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90-56 REFUNDING OF FREIGHT CHARGES

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON  
MERCHANT MARINE AND FISHERIES  
OF THE  
COMMITTEE ON COMMERCE

UNITED STATES SENATE  
NINETIETH CONGRESS

FIRST SESSION  
ON

S. 1905

A BILL TO AMEND PROVISIONS OF THE SHIPPING ACT,  
1916, TO AUTHORIZE THE FEDERAL MARITIME COMMISSION  
TO PERMIT A CARRIER TO REFUND A PORTION OF  
THE FREIGHT CHARGES

NOVEMBER 20, 1967

Serial No. 90-56

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## CONTENTS

---

	Page
Opening statement by the chairman .....	2
Text of S. 1905 .....	1
Agency comments .....	1

### WITNESSES

Rear Adm. John Harlee, U.S. Navy (retired), Chairman, Federal Maritime Commission; accompanied by Commissioner James V. Day, Samuel B. Nemirow, Assistant to Chairman, and Edward Johnson, Legislative Counsel .....	2
John R. Mahoney, attorney, on behalf of Steamship Conferences; accompanied by Charles D. Marshall, chairman, Associated American Freight Conferences, and Richard Gage, chairman, North Atlantic United Kingdom Conference .....	10

### ADDITIONAL INFORMATION

Text of bill recommended by Federal Maritime Commission .....	9
Text of H.R. 9473 .....	20
Werner M. Stern, letter dated November 28, 1967 .....	21

# CONTENTS

1	.....	1907-1908
2	.....	1908-1909
3	.....	1909-1910
4	.....	1910-1911
5	.....	1911-1912
6	.....	1912-1913
7	.....	1913-1914
8	.....	1914-1915
9	.....	1915-1916
10	.....	1916-1917
11	.....	1917-1918
12	.....	1918-1919
13	.....	1919-1920
14	.....	1920-1921
15	.....	1921-1922
16	.....	1922-1923
17	.....	1923-1924
18	.....	1924-1925
19	.....	1925-1926
20	.....	1926-1927
21	.....	1927-1928
22	.....	1928-1929
23	.....	1929-1930
24	.....	1930-1931
25	.....	1931-1932
26	.....	1932-1933
27	.....	1933-1934
28	.....	1934-1935
29	.....	1935-1936
30	.....	1936-1937
31	.....	1937-1938
32	.....	1938-1939
33	.....	1939-1940
34	.....	1940-1941
35	.....	1941-1942
36	.....	1942-1943
37	.....	1943-1944
38	.....	1944-1945
39	.....	1945-1946
40	.....	1946-1947
41	.....	1947-1948
42	.....	1948-1949
43	.....	1949-1950
44	.....	1950-1951
45	.....	1951-1952
46	.....	1952-1953
47	.....	1953-1954
48	.....	1954-1955
49	.....	1955-1956
50	.....	1956-1957
51	.....	1957-1958
52	.....	1958-1959
53	.....	1959-1960
54	.....	1960-1961
55	.....	1961-1962
56	.....	1962-1963
57	.....	1963-1964
58	.....	1964-1965
59	.....	1965-1966
60	.....	1966-1967
61	.....	1967-1968
62	.....	1968-1969
63	.....	1969-1970
64	.....	1970-1971
65	.....	1971-1972
66	.....	1972-1973
67	.....	1973-1974
68	.....	1974-1975
69	.....	1975-1976
70	.....	1976-1977
71	.....	1977-1978
72	.....	1978-1979
73	.....	1979-1980
74	.....	1980-1981
75	.....	1981-1982
76	.....	1982-1983
77	.....	1983-1984
78	.....	1984-1985
79	.....	1985-1986
80	.....	1986-1987
81	.....	1987-1988
82	.....	1988-1989
83	.....	1989-1990
84	.....	1990-1991
85	.....	1991-1992
86	.....	1992-1993
87	.....	1993-1994
88	.....	1994-1995
89	.....	1995-1996
90	.....	1996-1997
91	.....	1997-1998
92	.....	1998-1999
93	.....	1999-2000
94	.....	2000-2001
95	.....	2001-2002
96	.....	2002-2003
97	.....	2003-2004
98	.....	2004-2005
99	.....	2005-2006
100	.....	2006-2007

# REFUNDING OF FREIGHT CHARGES

MONDAY, NOVEMBER 20, 1967

U.S. SENATE,  
COMMITTEE ON COMMERCE,  
SUBCOMMITTEE ON MERCHANT MARINE AND FISHERIES,  
Washington, D.C.

The subcommittee met at 10:08 a.m., in room 5110, New Senate Office Building, Hon. E. L. Bartlett (chairman of the subcommittee) presiding.

Senator BARTLETT. The committee will be in order.

Today we will hear testimony on S. 1905, a bill to amend provisions of the Shipping Act, 1916, to authorize the Federal Maritime Commission to permit a carrier to refund a portion of the freight charges.

(S. 1905 and letter from the Comptroller General follow:)

[S. 1905, 90th Cong., first sess.]

A BILL To amend provisions of the Shipping Act, 1916, to authorize the Federal Maritime Commission to permit a carrier to refund a portion of the freight charges

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 18(b) of the Shipping Act, 1916 (46 U.S.C. 817(b)), is amended by changing the period at the end of subsection (3) thereof to a colon and adding the following proviso: "*Provided, however,* That the Federal Maritime Commission may in its discretion and for good cause shown permit a carrier to refund a portion of freight charges collected from a shipper or waive the collection of a portion of its charges from a shipper; where it appears that such refund or waiver will not result in discrimination among shippers: *Provided further, however,* That the carrier has, prior to applying for authority to make refund, filed a new tariff with the Federal Maritime Commission which sets forth the rate on which such refund or waiver would be based: *And provided further, however,* That the rate resulting from such refund or waiver when approved shall be the effective and applicable rate for all other shipments of the same description of the carrier for the period commencing thirty days prior to the date of the shipment or shipments involved, until thirty days subsequent to the date of application for refund or waiver or until ninety days subsequent to the shipment or shipments involved, whichever is later, and, where appropriate, additional refunds or waivers shall likewise be made."

COMPTROLLER GENERAL OF THE UNITED STATES,  
Washington, D.C., July 13, 1967.

B-97278.

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

DEAR MR. CHAIRMAN: Reference is made to your letter of June 12, 1967, requesting our comments on S. 1905, which would amend section 18(b)(3) of the Shipping Act, 1916, 46 U.S.C. 817(b)(3), by giving the Federal Maritime Commission discretionary authority for good cause shown to permit a carrier to refund a portion of freight charges.

Professional staff member assigned to this hearing: Stanley H. Barer.

The need for such legislation apparently arises since the Federal Maritime Commission as to common carriers by water in foreign commerce has no authority to fix and enforce reasonable rates and such carriers by section 18(b)(3) of the Shipping Act are directed to charge no different compensation than the rates and charges in its tariffs filed with the Commission, no provision being made for relief of the shipper in case of mistaken rate filing. Such situations are typified in the case of *Aarmo Bristle Processing & Brush Co. v. Zim Israel Navigation Co.*, Special Docket No. 401, the holding on which is summarized in "Traffic World" for June 10, 1967, where the Commission is reported to have denied an application by the carrier to waive collection of \$1,224.08 in freight charges computed at a general cargo rate that was several times higher than a commodity rate which was inadvertently omitted by the carrier in publishing its tariff, although both shipper and carrier admitted the inadvertent error and were willing to adjust the charges.

The enactment of S. 1905 would not directly affect the functions and operations of our Office. However, the proposed legislation appears to have adequate provisions to preclude unjust discrimination and to be in the public interest and in the Government's interest as a shipper and, therefore, we have no objection to favorable consideration of S. 1905 by your Committee.

Sincerely yours,

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

#### OPENING STATEMENT BY THE CHAIRMAN

Senator BARTLETT. This bill was introduced by Chairman Magnuson at the request of the Federal Maritime Commission and its companion measure in the House has already been the subject of hearings.

The bill would empower the Commission to authorize carriers to make voluntary refunds to shippers and waive the collection of a portion of their freight charges for good cause such as bona fide mistakes.

This amendment is urged because the Shipping Act, 1916, unlike the Interstate Commerce Act, contains no statutory authority which empowers the Commission to direct the enforcement of a reasonable rate. Section 18(b) appears to prohibit the Commission from authorizing relief where, through a bona fide mistake on the part of the carrier, the shipper is charged more than he understood the rate to be. For example, a carrier after advising a shipper that he intends to file a reduced rate and thereafter fails to file the reduced rate with the Federal Maritime Commission, must charge the shipper under the aforementioned circumstances the higher rates.

The first witness this morning is Admiral Harlee, Chairman of the Federal Maritime Commission. We would be very glad to hear from you, Admiral.

#### STATEMENT OF REAR ADM. JOHN HARLEE, U.S. NAVY (RETIRED), CHAIRMAN, FEDERAL MARITIME COMMISSION, WASHINGTON, D.C., ACCOMPANIED BY COMMISSIONER JAMES V. DAY; SAMUEL B. NEMIROW, ASSISTANT TO CHAIRMAN; AND EDWARD JOHNSON, LEGISLATIVE COUNSEL, FEDERAL MARITIME COMMISSION

Admiral HARLEE. Good morning, Mr. Chairman. I have with me today Commissioner James V. Day of Maine; my special assistant, Mr. Samuel Nemirow; and our legislative counsel, Mr. Edward Johnson.

It is a pleasure to be here today and offer our comments on S. 1905. The bill would amend section 18(b) of the Shipping Act, 1916, to authorize the Federal Maritime Commission to permit a carrier either to refund, or to waive the collection of, a portion of the freight charges. It is designed to permit the Commission to correct inequities presently existing in instances where there has been an error of a clerical nature in the filing of a tariff or where through inadvertence there has been a failure to file a tariff reflecting the intended rate, leaving the carrier no alternative but to charge a rate different from the one intended to be charged.

Prior to 1965, the Federal Maritime Commission entertained "special docket" applications both in the foreign and the domestic trades under rule 6(b) of the Commission's rules of practice and procedure, which provides that carriers or shippers "may file applications for the voluntary payment of reparation or for permission to waive collection of undercharges." Between 1962 and 1965 the Commission allowed carriers to make voluntary refunds or waive the collection of freight charges in 30 cases, all but one of which arose in foreign commerce. Relief was granted in those cases where the Commission found that through bona fide error or inadvertence a carrier failed to file, or incorrectly filed a rate which it intended in good faith to make applicable to the shipments in question, and that no discrimination would result to other shippers. The theory was that an innocent shipper should not be made to bear the consequences of a carrier's neglect or omission.

The Commission, however, on January 13, 1965, in a consolidated decision—special docket No. 377, *Ludwig Mueller Co. Inc. v. Peralta Shipping Corp.*, and special docket No. 378, *Application of Lykes Bros. Steamship Co. Inc.*—reviewed its special docket procedure in cases involving the foreign commerce of the United States. In a three-to-two decision, the Commission held that section 18(b)(3) of the Shipping Act, 1916, did not permit it to authorize deviations from filed tariffs in the foreign trade, notwithstanding rule 6(b) of the Commission's rules of practice and procedure.

The Commission decided that only in those cases where it is empowered to fix a reasonable rate is the refund procedure applicable, namely those cases relating to the Commission's domestic offshore trades which are within the purview of section 18(a) of the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933. The absence of such a authority in the Shipping Act, 1916, with regard to carriers in the foreign trades prevents the Commission from granting equitable relief in deserving situations.

The Interstate Commerce Act, which applies to domestic rail carriers, motor carriers, and water carriers, specifically gives to the Interstate Commerce Commission, as to each form of transportation, authority to fix and enforce reasonable rates—49 U.S.C. 15(1), 49 U.S.C. 316(e), and 49 U.S.C. 907(b). Therefore, the Interstate Commerce Commission can prescribe and enforce a rate different from the tariff rate when the agency makes a finding that the published rate is "unreasonable."

Although section 18(b)(5) of the Shipping Act, 1916, gives to the Commission authority to disapprove any rate "filed by a common carrier by water in the foreign commerce of the United States," which it finds to be "so unreasonably high" as to be detrimental to the com-

merce of the United States, nowhere in the Shipping Act is the Commission given the power to fix a "reasonable rate" in the foreign trade.

Since the Federal Maritime Commission has no direct authority to fix "reasonable rates" in the foreign commerce of the United States, it believes it necessary to obtain the statutory authority contained in the proposed legislation if refunds and waivers are to be permitted.

My reference to the ratemaking authorities of the Interstate Commerce Commission and of the Federal Maritime Commission in cases relating to the domestic offshore trades is merely to point out that the absence of such statutory authority with respect to its responsibilities in the foreign commerce of the United States leaves the Commission without authority to permit refunds or waivers of undercharges even where it is evident that such applications for refunds or waivers should be granted. I think it clear that there is no language in S. 1905 which would support the argument that the Commission by this reference to existing ratemaking authority in domestic trades is seeking to expand its authority over ratemaking activities in the foreign commerce of the United States. This was one of the matters of major concern to the industry in the House hearings and I wanted to clarify this beyond any possible doubt. That is to say there was an apprehension on the part of industry that we were seeking more power than we had, and therefore I have added this unequivocal statement. The Commission is in fact not seeking authority to set rates in foreign trades. Also there were changes made in the legislation as reported out by the House, H.R. 9473, which clarify, by listing clerical error or administrative inadvertence as reasons for correcting the rate which should make it absolutely clear that we at this time are not seeking more ratemaking authority in the foreign trade.

Senator BARTLETT. And those amendments are satisfactory to you?

Admiral HARLLEE. Yes, completely satisfactory. And Mr. Mahoney of course will testify for the industry, but I believe he will say likewise.

Since its decision in special dockets 377 and 378, the Federal Maritime Commission has not been able to afford relief in instances in which equity might call for the granting of refunds or the waiver of undercharges. Since January 1965, the Commission has denied, on jurisdictional grounds, 116 applications alleging mistaken rate filings in the foreign trade.

For example, a conference agreed to a \$38.50 per ton rate on scrap magnesium castings computed on a weight basis. Under the terms of the conference agreement each carrier filed its own tariff. One carrier neglected to show in its tariff on file that the freight was to be assessed on a weight basis rather than weight or measurement basis—a clerical error in failing to include the letter W after the figures \$38.50 to indicate that the commodity rate applied on a weight basis. In accordance with the tariff rules, except where W was shown, the rates were required to be applied on a weight or measurement basis—2,240 pounds or 40 cubic feet—whichever produced the greater revenue. As a result of this omission a shipper who booked 24,649 pounds—1,526 cubic feet—of magnesium castings, was assessed and paid freight in the amount of \$1,584 on the measurement basis of 40 cubic ft. per ton, whereas the freight would have been only \$423 if computed on a weight basis. The carrier sought permission to refund the \$1,161 difference. In this situation, under section 18(b)(3) of the Shipping Act, 1916, the carrier could only charge the published

rate and the Commission could not permit an adjustment to the intended rate since it did not have the statutory authority to do so.

In other words, a simple omission of the letter W on pieces of paper which have thousands of letters and figures.

In another case, a carrier indicated to a shipper its intention to reduce the rate on orange concentrate from \$4 per 100 pounds to \$2.75 per 100 pounds. The carrier then sent a letter to the Federal Maritime Commission to revise its tariff to conform with its agreement but, through clerical error, the correction was not enclosed. Before the carrier became aware of its oversight, 61,000 pounds of orange concentrate had already been booked at the \$2.75 rate. The carrier filed an application requesting permission to waive collection of undercharges in the amount of \$766.80. The Commission, under existing statutory authority and consistent with its decision in special dockets Nos. 377 and 378, was compelled to deny the request.

Senator BARTLETT. Admiral, if this bill becomes law, would it have a retroactive feature which would permit such cases to be taken care of in the future?

Admiral HARLLEE. Not as written, as reported out by the House, Mr. Chairman, it would not have. Of course it would be possible to make it retroactive, but in our contacts with the industry, who can speak for themselves this morning on that, we haven't had that request.

Senator BARTLETT. What would you think of an amendment which would make it retroactive back to 1965?

Admiral HARLLEE. I think offhand that such an amendment would be undesirable, Mr. Chairman. The reason I think so is that although this seems a ridiculous situation not to be able to handle clerical errors or inadvertent failure to file tariffs, the total sum of money involved from 1965 to date is not nearly as much as you might think. The total amount of money involved is only \$47,000. That is over a period of 3 years. Now during that period the integrity of the tariff system has been upheld and there has been no danger or likelihood of discrimination or rebates. One problem that you would run into in making it retroactive is making a determination on whether some other shippers might have been discriminated against if they had wanted to ship at the same tariff rate for which these adjustments were requested. I would say I am not at the moment unalterably opposed to retroactivity, and it may be the industry will request it, but it would pose a real problem as to whether somebody had been discriminated against during that period of time.

Senator BARTLETT. I can understand that, but I am on the Appropriations Committee where we deal with tens of millions of dollars. Nevertheless, if I were a shipper and thought I was going to pay \$1,161 more, I would feel pretty much aggrieved.

Admiral HARLLEE. As I say, it would be quite a problem to really determine in each case whether somebody had been discriminated against or wanted to ship or who actually did ship. There would have to be a searching of the records to determine whether somebody did ship at the same time that the subjects of these requests shipped to see whether they should get a lower rate also. And I think it would be a major administrative problem that I am not sure whether the industry would want to tackle as well as ourselves. In other words, if someone has requested a lower rate on the basis of one of these

mistakes, by the proposals that we make and the industry agrees with, there would have to be some kind of a method, which I will deal with later in my statement, of ascertaining whether someone else shipped at the same time and should also have the benefit of the lower rate. And this checking, this type of checking is so much of a burden that we had to change our original proposal from the House into one that imposed less of a burden on industry to determine who else is affected by these adjustments. And in fact this was the second, I mentioned one already, the second big change that the industry wanted and we agreed with in the original House bill, and from S. 1905.

However, what I would suggest about this is that we make a report to you very shortly at some length dealing with the question you asked. I have given you off-the-cuff opinions, and, of course, you will want to ask Mr. Mahoney and we will submit a letter to you on this subject very shortly.

Senator BARTLETT. All right. You may continue, Admiral.

Admiral HARLEE. The view that the shippers should be granted relief in those cases where a clerical or administrative error has resulted in the imposition of an unintended rate is, I feel sure, shared by the entire shipping industry. I know of no opponents to the objectives of our proposal.

Since the proposed legislation, S. 1905, was referred to your committee, there have been hearings on the companion House bill, H.R. 9473, before the House Subcommittee on Merchant Marine. Testimony before that subcommittee indicates that some revisions to S. 1905 are desirable to clarify the proposed statute. As introduced, there were no restrictions as to the type of cases in which the Commission could grant an application for permission to refund or waive an undercharge. We agree that this authority should be limited as requested by the industry to cases of clerical error or inadvertent failure to file, and ask that the following be substituted for the first proviso in S. 1905. The other changes from the original text would make it clear that the bill would apply specifically to the foreign commerce and to conferences as well as independent "carriers."

I would suggest this language, which is the same as the House bill which was reported out:

*Provided, however, That the Federal Maritime Commission may in its discretion and for good cause shown permit a common carrier by water in foreign commerce or conference of such carriers to refund a portion of freight charges collected from a shipper or waive the collection of a portion of [its] the charges from a shipper, where it appears that there is an error in a tariff of a clerical or administrative nature or an error due to inadvertence in failing to file a new tariff and that such refund or waiver will not result in discrimination among shippers;*

Although the bill would require a demonstration of good cause and a determination by the Commission that refund or waiver would not result in discrimination among shippers, there is always the danger that it could become a tool whereby unethical carriers and/or shippers could extend or obtain unfair competitive advantages for such carriers and/or favored shippers. For this reason, we included in the bill statutory safeguards which were designed to discourage its use as such a device. The second proviso requires that before applying for permission to make a refund or waive collection of a portion of the freight charges, the carrier must have filed with the Commission a new tariff setting forth the rate on which the refund or waiver would be based.

The third proviso as originally introduced would have required that the resulting rate be effective for the period commencing 30 days prior to the date of the shipment until 30 days subsequent to the date of application for refund or waiver or until 90 days subsequent to the shipment or shipments involved, whichever is later. This proviso would have required that the corrected rate be applicable for a sufficient period of time to discourage any attempt at discrimination or favoritism since the parties concerned, especially the carriers, would know that the resulting rate would be applicable to all shipments for the specified span of time. Thus, if the lower rate was merely an effort to accommodate a particular shipper, this provision would prevent the assessment of a higher rate during the specified period thereby making any attempted favoritism uneconomical.

Now that proviso is the third major change made in accordance with the House hearings and industry's position; we eliminated that because of very undesirable features which were pointed out in which we concurred. Section 18(b) of the statute presently requires that before any tariff change can be effective which results in an increased cost to shippers, a new tariff or tariffs must be published and filed with the Commission at least 30 days prior to the date such increase will become effective. In the event a carrier or conference of carriers is operating under an approved dual rate contract system, a change resulting in an increased cost to shippers can only become effective by publishing and filing any such increase with the Commission at least 90 days in advance. Changes resulting in a decreased cost to shippers may become effective upon publication and filing with the Commission.

Upon reconsideration in light of the testimony before the House subcommittee, it appears to us that these safeguards; that is, the 30-day notice and the 90-day notice, already built into the statute, are such that it would be unnecessary to freeze the rates as provided in the original bill. We think that the flexibility presently in the act, that is the ability to increase or decrease rates upon proper statutory notice in order to meet competitive market conditions, should be preserved.

As a result of the hearings in August on H.R. 9473, the Merchant Marine and Fisheries Committee on November 9, 1967, ordered favorably reported to the House, a substitute bill. We have carefully reviewed this substitute bill and are of the opinion that it accomplishes the purposes which prompted the Commission to seek legislative authority to permit refunds and at the same time contains adequate safeguards to prevent the use of this legislation as a rebating tool.

First, the present statutory filing requirements of section 18(b) are retained, i.e., the 30 or 90 days' notice and filing as to increases must be complied with.

Second, it makes mandatory refunds applicable all shippers for similar shipments made from the date of shipment until the date of application, without freezing the rate.

Third, it makes mandatory the publishing of appropriate notice concerning the erroneous rate. If there is no adequate method of notification available, the Commission may require conferences and/or carriers to take positive steps to ascertain other shippers entitled to a similar refund and in such instances to provide direct notice to such other shippers.

A requirement that application be filed with the Commission within 180 days from the date of shipment appears in the final—fourth—proviso of this revised bill. The third proviso specifies that “additional refunds or waivers as appropriate shall be made with respect to other shipments in the manner prescribed by the Commission in its order approving the application.”

If the application for refund or waiver is filed within the prescribed 180-day period and is approved, the Commission would enter order of approval authorizing the refund or waiver. The Commission also would prescribe the method of notice to be given by the carrier to other shippers, that a refund is due and of the rate on which the refund or waiver is based. As a result of that notice other applications may be submitted directly to the conference or carrier and would not have to be acted upon by the Commission. A report to the Commission of resulting refunds would suffice.

An example of the application of this bill would be as follows: A shipment is booked on January 1 at a \$20 rate negotiated between the carrier and the shipper. Through inadvertence, the carrier fails to file the \$20 rate and the shipment is assessed the published rate of \$30. The error is discovered and on May 1 application is filed with the Commission for authority to refund the difference. A proceeding would be instituted to ascertain whether a mistake had been made and the precise calculation of refunds attributable to the mistake. Of course that would be a shortened proceeding.

The Commission's order of approval would specify the type of notice to be given, e.g., where the conference employs a dual rate system and maintains a comprehensive shippers' mailing list, the order might specify that a copy of the notice be mailed to each contract shipper, and such action would constitute sufficient notice under the statute. All other shippers assessed the erroneous rate on or after January 1, would be entitled to a refund, and on receipt of the notice would file claims directly with the carrier.

In those instances where the conference or carrier does not maintain a mailing list, which in the judgment of the Commission could be considered sufficiently comprehensive for adequate notice, the order of approval would specify the steps that the carrier or conference would have to take to notify or ascertain all shippers of the same commodity during the period and to make appropriate refunds.

I would like to interject here that these last few paragraphs have dealt with the final objection of the industry which was their interpretation—and I think it was a correct one—that the original bill would have required them in these cases to search through all of their manifests and to notify the shippers of a change stemming from these proceedings which they felt to be—and I think it probably is from what they have told us—a very difficult and unnecessary burden, to look through all manifests for a particular commodity, when they may have thousands or tens of thousands of them. Therefore we reached agreement on a means of seeing that other shippers would know about the change in rate by notice to contract shippers, or to a mailing list, or as a last resort searching the manifests. I think that was the last objection they had to the original bill.

To summarize, the Commission supports the amended bill reported by the House Merchant Marine and Fisheries Committee because, in

our view, where no discrimination results from the approval of an application for permission to refund or waive an undercharge, an innocent party should not be required to bear the consequences of a carrier's mistake in failing to file a tariff rate which the carrier intended to file and which the carrier and shipper acting in good faith had agreed would be applicable. Accordingly, we recommend that S. 1905 be similarly amended and would strongly favor its enactment. We think this bill is clearly in the public interest.

A copy of the bill which we recommend be enacted is attached and I would request that be put in the record.

(The bill recommended by the Federal Maritime Commission follows:)

A BILL To amend provisions of the Shipping Act, 1916, to authorize the Federal Maritime Commission to permit a common carrier by Water in foreign commerce of conference of such carriers to refund a portion of the freight charges

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 18(b) of the Shipping Act, 1916 (46 U.S.C. 871(b)), is amended by changing the period at the end of subsection (3) thereof to a colon and adding the following provisos:

*“Provided, however,* That the Federal Maritime Commission may in its discretion and for good cause shown permit a common carrier by water in foreign commerce or conference of such carriers to refund a portion of freight charges collected from a shipper or waive the collection of a portion of the charges from a shipper where it appears that there is an error in a tariff of a clerical or administrative nature or an error due to inadvertence in failing to file a new tariff and that such refund or waiver will not result in discrimination among shippers;

*“Provided further,* That the common carrier by water in foreign commerce or conference of such carriers has, prior to applying for authority to make refund, filed a new tariff with the Federal Maritime Commission which sets forth the rate on which such refund or waiver would be based;

*“Provided further,* That the carrier or conference agrees that if permission is granted by the Federal Maritime Commission, an appropriate notice will be published in the tariff, or such other steps taken as the Federal Maritime Commission may require, which give notice of the rate on which such refund or waiver would be based, and additional refunds or waivers as appropriate shall be made with respect to other shipments in the manner prescribed by the Commission in its order approving the application; and

*“Provided further,* That application for refund or waiver must be filed with the Commission within 180 days from the date of shipment.”

Admiral HARLEE. I would like to make a few other comments about the points you brought up, Mr. Chairman. I do want to make it clear that the comments that I made are definitely not unalterably in opposition to this for two or three reasons. One of the reasons is that I will of course need to check with the other Commissioners to get a vote on that subject after a proper discussion. But we can do that expeditiously, because I am very anxious, and I think you are too, to see this passed this session of Congress.

And in that connection, I want to say that we started efforts to get this legislative authority some time ago—in fact, back in February 1965—and of course the Bureau of the Budget had to check with many other agencies involved. We had to have many discussions with the Commissioners and the House and Senate have been so busy, as you know, that it is difficult to get hearings on these matters. So there has been a chain of circumstances, perhaps some our own fault, which resulted in delay. So I would like to see this concluded in this session. After discussing it with the other Commissioners and after hearing the industry's comments, we can give you a better answer to your question. I made the comments I did make in an effort to be helpful to you.

Senator BARTLETT. When did you first ask the Bureau of the Budget for clearance on legislation of this character?

Admiral HARLLEE. February 24, 1965, which was a month after we made the decision that we didn't have authority to do it.

Senator BARTLETT. When did you receive clearance?

Admiral HARLLEE. We received—well, it had to undergo changes and we finally received clearance I think early this year. It was November 1966.

Senator BARTLETT. That will be enough of that subject.

Let me say I am not wedded—

Admiral HARLLEE. Mr. Chairman, I do want to emphasize one point. I recognize the sort of ridiculousness of this position in a sense and would have made much more of a push on it had it been somewhat larger sums of money involved. But in the meantime we have set up a situation which is particularly difficult to reach with foreign carriers and conferences of compliance with the tariffs, integrity of the tariffs, and the moneys involves for any one party have been relatively small in terms of something like one-hundred-thousandths of 1 percent of the freight bill of the United States. But as you say, \$1,000 to an individual is a lot, or even \$10.

Senator BARTLETT. I wasn't trying to assess any blame against the FMC, I just wanted to find out how long it took the Bureau of the Budget to clear minor matters such as this.

Admiral HARLLEE. In defense of the Bureau of the Budget, let me say they don't sit on things, they have to check with the Department of Justice, they have to check with the ICC and CAB, and a good many other agencies. And these things also take time.

Senator BARTLETT. Yes. Let me say I am not wedded to this retroactive feature. I never thought of it before. I just wanted to bring it up.

Admiral HARLLEE. It might very well be after hearing the industry's testimony on that and looking into it a bit further, it may be entirely practical without the danger of discrimination. I will have to report to you later on that in letter form.

Senator BARTLETT. Admiral, your statement has been so lucid that I have no further questions to ask and I thank you, Mr. Day, and your associates for coming up this morning.

Admiral HARLLEE. Thank you, Mr. Chairman.

Senator BARTLETT. Our next and final witness will be Mr. Mahoney.

**STATEMENT OF JOHN R. MAHONEY, ATTORNEY, NEW YORK, ON BEHALF OF STEAMSHIP CONFERENCES, ACCOMPANIED BY CHARLES D. MARSHALL, CHAIRMAN OF THE ASSOCIATED LATIN AMERICAN FREIGHT CONFERENCES, AND RICHARD GAGE, CHAIRMAN OF THE NORTH ATLANTIC-UNITED KINGDOM CONFERENCE**

Mr. MAHONEY. Mr. Chairman, I am John Mahoney of Casey, Lane & Mittendorf, New York City.

At my right sits Charles D. Marshall also of New York. He is chairman of the Associated Latin American Freight Conferences. That is a group of a dozen or so of the conferences that are set forth in appendix A, which is attached to my statement. His area of the world is roughly, or his beat, I would say, is South-Central America

and the Caribbean, chairing conferences that are run from the Atlantic coast and the gulf coast.

At my left is Richard Gage, who is chairman of the North Atlantic-United Kingdom Conference. There again the name of the conference I think speaks for itself. He is also based in New York City.

Now in this instance I appear on behalf of 24 steamship conferences based either in New York or in San Francisco. They operate from the Atlantic, the Gulf and the Pacific Coasts of the United States to most of the important trading areas of the world. Appendix A, which I referred to a minute ago, lists the various conferences and the 106 members, steamship carriers who are members of the one or more of those conferences.

If you look at appendix A, I think it will speak for itself because the names of the conferences show the geographical ranges. The subject matter of S. 1905 is a legal matter on which all of the conferences and their member lines have a common position. Since it is a legal memorandum, I request that all of my statement be incorporated in the record. This will give your able staff the benefit of our legal argument, much of which I propose to skim over. I am just going to annotate it in the interest of time—I know we are working against the clock here,

Senator BARTLETT. That will be permissible. Your entire statement will be printed in the record.

In addition, I should say now that Admiral Harlee had requested permission to have the draft of the revised bill printed and that will be done also.

Mr. MAHONEY. Apropos of that, the second request granted to Admiral Harlee, we have attached as appendix B to my statement H. R. 9473, H. Rept 920, as it emerged from the House Committee on Merchant Marine and Fisheries. This is the bill which we are supporting, which is the same one which is being urged by Chairman Harlee.

Senator BARTLETT. Do you happen to know when that bill was reported over in the House?

Mr. MAHONEY. I think November 14, 1967, it was reported with amendments, and I think—don't take my word as gospel on this—but I believe it is going to be on the Day Calendar today.

Senator BARTLETT. On the Consent Calendar?

Mr. MAHONEY. Excuse me, that is right, the Consent Calendar in the House I think is the first and third Monday of the month, so I suspect it will go through the Consent Calendar today.

But this is only what I was told last week on information and belief, Senator, so I am not sure.

Senator BARTLETT. And you never can tell when someone will pop up and say "I object."

Mr. MAHONEY. No. As a matter of fact, you never can tell when you are going to get a question that seems off the beaten path, like the question you asked Admiral Harlee about retroactivity.

I must say I was as surprised as he was on it. I am glad you are not wedded to any idea like that.

Before I answer that question, which I am really going to take up first, I want to tell you that we are in 100-percent support of the statement that was made to you by Admiral Harlee, and the questions or dialog between you and the admiral. The only area I think of disagreement—and it is not really disagreement, because I think he

appreciated and showed in his answers to your questions a real appreciation of our problems. However, I would say that we are unalterably opposed to such an amendment as you suggested. The reasons are brief.

First, there isn't a single shipper in the 156, or however many there have been, shippers, who have been involved in these special docket situations for the last two and a half years, who has bothered (1) to go to court on the matter, or (2) to come in here. This morning you have a complete absence of any of the people who normally would be looking out for the interest of the shippers, the National Industrial Traffic League, the Commerce & Industry Association, or even a local chamber of commerce or any of the 156 shippers involved.

Senator BARTLETT. Should we call for Betty Furness?

Mr. MAHONEY. I think we ought to as a matter of fact. She might take up the cudgels. As a matter of fact, she might add a little glamour too.

So I would stress what Admiral Harlee touched on. It would be a monumental job to search our records back for a couple of years. The fact is if you people can move quickly on this bill and get it passed in this session in the next few weeks, there will be a 6-month retroactivity feature in there, because as you note at page 3 of appendix B the final clause provides that applications for refunds must be filed with the Commission within 180 days. So you will get a 6-month retroactivity anyway, which would pick up a fair number of these.

The most important thing, I think, Mr. Chairman, in this instance is to stress to you the fact that every year based on the Commission's own figures in its report in 1966 there were 500,000 separate rate filings that were given to them. Out of these 500,000, to have only 156, if I have the right figure, errors of inadvertence is really a miniscule percentage.

Now we would hasten to say that we seek perfection, but as you know, the fact is that gremlins creep in. Occasionally somebody will slip and forget to put a weight or a measurement or do the kind of things that the admiral talked about. I am not going to illustrate those or go any further, other than to say considering the huge volume of tariff changes that have been made, I think that these few corrections that are involved don't warrant our going back and searching our records. A lot of them occurred abroad, and the cost is really tremendous. We impressed that on the Commission in the discussions we had with them.

I would say parenthetically that the progress of this bill is a good example of Commission-industry cooperation. When we started out I didn't think we had a chance to have a dialog with the Commission, because Chairman Garmatz called the hearings over in the House on about 6 days' notice. They didn't get their position solidified nor did we until the hearing. One reason is because I have both east coast and west coast clients, so I had trouble getting a common position hammered out.

But subsequent to the House hearing we carried on a useful exchange. It seems to me that the Commission has been very receptive and very understanding of the special problems that the industry has. They recognize that at no time have we ever been anything but in 100-percent agreement with the objectives of the legislation. What we objected to, which is detailed in my statement, is the form that it took first, particularly the rate freeze.

I am not going to go into those differences because it seems to me they are past history. We are in agreement on them. The important thing as I see it is that because of this dialog and because they have appreciated our points of view, and realized that particularly we have an unwarranted expense of going back to search through our records in a case which is really pretty much de minimus, I agree that \$1,000 for a person that is aggrieved may seem like a large amount, but I think you have to take an overview of this and recognize that it is \$1,000 out of millions and billions of dollars that are involved.

Now when H.R. 9473 was introduced and considered by the House committee, it was in haec verba with S. 1905 which you have before you.

During the intervening months H.R. 9473 was reported out of the subcommittee in a revised form, which we suggested. I think that the suggestions have all been incorporated in the text of our appendix B, with a few changes.

I have really covered the material on page 2 and I just want to say that to save time I am also going to skip the material which appears on the rest of pages 3, 4, and 5. What it does is set forth in detail our legal objections to the FMC's covering comments and the material at lines 1 to 15 on page 2 of appendix B; in other words, to the original bill H.R. 9473, and the original bill S. 1905.

It seems to me this has become academic in the light of the Commission's changed position. However your staff, when it is considering this matter, may want possibly to have the reasons we gave in capsulized form that I think persuaded the Commission to change its position. Therefore I want to skip down to the bottom of page 5 and talk first about urging your committee to concur in the changes which have been made by the House of Representatives. I want to outline briefly the areas in which the House bill differs from the original draft before you, and bear down on the points that matter to us.

First, there is no longer any provision for a mandatory rate freeze, retroactive for 30 days and prospective for 90 days. We are at the top of page 6 of my statement now. This requirement has been replaced by the last proviso which states that if permission is granted by the Commission, the carrier or conference will publish an appropriate notice in its tariff, or take such other steps as the Commission may require, to give notice of the rate change and will provide for additional refunds to other shippers who are similarly situated.

This language appears at lines 8 to 16 on page 3 of our appendix B.

The legislation in its present form protects the innocent shipper in those rare cases where through a carrier's inadvertence a shipper has paid a manifestly improper rate. The legislation empowers the Commission on good cause shown to grant to the carrier authority to correct a clerical or administrative error and to refund the difference.

The legislation also provides that relief will be afforded in those few cases where through inadvertence a carrier or conference fails to file a specific rate promised to a shipper.

I would stress here parenthetically that these are very few cases and we are not talking about any kind of constantly occurring situation. They come up infrequently. When they do come up, we in the industry want to correct them as much as anybody else, and we want to be sure that anybody else similarly situated gets a similar refund.

Now in the second instance, we appreciate the possibility that the question as to whether relief should be granted hinges on the question of the intent of the particular carrier and shipper applying for relief. In such a case, the carrier and shipper alike must bear the heavy burden of showing good cause for relief under these exceptional circumstances.

We think that the revised third proviso adequately protects the rights of similarly situated shippers against discrimination.

In our presentation to the House committee, we pointed up the practical problems involved in giving notice to such similarly situated shippers. This is what I was stressing to you earlier on the retroactivity problem. If you think it is difficult, and we think it is extraordinarily difficult and so persuaded the Commission, to roll back our records over a 6-month period and search through hundreds, thousands of bills of lading. As a matter of fact, if you talked about retroactivity, we would be talking about tens of thousands of manifests. Maybe I am exaggerating if I say millions, but I'm sure hundreds of thousands of bills of lading are involved. Am I exaggerating this, Mr. Marshall?

Mr. MARSHALL. No, I think that is a fair statement.

Mr. MAHONEY. This retroactivity thing would cost us an enormous amount of money, all for a very few dollars. It would cost us hundreds of thousands of dollars, to refund, probably just about \$10,000 on the other side.

Well, we emphasized it was unfair to thrust on the carriers and the conferences the burden of searching through these bills of lading for the sailings at or about the time in question, and suggested that the Commission might give notice through the Federal Register of a synopsis of the rate mistake and an invitation for any similarly situated shipper to come forward.

Some of the members of the House committee were concerned with whether or not the Federal Register was an adequate vehicle for notice. They were afraid it might get cluttered up with these rate synopses. I think we persuaded them that they come up so infrequently that it didn't matter really and it wouldn't be an inhibiting factor and the subcommittee in the House agreed to that.

However, in talking with the Commission further, we felt if the carrier or conference published a tariff correction notice showing the proper rate of classification that this correction notice would be sufficient for any other alert shipper to claim his rights by a timely application.

Well, the Commission staff didn't share our view as to the efficacy of the Federal Register as an effective method of notice. Maybe we are biased in this regard because we have to comb through it every day to see if there is any action by any one of the Federal agencies that is inimical to the best interests of our clients. But since the Commission entertains reasonable doubts as to its efficacy, our clients are willing to go one step further. This is what was described to you by Admiral Harlee.

Most of the conferences employ a contract rate system under which the shipper who agrees to confine all of his shipments to conference lines receives a discount up to 15 percent. All contract conferences must maintain current lists of all contract shippers. In those conferences where contracts are offered, better than 99 percent of the

shippers in the trade avail themselves of the contract. Therefore, the most effective way to publicize any rate action in such a conference is by a notice to the contract list. Our clients are prepared to circularize their contract list with an erratum notice if the Commission grants a special application. This will provide actual notice to practically everyone who might be affected.

It is an expensive way of correcting an error, but we are confident the number of instances where this will be necessary is so limited that we can shoulder the burden.

Now in those few instances where our clients don't have a dual rate contract, they still maintain a complete shipper list. If an error happens in such a conference, the conference would undertake to circularize the shipper list, thereby giving actual notice to any shipper similarly situated.

The third possibility would arise in the case of an individual line not a member of a conference, if such line made an application for a refund. In this case the line wouldn't have a contract list and it might not have a shipper list. Under those circumstances the Commission might well condition its approval of the refund on the carrier's undertaking to search its manifests and bills of lading to uncover any other shipper similarly situated.

The final proviso also requires that an application for refund or waiver must be filed with the Commission within 180 days. We approve of this because it will eliminate or minimize stale claims.

Again I can't emphasize too strongly, the fact that we are in a dynamic industry. It is one that is moving fast all of the time with huge amounts of paperwork, and it is difficult enough to go back 180 days to search records if you have to, but to go back for 2 years would be a colossal task and one that I believe is way beyond what should be required.

We are confident that after the full exchange of views we have had, the Commission understands the various possibilities and will use the remedy best suited to the circumstances. Therefore we believe the revised legislation set forth in appendix B, which is the same as the Commission is urging, will do the following:

First, it will provide an effective way to cure the evil that S. 1905 seeks to cure, and second, it will satisfactorily protect the rights of similarly situated shippers and give the Commission sufficient flexibility to condition its relief upon the circumstances involved.

Therefore, we respectfully urge you to substitute the revised language embodied in appendix B for that which is before you in S. 1905.

Thank you for your attention. I will endeavor to answer any questions that you might have.

(The complete prepared statement with appendixes follows:)

STATEMENT OF JOHN R. MAHONEY ON BEHALF OF 24 CONFERENCES AND THE 106  
COMMON CARRIER MEMBERS OF ONE OR MORE THEREOF

I am John Mahoney of Casey, Lane & Mittendorf, 26 Broadway, New York City. I appear here on behalf of 24 steamship conferences based either in New York or San Francisco which operate from the Atlantic, Gulf and Pacific Coasts of the United States to most of the important trading areas of the world. Appendix A which is attached lists the Conferences and the names of the 106 steamship carriers, members of one or more of these Conferences. If you will take a quick look at Appendix A, you will see that the Conference names themselves indicate the geographical ranges served.

The subject matter of S. 1905, Permission to Refund a Portion of Freight Charges, is a legal matter on which all of the Conferences and their member lines have a common position.

To avoid duplication, they have employed common counsel. I testified on behalf of the same Conferences and carriers before the Subcommittee on Merchant Marine of the House Merchant Marine and Fisheries Committee on August 16 of this year in connection with the House companion bill, H.R. 9473. At the time H.R. 9473 was introduced and considered by that Subcommittee, it was *in haec verba* with S. 1905. During the intervening months, H.R. 9473 was reported out of the Subcommittee in a revised form which we suggested.

Chairman Garmatz called hearings of the Subcommittee on very short notice. Since I represented Conferences and carriers on both coasts, there wasn't time for us to get together with and exchange views with the proponent of this legislation, the Federal Maritime Commission, before the hearing on August 15th. However, after the Subcommittee hearing, there was a subsequent exchange of ideas with the Commission in the form of letters to the Committee which supplemented the record. After the Subcommittee had reported out the bill in the form we suggested, we had a further opportunity to consider the matter in some depth with the senior staff at the Maritime Commission. Out of those meetings came some further suggestions which were embodied in the second substitute which was reported out by the full House Merchant Marine Committee a few weeks ago. A copy of the bill as reported is attached as Appendix B.

The bill as reported to the House meets all of our serious questions about, and objections to, H.R. 9473 and S. 1905 as originally drafted. We have always endorsed the purpose of this bill, which would permit refunds of freight when a typographical error in a tariff, or carrier inadvertence in failing to file agreed changes to a tariff, results in shippers being charged at excessive rates. However, the comments that accompanied the Commission's original bill and some of the language in the original bill troubled us.

We were particularly concerned about the suggestion, contained in the following quotation from the Commission's comments, that the Commission was seeking indirectly the power to regulate rates, a power which Congress has consistently denied it in the past. The comment that caused concern reads:

"This amendment is necessary because the Shipping Act, 1916, unlike the Interstate Commerce Act, contains no statutory authority which empowers the Commission to direct the enforcement of a reasonable rate . . . . Since no reasonable rate fixing authority is contained in the Shipping Act applicable to ocean carriers engaged in foreign commerce, the Commission feels it necessary to obtain the statutory authority contained in this proposed legislation."

After we voiced our concern, Chairman Harlee emphatically stated that the Commission was not seeking any rate making authority. While we welcomed the Chairman's forthright statement and recognized that the legislative history would make it difficult to interpret the proposed legislation as a grant of rate-making authority, we also were fearful that Commission personnel and others who were not particularly familiar with the legislative history would argue in the future that limited rate-making authority had, in fact, been granted. To avoid future problems of interpretation, we urged that the legislation enacted should not contain any ambiguous language that could be the basis of a future claim of rate-making authority.

We were particularly concerned with the third proviso which would freeze rates retroactively for 30 days and prospectively for 90 days. The power to freeze rates for a limited period because of a mistake could lead to attempts to postpone intentional rate changes of which the Commission disapproved. The Commission proposed these rate-freezing provisions to make doubly and triply certain that this bill could never be used by a carrier, intent upon wrongdoing, to discriminate among shippers by obtaining a refund for one shipper and then immediately raising the rates paid by others. However, such a provision was unnecessary because the Shipping Act, 1916, already contains provisions requiring advance notice of rate increases. In addition, every application for permission to refund freight moneys would be subject to Commission scrutiny. Carriers intent upon discriminating certainly would find some other means to discriminate that did not involve examination by the Commission.

In addition to being unnecessary, the rate-freezing proviso was objectionable because it introduced an unwarranted element of inflexibility into rate-making. This could be particularly damaging if a carrier wished to reduce rates without advance notice, as permitted by the Shipping Act, 1916, in order to enable American shippers to compete with foreign competitors. Accordingly, we considered

the rate-freezing provision objectionable in itself, aside from any possible use that might be made of it to support rate fixing by the Commission.

We also opposed the Commission's original requirement that the carrier notify all similarly situated shippers. As originally drafted, this provision would in each instance have imposed upon the carrier, or all the carrier members of a conference, the heavy burden of searching innumerable shipping documents to insure that every shipper entitled to even a purely nominal refund was notified. Since the close of the hearings in the House, we have engaged in a series of discussions with Commission personnel in order to find an effective means of giving notice to shippers without imposing an impossible burden on the carriers.

Today, I'd urge your Committee to concur in the changes which have been by the House of Representatives. Let me outline briefly the areas in which the House bill differs from the original draft before you: First, there is no longer any provision for a mandatory rate freeze retroactive for thirty days and prospective for ninety days. This requirement has been replaced by the last proviso which states that if permission is granted by the Commission, the carrier or conference will publish an appropriate notice in its tariff, or take such other steps as the Commission may require, to give notice of the rate change and will provide for additional refunds to other shippers who are similarly situated.

The legislation in its present form protects the innocent shipper in those rare cases when, through a carrier's inadvertence, a shipper has paid a manifestly improper rate. The legislation empowers the Commission *upon good cause shown* to grant to the carrier authority to correct a clerical or administrative error and to refund the difference. The legislation also provides that relief will be afforded in those few cases where through inadvertence a carrier or conference fails to file a specific rate promised to a shipper. In the second instance, we appreciate the possibility that the question as to whether relief should be granted hinges on the question of the intent of the particular carrier and shipper applying for relief. In such a case, carrier and shipper alike must bear the heavy burden of showing "good cause" for relief under these exceptional circumstances.

We believe that the revised third proviso adequately protects the rights of similarly situated shippers against discrimination. In our presentation to the House Committee, we pointed up the practical problems involved in giving notice to such similarly situated shippers. We emphasized that it was unfair to thrust on the carriers and the conferences the burden of searching hundreds and perhaps thousands of bills of lading for the sailings at or about the time in question and suggested that the Commission could give notice to the shipping public by publication in the Federal Register of a synopsis of the rate mistake and an invitation for any other shipper similarly situated to come forward within a reasonable period. Some of the members of the House committee were concerned with whether or not the Federal Register would be cluttered with such notices, but it was our considered judgment that these incidents happen so infrequently that this would not be an inhibiting factor. We felt that if the carrier or conference published a tariff correction notice showing the proper rate or classification that this correction notice would be sufficient for any other alert shipper to claim his rights by a timely application.

The Commission staff doesn't share our view as to the efficacy of the Federal Register as an effective method of notice to the shipping public. Perhaps we are biased in this regard because we must comb through it daily for actions by various federal agencies which may be inimical to our clients' interests. Since the Commission entertains reasonable doubts as to its efficacy, our clients are willing to go one step further. Most of the conferences employ a contract rate system under which the shipper who agrees to confine all of his shipments to conference lines receives a discount up to 15%. All contract conferences must maintain current lists of all contract shippers. In those conferences where contracts are offered, better than 99% of the shippers in the trade avail themselves of the contract. Therefore, the most effective way to publicize any rate action in such a conference is by a notice to the contract list. Our clients are prepared to circularize their contract list with an erratum notice if the Commission grants a special application. This will provide actual notice to practically everyone who might possibly be affected. It is an expensive way of correcting an error but we are confident that the number of instances where this will be necessary is so limited we can shoulder the burden.

In those few instances where our clients don't have a dual rate contract, they still maintain a complete shipper list which is comparable to the contract list. If an error happens in such a conference, the conference would undertake to circularize its shipper list, thereby giving actual notice to any shipper similarly situated.

The third possibility would arise in case an individual line not a member of a conference made an application for a refund. In this case, the steamship line would not have a contract list and may not have a shipper list. Under those circumstances, the Commission well might condition its approval of the refund on the carrier's undertaking to search its manifests and bills of lading to uncover any other shipper similarly situated.

The final proviso also requires that an application for refund or waiver must be filed with the Commission within 180 days. We approve of this proviso because it will eliminate or minimize stale claims.

We are confident after the full exchange of views which we've had that the Commission understands the various possibilities and will use the remedy best suited to the circumstances.

We believe that the revised legislation set forth in Appendix B will do the following:

(1) It will provide an effective way to cure the evil which S. 1905 seeks to cure;

(2) It will satisfactorily protect the rights of similarly situated shippers and give the Commission sufficient flexibility to condition the relief upon the circumstances involved.

Therefore, we respectfully urge you to substitute the revised language embodied in Appendix B for that which is before you in S. 1905.

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APPENDIX A.—LIST OF CONFERENCES, AND CARRIER MEMBERS OF ONE OR MORE THEREOF, REPRESENTED IN THE TESTIMONY OF JOHN MAHONEY ON S. 1905

American West African Freight Conference  
 Atlantic & Gulf/Indonesia Conference  
 Atlantic & Gulf/Panama Canal Zone, Colon & Panama City Conference  
 Atlantic & Gulf/Singapore, Malaya and Thailand Conference  
 Atlantic & Gulf/West Coast of Central America & Mexico Conference  
 Atlantic & Gulf/West Coast of South America Conference  
 East Coast Colombia Conference  
 Far East Conference  
 Havana Northbound Rate Agreement  
 Havana Steamship Conference  
 Latin America/Pacific Coast Steamship Conference  
 Leeward & Windward Islands & Guianas Conference  
 North Atlantic Mediterranean Freight Conference  
 North Atlantic United Kingdom Freight Conference  
 Pacific Coast European Conference  
 Pacific Coast River Plate Brazil Conference  
 River Plate and Brazil Conferences  
 Santiago de Cuba Conference  
 United States Atlantic & Gulf/Australia New Zealand Conference  
 United States Atlantic & Gulf-Haiti Conference  
 United States Atlantic & Gulf-Jamaica Conference  
 United States Atlantic & Gulf-Santo Domingo Conference  
 U.S. Atlantic & Gulf-Venezuela and Netherlands Antilles Conference  
 West Coast South America Northbound Conference

MEMBER CARRIERS

Alcoa Steamship Company, Inc.  
 American-Australian Steamship Line—Joint Service  
 American Export Isbrandtsen Lines, Inc.  
 American President Lines, Ltd.  
 Anchor Line, Ltd.  
 Anglo Canadian Line—Joint Service  
 A. P. Moller Maersk Line  
 Atlantic Container Line  
 Atlantic Lines, Ltd.  
 Atlantrafik Express Service  
 Azta Shipping Co.  
 Bank Line Limited

Barber-West African Line—Joint Service  
 Belgian Line—Joint Service  
 Black Star Line, Ltd.  
 Blue Sea Line—Joint Service  
 Blue Star Line, Limited  
 Booth-Lamport—Joint Service  
 Booth Steamship Company, Ltd.  
 Bristol City Line of Steamships, Ltd.  
 Canadian Transport Co., Ltd.  
 Chilean Line (Compania Sud Americana de Vapores)  
 Coldemar Line (Compania Colombiana de Navegacion Maritima, Ltda.)  
 Columbus Line (Hamburg-Suedamerikanische Dampfschiff-fahrts-Gesellschaft Eggert & Amsinck.)  
 Compagnie Maritime des Chargeurs Reunis  
 Companhia Colonial de Navegacao  
 Companhia de Navegacio Lloyd Brasileiro (Lloyd Brasileiro)  
 Companhia Nacional de Navegacao  
 Concordia Line—Joint Service  
 Constellation Line (Van Nievelt, Goudriaan & Co. Stoomvaart Maatschappij)  
 Cunard Steam-Ship Company, Limited, The  
 D'Amica Societa di Navigazione per Azioni  
 Delta Steamship Lines, Inc.  
 Dominican Steamship Line (Flota Mercante Dominicana, C. por A.)  
 East Asiatic Company, Ltd., The  
 Elder Dempster Lines, Ltd.  
 Empresa Lineas Maritimas Argentinas (ELMA)  
 Fabre Line  
 Farrell Lines Incorporated  
 Fern-Ville Line—Joint Service  
 French Line (Compagnie Generale Transatlantique)  
 Fresco Line—Joint Service  
 Furness Warren Line  
 Gdynia American Line  
 Grace Line Inc.  
 Grancolombiana (Flota Mercante Grancolombiana S.A.)  
 Gulf & South American Steamship Co., Inc.  
 Hamburg-American Line (Hamburg-Amerika Linie)  
 Hansa Line  
 Hanseatic-Vaasa Line  
 Hellenic Lines, Ltd.  
 Hoegh Lines—Joint Service  
 Holland-America Line (N.V. Nederlandsche Amerikaansche Stoomvaart Maatschappij)  
 Holland Pan-American Line (Van Nievelt, Goudriaan & Co. Stoomvaart Maatschappij)  
 Interocean Line  
 Irish Shipping Limited  
 Isthmian Lines, Inc.  
 Italian Line (Italia Societa per Azioni de Navigazione)  
 Itaipacific Line, Inc.  
 Ivaran Lines (Aktieselskapet Ivarans Rederi)  
 Japan Line, Ltd.  
 Johnson Line  
 Johnson-Warren Lines, Ltd.  
 Kawasaki Kisen Kaisha, Ltd.  
 Lamport & Holt Line, Ltd.  
 Lykes Bros. Steamship Co., Inc.  
 Mamenic Line (Marina Mercante Nicaraguense, S.A.)  
 Manchester Liners, Ltd.  
 Maritime Company of the Philippines, Inc.  
 Mitsui-O.S.K. Lines, Ltd.  
 Montemar Line, S.A., Commercial y Maritima  
 Moore-McCormack Lines, Inc.  
 National Hellenic American Line, S.A.  
 Nigerian National Shipping Line, Ltd.  
 Nippon Yusen Kaisha, Ltd.  
 Nopal West Africa Line  
 North German Lloyd (Norddeutscher Lloyd)

The Northern Pan-American Line, A/S (NOPAL Line)  
 Norton Line—Joint Service  
 Olsen Line, Fred (Fred Olsen & Co.)  
 Orient Mid-East Lines  
 Peruvian State Line (Corporacion Peruana de Vapores)  
 Port Line Limited  
 P.N. Djarkata Lloyd  
 Prudential Lines, Inc.  
 Royal Netherlands Steamship Company (Koninklijke Nederlandsche Stoomboot  
 Maatschappij N.V.)  
 Royal Mail Lines, Ltd.  
 Seaboard Shipping Co., Ltd.  
 Sea-Land Service, Inc.  
 Sea-Land Joint Service  
 States Marine Lines—Joint Service  
 Thai Mercantile Marine Limited  
 Torm Lines (Dampskibsselskabet Torm A/S)  
 Ulster Steamship Company, Ltd. (Head Line and Lord Line)  
 United Fruit Company  
 United Philippine Lines, Inc.  
 United States Lines, Inc.  
 United Yugoslav Lines  
 Venezuelan Line (Compania Anonima Venezolana de Navegacion)  
 West Coast Line S.A.  
 Westfal-Larsen Line  
 Westwind Africa Line  
 Weyerhauser Line  
 Wilhelmssen Lines—Joint Service  
 Yamashita-Shinnihon Steamship Co., Ltd.  
 Zim Israel Navigation Co., Ltd.

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 APPENDIX B

[H. R. 9473, 90th Cong., first sess.]

A BILL To amend provisions of the Shipping Act, 1916, to authorize the Federal Maritime Commission to permit a carrier to refund a portion of the freight charges

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [That section 13(b) of the Shipping Act, 1916 (46 U.S.C. 817(b)), is amended by changing the period at the end of subsection (3) thereof to a colon and adding the following proviso: "Provided, however, That the Federal Maritime Commission may in its discretion and for good cause shown permit a carrier to refund a portion of freight charges collected from a shipper or waive the collection of a portion of its charges from a shipper; where it appears that such refund or waiver will not result in discrimination among shippers: Provided further, however, That the carrier has, prior to applying for authority to make refund, filed a new tariff with the Federal Maritime Commission which sets forth the rate on which such refund or waiver would be based: And provided further, however, That the rate resulting from such refund or waiver when approved shall be the effective and applicable rate for all other shipments of the same description of the carrier for the period commencing thirty days prior to the date of the shipment or shipments involved, until thirty days subsequent to the date of application for refund or waiver or until ninety days subsequent to the shipment or shipments involved, whichever is later, and where appropriate, additional refunds or waivers shall likewise be made." ] That section 18(b) of the Shipping Act, 1916 (46 U.S.C. 817(b)), is amended by changing the period at the end of subsection (3) thereof to a colon and adding the following proviso: "Provided, however, That the Federal Maritime Commission may in its discretion and for good cause shown permit a common carrier by water in foreign commerce or conference of such carriers to refund a portion of freight charges collected from a shipper or waive the collection of a portion of the charges from a shipper where it appears that there is an error in a tariff of a clerical or administrative nature or an error due to inadvertence in failing to file a new tariff and that such refund or waiver will not result in discrimination among shippers: Provided further, That the common carrier by water in foreign commerce or conference of such carriers has, prior to applying for authority to make refund, filed a new tariff with the Federal Maritime Commission which sets forth the rate on which such refund or*

*waiver would be based: Provided further, That the carrier or conference agrees that if permission is granted by the Federal Maritime Commission, an appropriate notice will be published in the tariff, or such other steps taken as the Federal Maritime Commission may require, which give notice of the rate on which such refund or waiver would be based, and additional refunds or waivers as appropriate shall be made with respect to other shipments in the manner prescribed by the Commission in its order approving the application: And provided further, That application for refund or waiver must be filed with the Commission within one hundred and eighty days from the date of shipment."*

Amend the title so as to read "A bill to amend provisions of the Shipping Act, 1916, to authorize the Federal Maritime Commission to permit a common carrier by water in foreign commerce or conference of such carriers to refund a portion of the freight charges."

Senator BARTLETT. Thank you, Mr. Mahoney. I only have one or two questions.

Did you say that the language to be found in H.R. 9473, appearing as your appendix B, is identical with that of the draft submitted by Admiral Harllee?

Mr. MAHONEY. I so understand, yes, sir.

Senator BARTLETT. I have no further questions. Thank you, gentlemen.

Admiral?

Admiral HARLLEE. Mr. Chairman, I would like to add one thing on that retroactivity business, and this ties in with what Mr. Mahoney said.

I gave you the figure of \$47,000 as having been denied in terms of these special docket applications since January 1965. But actually of that figure \$36,253 were waivers of undercharges, which would mean they would redound to the benefit of his clients. So in terms of the shippers—and this is a rather interesting figure—in terms of the shippers' refunds, money going to them, there is only \$10,956. So the shippers would be losing, if it was not retroactive over this 3-year period, only the \$10,956.

I thought this might be helpful to you in outlining the magnitude of the problem. There are 10 different shippers that were involved.

Senator BARTLETT. Well, the amount of money wasn't large to start with, and this diminishes it considerably, of course.

Admiral HARLLEE. We can still, however, if you like, submit a statement after checking.

Senator BARTLETT. No, I don't think it will be necessary.

Admiral HARLLEE. I was hoping you would say that, because of the possible delay in getting action on it.

Senator BARTLETT. No, we will leave it at that.

Thank you, gentlemen. The committee will be in recess subject to the call of the Chair.

(Thereupon, at 11 a.m., the hearing was concluded.)

(The following letter was subsequently received for the record:)

FOREIGN TRADE DIVISION,  
NATIONAL ASSOCIATION OF  
SECONDARY MATERIAL INDUSTRIES, INC.,  
New York, N.Y., November 28, 1967.

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

DEAR SENATOR MAGNUSON: At a recent meeting of our Ocean Freight Committee, which represents the majority of exporters of nonferrous scrap metals in the United States, the hearings which you are now holding were discussed.

We have been working with revised Maritime Law for several years and have found that there are certain points which still require revision. While they may have been written with the best intention, they are unworkable under our competitive business system.

We respectfully request that your Committee approve the amendments relating to freight rate refunds which are now rejected due to a stringent interpretation of Section 18(B)3 and Section(B)5 of the law.

We refer specifically to errors in printing and omission in the Tariff Book. These situations have caused our members, as well as other companies in allied fields, hundreds of thousands of dollars which the Steamship companies would have gladly refunded had the FMC allowed them to do so. In no instance was there any attempt or intent to discriminate in these refunds as the same refunds would have been afforded any shipper affected by the error.

Should you require further information regarding these cases, we will be ready to make available to you copies of briefs filed with FMC.

We request favorable consideration on this amendment as it is vital that the law protect the shipper as well as the steamship companies.

Respectfully yours,

WERNER M. STERN,  
*Chairman, Ocean Freight Committee,  
Foreign Trade Division.*





