routing of a shipment refers that shipment to a forwarder at an outport, the latter completes the forwarding services necessary, and brokerage and other fees are divided between the two. The forwarders contend that these arrangements are not agreements of the type contemplated by section 15 of the Act as requiring prior approval. They argue that the statute is directed principally to agreements which purport to regulate competition as between two or more persons subject to the Act. Section 15 provides among other things that all agreements controlling, regulating, preventing, or destroying competition, pooling or apportioning earnings, or providing for exclusive, preferential, or cooperative working arrangements, between persons subject to the Act, shall be filed for approval, and that operations under such agreements shall be unlawful until they are approved.

The agreements between forwarders here under consideration fall within these provisions. To the extent that referral to one forwarder at an outport is accomplished under such an agreement, other forwarders are denied an opportunity to compete for the traffic. The arrangements constitute cooperative working arrangements between the forwarders parties thereto for the performance of forwarding services. The arrangements contemplate, in almost every instance cited of record, a division of the revenues accruing from the performance of forwarding services between the forwarders parties thereto on an agreed basis. As shown, a number of such agreements or arrangements have been filed for approval, and no forwarder has questioned our authority to act under the statute with respect thereto. The forwarders contend that, since there may be a large number of such agreements in existence, the filing of them will create a burden for the forwarders and for us. The statute clearly places upon the parties to such arrangements the duty of filing them for approval, and proscribes operations thereunder until approval has been secured. We are required by the Act to take action with respect to such filings, and we may not shirk this duty because of its magnitude.

No parties to the proceedings have made mention of the arrangements shown of record between some forwarders and some carriers under which carriers perform the completion of forwarding services at outports for forwarders. These arrangements are likewise cooperative working arrangements, required by the statute to be filed.

The record does not indicate with particularity the parties to the arrangements of both types which are in existence, but it may be concluded that the practices are rather widespread. All forwarders, and all carriers engaged in foreign commerce in the outbound trades from the United States, its territories and possessions, and the Commonwealth of Puerto Rico are respondents in one or the other of the proceedings here involved. All such agreements should be filed with us pursuant to Section 15.

Brokerage.—This record discloses that the payment by carriers of so-called brokerage to forwarders who render freight forwarding service to shippers of the cargo leads the forwarders into the practices of discrimination, preference, and prejudice as found above, that such payments almost always result in indirect rebates to the shippers through the performance by forwarders of forwarding services free or at non-compensatory rates or charges, that consequently the payment of brokerage by carriers is an unjust and unreasonable practice related to or connected with the receiving, handling, storing, or delivering of property prohibited by section 17 of the Act. It follows that the payment of any fees or commissions to forwarders in connection with cargo with respect to which they render freight forwarding service by carriers must be prohibited. As to the inevitability of rebating under the present practices of forwarders, it has previously been found that at present in the forwarding industry as a whole, forwarding fees charged by forwarders to shippers do not fully cover the costs of performance by the forwarders of their forwarding services for the shippers. This is tacitly recognized in the brief of one forwarder, Universal Transport Corporation, which states:

“For many years commission on freight, paid by carriers to forwarders compensated forwarders for their services to shippers, consignees and carriers. The practice is an open one, known to all parties concerned and connected with the export of goods. It has reduced to a nominal sum and, in part, completely eliminated forwarding as a cost in the export of American products.”

Reconsideration of prior decisions in No. 831.—The principal basis for the prior decisions in holding that conference prohibitions against the payment of brokerage, or limiting brokerage to less than 1¼ percent of ocean freight charges, would be detrimental to the commerce of the United States, is found in the finding in *Agreements and Practices Re Brokerage, supra*, at p. 177 that such conference actions have had and will have a serious effect upon the forwarding industry. This finding can be supported on this record, as urged by the forwarders and a number of other parties, but only if it is assumed that forwarding fees must remain at unremunerative levels with resulting indirect rebates to shippers and general disregard of the requirements of section 16 of the Act prohibiting rebates, discrimination, preference, and prejudice. On the other hand, the unregulated payment of brokerage has resulted in substantial payment by the carriers of unearned brokerage, as disclosed on this record, with consequent unnecessary dissipation of carrier revenues creating upward pressures upon ocean freight charges to the detriment of the commerce of the nation.

In addition, the prior decisions failed to recognize the true nature of brokerage of the type here involved as voluntary payments, made by the carriers as a competitive device to attract traffic or as a protective device to prevent the diversion of cargo over which the forwarders have control of routing. The continuance and recurrence of the widespread rebating resulting therefrom which this record shows to exist must cease. The safeguards included in the prior decisions to insure that an individual carrier should be free to pay or not to pay brokerage as it sees fit are, according to this record, generally of no avail, in view of the competitive pressures which prevail in the event that any brokerage is paid in a trade. There is in logic no sound reason why carriers acting in concert should be free to limit or regulate competition among themselves by imposing upper limits upon rates of brokerage, but at the same time be prevented from limiting or regulating competition among themselves by prohibiting in its entirety the payment of brokerage.

This record discloses with certainty that brokerage payments lead indirectly, through the forwarder recipients, to undesirable and unlawful practices. It must be concluded, therefore, that the prior findings under reconsideration in No. 831 are no longer valid, and are overruled.

In addition, in view of our findings above as to the violations of sections 16 and 17 of the Act which result from the payment of brokerage, and the consequent necessity for the imposition of a rule prohibiting such payments in connection with cargo with respect to which the freight forwarder renders freight forwarding service, the prior findings would be of no further material effect.

Rules.—In *California v. United States, supra*, it was held that when our predecessor, the Maritime Commission, found a breach of the duty imposed on those subject to the Shipping Act, 1916, by section 17 of the Act, the Commission was authorized and charged with a duty to determine and prescribe a just and reasonable regulation, and order it enforced. We have found a breach of this duty to establish, observe and enforce just and reasonable regulations and practices relating to and in connection with the handling, storing or delivering of property. We have further found that existing practices on the part of both forwarders and common carriers relating to and in connection with the receiving, handling, storing and delivering of property are unjust and unreasonable.

The report of the examiner contains a comprehensive discussion of the rules originally proposed by us, the positions of the parties with respect thereto and amendments proposed by them, the rules proposed by Public Counsel, and those recommended to us by the examiner. It is clear that the examiner, because of his view that the prohibition of brokerage constitutes a drastic remedy which should not be resorted to until all other measures have failed, attempted to devise rules which in his opinion would, with the cooperation of the forwarding industry, eliminate the violations of law which have been shown to stem from the payment of brokerage by the carriers. We are convinced that such half-measures will not suffice, and are of the opinion that the widespread rebating and discrimination here shown cannot reasonably be expected to cease without the total prohibition of brokerage payments to forwarders in connection with cargo with respect to which they render forwarding service. The nature of the brokerage practices and the practices of the forwarders in connection therewith, and the obvious attractions of inherently unearned compensation require this conclusion.

The Examiner proposed a rule requiring the establishment of minimum freight forwarding fees by forwarders, in order that such fees should not fall below remunerative levels with resulting indirect rebates of brokerage received by forwarders from carriers, and to eliminate discrimination, preference, and prejudice as found to exist in the charges of forwarders to shippers. These practices stem almost entirely from the brokerage practices, and elimination of the latter as found by us to be necessary should result in the establishment by the forwarders of realistic forwarding fees. We feel that the forwarders should, in their managerial discretion, be free to recast their charges to their clients, after discontinuance of brokerage, without prejudice to further action by us with respect thereto, upon complaint or upon our own initiative, should it be brought to our attention that the discriminations have not been eliminated.

There is set forth in the Appendix hereto the revision of General Order 72 which we find to be necessary. The rules reflect a number of the suggestions made by the parties hereto, and have been revised to eliminate redundancy. They are largely self-explanatory, and discussion herein will be limited to the most important features thereof. The definition of "freight forwarder" is simi-

lar to that originally proposed. In view of the lack of authority on the part of the Board to regulate entry into the business of freight forwarding, as previously indicated, the suggestions that only independent freight forwarders be permitted to operate cannot be given effect.

The definitions of broker, brokerage, and brokerage service are revised to conform with the recognized and settled principles of law referred to heretofore. Although the suspension or cancellation of registration numbers need not be made subject to notice and hearing since the registration numbers do not constitute licenses to do business, but are issued only to insure that those engaging in the forwarding business are made known to the Board, we feel that notice and an opportunity to be heard should be accorded before a registration is cancelled or suspended. Accordingly, section 244.5(b) provides for notice and hearing in such cases.

In section 244.5(d) registration is confined to the issuance of only one registration number to a particular forwarder, or only one of a group of forwarders under common control. The possibility of discrimination is obvious should recognition be granted to more than one business entity in such circumstances.

In section 244.7, the present regulations relating to the billing practices of forwarders are brought forward, and modified to prohibit the assessment of disguised markups in all instances which are shown on this record to result in violation of sections 16 and 17 of the Act.

Section 244.13, relating to brokerage payments, reflects our conclusions above that the receipt by forwarders and payment by carriers of brokerage in connection with shipments as to which the forwarders have performed forwarding services is violative of the statute, and is intended to prohibit brokerage payments in such instances. The provisions are not intended to prohibit the payment of brokerage in those instances where the recipient has no other connection with the cargo than to perform the true functions of a broker. Despite the fact that section 244.14 of the rules amounts in effect to a restatement of the requirements of section 15 of the Act, we feel that they will serve to impress upon the forwarders the statutory requirements, in view of the fact that a copy of the rules will be served upon all active forwarders.

We are requiring that the revised General Order 72 will take into effect 120 days after promulgation, in order to provide a reasonable period of time for the forwarders, who will thereafter be prohibited from receipt of brokerage, to revise their charges to their clients in order to make up for the consequent loss of revenues. In fixing the effective date we assume that the forwarders will accordingly proceed forthwith.

Proposed findings and conclusions, and exceptions to the Examiner's recommended decision, have been fully considered, and except to the extent they are given effect in this report and our regulatory order, they are denied and overruled.

We conclude and specifically find, in the light of the foregoing:

1. That the performance by forwarders of forwarding services free of charge or at non-compensatory charges on shipments moving in the commerce of the United States, subject to the Act, and the receipt of so-called brokerage from common carriers by water subject to the Act on such shipments, constitute a violation of section 16 of the Act.

2. That forwarders, in assessing varying charges for like forwarding services to their shippers, in adding disguised markups to charges for accessorial services procured for their shippers, and in performing forwarding services free of charge or at non-compensatory charges for some shippers and not for others, thereby give undue and unreasonable preference or advantage to some of their shippers, and subject others of their shippers to undue and unreasonable prejudice or disadvantage, in violation of section 16 First of the Act, and engage in unjust and unreasonable practices relating to or connected with the receiving, handling, storing, or delivering of property, in violation of section 17 of the Act.

3. That forwarders have failed to establish, observe and enforce just and reasonable regulations and practices relating to and connected with the receiving, handling, storing and delivering of property; and that the practices of forwarders as found in this record relating to and connected with the receiving, handling, storing and delivering of property are unjust and unreasonable practices in violation of section 17 of the Act.

4. That the performance by common carriers subject to the Act of forwarding services free of charge or at non-compensatory charges on shipments transported by such carriers constitutes a violation of section 16 Second of the Act.

5. That payments by carriers to forwarders of brokerage relating to and in connection with the receiving, handling, storing and delivering of property result in indirect rebates to shippers through the performance by forwarders of forwarding services free or at non-compensatory rates or charges, in violation of section 16 of the Act, and that the payment of brokerage by carriers to forwarders in connection with cargo with respect to which the forwarders render freight forwarding services in an unjust and unreasonable practice in violation of section 17 of the Act.

6. That violations of the Act found herein have occurred regularly and unjust and unreasonable practices exist relating to and in connection with the receiving, handling, storing and delivering of property, as found above, and that the rules and regulations shown in the Appendix hereto are just and reasonable in connection therewith, and are determined, prescribed and ordered enforced to prevent the continuance and recurrence of such violations.

7. That forwarders and carriers, not specifically identified on the record in all instances, have entered into, failed to file, carried out agreements or arrangements providing, in connection with the performance of forwarding services, for the regulation of competition, pooling or apportioning of earnings, and cooperative working arrangements, and have not secured the approval of the Board, in violation of section 15 of the Act.

8. That the findings in the prior decisions cited in the order in Docket No. 831, to the effect that agreements between common carriers by water subject to the Act prohibiting the payment of brokerage, or limiting the payment of brokerage to less than 1¼ percent of freight charges, are or would be detrimental to the commerce of the United States in violation of section 15 of the Act, are no longer valid. Orders in the proceedings cited carrying such findings into effect will no longer be considered effective.

An order discontinuing these proceedings will be entered.

THOMAS LISI, *Secretary.*

ORDER

At a Session of the FEDERAL MARITIME BOARD, Held at its office in Washington, D.C., on the 29th day of June, A.D. 1961

No. 765

INVESTIGATION OF PRACTICES, OPERATIONS, ACTIONS AND AGREEMENTS OF OCEAN FREIGHT FORWARDERS AND RELATED MATTERS, AND PROPOSED REVISION OF GENERAL ORDER 72 (46 CFR 244)

No. 831

INVESTIGATION OF PRACTICES AND AGREEMENTS OF COMMON CARRIERS BY WATER IN CONNECTION WITH PAYMENT OF BROKERAGE OR OTHER FEES TO OCEAN FREIGHT FORWARDERS AND FREIGHT BROKERS

These proceedings having been instituted by the Board upon its own motion, and having been duly heard and submitted, and investigation of the matters and things involved having been had, and the Board, on the date hereof, having made and entered of record a report containing its conclusions and decision thereon, which report is hereby referred to and made a part hereof:

It is ordered, That these proceedings be, and they are hereby discontinued.

By the Board.

THOMAS LISI, *Secretary.*



APPENDIX

RULES

BUSINESS PRACTICES OF FREIGHT FORWARDERS AND OF CARRIERS IN RELATION THERETO

(General Order 72, revised)

Sec.	
244.1	Definitions.
244.2	Registration.
244.3	Additional information.
244.4	Information available to public.
244.5	Registration numbers.
244.6	Registration lists.
244.7	Billing practices.
244.8	Consolidated shipments.
244.9	Special contracts.
244.10	Nondiscriminatory treatment required.
244.11	Exceptions as to special contracts.
244.12	Forwarders' receipts.
244.13	Brokerage payments.
244.14	Section 15 agreements.
244.15	Carrier performing forwarding services.
244.16	Penalties for violations.
244.17	Separability clause.
244.18	Effective date.

AUTHORITY : § 244.1 to 244.18 issued under sec. 204, 49 Stat. 1987, as amended, 46 U.S.C. 1114; sec. 19, 41 Stat. 995, 46 U.S.C. 876. Interprets or applies 39 Stat. 728; 46 U.S.C. 814, 815, 816, 820.

SEC. 244.1 *Definitions.* (a) "Freight forwarder" means any person engaged in the business of dispatching or facilitating shipments on behalf of other persons, by common carrier by water in transportation as defined in this part, and of handling the formalities incident to such shipments. This definition includes, without limitation, independent freight forwarders, common carriers, manufacturers, exporters, export traders, manufacturers' agents, resident buyers, brokers, commission merchants, and any other persons when they engage for and on behalf of any person other than themselves, in the aforementioned activity.

(b) "Common carrier by water" means any person engaged in transportation as defined in this part.

(c) "Transportation" means transportation of property by common carrier by water on ocean-going vessels in commerce from the United States, its territories and possessions, and the Commonwealth of Puerto Rico, to foreign countries, or between the United States, its territories and possessions, and the Commonwealth of Puerto Rico.

(d) "Freight forwarding service" means a service rendered by a freight forwarder, as defined in this part, in the process of dispatching or facilitating shipments on behalf of other persons, as authorized by such other persons. Such services include, but are not limited to: Examining instructions and documents received from shippers; ordering cargo to port; preparing export declarations; booking cargo space; preparing and processing delivery orders and dock receipts; preparing instructions to truckman or lighterman, and arranging for or furnishing such facilities; preparing and processing ocean bills of lading; preparing consular documents, and arranging for their certification; arranging for or furnishing warehouse storage; arranging for insurance; clearing shipments in accordance with United States Government regulations; preparing advance notices of shipments, sending copies to bank, shipper, or consignee, as required; sending completed documents to shipper, bank, or consignee, as required; advancing necessary funds in connection with the foregoing; providing supervision in the coordination of services rendered to the shipment from origin to vessel; and giving expert advice to exporters as regards letters of credit, licenses, and inspection.

(e) "Freight forwarding fee" means any compensation paid by the shipper or consignee, or the agent of either, who engages the freight forwarder for the performance of a freight forwarding service.

(f) "Broker" means any person, not a common carrier by water and not regularly employed by any common carrier by water, who is engaged by such carrier to sell or offer for sale transportation, or who holds himself out by solicitation, advertisement, or otherwise as one who negotiates between shipper and carrier for the purchase or sale of transportation.

(g) "Brokerage service" means securing cargo for a vessel engaged in transportation as defined in this part by selling transportation or by negotiating for the purchase or sale of transportation.

(h) "Brokerage" or "brokerage fee" means compensation paid by a common carrier by water for the performance of a brokerage service.

(i) "Person" includes individuals, and corporations, partnerships, associations, and other legal entities existing under or authorized by the laws of the United States, or any State, Territory, District, or possession thereof, or the Commonwealth of Puerto Rico, or any foreign country.

SEC. 244.2 *Registration.* (a) Each person who engages in business as a freight forwarder shall register with the Federal Maritime Board before engaging in such business. Registration shall be accomplished by executing and filing with the Federal Maritime Board Freight Forwarder Registration Form FMB-21 (set forth in paragraph (b) of this section), which will be furnished by the Federal Maritime Board upon request. All freight forwarders currently engaged in business as freight forwarders and holding registration numbers heretofore issued by the Federal Maritime Board shall, within 30 days from the effective date of the rules in this part, execute and file with the Federal Maritime Board Form FMB-21 as prescribed in this part.

(b) Form FMB-21, appended hereto, is hereby prescribed for registration under this section.

SEC. 244.3 *Additional information.* Registrants shall submit such additional information as the Federal Maritime Board may request from time to time, and shall notify the Federal Maritime Board of any change in facts reported to it under this part within ten days after such change occurs. Failure to comply with this section by a freight forwarder will be deemed sufficient reason to cancel his registration.

SEC. 244.4 *Information available to public.* Information set forth in Freight Forwarder Registration Form FMB-21 shall be public information and available for public inspection at the offices of the Federal Maritime Board.

SEC. 244.5 *Registration numbers.* (a) Each person who intends to engage in business as a freight forwarder and has filed the required information will be issued a registration number by the Federal Maritime Board after examination and verification of the information submitted by him and a determination that the issuance of a registration number will not be inconsistent with this part of the Shipping Act, 1916. Thereafter, such registration number shall be set forth on the registrant's letterheads, invoices, advertising, and all other documents relating to his forwarding business. The issuance of a registration number by the Federal Maritime Board to a freight forwarder is for identification and informational purpose and does not mean that the Board has investigated and found that the freight forwarder is qualified. Use of these registration numbers in any manner other than to indicate the fact of registration with the Federal Maritime Board is prohibited.

(b) A freight forwarder's registration may be suspended or cancelled after notice and hearing, if the Federal Maritime Board finds that the registrant has violated the rules in this part or the Shipping Act, 1916.

(c) A freight forwarder may not transfer or assign his registration number.

(d) A freight forwarder shall not be entitled to register under more than one name or to obtain more than one registration number regardless of the number of names under which he may be doing business. When two or more entities are owned or controlled by substantially the same interests they shall be treated as one entity for the purpose of registration and they shall not be entitled to separate numbers.

SEC. 244.6 *Registration lists.* The Board will compile periodically, and make available to the public upon request, lists of all registrants with their respective registration numbers.

SEC. 244.7 *Billing practices.* All freight forwarders shall use invoices or other forms of billing which state separately and specifically, as to each shipment:

- (a) The amount of ocean freight assessed by the carrier;
- (b) The amount of consular fees paid to consular authorities;
- (c) The actual cost to the forwarder of insuring the shipment whether by a policy bought in the name of the shipper or by an open policy or otherwise;
- (d) The amount charged for each accessorial service performed in connection with the shipment;
- (e) Other charges.

Provided, however, That freight forwarders who offer to the public at large to forward small shipments for uniform charges available to all and duly filed with the Federal Maritime Board, shall not be required to itemize the components of such uniform charges on shipments as to which the charges shall have been stated

to the shipper at time of shipment, and accepted by the shipper for payment; but if such freight forwarders procure marine insurance to cover such shipments, they must state their total charge for such insurance, inclusive of premiums and placing fees, separately from the aforementioned uniform charge.

SEC. 244.8 *Consolidated shipments.* In the case of individual shipments consolidated with other individual shipments, the invoice or other form of billing concerning each shipment shall state the minimum ocean freight and consular fees that would have been payable on each shipment if shipped separately, and the amounts actually charged for these items by the freight forwarder, on the shipment in question.

SEC. 244.9 *Special contracts.* All special agreements or contracts between freight forwarders and shippers or consignees shall be in writing and shall be filed with the Board within 10 days after they are signed.

SEC. 244.10 *Nondiscriminatory treatment required.* To the extent that special agreements or contracts are entered into by a freight forwarder with individual shippers or consignees, such freight forwarder shall not deny to other shippers or consignees similarly situated, and whose shipments are accepted by such freight forwarder, equal charges for forwarding and accessorial services to be rendered by the freight forwarder, insofar as such forwarding and accessorial services are similar to those performed for shippers or consignees holding special contracts.

SEC. 244.11 *Exceptions as to special contracts.* In the case of special contracts whereby the parties have agreed in advance as to the charges for services in connection with the forwarding of a shipment, the invoice or other form of billing shall refer to the agreement, in which event the charges need not be itemized.

SEC. 244.12 *Forwarders' receipts.* Freight forwarders' receipts for cargo shall be clearly identified as such and shall not be in form purporting to be ocean carriers' bills of lading.

SEC. 244.13 *Brokerage payments.* (a) No common carrier by water shall pay to a freight forwarder, and no freight forwarder shall charge or receive from any common carrier by water, either directly or indirectly, any compensation or payment of any kind whatsoever, whether called "brokerage", "commission", "fees", or by any other name, in connection with any cargo as to which the freight forwarder has performed any forwarding service as defined in paragraph 244.1 (d) of this part.

(b) No freight forwarder may render, or offer to render, any forwarding service free of charge or at reduced rates in consideration of the shipper or carrier agreeing to allow or allowing the freight forwarder to receive brokerage on the shipment.

(c) Common carriers by water when acting in accordance with approved section 15 agreements or an individual carrier may make rules and regulations to assure that brokerage will not be paid under circumstances which will violate the Shipping Act, 1916, or the rules in this part.

(d) No freight forwarder or other person shall collect brokerage from a common carrier by water, and no such carrier shall pay brokerage to any freight forwarder or other person, in cases where payment thereof would constitute a rebate, such as, for example, where the freight forwarder or other person; (1) Is the shipper or consignee or is the seller or purchaser or purchasing agent of the shipment, (2) advances the purchase price of the goods shipped or guarantees payment therefor, or has any beneficial interest therein, (3) directly or indirectly, by stock ownership or otherwise, controls or is controlled by the shipper or consignee, or seller or purchaser or purchasing agent of the shipment or by any person having a beneficial interest in the shipment or person advancing the purchase price of the goods shipped or guaranteeing payment therefor, and (4) where the freight forwarder and the shipper, consignee, seller or purchaser or purchasing agent, or person advancing the purchase price of the goods shipped or guaranteeing payment therefor are owned or controlled by substantially the same interests.

(e) No freight forwarder shall share directly or indirectly any part of the brokerage received from a common carrier by water with a shipper, consignee, or an employee of a shipper or consignee or seller or purchaser or purchasing agent of the shipment or person advancing the purchase price of the goods shipped or guaranteeing payment therefor, or with any person having a beneficial interest in the shipment.

(f) No common carrier by water shall pay brokerage to a freight forwarder or other person when receipt of such brokerage by the freight forwarder is prohibited by the rules in this part or the Shipping Act, 1916, as amended.

Sec. 244.14 *Section 15 agreements.* (a) Copies of written agreements and true and complete memoranda of oral agreements between a freight forwarder and another freight forwarder or carrier or other person subject to the Shipping Act, 1916, or modifications or cancellations thereof, which relate to one or more of the following subjects must be filed with the Board:

- (1) Fixing or regulating transportation rates or fares;
- (2) Giving or receiving special rates, accommodations or other special privileges or advantages;
- (3) Controlling, regulating, preventing or destroying competition;
- (4) Pooling or apportioning earnings, losses, or traffic (including sharing or dividing forwarding or brokerage fees with another forwarder);
- (5) Allotting ports or restricting or otherwise regulating the number and character of sailings between ports;
- (6) Limiting or regulating in any way the volume or character of freight or passenger traffic to be carried;
- (7) In any manner providing for an exclusive, preferential or cooperative working arrangement.

(b) Copies of all such agreements referred to in paragraph (a) of this section are required to be filed with the Federal Maritime Board accompanied by a letter stating that they are offered for filing in compliance with section 15 of the Shipping Act, 1916, specifically requesting the Board's approval and addressed as follows:

Federal Maritime Board,
Office of Regulations,
Washington 25, D.C.

(c) All copies of memoranda or agreements, modifications or cancellations thereof submitted for the Board's approval under section 15 shall clearly show (preferably in the opening paragraph), their nature, the parties, ports and subject matter in detail, and reference to any previously filed agreements to which they may relate.

(d) All such agreements, or modifications or cancellations thereof, shall not be carried out without the prior express approval of the Board.

SEC. 244.15 *Carrier performing forwarding services.* Any common carrier by water performing forwarding services shall specify in his tariff the kinds of forwarding services performed by him and the charges made for such services.

SEC. 244.16 *Penalties for violations.* Penalties for violations of this part are prescribed by section 806 (d) of the Merchant Marine Act, 1936, 46 U.S.C. 1228.

SEC. 244.17 *Separability.* The provisions of this order are not interdependent. If any portion hereof shall be enjoined, set aside, suspended, or held invalid, the validity and enforceability of all other parts shall be unaffected thereby, and shall to the full extent practicable, remain in full force and effect unless and until it is otherwise provided by a court of competent jurisdiction.

SEC. 244.18 *Effective date.* The rules in this part shall take effect 120 days after publication in the Federal Register.

By order of the Federal Maritime Board.

[SEAL]

THOMAS LISI, *Secretary.*

Date:

Form FMB-21 (Revised)
(6-29-61)

Form Approved
Budget Bureau No. 41-R1550.2

U. S. DEPARTMENT OF COMMERCE
Federal Maritime Board

FREIGHT FORWARDER REGISTRATION

1. Name of registrant (if trade name is used by individual, show the words "doing business as" or the abbreviation therefor "d/b/a", and the trade name)	: INSTRUCTIONS	
2. Form of organization (corporation, partnership, individual, etc.)	: This form is prescribed	
3. If answer to 2 is "corporation", state where organized.	: for ocean freight forwarder registration and shall be executed and filed with the Office of Regulations, Federal Maritime Board, U.S. Dept. of Commerce, Washington 25, D.C. pursuant to Federal Maritime Board General Order 72, revised. If additional space is needed to answer questions, extra sheets may be attached to this form.	
4. Date organization established (Month) (Day) (Year)		
5. If new registrant, show date freight forwarding operations will begin (Month) (Day) (Year)		
6. *Principal Office-Street and number, and room number, if any, (P. O. Box is not regarded as complete address).		
City or Post Office and State		
7. *Branch Offices		
Name under which operated	: Business Address	: Date Established
:	:	: (Month) (Day) (Year)
:	:	:
:	:	:
8. Average number of employees in the principal office and each branch office, who handle freight forwarding work and matters incident thereto.		
Number of :	:	Name of Person in
Employees :	Office :	Charge and Home Address
:	Principal Office :	:
:	:	:
:	Branch Office :	:
:	:	:
9. Other Registered Forwarders with whom registrant does business.		
Name :	Address :	Reg. No.
:	:	:
:	:	:
10. Names, addresses, and citizenship of principal stockholders, owners and officers, and extent of stock ownership or other interest of each.		
Name - Title :	Home Address :	Citizenship :
:	:	Extent of Stock
:	:	(Name of Ownership or
:	:	Country) : Other Interest
:	:	:
:	:	:

11. Total Stock Authorized:

Total Stock Issued:

12. (a) Is registrant a parent corporation, subsidiary or affiliate of any other business? Yes No

(b) Is registrant connected with any other business through common ownership of stock or other interest, employment, or otherwise? Yes No

If answer to (a) and/or (b) is "Yes", state name, address and description thereof.

	Name	Address	Description
(a)	:	:	:
(b)	:	:	:

13. (a) Does registrant or any officer, stockholder, or employee of the registrant control or engage, directly or indirectly, in any business other than forwarding? Yes No

(b) If answer is "Yes", (1) describe nature of such business, and (2) affirm that the provisions of General Order 72, revised, have been read and understood and that registrant will comply therewith, making specific reference to Rule 244.13 setting forth certain requirements for and certain restrictions against the collection of ocean freight brokerage.

14. Does registrant specialize in handling particular commodities, or in particular trades? Yes No If "Yes" give details.

Date

Signature of Official

Title

The above statements are made subject to penalties prescribed by statute for any person who knowingly and willingly makes a false statement on any matter within the jurisdiction of an agency of the United States (18 U.S.C. 1001).

***Note:** "Branch office" means an office where the registrant maintains one or more full-time, salaried employees engaged in the business of furnishing forwarding services.

"Principal office" means the office designated by the registrant as its principal office engaged in the business of furnishing forwarding services, and at which the registrant maintains one or more full-time, salaried employees, or engages in such business as full-time owner or partner. Each registrant may designate only one office as principal office.

Mr. STIGLER. Thank you very much.

Senator YARBOROUGH. Do you desire at this time, Mr. Stigler, to make a brief statement? I realize it is a hard time to condense all of this material.

Mr. STIGLER. I have no further statement that I care to make, Mr. Chairman. I am available for further questioning at any time that the committee so desires.

Senator YARBOROUGH. Thank you. We may have to restudy this record more and we may desire to call you back for further information. We will certainly be calling on you. I speak now only for myself. My conferees, comembers of this subcommittee, aren't here. If this legislation doesn't pass this session, speaking for myself, I hope that the Board would not attempt enforcement of this order at so early a period as November of this year, that there be time for readjustment of an industry that is as farflung as the American merchant marine shipping.

Mr. STIGLER. As you recognize, Mr. Chairman, that is something that only the Board can speak to. I have no authority to speak on that.

Senator YARBOROUGH. Thank you, gentlemen.

Subject to the desire of the full committee to recall Mr. Stigler for further examination, we will order the hearing closed at this time subject to further documentary evidence. This record will be left open 1 week for any additional statements, briefs, memorandums, or documents that any of the witnesses or any other interested citizen may desire to file in the matter.

We will close the record and send the record to the printer. Thank you for your patience and staying here until we completed the hearing.

(Whereupon, at 1:20 p.m., the subcommittee was adjourned.)



