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HEARINGS

COMMITTEE ON MERCHANT MARINE
OF THE
COMMITTEE ON
MERCHANT MARINE AND FISHERIES
USE OF REPRESENTATIVES



NINETY-FOURTH CONGRESS
SECOND SESSION
ON

REGULATORY REFORM—H.R. 10841

A BILL TO AMEND THE INTERCOASTAL SHIPPING ACT, 1933,
BY REVISING ITS SUSPENSION PROVISIONS AND BY AUTHOR-
IZING PERIODIC PROMULGATION OF RATE OF RETURN
GUIDELINES

—
JUNE 16, 1976
—

INTERMODAL—H.R. 1080

A BILL TO AMEND THE SHIPPING ACT, 1916, IN ORDER TO
FACILITATE INTERMODAL TRANSPORTATION, AND FOR
OTHER PURPOSES

—
SEPTEMBER 15, 1976
—

Serial No. 94-37

Printed for the use of the Committee on Merchant Marine and Fisheries



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REGULATORY REFORM

WEDNESDAY, JUNE 16, 1976

HOUSE OF REPRESENTATIVES,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
SUBCOMMITTEE ON MERCHANT MARINE,
Washington, D.C.

The subcommittee met at 10:10 a.m., in room 1334, Longworth House Office Building, Hon. Thomas N. Downing (chairman) presiding.

Mr. DOWNING. The committee will come to order.

Ladies and gentlemen, you can see that there is a quorum call in the house, so the committee will recess in order to make that quorum call, and it will return in about 10 minutes.

[A brief recess was taken.]

Mr. DOWNING. The subcommittee will please come to order.

We are meeting this morning to commence hearings on H.R. 10841. This bill would amend the Intercoastal Shipping Act, 1933, by permitting carriers in our domestic offshore commerce to file a general rate increase of up to 7-percent annually without being subject to the suspension provisions of that act. Should the Federal Maritime Commission later find that the increase is unjustifiable, in whole or in part, it could order the carriers to make appropriate refund with interest to the persons entitled.

The bill would also amend the 1933 act to authorize the Federal Maritime Commission to periodically promulgate rate of return guidelines on which the Commission would presumably base its determination of reasonable rates.

Let the bill and departmental report appear at this point in the record.

[The bill, H.R. 10841, along with a report received from the Treasury Department, follow:]

[H.R. 10841, 94th Cong. 1st Sess.]

A BILL To amend the Intercoastal Shipping Act, 1933, by revising its suspension provisions and by authorizing periodic promulgation of rate of return guidelines

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3 of the Intercoastal Shipping Act, 1933 (46 U.S.C. 845), is amended by inserting at the end of the second sentence of the second paragraph the following: "Provided, however, That commencing in calendar year 1976 and with a frequency of not more often than once each twelve months a carrier may file a general increase in rates without suspension of that portion of such changed rates bringing about an increase of 7 per centum or less in its gross annual revenues. If at the conclusion of any proceeding the Commission finds that such portion of the changed rates is unjustified in whole or in part, it may order the carrier or carriers concerned to make appropriate refunds, with interest, to the persons entitled. For purposes of this section a general increase in rates is defined

as a change in rates that in the aggregate brings about an increase of 3 per centum or more in a carrier's gross revenue or in 50 per centum or more of its tariff items per trade for the twelve-month period ending not more than sixty days prior to the date of filing."

SEC. 2. That section 3 of the Intercoastal Shipping Act, 1933 (46 U.S.C. 845), is further amended by adding a third paragraph reading:

"As a means of assisting in insuring that the noncontiguous States, territories, and possessions of the United States will have adequate, modern, and efficient ocean transportation service to and from the United States mainland, the Commission shall, within six months after enactment of this provision and from time to time thereafter as substantial change in circumstances may make appropriate, promulgate numerical guidelines as to common carrier rate of return on rate base and common equity which the Commission deems to be prima facie reasonable: *Provided*, That in its determination of such guidelines the Commission shall include therein as determinative factors (1) the cost of replacing vessels and related equipment including that associated with stevedoring and terminal operations, (2) the prevailing cost of capital, (3) the degree of risk associated with the investment of such capital, (4) the need of the public interest for the continued provisions by carriers of certain unprofitable segments or elements of service, and (5) other appropriate factors."

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., May 11, 1976.

HON. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: Reference is made to your request for the views of this Department on H.R. 10841, "To amend the Intercoastal Shipping Act, 1933, by revising its suspension provisions and by authorizing periodic promulgation of rate of return guidelines."

The bill would provide that commencing in calendar year 1976 a carrier may file for a general increase in rates without, under specified conditions, a suspension of such changed rates pending a hearing, and would authorize periodic promulgation of rate of return guidelines.

The proposed legislation is not of primary interest to this Department, and therefore we have no views to express as to the need for or merits of the proposed legislation.

The Department has been advised by the Office of Management and Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,

HENRY C. STOCKELL, Jr.,
Acting General Counsel.

Mr. DOWNING. Our first witness this morning is the Honorable Karl E. Bakke, Chairman of the Federal Maritime Commission.

Mr. Bakke, I see that you are already in place.

If you will identify your colleagues, you may proceed.

STATEMENT OF HON. KARL E. BAKKE, CHAIRMAN, FEDERAL MARITIME COMMISSION, ACCOMPANIED BY RICHARD E. HULL, GENERAL COUNSEL, DONALD J. BRUNNER, MANAGING DIRECTOR, JAMES A. WARNER, CHIEF, DOMESTIC TARIFFS BRANCH, AND LEROY F. FULLER, DIRECTOR, BUREAU OF CERTIFICATION AND LICENSING

Mr. BAKKE. Thank you, Mr. Chairman, Madam Chairman, and members of the committee.

We are honored to have you here, Madam Chairman.

Reading from my left to right around the table, I have with me Leroy F. Fuller, Director of the Commission's Bureau of Certification and Licensing. On my immediate left, Donald J. Brunner, the Commission's Managing Director. On my immediate right, Richard E. Hull,

The Commission's General Counsel, and, on the far right, Mr. James A. Warner from our Domestic Tariffs Branch.

Mr. DOWNING. We welcome you.

Mr. BAKKE. Mr. Chairman, enactment of this proposed legislation would accomplish three things.

First, the bill would permit common carriers in the domestic offshore trades to file, without suspension, annual general rate increases producing a 7 percent or less increase in carriers' gross revenues. This would limit the present general suspension authority now contained in section 3 of the 1933 act.

Second, coupled with this limitation on suspension authority, the Commission would be authorized, with respect to any such general rate increases which the Commission thereafter found to have been unjustified in whole or in part, to order refunds to "persons entitled".

Third, the Commission would be required periodically to promulgate "rate of return" guidelines for the ocean common carriers subject to the 1933 act.

Although we fully understand and share the concerns that gave rise to the proposed legislation, we are opposed to enactment for the reasons summarized below.

Before addressing the particular provisions of H.R. 10841, it may be useful to provide some background on the trades between the U.S. mainland and the so-called noncontiguous, or domestic offshore, areas. These areas are:

1. Alaska
2. Hawaii
3. Puerto Rico
4. U.S. Virgin Islands
5. Guam
6. American Samoa
7. Wake Island
8. Midway Island.

Under the 1933 act, the Commission is authorized to regulate the rates assessed by oceangoing common carriers between these areas and the continental United States to insure that such rates are "just and reasonable". However, two caveats must be borne in mind. The vast preponderance of cargo moving to and from Alaska is carried pursuant to rates filed with, and regulated by, the Interstate Commerce Commission pursuant to Public Law No. 87-595. Moreover, service in four of the domestic offshore trades (Alaska, Guam, Hawaii and Puerto Rico), is restricted by U.S. Sabotage laws to American-flag carriage.

The predominant carrier in the Hawaiian trade is Matson Navigation Co., which carries approximately 90 to 95 percent of the traffic. In the Puerto Rican trade, the predominant carrier to and from Atlantic/Gulf ports is the Puerto Rico Maritime Shipping Authority (PRMSA), an agency of the Commonwealth of Puerto Rico. There is, however, a very strong competing tug and barge operation between Jacksonville/Miami and Puerto Rico. In addition, Seatrain Lines, Inc., offers service between the Atlantic coast ports and Puerto Rico, as does Sea-Land Service, Inc., to and from the Pacific coast.

Matson and U.S. Lines, Inc., serve the trade between Guam and the United States. American Samoa is served by two American-flag

carriers (PFEL and Farrell) and two foreign-flag carriers (Pacific Island Transport and Polynesian Line).

The Virgin Islands trade is served primarily via transshipment through Puerto Rico. The major carrier providing the portion of service between Puerto Rico and the Virgin Islands is Inter-Island Intermodal Lines. Before abandonment approximately 3 years ago, there had also been direct service from U.S. Atlantic ports to and from the Virgin Islands.

Of the carriers so far mentioned, Sea-Land, Inc., is a wholly-owned subsidiary of R. J. Reynolds Industries, Inc. Matson Navigation Co. is a wholly-owned subsidiary of Alexander & Baldwin, Inc. PRMSA, as previously mentioned, is an agency of the Puerto Rican Government, established pursuant to a Commonwealth Statute approved June 10, 1974. U.S. Lines is wholly-owned by Walter Kidde Co. These companies, with the exception of PRMSA, are involved, inter alia, in land holdings in Hawaii, tobacco industries, food industries and numerous other nontransportation activities.

In addition to the foregoing described major vessel operating common carrier services, numerous nonvessel operating common carriers (NVO's) serve the regulated domestic offshore trades. These are generally freight forwarders and consolidators that neither own nor operate vessels, but that publish tariffs and hold themselves out to provide common carrier services to the public. They usually provide services for small-lot shipments, utilizing the underlying vessel services of the major vessel operating common carriers. Also, many domestic offshore trades are served by tug and barge operators.

The Federal Maritime Commission is well aware of the need to insure adequate, safe, dependable and efficient transportation in the domestic offshore trades, in view of unique environmental circumstances and the dependency of these island economies on maritime transportation. There simply is no alternate form of transportation for the vast preponderance of our domestic offshore commerce, since air transportation is not economically viable for most carriers moving in these trades.

With this broad general background, I now will address myself to the provisions of H.R. 10841.

AUTOMATIC ESCALATION OF RATES WITHOUT SUSPENSION

Under section 3 of the 1933 Intercoastal Shipping Act, the Commission is now authorized, but not required, to suspend any proposed increase or decrease in rates, for a period not to exceed 4 months, whenever it orders an investigation and hearing into the reasonableness of any such rate changes.

This authority is intended principally to provide a degree of protection to the interests of shippers, similar to the 7-month suspension authority of the ICC under the Interstate Commerce Act.

Under the proposed amendments contained in section 1 of H.R. 10841, carriers would be permitted, not more than once each 12 months, to file a general increase in rates without suspension of that portion of such changed rates which would bring about an increase of 7 percent or less in the carrier's gross annual revenue. If, after an appropriate proceeding questioning the lawfulness of any rate in-

crease, the Commission should find that the unsuspended portion of the changed rate was not justified in whole or in part, the Commission could order the carrier to make appropriate refunds, with interest.

There are a number of serious defects in this provision.

First, there is no apparent rationale for selection of this arbitrary "trigger point" of seven percent, nor is there any indication how the base for calculating that percentage is to be derived.

Second, the underlying reason for the proposed "automatic" rate increase appears to be that costs, and therefore rates, will continue to spiral upward, and that a reduction in, or elimination of, litigation costs will help hold down such general increases. While enactment of the proposed legislation might have this limited effect—in the event that proposed general rate increases are not otherwise placed under investigation—a possible and predictable consequence of this legislation would be that a 7 percent general rate increase would be effected each year by each carrier. Should this result, in a relatively short span of 5 years every carrier could implement a compounded increase of 40 percent in its schedule of rates, without concern about suspension at any point along the way.

Third, the "automatic escalator" would permit a carrier with an already high rate of return to collect revenues to which it may not be entitled, simply by keeping the overall increased rates at or below 7 percent of gross revenues. Since there would be no suspension, this practice might be encouraged, with the result being a marked increase in the number of Commission proceedings after the fact to bring rate levels back into line. While the Commission could ultimately find that the increase was not "just and reasonable," the carrier would have been collecting the higher rates in the meantime, and the clutter of resulting reparation proceedings could create an administrative nightmare.

Fourth, while the proposed legislation focuses on a carrier's "gross annual revenue," for suspension purposes an increase of 7 percent in revenue might also result in a radical increase or decrease in the rate of return on rate base, if the company had significantly reduced or enlarged its rate base during the period. As you know, Mr. Chairman, this would make the return on rate base the ultimate test of lawfulness, not the carriers' return on that gross revenue.

In this connection, a "general increase in rates," for the purposes of this proposed legislation, is defined as any change in rates which brings about, in the aggregate, an increase of three percent or more in a carrier's gross revenue for the 12-month period ending not more than 60 days prior to the date of filing, or 3 percent or more in 50 percent or more of the tariff items in the trade.

The definition of a "general increase in rates" contained in the bill is basically the same as the definition now contained in the Commission's own regulations (46 C.F.R. 512.3(d)(1)), which identify rate changes filed with the Commission that are significant enough to require the filing therewith of certain financial and operating data to justify the reasonableness of the changes. We feel that this definition is an adequate description of "significant rate increases" for purposes of the Commission's threshold data submission requirements, but do not believe that it is an adequate working definition for purposes of this legislation.

For example, the general rate increase that would be permitted without suspension is that increase, or portion thereof, which brings about an increase of 7 percent or less in gross annual revenues of a carrier. However, a particular general increase in rates may or may not result in a seven percent increase in gross revenues for the future, depending on the future volume mix of cargo carried. Thus, under the proposed statutory definition, in order to reach a judgment whether these combinations of factors would amount to an increase in the carrier's gross revenues of 7 percent or less, the Commission would have to project estimated carryings for the future in light of the filed rate increase.

Another difficulty could arise if more than 50 percent of the rates on tariff items were increased by an amount sufficient to increase gross revenues by more than 7 percent, but proposed individual rate increases varied in amount, for example, some less than 7 percent, some substantially more than 7 percent. Since such commodities would have moved—and may move in the future—in different volumes, it would be extremely difficult for the Commission to determine which portion of which rate increase brought, or would bring about, an increase in gross revenues of less than 7 percent, and which brought, or might bring about, an increase in gross revenues of greater than 7 percent.

In addition, even if a general rate increase should be filed by a carrier, which clearly could not be suspended because the general revenue increase resulting therefrom is less than 7 percent, individual shipper and specific commodity rate problems still could arise. One particular shipper might protest, on valid grounds, that the rate increase on his particular commodity was unreasonable, hence unlawful. There well might be valid legal and economic grounds for the Commission to agree, and, under present authority, to suspend that particular commodity rate increase for the period permitted by law. There have been instances in the past where particular commodity shippers have raised such valid grounds for protest and requests for suspension of their particular commodity rates. Yet, under the proposed legislation, the Commission would appear to be foreclosed from suspension of any such individual commodity rate changes involved in a general rate increase, no matter how valid the reasons for suspension might be.

For this reason, we believe that our suspension authority should remain as is. While a carrier has a legitimate expectation of a fair return on investment, the consumer has an equally legitimate right to expect that the element of cost attributable to transportation that is reflected in the price he pays will not be excessive. And while most merchants pass through to customers any transportation cost increases, I would venture to say that seldom are decreases in those costs passed through, whether or not the rate may be determined unjust or unlawful.

I assure you that, as far as I am concerned, suspension should not, and will not, be imposed routinely by the Commission merely as a means of providing shippers with additional notice periods or consumers with a grace period. Revenue lost by the carrier during a suspension period can never be recouped. Therefore, it has been the practice of the Commission to suspend only when there is serious

question regarding the justification for a proposed rate increase. This practice will be continued.

Recent experience of the Federal Maritime Commission with respect to suspension of general rate increase filings seems to demonstrate that the Commission has not abused this authority, but has, in fact, used it sparingly and only in situations of critical importance. For the period from 1971 to the present time, the Commission has considered 62 general revenue increase filings involving 31 major vessel operating carriers in the domestic offshore trades.¹ After careful staff evaluation, 48 of these situations were referred to the Commission. Of these, 20 resulted in general rate suspensions. In addition, five general rate investigation proceedings involving three major vessel operating carriers were instituted during this time without suspension.

I would be first to concede that if the 4-month-maximum suspension period were solely intended to give the Commission adequate time to complete its proceedings and rule on the lawfulness of new rates, the allocated period is unresponsive to reality. In practice, most Commission proceedings now may take considerably longer, so that the suspension period does not cover the entire period of Commission investigation. But this, it seems to us, is insufficient cause to restrict the Commission's suspension authority.

I might say also that, with more detailed data submissions required for justifying rate increases under our proposed rules in docket No. 67-57, we are hopeful that the Commission will be in a position to determine more promptly the just and reasonable nature of a carrier's filings. With extensive supportive information provided upon filing, it is most unlikely that the Commission would fail to reach an initial determination on whether the filing appears to be just and reasonable within the minimum 30-day period between filing and effectiveness of the rate increases. At the same time, the need for suspension, or, if you will, the likelihood of eventual disapproval, would be apparent more readily prior to the commencement of any hearing on filed rates. For this reason, the suspension authority could become a more effective regulatory tool than is now the case. With most of the information needed for final decisionmaking available before hearing, proceedings undoubtedly could be concluded with more thoroughness and speed.

I would also point out that the Commission, through an internal committee, has been revising its Rules of Practice and Procedure to eliminate any unduly technical or unnecessary procedural delays in completing its formal proceedings. For this reason, the Commission also expects to reduce the time involved in the conduct of its general rate increase proceedings.

Finally, we do not believe that any *prima facie* case of justness and reasonableness, or any corollary decision to suspend or not suspend a rate or structure of rates, can be predicated on an arbitrary percentage rate of return. Therefore, Mr. Chairman, we strongly oppose the provisions of H.R. 10841 that would provide for such an across-the-board numerical standard.

¹ During this period, there were in excess of 400 other general rate increases filed by numerous smaller carriers and NVO's in the domestic trades, which were determined not to require any formal consideration by the Commission itself.

REPARATIONS FOR UNLAWFUL RATE INCREASES

Permit me now to refer briefly, Mr. Chairman, to the provision of H.R. 10841 that authorizes the refund of overcharges to shippers, following final disapproval of rates by the Commission.

We recognize the apparent equity in the concept that, where a nonsuspended rate increase has later been found unjustified and unlawful by the Commission, the excess monies should not be retained by the carrier. However, there would be many legal and practical difficulties in accomplishing such refunds under the proposed bill. Of primary importance would be the threshold matter of determining the identity of "persons entitled" to such refunds. Normally, the seller or exporter has paid the increased rate to the carrier and has passed on this increased rate—if not a greater amount—to the purchasing consignee, who has further passed on this increase to the ultimate consumer. Any subsequent refund of the unlawful rate increase to the shipper who paid the freight, either the export seller or consignee purchaser, would be a windfall profit to him at that time, since he has already recouped from the consumer the increased freight rate he paid previously. It is highly unlikely that the refunded freight money would be passed on thereafter to consumers, and if it should be, it would be done in a haphazard manner, depending upon market and competitive conditions, not out of consideration for the underlying consumers, who have had that increase in the commodities purchased during the time it was being charged.

Historically, protestants in the major general rate cases conducted by the Commission and its predecessor, the Federal Maritime Board, have been the state or territorial governments of the domestic offshore areas, arguing principally that increased rates would result in an adverse inflationary impact on the offshore economies. Later windfall profits returned to shippers or consignees would not resolve this critical problem.

There are also significant practical and administrative problems which would make carriers' refunds of unlawfully collected rate increases extremely difficult. During the time it would take for the Commission to conduct and complete any general rate increase case, there would be literally thousands of individual shipments and shippers, involving hundreds of different commodities, with varying individual rate increases collected. The administrative and accounting burdens inherent in maintaining adequate records and calculating the specific refunds which might be due each individual shipper or consignee would be monumental.

In addition, during the period of time involved in conducting general rate investigation cases, the parties would have no way of knowing whether the increased rates collected ultimately would be found lawful or unlawful. The carrier well might continue to use these collections as its day-to-day working capital, and might not, after final decision, actually have sufficient available liquid assets to make the refunds, without creating critical corporate financial problems.

RATE OF RETURN GUIDELINES

H.R. 10841 also would require the Commission to "promulgate numerical guidelines as to common carrier rate of return on rate

base and common equity * * * ". The Commission has no objection in general to promulgating and administering rate of return guidelines, so long as we are giving sufficient discretion to deal individually with carriers on particular trade routes. It is essential that the Commission be afforded the discretion to evaluate each carrier and its trade to determine a fair return for that carrier. I am well aware of the fact that the Interstate Commerce Commission and the Civil Aeronautics Board have promulgated profit guidelines applicable to all carriers within given classes of carriers operating within certain geographical areas of the United States. Thus, the Interstate Commerce Commission establishes a standard applicable to class I motor carriers. However, there may be as many as 400 such carriers in that class. This is not the case with the Federal Maritime Commission.

The noncontiguous trades of the United States do not comprise a single, distinct category, either geographically or in terms of carrier size or operating characteristics. Rather, each trade is substantially different from the others because of various economic, geographical, financial, and operating conditions. These distinctions require individual inquiry and determinations concerning each separate trade.

Moreover, a proper rate of return for one carrier might be totally inappropriate for another carrier in the same trade, if the carriers have differing degrees of financial leverage. Not only do differing leverage and costs of embedded debt make direct comparison between carriers impossible, but also, because of the different types of operations and relative risk of the individual trades, issuance of anything other than separate rate of return guidelines for each carrier in our domestic offshore trades would seem to be impossible.

For example, carriers in the Alaska trade are subject to greater natural hazard risk than carriers in other trades. Some of them are able to operate only during about 6 months of a year, and in most cases have a low-capital investment. Accordingly, earnings of these carriers may well produce a high rate of return on investment, but not always a reasonable profit when viewed in context of conditions in the trade.

A basic objection to the rate of return guidelines in H.R. 10841 is that the "rate of return on rate base" test would be imposed as the exclusive method of determining the fair rate on investment to which the carrier is entitled. The rate base is a figure representing the money invested in the property and equipment utilized in providing service. Thus, the Commission determines the amount of investment in ships, terminals, lands and other facilities and property at the time they were first devoted to the trade plus the amount prudently invested in improvements, all of which are depreciated to the period for which rates are being tested. These factors are included in the determination of the rate base for a carrier. When the rate base has been established, the Commission then determines the financial makeup of that rate base, that is, how much is debt capital and how much is equity capital. This is known as the debt/equity ratio. In determining the rate of return on the rate base, the carriers are entitled to sufficient revenue, not only to meet operating expenses, but also to meet capital costs including service on the debt and dividends. The equity owners' return should be sufficient to insure confidence in the financial integrity of the carriers, so as to maintain the carriers' credit and their ability to attract capital in the future.²

² See Atlantic & Gulf-Puerto Rico General Increase in Rates and Charges, 7 F.M.C. 87 (1962).

The Commission has traditionally considered "rate of return on rate base" as the appropriate standard for measuring that fair return to which carriers are entitled. However, we do recognize that there are other standards equally as valid under appropriate circumstances. For example, the Interstate Commerce Commission commonly applies the operating-ratio standard. Operating ratio is simply the relationship of total expenses to gross revenues. Thus, if a carrier generates \$1 million in revenue and incurs expenses of \$930,000 in providing the service, it would have an operating ratio of 93 percent. Or stated another way, it would have a profit margin of 7 percent. This operating ratio test generally is appropriate where gross revenues are many times greater than the rate base. In addition, I am informed that, in a case presently in litigation before our Commission, a carrier that is substantially, if not totally, debt financed is advocating a "fixed charges coverage ratio" test for determining the reasonableness of its profit. This is an entirely new concept to the Commission, and since it is a standard which will be decided ultimately by the Commission, I am not at liberty to comment further on it at this time. I mention it, however, merely to point out that there are a number of methods to determine a fair return, and that "rate of return on rate base" is but one of the methods and may not be appropriate in all circumstances.

I now will address myself to the specific "determinative factors" which H.R. 10841 would require the Commission to consider.

The first of these factors is the cost of replacing vessels and related equipment, including that associated with stevedoring and terminal operations. The use of replacement costs as opposed to acquisition costs—the basis presently utilized by the Commission—is a subject widely debated by the accounting community. I agree, however, that replacement costs must be taken into account by the Commission in one fashion or another in determining the adequacy of revenue levels. I am well aware of the fact that one carrier operating in one of our noncontiguous trades has contracted for a new container-ship which will cost approximately \$64 million. That same carrier had purchased two similar ships five years ago for approximately \$20 million per ship. Replacing the fleet which services our noncontiguous trades is a matter of great concern, not only to the Commission but also to the trades which that fleet serves. In the past, carriers could obtain relatively efficient vessels through various Government programs, whereby excessive tonnage in the reserve fleet could be purchased at a reasonable price and the ships converted to container-ships. Thus, carriers were able to provide our noncontiguous trades efficient service with relatively small capital investments. That day has passed. As I indicated previously, in determining the return on capital, one of the criteria is that the return be sufficient to enable the company to continue to attract capital. I submit that the replacement costs of vessels and related equipment should be considered within that context.

The second determinative factor is the cost of capital. The Commission has no objection to considering this factor, since traditionally it has been a factor in determining rate of return. Thus, the rate

of return must be sufficient to service outstanding debt capital and to meet the requirements of obtaining new equity capital.

The third factor is the degree of risk associated with such capital. Again, we have no objection to this factor, since traditionally risk has likewise been considered in determining the rate of return. I should note, however, that this is a sophisticated economic undertaking, and it is, at times, extremely difficult to quantify "degree of risk" into a firm percentage figure.

The fourth factor to be considered is "the need of the public interest for the continued provision by carriers of certain unprofitable segments or elements of service." While I am not quite certain as to the intentions of the drafters of this legislation, I presume this reference is to lower rates on backhaul movements, promotional rates, and maintenance of rate parity to outports.

I have no objection to this standard when considering the reasonableness of individual rates, or in analyzing the overall rate scheme of a carrier, such as whether the revenue from an individual rate or rates for a segment of the service makes an appropriate contribution to total expenses. However, it seems it is an appropriate factor to consider in the context of H.R. 10841, which attempts to establish guidelines for the entire service—not just segments of the service.

At the present time, the rate of return guidelines contemplated by H.R. 10841 can, in my opinion, be applied only to a relatively few carriers serving the U.S. noncontiguous trades,³ and I believe it would be a disservice to the public, as well as to most carriers, to impose this standard by statute to the exclusion of other recognized standards, as well as new standards which may be developed in the future. Should the Congress require the Commission, through passage of this legislation, to promulgate rate of return guidelines, we strongly urge that we be provided adequate time to develop such rate of return standards.

As presently constituted, the bill would require the Commission to publish rate of return guidelines for carriers in our domestic offshore commerce within a 6-month period, and I call attention to that in the context of our plea for adequate time to develop rate of return standards because it is a best estimate of our professionals at the Commission that the task initially computing a rate of return guideline for a particular carrier may take as long as 1 year, 1 year per carrier, Mr. Chairman.

Obviously, if the bill passes, that would be an intolerable situation and we certainly would need additional personnel in order to expedite the calculation process—probably one professional economist and one professional financial analyst for each of the trades in our domestic offshore commerce.

³Two major carriers in the domestic offshore trades are Matson (Hawaii) and PRMSA (Puerto Rico). Any rate of return guidelines developed for the government-owned PRMSA would be just as unsuitable for the smaller, privately-owned carriers in the Puerto Rican trade as they would for the conglomerate-held Matson in the Hawaiian trade. The result might very well be that a standard would have to be developed for each carrier each time a rate increase is filed, which, in effect, is what the Commission does under present law.

BROAD APPLICATION TO ALL CARRIERS

A. Nonvessel operating common carriers.

The bill is also very broad in terms of its coverage of "carriers." In the U.S. noncontiguous trades, there are basically two separate classes of carriers.

The first group includes those that operate their own vessels and directly provide the total common carrier services—these are known as vessel operating common carriers.

The second group includes the NVO's, that neither own nor operate vessels. They publish tariffs and hold themselves out to the public to provide common carrier services. Basically, they are consolidators that take numerous small lot shipments, consolidate them into one container, and tender the container to the vessel operator for the ocean voyage. They accept delivery from the ocean carrier, deconsolidate the trailer, and tender delivery of the cargo to the consignee. NVO's exist because vessel operators in our noncontiguous trades generally publish container-load freight-all-kinds (FAK) rates which are lower, on a per unit basis, than individual less-than-container-load commodity rates. Thus, an NVO's margin of profit is the difference between his expenses of consolidation/deconsolidation and the ocean carriers FAK rate, and the revenue which the NVO generates from small-lot shipments.

The NVO need not have any investment whatsoever. It could lease warehouse space to provide consolidation/deconsolidation services, and the containers it utilizes are those of the ocean carrier.

I do not believe that it should be the purpose of H.R. 10841 to cover NVO's. Thus, if H.R. 10841 is passed in any form, it should be more precisely defined to be limited solely to vessel operating common carriers.

B. Nonself-propelled carriers.

Also, the noncontiguous States of Alaska and Hawaii, as well as the Commonwealth of Puerto Rico and the United States Virgin Islands, have been, or are presently being, served by tug and barge services. In many instances, tug services are pursuant to short-term contracts. Indeed, in some instances the barges are chartered. Thus, there could be relatively little capital investment in this type of venture. Tug and barge operators can be similar to NVO's in their company's capital structure.

Actually H.R. 10841 contemplates a carrier that has substantial investment in assets, either through debt or equity capital, through which it provides common carrier services. While many tug and barge operators in the above-mentioned trades have such an investment, some do not, and H.R. 10841 may provide an unworkable standard for that segment of the industry which provides tug and barge common carrier services in the U.S. noncontiguous trades.

CONCLUSION

As a final comment, Mr. Chairman, the Commission staff has done considerable research concerning rates of return for particular carriers in the domestic offshore trades, most particularly those of Hawaii and Puerto Rico, and has analyzed the applicability of various criteria

to the realities of ocean commerce. I have not included these data and analyses in my prepared statement for two reasons: First, most of it is highly technical and very detailed; and Second, coming from individual carrier business records, much of the information relied upon in making our analysis is of a business confidential nature. I would be pleased, however, to have my staff work closely with the subcommittee staff to make these data available to the subcommittee with appropriate safeguards for maintaining their confidentiality.

The Office of Management and Budget has advised that it is also opposed to enactment of H.R. 10841, but that some of its reasons for opposing the bill may be different from those expressed by the Commission.

Thank you very much, Mr. Chairman. We will now be glad to answer any questions you, or the other members of the subcommittee, may wish to ask.

Mr. DOWNING. Thank you for your very fine statement.

We appreciate your active participation in these matters.

You have appeared here more frequently during the short time of your tenure than many of your predecessors did over a long period of time.

I will defer my questions until later.

Mr. Patterson?

Mr. PATTERSON. I have no questions.

Mr. DOWNING. Mr. McCloskey?

Mr. MCCLOSKEY. On page 11 you indicated the Commission will not continually impose this suspension of rate increases.

In its statement, Matson indicates that since 1947 6 of its 11 rate increases have been suspended and that where decisions were rendered, the increases were not found to be unlawful.

Is that correct?

Mr. BAKKE. I suspect that they are correct. But I would like to explain.

Mr. MCCLOSKEY. How could you reach a decision to suspend a rate increase and 2 years later determine that the rate increase was not unlawful?

Mr. BAKKE. Well, there is inquiry in depth into each of the component proposals in a general rate increase. The current legislation provides, and would continue to provide if this bill is enacted, a 30-day period between filing a proposed rate increase and the effectiveness of that rate. As I indicated in the course of my testimony, the purpose is to provide both shippers and ultimate consumers an opportunity to adjust to the new rates.

However, the problem from the Commission's standpoint has been that, when a general rate increase is filed, there is usually not enough hard, definitive economic documentation at the time of filing, and therefore the Commission has been able to make only the most cursory review of the total package within that 30-day period. If, on its face, based on that cursory review, there appears to be a reasonable prospect of justification for the proposal, the Commission has permitted them to go into effect. On the other hand, again within the confines of that 30-day period, the Commission has been obliged, if there is any reason to question the overall justification for a particular general rate increase, to act on the basis of that preliminary

evaluation and to suspend until there has been an opportunity to develop fully all of the financial and economic data pertaining to the total proposal.

Having said that about the past, Mr. McCloskey, I would like to comment that, since the last suspension action, or nonsuspension action, in a proposed general rate increase, the Commission has been developing procedures whereby vastly more economic and financial material will be presented at the time the proposal is filed. In that way, the Commission will have in its possession much more detailed data to use in making the preliminary evaluation.

Mr. McCLOSKEY. That is not going to speed up the time of determination, to increase the paperwork; is it?

Mr. BAKKE. Well, it certainly will, in our view, because, first of all, a proposal is pending that will provide the Commission, in greater detail, financial information from the carriers engaged in our domestic offshore trades.

Mr. McCLOSKEY. Does that give them a better chance of not having a suspension?

Mr. BAKKE. I think it will provide a substantially greater chance, and, by the same token, it will provide a substantially greater chance that we will be able to make an effective determination, where warranted, that suspension is, in fact, called for.

Mr. McCLOSKEY. Mr. Bakke, you indicate on page 13 that under proposed rules in docket 67-57, the Federal Maritime Commission is attempting to expedite procedures for making prior determinations of the reasonable nature of the rate increases.

Do I understand that docket 67-57 was begun in 1967?

Mr. BAKKE. That is correct, sir.

Mr. McCLOSKEY. Well, my God, has it taken you 9 years to determine how to speed up and expedite your rate determination?

Mr. BAKKE. To the extent that an element involved—

Mr. McCLOSKEY. You understand my question?

Has that docket proceeding been going on for 9 years?

Mr. BAKKE. It has been pending for 9 years. It has had a rather checkered career in terms of aggressive pursuit.

Mr. McCLOSKEY. I would like to know why a proceeding to expedite your proceedings should take 9 years.

It does not give me any reason to have any hope that you are ever going to determine how to expedite your proceedings.

Why would it take 9 years?

Mr. BAKKE. I am not in a position—

Mr. McCLOSKEY. Who else is?

Mr. BAKKE [continuing]. To defend or explain what has gone on in the past. I am concerned with and responsible for the happenings now and in the future. That particular docket caught my attention my first week on the job, Mr. McCloskey. I, too, was appalled that such a situation existed. Steps have now been taken by the Commission to move forward with docket 67-57 for final comment. Once, the Commission staff has reviewed those comments, we will move to a final determination.

Mr. McCLOSKEY. That is fine.

Who is in a position to explain why a procedure to expedite proceedings would take 9 years to work out?

Mr. BAKKE. If I—

Mr. McCLOSKEY. Do you understand my question?

Mr. BAKKE. Yes.

Mr. McCLOSKEY. We will get no place if I ask one question and you answer another.

Who should I address it to?

Mr. BAKKE. My predecessor, I suppose.

Mr. McCLOSKEY. Who should we call before this committee?

Mr. BAKKE. Well, I believe before we reach that state of confrontation, it might be helpful to review the facts, which I do not have here at my command, to explain all the circumstances.

Mr. DOWNING. Can the witness answer the question?

Mr. BAKKE. No; I cannot answer the question. All I know is that we now have moved that docket along. What has happened in the past seems to me—it is unfortunate.

Mr. McCLOSKEY. You know, I am just deeply troubled by this.

Matson does business out of the State of California.

They point out in eleven rate procedures, the Federal Maritime Commission has suspended six of them, later to determine that they shouldn't have been suspended, but 2 years later, apparently.

That position seems to justify some kind of change in our law or our procedure.

Mr. BAKKE. The determination was not that the Commission could not have suspended at the time of filing. The determination was, as ultimately crystallized, that the proposal was, at the time of decision, just and reasonable.

Mr. McCLOSKEY. Then it shouldn't have been suspended, should it?

Mr. BAKKE. Well, with the benefit of 20-20 hindsight—

Mr. McCLOSKEY. What did the Commission do?

There are attempts to move to a deregulation program.

A carrier files a rate increase within 30 days; the Federal Maritime Commission suspends it, and then 2 years later finds the suspension was not justified. If I were the attorney for that company, I would come to this Congress and ask for legislation to remedy that situation.

Mr. DOWNING. Let me interrupt.

Let the witness ponder the question.

We will recess for 10 minutes to answer a quorum call on the floor of the House, and then the witness can answer the question.

[A brief recess was taken.]

Mr. DOWNING. The subcommittee will come to order.

Mr. McCloskey will resume his questioning.

Mr. McCLOSKEY. My question is in the record.

Mr. Chairman, will you answer?

Mr. BAKKE. First of all, I think it is important to put in context the matter of what happens in the event of suspension. Our present statutory authority permits imposition of suspension for only a 4-month period. At the end of that 4-month period, however justified the suspension was at the outset, the rates go into effect unless and until the Commission may later determine they were not just and reasonable, hence, unlawful.

Mr. McCLOSKEY. Do you now think that the suspension was originally predicated on the hope that the Federal Maritime Commission could reach a decision in 4 months?

Mr. BAKKE. That is entirely possible. In practice it has not been able to do so.

Mr. McCLOSKEY. What should we do to try to expedite a decision in a rate case so that it could be made in 4 months?

Do you need more money?

More personnel?

I cannot imagine submitting a case to a judge, and not getting a decision in 4 months.

What takes so long?

Mr. BAKKE. It is extremely complex to evaluate, from the standpoint of the public interest, whether a rate or structure of rates is just and reasonable. One of the problems the Commission has had in the past, which I think should be resolved to a much greater degree in the future, is that under the financial reporting requirements prior to docket 67-57, frankly, there was not adequate baseline data being developed as a point of reference for the Commission when a general rate increase was proposed. Therefore, it was necessary for the Commission to develop a great deal more refined data to permit construction of a baseline against which the new proposal could be evaluated.

At the same time, the rate increase proposals were not necessarily accompanied by complete, accurate, or meaningful information. And in the course of consideration, it has been necessary for the Commission to pursue the refinement of information in support of a particular proposal that is necessary in order to make a judgment. The regulations proposed in docket 67-57 should improve this considerably.

We are also putting into effect a requirement for more definitive data to be included at the outset when a carrier proposes a general rate increase in the domestic offshore trades, so that the economic data we have will, I think, permit the Commission to make a much more rapid evaluation, at the outset, whether or not the proposed rate increase may be just and reasonable.

I might say also that, in the course of rate proceedings, the carriers themselves frequently have had inadequate or even conflicting data which have had to be sorted out and, of course, in the inflationary spiral that this country has been experiencing for the past 20 years, the carriers understandably are consistently updating the economic and financial data which they are presenting in justification of the rate increase.

Now, again, where updated information is presented, it is necessary to test and to evaluate that.

Mr. McCLOSKEY. You are describing an almost impossible situation, it seems to me.

Let me just close the scenario.

If we are going to move to deregulation or to decrease regulation, the opportunity is in front of us; clearly the 4 months suspension power that stands in the law is unworkable.

If the power of suspension is to mean anything, it should be suspended until a decision is made.

That is the purpose of the original law.

With your testimony in front of us, if the suspension power is unworkable in 4 months, the law should be amended to increase the suspension power to some reasonable point in time in which you feel you could make a decision. Would that be fair?

Mr. BAKKE. That is one corollary of what I have been saying.

Mr. DOWNING. Wouldn't that be unreasonable for the carrier?

Mr. McCLOSKEY. That is my point.

We meet ourselves coming and going.

Mr. BAKKE. Let me say, Mr. McCloskey, before proposing either solution, I would suggest that it would be appropriate for us to get some operating experience utilizing the procedure for data collection spelled out in docket 67-57, and to test the effectiveness of our requirements for much more definitive supporting data when a general rate increase proposal is filed.

Mr. McCLOSKEY. Let me just test you on that just a little and, if I may, Mr. Chairman, use this.

We are looking for what we can best do to help shippers and shipping companies.

In a rapidly accelerating economy with inflation hitting us and fuel costs and labor costs going up in a sporadic method, anybody engaged in the carrying of goods will have to come in for rate increases just like public utilities do. Your answer is that their applications must be exceedingly more voluminous so every time a rate increase is filed, it must include more information so you can make a definitive decision.

If the information for any rate increase has got to be voluminous and comprehensive, then you will need 2 years to study or 6 months to study or a year to study, whatever that period may be. You want a suspension period during that time, in case the rate increase turns out to be unlawful. Aren't we just compounding regulation upon regulation and time and effort and increasing the costs of the Merchant Marine to meet these regulatory problems?

Mr. BAKKE. I certainly cannot disagree wholly with you on that. There is, however, another side of the coin. We are obliged, by statute, to look not only to the justifiable interest of carriers in maintaining reasonable profit margins in the operations in which they are engaged, but ultimately, to the public interest involved in any proposal for rate increases in the domestic offshore trades. That means we must take into account the interests of shippers, the interests of consumers, and the interests of the State, territory or possession involved from the standpoint of total dependence upon ocean trade for the commodities that are necessary even for a bare economic existence. When you start applying considerations of that sort, that are not quantifiable, it is a somewhat more difficult process than if you could punch a button and have a series of numbers come out of a computer against which you could determine that rate increases are or are not warranted by whether the number is below or above some standard reference point.

Mr. McCLOSKEY. I will concede that.

I do not think that any of us disagree with that.

You have got in these intercoastal shippers a special problem.

There is no competition.

You may have a single company.

You have got a specific problem in regulations for the public interest because there is no competition to keep those rates down as there would be in other circumstances; isn't that correct?

Mr. BAKKE. Yes sir.

Mr. McCLOSKEY. But isn't there some way that this process can be speeded up without the addition of additional voluminous information and the additional staff to review that information?

Have you got any goal in mind?

You are right now taking 2 years to reach a decision on a rate case. Is that not correct?

Mr. BAKKE. I think that is approximately correct for a general rate increase.

Mr. McCLOSKEY. So if you have a Matson situation where you suspend their rates, they would lose 4 months out of that 2 years?

Mr. BAKKE. Yes.

Mr. McCLOSKEY. Isn't there some possibility we could put on a penalty?

You say it is unworkable to try to pay back the excess rates that are charged.

What about just having them pay a penalty?

If somebody goes with an excess rate that is not justified, add a penalty onto it.

If they cannot justify it, then they ought to be willing to pay a penalty.

The time and effort and money that goes into this, and the delay, make it all seem unworkable. We have got to do something statutorily to either reduce the time of decision or to reduce the volume and complexity of this kind of litigation.

The way to do that is to put triple damages on it so that people who had no competition and filed excessive rates would pay a penalty for it.

If you did that, it might help.

Perhaps people who protest rate increases ought to post a bond so if they protest it and it turns out all six suspensions are rescinded, that person who protested pays a penalty for protesting wrongfully.

I want to reduce the cost of Government and the burden on private enterprise and expedite the rulemaking that takes 9 years.

I would be embarrassed to sit on this committee unless we change the law to remedy this situation, Mr. Bakke.

Mr. BAKKE. Let me point out a couple of things, Mr. McCloskey.

Bearing in mind that this inflationary spiral has induced carriers who have presented a rate case to us continually to update the data that, in and of itself, intrudes on the orderly conduct of the case before the Commission. Ultimately, therefore, the Commission's decision is predicated upon data that are relatively current at the time of the decision, rather than on the data submitted at the outset. Therefore, it is entirely possible that an ultimate determination by the Commission that a proposed rate increase is just and reasonable will be made on the basis of facts and circumstances that come into existence at some period of time after the original case was filed. That does not mean necessarily that the case was unjustified at the time it was filed.

I agree with the proposition that in the past, perhaps, general rate increases allowed in the domestic offshore trades have not been adequately responsive to the financial and operating needs of the carriers. I am not an economist or a computer expert; but it seems to me that the additional data we are calling for in docket 67-57

and the additional data that a courier would be required to submit at the time a proposed rate increase is filed under our proposed procedures, could be plugged into a carrier's computer, literally daily, and at the time the information is needed, a button can be pushed and out it comes in a printout. That, perhaps is an oversimplification. But I do not view the requirements imposed on the carriers by docket 67-57, nor do I view the substantiation requirements that will be imposed upon those who file for a general rate increase in the domestic offshore trades, as being excessive in the light of the facility for developing, collating, and recording data through electronic data processing means. That also means that, when data of that sort are presented to the Commission, either for the development of base line data or for evaluation purposes in connection with a proposed general rate increase, the Commission staff itself will be able to evaluate the data much more readily with the utilization of ADP methods.

Mr. DOWNING. Thank you.

Mr. Bonker?

Mr. BONKER. Let me begin by saying that I share Mr. McCloskey's concern over the delays and complexities of the process that now is underway for ruling and rate increases.

In fact, if we can have a more expeditious means of handling these matters, then perhaps we would not have this legislation before us.

I would like to pick up on page 11 where you say that you believe that the suspension authority should remain as it is; that is, where Mr. McCloskey left off on page 11, and that the suspension will not be imposed routinely by the Commission merely as a means of providing shippers with additional notice periods or consumers with a grace period; revenue loss by the carrier during a suspension period can never be recouped.

Therefore, it has been the practice of the Commission to suspend all—only when there is serious question regarding the justification for a proposed rate increase.

If this is the case, why is there a compelling need for this legislation?

I know you are not supporting the legislation. But from the other side, if you actually hold rate increases in suspension only a minimum number of times, why is there a request for this legislation?

Mr. BAKKE. I suspect that Mr. Pfeiffer may have a much more articulate presentation of justification for the proposed legislation than I, but it seems that the underlying justification, as viewed by Matson, is that they find it necessary or desirable, in the particular trade in which they operate, to come before the Commission virtually on a continual basis on rate increase matters.

It is true, as I said in response to Mr. McCloskey, that, in the past, the Commission has not been able, however diligent it may have been, to resolve general rate increase issues in the domestic offshore trades, absent the kind of information that we are now hopeful of developing through implementation of docket 67-57 and through implementation of new supporting data requirements at the time a general rate increase is proposed. As you indicated, on page 11 of my statement I have said that, at the very least, the proposal ought to—if enacted—leave our suspension authority where it is, or perhaps even ideally to expand it. But I reiterate my response to

Mr. McCloskey's question on that point, that is that I would like to have some operating experience under the new procedures before I commit myself to a statement that 4 months is not adequate for our purposes. It may well be. It may well not be.

Mr. BONKER. Going on to page 12, you say that the Commission has not abused this authority and, in fact, has used it only sparingly and only in situations of critical importance.

You said that, for the period from 1971 to 1976, the present time, that you have had 62 general revenue increase filings before the Commission.

That is 62 over a 5-year period which averages out to about 12 a year?

Mr. BAKKE. Yes.

Mr. BONKER. May I ask this: You went on to say that of the 62 cases, 48 were referred to the Commission, and of those, 20 resulted in general rate suspensions?

Mr. BAKKE. Yes.

Mr. BONKER. My first question is this: If you have an average of 12 a year before the Commission, why is it taking so long to process them?

It does not seem like an inordinate number of cases.

No. 2, how many cases that have gone into suspension have involved Matson Lines?

Mr. BAKKE. Let me answer your question generally, first.

I think perhaps it is misleading to evaluate either the complexity or the processing requirements of general rate increase proposals by the number of such proposals that are presented to the Commission. On the general rate increase filings—I cannot give you an average number of inches thick of all the documentation. But a pretty formidable package is required when you get down to the substantiation of financial and economic data.

Under the present commodity tariff structure, which I will have more to say about at some other time, virtually every commodity being carried has a particular rate associated with it, so that it is not just a matter of coming in with a proposal of 10-percent increase over the general—

Mr. BONKER. Why is that not possible?

Mr. BAKKE. Sir?

Mr. BONKER. Why is that not possible?

Why cannot you simplify your evaluation of the rate increases?

Mr. BAKKE. Because of the way in which they are presented by the carriers. They come in to us on the basis of the commodity rates, increases in commodity rates. In addition to looking at the overall rate structure to determine whether it is just and reasonable, a great many shippers and, indeed, a great many consignees, who are utilizing the services of the carrier involved, will intervene before the Commission in order to protest a particular rate because that rate alone impacts most severely on them. So, neither the number of proceedings before the Commission, nor the frequency with which they are filed, really gives you a handle on what is involved in dealing with a general rate increase.

To the extent that there are protests, the Commission has very little control over the prolixity or the depth into which a particular

aspect of the case will be developed. In addition to the ocean carrier rates, we have had something on the order of 400 tariff increase proposals coming from the nonvessel operating common carriers—the NVO's. So, in a sense, you have to throw those 400 NVO's in with the vessel-operating carrier proposals to have a clear idea of what is involved from the staff standpoint at the Commission in processing these things.

May I now—

Mr. BONKER. Let me ask you a few general questions before my time expires.

Mr. DOWNING. Go right ahead.

Mr. Bonker. You outlined in your statement the serious defects that you found in the legislation before us.

I would just like to run through those quickly with you.

You listed four serious defects.

The first is that there is no apparent rationale for selection of the arbitrary trigger point of 7 percent.

And, insofar as you are concerned, you do not know how that particular percentage was arrived at.

Second, a possible and predictable consequence of this legislation would be that a 7 percent general rate increase would be effective each year by each carrier.

Based on your experience, you would predict that would be the consequence of this legislation, should it pass.

And third, concerning the automatic escalator to collect revenues to which it may not be entitled simply by keeping increased revenues at or below 7 percent, so that you are saying in some cases while a rate increase goes into effect and later it is ruled that the carrier would be able to enjoy the immediate revenue increase, even though at some point it would have to pay it back—with interest?

Is that in the legislation?

Mr. BAKKE. Yes.

Mr. BONKER. Then, an increase of 7 percent in revenue might also result in a radical increase or decrease of rate of return on rate base if the company had significantly reduced or enlarged its rate base during that period.

Should this legislation pass, how do we get around that problem?

Mr. BAKKE. I do not really know that you can. That is why we are opposed to the legislation. It seems to me that one of the most fundamental deficiencies in the bill is using a rate of return base as the ultimate determinant as to whether or not the proposed rate increase is just or reasonable.

Let me explain to you why I say that. A carrier's books, for purposes of a rate base, ordinarily reflect its investment in plant and equipment, depreciated over a period of time. Although this proposed legislation would take into account replacement costs of capital equipment rather than the initial book value, there still is a great disparity between carriers in the extent to which an increase of 7 percent in gross revenues will reflect a reasonable or an unreasonable return on capital.

Take, for example, the tug and barge operations. Frequently, the barges are chartered so that they are not in the operator's capital base. Indeed, even the tugs may be chartered. There is one carrier in our Alaskan trade that does about a half a million dollars in

gross revenues annually. It has a capital base of \$700. A 7-percent increase in operating revenues would be about \$3,500, which would be something near 40 times or 50 times its capital base. Can you say that an increase of 40 to 50 times, 4,000 to 5,000 percent return on investment, is reasonable? So, the relationship of capital base to operating revenues really has nothing at all to do with the extent to which the carrier is producing adequate return on investment or an excessive return on investment. I don't know how we get at that, unless the Congress were to give the Commission a free hand in determining what in a particular instance is appropriate as a point of reference in determining a fair return.

As presently drafted, it would appear from our analysis that this legislation will only be of reasonable benefit to one or two carriers engaged in the domestic offshore trade. Others could be hurt by the standards embodied in this bill, and others could realize an inequitable windfall. I am not entirely sure that the interests of either the carriers or the shippers would be well served.

Mr. BONKER. Just one brief followup question.

You say if this legislation is passed, that 7 percent would be automatic, in fact, for all carriers.

I did not see in your statement where you made the distinction that the impact would be only on one or two carriers.

Mr. BAKKE. The point is made in my prepared statement.

Mr. BONKER. I am sure it is.

You do not have to answer it.

No further questions.

Mr. DOWNING. Thank you.

Mr. BAKKE. May I add one further example of the problem I have just mentioned, Mr. Chairman?

There is one carrier in the domestic offshore trades that has a rate base comprising 100-percent debt. How do you handle that? Under the formula used here, that is a zero capital rate base; \$1 of earnings is an infinite percentage return on rate base.

Mr. BONKER. We tie a lot of things domestically into the Cost-of-Living Index. Can't you have developed an index by which you can measure justified increases from time to time?

Mr. BAKKE. It is entirely possible that such an index might be fashioned. I am not sure that either the components or the operation of such an index could be universally applied to all of our domestic offshore trades—probably not. I think you would have to look essentially at each of the trades to determine what the relative components are and construct an index for each trade. That may be a pretty good idea. But, I think if that approach is to be taken there should be a deflator as well as an inflator involved in the proposal, so that the carriers must reduce their rates when the index goes down.

Mr. BONKER. I don't know if I will ever see the day when the index goes down.

Thank you.

Mr. DOWNING. Thank you.

I do think that any procedures which tolerate a delay of 9 years in reaching a final decision ought to be reviewed by you and some effort made to expedite the whole ratemaking procedure. I hope that you will persist in your efforts to expedite these matters.

Thank you very much, Mr. Chairman, and gentlemen, for your testimony here today.

Mr. DOWNING. The next witness is Mr. Robert J. Pfeiffer, president, Matson Navigation Co., San Francisco, Calif.

Mr. Pfeiffer, I understand that you have a rather comprehensive statement which you wish to insert in the record and that you will read from a shorter version?

Mr. PFEIFFER. Yes, sir.

Mr. DOWNING. Very well.

Will you identify your colleague for purposes of the record?

STATEMENT OF ROBERT J. PFEIFFER, PRESIDENT, MATSON NAVIGATION CO., SAN FRANCISCO, CALIF.; ACCOMPANIED BY JOHN R. KUYKENDALL, VICE PRESIDENT, GOVERNMENT RELATIONS, MATSON NAVIGATION CO.

Mr. PFEIFFER. Mr. Chairman, I would like to have sitting alongside me John R. Kuykendall, vice president of the Matson Navigation Co. He is in charge of our Washington office.

Mr. DOWNING. Many of us know Mr. Kuykendall extremely well.

Mr. PFEIFFER. Mr. Chairman, we appreciate the committee's willingness to consider the proposed amendment of the Intercoastal Shipping Act, 1933, which provides for the promulgation of rate-of-return guidelines by the Federal Maritime Commission and for the revision of the act's suspension procedures. Thank you for letting us make our views known.

With your permission, Mr. Chairman, I propose to read at this time a condensed version of my complete and more lengthy statement, which I request be included in its entirety in the hearing record.

The amendments are proposed because capital requirements and operating costs in the domestic offshore trades have increased so dramatically in recent years that it has become difficult to raise the capital required for fleet improvements and for continued operations in a regulated, capital-intensive and low-profit environment. As a result of these inflationary pressures, two major operators of self-propelled vessels have discontinued operations between the U.S. Pacific coast and the Territory of Guam, and one such operator between the U.S. Pacific coast and Hawaii. In the U.S. Atlantic-Puerto Rico trade, the three major carriers sold their operating assets to an entity of the Commonwealth of Puerto Rico, the Puerto Rico Maritime Shipping Authority. We now have Government ownership of a shipping service in the domestic offshore trades.

For many years, it was not necessary for carriers in the domestic or foreign trades to construct new vessels because of the availability of surplus World War II vessels at attractive prices for conversion to specialized carriers and for fleet replacement purposes. Because of this inventory to draw on, no new vessels were constructed by Matson during the period 1946-70.

Because in 1970 no suitable surplus conventional vessels were available, Matson took delivery of two new container vessels at a capitalized construction cost of \$21.1 million each. In 1973, Matson took delivery, under long-term charter arrangements, of two trailer vessels with a total capitalizable construction cost of approximately \$30.6 million for each vessel. We now have contracted for the con-

struction of one new container vessel of the same design as those delivered in 1970, but at a contract cost of not less than \$56,920,000.

In the past 3 years, vessel construction costs have increased dramatically and shoreside equipment costs have gone up 50 to 75 percent. Fuel oil costs four times more than it did 3 years ago. Maritime labor costs have doubled in the last 5 years. Longshore costs have escalated at an annual rate of 10 percent.

If privately owned carriers are to continue to operate in the domestic offshore trades without Federal operating or construction differential subsidies, the investment climate must be improved, and the risk and uncertainty of the return to be realized on the new investments must be reduced.

New capital investment contributes substantially to a reduction in operating costs, or at the least reduces the rate at which such costs increase, and contributes to improvement in service to our customers. Matson's newer vessels provide day-of-the-week service and eliminate uncertainty as to the total transit time for goods shipped to Honolulu. Regular weekly service eliminates the need for prolonged warehousing, the costs of which would be borne by the consumer. Also, the recent institution of direct calls at Hilo, Hawaii, by Matson's high speed and efficient trailer vessels, the SS *Lurline* and SS *Matsonia*, reduces the transit time for goods moving from the Mainland suppliers to their customers on the Island of Hawaii.

Currently, the act does not place any statutory obligation on FMC to ensure that the regulated party earns a fair and reasonable rate of return. This is not to say that FMC as currently constituted has no concern with this matter, but only that it has no statutory obligation in that regard. Under present law, investors have no rate-of-return guidelines issued by the FMC upon which they can base their expectations for a reasonable return on their investment. The bill under consideration by the committee includes a provision for the development and promulgation by FMC of rates of return on rate base—that is, the relationship of net income, after State and Federal income tax, to the sum of the depreciated value of the carrier's assets and working capital.

Matson supports the proposal that *prima facie* rates of return be promulgated after notice and opportunity for hearing, since it is our belief that such rates of return would serve as useful guidelines (1) for the benefit and encouragement of investors, (2) for use in exercising the suspension power, and (3) for use in expediting the conclusion of general rate-increase proceedings.

That such promulgation would be helpful as an encouragement to investors can be attested by my personal experience. Only after an effort spanning the last 18 months did I receive approval from Matson's board of directors to enter into a contract with Bath Iron Works Corp. for the construction of the new containership previously referred to in my testimony. As a result of the periodic and continuing effort to convince Matson's Board to make this additional capital investment, I am completely conversant with the understandable reluctance to invest such substantial amounts of capital in the environment of uncertainty that now prevails, and will prevail in the foreseeable future, in the Pacific coast-Hawaii trade.

Given the history of rates of return in that trade—an average of 5.604 percent per annum for the period 1947-74—the people of Hawaii are indeed fortunate that someone, and in particular a corporate citizen of Hawaii, has been willing to invest in Hawaii's lifeline with the U.S. mainland. Virtually risk-proof U.S. Treasury bonds offer a more satisfactory rate of return.

Because of the prevailing economic differences among the various domestic offshore trades, it would be appropriate and desirable that rates of return be developed and promulgated for each trade. Rates of return for each trade should be based on and limited to the operations of those carriers providing service both to and from U.S. mainland points and ports in the respective domestic offshore community with self-propelled vessels, that is, Puerto Rico Maritime Shipping Authority in the Atlantic/Gulf-Puerto Rico trade; SeaLand Service, Inc., in the Pacific Coast-Puerto Rico trade; and, Matson Navigation Co. in the U.S. mainland-Hawaii and Guam trades. All other operators of self-propelled vessels serve the offshore communities on an incidental wayport basis as a part of their operations in the foreign commerce.

It must be understood that prima facie rates of return that are established as a result of this legislation do not provide any guarantee that the carrier will earn such a return from its operations. It still will be faced with the same operating risks that always have been inherent in the shipping industry.

In addition to the requirement that FMC establish prima facie reasonable rates of return, the bill pending before the committee proposes a revision of the suspension power of the Commission, but only to the extent of exempting a certain level of general rate increase from such suspension. All other changes in rates or charges, as well as changes in regulations, practices or conditions of carriage, would remain subject to possible suspension.

A loss of revenue to the regulated carrier caused by the suspension of a general increase in rates is of particular significance in today's economic environment because of the unprecedented amount of capital currently required for the replacement of vessels and related equipment. The act currently provides the regulatory agency with unlimited power to impose a suspension. It is a deterrent to an investor to have the effective date of a general rate increase suspended even before the increase is found to be unlawful. The practice of penalizing a carrier before it is found "guilty" no longer is consistent with economic reality.

Even without suspension, rate payers under current law have the benefit of considerable delay in the passthrough to them of increased operating costs or other factors necessitating a general increase in rates. Such delay is primarily caused by the lead time required for preparation of supportive financial data and issuance of corrected tariffs, both of which in accordance with FMC regulations must be filed concurrently with FMC. Such delay normally amounts to about 105 days, during which period the carrier absorbs increases in costs and/or the effect of an inadequate rate of return.

Why such extended delay—even without suspension of the effective date of a general rate increase? Before the required supporting income statements can be prepared, Matson must construct a cargo

forecast—after contacting all major shippers—and a fleet employment plan. A financial forecast then is assembled, and a determination made as to the amount of general increase that will be needed.

The next step entails the preparation of financial statements, which literally requires hundreds of separate calculations and the preparation of detailed supporting work papers for use by FMC auditors.

The final step involves a decision as to how the increase is to be distributed, and the typing and preparation of new tariffs reflecting the increase in rates for filing with FMC. Sixty days is required for this total process.

Matson ordinarily files on 45 days notice in order to provide FMC with sufficient time in which to review the considerable volume of financial and other material which is furnished by it to the Commission in justification of the increase. We have found that it is not possible to resolve with the Commission within the customary 30-day filing period the questions which inevitably arise in connection with the supporting data.

It is clear that without suspension the freight rate payer and presumably his customer enjoy a period of at least 105 days during which the regulated carrier absorbs cost increases which he never recovers.

Even when the carrier's rate increases becomes effective, however, there is much support for the proposition that any immediate passthrough of the increase to consumers is unwarranted and unnecessary. For example, we estimate that approximately 87 percent of the total cargo transported by Matson to Hawaii moves into inventory; it is customary to maintain 30-day to 60-day inventories of nonperishable goods in Hawaii. A passthrough of an increase in freight rates on goods received in Hawaii prior to the effective date of the increase, therefore, brings about a windfall benefit to the rate payer, but not necessarily to his customer, the ultimate consumer.

There are those who insist that the suspension power must be retained in order to protect the shipping public. Who is the shipping public? In the Hawaii trade, those consignees receiving goods transported at total freight charges of \$100,000 or more per annum—including the U.S. Government and many national and Hawaiian corporations with operating revenues many times more than those of Matson—account for approximately 80 percent of Matson's total westbound revenue. The effect of the most recent suspension was to deprive Matson of \$1,750,000 in new revenue, 80 percent, or \$1,400,000, of which accrued to the benefit of the referenced consignee group.

We recognize the concern that has been expressed concerning the interests of the shipping public and its customers. But, given the dramatic social and economic changes since 1933, we respectfully submit that it is in the public interest that the carrier's interests receive a greater degree of recognition. Because of the lag previously described, the public has the benefit—without suspension—of a period of at least 105 days during which cost increases are absorbed by the carrier. The time at which Matson's customers pass through a freight rate increase is not a matter within the control of either FMC or the regulated carrier, and consequently to suspend a general increase for the purpose of possibly delaying such passthrough is unwarranted and unfair to the carrier.

There are those who propose that in lieu of revising the suspension power, attention be focused on seeking ways of bringing regulatory proceedings to a more expeditious conclusion. Matson shares with FMC and others a concern for seeking ways to expedite the conclusion of proceedings before FMC in a manner that would be consistent with the requirements of due process. In FMC Docket No. 75-36—a rulemaking proceeding undertaken for the purpose of amending FMC's rules of practice and procedure—Matson submitted various suggestions relative to bringing about procedural expedition. Expedition of proceedings cannot, however, be considered as a substitute for removing the suspension power from general rate increases. Modernization of both is urgently needed.

What is accomplished by suspending the effective date of a general increase? To answer that question, we must understand what transpires immediately prior to the service of a suspension order.

As previously described, Matson normally files its revised tariffs along with the voluminous supportive financial data required by FMC General Order 11 on a date not less than 45 days prior to the scheduled effective date of the general rate increase. Inevitably, there are interested parties who file protests with FMC requesting that the effective date of the increase be suspended and the matter docketed for hearing and investigation. Such protests must be filed within 25 days of the increase's effective date. During the 45-day notice period, FMC conducts analysis and review of the revised tariffs and supporting data that is tantamount to examining all of the issues that would be considered during an evidentiary hearing. Given the volume of material, it is not practical to attempt to reach conclusions on such issues for the purpose of deciding whether the suspension power should be exercised and the matter set for hearing and investigation.

The basic purpose of the 45-day notice is to provide the shipping public with adequate advance notice that a general increase in rates has been scheduled. The notice period should be used for that purpose and for determining if a hearing and investigation are necessary, rather than under pressure of time to make a decision about suspension. Any such decision would be especially difficult and subjective when a guideline as to the lawful rate of return is not available. But, with or without the guideline, those who wish to retain the existing suspension power and even enlarge the suspension period are taking the position that it is not sufficient for the carrier to absorb cost increases for 105 days but that he should do so for 225 days or more.

The interests of the shipping public require that capital be invested periodically for the purpose of providing the most efficient and modern transportation service between the U.S. mainland and the domestic offshore communities, while at the same time providing protection to the shipping public from unfair or unreasonable rates and charges. A means for reconciling these two requirements is provided by the bill pending before this committee—the refund provision.

It has been proposed that when changed rates or charges exempted from suspension are found to be unjustified in whole or in part, carriers would be required to make refund of excess charges collected, plus interest. There are those who claim this procedure to be unworkable on the grounds that it does not provide for refund to the rate payer's customer to whom the excess charge may have been passed

on. Even if a procedure for refund to third parties did exist, what legal right would the carrier or FMC have to convert what rightfully belongs to the rate payer for refund to any third party? There is adequate precedent for a refund procedure, and it is our sincere belief that in the public interest the refund arrangement is a satisfactory tradeoff for eliminating the suspension power in cases of general rate increases.

To say that the refund proposal is unworkable because of an inability to make the refund to the rate payer's customer is to say that the existing provisions of section 4 of the act are unworkable. Section 4 empowers the FMC to prescribe and order enforced just and reasonable maximum rates. At the conclusion of a general rate increase proceeding, therefore, FMC may order a reduction in rates to the benefit of the rate-paying shipping public. It cannot order a reduction in prices paid by the rate payer's customer. It is clear that the consumer, for purposes of the Shipping Acts, is that person using the services and paying the charges of the regulated carrier.

We again express our appreciation to you, Mr. Chairman, and to the members of the committee, for this opportunity to convey our views on this most important legislation. At this point, we request the committee's consideration of a substitute to H.R. 10841, the text of which is set forth in attachment B of the full statement hereto; the substitute is compared with H.R. 10841 in attachment C to the full statement.

Mr. Chairman, I apologize for the length of my brevitized statement.

Mr. DOWNING. Thank you.

That proposed amendment is presently pending over on the Senate side?

Mr. PFEIFFER. Yes, sir.

Mr. DOWNING. Thank you very much for a very fine statement.

Mr. Patterson?

Mr. PATTERSON. I have no questions.

Mr. DOWNING. Mr. Pfeiffer, to what extent can you anticipate increases in operating costs and, if you can, are they predictable?

Mr. PFEIFFER. No, sir; there are some instances—for example, when you negotiate a 3-year labor contract—where you can; but in most instances, you cannot.

As an example, in the last 2 weeks, the price of marine fuels has gone up \$1.4 million per annum, which was quite a shock after the Federal Energy Administration had decontrolled the prices of residual fuel oil.

From time to time, we have heavy weather such as the recent typhoon in the Pacific where you can have severe damage to ships and equipment. You have work stoppages. So it really is not predictable.

Mr. DOWNING. On behalf of the committee, it would help us to have an understanding of how Matson rates contribute to retail prices in Hawaii. Could you give us some representative examples? I am referring to freight rates.

Mr. PFEIFFER. Yes, sir; I could have Mr. Kuykendall provide the staff with a complete list.

[The material referred to follows:]

MATSON NAVIGATION COMPANY
RELATIONSHIP OF FREIGHT CHARGES TO RETAIL PRICES
FOR SELECTED COMMODITIES

COMMODITY	UNIT	(1)		(2)		FREIGHT CHARGES AS % OF RETAIL PRICE
		RETAIL PRICE		FREIGHT CHARGES		
Tomato soup	10 3/4 oz. can	\$	0.26	\$0.0176		6.7%
Rice	25 lb. bag		5.38	0.4530		8.6%
Spam	12 oz.		1.15	0.0160		1.4%
Tomatoes (fresh)	lb.		0.49	0.0420		8.5%
Frozen fryers	lb.		0.55	0.0390		7.1%
Tide detergent	84 oz.		1.95	0.1360		7.0%
Lilly Lawn fertilizer	20 lbs.		5.99	0.4200		7.0%
G. E. 18 cu. ft. refrig./freezer	ea.		498.00	40.68		8.2%
G. E. Dryer	ea.		230.00	17.38		7.6%
Zenith 23" color T.V.	ea.		699.00	10.05		1.4%
3/8 D. F. plywood 1000 sq. ft.	1000 sq. ft.		566.00	21.95		3.9%
1976 Vega	ea.		<u>4,244.00</u>	<u>261.32</u>		<u>6.2%</u>
Simple Average of Above			\$6,252.77	\$352.5136		<u>5.6%</u>

(1) Retail prices were obtained from:

- a) Advertisements appearing in the Honolulu Advertiser or Honolulu Star Bulletin, between June 3rd and June 7, 1976.
- b) "Matson; Still a Good Bargain": an article published in the spring, 1976 issue of Amper-sand.

(2) See Matson Navigation Company Tariffs Nos. 14-E and 30.

Mr. DOWNING. In your opinion, will the proposed revision of the suspension power tend to encourage the filing of general rate increases by carriers in lieu of seeking to improve profitability by other means?

Mr. PFEIFFER. No.

In the first place, undertaking such filings involves an onerous workload and we would be happy to provide the committee with our most recent filing so that it can see what is entailed.

Second, we have our credibility to protect, not only with the Federal Maritime Commission, but with the shipping communities we serve and, lastly, the competitive restraints mitigate against such filings.

Also, I might point out that Matson has a pretty good track record of constantly seeking ways to lower its costs and become more efficient.

Last year when the State of Hawaii suffered a substantial drop in its economy, we immediately redeployed our fleet to compensate for that and in the process we saved about \$8 million annually in operating costs and therefore did not need to go in for as much of a freight-rate increase.

Mr. DOWNING. Thank you.

You make some good statements, Mr. Pfeiffer.

I was wondering what you would think if we revised this legislation to remove the suspension period of 4 months, but imposed treble damages on the carrier if the rates are eventually determined to be unreasonable, and also include a provision which would require the Federal Maritime Commission to give you some guidelines as to a return rate on your capital investment?

Mr. PFEIFFER. We would not object to that, Mr. Chairman. I would respectfully suggest when the committee is studying it and working with the various participants, that the committee explore what we consider a not too difficult way to make refunds to those ratepayers who may be hurt.

But to answer you directly, no, sir. That would be acceptable.

Mr. DOWNING. Thank you very much.

You made a distinct contribution to the committee's deliberations.

Mr. PFEIFFER. Thank you.

Mr. DOWNING. Your prepared statement will appear at this point in the record.

[The prepared statement follows:]

STATEMENT OF ROBERT J. PFEIFFER, PRESIDENT,
MATSON NAVIGATION COMPANY

Mr. Chairman, we appreciate the committee's willingness to consider the proposed amendment of the Intercoastal Shipping Act, 1933 (Act), which provides for the revision of the Act's suspension procedures and for the promulgation of rate of return guidelines by the Federal Maritime Commission (FMC). Thank you for letting us make our views known.

Introduction

Initially, the 1933 Act applied only to those carriers operating via the Panama Canal between U.S. Pacific Coast ports and U.S. Atlantic/Gulf ports. In 1938, however, the Act's application was expanded to include the domestic offshore trades, that is those carriers, including Matson, transporting cargo between U.S. Mainland ports and ports in Alaska, Guam, Hawaii, Puerto Rico and the Virgin Islands. Since 1940 the Act has applied only to carriers serving any of these domestic offshore communities.

Economic regulation by FMC of the rates, charges and conditions of carriage assessed or applied by carriers providing service in such trades has been authorized by the Congress, in part in the Act, and in part in the Shipping Act, 1916.

The substance of such regulation is summarized below:

- a. Rates and regulations and practices relating thereto shall be just and reasonable.

- b. Rate schedules or tariffs must be filed with FMC in a form prescribed by FMC and remain open to public inspection.
- c. Any change in rates and related regulations or conditions of carriage must be filed not later than 30 days prior to the effective date of the change, unless FMC grants special permission for filing within a shorter period of time.
- d. Either upon its own initiative, or upon complaint, or upon a protest from any party of interest, FMC is authorized to enter into a hearing concerning the lawfulness of such changes; and, further, is authorized to suspend the operation of such change for a period of time not exceeding four months beyond the date when it otherwise would have gone into effect.
- e. Common carriers are prohibited from:
 - Paying or allowing a deferred rebate to any shipper.
 - Using a vessel or vessels either alone or in agreement with other carriers for the purpose of excluding, preventing or reducing competition by driving another carrier out of a trade.
 - Refusing service to any shipper in retaliation for the filing of a complaint by such shipper or such shipper's use of another carrier's service.
 - Entering into any unfair or unjustly discriminatory arrangement with any shipper based on the volume of freight offered.

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- Giving any undue or unreasonable preference or advantage to any particular person, locality or description of traffic.
- Allowing any person to obtain transportation at less than the lawful rates in effect by any means.

The bill under consideration by the Committee today--H.R. 10841--only undertakes to revise the suspension power described in paragraph d, above; all other existing regulatory requirements would remain unchanged.

General Discussion

Why such revision or modification now?

In his 1976 State of the Union message the President indicated that he has ordered "a critical review of all Federal regulatory activities to eliminate regulations which are obsolete and inefficient in today's economic environment . . . to make government more responsive to current economic and social realities."

The Act was enacted in an economic, political and social environment much different from that prevailing some forty-three years later . . . for example, prior to 1938 domestic offshore carriers had only to file their maximum rates rather than the rates actually charged, creating a potential for undue preference and

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unjust discrimination among shippers, localities or class of traffic and, therefore, a need for regulation. The economic power of the maritime and longshore unions was yet to evolve, and capital requirements for vessel construction and for acquisition of terminal and stevedoring equipment were far more modest than currently is the case.

Recent increases in capital requirements and in operating costs have been dramatic.

Rather than invest the capital required for fleet improvement and continue operations in a regulated, escalating cost and low profit environment, two major operators of self-propelled vessels have discontinued operations between the U.S. Pacific Coast and the Territory of Guam, and one such operator between Hawaii and the U.S. Pacific Coast. In the case of the U.S. Atlantic-Puerto Rico trade, the three major carriers have sold their operating assets to an entity of the Commonwealth of Puerto Rico--the Puerto Rico Maritime Shipping Authority. We now, therefore, have government ownership of a shipping service in the domestic offshore trades.

Due to the availability of surplus World War II vessels at attractive prices for conversion to specialized container vessels and for fleet replacement purposes, it was not necessary for many years for carriers to construct new vessels. For example, no new cargo vessels were constructed by Matson during the period 1946-1970.

In 1957 Matson's U.S. Pacific Coast/Hawaii fleet consisted of 15 vessels, all acquired as surplus units from the federal government at a total price--in 1975 dollars--of approximately \$40,200,000. During the period 1957-1970, however, Matson invested a total of \$39,500,000 in the conversion of such vessels to specialized container vessels, as well as \$46,100,000 for related shoreside equipment required for such specialized operations. This infusion of private risk capital brought the innovative concept of containerized shipping to the Pacific Basin, the economics of which made it possible for Matson to forego any general increase in its freight rates for a ten-year period from 1961 to 1971.

Finally no suitable surplus conventional vessels were available for conversion, and in 1970 Matson took delivery of two new container vessels at a capitalized construction cost of \$21,100,000 each; in 1973 Matson took delivery, under lease arrangements, of two trailer vessels with a total capitalizable construction cost of approximately \$30,600,000 for each vessel. Matson now has reluctantly contracted for construction of one new container vessel of the same design as those delivered in 1970 but at a contract cost at delivery of not less than \$56,920,000. If Matson exercises an option to purchase two rather than one vessel, the contract price per vessel would be \$49,914,000, as compared with the 1970 capitalized construction cost of \$21,100,000. The 137% increase of \$28,884,000 per vessel is due to increases in labor and material costs.

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For example, the Shipbuilders Council reports that the index of straight-time hourly earnings (June, 1962 = 100) for labor in the U.S. private yards has moved from 116.8 in December, 1967, to 197.6 in February, 1976, when Matson contracted for the vessels the cost of which is being compared. The index for materials (iron, steel, propulsion and all other machinery and equipment) moved from 100.0 in 1967 to 190.1 in February, 1976. In February, 1968, a major supplier's price for carbon steel plate was \$158 per long ton; in October, 1974, the shipyard's cost for plate from this same supplier had escalated to \$383 per long ton. To construct a containership of Matson's design requires approximately 12,000 long tons of steel and 2,000,000 manhours of shipyard labor.

In the past three years, shoreside equipment costs have gone up 50 to 75 percent and fuel oil costs have quadrupled. Maritime labor costs have doubled in the past five years.

If we are to continue to have privately owned carriers operate in some of the domestic offshore trades without federal operating or construction differential subsidies, the investment climate must be improved by diminishing the risk of and uncertainty over the return to be realized from the investment in modern, more efficient replacement vessels and related shoreside equipment.

Elements of risk and uncertainty -- now heightened by the unprecedented escalation in operating costs and investment capital

required -- include for example, the following in the U.S. Pacific Coast-Hawaii trade:

1. Free entry-exit to and from the trade

Any U.S.-flag carrier (provided that it does not receive federal operating-differential subsidy for operations in foreign commerce) may enter or withdraw from the Hawaii trade without benefit of prior permission or certification. U.S.-flag carriers operating vessels built with federal construction-differential subsidy on mixed domestic-foreign voyages may and do participate and compete with Matson in that trade. Because there are at present no certification requirements, such competing carriers may at their election serve only those ports in the trade, or provide those specific services, that are most profitable.

2. Price competition

There is no collective rate making in the trade.

3. Sizing fleet to demand for service

Prior to containerization Matson operated "standard" vessels in the sense that they were those vessel types generally operated by U.S.-flag carriers as well as by many foreign-flag operators. Consequently, if a new competitor entered the Hawaii trade, Matson could react to a reduction in its share of the total cargo volume by chartering out or selling one or more of these "standard"

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fleet units, for which there was a ready market. Today, however, we have specialized vessels tailored to the requirements of the Hawaii trade and having a capacity for as many as 1,153 24-ft. containers. There is no ready market for these specialized vessels, and they obviously cannot be cut down in size as a response to the reduced demand brought about by the entry of new competitors into the trade.

4. Regulatory lag

Concurrent with filing a general increase in rates, common carriers such as Matson are required by FMC to file detailed financial data supportive of the increase for evaluation by certain of FMC's staff. The preparation of revised tariffs and such supportive data is the first step in what can constitute substantial "regulatory lag" as outlined below:

- a. Elapsed time required for preparation of tariff revisions and supportive financial data - 60 days
- b. Elapsed time between date of filing tariff revisions and supportive financial data and scheduled effective date of the increase - 45 days
- c. Suspension period - 120 days
- d. Total elapsed time before an increase becomes effective - 225 days

5. Minority role in labor-management collective bargaining
- Matson negotiates with the U.S. West Coast maritime and longshore unions as a minority member of the Pacific Maritime Association (PMA). The balance of the Association's membership consists of stevedores and carriers engaged in the foreign commerce including U.S.-flag carriers, some with and some without construction and/or operating-differential subsidy.

Those members engaged in the foreign commerce can pass through any increase in longshore labor costs by filing tariff increases on 30 days' notice without fear of the effective date being suspended while those U.S.-flag carriers receiving operating-differential subsidy pass through the majority of any increase in offshore union wages and benefits to the taxpayer and the balance by tariff increases not subject to suspension.

6. Labor-management disputes
- Since 1946 Hawaii has suffered, as a result of such disputes, a total of 35 separate interruptions in ocean transportation service with the aggregate length of such interruptions totaling almost four calendar years. An offshore maritime strike on the Pacific Coast has a more immediate impact on Matson's Hawaii service than it does on the vessel operations of the other members of PMA who are engaged in the foreign commerce. For example, if a strike had commenced on April 1,

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all of Matson's vessels in that service with one exception would have been strike-bound at Pacific Coast ports by April 9. On the other hand, all of those vessels operated by other U.S.-flag carrier members of PMA would not be strikebound until May 21 -- 51 days after the strike commenced.

All vessels would become strikebound as they arrived inbound at a U.S. Pacific Coast port; the difference in time before Matson's vessels and other U.S.-flag vessels would become idled at such ports is due to the greater distances traveled by those other carriers in the foreign commerce. For example, one such carrier operating vessels between the Far East and California would require 45 days to complete a round trip voyage between those two areas. Some Matson vessels, however, can complete a voyage to and from California and Hawaii in as few as 10 days. As a consequence, those Matson vessels that have commenced a voyage before the strike begins will be strikebound upon their return to a Pacific Coast port in a relatively short time; those union personnel manning Matson vessels are "on the beach" without income at a much earlier time than those union members serving on other PMA U.S.-flag vessels.

7. Delay in rendering of decisions by FMC

The regulatory agency as well as the shipping public and the carriers have an interest in expeditious determinations;

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prolonged proceedings are expensive and time-consuming, and the carriers' lending institutions view pending general rate increase hearings and investigations with apprehension.

To summarize at this point, it becomes clear that new technology in shipping--without which freight rates would be astronomically high--when combined with the effects of inflation and the other factors described above makes it timely that the Congress undertake to update certain aspects of the manner in which the domestic offshore carriers are regulated, by wherever possible reducing risk and uncertainty for those providing the investment capital necessary for the further modernization of the offshore interstate transportation system.

Rate of Return Guidelines

The bill under consideration by the Committee makes provision for the development and promulgation by FMC of rates of return on rate base, i.e., the relationship of net income, after State and Federal income tax, to the sum of the depreciated value of the carrier's assets and working capital.

The Act presently does not place any statutory obligation on FMC to ensure that the regulated party earns a fair and reasonable rate of return; this is not to say that FMC as currently constituted has no concern with this matter, but only that they or successor Commissions have no statutory obligation in that regard.

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Under present law investors have no FMC rate of return guidelines or determinations reflecting current economic conditions upon which they can base their expectations as to return on their capital. Neither FMC nor its predecessor agencies have made a determination as to what constitutes a maximum fair and reasonable, and thus lawful, rate of return.

Matson supports the proposal that prima facie rates of return be promulgated after notice and opportunity for hearings, since it is our belief that such rates of return would serve as useful guidelines (1) for the benefit and encouragement of investors, (2) for possible use in exercising the suspension power, and (3) for use during general rate increase proceedings in expediting conclusion of the same.

That such promulgation would be helpful as an encouragement to investors, by giving them an indication of the rate of return that would be lawfully permitted, can be attested by my personal experience. After an effort spanning the last 18 months I recently did receive approval from Matson's Board of Directors to enter into a construction contract with Bath Iron Works Corporation for the construction of the new containership previously referred to in my testimony. As a result of the periodic and continuing effort to convince Matson's Board to make this additional capital investment, I am completely and currently conversant with the understandable reluctance to invest such substantial amounts of capital in the environment of uncertainty that now

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prevails and will prevail in the foreseeable future in the Pacific Coast-Hawaii trade. Given the history of rates of return in that trade the people of Hawaii are indeed fortunate that someone, and in particular a corporate citizen of Hawaii, has been willing to invest in Hawaii's life-line with the U.S. Mainland. As the following table demonstrates, Matson's experienced rate of return on rate base has clearly been unsatisfactory with the exception of the six-year period from 1962 to 1968 which were the initial years of containerization with rapid though short-lived improvement in productivity. Virtually risk-proof U.S. Treasury Bonds offer a more satisfactory rate of return.

Rates of Return: Pacific Coast-Hawaii Trade

<u>Period</u>	<u>Matson's Average Rate of Return on Rate Base (1)</u>	<u>Average Yields of Long-Term Treasury Bonds (2)</u>
1947-1956	1.287	2.598
1957-1961	2.998	3.780
1962-1968	14.273	4.439
1969-1974	4.855	7.393
1947-1974	5.604	4.047

(1) Roseman's Schedule 1: FMC Docket No. 75-57

(2) Treasury Bulletin: U.S. Treasury Department,
Office of the Secretary.

With the exception of ship channel improvement at ocean ports, the citizens of the State of Hawaii do not receive any direct

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federal financial assistance for their interstate ocean transportation system, unlike many of the contiguous Mainland states which derive economic benefits from federal assistance for construction, improvement and maintenance of inland waterway systems or construction of highway systems for movement of their interstate commerce. Hawaii depends on continued capital investment by common carriers serving the state, a dependence that has been well served by the development of the container shipping system and, until the recent inflation, rate stability.

It is in the public interest that private enterprisers be encouraged to invest in modern and more efficient vessels and related equipment, not only for the contribution that such investment makes towards reducing costs, or at least slowing the rate at which costs increase, but also towards improving service that is, thereby, made possible. For example, Matson's two Enterprise class container vessels make it possible to provide day of week vessel departures from the West Coast which, by reducing uncertainty as to the total transit time for goods coming from the Mainland, permit some reduction in inventories at Honolulu and thus the cost of doing business. The same result is realized by having day of the week vessel arrivals at Honolulu, with goods arriving in sufficient time for week-end shopping by consumers but not too far in advance of the week-end to require prolonged warehousing as inventory, the costs of which would of course be borne by consumers. Another example is the recent institution of direct calls at Hilo, Hawaii, by Matson's high speed and efficient trailer vessels, the SS LURLINE and SS MATSONIA. These direct calls reduce the transit time for goods

moving from the Mainland suppliers to their customers in Hawaii.

The Civil Aeronautics Board has, through rule-making procedures, developed and promulgated fair and reasonable rates of return on investment which are used not only for the purpose of establishing the lawfulness of a general rate increase but also as a benchmark for application of the Board's suspension power (see CAB Docket 21866; instituted on January 29, 1970, and decided on April 9, 1971). It is our belief, therefore, that FMC should have an equal capability, pursuant to its own rule-making procedures, for development and promulgation of the proposed rate of return guidelines. Reasonably current data suitable for development of guidelines for the Hawaii and Puerto Rico trades will be available in two general rate increase proceedings now in progress at FMC -- Dockets 75-57 and 75-38.

Suspension Power

As a common carrier by water in the domestic offshore trades, Matson became initially subject to the Act and its suspension provisions in 1938. Since World War II intervened, however, Matson and other domestic offshore carriers have been subject to complete economic regulation, including suspension, only since 1946-1947. For this reason the following history of the frequency with which the suspension power has been exercised in the Pacific Coast-Hawaii trade begins at that time:

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Year	Docket No.	% of Increase	Date Filed	Suspended	Decision as to Rate of Return		
					Date	%	Not Unlawful
1947	660	20.0	2/ 1/47	No	8/24/48	3.00	Yes
1957	808	12.5	12/ -/56	Partial	12/ 9/57	6.70	Yes
1959	869	12.5	8/ -/59	No	6/28/62	8.32	Yes
1961	941	10.0	7/ -/61	No	6/28/62	10.59	Yes
1961	960	7.6	10/ -/61	Yes	Increase cancelled		
1971	71-18	12.5	1/ -/71	Partial	1/31/73	9.15	Yes
1973	73-22	12.5	2/15/73	No	(Pending)		
1974	74-36	*25.5	7/25/74	Partial	Proceeding Discontinued		
1975	73-22(sub 1)	5.0	3/ 7/75	No	(Pending)		
	74-36(sub 1)	*3.0	3/ 7/75	Yes	(Pending)		
1975	75-57	5.4	10/16/75	Yes	(Pending)		

*Applies to automobiles only.

Summary:

Complete suspension - 3
 Partial suspension - 3
 No suspension - 5

Total 11

In all instances where a decision has been rendered, the projected rate of return on rate base was found to be "not unlawful," and as a consequence the effect of exercising the suspension power was to deprive Matson of additional operating revenues to which it was entitled. Since 1947 these revenues total \$3,924,000 in 1975 dollars.

The loss of revenue resulting from suspension of the effective date of a general increase in rates, is of more significance than heretofore because of the unprecedented amount of capital currently required for replacement of vessels and related equipment; the Act presently provides the regulator with unlimited power to impose the suspension penalty. It is a deterrent to

the investor to have the effective date of general rate increases suspended even before the increase has been found to be unlawful; the practice of penalizing a carrier before he is found "guilty" is no longer consistent with economic reality.

Even without suspension, rate payers under current law have the benefit of considerable delay in the pass-through to them of increased operating costs or other factors necessitating a general increase in rates. Such delay is primarily caused by the lead time required for preparation of supportive financial data and issuance of corrected tariffs, both of which in accordance with FMC regulations must be filed concurrently with FMC. Such delay normally amounts to about 105 days, during which period the carrier absorbs increases in costs and/or the effect of an inadequate rate of return.

Why such extended delay -- even without suspension of the effective date of a general rate increase? Before the required supporting income statements can be prepared, Matson must construct a cargo forecast -- after contacting all major shippers -- and a fleet employment plan. A financial forecast then is assembled, and a determination made as to the amount of general increase that will be needed.

The next step entails the preparation of financial statements, which literally requires hundreds of separate calculations and the preparation of detailed supporting work papers for use by FMC auditors.

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The final step involves a decision as to how the increase is to be distributed and the typing and preparation of new tariffs, reflecting the increase in rates for filing with FMC. Sixty days is required for this total process.

Matson ordinarily files on 45 days notice in order to provide FMC with sufficient time in which to review the considerable volume of financial and other material which is furnished by it to the Commission in justification of the increase. We have found that it is not possible to resolve with the Commission within the customary 30-day filing period the questions which inevitably arise in connection with the supporting data.

During this 105 day period -- 225 days if suspension is ordered -- Matson absorbs cost increases, to the unfair benefit of the shipping public and the consumer. This situation is illustrated by citing Matson's latest general increase, which is the subject of hearing and investigation in FMC Docket 75-57:

- 8/8/75 - Determination made that Matson needed additional annual operating revenues of \$6,100,000.
- 10/16/75 - Filed with FMC 5.4% general increase to become effective on 12/8/75.

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- 12/3/75 - By order served 12/3/75 FMC suspended the 12/8/75 effective date of the increase until 4/8/76 and set the matter for hearing and investigation as Docket No. 75-57.
- 12/18/75 - Matson petitioned for reconsideration and the vacating of the suspension order.
- 1/7/76 - Commission granted reconsideration with replies to Matson's petition to be filed by 1/19/76.
- 1/7/76 - Pre-hearing conference convened by Administrative Law Judge.
- 1/16/76 - Extension of time to 1/23/76 granted to Hearing counsel for filing of reply to Matson's petition of 12/18/75.
- 2/27/76 - Petition for the vacating of suspension denied.
- 4/8/76 - Suspension period expired and general increase became effective subject to an ultimate finding as to its lawfulness.
- 6/1/76 - Evidentiary hearing commenced and currently is in progress, with completion on about 6/25/76.

As is usual in these situations, a major portion of the increased costs to be recouped by the increase in freight rates is attributable to longshore and maritime labor cost increases, which with the subsequent completion of contract negotiations became effective retroactively to 7/1/75. Without suspension the increased rates would have been effective five months later on 12/8/75; with suspension the rates became effective on 4/8/76, nine months after Matson began to absorb the increase in only this one component of its operating costs.

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When Docket 75-57 will be concluded cannot at this time be predicted. In a prior proceeding, Docket 71-18, however, the Administrative Law Judge's initial decision was served approximately four months after completion of the evidentiary hearings with a final report by the Commission served approximately eleven months after service of such initial decision (see Attachment A). On this basis a final report would be served on about 10/1/77.

Conclusions and Recommendations

Rate of Return Guidelines

In our opinion it is preferable for all parties that promulgated rates of return be prima facie rather than be considered as standard rates, and desirable that the statute specify that rates of return be developed through the hearing process.

Because of the prevailing economic differences among the various domestic offshore trades, it would be appropriate and desirable that rates of return be developed and promulgated for each trade. Rates of return for each trade should be based on and limited to the operations of those carriers providing service both to and from U.S. mainland points and ports in the respective domestic offshore community with self-propelled vessels, i.e., Puerto Rico Maritime Shipping Authority in the Atlantic/Gulf-Puerto Rico trade; Sea Land Service, Inc. in the Pacific Coast-Puerto Rico trade, and Matson Navigation Company in the U.S. mainland-Hawaii and Guam trades. All other operators of self-propelled vessels serve the offshore communities on an incidental wayport basis as a part of their operations in the foreign commerce.

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In those instances where general rate increases are filed subsequent to such promulgation, the prima facie rate of return would be subject to potential disprovement during any ensuing hearing by either the carrier who may wish to argue for a higher rate of return or by protestant intervenors who may argue for a lower rate of return.

The prima facie approach thus does provide an opportunity for the parties to the proceeding to convince FMC that the rate should be changed. Since the major parties of interest would participate in the development of the initial promulgated rate of return, however, such opportunity probably would be exercised only when there has been a substantial change in circumstances without any subsequent change in the previously promulgated rate of return. Any changed rate of return included as part of FMC's ultimate finding as to the lawfulness of a general rate increase would then become the prevailing prima facie rate of return for operators of self-propelled vessels and for the trade if that carrier is the only one providing dedicated turn-around service in the trade.

It is understood that any promulgated rate of return does not guarantee in any way that the carrier will earn such return from his operations; the carrier merely has an opportunity to earn it but in attempting to do so remains subject to those operating risks inherent in the shipping industry.

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Suspension Power

It is clear that without suspension the freight rate payer and presumably his customer enjoy a period of at least 105 days during which the regulated carrier absorbs cost increases which he never recovers.

But, even when the carrier's rate increase becomes effective there is much support for the proposition that any immediate pass-through of the increase to consumers is unwarranted and unnecessary. For example, we estimate that approximately 87% of the total cargo transported by Matson to Hawaii moves into inventory; it is customary to maintain 30-day to 60-day inventories of non-perishable goods in Hawaii. Therefore, a pass-through of an increase in freight rates on goods received in Hawaii prior to the effective date of the increase brings about a windfall benefit to the rate payer, but not necessarily to his customer the ultimate consumer.

There are those who would insist that the suspension power must be retained in order to protect the shipping public, but who is the shipping public? In the Hawaii trade those consignees receiving goods transported at total freight charges of \$100,000 or more per annum -- including the U.S. government and many national and Hawaiian corporations with operating revenues many times more than those of Matson -- account for approximately 80% of Matson's total westbound revenue. The effect of the most recent suspension was to deprive Matson of \$1,750,000 in new revenue, 80% or \$1,400,000 of which accrued to the benefit of the referenced consignee group.

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We recognize the concern that has been expressed concerning the interests of the shipping public and its customers. But, given the dramatic social and economic changes since 1933, we respectfully submit that it is in the public interest that the carrier's interests receive a greater degree of recognition. Because of the "lag" previously described, the public has the benefit -- without suspension -- of a period of at least 105 days during which cost increases are absorbed by the carrier. The time at which Matson's customers pass through a freight rate increase is not a matter within the control of either FMC or the regulated carrier, and consequently to suspend a general increase for the purpose of possibly delaying such pass-through is unwarranted and unfair to the carrier.

National retail organizations, especially those which extend national or regional pricing of their products to the Hawaiian market, probably absorb the increase in freight rates until such time as they can combine it with other cost increases for pass-through. Our regulated customers -- freight forwarders, NVOCC's and used household goods carriers -- ordinarily cannot pass through the increase until at least 30 days after it becomes effective in Matson's tariff.

There are those who propose that in lieu of revising the suspension power, attention be focused on seeking ways of bringing regulatory proceedings to a more expeditious conclusion. Matson shares with FMC and others a concern for seeking ways to expedite the conclusion of proceedings before FMC in a manner that would be consistent with the requirements of due process. In

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FMC Docket No. 75-36--a rule-making proceeding undertaken for the purpose of amending FMC's rules of practice and procedure--Matson submitted various suggestions relative to bringing about procedural expedition. However, expedition of proceedings cannot be considered as a substitute for removing the suspension power from general rate increases. Modernization of both is urgently needed.

How much expedition reasonably can be expected? Again using the Docket 71-18 chronology for discussion purposes (see Attachment A), it would seem in that case that the pre-hearing conference and the evidentiary hearing itself commenced as quickly as could be expected following service of the order of investigation; however, such hearings were conducted in three phases over a period of about 5½ months. If the hearings had been completed in one month's time, and a Commission final report issued within 6 months rather than 11 months after the administrative law judge's initial decision was served, the proceeding would have been concluded by 4/15/72 rather than 1/31/73. With a conclusion date of 4/15/72 the proceeding in Docket 71-18 would have run for 13½ months, rather than 23 months from the service date of the order of investigation. In applauding this desirable improvement, however, it must be recognized that there is a limit to how much expedition can be realized consistent with the requirements of due process. Therefore, if the suspension period were to be lengthened for the purpose of permitting conclusion of proceedings during such period, it would be necessary to expand the period from 4 to 12 or 13 months.

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What is accomplished by suspending the effective date of a general increase? In order to answer that question we must understand what transpires immediately prior to service of a suspension order.

As previously described, Matson normally files its revised tariffs along with the voluminous supportive financial data required by FMC General Order 11 on a date not less than 45 days prior to the scheduled effective date of the general rate increase. Inevitably there are interested parties who file protests with FMC requesting that the effective date of the increase be suspended and the matter docketed for hearing and investigation; such protests must be filed within 25 days of the increase's effective date. During the 45 day notice period, FMC conducts analysis and review of the revised tariffs and supporting data that is tantamount to examining all of the issues that would be considered during an evidentiary hearing. Given the volume of material, it is not practical to attempt to reach conclusions on such issues for the purpose of deciding whether the suspension power should be exercised and the matter set for hearing and investigation.

The basic purpose of the 45-day notice is to provide the shipping public with adequate advance notice that a general increase in rates has been scheduled. The notice period should be used for that purpose and for determining if a hearing and investigation are necessary, rather than under pressure of time to make a decision about suspension. Any such decision would be especially difficult and subjective when a guideline as to the lawful rate of return

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is not available. But, with or without the guideline, those who wish to retain the existing suspension power and even enlarge the suspension period are taking the position that it is not sufficient for the carrier to absorb cost increases for 105 days but that he should do so for 225 or more days.

The interests of the shipping public require that capital be invested periodically for the purpose of providing the most efficient and modern transportation service between the U.S. mainland and the domestic offshore communities, while at the same time providing protection to the shipping public from unfair or unreasonable rates and charges. A means for reconciling these two requirements is provided by the bill pending before this Committee -- the refund provision.

It has been proposed that when changed rates or charges exempted from suspension are found to be unjustified in whole or in part, carriers would be required to make refund of excess charges collected plus interest. There are those who claim this procedure to be unworkable on the grounds that it does not provide for refund to the rate payer's customer to whom the excess charge may have been passed on. Even if a procedure for refund to third parties did exist, what legal right would the carrier or FMC have to convert what rightfully belongs to the rate payer for refund to any third party? There is adequate precedent for a refund procedure, and it is our sincere belief that in the public interest the refund arrangement is a satisfactory trade-off for eliminating the suspension power in cases of general rate increases.

To say that the refund proposal is unworkable because of an inability to make the refund to the rate payer's customer is to say that the existing provisions of Section 4 of the Act are unworkable. Section 4 empowers FMC to prescribe and order enforced just and reasonable maximum rates. At the conclusion of a general rate increase proceeding, therefore, FMC may order a reduction in rates to the benefit of the rate paying shipping public. It cannot order a reduction in prices paid by the rate payer's customer. It is clear that the "consumer," for purposes of the Shipping Acts, is that person using the services and paying the charges of the regulated carrier.

The bill pending before the committee proposes a revision of the suspension power only to the extent of exempting a certain level or portion of general rate increases from its application. All other changes in rates or charges as well as changes in regulations, practices or conditions of carriage would remain subject to possible suspension.

We again express our appreciation to you Mr. Chairman, and to the members of the committee, for this opportunity to convey our views on this most important legislation. At this point we request the committee's consideration of a substitute to H.R. 10841, the text of which is set forth in Attachment B hereto; the substitute is compared with H.R. 10841 in Attachment C.

CHRONOLOGY

FMC DOCKET NO. 71-18

1/5/71 Matson filed a 12½% rate increase to become effective March 1, 1971.

2/24/71 The Commission issued an order of investigation.

3/6/71 9% of the increase became effective.

3/23/71 A pre-hearing conference was held in Washington.

4/28/71 Matson served exhibits in testimony.

5/18/71 Hearings commenced in San Francisco and lasted for seven days.

6/20/71 The 3½% increase became effective.

10/17/71 Hearings commenced in San Francisco and lasted for two days.

10/26/71 Hearings commenced in Washington and lasted for four days.

12/7 & 23/71 Initial briefs were served.

1/31/72 Reply briefs were served.

3/9/72 The examiners initial decision was served.

3/24/72 Exceptions were served

4/10/72 Replies to exceptions were served.

6/6/72 Oral argument was held in Washington.

1/31/73 The report of the Commission was served and the proceeding was discontinued.

A BILL

To amend the Intercoastal Shipping Act, 1933, for the purpose of assuring adequate, modern, and efficient transportation by water between the noncontiguous States, territories, and possessions of the United States, and the United States mainland.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That section 3 of the Intercoastal Shipping Act, 1933 (46 U.S.C. 845), is amended by adding at the end thereof the following new paragraph:

"The Commission shall within twelve months after enactment of this provision, and from time to time thereafter as substantial change in circumstances may make appropriate, develop, and promulgate a reasonable prima facie rate of return for common carriers by water operating self-propelled vessels, with development of the initial rate of return to be preceded by notice and an opportunity for a hearing: *Provided*, That such rates of return shall include as determinative factors—

"(A) the cost of replacing vessels and related equipment including that associated with stevedoring and terminal operations;

"(B) the degree of risk associated with the investment of capital;

"(C) the prevailing cost of money in capital markets;

“(D) the need in the public interest for the continued provision by carriers of certain unprofitable segments or elements of service; and

(E) other appropriate factors.”.

SEC. 2. Section 3 of the Interoceanic Shipping Act, 1933 (46 U.S.C. 845), is amended by inserting at the end of the second sentence of the second paragraph the following: “*Provided, however,* That when a carrier files a change in rates and charges there shall be no suspension of the effective date of that portion of such changed rates and charges which will provide the carrier with an opportunity to realize during the succeeding twelve months an increase in gross revenues not exceeding that sufficient to raise the carrier's rate of return to the *prima facie* rate of return, which until its initial development and promulgation, shall be for this purpose 10.59 percent on rate base. Nothing in this paragraph shall be construed as establishing a presumption that any increase in gross revenues in excess of such amounts is unlawful or should be suspended. If at the conclusion of any proceeding the Commission finds that the portion of the changed rates and charges hereby made exempt from suspension is unjustified in whole or in part, it may order the carriers or carriers concerned to make appropriate refunds to the persons entitled to the excess charges collected during the four-month period of exemption from suspension, plus interest at a rate which is equal, on the date the

changed rates or charges are filed, to the average yield of marketable securities of the United States having a duration of ninety days.”.

ATTACHMENT C

Substantive differences between H.R. 10841
and the substitute bill:

Rate of return guidelines:

	<u>H.R. 10841</u>	<u>Substitute</u>
Promulgation within	6 months	12 months
Notice and hearing	No	Yes
Rates of return on	rate base & common equity	not specific

Suspension power:

Benchmark for applying suspension exemption	7% increase in revenues	Increase in revenues raising rate of return to level of guideline rate
Frequency limitation on exemption	once each 12 months	none except through opera- tion by bench- mark criteria
Changed rates limitation	general increase as defined	any increase
Refund accrual period	Not specific	4 month exemp- tion period
Refund rate of interest defined	No	Yes

Mr. DOWNING. Our next and last witness is Mr. Stanton P. Sender, Chairman, Legislative Committee, National Industrial Traffic League of Washington, D.C.

STATEMENT OF STANTON P. SENDER, CHAIRMAN, LEGISLATIVE COMMITTEE, NATIONAL INDUSTRIAL LEAGUE, WASHINGTON, D.C.; ACCOMPANIED BY ROBERT RICKER, MEMBER, INTERCOASTAL AND COASTWISE TRANSPORTATION COMMITTEE, NATIONAL INDUSTRIAL TRAFFIC LEAGUE AND MANAGER, TRANSPORTATION, EASTERN REGION, GEORGIA-PACIFIC CORP.

Mr. DOWNING. Mr. Sender, will you identify your colleague for the record?

Mr. SENDER. Thank you, Mr. Chairman.

My name is Stanton P. Sender. I am transportation counsel for Sears-Roebuck & Co., and I am appearing today as the chairman of the Legislative Committee of the National Industrial Traffic League.

Accompanying me today is Mr. Robert Ricker, a member of the league's intercoastal and coastwise transportation committee and the manager of transportation, eastern region, of the Georgia-Pacific Railroad.

Mr. RICKER. Georgia-Pacific Corp.

Mr. SENDER. Excuse me.

I have an economy size statement of three pages and I will ask that it be incorporate into the record.

Mr. DOWNING. We appreciate it.

Mr. SENDER. If the total statement can be incorporated, I will summarize it.

Mr. SENDER. The National Industrial Traffic League appears today in opposition to the no-suspend and rate-of-return provisions of H.R. 10841, but would support provisions to speed up regulatory proceedings.

I will not describe the league. It has appeared before this committee before, including hearings which involved the Intercoastal Shipping Act.

The provisions of the bill have been described by previous witnesses. It has also been described by the Chairman of the Federal Maritime Commission, who said that the definition of "general increase" would allow selective increases as well as across-the-board surcharges and increases primarily on westbound or eastbound trade as well as on both.

It is also to be noted that, as the Chairman of the Federal Maritime Commission did, that one factor in the rate-of-return sections specifies need of continuation of unprofitable segments or elements of service.

Not mentioned by either prior witness is that an item missing from the Federal Maritime Commission's consideration in determining fair return on a carrier's investment is the requirement of honest, economical and efficient management, a requirement we think that should be in that provision.

The no-suspend concept is a favorite of the Department of Transportation and the administration and has been proposed in various transportation bills submitted in Congress.

Unlike the bills submitted by the Department of Transportation, the present bill does not contain a no-suspend zone up and down and is not accompanied by regulatory reforms.

Instead, it contains a one-way, 7 percent up only and contains no provision to insure that competition, where it is effective, is substituted as a protection for the shipping public in the place of regulation.

The league has opposed no-suspend zones and will oppose them whether they appear in aviation bills, motor-carrier bills or in this ocean bill. The league, instead, favors reducing timelag. We have some specific suggestions that are not incorporated in the statement, but in fact were adopted by Congress in February of this year and applied to the Interstate Commerce Commission.

The Interstate Commerce Commission also had its over 9-year-old hearings; the Rock Island Railroad merger proceeding went 12 years.

The members of the House Interstate and Foreign Commerce Committee felt that they should do something; and what they did in section 303, 305 and 307 of Public Law 94-210, was to enact by law specific deadlines for each stage of the proceeding before the Interstate Commerce Commission involving railroad cases, including rate cases.

Second, they gave the tools to the Commission to handle the proceedings within the time period allotted, and those tools were that the Commission could establish procedures and revisions of procedures in order to accomplish expedited proceedings; and, third, the Congress required the Interstate Commerce Commission to establish uniform cost and revenue accounting systems so that it could end the cases within realistic and reduced timelag periods.

If contrary to our suggestion, this committee proceeds with a no-suspend zone, we would suggest that you follow the safeguards adopted in Public Law 94-210 and not apply it where a carrier does not face effective competition from other carriers or other modes of transportation; in other words, where the shipper and the consuming public is not protected by effective competition.

The league does support the principle that the carrier deserves a fair rate of return, provided that there is an honest, economical and efficient management, and we have so testified.

In conclusion, the league does oppose the proposal in this legislation to do away with the suspension zone by putting in a 7 percent up or down provision, but does strongly favor reducing the timelag before the Federal Maritime Commission. We had one additional suggestion with respect to enabling carriers in the domestic trades to provide service at lower cost; and it is found on page 4 in connection with shipbuilding.

In summary, the league, on behalf of shippers and receivers in the trade subject to the Intercoastal Shipping Act urges the provisions of these bills not be adopted but, instead, consideration be given to measures for speeding up regulatory proceedings.

My colleague, Mr. Ricker, has a few brief comments.

Mr. RICKER. Thank you, Mr. Chairman.

Naturally, I adopt everything that Mr. Sender has said. We do support the need and the requirement of carriers for an adequate return; but we do feel that a legislatively stipulated return on investment is inadequate, for several reasons.

One of them is that because of the cyclical nature of business, where you might have 5 percent one year and 15 percent in another

year, and the Commission just couldn't react to that kind of a situation.

Another one, as Mr. Bakke pointed out, you have tug-barge operators who have a very low capital base.

For example, there are two such operators sailing between Puerto Rico and the east coast.

For example, the Puerto Rico Maritime Shipping Authority which acquired the three shipping lines operating to Puerto Rico, acquired three trans-American trailer-transport vessels by taking over their 20-year charter. I do not think that can be included in a revenue base.

Again, we definitely feel that something has to be done to speed up the Federal Maritime Commission decisions; and I think that Mr. Bakke has indicated that they are taking steps in that direction.

One problem is that many times the carriers themselves will ask for delays, and if you remove the suspension period, then they have no incentive whatsoever to expedite proceedings, and once that extension period has expired, they have every incentive to procrastinate and extend out the time of the decision of the Federal Maritime Commission because all the time they have the money coming in and it might turn out eventually to be an unreasonable level of rates; so we would rather see the suspension continue, but expedite the proceedings.

Thank you.

Mr. DOWNING. Thank you.

Would you oppose the suggestion that we have no-suspend, but impose treble damages?

Mr. RICKER. That would be very difficult to administer. We would oppose a no-suspend.

Mr. SENDER. We would prefer that you go directly to the heart of the problem, which is delay.

Mr. DOWNING. How many shippers in our domestic offshore commerce does your organization represent? Will you please file a list of these shippers and the approximate amount of cargo shipped by each of the lines?

Mr. SENDER. I could supply you with names of members of the league who have indicated that they have an interest in shipping in these trades—the intercoastal and coastwise trades.

We do not have available the amount of cargo. We would have to query each one to ascertain the amount of cargo they shipped; but we would supply the names of the companies that have indicated an interest in these trades.

Mr. DOWNING. Could you explain in more detail exactly what kind of measures you think should be adopted by the Federal Maritime Commission in order to speed up these regulatory proceedings?

Mr. SENDER. Yes.

We do not believe the answer though is that the Federal Maritime Commission should take action solely. That was our testimony to the House Interstate and Foreign Commerce Committee.

Mr. DOWNING. By imposing a deadline?

Mr. SENDER. Yes.

There are three steps necessary. The first is in section 303 of this bill.

It provides time-limits for each step of the way of the proceedings before the Commission. It is section 303 of Public Law 94-210. These were the Congress' decisions, not necessarily the league's, on how extended a period of time there should be.

But in the Matson outline of the case they selected, you will notice in docket 71-18 that there were something like 6 months from the time the case was submitted after oral argument until the full Commission itself acted. That was after all the hearings and everything else.

What the House Commerce Committee did for the Interstate Commerce Commission was to say that regulatory proceedings have to be ended at a certain period of time and then the Commission must act within a certain period of time; and you must have a final decision.

If the Commission is not meeting those final decision requirements imposed by Congress, then they must report to the Congress, and then the House Commerce Committee can take a look as to why it isn't meeting the requirements. It is not enough to tell the Agency that they have got to meet deadlines. You have to give them the tools with which to do it. The legislation provides for a reform of all the rules of practice of the Interstate Commerce Commission.

The Interstate Commerce Commission said that some of the American Bar Association supported administrative procedure requirement caused the delay. The Commission was directed to reform its procedure to come up with a means of receiving evidence and taking testimony, so that they can use computerized procedures.

The amazing thing about these rate cases which are legislative and rulemaking is that they are not, strictly speaking, an adjudication proceeding. Yet, they are the last handcrafted product here in Washington. Each one is massaged. Each record is separately handled. They involve repetitive patterns, as Matson indicates. There are many which are really the same. You could select cases utilizing management by exception. Pick out the exceptional case and handle it.

The league policy favors an initial 90-day period for suspension. We go the opposite way. We think these proceedings can be handled expeditiously by modern techniques of management.

The Commission needs to be given the rules. Thereafter, new rules of practice, enabling the Commission to come to Congress and effectuate new rules so they can handle it are important.

Third, if you are going to have this, you need a uniform cost and revenue accounting system. You cannot have 40 different carriers following 40 different practices. So the Interstate Commerce Commission was told and the Federal Maritime Commission is moving in that direction, to have a uniform cost accounting system so you can computerize them.

These are the three provisions which have been applied to the Interstate Commerce Commission.

Mr. DOWNING. Has the Interstate Commerce Commission had experience enough with this new law so that we could see how they fare?

Mr. SENDER. No, sir. The new law just became effective on February 5.

Mr. DOWNING. Thank you very much, gentlemen. That will conclude for today the hearings on H.R. 10841.

Mr. SENDER. Thank you.

Mr. DOWNING. Without objection, your prepared statement will appear at this point in the record.

[Mr. Sender's statement along with material supplied for the record follows:]

STATEMENT OF STANTON P. SENDER, CHAIRMAN, LEGISLATIVE COMMITTEE, NATIONAL INDUSTRIAL TRAFFIC LEAGUE

The National Industrial Traffic League appears today in opposition to the no-suspend & rate of return provision of H.R. 10841 but would support provisions to speed up regulatory proceedings.

The National Industrial Traffic League is a voluntary organization of shippers, shippers associations, boards of trade, chambers of commerce, and other entities concerned with traffic and transportation service for all carrier modes. Our primary concern is to provide for our members a sound, efficient, well-managed transportation system privately owned and operated. Members of the National Industrial Traffic League are located throughout the United States, consist of enterprises large, medium, and small, which use all modes of transportation by land, river, sea, and air. Carriers are ineligible for membership in the League and since the membership has such a broad base, the League is generally looked upon as representing the shippers' point of view.

For the more than sixty-five years of its existence The National Industrial Traffic League has been dedicated to the development and maintenance of sound conditions in transportation having in mind the needs of the nation, the carriers, and the shippers/receivers who are the consumers of transportation. The League has frequently presented its views to Congress on proposed transportation legislation.

The League submitted its views during the last Congress before this Subcommittee in favor of H.R. 13561 (P.L. 93-487), introduced by Chairman Sullivan, to amend section 6 of the Intercoastal Shipping Act, 1933. The League agreed with Senator Inouye's statement introducing the counterpart Senate bill on March 13, 1974, that: "Repealing the applicability of section 6 would subject all government cargo rates in that trade to economic regulation. As a consequence the government shipper, as does now the commercial shipper, would have the right to file a formal protest with the Federal Maritime Commission as to any change in rates or attendant conditions filed by a carrier, requesting that the effective date of the matter be suspended and set down for hearing and investigation. In this way the Government, as does any shipper, would have full protection from any pricing action taken by the carrier that it may believe to be unreasonable, unduly preferential or unfair."

H.R. 10841, would amend the Intercoastal Shipping Act, 1933, by adding a no-suspend zone, and requiring the F.M.C. to periodically determine rate-of-return guidelines.

Under the provisions of H.R. 10841, once each twelve months, commencing in calendar year 1976, a carrier subject to the Intercoastal Shipping Act could file without suspension that portion of a "general increase" in rates of 7 percent or less. A general increase is defined under the bill as a change in rates that in the aggregate brings about an increase of three percent or more in the carrier's gross revenue, or in 50 percent or more of its tariff items per trade.

It is to be noted that this definition of general increase would allow 7 percent no-suspend selective increases as well as across-the-board surcharges, and increases primarily on westbound or eastbound trade as well as on both.

The second section of the bill would require the F.M.C. within six months and from time-to-time thereafter, to promulgate numerical guidelines as to common carrier rate of return on rate base and common equity including, among others, five factors for specific consideration.

It is to be noted that one factor specifies the need for consideration of continuation of unprofitable segments or elements of service. Not listed in the bill as an item for F.M.C. specific consideration in determining fair return on a carrier's investment is honest, economical and efficient management.

The no-suspend zone concept is a favorite of the Department of Transportation, and has been proposed in various transportation bills submitted to Congress. Originally, the Department proposed a 150 percent zone up and down for railroad and motor carriers; later this was changed to 7 percent the first year; 12 percent the second year; and 15 percent the third year. The Department of Transportation has also proposed similar zones in its air carrier and motor carrier regulatory reform proposals.

Unlike the zone in H.R. 10841, these no-suspend zones proposed by the Department of Transportation are both up and down, and are accompanied by reforms to rate bureaus and entry (in the case of motor and air carriers) to substitute competition, where it is effective, as a protection to the shipping public, in place of regulation.

H.R. 10841 contains a one-way 7 percent up only; and contains no provisions to insure that competition, where it is effective, is substituted as a protection for the shipping public, in the place of regulation.

During the hearings on railroad regulatory reform before the Congress, the League opposed no-suspend zones proposed by the Department of Transportation—noting that where there is effective competition, competition itself provides the ceiling or maximum for such rates.

The League favored instead reducing “time-lag”—speeding up regulatory proceedings and greater freedom for individual carrier management to experiment with innovative rate-making. The League testified:

“The League also favors reducing “time-lag”. The League believes that it is in the interest of the nation and the general public to reduce regulatory time-lag, such as the time between the increases in wages or other costs, and approval of increases in freight rates necessary to meet such cost increases, to the minimum consistent with the interests of consumers and the shipping public; provided there are necessary safeguards to assure adequate notice and justification of the proposed rates, timely receipt of the representations of shippers with respect to such rates, and prompt refunds in interim rate increases exceeding the maximum amounts found reasonable by the Commission in its final determination. The principle of reducing unnecessary regulatory delay applies as well to decreases as increases in rates, and in short, to all regulatory proceedings.

“The League would favor the speeding up of regulatory proceedings through granting the Commission the power to define or limit by general rule, notwithstanding present administrative law requirements, expedited new procedures to handle its proceedings through advance evidentiary filings, guidelines for desired presentations, and the limitation of the right to apply for reconsideration, rehearing or reargument, while preserving necessary safeguards. The ICC should be encouraged to experiment and innovate in handling its workload.”

The League opposes the no-suspend zone in H.R. 10841, urging instead consideration of amendments to reduce regulatory time-lag.

While the League is opposed to a no-suspend zone—and the Congress rejected unlimited no-suspend zones in P.L. 94-210, the new rail legislation—if this Committee goes forward with such a proposal, then, it should add the safeguards adopted in P.L. 94-210.

In the new rail legislation, the 7 percent up and down zone is for two years only, and can only be utilized for increased rates where the railroads face effective competition from other carriers or modes of transportation, for the traffic or movement to which a rate applies.

H.R. 10841 proposes to require the Federal Maritime Commission to periodically promulgate rate of return guidelines for common carriers by water subject to the Intercoastal Shipping Act.

League policy provides: A-5 Fair Return. The carriers are entitled to an opportunity to earn a fair return on their investment under honest, economical and efficient management, to assure the public of adequate and efficient transportation service at reasonable charges, and to assure a continuation of a privately owned and operated transportation system.

While the League agrees that carriers are entitled to a fair return, the League submits these criteria can now be considered by the Federal Maritime Commission and need for this legislation is non-existent. As an example in Federal Maritime Commission Docket 65-57, page 37, paragraph 4 sets forth: “the basic theory of rate regulation is to set rates at a level, which, on the basis of estimated future revenues, will enable the carrier to recover its cost of operation plus a reasonable return on its investment. The reasonable return on investment, in turn envisages an amount sufficient to meet imbedded debt, recovery of depreciation of assets used up in the public service, and sufficient return on the equity investment in light of comparable risks so as to attract equity sufficient to the needs of the company and the expansion thereof as may be prudently required.”

H.R. 10841 proposes adequate rate of return be determined including the need of the public interest for the continued provisions by carriers of certain unprofitable segments or elements of service. This appears to be a method of insuring that low paying cargo is underwritten by high paying cargo in the voyage or in other words the high rates go higher and low rates go lower.

It is to be noted that Congress in Section 205, of the new rail legislation, did provide that the ICC within 24 months establish adequate revenue levels for rail carriers but included the prerequisite for honest, economical and efficient management.

However, since the Federal Maritime Commission can already consider the elements of rate of return as suggested here, there is no need for legislating such criteria for F.M.C. consideration.

As a means to assist the carriers to maintain competitive rate levels, the League adopted the following policy at its 1969 annual meeting: "That the League support legislation that would allow new foreign built ships or partially foreign built ships to operate in domestic trades with United States crews under the U.S. Flag, provided there is a concurrently and equalizing subsidy to American shipyards to enable them to compete with foreign shipyards for the shipbuilding involved and further provided that a system of construction subsidies be provided for U.S. built ships on which construction began after January 1, 1968, designed to protect their economic competitive position."

In summary, the League on behalf of shippers and receivers in the trades subject to the Intercoastal Shipping Act urges that the provisions of these bills not be adopted but instead that consideration be given to measures to speed up regulatory proceedings.

STATEMENT OF SEA-LAND SERVICE, INC.

Sea-Land Service, Inc. respectfully submits this statement with respect to H.R.10841, which would amend the Inter-coastal Shipping Act, 1933, by revising its suspension provisions and by authorizing periodic promulgations of rate of return guidelines.

Sea-Land Service is a common carrier by water operating extensively in the foreign and domestic trades of the United States. Since the late 1940's Sea-Land, and its predecessor companies, have served the U.S. West Coast/Puerto Rico trade, under the jurisdiction of the Federal Maritime Commission. It previously also operated in the U.S. East Coast/Puerto Rico trade and the U.S. Gulf Coast/Puerto Rico trade. However its earnings, and those of its competitors in those trades, were never totally satisfactory. In 1974 the Commonwealth of Puerto Rico instituted its own service in those trades, acquiring for that purpose the vessels which Sea-Land and the other carriers were then operating therein.

Sea-Land's U.S. West Coast/Puerto Rico service is and has always been operated in conjunction with its Atlantic-Pacific

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domestic intercoastal service. The preponderance of traffic moving in the U.S. West Coast/Puerto Rico trade is eastbound, and this unbalanced situation has been alleviated by the carriage of traffic westbound from U.S. Atlantic to U.S. Pacific coast ports. Despite this, however, the service has always been at best a marginal one.

Sea-Land is the only carrier now operating in the U.S. West Coast/Puerto Rico trade, although several other carriers at various times since World War II have served this trade. Among those were American Hawaiian Steamship Company, Pope & Talbot Inc. and Isbrandtsen Steamship Company (as it was then named). However, all of these carriers have long since withdrawn from the trade.

Since 1969 Sea-Land attempted at various times to increase its rates in the West Coast/Puerto Rico trade to compensate for increased operating costs. With one exception every proposed increase has been placed under suspension for the statutory four month period by the Federal Maritime Commission, pending hearing as to its lawfulness. This has led to costly and time consuming litigation. The four months' losses of revenue increases due to the suspensions and the tremendous amount of time, effort and expense involved in defending rate increases before the Commission have cost Sea-Land dearly and have contributed to its present

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less than satisfactory profit position in the trade.

There are presently before the Congress four bills which would amend the Intercoastal Shipping Act, 1933. S.3260, which is before the Senate Subcommittee on Merchant Marine, appears to be identical with H.R. 10841, which is before this Subcommittee. In addition there are S.3180 and S.3261 which have as their stated objectives the assurance of adequate, modern and efficient transportation by water between the non-contiguous States, territories and possessions of the United States and the United States mainland. In a statement submitted by Sea-Land to the Senate Subcommittee on Merchant Marine on June 8, 1976, it was indicated that of the bills under consideration Sea-Land believes that S.3261 will best accomplish the intended purposes. That is to say, while we strongly applaud the objectives of H.R. 10841, and its companion bill S.3260, after due consideration we believe that S.3261 will best accomplish those objectives.

H.R.10841 would allow the carriers, commencing in calendar year 1976 and with a frequency of not more than once each 12 months, to effect general increases in rates without suspension of that portion of such changed rates bringing about an increase of 7% or less in gross annual revenue. In addition, the Federal Maritime Commission would be directed within 6 months after enactment, and from time to time thereafter, as substantial

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change in circumstances may make appropriate, to promulgate numerical guidelines as to common carrier rate of return on rate base and common equity which the Commission deems to be prima facie reasonable. The FMC is instructed in its determination of such guidelines to include therein certain determinative factors, which will be referred to later.

S.3261, on the other hand, while also instructing the FMC to promulgate a reasonable prima facie rate of return for the carriers covered, provides that there should be no suspension of proposed changed rates which would allow the carrier an opportunity to realize during the succeeding 12 months an increase in gross revenues not exceeding that sufficient to raise the carrier's rate of return to the prima facie rate of return, which until its initial development and promulgation shall be 10.59% on rate base.

In other words, during the period prior to the determination by the FMC of a prima facie reasonable rate of return, under S.3261 rates could be increased so as to permit a 10.59% return on rate base, whereas H.R.10841 would permit a maximum increase of 7% per year. We believe that the approach of S.3261 is preferable. In this inflationary era experience has shown that increases of 7% per year have not been adequate to defray the increased costs to which carriers in the domestic offshore

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trades have been subjected. Greater flexibility would be provided if the carriers were allowed to increase their rates sufficient to obtain a rate of return of up to 10.59% on rate base. We submit that under no proper standards can such rate of return be considered excessive. Rates of return on investment as high as this, and higher, have heretofore been approved by the Federal Maritime Commission. We have reference to Pacific Coast/Hawaii and Atlantic-Gulf/Hawaii General Increases in Rates, 7 F.M.C. 260, 292 (1962) and Kimbrell-Lawrence Transportation, Inc., General Increases in Rates in Kodiak Island, Alaska Peninsula, and Aleutian Islands Area of Alaska, 12 F.M.C. 15, 17 (1968). The allowance of rates of return up to 10.59%, pending the formulation of guidelines by the FMC, is a necessary incentive if existing carriers are to continue to invest their efforts and money in operating and developing the domestic offshore trades, and if additional services are to be encouraged for the future.

All of the four bills now under consideration have a provision that if at the conclusion of any proceeding the Commission finds that any portion of the changed rates and charges made exempt from suspension is unjustified in whole or in part, it may order the carriers or carriers concerned to make appropriate refunds to the persons entitled. As we stated to the Senate Subcommittee with respect to S.3261 we have a

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reservation in this area.

We do not think it is the intention of H.R. 10841 or the other bills to require the carriers to maintain a system of accounts in order to be able to refund with interest to persons entitled to any charges found to be excessive those charges collected during the four month period of exemption from suspension. Rather we would expect the legislation or the legislative history to recognize what has been historical in transportation regulations that the only viable means of providing refunds is upon request, when the shipper or the party entitled to the refund documents a formal request with proof of overcharge. Any other system would become what our accounting department terms an "administrative nightmare".

Sea-Land is strongly in favor of the provisions of H.R.10841 and S.3261 requiring the Federal Maritime Commission to develop and promulgate a reasonable prima facie rate of return for common carriers by water operating self-propelled vessels, which rate of return shall include as determinative factors

- A) the cost of replacing vessels and related equipment, including that associated with stevedoring and terminal operations;
- B) the degree of risk associated with the investment of capital;
- C) the prevailing cost of money in capital markets; D) the need in the public interest for the continued provision by carriers

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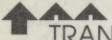
of certain unprofitable segments or elements of service; and E) other appropriate factors. We urge that the replacement costs of vessels and related equipment not only should be taken into account in promulgating a reasonable prima facie rate of return, but also should be reflected in the rate bases of the carriers. It is requested either that proposed legislation be amended so as to provide this or that the legislative history make it clear that this is the intention of the Congress.

For too long the Federal Maritime Commission, among other agencies, has refused to consider the foregoing factors in passing upon applications for rate increases. Particularly factors such as equipment replacement costs, risk and the prevailing cost of money have been ignored to the severe disadvantage of regulated carriers. In the business world all of these factors are taken into account, and we applaud the proposal that they be applied with respect to domestic offshore shipping.

S.3261 in dealing with prima facie rates of return which shall be determined by the FMC to be reasonable, refers to rates of return "on rate base". On the other hand H.R. 10841 makes reference to rates of return "on rate base and common equity". Sea-Land recommends that the reference to return on common equity be deleted. It is submitted that basing carrier return on common equity will result in substantial complications, in part because

of the difficulties that will be encountered in determining the carriers' true capital structures. Return on total capital is far more desirable. A carrier's earnings should be directly related to the present and future values of the assets which it commits in order to provide transport services. Both the values and use of these assets are clearly measurable, and will serve as a basis in determining reasonable revenue needs separately by service or trade. The concept of total capital will produce a standardized industry rate base which will provide the long term capability to earn adequate profits independent of the source of the funds.

In summary, Sea-Land strongly supports the objectives and intentions of H.R. 10841 but for the reasons stated would prefer it to incorporate the referenced portions of S.3261, with the reservations with respect to refunds previously referred to.



TRANSPORTATION ASSOCIATION OF AMERICA
SUITE 1107, 1100 17TH STREET, N.W., WASHINGTON, D. C. 20036, (202) 296-2470

PAUL J. TIERNEY
PRESIDENT

June 23, 1976

Honorable Thomas N. Downing
Chairman
House Merchant Marine Subcommittee
Washington, D.C. 20515

Dear Chairman Downing:

H.R. 10841, a bill now under consideration by your Subcommittee, contains provisions that seek to assure that the Federal Maritime Commission gives proper recognition to the need for adequate revenue levels of common carriers by water operating between the United States mainland and noncontiguous states, territories, and possessions of the U.S. The Transportation Association of America favors such a Congressional directive to the FMC.

As you will recall, similar provisions were contained in Section 205 of P.L. 94-210, the Railroad Revitalization and Regulatory Reform Act of 1976. A copy of this Section is attached. Its language, with the exception of the last sentence, is virtually identical to that proposed by TAA to the House Interstate and Foreign Commerce Committee last year. At that time, TAA expressed hope that the proposed language on adequate carrier revenue levels also be made applicable to domestic water carriers.

One of the major problems of regulated transport carriers of virtually all modes is the growing scarcity of capital funds -- both internal and external. The causes are many, although an underlying one is inadequate carrier revenue levels -- a condition brought about in large part by restrictive and time-consuming regulatory practices. Delays in adjusting revenue levels to help absorb rapidly rising labor, fuel, and equipment costs have proved to be particularly harmful to carriers during periods of steep inflation, such as experienced during the past several years. While transport regulatory agencies can't be expected to guarantee that carriers under their jurisdiction will maintain adequate revenue levels, they should be expected to seek this as an objective and recognize the need for such revenues if these carriers are to be expected to provide good service and be innovative.

If we want common carrier service to be efficient and progressive, it should be able to generate capital at levels that compare favorably with other types of business enterprises. This is the only way that common carriers can compete for private investment funds. The alternative is more and more U.S. financial assistance -- which leads to greater control and, eventually, to Government take-over.

We request that this letter be made a part of the official record of hearings on this bill.

Sincerely,

PT/dmk

Attachment

cc: House Merchant Marine Subcommittee

SUPPORTED IN THE NATIONAL INTEREST BY USERS, INVESTORS, AND ALL FORMS OF TRANSPORTATION

COPY

Public Law 94-210
94th Congress, S. 2718
February 5, 1976

AN ACT

To improve the quality of rail services in the United States through regulatory reform, coordination of rail services and facilities, and rehabilitation and improvement financing, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, divided into titles and sections according to the following table of contents, may be cited as the "Railroad Revitalization and Regulatory Reform Act of 1976":

ADEQUATE REVENUE LEVELS

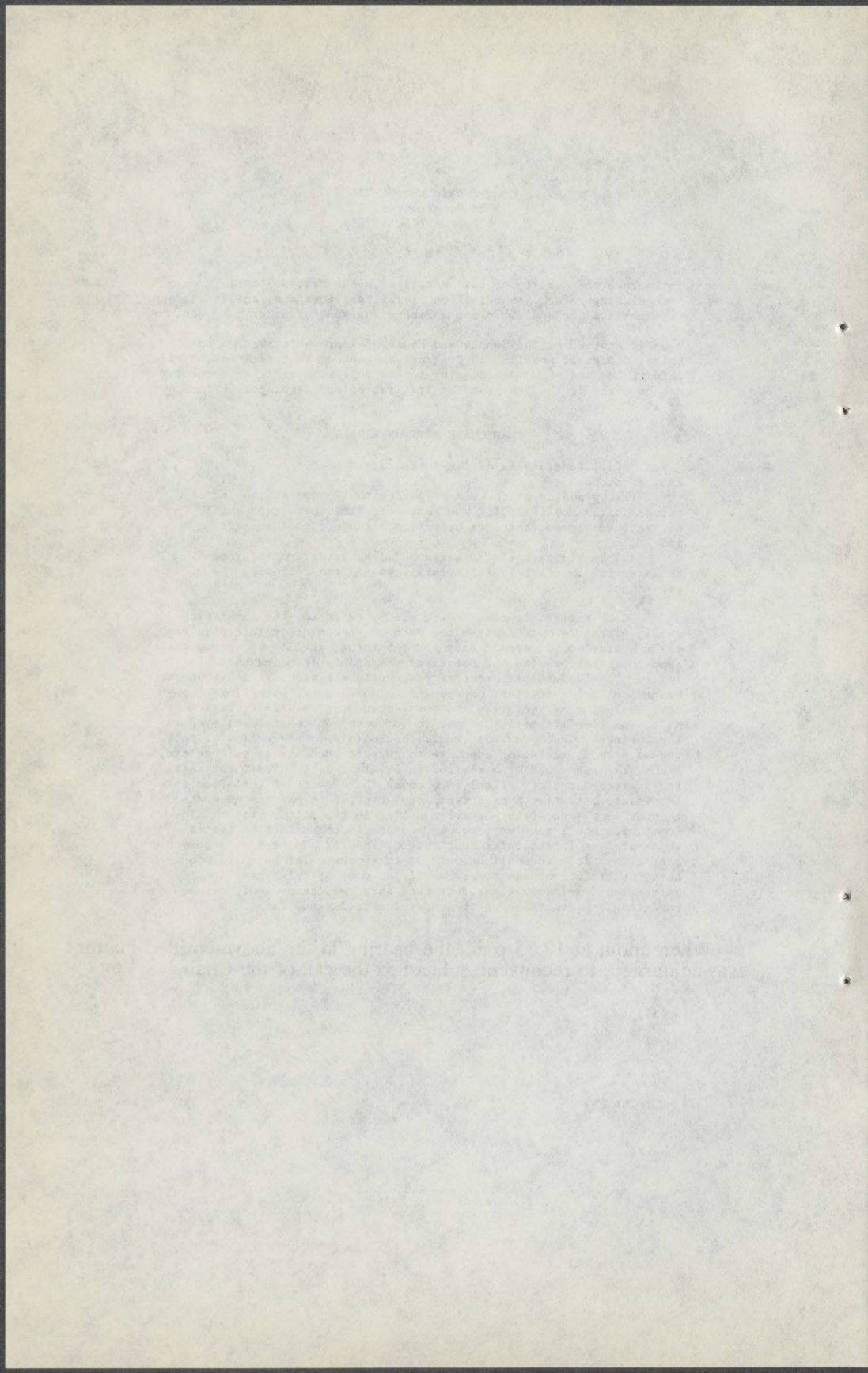
Sec. 205. Section 15a of the Interstate Commerce Act (49 U.S.C. 15a) is amended --

(1) by adding at the end of paragraph (2) and at the end of paragraph (3) the following new sentence: "This paragraph shall not apply to common carriers by railroad subject to this part." and

(2) by redesignating paragraph (4) as paragraph (6), and by inserting immediately after paragraph (3) the following new paragraph:

"(4) With respect to common carriers by railroad, the Commission shall, within 24 months after the date of enactment of this paragraph, after notice and an opportunity for a hearing, develop and promulgate (and thereafter revise and maintain) reasonable standards and procedures for the establishment of revenue levels adequate under honest, economical, and efficient management to cover total operating expenses, including depreciation and obsolescence, plus a fair, reasonable, and economic profit or return (or both) on capital employed in the business. Such revenue levels should (a) provide a flow of net income plus depreciation adequate to support prudent capital outlays, assure the repayment of a reasonable level of debt, permit the raising of needed equity capital, and cover the effects of inflation and (b) insure retention and attraction of capital in amounts adequate to provide a sound transportation system in the United States. The Commission shall make an adequate and continuing effort to assist such carriers in attaining such revenue levels. No rate of a common carrier by railroad shall be held up to a particular level to protect the traffic of any other carrier or mode of transportation, unless the Commission finds that such rate reduces or would reduce the going concern value of the carrier charging the rate."

[Whereupon, at 12:35 p.m., the hearing in the above-entitled matter was adjourned, to reconvene subject to the call of the Chair.]



INTERMODAL TRANSPORTATION

WEDNESDAY, SEPTEMBER 15, 1976

HOUSE OF REPRESENTATIVES,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
SUBCOMMITTEE ON MERCHANT MARINE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 1334 Longworth House Office Building, Hon. James L. Oberstar presiding.

Mr. OBERSTAR. The Subcommittee on Merchant Marine will come to order.

The regular chairman of the subcommittee, Congressman Tom Downing of Virginia is necessarily absent this morning and I am very pleased to sit in for him.

We have a number of witnesses and I would appreciate it if each of the witnesses could confine their testimony as much as possible, and all prepared statements will be printed in the record in full in detail as though originally delivered. If any wish to summarize, we certainly would appreciate that.

This morning, we will begin hearings on legislation to amend the Shipping Act of 1916, H.R. 1080, to facilitate intermodal transportation.

[The bill, H.R. 1080, and departmental reports follow:]

94TH CONGRESS
1ST SESSION

H. R. 1080

IN THE HOUSE OF REPRESENTATIVES

JANUARY 14, 1975

Mrs. SULLIVAN introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries and Public Works and Transportation

A BILL

To amend the Shipping Act, 1916, in order to facilitate intermodal transportation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That section 15 of the Shipping Act, 1916 (46 U.S.C.
4 814), is amended by inserting after the first paragraph the
5 following new paragraph:

6 "This section shall apply to agreements involving the
7 through intermodal transportation of property between points
8 in the United States and points abroad or between points in
9 the continental United States and points in noncontiguous
10 States, territories, and possessions, between a vessel-operat-

1 ing common carrier by water, and a common carrier regulated
2 under part I, II, or III of the Interstate Commerce Act
3 and/or a direct (not an indirect) air carrier regulated under
4 the Federal Aviation Act and/or a carrier operating trans-
5 portation company located in a foreign country whose facili-
6 ties or instrumentalities are utilized for a portion of such
7 through intermodal transportation.”.

8 SEC. 2. In order to further facilitate through intermodal
9 transportation of property in foreign and domestic non-
10 contiguous commerce, the Federal Maritime Commission,
11 the Interstate Commerce Commission, and the Civil Aero-
12 nautics Board, shall within six months of the date of enact-
13 ment of this Act promulgate uniform rules and regulations
14 governing the content, format, and filing of tariffs providing
15 for intermodal services and systems.

16 SEC. 3. One year following the date of enactment of
17 this Act, the Chairmen of the Federal Maritime Commis-
18 sion, the Interstate Commerce Commission, and the Civil
19 Aeronautics Board shall report directly to the Congress
20 with respect to—

21 (1) the need for additional legislation to further
22 facilitate the through intermodal transportation of prop-
23 erty in foreign and domestic noncontiguous trade, and

24 (2) conflicts between the statutes administered by

3

1 their respective agencies which may inhibit the full
2 development of intermodal services and systems, together
3 with such legislative recommendations as they may
4 deem appropriate to accomplish the foregoing.



CIVIL AERONAUTICS BOARD
WASHINGTON, D.C. 20428



SEP 15 1974

IN REPLY REFER TO:

Honorable Leonor K. Sullivan
Chairman, Committee on Merchant
Marine and Fisheries
House of Representatives
Washington, D. C. 20515

Dear Madam Chairman:

This is in reply to your request for the Board's views on H.R. 1080, a bill to amend the Shipping Act, 1916, in order to facilitate intermodal transportation.

An identical bill (H.R. 12428) was the subject of an August 15, 1974, report by the Board to the House Committee on Merchant Marine and Fisheries setting forth the Board's reasons for its opposition to the enactment of the subject legislation. The Board's views with respect to the need for such legislation have not changed.

Sincerely,

(Signed) Richard J. (-11a

Acting Chairman

Interstate Commerce Commission

Washington, D.C. 20423

OFFICE OF THE CHAIRMAN

September 22, 1976

Honorable Leonor K. Sullivan
Chairman
Committee on Merchant Marine
and Fisheries
House of Representatives
Washington, D. C. 20515

Dear Chairman Sullivan:

This is in response to your request for our comments on H.R. 1080, a bill "to amend the Shipping Act, 1916, in order to facilitate intermodal transportation, and for other purposes." Section 1 of the legislation would amend section 15 of the Shipping Act to make its provisions applicable to agreements involving certain through intermodal transportation of property between points in the United States and points abroad, and between points in the continental United States and points in noncontiguous States or territories. The effect of this amendment would be to require that these agreements be filed with the Federal Maritime Commission, to authorize the FMC to approve, disapprove, or modify the agreements, and to exempt the agreements from the operation of the antitrust laws. Section 2 of the bill would direct the FMC, the ICC, and the CAB to promulgate uniform rules and regulations governing the content, format, and filing of tariffs providing for intermodal services. Finally, section 3 would require the three agencies to report to Congress with respect to the need for additional legislation to further facilitate intermodal transportation and with respect to conflicts in the statutes administered by the agencies.

This legislation is identical to H.R. 12428, introduced in the 93rd Congress, which, together with H.R. 12429, was the subject of hearings before your Committee in August and December of 1974. On August 14, 1974, this Commission presented testimony on both intermodal bills, and concluded generally that many of their provisions were contrary to the public interest and unnecessary since the actual problems experienced by the carriers were being solved by various regulatory actions.

The events of the past two years have substantiated the conclusion that intermodal transportation can take place without major difficulty within the existing regulatory framework. Actions taken by the Commission

in its proceeding in Ex Parte 261, In the Matter of Tariffs Containing Joint Rates and Through Routes for the Transportation of Property Between Points in the United States and Points in Foreign Countries, and in its participation in joint agency activities have effectively facilitated intermodal transportation. An increasing volume of traffic is moving pursuant to more than 150 intermodal joint rate and through route tariffs on file with the ICC and the FMC. Although we are monitoring the situation to detect and alleviate any problems which may develop, there simply have not been any major difficulties in intermodal transportation which we have been unable to resolve through administrative action. Certainly, there have been no problems so great as to justify a major revision of the regulatory structure. Some of the actions taken by the Commission in the field of intermodal transportation since my testimony before your Committee in 1974 are summarized below.

At that hearing I stated that the Commission had voted, in Ex Parte 261, to adopt formal rules and regulations for filing and publishing joint rates over international through routes; those regulations were published at 346 I.C.C. 688. They were revised in the Commission's Report and Order on Further Reconsideration served July 29, 1975 (350 I.C.C. 361), when experience with intermodal movements suggested the desirability of modifying the earlier order.

In that later report and order the Commission also instituted a new proceeding, Ex Parte 261 (Sub-No. 1), In the Matter of Tariffs Containing Joint Rates and Through Routes - Freight Forwarders and Non-Vessel Operating Common Carriers. The lead proceeding did not address the issue of freight forwarder and NVOCC participation in tariffs containing joint rates and through routes for the transportation of property between points in the United States and points in foreign countries, and the new proceeding was instituted to deal specifically with this question.

The rules and regulations promulgated in Ex Parte 261 were again modified and clarified in a supplemental order issued on February 9, 1976 (351 I.C.C. 490). In this report the Commission emphasized that we do not intend to assert jurisdiction over, or otherwise engage in, substantive regulation of the ocean portion of these intermodal rates; our jurisdiction will be invoked only to accomplish the substantive regulation of the domestic carrier's portion of the through rates. Further, we stated that our tariff publishing regulations would be relaxed when possible to permit publication of tariffs by ocean carriers in conformity with the regulations of the FMC.

These rules and regulations have proven to be a workable mechanism for the publication of intermodal through rates and they have avoided any major jurisdictional problems between the ICC and the FMC.

Intermodal tariffs are being filed jointly with both agencies and no major difficulties are being experienced by either the carriers or the agencies.

In addition to our actions in Ex Parte 261, the Commission has continued to work closely with the FMC and the carriers in identifying and solving possible problems. The handling of containerized cargo in so-called mini-land bridge movement (an integrated overseas-domestic movement employing steamship-transcontinental rail coordinated handling of containers) is an example of the effectiveness of cooperation between the agencies and the carriers. Here, the carriers helped identify possible regulatory impediments to the mini-land bridge concept and ICC and FMC staffs worked together in a joint learning process to develop special procedures for the resolution of those difficulties which developed. These procedures were included in our regulations promulgated in Ex Parte 261.

The Interagency Committee on Intermodal Cargo, composed of representatives of the ICC, FMC, CAB, and DOT meets monthly and has provided continuing interagency staff liaison and has proved to be an effective forum for the resolution of intermodal questions. The Commission has continued active participation on that body. The chief issue in the intermodal area today involves the question of NVOCC operations and, as I have stated, this is currently being addressed by the Commission in Ex Parte 261 (Sub-No. 1).

Finally, we might note that the Commission recently issued a notice (copy attached) which allows the voluntary use of metric conversion units in tariffs and reports filed with the Commission in accord with Public Law 94-168, the Metric Conversion Act of 1975. The standardization of units of measurement will facilitate intermodal transportation.

For these reasons the Commission believes that enactment of section 1 of H.R. 1080 is not only unnecessary but also could be detrimental to the progress being made in the intermodal areas. The huge and increasing amounts of tonnage now moving on joint ICC/FMC intermodal tariffs are evidence that the current regulatory laws are conducive to intermodalism. To change the regulatory framework by authorizing the FMC initially to approve, disapprove, or modify the agreements would not facilitate intermodal transportation. Moreover, it could negate the progress that has been made in this area since it would effectively cancel the recent actions that have been taken jointly and individually by the ICC and the FMC and would put the entire burden for fostering the intermodal transportation covered by the bill on an agency which is specifically charged by its statute to promote the interests of water

carriers under its jurisdiction. We remain of the view that the FMC should not have authority superseding that of this Commission to disapprove, cancel or modify agreements in which carriers subject to the Interstate Commerce Act participate. Therefore, we continue to be opposed to enactment of section 1 of this legislation.

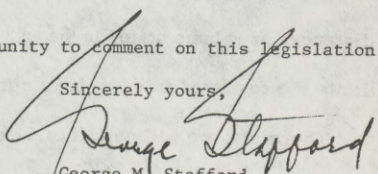
We also believe that enactment of section 2 of the bill is unnecessary. It is the apparent intent of that section to provide that the agencies be consistent in their tariff requirements so that the same tariff can be filed at all agencies. Since that is what is being done today, at least with respect to the ICC and FMC, we do not see the need for any further rulemaking at this time.

The Commission supports enactment of section 3 of the bill which would direct the ICC, the CAB, and the FMC to report directly to Congress with respect to the need for legislation to further facilitate intermodal transportation and with respect to any conflicts between statutes administered by the agencies which may inhibit full development of intermodal service. We believe that this is a common sense approach to examining and resolving the legal aspects of intermodal transportation.

In conclusion, we believe that the Interstate Commerce Commission has been moving responsibly and progressively to meet the needs of shippers and carriers to facilitate the movement of intermodal international cargo. We have amended and modified our rules when it has been necessary and will continue to be flexible and responsive to the needs of intermodal transportation. In view of this and of the fact that there are currently no major problems in intermodal movements, we believe that enactment of H.R. 1080, except for section 3, is unnecessary and undesirable.

Thank you for the opportunity to comment on this legislation.

Sincerely yours,


George M. Stafford
Chairman

Attachment

Commissioner Gresham was absent and did not participate.

July 2, 1976

JUL 6 1976

METRIC CONVERSION OF UNITS OF MEASUREMENT

Public Law 94-168, the Metric Conversion Act of 1975 (15 U.S.C. 205), was enacted on December 23, 1975. It declares a national policy of encouraging and coordinating the increasing use of the metric system in the United States. Primary responsibility for devising and carrying out a broad program of planning, coordination and education in the conversion to a metric system of measurements is lodged in the United States Metric Board. The new law adopts the International System of Units (commonly referred to as SI) as the metric system of measurements to be utilized in converting from customary units to metric units. We will be guided accordingly.

The Commission is cognizant of the vast number of tariffs, reports, operating authorities, and regulations on file and in effect which contain measurements of weight, size, distance, or volume stated in the customary units. The Commission desires to facilitate the regulated industry in its efforts to convert these measurements to SI units. Therefore, we will permit carriers and their duly authorized agents to file tariffs and reports which include SI metric units in lieu of customary units of measurement. Any such tariffs or reports so filed must contain clearly stated and easily understood conversion tables which explain the standards applied and methods used in the conversion between customary units and SI metric units.

ROBERT L. OSWALD

Secretary



UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number

October 8, 1976

DIB:JCR:DLF
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OCT 13 1976

COMMITTEE ON
MERCHANT MARINE AND FISHERIES

The Honorable Leonor K. Sullivan
Chairwoman, Committee on Merchant Marine
and Fisheries
House of Representatives
Washington, D.C. 20515

Dear Madam Chairwoman:

This is in reply to your letter of February 18, 1975, requesting the views of the Department of Justice on the Federal Maritime Commission's current authority to grant antitrust immunity to intermodal agreements between carriers and ratemaking groups serving different transportation modes. Your original letter was apparently lost somewhere in the course of intradepartmental transit. I apologize again for our delay in responding to it.

The Federal Maritime Commission derives its authority to approve and grant antitrust immunity to agreements from Section 15 1/ of the Shipping Act. Under the literal terms of the section, the Commission's jurisdiction extends to agreements among common carriers by water, and other persons subject to the Act, which inter alia, fix rates, or regulate, prevent, or destroy competition. "Other persons" are defined as persons providing forwarding, wharfage, dock, warehouse or terminal services in connection with a common carrier by water. 2/ In our view, the language of the statute excludes overland carriers as parties to agreements which may be

1/ 46 U.S.C. §814 (1970)

2/ 46 U.S.C. §801. (1970)

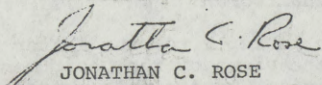


immunized from the antitrust laws under §15 of the Shipping Act. Moreover, neither the FMC nor any court has held that the FMC has authority to immunize such carriers. 3/ Accordingly, the Department's position is that the FMC does not possess authority to immunize intermodal agreements from the antitrust laws.

Your letter mentions the fact that the FMC appears to have granted approval to amendments to conference agreements which allow conferences to negotiate joint rates with inland carriers. This is, in fact, the case. The Pacific Westbound Conference agreement, for example, provides for ratemaking point to point, and allows the conference to agree with inland carriers or associations thereof on joint rates. The Department's position is that the approval granted is beyond the FMC's statutory authority. Thus, we believe the activities sanctioned are subject to the antitrust laws.

I hope that these comments will be of help to you in your consideration of H.R. 1080 and similar legislative proposals.

Sincerely yours,


JONATHAN C. ROSE
Deputy Assistant Attorney General
Antitrust Division

3/ A number of cases have interpreted the Commission's jurisdiction over persons not subject to the Act, particularly in the labor area. See e.g. Volkswagenwerk Aktiengesellschaft v. FMC, 390 U.S. 261 (1968); New York Shipping Ass'n v. FMC, 495 F.2d 1215 (2d Cir. 1974). These cases dealt with NLRA mandated agreements, however, which would have existed in the absence of the Commission's exercise of jurisdiction. See also Port of New York v. FMC, 429 F.2d 663 (5th Cir. 1970) which recognized in dicta the existence of certain absorption agreements between ocean carriers and railroads, but did not express a view as to the approvability of such agreements, or the FMC's authority to grant antitrust immunity to such agreements.



OFFICE OF THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

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Honorable Leonor K. Sullivan
Chairman, Committee on Merchant
Marine and Fisheries
House of Representatives
Washington, D.C. 20515

COMMITTEE ON
MERCHANT MARINE AND FISHERIES

Dear Madam Chairman:

This is in response to your request for Departmental comments on H.R. 1069 and H.R. 1080, bills

"To amend the Shipping Act, 1916, in order
to facilitate intermodal transportation,
and for other purposes."

These bills are identical to H.R. 12429 and H.R. 12428, respectively, introduced in the 93rd Congress. The Department's views on this legislation are best expressed in the statement of Robert H. Binder, Assistant Secretary for Policy, Plans and International Affairs, in his testimony before your Committee on December 19, 1974, a copy of which is attached.

Mr. Binder made reference in his statement to the question of agency jurisdiction to be exercised over United States international commerce. In declining to support H.R. 12429, Mr. Binder stated that the approach taken by Sections 2 and 3 of the companion bill, H.R. 12428, was more appropriate. Such an approach would require the three transportation regulatory agencies to issue uniform rules and regulations governing the filing of tariffs for intermodal services, and require those agencies to propose such legislation as may be needed. He urged the Committee to amend Sections 2 and 3 to authorize the Department of Transportation to participate in the joint regulatory agency deliberations.

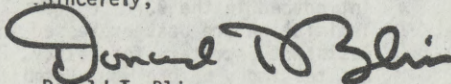
Mr. Binder also referred to the activities of the Interagency Committee on Intermodal Cargo (ICIC) as an appropriate vehicle to help resolve the jurisdictional question. He mentioned a proposed work program

developed by the Department for ICIC which would greatly contribute to needed solutions. Since the presentation of his testimony, Mr. Binder wrote to the respective chairmen of the Civil Aeronautics Board (CAB), the Federal Maritime Commission (FMC) and the Interstate Commerce Commission (ICC), transmitting the proposed work program and inviting approval and support. He has since received replies to this correspondence. Copies of his letters and the respective replies are enclosed for the information of the Committee.

The Department is of the view that the enactment of H.R. 1080, as amended in a manner similar to that proposed for H.R. 12428 is the best solution. The Department further takes the view that the ICIC could render a very useful service in connection with such legislation. Indeed, several of the items of the proposed work program were raised by the Committee during its hearings last Congress when both the FMC and ICC acknowledged that certain studies had not been made. We feel that the ICIC would be the best vehicle to conduct these studies and will support such activity to the extent that our resources permit.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report for the consideration of the Congress

Sincerely,



Donald T. Bliss
Acting General Counsel

Enclosures



ASSISTANT SECRETARY

OFFICE OF THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

January 27, 1975

Honorable George M. Stafford
Chairman
Interstate Commerce Commission
Washington, D. C. 20423

Dear George,

In the interest of improved and expanded transportation services for which we share some responsibility, I invite your support of the proposal in this letter.

In December, I testified before the House Committee on Merchant Marine and Fisheries concerning H.R. 12428 and 12429, on which you also testified last July. A copy of my prepared statement is enclosed for your information.

It is our hope that your agency will support the viewpoint that, notwithstanding the pendency of intermodal legislation, we should jointly take all possible steps in the interim to fulfill our governmental responsibilities in this area on a coordinated and cooperative basis.

As we see it, this can best be accomplished by strong support and guidance of the Interagency Committee on Intermodal Cargo (ICIC). Almost two years ago, you will recall that we agreed to establish the four-member ICIC as a cooperative mechanism to find solutions to intermodal cargo problems. Some success has been achieved and our representatives have gained a much better understanding of such problems.

We think it is time for ICIC to increase its efforts to find solutions to intermodal problems, and each of our staff members who attend ICIC sessions should be so instructed. In particular, the Department of Transportation urges that ICIC be handed the special responsibility of finding an acceptable resolution of the difficult interagency jurisdictional question.

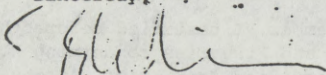
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The January 1975 meeting of ICIC recently was held, at which the member representatives unanimously adopted for recommendation a six-point work program for 1975. A copy of this important program is also attached hereto. It appears to me that this work program is realistic and endeavors to deal with the troublesome intermodal areas of importance, including the jurisdictional question.

Satisfactory implementation of this work program will require the announced and full support of each of the four member agencies. The work also would benefit from a periodic review of ICIC activities by top officials of the agencies and this Department.

I urge you and your agency to join us and the other members in support of the proposed work program, including the provision of the necessary resources to carry it out. Let's show the world that we as government representatives, who share responsibility for intermodal transport, can also share in the process of finding solutions to its problems.

Sincerely,



Robert Henri Binder
Assistant Secretary for Policy,
Plans and International Affairs

Enclosures

UNITED STATES DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20590

STATEMENT OF ROBERT HENRI BINDER, ASSISTANT SECRETARY
FOR POLICY, PLANS AND INTERNATIONAL AFFAIRS, U. S.
DEPARTMENT OF TRANSPORTATION, BEFORE HOUSE COMMITTEE
ON MERCHANT MARINE AND FISHERIES ON H.R. 12428 and
H.R. 12429, THURSDAY, DECEMBER 19, 1974.

Madam Chairman and Members of the Committee:

Thank you for your invitation to present the views of the
Department of Transportation on H.R. 12428 and H.R. 12429, bills
which amend the Shipping Act of 1916 to facilitate intermodal
transportation.

The growth of intermodal transportation -- involving a
combination of air, water and surface carriers -- reflects our develop-
ment from a regional to a national and international economy. But
it presents a challenge to the three transportation regulatory agencies
which were designed to regulate different components in our transportation
network.

The Department has increased its attention to eliminating
institutional barriers to intermodal transportation. The needs
of the marketplace and requirements of increased efficiency,

energy conservation and lowered costs will lead to an expanding role for intermodal arrangements in the future. This will benefit producers and consumers, simplify confusing and duplicative procedures, lower the cost of moving freight and cargo, and help us achieve the goal of an integrated and efficient national transportation system. These are important ways to fight inflation.

The Department of Transportation has encouraged development of coherent and effective operating arrangements for intermodal service in domestic and international commerce. These arrangements include through bills of lading, clarification of liability, the efficient interchange of intermodal equipment, and joint through rates. We have regarded these features as major elements in an effective origin-to-destination transportation system under modern conditions.

In the last two years, we have endeavored to make progress in this area, without legislation, through the Interagency Committee on Intermodal Cargo (ICIC). ICIC is an experimental forum involving the Department and the three independent transportation regulatory agencies--the Interstate Commerce Commission, Federal Maritime Commission and Civil Aeronautics Board.

As a result of ICIC's work, a standard and short-form set of terms and conditions for bills of lading was cleared for use by rail, truck and ocean carriers. These terms and conditions have now been accepted; they are being applied to shipper-provided bills of lading for cargo transported by these three carrier modes. I believe ICIC can accomplish much more in helping to resolve the problems raised by intermodal transportation in a coordinated and cooperative way. In this connection, certain provisions in one of the bills before your Committee, Madam Chairman--H.R. 12428--would be welcome support for the work of ICIC by setting deadlines for the agencies to complete their cooperative work.

H.R. 12428 would amend Section 15 of the Shipping Act by expanding antitrust immunity to include agreements filed by common carriers which involve intermodal transportation. The bill also requires that the three transportation regulatory agencies promulgate within six months of enactment rules and regulations governing the content, format and filing of intermodal tariffs. Finally, it requires the regulatory agencies to report to Congress within one year with respect to the need for additional legislation to facilitate through intermodal transportation of property and also with respect to statutory conflicts which inhibit development of intermodal services.

H.R. 12429 goes somewhat further. Briefly, in addition to granting an exemption from antitrust provisions to intermodal agreements (section 4), it resolves the issue of agency jurisdiction over intermodal carrier services by permitting the intermodal carrier to file a single through rate with the FMC where part of the commerce is waterborne. Nonvessel operating common carriers are excluded from the definition of intermodal carriers.

What of the two issues presented squarely by these bills -- antitrust immunity and regulatory jurisdiction over intermodal transportation?

As to the first, the Department believes the regulatory agencies should seek the least anticompetitive solution to the problems addressed. We have stated this view in our filings with the regulatory agencies, in our legislative proposals, and in our overall policy approach to the transportation field. In the intermodal area, as in others, special circumstances may warrant an exception to our basic policy that favors competition. But the burden of proof is on those who argue for such exception. They must show clear and convincing reasons why we should deviate from an approach which encourages more competition and less regulation.

In the case of H.R. 12428 and H.R. 12429, no need has been shown for collective ratemaking between groups of carriers of different modes. Without such a demonstrated need, the antitrust immunity sought in each of these bills must be assumed to deter rather than promote an efficient allocation of resources and the efficient development of intermodal transportation.

Second is the question of agency jurisdiction. H.R. 12429 would confer exclusive jurisdiction over the intermodal carrier, as therein defined, on the FMC. The ICC has contested this jurisdiction in testimony before your Committee on August 14, 1974. In the past, we have refrained from expressing a view on the selection of either the ICC or the FMC to be the agency to exercise exclusive jurisdiction over intermodal services.

In our judgment, at the present time, the approach taken by sections 2 and 3 of the companion bill, H.R. 12428, is more appropriate. Requiring the three transportation regulatory agencies to issue uniform rules and regulations governing the filing of tariffs for intermodal services, and requiring those agencies to propose such legislation as may be needed, places the burden where it belongs--on the regulatory agencies themselves. In the final analysis, the decision as to divided or shared jurisdictional responsibility will

be a matter the Congress must decide if the agencies are unable to resolve the jurisdictional question short of legislation. But for the present, we believe the better approach is to encourage the agencies to resolve the dispute among themselves and DOT is prepared to help. To this end, we suggest that sections 2 and 3 of H.R. 12428 be amended to authorize the Department of Transportation to participate in the joint regulatory agency deliberations there required.

The Interagency Committee on Intermodal Cargo (ICIC) is an appropriate vehicle to help resolve the jurisdictional question and sections 2 and 3 of H.R. 12428 with our proposed amendment will spur the members of ICIC to work together to identify the needed solutions. ICIC has a proposed work program developed by the Department on which action is scheduled at its next meeting. Legislation will help ICIC to expand its program to include resolution of the difficult jurisdictional question.

In conclusion, first, we believe the antitrust immunity granted by each proposal has not been shown to be necessary and we oppose these provisions for that reason; second, we believe the preferable approach to resolution of the jurisdictional

question is that contained in H.R. 12428 which directs the interested agencies to reach an agreed solution. For these reasons, we support enactment of sections 2 and 3 of H.R. 12428, amended to include the Department as a participant in the discussions, and we oppose enactment of both H.R. 12429 and section 1 of H.R. 12428.

This concludes my prepared statement, Madam Chairman. Now, I or my colleague will be happy to answer any questions you or other members of the Committee may have.

PROPOSED 1975 WORK PROGRAM

FOR THE

INTERAGENCY COMMITTEE ON INTERMODAL CARGO

1. Fact finding re extent to which the lack of uniform laws, regulations and rules governing the content, format, filing, and regulatory processing of tariffs providing for intermodal services and systems are inhibiting growth.
2. Fact finding re extent to which the lack of uniform laws and regulations inhibit the development of uniform interline carrier agreements concerning intermodal services and systems.
3. Fact finding re extent to which growth of domestic and international intermodal cargo is inhibited by lack of through documents, joint rules and joint rates.
4. Fact finding re extent to which additional antitrust immunity is needed to facilitate the movement of intermodal cargo.
5. Fact finding re appropriate role of ICC and CAB regulated freight forwarders and Non Vessel Operating Common Carriers (NVOCC's) in through intermodal cargo services and rates.
6. Develop appropriate solutions.

1976 WORK PROGRAM
FOR THE
INTERAGENCY COMMITTEE ON INTERMODAL CARGO

1. Through bill of lading fact-finding. Explore extent of use and private sector views of need.
2. Cargo liability improvements.
3. Review of ICC released rate order on intermodal traffic.
4. Review of offline point problems of regulated air/surface interline traffic agreements, and need for Uniform Intermodal Interchange/Interline agreement between air/truck, and air/ocean carriers.
5. Coordinate CARDIS program as it relates to regulatory problems.
6. Review of Inland Waterway Interface.
7. Review of ICC regulations (49 CFR 1082) relating to air freight forwarders.
8. Shipper-provided air waybill.
9. Develop appropriate solutions.

PENDING - Intermodal cargo terminal development as related to airport/
commercial zones. Coordinating/advisory function.

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE CHAIRMAN

February 13, 1975

Mr. Robert Henri Binder
Assistant Secretary for Policy,
Plans and International Affairs
Department of Transportation
Washington, DC 20590

Dear Bob:

Thank you for your letter of January 27 concerning intermodalism and the functions of the Interagency Committee on Intermodal Cargo.

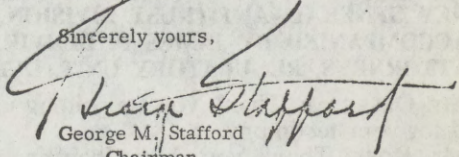
I agree with you fully that as the need for, and availability of, intermodal transportation increases, we, as interested Government representatives, share a burden of finding satisfactory solutions to the problems attendant to this growing concept of intermodalism. It is for this reason that the Commission has supported and actively participated in ICIC. We certainly intend to continue that support in the future.

This Commission has always made an effort to cooperatively search for solutions to intermodal problems whether legislation relating to those problems has or has not been pending. We would plan to continue this objective in the future.

We regard the establishment of the six-point ICIC work program as a commendable step in that it establishes specific ambitious and comprehensive goals for the future. Through its designated staff representatives, the Commission will continue to support and participate in the work of ICIC and will plan to make every effort to provide staff support as it can be made available. However, without additional funding, I am sure you appreciate that the Commission simply does not have the resources to make a substantial continuing contribution.

ICIC can be of considerable value in solving problems at the staff level, such as those arising from a concern about regulatory jurisdiction, as well as others that you mention in your letter. As we have indicated in the past, the Commission welcomes the opportunity to participate in this cooperative effort to find solutions to these problems and to foster an improved and expanded intermodal transportation system.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "George M. Stafford", is written over the typed name and title.

George M. Stafford
Chairman

Mr. OBERSTAR. Our first witness this morning is Mr. Jonathan C. Rose, Deputy Assistant Attorney General, Antitrust Division in the Justice Department.

Mr. Rose, if you have any associates with you, feel free to bring them to the witness table and identify them.

STATEMENT OF JONATHAN C. ROSE, DEPUTY ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION, DEPARTMENT OF JUSTICE, ACCOMPANIED BY JAMES P. DENVIR; AND CRAIG W. CONRATH, ATTORNEYS, REGULATORY UNIT, DEPARTMENT OF JUSTICE

Mr. OBERSTAR. Thank you for joining us this morning for the hearing and for your testimony.

Mr. ROSE. Thank you, Mr. Chairman. Should I identify myself for the record, sir?

Mr. OBERSTAR. Please do, and your associates.

Mr. ROSE. My name is Jonathan C. Rose, Deputy Assistant Attorney General in the Antitrust Division. My associates are Mr. James P. Denvir, and Mr. Craig W. Conrath, both attorneys in the regulatory unit of the Antitrust Division.

Mr. Chairman and members of the subcommittee. We are grateful for the opportunity to appear today to express the views of the Department on H.R. 1080.

H.R. 1080 is identical in its provisions with H.R. 12428 introduced in the 93d Congress, with respect to which a predecessor of mine, Keith Clearwaters, testified. The bill would vest in the Federal Maritime Commission, authority to grant antitrust immunity to agreements involving intermodal transportation between ocean, truck, rail and air common carriers, and requires the FMC, ICC and CAB to promulgate uniform rules and regulations governing the content, format and filing of intermodal tariffs within 6 months of enactment. Under section 3 of the bill, the chairmen of the respective agencies are directed to report to Congress 1 year after enactment on the need for additional legislation to facilitate intermodal freight carriage, and on conflicts between the statutes administered by the agencies.

Perhaps before addressing the troublesome competitive issues raised by section 1 of the bill, I might briefly comment on two other provisions.

Section 2 of the bill which requires promulgation of uniform tariff rules, and formats, appears to be a laudable effort to alleviate some of the technical difficulties in complying with the morass of regulations with which intermodal freight carriers have to deal. It seems clear that the confusion, delay and inconvenience caused by overlapping agency jurisdictions has hampered the development of intermodal transport in this country.

Indeed, there seems to be evidence that some traffic is moving through Canada because of our regulatory complications, so we think that this section of the bill is a step in the right direction.

With respect to the merits of section 3, we are frankly ambivalent. I would make only a couple of points. First, since the issues involved concern broad areas of transportation policy, it would seem to us possible that the principal responsibility ought to be lodged with the Department of Transportation as the lead agency. We would note that the three regulatory bodies involved have already attempted to

resolve their differences by voluntary negotiation for a number of years and not a whole lot of progress has been made, and therefore perhaps it might be better to give DOT a mandate to bring these agencies together in order to produce the requisite legislation.

The other problem we have with section 3 is that we are not sure the end process of such discussions necessarily has to be legislation as section 3 would seem to contemplate.

In the Department's view, section 1 of the bill, which would authorize the extension of antitrust immunity to agreements between carriers in different transportation modes, presents issues of overriding importance with respect to competition policy. Although section 1 appears to refer to individual carriers in the respective modes which may become parties to immunized agreements, the bill might well be interpreted to cover approval of agreements between ratemaking groups in the various modes. In fact, it seems clear from the testimony developed in hearings on H.R. 12428 before the full committee, that this legislation is intended to have that effect.

As an initial matter, the extension of antitrust immunity to inter-modal arrangements constitutes a serious departure from our fundamental national economic policy of promoting competition. That policy is founded upon the premise that competition, rather than regulation, best serves to promote innovation, efficient allocation of resources and the provision of services at reasonable cost.

Where an exception from this competitive norm is sought, its proponents bear a heavy burden in demonstrating that the detrimental effect on competition occasioned by the proposed regulation is outweighed by competing public policy considerations. It is our view that this burden has not been carried. Examination of the public record accumulated in support of bills similar to this one reveals that the only need that has been articulated for the proposed extension of immunity is the current absence of FMC authority to grant such immunity. In these circumstances, and for reasons upon which I will elaborate below, we must oppose any further extension of antitrust immunity.

The present regulatory system is largely a product of the Alexander committee's investigation of the ocean shipping industry in 1914. The committee's report led to the enactment of the Shipping Act of 1916, a principal feature of which is the antitrust immunity which covers the operations of shipping conferences today. The Alexander report was based on a thorough job of investigation, and convinced Congress that a regulated ocean shipping industry would provide public benefits which a competitive market would be incapable of producing.

While the economic premises underlying the 1916 decision may not still be valid today, the Alexander report carried its burden under the then operative economic conditions and assumptions. In enacting the 1916 legislation, Congress recognized the danger of legislatively sanctioning unrestrained monopoly, and incorporated into the grant of antitrust immunity several checks on the power of the shipping conferences. Among the most significant were measures designed to insure the protection and maintenance of independent competition. For example, section 14 prohibits certain predatory practices such as the use of "fighting ships" and deferred rebates. The same concept is carried forward in the 1961 amendments, in section 18(b)(5)'s condemnation of predatory pricing.

The innovative possibilities of container shipping were unknown in 1916 and unforeseen in 1961. The advent of containerization has opened new vistas in transportation technology, offering the potential for superior service and routing alternatives to shippers, as well as cost savings normally associated with such innovative advances. Also accompanying intermodal transport has been the potential for new competition among carriers and between carriers and conferences. This latter possibility, we believe, is a major factor in the current support for this bill.

Intermodalism has opened up basically three areas of potential competition. First, by extending the access of certain coastal ports to previously difficult to reach inland areas, intermodal shipping has created new competition for cargo among carriers operating out of formerly noncompetitive port areas. Second, because under current law ocean carriers and inland carriers must negotiate intermodal rates individually, these carriers compete with each other in arriving at joint rates. Third, carriers that offer intermodal service compete with conference all-water service which attracts cargo from the same inland areas.

H.R. 1080 would, for all practical purposes, eliminate the latter two areas of competition, and substantially limit the first by subjecting intermodal transportation to existing interconference agreements which already limit competition between port ranges. I realize that the mention of competition is fearsome to some, but as mentioned earlier, the notion of competition as a restraining influence on conference power is entirely compatible with the regulatory scheme embodied in the Shipping Act. Indeed, competition as a check on conference power is one of the Shipping Act's basic premises.

It has been, and no doubt will be argued again that the competition offered by intermodal operators is a threat to the very existence of the conference system. Our first answer is that the FMC has had on file numerous individual intermodal tariffs for a number of years, and the conferences and intermodal operators have coexisted during that period without any visible deterioration of conference stability. Further, nonconference operators have always operated on conference routes, and most often it has been the nonconference lines which have suffered from the competition. The Shipping Act never contemplated a market totally without independent competition. I might add that the numerous joint rates currently on file with the Commission would seem adequate evidence that intermodalism is progressing in an acceptable manner except for the burden imposed by the current regulatory jurisdictional conflict.

I mentioned previously that the consequences or even the existence of intermodalism were unforeseen by the drafters of the Shipping Act. However, one development which Congress consistently sought to forestall by legalizing conferences was the tendency toward increasing concentration in ocean shipping. Yet, this is precisely what has occurred on the North Atlantic, the most heavily containerized trade in U.S. foreign commerce. In 1968, the North Atlantic trade was comprised of six loosely related conferences encompassing 25 carriers. As of 1971, the seven largest containership firms in the trade had consolidated to comprise a majority of the membership in all of the conferences. By 1975, the seven firms accounted for the total member-

ship of four conferences, seven-eighths of the membership of two conferences, and seven-elevenths of the membership of one conference. Seven containership operators, therefore, control conference ratemaking decisions for the whole North Atlantic trade—a trade that was formerly comprised of six competing conferences. As this example illustrates, the need for competition as a check on conference power is even more compelling now than it was in 1916 or 1961.

As I stated earlier, the intermodal concept contains the potential for benefiting not only the shipping public, but the consuming public in general. The realization of these benefits, however, depends upon the existence of a market environment amenable to the development of intermodal transport in an economically efficient manner. It is a well recognized fact that competition is a spur to innovative development. Competition rewards the skillful and innovative, while regulation often has as its goal the maintenance of the status quo or the preservation of stability. More specifically, conferences and other ratemaking groups remove the incentive for innovation by making it impossible for an innovative member to "cash in" on the cost savings through lowering his rates and increasing his market share. Innovation is by its nature a risky business. Absent the prospect of a reward, the risk involved is usually sufficient to thwart an innovative enterprise at the outset. In addition, group decisionmaking is a much slower process, and one less responsive to changing market conditions than is decisionmaking by a single firm. Moreover, conference or rate bureau decisions by necessity are geared to protect the weakest and least efficient firms. Such an environment is, at best, inhospitable to innovation and efficient expansion of service to the public.

The experience of the ocean shipping industry in the development of containerization and intermodal transport has borne out these observations. Containerization and intermodalism were the result of carrier initiatives taken outside the conference system. In fact, the notion of transporting ocean freight in containers came from men experienced in trucking, not ocean shipping.

Collective control of intermodal rates not only threatens to impede the development of intermodalism, but is likely to impose costs on carriers and shippers alike that do not reflect the economies of containerization. We are aware that a number of conferences are currently dominated by all-water carriers. In these conferences, ratemaking is likely to be geared toward maintaining intermodal rates at levels designed to protect all-water carriers from intermodal competition. Even in conferences characterized by a relatively even mix of intermodal and all-water carriers, ratemaking by necessity must reflect a compromise between competing interests, and not the interests of the intermodal operators. Seatrain, for example, an intermodal pioneer, in testimony on a similar bill, expressed concern for the level of rates set by conferences whose main concern is protecting its members' all-water service.

Individual negotiation is more likely to result in rates reflective of the costs of intermodalism. Individual negotiation of intermodal rates by competing carriers creates an incentive to drive a hard bargain with the carrier in the other mode, thus exerting a downward pressure on rates. We feel that extending group control of this innovative transportation technology is likely to result in, not only higher

rates generally, but in gearing the progress of intermodalism to the pace acceptable to the least progressive conference firms.

I would like to make a few final comments on the propriety and necessity of adding an additional layer of regulation to an industry already burdened with pervasive regulation, particularly during a period when the assumptions underlying regulation of the private sector are increasingly being called into question. Example of the current skepticism are the administration bills for reform of the ICC and CAB presently before Congress. Experience has taught us that regulation, once imposed, is self-perpetuating. Questioning of changed economic circumstances and assumptions is a difficult task in the face of entrenched interests and comfortable industry participants. But the tenor of the debate is now clearly in that direction. Illustrative of this new mood of skepticism is a statement contained in the 1970 Report of the Council of Economic Advisers:

... Regulation has too often resulted in protection of the status quo.

... [C]hange of any kind becomes hard to justify and even harder to allow when some affected group can claim immediate harm, whereas the potential beneficiaries are widely diffused and usually not represented. Yet innovation and adaption are the dynamics of economic progress.

There is no clear safeguard against these dangers, but more reliance on economic incentives and market mechanisms in regulated industries would be a step forward.

... Industries have been more progressive when agencies have endeavored to confine regulation to a necessary minimum and have otherwise fostered competition.

The Department is of the view that now is not the time to increase government economic regulation of private enterprise, but rather to reexamine the premises upon which some of the current regulation is founded.

Thank you, again, for giving us the opportunity to comment on this important legislation.

Mr. OBERSTAR. Thank you very much for a very comprehensive and thoughtful statement, Mr. Rose.

On page 2 of your statement you refer to cargo diverted through Canada. To be more specific, what cargoes are being diverted through Canada and what information do you have about those?

Mr. ROSE. Sir, there has been testimony to that effect by others before your committee. Perhaps my colleague has a specific reference to that.

Mr. DENVER. The only evidence we have of cargo diversion is indirect and gathered through examination of testimony in FMC proceedings. It is mainly evidenced in claims of industry participants that serve U.S. ports. For example, I believe Mr. Diaz who is president of American Export Lines testified in the Sea-Land/U.S. Lines merger case that he believed a substantial amount of cargo was being diverted through Canada because of the simpler regulatory structure there.

Mr. OBERSTAR. Was that diversion by rail and then to ocean carrier?

Mr. DENVER. Yes, I think it was.

Mr. OBERSTAR. I think what he had reference to and what we have reference to is a problem with a growing concern on the Great Lakes, two ways. One is bulk cargoes like grain being diverted through Canada because of the lower rates, to Montreal, and then being shipped out under foreign flags. The ports there have been experiencing a severe decline this year in port activity. So any further information you might have on diversion through Canada, its effect on the

Great Lakes shipping and in general on shipping from U.S. ports would be very interesting for those of us from the lakes area.

Mr. ROSE. Sir, we will be glad to follow up to the extent we have the information. I was reading last night the hearings held before the full committee in 1974 on this same subject and I believe there was testimony in those hearings by at least one of the firms that there was such diversion.

Mr. OBERSTAR. On page 8 I was interested in your comments referring to the conference activities. Do you see the conferences as becoming a restraint on competition, some of the practices that you have witnessed in recent years?

Mr. ROSE. Sir, I think one has to admit the fundamental premise of the conference system as permitted under the Shipping Act of 1916 was to restrain some aspects of competition. The whole notion was at that time, as I understand it, that unrestrained competition in the ocean trades was sufficiently destructive that it threatened the viability of shipping firms and would eventually lead to a one or few firm monopoly.

One of the issues that we examined in the preparation of this testimony and are looking at more broadly is whether the economic assumptions and evidence relied upon by the Alexander committee in 1916 which justified the restrictions on competition that were placed in the Shipping Act continue to be justified today. We have found in our examination of other modes, such as truck and rail, that some of the economic assumptions that underlie the Interstate Commerce Act of 1887 as amended in 1935 by the Motor Carrier Act really don't apply today. We have therefore proposed legislative reform.

We are not at the stage of proposing legislative reform or change today, but we are certainly continuing to look at the subject.

Mr. OBERSTAR. As you noted, Congress sought, as you put it, to forestall the tendency toward increasing concentration of ocean shipping and you developed that theme and it seems you come down to your conclusion that the conference bureau decisions are geared to protect the weakest and least efficient firms, in your conclusion on page 9. It seems you have some question about the competition within these conferences. If there is some concern from the Justice Department, I think we want to know about it.

Mr. ROSE. We have some concern. Our study of the subject has not progressed to the point where we are prepared to propose to you reforms of the existing system. What we are prepared to do is say the passage of this bill tends to extend the immunities of the conference system. We believe that progress lies in the reverse direction.

Mr. OBERSTAR. So that is an area we ought to be watching very carefully?

Mr. ROSE. Yes, sir; in our judgment.

Mr. OBERSTAR. What about the independent ocean carriers? What about their competitiveness during this same period that you have discussed at this point in your testimony?

Mr. ROSE. From time to time, there has been considerable competition from the independents. On the other hand, we have some question as to how effective a restraint they have been on conference rates

generally. That is the kind of question we are examining currently. So I would not want to venture a definitive conclusion on the effectiveness of independents today, but we are looking at it, sir.

Mr. OBERSTAR. The business of setting rates and how those rates are arrived at, my short experience and exposure on this committee, it seems to me, kind of a mystical operation. I have had the experience previously in a secondary way because it affected the Port of Duluth. When I say previously, I mean my previous service on committees and as a congressional office staff member to my predecessor representing the same district in Minnesota. We used to get in extended hassles with the Department of Agriculture over all matters of on-land carriers over these rates. Now that I am serving on this committee, the more I see of it the less I understand. It is one of the most arcane subjects to come before the Congress, and there are rates on file that no one understands how they got there and what they mean.

Are these things that you are looking into?

Mr. ROSE. Oh; yes, sir. I guess the most famous story is the one about the trucker that wanted to ship yak fat from Omaha to Chicago and filed a tariff. It was immediately protested by 20 or 30 trucking organizations which thought that the rate for yak fat was too low. The fact that you can only find yak fat in Tibet, and that there was no ability to ship it at all was not considered. Indeed, it was a perfectly mythical commodity and a mythical rate. That fact completely escaped these people because they were so prepared to protest any rate that might be filed by someone else. It is a mystical process and we are trying to understand it, but we must confess to the same degree of mystification that you have had.

Mr. OBERSTAR. If they ever got the rates who would want the yak fat shipped anyway?

These domestic rail and other motor truck carriers, and so on, belong to rate bureaus, which I am trying to understand.

The ocean carriers belong to their conferences. As to the rate bureaus and the conferences, what are the antitrust implications of certain relationships, that I will try to develop for you, where you have a situation where a U.S. flag member of an ocean conference enters into a rate with a rail or a truck line, what antitrust implications do you see there?

Mr. ROSE. There are none as long as it is done between a single ocean shipping line and a single inland carrier. In fact, that is what is done today in the presence of some significant regulatory constraints. A single firm agreeing with another single firm on a through rate is perfectly acceptable under the antitrust laws.

It becomes a problem, for example, where groups of surface carriers get together on the one hand, and a group of ocean lines on the other, to establish a joint rate. That would be a violation of section 1 of the Sherman Act today.

Mr. OBERSTAR. How about a slight modification on that where you have a situation where a U.S. flag member of an ocean conference enters into a through rate with a rail or a motor carrier rate bureau?

Mr. ROSE. In our judgment that would raise significant antitrust questions because again you have a group. Maybe I ought to start from the beginning. Under section 15 of the Shipping Act there is

an exemption for the shipping conference and its activities on the one hand, and an exemption under section 5 of the ICC Act for the activities of the rate bureau on the other hand. However, there is no exemption for the agreement of even one shipping line with a rate bureau.

Mr. OBERSTAR. That gets into a group situation where they are trying to regulate a whole sector?

Mr. ROSE. Yes, sir; and that would raise serious antitrust questions.

Mr. OBERSTAR. But the one-on-one situation you do not see as serious?

Mr. ROSE. No, sir.

Mr. OBERSTAR. How about on an ocean conference basis working out a through rate with an individual or truck officer?

Mr. ROSE. Here we have the same problem of the exemption not extending beyond the activities of the ocean conference itself. It would be a group agreement with a single inland carrier and in our judgment section 15 would not cover that kind of agreement.

Mr. OBERSTAR. You do not see the conference having the same status as a rate bureau?

Mr. ROSE. Not under existing law. I am going through what our judgment of the law is today, sir. I am not giving a policy answer. I am giving what is a legal answer to the best of my ability with respect to the relationship between the antitrust laws and exemptions currently on the book. There are existing exemptions for inland carrier rate bureaus and for ocean shipping conferences under section 15 of the Shipping Act and section 5 of the ICC Act, but they do not extend to intermodal agreements.

Mr. OBERSTAR. Look at a U.S. flag with an individual land carrier and then a U.S. flag in an ocean conference with a bureau and you think that would be questionable, but the whole conference working with an individual carrier you do not see any problem with.

Mr. ROSE. No. Wait. Please repeat your last example. I think we have a problem of interpretation here.

Mr. OBERSTAR. Maybe I did not understand you properly.

Where you have a whole ocean conference that works out a rate with an individual carrier?

Mr. ROSE. We think that would raise antitrust questions under current law.

Mr. OBERSTAR. I misunderstood you, then, I am sorry. That is why I asked the followup question, you do not see a parallel between a conference and a rate bureau?

Mr. ROSE. Oh, yes; we do.

Mr. OBERSTAR. I was puzzled by that.

Then if you have a conference to rate bureau working?

Mr. ROSE. A conference to rate bureau agreement is in our judgment probably the worst case from a policy standpoint, and also it would in our judgment clearly raise antitrust questions.

Mr. OBERSTAR. What effect would this pending legislation have on any of those situations that I delineated for you?

Mr. ROSE. I think it would immunize most of them from the antitrust laws, sir, if not all of them.

Mr. OBERSTAR. That would not be good?

Mr. ROSE. Not in our judgment.

Mr. OBERSTAR. Counsel, do you have any questions?

Mr. CORRADO. Just to follow up on what you have said, Mr. Chairman, the whole purpose of this legislation is to extend antitrust immunity to various group situations and the bill as constituted does not have the word conference in it, but it should have. It will either have to be amended or corrected when it is introduced next year.

Mr. Rose, as you know, this legislation has been kicking around, various versions of it, for about 8 years. We have in this committee at the time a number of versions and a lot of problems. The staff and members of the committee about a year ago finally decided on this short bill as at least a step along the road to get us started because we perceived with all the involved problems such as jurisdiction, liability and the other associated problems, it was impossible to address the situation. As a consequence, this bill is intended to be a first step along the intermodal legislative path and really does not address itself to anything except to the extension of antitrust immunity which we felt was the one area where there was, at least among the involved industries, consensus. It seemed clear that help was needed with respect to the extension of antitrust immunity as between the water carriers and conferences and the inland modes.

Now in considering all of this, we were aware that there were various cases and situations before the FMC that we felt perhaps indicated that the FMC already had the authority to extend this antitrust immunity and we did not need the legislation. So on February 18, 1975, we addressed a letter to the then Chairman of the FMC outlining these cases and documents and our feeling thereto. As a result of our opinion, we asked the question, "Have you in fact in the past and were you given this type of immunity through section 15, with respect to point-to-point rather than port-to-port services?" We quoted part of one of the dockets and we asked the question whether, in fact, the officials at FMC felt that they had this authority already. At the same time we directed on the same date a letter to Hon. Edward H. Levi—Justice—with a copy of the letter to the Chairman of the FMC, and also a copy to Hon. William T. Coleman—DOT—with a copy of the letter from the chairman of the committee to the Chairman of the FMC.

We never heard anything from the Justice Department in all this time. We never heard anything from the Department of Transportation in all this time. On one occasion, I even called the Justice Department and asked about it and was assured that we would get an answer. In light of this background, I think your criticism now of this legislation seems at least a little hollow.

You know, in addition in your testimony you assert that the Department of Transportation ought to be the lead agency with respect to this intermodal legislation. Well, in the first place, I am not sure why DOT should have any jurisdiction over regulatory matters. Second, DOT has not even seen fit to answer the Chairman's letter when we tried to get some determination as to where we stood on this very vexing matter. That certainly is not a manifestation of any great interest on the part of DOT.

Mr. ROSE. Sir, you are certainly entitled to an answer. I did not see the letter and I will certainly follow up on it. Obviously, it should not take us a year to answer a letter.

I think our position on this legislation has been consistent throughout. You did have hearings in August of 1974 and my predecessor testified essentially to the same effect that I have today. Also I think, at that time DOT submitted a letter from its general counsel as well as testimony from Assistant Secretary Bender indicating their opposition to antitrust immunity and to this kind of legislation. So I do not think our position has been unclear, but certainly our manners may not have been what they should have been.

Mr. CORRADO. I do not blame you personally, but in a year and a half's time, it seems to me we were entitled to some kind of answer, if only an acknowledgment.

Mr. OBERSTAR. Without objection at this point in the record, we will introduce that letter.

Mr. CORRADO. Could all three letters be included?

Mr. OBERSTAR. Without objection, so ordered.

[The information follows:]

February 18, 1975

The Honorable Edward H. Levi
The Attorney General
Washington, D. C. 20260

Dear Mr. Attorney General:

Attached is a copy of a letter which I have recently sent to the Chairman of the Federal Maritime Commission. This letter concerns intermodal legislation which has been before the Congress for some time. As you know, it is a complex and controversial legislative matter. Specifically, we have requested the Federal Maritime Commission to give us its statement and supporting legal analysis of the existing statutory authority of the Commission under Section 15 to grant to a conference the type of authority and antitrust immunity requested, for example, by the Far East Conference as set out on page two of the letter to Chairman Bentley.

I am sending a copy of this letter to you since we think it is imperative that we also have the comments of the Department of Justice with respect to the legal issues set out in this letter.

I would appreciate your attention to this matter and I look forward to receiving your comments with great interest.

Sincerely,

Leonor K. (Mrs. John B.) Sullivan
Chairman

LKS:Cvb

February 18, 1975

The Honorable William T. Coleman
The Secretary of Transportation
Department of Transportation
Washington, D. C.

Dear Mr. Secretary:

Attached is a copy of a letter which I have recently sent to the Chairman of the Federal Maritime Commission. This letter concerns intermodal legislation which has been before the Congress for some time. As you know, it is a complex and controversial legislative matter. Specifically, we have requested the Federal Maritime Commission to give us its statement and supporting legal analysis of the existing statutory authority of the Commission under Section 15 to grant to a conference the type of authority and antitrust immunity requested, for example, by the Far East Conference as set out on page two of the letter to Chairman Bentley.

I am sending a copy of this letter to you since we think it is imperative that we also have the comments of the Department of Transportation with respect to the legal issues set out in this letter.

I would appreciate your attention to this matter and I look forward to receiving your comments with great interest.

Sincerely,

Leonor K. (Mrs. John B.) Sullivan
Chairman

LKS:Cvb

February 18, 1975

The Honorable Helen Delich Bentley
The Chairman
Federal Maritime Commission
Washington, D. C. 20573

Dear Madam Chairman:

The situation concerning the need for so-called intermodal legislation, as reflected in H. R. 12428 and H. R. 12429, 93rd Congress (now H. R. 1080 and H. R. 1069), is somewhat confusing. It has been represented to us in testimony and statements made to our Committee on these bills that such legislation is necessary so that the steamship conferences may have the authority and consequent antitrust immunity under Section 15 of the Shipping Act, among other things, to fix uniform point-to-point rates as amongst their members and generally to extend conference jurisdiction to encompass point-to-point movements as opposed to port-to-port movements.

The thing that is confusing is that the Commission has apparently already given various conferences the authority to extend their jurisdiction inbound and has several other applications for such extension before it. Certainly, there is an apparent difference of opinion concerning the scope of the present Act.

I have information indicating that some twenty-one conferences have been accorded the authority by the Commission to extend their jurisdiction to include point-to-point intermodal movements. We further understand that some thirty-five conferences either have been authorized to publish point-to-point inland rates or have applications pending for authority to publish such rates.

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In addition, there appear to be at least two formal proceedings now pending before the Commission involving intermodal authority, viz.!

FMC Docket No.

72-46	Pacific Westbound Conference
74-53	Far East Conference

The Commission's Order of Investigation in FMC Docket No. 74-53 describes the application of the Far East Conference as follows:

"The member lines of the Far East Conference (FEC) have entered into Agreement No. 17-34, which has been filed with the Commission for approval under Section 15. This agreement contains an application by the member lines for permission to: (a) extend the geographic scope of the Conference to include inland points in the United States and inland points in Japan, Okinawa, Korea, Taiwan (Formosa), Siberia, Manchuria, Ching, Hong Kong, the Philippines, Vietnam, Cambodia, and Laos; (b) establish point-to-port, port-to-point, and point-to-port rates from or via U.S. Atlantic and Gulf ports, in addition to the presently established port-to-port rates; (c) enter into intermodal arrangements with carriers of other transportation modes; and (d) adopt a uniform bill of lading incidental thereto."

Quite obviously to our Committee this is a matter on which we require your clarification. If the Commission already has the authority to grant conferences antitrust immunity covering conference jurisdiction over intermodal movements, especially the broad type of authority requested by the Far East Conference, the major reason for H.R. 12428 (H. R. 1080), at least, would appear to be nonexistent. We need your comments on this matter and also those of the Departments of Justice and Transportation to whom I am sending copies of this letter. Specifically, we request your statement and your supporting legal analysis of the existing statutory authority of the Commission under Section 15 to grant to a conference the type of authority and antitrust immunity requested, for example, by the Far East Conference as quoted above. If you consider that you

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can accord a conference such increased authority but not antitrust immunity, then of course we would like that statement and supporting legal analysis.

Since the Committee does intend to take up this legislation again in the 94th Congress, the comments of the FMC and of the Departments of Justice and Transportation on this basic legal issue appear to be imperative.

Sincerely,

Leonor K. (Mrs. John B.) Sullivan
Chairman

LKS:Cvb



Federal Maritime Commission

Washington, D. C. 20573

Office of the Chairman

April 15, 1975

Honorable Leonor K. Sullivan
Chairman, Committee on Merchant
Marine and Fisheries
House of Representatives
Washington, D.C. 20515

Dear Leonor,

This is in reply to your letter in which you request clarification of "the need for so-called intermodal legislation, as reflected in H.R. 12428 and H.R. 12429, 93rd Congress (now H.R. 1080 and H.R. 1069)."

This issue is raised apparently in light of our past authorizations to conferences for the filing of "intermodal rates."^{1/} As a result, you express confusion as to why legislation is necessary to confer antitrust immunity to cover intermodal movements "[i]f the Commission already has the authority to grant conferences antitrust immunity covering conference jurisdiction over intermodal movements." Sharing with you an ardent desire to make intermodalism a reality, the Commission agrees with you as to the necessity for clarifying this matter.

When the Commission, under its existing authority, accords to a conference the authority to extend their jurisdiction to include point-to-point movements, the antitrust protection goes to the members of the conference and the agreement among themselves as to the rates, practices etc. and does not cover any subsequent agreement entered into with a carrier or carriers of another mode of transportation e.g., motor carrier or railroad, nor does the protection cover the carrier or carriers of that other mode. If the full benefits of intermodalism are to be realized, common carriers by water and conferences thereof must enter into agreements or arrangements with carriers of other modes of transportation and the pending bills authorize antitrust exemption for such agreements or arrangements.

^{1/} See for instance 13 FMC 121 (1969), *Atlantic & Gulf/West Coast of South American Conference Agreement No. 2744-50, et al.*, in which the Commission discusses the perimeters of antitrust immunity in an approved "intermodal rate" agreement.

- 2 -

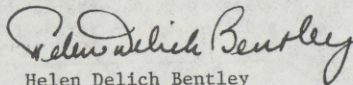
When the Commission in 1970 amended its tariff filing rules applicable to common carriers in the foreign commerce of the United States, and conferences thereof, to require the filing of through rates for any established through route, it made clear the limits of its authority to grant antitrust immunity over intermodal arrangements when it stated:

We do not believe that carriers will be misled with respect to the availability of antitrust immunity with respect to arrangements for through routes and through rates since the rule plainly indicates that it relates to the filing of such arrangements and does not purport to grant any immunity from the antitrust laws. Only agreements approved under section 15 of the Act will receive antitrust immunity. However, the problem of the possible absence of antitrust immunity for some through rate and through route arrangements, because they are beyond this agency's present jurisdiction and authority, will not be solved by delaying issuance of the rule, and the promulgation of the rule now will enable the filing of such through rates and through routes which the carriers may presently establish in compliance with the Shipping Act and the antitrust laws.^{2/}

The purpose of H.R. 1069 (previously H.R. 12429) and of H.R. 1080 (previously H.R. 12428) is to provide the Commission with the necessary authority to approve, under Section 15, the arrangements or agreements between steamship carriers and conferences and carriers of other modes of transportation. The Commission does not presently have this authority under existant Section 15 provisions. It has always been our belief that until the Commission can grant antitrust immunity for all the parties to the agreement -- both water and inland carriers -- the growth and development of intermodalism necessary for our country's transportation needs will be stunted.

Assuring you of the Commission's continuous desire to be of assistance in any question or problem which will assist in passage of intermodal legislation this session, I remain with every best wish

Sincerely,



Helen Delich Bentley
Chairman

^{2/} General Order 13, Amdt. 4, April 21, 1970 (35 F.R. 6394).

Mr. CORRADO. I am well aware of the Justice Department's traditional opposition on antitrust immunity. I have some difficulty substantively with your position. You seem to premise your objections to this legislation on the issue of competition. However when I look at the U.S. flag fleet your argument lacks credibility. After all, our flag fleet was the technological innovator over all the maritime nations of the world with respect to container operations and with respect to Lash and Seabee vessels. There is no question that we have been in the vanguard of maritime technology over the last 10 years, yet when you look at our fleet today you have to come to the conclusion that we are not really too competitive, despite all of these marine innovations and our leading technology. All the other countries of course then copied the technology and the same conditions that made us noncompetitive 10 years ago or before make us noncompetitive now when all of these technological innovations are adopted by the other maritime countries. In addition, we are faced with the fact that we have a tremendous problem today with the so-called independents, as was mentioned, and with rate undercutting by the socialist bloc fleets. In light of all these factors, I really have a great deal of difficulty with your competitive arguments.

Mr. ROSE. In what respect?

Mr. CORRADO. You seem to argue against us having legislation like this or extending section 15 antitrust immunity on the grounds that there ought to be free trade and competition. I do not see the basis for your premise, as I just contended.

Mr. ROSE. I think one of the points—

Mr. CORRADO. We will not have a U.S. flag fleet unless we help ourselves. The conference system and section 15 antitrust immunity help the U.S. flag fleet and help us to compete. The Justice Department would destroy these helpful devices.

Mr. ROSE. I guess our response is that the innovation that have been produced largely came from outside of the conference system. We believe that we would become even more inefficient and less competitive than we are today if the limited competition we have were eliminated. Moreover, the U.S. flag fleet receives a substantial operating subsidy designed to ameliorate the problem of lower cost foreign competition.

When you are dealing with the Soviet bloc situation, I have to admit that is a different case than when you are dealing with a market economy, and special measures may or may not be called for. I frankly have not studied that but I am aware of similar problems in the airline industry. It becomes a very difficult and specialized situation, to which the same principles may not apply.

Mr. CORRADO. One protection we have and our Western European allies do have is the conference system. I hear all kinds of rumors that the administration has huge sinister studies underway and that the administration will come up and attack the conference system and attempt to destroy it. These rumors may or may not have substance, but when you look at the total picture, if the conference system is eliminated and the U.S. is left nudum pactum, so to speak, before the countries that have a different economic structure and system and who can and are undercutting us, I think it is a cause of great concern. I trust the industry itself is alert to the possibilities of this situation.

Of course, it is a matter this committee will have to get into heavily next year.

Mr. ROSE. We will certainly be back to testify if you will let us.

Mr. CORRADO. Please answer our letters as a start.

Mr. OBERSTAR. Following up on counsel's request was a further point I wanted to inquire about and that is if we do all the things that the Justice Department would suggest that we do in the interests of competition where do we foster that competition? Is it among U.S. flags or are we fostering more competition between the U.S. flags and foreign flag vessels, particularly the Soviet bloc interests?

Mr. ROSE. I think if you are talking about competition between the U.S. flag carriers and also competition between U.S. flag carriers and foreign carriers, we would say we ought to foster competition among both. It is not entirely clear to me how you deal with the situation if there is one—and this is where I think you really have to look at the evidence pretty carefully—where a nonmarket economy is willing to subsidize its shipping lines in order to permit them to offer predatory rates. If that is in fact occurring that may well be a special situation for which particular legislation is required. The situation we are addressing is not that, but is rather foreign flag carriers that are privately owned competing with our foreign flag carriers that are privately owned. We believe that competition is going to offer lower rates for shippers of all nationalities.

Mr. OBERSTAR. Where we have really meaningful and realistic competition I think it is good, and I think that it has helped the U.S. flags. But where we have situations that we witnessed on the Great Lakes, and this has been a matter of concern to the Association of Ports, to the longshoremen, to the local governing bodies as in my own port of Duluth, the port commissioners, the St. Louis County Board of Commissioners—it is partially State agencies and State government that gets involved in this—and for years we have seen predatory rates visited upon Great Lakes ports by rail lines working in conjunction with U.S. flags; U.S. flags file paper rates on Great Lakes ports that are so ridiculously high that they just do not mean anything, and then they do not call on our ports. Only last year and again this year for the first time since 1969 we had U.S. flags calling on Great Lakes ports. So while I am expressing a personal view and not one on behalf of the committee, I am concerned about the effect of competition in the Great Lakes area. It is one that has very deep concern, and one if you have any information on we would like to have it.

Mr. ROSE. We certainly will follow up on that, sir. I might respond to the points you have made and the points the committee chief counsel made only by saying this. It is not clear to us that the response to alleged predatory pricing by Soviet bloc ships or other carriers is furthered by extension of the existing antitrust immunity. It does not seem to us that this is the appropriate legislative response to that problem. We are certainly willing to entertain evidence if someone can show us how this legislation would ameliorate that kind of problem.

Mr. Oberstar. One last speculative question. Supposing we were to lift the ban on competition, would it possibly have the effect of worsening the competitive position of the Great Lakes?

Mr. ROSE. I do not see how it would, sir, but I would be glad to give you a more specific and responsive answer after we have had a chance to look into it.

Mr. OBERSTAR. If we make it so difficult for foreign flags to compete in the U.S. trade, they are just not going to call on the Great Lakes and if the U.S. flags do not call on the Great Lakes, then we have nothing.

Mr. ROSE. I do not see how this legislation would ameliorate the situation, but I would be glad to look at it.

Mr. OBERSTAR. Minority counsel has a question.

Mr. SANDS. Mr. Rose, has your statement been cleared with the Office of Management and Budget?

Mr. ROSE. Yes, it has.

Mr. SANDS. My understanding is the Justice Department is conducting a study of the ocean conference system, is that right?

Mr. ROSE. We are—in the regulatory reform unit—conducting a number of studies of which that is one, looking toward possible legislation. We are not far enough along to know that we will have anything constructive to say.

Mr. SANDS. You have no idea when that study will be concluded?

Mr. ROSE. I would hope by the end of the year but I always hesitate to commit to deadlines because sometimes they do not get met.

Mr. SANDS. Is there a person on your staff that we can keep in touch with so we can have a copy of the study when it is available?

Mr. ROSE. You are perfectly free to call me.

Mr. SANDS. Thank you.

Thank you, Mr. Chairman.

Mr. OBERSTAR. We have other questions that would be submitted for the record and we would appreciate your response. Thank you very much for your presentation this morning.

[The questions with the answers thereto follow:]

QUESTIONS SUBMITTED AND ANSWERS THERETO

Question. On page three you take the position that "the extension of anti-trust immunity to intermodal arrangements constitutes a serious departure from our fundamental national economic policy of promoting competition". Would you be good enough to inform the subcommittee what our national policy is with respect to ocean shipping conferences?

Answer. Many of the activities of approved ocean shipping conferences are immune from antitrust enforcement under Sec. 15 of the Shipping Act. The national policy is to permit some cooperative activities among members of approved conferences, and to oppose unwarranted regulatory extension of anticompetitive practices and agreements. In addition, practices of conferences and ocean carriers beyond the scope of the antitrust immunity granted under Sec. 15 are subject to antitrust scrutiny.

Question. Am I correct in understanding the position of the Department of Justice to be not only in opposition to H.R. 1080, but also to undertake an in-depth study as to the desirability of ocean conferences in general?

Answer. Yes, among other things, the Regulatory Reform Unit of the Antitrust Division has undertaken a study of the ocean shipping industry.

Question. On page six, you take the position that intermodalism has opened up basically three areas of potential competition. Would you please give an example with respect to each such area, and how "H.R. 1080 would, for all practical purposes, eliminate the latter two areas of competition, and substantially limit the first"?

Answer. The first area of competition opened up by intermodalism is between carriers serving formerly non-competitive port ranges. Before the advent of the container, economic feasibility dictated the movement of cargoes through proximate port ranges.

Intermodalism has created economic routing alternatives overland to ports more distant from the shipper's point of origin, but nearer the point of destination in terms of water miles. For example, this development has created the potential for competition between Gulf ports and North and South Atlantic ports. A shipper in Shreveport, who would have previously shipped through the nearest Gulf port to Europe now has the alternative of routing his shipment through a North or South Atlantic port at a comparable price and in most cases, a faster total transit time. The same is true for inland Gulf or Atlantic shipments destined for the Far East, that would formerly have moved mainly through the nearest Gulf or Atlantic ports, and then by water to the Far East. Intermodal carriers offer service from these areas by rail to the West Coast and by water to the Far East at one rate, a comparable or lower price, and a faster transit time. One effect of the new service is that carriers operating an all water service, for example, from the Gulf to the Far East must compete for cargo with intermodal carriers that serve the Far East by rail and water. Placing control over intermodalism entirely in the hands of conferences would severely limit the new competition by subjecting intermodal operators to interconference agreements designed to eliminate such competition.

The second competitive area opened up by intermodalism is between intermodal carriers themselves. Individual carriers offering the same intermodal service, naturally compete for cargoes if their rates are set individually and are not subject to conference control. Although the FMC has granted conferences intermodal authority in some instances, it is difficult to envision full implementation of that authority by publishing a conference intermodal rate, if each ocean carrier must negotiate the underlying inland rate individually. The proposed extension of immunity would place the rates of intermodal carriers entirely under conference control, and eliminate the competition between intermodal carriers.

Finally, intermodal carriers compete with conference all-water service which attracts cargo from the same areas. A notable example of this phenomenon is the competition for cargoes moving to the Far East between the Pacific Westbound Conference and intermodal carriers which are members of that conference but file individual intermodal tariffs. The Pacific Westbound Conference attracts some of its cargoes from inland areas by reason of its Overland/OCP rates. Single factor through rates offered by intermodal carriers attract cargoes from the same areas. This legislation by granting conferences complete authority over intermodal rates would eliminate that source of competition.

Question. On page four, you say that the "proponents bear a heavy burden in demonstrating that the detrimental effect on competition occasioned by the proposed regulation is outweighed by competing public policy considerations"—and that in your opinion this burden has not been carried with respect to H.R. 1080. Tell me, what sort of public policy considerations would it take to make you change your position?

Answer. The question posed is difficult to answer in the abstract. Traditionally, regulation has been deemed justified upon a strong showing of one or more of the following three factors: (1) The presence of a scarce resource as in television or radio broadcasting; (2) a natural monopoly, as in the case of public utility regulations; or (3) a public goods aspect, such as in the case of providing health or environmental quality, where competition alone is insufficient to produce the desired result. In the case of intermodalism competition not only spurred its introduction, but would seem to be a *sine qua non* to its efficient development and the realization of accompanying public benefits. The Department is of the view, particularly with respect to the third factor, that where such a showing has been made, the goal regulation is designed to achieve must be balanced against the benefits provided by competition. Moreover, if the need for regulation is shown, it is the Department's position that regulation should be implemented in a manner that least intrudes upon competitive considerations, while still achieving the purpose of the regulation.

Mr. OBERSTAR. Our next witness is the Chairman of the Federal Maritime Commission, Karl E. Bakke.

STATEMENT OF HON. KARL E. BAKKE, CHAIRMAN, FEDERAL MARITIME COMMISSION, ACCOMPANIED BY DONALD J. BRUNNER, MANAGING DIRECTOR; AND RICHARD E. HULL, GENERAL COUNSEL

Mr. BAKKE. Good morning, Mr. Chairman.

Mr. OBERSTAR. Good morning, and welcome. Thank you for being with us today.

Mr. BAKKE. I am accompanied today by Donald J. Brunner on my left, Managing Director, and on my right by Richard E. Hull, the Commission's General Counsel.

Before getting into my statement, Mr. Chairman, I would like to make two disclaimers and one clarification concerning Mr. Rose's testimony.

First, the discussion about bulk cargoes such as grain and potential diversion through Canada is indeed a problem, but neither bulk cargoes nor their diversion is a subject within the jurisdiction of the Federal Maritime Commission. The Commission is responsible only for liner trade matters, those involving common carriers in the U.S. ocean trades.

My second disclaimer is that yak fat, whether in bulk or not, is not a subject that has been before the Federal Maritime Commission for attention. I'm happy to say that was an ICC matter.

Finally, I might add to Mr. Rose's comments about the Alexander committee in 1916 that on two more recent occasions, the Cellar committee from 1958 through 1961, and the Bonner committee in 1961, examined the Merchant Marine legislation that is applicable to the Federal Maritime Commission and reached the same conclusions that the Alexander committee had reached—namely, that, notwithstanding a general national policy in favor of competition as expressed in the antitrust laws, in the ocean shipping field there are good reasons for giving carriers a limited exemption from the antitrust laws. Accordingly, the legislation relating to liner shipping, which expresses a national maritime policy in that respect, prevails.

Now, I would like to turn to comments on H.R. 1080 which is before the committee for discussion this morning.

I might say that in the first several pages of my prepared statement, I deal with the historical evolution of this issue. I think, since that material is historical, I can dispense with reading it at this point.

Mr. OBERSTAR. Your statement will be entered in the record in full and you may summarize and proceed as you wish.

[Statement follows:]

STATEMENT OF KARL E. BAKKE, CHAIRMAN, FEDERAL
MARITIME COMMISSION

Good morning, Mr. Chairman. I am accompanied this morning by our Managing Director, Mr. Donald J. Brunner and by our General Counsel, Mr. Richard E. Hull.

Thank you for inviting me here today to comment on H.R. 1080, a Bill "To amend the Shipping Act, 1916 in order to facilitate intermodal transportation, and for other purposes."

In my view, intermodal legislation is desperately needed to allow American importers and exporters the opportunity to realize fully the benefits of containerization.

The subject of intermodalism has been before the Congress in one form or another for at least 12 years, and this Commission has, in general, vigorously supported legislation proposed to clarify and to streamline the procedures applicable to ocean carriers in that context. With your indulgence, I would like to recap quickly for the record the chronology of what has occurred.

In 1965, bills were introduced in the House and the Senate, H.R. 7793 and S. 1950, to allow for common carriers regulated by the Interstate Commerce Commission, Civil

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Aeronautics Board and the Federal Maritime Commission to enter into joint rates for the through transportation of cargo in the domestic trades.

In 1968, two new intermodal bills were introduced in the House and the Senate, H.R. 16023 and S. 3235. These bills, known as the trade simplification bills, were supported by a rather large number of government agencies, including FMC, CAB and DOT. These bills would have provided for the statutory beginnings of intermodalism, albeit with a fragmented approach to regulation.

In 1970, the Federal Maritime Commission put into effect new tariff filing rules designed to permit ocean carriers to file tariffs containing through rates to and from inland points. Since the institution of these rules, collectively embodied in Amendment 4 to General Order 13, and informal accommodations by the Interstate Commerce Commission, it has been possible for ocean carriers to file a tariff containing through rates with both the FMC and the ICC, subject to regulation by both agencies.

On September 18, 1972, my predecessor testified before this committee on H.R. 15465. That bill abandoned the cumbersome joint board approach in the trade simplification bills which would have given jurisdiction over such movements to a joint board composed of members from the different regulatory agencies -- the Federal Maritime Commission, the Interstate Commerce Commission and the Civil Aeronautics Board. Under H.R. 15465, intermodal through transportation

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of cargo between ports or interior points in a foreign country, would have been subject to regulation under a single comprehensive law by a single regulatory body. However, this Commission opposed that provision of H.R. 15465 which would have prohibited granting antitrust immunity where more than one carrier in any mode of transportation participated in a through route and through rate arrangement.

H.R. 8097 was introduced May 23, 1973, in an attempt to avoid some of the objections to H.R. 15465. H.R. 8097 provided for the granting of antitrust immunity to all parties participating in an agreement providing for through routes and through rates and provided exclusive jurisdiction in one agency as to all intermodal activities. Because of the opposition to this bill by ICC regulated carriers and several agencies, the FMC attempted to support a less controversial approach to intermodal legislation.

On August 13, 1974, Commission testimony was heard by this Committee on four separate bills then under consideration; H.R. 739, H.R. 8097, H.R. 12428, and H.R. 12429. The Commission supported H.R. 12428 and H.R. 12429, favoring H.R. 12429 as being the better vehicle for the nation to achieve the benefits of intermodalism, because it also provided for liability in a single carrier for loss or damage to the goods and permitted filing of a single tariff containing a single factor rate for the entire movement of the cargo, thereby placing the regulation of the entire through movement

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under the jurisdiction of a single agency, the FMC. In addition, H.R. 12429 clearly authorized the Commission to confer antitrust immunity with respect to agreements which involved several carriers in a given mode of transportation.

H.R. 12428 would have amended the Shipping Act, 1916, by making section 15 applicable to agreements involving the through intermodal transportation of property in the foreign and domestic offshore commerce, between "a vessel operating common carrier by water and a common carrier regulated under Parts I, II, or III of the Interstate Commerce Act and/or a direct air carrier regulated under the Federal Aviation Act." Thus, although this language did not, as under H.R. 15465, *prohibit* the granting of antitrust immunity for concerted activities by more than one carrier in a particular mode, it was unclear whether the granting of such immunity was authorized. Two other provisions were included in H.R. 12428. The Bill would have required each of the three transportation regulatory agencies within six months of enactment, to promulgate uniform rules and regulations governing the content, format, and filing of tariffs providing for intermodal services and systems. It also would have required the agencies, within one year following enactment, to report to the Congress with respect to the need for additional intermodal legislation, and with respect to conflicts between their respective statutes which may inhibit the full development of intermodal services, together with appropriate legislative recommendations.

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I would now like to comment on H.R. 1080, the Bill which is the subject of this Hearing. This Bill is identical to H.R. 12428, referred to above. As such, the same question is presented concerning antitrust immunity for parties to concerted activities involving more than one carrier in a particular mode. At this time, conferences of water carriers and rate bureaus of surface carriers cannot collaborate and discuss rates with each other because of antitrust implications. We truly believe that such collaboration over rates, services, and practices, is vital to the implementation of an integrated intermodal transport system. Accordingly, we would recommend that section 1 be amended to use the plural wherever the word "carrier" appears therein. This modification would make it clear that the Bill is intended to authorize the granting of antitrust immunity to concerted activities between *groups* of carriers by water and *groups* of carriers in other modes with which they connect. We have been informed by the Office of Management and Budget that the Administration strongly supports the Justice Department's position opposing section 1.

Under H.R. 1080, carriers would still be required to file tariffs with each agency that regulates participants in the through movement. For this reason, section 2 would require the three transportation regulatory agencies (FMC, CAB, ICC) to join forces and promulgate uniform tariff filing rules within six months of the date of enactment.

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However, the problem of conflicting regulatory statutes will continue to exist in formulating uniform tariff filing rules, no matter how cooperative the efforts may be of the agencies involved in regulating the various modes of transportation.

It is my strong belief that, if the full benefits of intermodalism are to become available to the shipping public, the Congress will eventually have to enact legislation to provide for regulation of intermodal transportation by a single agency. I am pleased to see that section 3 of H.R. 1080 would require the Chairmen of the three transportation regulatory agencies to report directly to Congress within one year following enactment of this Bill with respect to the need for additional legislation to facilitate intermodal transportation and with respect to conflicting statutory provisions.

Thus, the pending Bill seems to me to be a step in the right direction and would provide a basis for the further development of intermodalism. Enactment of legislation eliminating conflicting statutory provisions and assigning the regulation of intermodal movements to a single agency is long overdue. While it may appear to some that section 3 of this Bill is an unnecessary intermediate step toward the promotion of effective intermodal transportation, it is a necessary one, given the art of the possible, to deal with the most immediate obstacle to continuing development of intermodalism.

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Accordingly, we urge this Committee to act favorably on H.R. 1080, with our suggested modification.

We have been advised that the Office of Management and Budget has no objection to the position taken by this Commission on H.R. 1080, except that it opposes the enactment of section 1.

Mr. Chairman, this concludes my prepared statement. I would be glad to answer any questions you and the other Subcommittee members may have. Thank you.

Mr. BAKKE. Thank you, Mr. Chairman. This bill is identical to H.R. 12428 that was considered by this committee in 1974. The threshold question now, as it was then, is whether there should or should not be limited antitrust immunity for parties to concerted activities involving more than one particular mode of transportation. At this time, conferences of water carriers and rate bureaus of surface carriers cannot undertake joint action or discuss rates with each other because of the antitrust implications.

We truly believe that such collaboration concerning rates, services and practices is vital to the implementation of an integrated intermodal transport system. Accordingly, we would recommend that section 1 of H.R. 1080 be amended to use the plural wherever the word "carrier" appears therein. This modification would make it clear that the bill is intended to authorize the granting of antitrust immunity to concerted activities between groups of carriers by water and groups of carriers in other modes with which they connect. However, I have been asked at this point to include a statement to the effect that we have been advised by the Office of Management and Budget that the administration strongly supports the Justice Department's position opposing section 1.

Under H.R. 1080, carriers would still be required to file tariffs with each agency that regulates participants in through movements of cargo. For this reason, section 2 would require the three transportation regulatory agencies—FMC, CAB, ICC—to join forces and promulgate uniform tariff filing rules within six months of the date of enactment.

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Accordingly, we urge this committee to act favorably on H.R. 1080, with our suggested modification.

I have been asked at this point to include a statement to the effect that we have been advised that the Office of Management and Budget has no objection to the position taken by this Commission on H.R. 1080, except that it opposes the enactment of section 1.

Mr. Chairman, that concludes my summary of my prepared statement. I would be glad to answer any questions you and the other subcommittee members may have.

Thank you.

Mr. OBERSTAR. Mr. Downing?

Mr. DOWNING. This has been one of the most controversial pieces of legislation that this committee has handled. I suppose you support it, Justice is opposed to it, ICC is opposed to it. In your opinion, this would facilitate the ratemaking procedures and the carriage of goods between points abroad and inland points in the United States?

Mr. BAKKE. Definitely.

Mr. DOWNING. Thank you very much.

Mr. BAKKE. If I might amplify on that, Mr. Chairman, there are three elements that are really essential to an effective and efficient intermodal system. First, antitrust immunity is necessary for the discussions and agreements reached concerning intermodal rates and practices by groups of common carriers in one mode in discussion with groups of common carriers in another mode. A second essential is that there be single party liability from points of origin to points of delivery. The third, of course, is a through bill of lading to cut down the paperwork and the transitional problems that now arise in turning cargo over from one mode of carriage to the next.

Absent legislation that would accommodate all three of those requirements, the full realization of the economies of scale and the benefits of efficiency—and, indeed, the potential for less costly movement of goods in ocean commerce—will be frustrated.

Mr. DOWNING. For purposes of the record, and for the benefit of the members, including me, could you give us a simplified example of the way the procedure is now and the way the procedure would be if this were enacted into law?

Mr. BAKKE. A simplified version?

Mr. DOWNING. Pick a cargo example, somebody shipping something from Hamburg, Germany, to Kansas City.

Mr. BAKKE. All right. The cargo originating in Hamburg would be loaded at Hamburg, let's say, aboard a U.S. ship. There are certain assumptions that have to be made about when title to the goods is to pass from the shipper to the consignee, but let's assume that we have no complications in that area. The cargo is loaded aboard a U.S. vessel in Hamburg Harbor. Upon receipt of the goods from the drayage company or the shipper, the ocean carrier becomes liable for the loss or damage to the goods. The ship arrives in New York and the cargo is loaded on an inland carrier—a railroad or a trucking concern—for delivery to the consignee. At that point, the liability attaches to the carriage by that inland carrier. So long as the goods are turned over in satisfactory fashion to the inland carrier, the ocean carrier's liability is terminated and the inland carrier's liability commences. This becomes very important in instances where there happens to be either loss or damage to the goods.

Under the intermodal system, there would be a single liability that would follow the goods from Hamburg until the shipment reaches the ultimate consignee in Kansas City.

Mr. DOWNING. Who would bear that liability?

Mr. BAKKE. It would be the carrier designated as the intermodal carrier. In the case you cite, I am assuming that the ultimate legislation would designate the ocean carrier.

Mr. DOWNING. And the ocean carrier would also be liable for any liability after it gets on the train going to Kansas City?

Mr. BAKKE. Yes, sir. That simplifies the legal world considerably for the merchants involved, because they know they have only one person to look to and they know who that one person is.

Mr. DOWNING. Who determines the rate?

Mr. BAKKE. The intermodal carrier and its connecting carrier would establish the rate or, if it were to be an intermodal movement under the umbrella of a liner conference on the one hand and a rate bureau of inland carriers on this side, it would be the rate established by negotiation between the liner conference and the rate bureau.

Mr. OBERSTAR. If the chairman will yield, are the limits on liability the same for an ocean carrier on land?

Mr. BAKKE. No. Under the Carriage of Goods by Sea Act, there are, I believe, lower limits on the ocean leg than pertain with respect to liability of inland carriers. Under that act, the upper limit of liability is \$500, whereas with respect to our inland carriers the liability is the actual damage. That discrepancy is another reason for having the liability consolidated.

Mr. OBERSTAR. Then if only the ocean carrier was the responsible party, there would be a substantial benefit for somebody not having the higher liability of land carriage?

Mr. BAKKE. This bill does not involve anything that would even come close to resolving that problem. The maximum amount recoverable for damage or loss of the goods would still depend on whether such damage or loss occurred on the ocean or land portion of the transportation. However, there is always the possibility that the person most directly concerned in protecting his interests in the goods can get insurance coverage over and above what the common law liability is or what the liability would be under the Carriage of Goods by Sea Act.

Mr. DOWNING. Thank you.

Mr. OBERSTAR. The gentleman from California.

Mr. ANDERSON. Thank you, Mr. Chairman.

Following Mr. Downing's question, let's reverse the direction of the shipment of goods. Supposing the shipment was sent from Kansas City to Hamburg by the way of rail first, would it be the railroad that assumes the liability?

Mr. BAKKE. Yes, sir; to the port.

Mr. ANDERSON. It is the initial part of the transportation then, that establishes the responsible carrier?

Mr. BAKKE. I beg your pardon. If you are talking about the case under intermodal legislation—the ultimate intermodal legislation to which I referred—it would be the intermodal carrier who would bear the liability throughout the transit of goods.

Mr. ANDERSON. Which would that be?

Mr. BAKKE. That would depend upon the statutory definition of intermodal carrier. It could be the inland carrier or the ocean carrier.

Mr. ANDERSON. In the example you used for Mr. Downing, you said if we shipped from Hamburg to Kansas City, it would be the vessel, the steamship company would be the motor carrier.

Mr. BAKKE. Assuming that the ocean carrier is designated by legislation as the intermodal carrier.

Mr. ANDERSON. If it is the reverse, the other way around from Kansas City to Hamburg would that make any difference?

Mr. BAKKE. No, it would depend upon the statutory definition.

Mr. ANDERSON. Who sets the insurance rates to cover this?

Mr. BAKKE. Insurance companies.

Mr. ANDERSON. In other words, this is solely, this being not only international, but there would be no one looking over the shoulder of insurance companies to see what the rates would be.

Mr. BAKKE. It is my understanding that, at least in terms of domestic operations, there are constraints upon the rates charged by insurance companies under State law.

Mr. ANDERSON. That is intrastate?

Mr. BAKKE. It can be interstate. The insurance company writing the policy must be authorized to do business in the State where the policy is written. Assuming that is the case, the price of the insurance would be the company's going rate.

Mr. ANDERSON. But under the restrictions of the State's authority, there is no Federal agency that looks over their shoulder on the rates?

Mr. BAKKE. No, sir.

Mr. ANDERSON. And nothing internationally, so it would solely be the carrier, the insurance company in the State where the intermodal operator was located?

Mr. BAKKE. It would be where the policy is written. In terms of the international movement of goods, of course, you have Lloyds of London and conceivably others that operate routinely on an international scale.

Mr. ANDERSON. Thank you, Mr. Chairman.

Mr. OBERSTAR. Mr. Bakke, could we come back to the series of questions that I posed to the Justice Department witness of four situations in which I asked his reaction to the possible restraints of trade—

Mr. BAKKE. I agree completely with Mr. Rose's response to those questions in that respect. In the absence of an antitrust exemption, the carriers concerned could well be charged with violations of our antitrust laws, and that is precisely why we need this legislation.

Mr. OBERSTAR. You agree with his responses and you come to a different conclusion.

Then let me ask you, what is the advantage of having this broadened antitrust immunity? What specific benefits are we going to realize?

Mr. BAKKE. We are going to realize initially the opportunity for groups of carriers of different modes to get together and start talking about development of intermodal operations that one might expect to be more efficient and more effective, assuming that follow-on legislation with the authorities required is forthcoming. This particular bill will do little or nothing with respect to the long run, because, even though the carriers can get together and talk about rates in terms of carriage, there still is, as I mentioned earlier, the problem of single party liability and the single through bill of lading, both of which, in the view of the Commission, are essential for the realization of the full benefits of intermodalism and economies of scale.

and efficiencies of operation. These problems now exist because of conflicting regulatory statutes and the recovery limits placed on losses arising in ocean transportation.

The principal benefit, then, of the antitrust immunity is to permit the groundwork to be laid on the private sector side, while the three regulatory agency chairmen involved are getting together on their joint regulatory assessment, plus the development of the report that will be made to the Congress one year following enactment, suggesting further legislative actions that can be undertaken to permit fuller realization of the benefits that we see in intermodalism.

Mr. OBERSTAR. Mr. Rose made a comment in his statement that I questioned him about. Let me ask your reaction. He said that the conference, and I am quoting now, "The conference or rate bureau decisions by necessity are here to protect the weakest and least efficient firms." Is that your experience with the FMC that that, in fact, is the practice?

Mr. BAKKE. To the best of my knowledge, we have absolutely no evidence, not even a scintilla of evidence, to show that is true in the liner conferences.

Mr. OBERSTAR. I guess if you have the situation that exists in the United States with the limited number of firms, I think you probably do have to have some protection for the least efficient or the weakest firms, otherwise you reduce competition down to a point where there isn't any just by the natural operation of the market and you achieve exactly the opposite effect that the Justice Department was seeking to insure stabilized increased competition.

If you don't protect some of those few operators in some way, you will run into far-reaching problems.

Mr. BAKKE. That certainly is the view that prevailed at the outset of the liner conference system about a hundred years ago. The first conference was formed in the trade between Great Britain and India for that very reason.

A rate war by the carriers serving that trade ultimately resulted in one carrier after another falling by the wayside because they had to eat into capital to sustain operations while they were charging noncompensatory rates. Indeed, one of the principal rationales of the Alexander committee report that led to the Shipping Act of 1916 and authority for liner conferences was precisely that—that the ocean trades are sufficiently important as an element of our foreign commerce that they can best be served by a multiplicity of carriers, and in order to insure that a particular carrier, that happens to be more financially solid than others, does not drive the others out of business by a war of economic attrition.

The provision for a conference system, under which there is a single conference tariff that each member is obliged to observe, puts the competition on either economies of service or quality of service to the customer rather than on economic warfare.

Mr. OBERSTAR. Looking at it from the Justice Department perspective, who benefits from their view of competition, given the real world of ocean shipping and the two kinds of foreign competition we face, the third flags, by which I mean the United States, the third flags and those noncompensatory operations such as the Russians and the Polish fleets and the Balkan fleet and the rest?

Who really benefits if we take their position to its logical conclusion?

Mr. BAKKE. I would like to say nobody.

Mr. OBERSTAR. I asked this question of the Justice Department. Are they really stimulating competition among U.S. carriers, or are they insuring competition in a sense that will be beneficial principally to noncompensatory carriers?

Mr. BAKKE. There are two aspects to that question. One involves the serious competitive problems that are or could be presented by carriers of nonmarket economy countries, particularly Soviet carriers, and the other involves competition from non-Bloc carriers that cannot be constrained by the same concepts of business morality embodied in the U.S. antitrust laws as are U.S. carriers, absent the conference system.

On the first point, you may recall that an agreement was reached between the FMC and the Soviet Ministry of Merchant Marine, in Leningrad last July, that Soviet carriers operating as independents in the U.S. liner trades will adjust their rates to a level not below those of the lowest responsible non-Soviet independent carrier in relevant trade, and will sit down to serious discussion about ultimate conference membership, which would oblige those Soviet carriers to observe the conference tariff applicable to all other conference members.

There are already some encouraging developments in that area, and I think, given the nature of the Leningrad Agreement and the apparent disposition on the part of the Soviet carriers to pursue in good faith the undertakings spelled out in that agreement, that we need not have the same degree of apprehension with respect to the consequences of competition from that direction than has been the case up to this point.

As to the second point, I think if the conference system were to be abolished, as far as this country is concerned, the result would be head-on, dog-eat-dog liner competition that could only be a major economic disaster for many carriers, whether U.S. flag carriers or those of any other flag. In our foreign commerce, under the perspective—the regulatory perspective—of the Federal Maritime Commission, there are no flags. It is our responsibility to seek a commercial environment in which all carriers in our liner trades are accorded—and accord each other—equal and nondiscriminatory treatment. So abolishing the conference system, as far as this country is concerned, would throw all of our ocean trades into a brutal one-on-one kind of competitive relationship, leaving our ocean liner trades to the caprice of the most operationally effective predators.

Mr. OBERSTAR. I have several other questions that I would like to submit so you could answer them for the record.

How would this pending legislation stimulate containerization? How would it benefit containerization?

Mr. BAKKE. I think I would like to turn that around, if I may. This legislative proposal is a logical outgrowth and direct result of the appearance of containerization in our ocean trades. Prior to the development of containerization, there were break-bulk cargoes moving in the international liner trade routes, that presented considerably different problems in terms of handling and distribution. With the

advent of containers, the shipment is enclosed at the point of origin and opened at the point of destination. No intermediate handling of the commodity is required. The full realization of efficiencies and of effective economies that containerization can have, not only on costs of handling but on costs of distribution, awaits legislation that will provide the three essential elements I have previously mentioned: The antitrust immunity for discussions between groups of carriers in different modes, the single party liability, and the single through bill of lading. Without those elements the full potential of containerization is being hampered.

Mr. OBERSTAR. Does counsel have any questions?

Thank you very much, Mr. Bakke. We will submit other questions which we would appreciate your response in writing for the record.

Thank you for being with us.

[The following was submitted:]

ANSWERS OF CHAIRMAN BAKKE TO QUESTIONS POSED BY REPRESENTATIVE OBERSTAR
FOR INCLUSION IN THE RECORD

Question 1. Mr. Oberstar. As you know, the witness for the Department of Justice took the position that even with the mandate of section 3 of the bill (H.R. 1080), "It thus seems a bit much to hope that they (FMC, ICC, CAB) will be able to reach a consensus on appropriate remedial action." Tell me, does the Federal Maritime Commission anticipate difficulty in carrying out section 3 of H.R. 1080?

Answer 1. Mr. Bakke. Section 3 of H.R. 1080 requires the Chairman of FMC, ICC and CAB to report directly to Congress. Nothing in Section 3 implies that the reports of these officials must reflect unanimous agreement, although this would, of course, be preferable. Section 3 simply does not require consensus. The witness of the Department of Justice indicated that the three regulatory agencies have failed to resolve their differences by voluntary means. The agencies have had their differences over the years, and no doubt differences will appear as intermodalism develops. However, the agencies are cooperating. Our staff and the staff of the ICC are in almost daily contact at the working level with respect to carrier tariffs filed with both agencies. ICC, CAB, and FMC, together with DOT, comprise the Interagency Committee on Intermodal Cargo (ICIC). This body is a forum for discussion of intermodal problems and solutions to them. The ICC promulgated its intermodal tariff filing rules under its Docket No. Ex Parte 261. These rules are totally acceptable to FMC and we have approved them. However, there are some problems caused by inconsistent statutory requirements in the Shipping Act and the Interstate Commerce Act which the agencies cannot resolve cooperatively. Even if a consensus on appropriate remedial action were not reached, the reports of the three Chairmen should prove most useful in assisting the Congress in its deliberations.

Question 2. Mr. Oberstar. The witness for the Department of Justice took the position that the need for H.R. 1080 has yet to be demonstrated. Obviously you feel that it has. Tell me, how has the need for the bill been demonstrated?

Answer 2. Mr. Bakke. H.R. 1080 is a bill which would permit intermodal transportation networks to develop within the United States. I earnestly believe that the lack of antitrust immunity between carriers (and groups of carriers) has seriously delayed the establishment of through routes and joint rates to and from the inland locations of a majority of our exporters and importers. The full benefits of intermodalism (and containerization) can only be realized when an integrated transportation offering will permit goods to be loaded at the shipper's plant and unloaded at the consignee's warehouse regardless of the combination of transport modes or companies necessary to carry out the service. Ideally, this should be accomplished on a single bill of lading setting forth the liability and conditions of carriage for the total transportation, undertaken jointly, and should minimize paperwork by permitting a single set of documents and a payment to either the originating or delivering carrier. Recently, my staff was provided with the results of a survey conducted by Traffic Management, a leading transportation publication.

Included are copies of the results of the survey, as well as an editorial on intermodal legislation, as reported by the magazine in its June 1976 issue, which I ask be made a part of the hearing record.

In addition to the results of this survey, the glaring proof of need is the lack of development of systems in the United States while such development is occurring in other major trading nations. In fact, Canadian intermodal systems have developed to the point that they are able to divert substantial amounts of U.S. imports and U.S. exports through Canadian port gateways.

INTERMODALISM—WHERE IT STANDS

An important breakthrough this year in international traffic is the Interstate Commerce Commission's new attitude on facilitating intermodalism. While intermodalism is nothing new, its full potential has been retarded by regulatory impediments which evolved from laws and operating rules enacted in two separate areas of commerce.

For years the Federal Maritime Commission, recognizing this problem, pushed the ICC to change its rules affecting foreign commerce by: 1) relaxing its regulations; 2) adjusting tariff filing requirements; and 3) revising other rules to remove bottlenecks. The growth of containerization and marketing concepts such as minibridge consequently demanded faster transfers of shipping; but regulatory inconsistencies in U.S. portions of movements regarding through tariff applications hung on. Also, FMC and ICC regulatory laws differed widely on such matters as antitrust immunity, certification of carriers, dual rate contracts, suspension of rates, and tariff publishing requirements. The ICC, acting in strict interpretation of its mandate and concerned about legal developments arising when statutes conflict, explained its reasons for nonconformity. The problem, nevertheless, remained in limbo.

Then last February that agency did an about-face and set out to wipe away regulatory roadblocks to a large measure. In its Ex Parte 261 ruling, the commission said it will limit its regulation to the land portion of joint rates and through routes rather than water and inland portions, and that "provisions of the Interstate Commerce Act will not be applied to the dual rate, allowance, and other features of an international joint rate which affect only the operations of the ocean carriers involved . . . and not the divisions . . . or services by domestic carriers." Other changes it ordered involve tariff filing requirements, credit regulations, indexing of effective tariffs and concurrences by participating land carriers.

The next big step to open the door wide to intermodalism is legislation. Much needs to be done to make the Shipping Act of 1916 and the Interstate Commerce Act compatible documents for regulating transportation in foreign commerce.

A bill introduced in Congress (H.R. 1069) appears to go a long way towards breaking down the statutory barriers. In substance it says: "H.R. 1069 amends the Shipping Act, 1916, to provide for an 'intermodal carrier' which is a common carrier by water and offers a through intermodal service utilizing inland carriers in connection with its own service by water. It would be required to quote single factor rates, filed with the FMC, and would assume responsibility for the cargo from the place of receipt to destination. The bill would also provide antitrust immunity to arrangements between such carriers and to other carriers utilized in the through transportation."

Although the ICC had previously opposed the term "intermodal carrier" in the 93rd Congress when a similar measure was under debate, the new interagency cooperative spirit might engender suitable compromise to remove specific objections.

In all this controversy about how (and when) government should foster rather than inhibit intermodalism, shippers' input was barely noticeable. Yet they pay the freight tab. To sift out their views, we prepared a questionnaire covering pertinent shipping data and the extent of their wishes for legislative remedy. The report, published in this issue, clearly indicates the shippers' needs for: 1) an effective law to gain the benefits of intermodalism; 2) savings through intermodalism in shipping time, costs, work effort, paperwork and insurance; and 3) a more definitive carrier responsibility on settlement of cargo claims.

Hearings are expected to be called this year on H.R. 1069. Now is the time to write your congressman or senator on the need for legislation to clear the way for effective intermodalism. To acquaint government leaders with shippers' views, reprints of the survey report will be mailed to the pertinent legislative committee members and the Secretaries of Commerce and Transportation. Data contained therein will be useful in their fact-gathering efforts.

From every aspect, the artificial obstacles placed in the way of foreign trade, even though protective in nature, appear to be regressive. Many laws and regulatory rules were made well before containerization came along. But times change and so should related laws and rules. The intent of framing laws is to help, not hinder, commerce. During this worldwide inflationary period, American exporters and importers need every aid to gain and hold markets. True intermodalism is badly needed—and we need it now.

INTERMODALISM: WHAT SHIPPERS WANT

(By Stephen Tinghitella, Editor)

Intermodalism.— "The arrangement for through transportation, from shipper to consignee, over the lines of two or more transportation modes—and under through liability, through billing, and a single through rate."—Norman T. Harris, Director, Bureau of Compliance, Federal Maritime Commission

The promises of true intermodalism—which would eliminate waste, gain transit time, and other benefits—are now almost reality. Regulatory agencies until recently experienced difficulty in resolving the conflict of their respective rules. They are now joining in a cooperative spirit to overcome such problems. Legislation to make existing statutes compatible in the regulation of foreign commerce transportation is the next major step to achieve. The emphatic shipper desire for such legislation reported in this survey indicates that the goal is at hand. Congress might act this year in that regard, provided of course the demand for action is persistent.

Traffic management, in seeking the shippers' viewpoint on intermodalism and related characteristics, sent 1,000 questionnaires to traffic managers and other executives responsible for physical movement of each company's exports and imports. Nineteen percent responded to the four-page questionnaire. The report, covering a cross-section of industry and representing all U.S. regions serving world ports, expresses unmistakably three factors. Shippers want and need:

An effective law which would clear away problems in present statutes that result in cumbersome intermodal practices;

Savings through smoother intermodalism in cost, transit time, work effort, paperwork, and insurance;

A more definitive carrier responsibility on settlement of cargo claims in foreign traffic.

Much of the related data describes the depth of interest in various segments of traffic: geographical areas served, the modes contributing to offshore traffic, documentation, insurance, and description of respondents' commerce. The following responses are tabulated in percentiles with comments added to indicate additional opinions. In many cases, these answers will not total 100 percent because respondents selected more than one answer or offered none at all. The report in its entirety follows.

Below is a synopsis of proposed legislation designed to facilitate intermodalism. These two bills are currently before the House of Representatives.

H.R. 1069—amends the Shipping Act, 1916, to provide for an "intermodal carrier" which is a common carrier by water which offers a through intermodal service utilizing inland carriers in connection with its own service by water. It would be required to quote single factor rates, filed with FMC, and would assume responsibility for the cargo from the place of receipt to destination. The bill would also provide antitrust immunity to arrangements between such carriers and to other carriers utilized in the through transportation.

H.R. 1080—would provide antitrust immunity between common carriers by water and carriers of other modes. The bill would require the three transportation regulatory agencies to promulgate uniform tariff filing rules but would require the tariffs to be filed at more than one agency.

EXHIBIT E

INTERMODALISM SURVEY

		Percent
<i>Question 1. Which bill would benefit you most, if enacted:</i>		
H.R. 1069		83
H.R. 1080		13
No opinion		4
<i>Question 2. Do you think that intermodal legislation, such as described above, would benefit your company in regards to savings of:</i>		
Cost:		
Yes		78
No		15
Time:		
Yes		89
No		6
Work effort:		
Yes		80
No		8
Paperwork simplification:		
Yes		89
No		6
Insurance:		
Yes		37
No		33
Other:		
Transit time, tracing and claim control		1
Quicker customs clearance		1
Control of movement		4
Reduce packaging efforts and costs		1
Improve claims service		1
Maintenance of quality levels		1

COMMENTS

Individually negotiated rates under either bill would overlap into publications which could be detrimental to shippers' marketing areas.

Door-to-door container service is the ultimate in pilfer-proof, damage-free service and through bill of lading allows for better control, tracing, etc.

This may tend to alter geographical advantages to some in the international trade.

Antitrust immunity tends to free monopolistic practices which in turn allows carriers to dictate rates and terms.

<i>Question 3. Types of ocean carriers employed:</i>		Percent
Vessel operating common carrier		53
Non-vessel operating common carrier		11
Both		36
Other:		
Chartered vessels		2
Tankers		1
<i>Question 4. Trades engaged in U.S. and foreign ports:</i>		
United States:		
East Coast		78
Gulf Coast		58
Pacific Coast		70
Great Lakes		28
\$500 to \$999		2
\$1,000 to \$4,999		6
\$5,000 to \$9,999		1
\$10,000 to \$14,999		2
\$15,000 and over		1
\$100,000 and over		1
Unknown		9

Foreign:	Percent
Europe, U.K	85
Mediterranean	61
Africa, Middle East	59
Far East	77
South Pacific, Australia	57
South America, Central America.....	61
<i>Question 5. Type of shipments:</i>	
Less than container loads	79
Container loads—Single commodity	68
Container loads—Mixed commodities	45
Other:	
Bulk shipments too large for containers	2
<i>Question 6. Location of shipping/receiving facilities—U.S. and foreign (if more than one location, check for each):</i>	
At the port:	
United States	24
Foreign	28
Within 50 miles of port:	
United States	42
Foreign	49
Within 500 miles of port:	
United States	46
Foreign	53
Over 500 miles from port:	
United States	42
Foreign	18
<i>Question 7. Processing of documents:</i>	
By customs house broker or forwarder	94
By own personnel	41
Other:	
Corporate division	1
In-house forwarder	1
<i>Question 8. Modes utilized in movements of international cargo in connection to ocean carrier:</i>	
Mini-bridge	26
Rail	57
Local drayage.....	46
Air	44
Domestic freight forwarder	33
Motor	90
Motor-rail or air and local drayage.....	19
Other:	
Private fleet	1
Shippers association	1
<i>Question 9. Number of bills of lading involved:</i>	
One	21
Two or three	60
Four or more	18
If more than one, would a single document result in savings?	
Yes	30
No	8
Estimate per year:	
\$100 to \$499.....	2

COMMENTS

Cost of paperwork preparation and coordination only (\$10,000). Would expect intermodal rates to be lower than sum of two or three modes currently used.

<i>Question 10. Insurance coverage on international shipments:</i>	<i>Percent</i>
Ocean coverage only	26
Ocean coverage and coverage inland overseas	10
Coverage over entire movement	63
No coverage	9
Other:	
Ocean coverage and coverage inland domestic	1
<i>Question 11. If you have had occasion to file claims for loss or damage have you:</i>	
(a) been required to determine where loss and damage occurred?	
Yes	63
No	17
(b) had claims denied for inability to ascertain where damage occurred?	
Yes	35
No	39
(c) had liability for loss and damage declined by one or more carriers?	
Yes	52
No	24
(d) sustained unrecoverable losses?	
Yes	49
No	23
<i>Question 12. Type of firm:</i>	
Manufacturing	85
Distributing	1
Wholesaler	1
Export	1
Import	1
Other:	
Construction and engineering	1
Utilities	1
Retail	5
Operation and maintenance headquarters	1
Oil and petro-chemical construction	2

Mr. OBERSTAR. Our next witnesses are Mr. Gerald J. Flynn, chairman, Far East Conference, and Mr. Donovan D. Day, Jr., chairman, Pacific Westbound Conference.

We have your statements and they will be put in the record as if read and you may cover the highlights if you wish or deliver them.

STATEMENTS OF GERALD J. FLYNN, CHAIRMAN, FAR EAST CONFERENCE AND DONOVAN D. DAY, JR., CHAIRMAN, PACIFIC WESTBOUND CONFERENCE

Mr. DAY. Mr. Chairman, if I may, I would like to read the statement in the record.

My name is Donovan D. Day, Jr., I am the chairman of the Pacific Westbound Conference. The gentleman on my right is Mr. Gerald J. Flynn, the chairman of the Far East Conference, and on my left is Mr. Elkan Turk, counsel representing the Pacific Westbound Conference and Far East Conference in this matter. This is a joint statement of Mr. Flynn and myself on H.R. 1080.

We welcome this opportunity to come before this committee again to express our views as chairmen of two conferences serving important U.S. trade routes, with respect to a piece of legislation which we believe will profoundly affect the timing of the institution of intermodal service between interior points in the United States and ports and points in the many foreign countries with which the United States has active trading relations.

In past appearances, we have supported legislation designed to eliminate the legal and regulatory obstacles to intermodal transportation. After the initial bill on that subject, H.R. 15465, in the 92d Congress, the legislative proposals were divided. In the 93d Congress, there were two bills, H.R. 12428 and H.R. 12429. One of them, much like H.R. 1080, the subject of these hearings, was short and attempted to deal simply with the major difficulties being encountered. The other, more like H.R. 1069 in the present Congress, attempted to deal in detail with all of the many problems which were then in existence.

In the past we have favored the longer bills, which dealt with the problems which then existed more comprehensively.

Happily, we are able to say today that we support H.R. 1080. The change in position is attributable to the ironing out between the Federal Maritime Commission and the Interstate Commerce Commission of their previously different views regarding the extent to which the ICC's pursuit of its regulatory function over the participating carriers subject to its jurisdiction should be able to affect the joint through rates established jointly by carriers subject to its jurisdiction and carriers subject to the Maritime Commission's jurisdiction.

We are sure that the committee is aware that on January 30, 1976, the Interstate Commerce Commission issued a "Supplemental Report and Order of the Commission on Further Reconsideration" in its case, Ex Parte 261, In The Matter of Tariffs Containing Joint Rates and Through Routes for the Transportation of Property Between Points in the United States and Points in Foreign Countries (351 ICC 490). In its report, the ICC declared that, in considering intermodal tariffs filed with it, it does not intend to assert jurisdiction over or otherwise to engage in substantive regulation of the ocean portion of the rates pursuant to the Interstate Commerce Act.

Rather, it would restrict its regulatory and procedural activities to the domestic carriers' portion of the through rate. It states that changes in intermodal tariffs involving changes only in the through rate by reason of a change in the ocean portion of the rate, might be implemented within the notice periods provided in the Shipping Act, rather than those in the Interstate Commerce Act, and that when ICC suspension procedures might be invoked, they would apply only to the divisions of the through rate accruing to the domestic carrier. At the same time, the ICC promulgated revised regulations governing the filing with it of intermodal tariffs which, for the most part, eliminated differences between ICC requirements and Federal Maritime Commission requirements under the Shipping Act.

Although the permanence of this new departure in ICC thinking would be assured by congressional action, we are confident that the good faith of the governmental agencies concerned will, for the foreseeable future, eliminate many of the problems of overlapping jurisdiction which we previously sought to make the subject of legislation.

Our principal concern with intermodal legislation from the very beginning has been over the question of conference authorization to make intermodal rates for carriers desirous of participating in the conference and channeling their competition in the direction of service competition, rather than rate competition. The original bill introduced in 1972 did not provide for conference intermodal ratemaking because the Federal Maritime Commission, which sponsored the bill and favored conference participation, was unable to obtain clearance for its introduction without eliminating that authorization. The position of the then chairman of the commission in favor of conference authorization was made abundantly clear at the hearings on the bill.

In preparing this statement, we assume that the commission still favors conference participation, and that the Department of Justice will still oppose it.

To explain why we urge that provision be made for conference intermodal ratemaking, we can do no better than to quote a portion of the statement which we submitted in December of 1974 for the consideration of this committee in connection with the bills numbered H.R. 12428 and 12429:

We welcome the consideration of legislation which would authorize ocean steamship conferences and bureaux or conferences of inland carriers to work cooperatively in developing the tariff structures which are prerequisite to the introduction of large scale interior point intermodal transportation.

We recognize at the outset that in endorsing this aspect of the legislation, we are urging this committee to swim against a strong tide of antitrust sentiment. If the committee accepts our arguments it will not be the first occasion on which it has rejected powerful arguments that the antitrust laws should have wider application in the field of ocean shipping. In 1914, the Alexander committee endorsed the conference system at the same time as an antitrust-minded Congress was passing the Clayton Act. Its views were vindicated by the passage of the 1916 Shipping Act, which authorized conferences and exempted them from the antitrust laws. In 1961, after lengthy investigations of shipping both by this committee and by a subcommittee of the House Judiciary Committee, this committee, in conference with the Senate Committee on Commerce, rejected efforts to debilitate the conference system with antitrust-style restrictions. We believe that the reasons for resisting the antitrust arguments are stronger today than ever.

Mr. OBERSTAR. If I might interrupt at that point, we do have that portion of your statement in the committee records previously, and rather than repeat it for the record, it would be helpful if you could continue at page 8. I think you are reaffirming the statement previously made which is helpful for us to know that.

Mr. DAY. I will continue then at page 8.

We believe that events since that statement was made strongly support our position. For one thing, although there has been a proliferation of minibridge arrangements, there have been very few interior point intermodal arrangements, and negligible traffic has moved pursuant to them. We believe that the absence of interior point intermodal service is attributable to the complexity of the construction of such a tariff and the concern of individual carriers that if they initiate interior point intermodal tariffs, other carriers will feel compelled to do likewise in order to remain competitive, and that there will follow, as has always been the case in the history of steamship liner competition, competitive rate cutting to attract traffic with disastrous results to the financial viability of the carriers concerned, and no help to merchants who desire stability of freight rates.

The introduction and development of minibridge service to the Far East under individual carrier auspices has produced rate competition, both among the minibridge services, and between the minibridge service on the all-water service between Atlantic and gulf ports and the Far East.

Efforts to ameliorate the minibridge situation and to provide for an orderly rate basis for the innovation of interior point intermodal service have been thwarted partly for lack of a clear legislative endorsement and authorization of conference intermodal ratemaking. If H.R. 1080 were to be enacted without change, it would appear to settle the issue adversely to conference intermodal ratemaking. It applies the approval procedure of No. 15, and the consequent antitrust exemption, to intermodal agreements "between a vessel operating common carrier by water and a common carrier regulated under the Interstate Commerce Act, and/or a direct air carrier regulated under the Federal Aviation Act, and/or a carrier operating transportation companies located in a foreign country." We urge that there be inserted, following the description of each category of participating carrier, some such words, as "or conference or ratemaking bureau, or association of such carriers having such approval as may be required, and authorized under applicable laws."

Rate stability in international transportation has been recognized as a desirable condition for international trading from the time of the Alexander committee report in 1914—and in antecedent inquiries in England—through the hearings and legislation substantially overhauling the Shipping Act in 1961, and up to the present moment insofar as stability has been threatened by particular types of operation believed to be inconsistent with privately owned operation. Domestically, the United States has provided for transportation rate reasonableness and stability by detailed regulation of rate levels, rates of return, et cetera. It has consistently been recognized that such regulation cannot be unilaterally imposed by only one of the sovereign nations involved in transportation between two or more sovereign nations.

Repeated critical assessments of the conference system have always led to the conclusion that in international trade, conferences are the best means of achieving rate stability. As we pointed out in our previous statement to this committee, quoted above, the reasons for achieving stability in intermodal transportation today are even more compelling than was the case in the days of breakbulk all-water service.

Finally, we want to urge that if the committee adopts our view, it record in its report its sentiment in favor of conference intermodal ratemaking. We say this because recently it has become quite difficult and time-consuming to obtain Federal Maritime Commission approval of rate agreements, even though Commission decisions have recognized the public benefits inherent in such agreements. We believe that this results from an over-expansive interpretation of court decisions approving a Commission philosophy that any agreement which, absent approval, would violate the antitrust laws, is *prima facie* contrary to the public interest, and, therefore, unapprovable unless a showing of public benefit from approval is made. It is wasteful, and productive of delay, to require proponents of agreements to prove in each instance what Congress has repeatedly concluded—that an agreement on rates which is inherently productive of rate stability is in the public interest.

If this committee desires conferences to take the initiative in developing interior point intermodal tariffs, we believe that it must make its sentiments so clear that they cannot be misinterpreted.

Thank you.

Mr. OBERSTAR. Thank you very much, Mr. Day. It is a clear statement of the position of the conferences on this legislation. I was interested in the view expressed on page 10, your suggestion that the conference and ratemaking bureau be added to the legislation. That differs diametrically from the position taken by the Justice Department in which Mr. Rose said that would be the worst of all situations.

Mr. DAY. I think we have recognized the Department of Justice's position on this. We happen to differ in opinion 180 degrees. We feel that it is extremely important to the trade of the United States that there be stability, that there be a responsibly uniform structure of rates which can only come out of this type of legislation.

Mr. OBERSTAR. Why do you see this as not being a restraint on trade as an anticompetitive practice to allow conferences and ratemaking bureaus to negotiate with each other?

Mr. DAY. It is restrictive. I do not think it has any question about that. It has its anticompetitive aspects. But I think those anticompetitive aspects are overridden by the need and necessity of the trade for a stable and uniform and usable rate structure by shippers and consigners.

Mr. OBERSTAR. What are the benefits then to the public that accrue from the arrangements you are suggesting?

Mr. DAY. Perhaps by way of illustration, if we take the extreme opposite end where we have a one-on-one situation, I have 18 regular member carriers within my Pacific Westbound Conference and two associate lines for a total of 20. If we have a one-on-one situation, it is possible that we can have 20 different rate structures, 20 different

levels or rates, 20 different tariffs, which makes it a rather chaotic situation for a shipper to determine what rate he has to pay today or tomorrow or next month. Now, we can eliminate all of this by the ability of conferences and rate bureaus to be able to get together to discuss and construct the single rate structure which makes far more sense and is far more usable by the trading community.

Mr. OBERSTAR. Is there any parallel in any other sector of American industry for that kind of practice?

Mr. DAY. I cannot think of any off the top of my head, but I think we are dealing in an environment that is not comparable to our domestic situation. I personally do not feel that you can compare freight rates in international transportation with a system of domestic freight rates and a system of domestic regulations.

Mr. OBERSTAR. How about if we had a situation where a regulatory agency separates, instead of conference to rate bureau working it out, the conference setting its own rate, the rate bureau setting and those two working together, how about if say one of the transportation regulatory agencies set that rate in a manner that the CAB sets rates for domestic airlines?

Mr. DAY. Here, again, we are dealing in an international environment. We have a sovereign nation on the other end of the line and it is a question, I think, here is the propriety of a United States regulatory commission setting rates in a trade that involves another sovereign nation. I do not for that reason think it is practical.

Mr. OBERSTAR. Practical from the sense that the other countries would not accept the U.S. Regulations?

Mr. DAY. I think that is true.

Mr. OBERSTAR. Could it be done by an international body?

Mr. DAY. I think you are getting into an area, not that it could not be done, it probably could be done but how practical it is to meet the needs of modern-day trade.

Mr. OBERSTAR. There is not now in existence any international ocean trade regulatory agency; you would have to create one; and like the Law of the Sea Conference, that would be a total occupation for whomever.

Mr. Anderson? Counsel?

Mr. CORRADO. I would only say in answer to what you were fishing for, Mr. Chairman, the intermodal movement is cut into three segments and the third segment, the inland movements from the port inland in the foreign country, we cannot regulate. That is really the sovereignty of the foreign nation. But when you were talking about the liability problems you hit on a big issue. Liability is one of the main sticking points we have had in this intermodal issue and it is a real can of worms. It should be recognized, however, that there have been international efforts in the area of intermodal liability and we are hopeful that is the way to go rather than domestic legislation, although as in the Law of the Sea, the progress has been very slow. Perhaps that is the way to go, rather than domestic legislation. It is very difficult to legislate domestically with respect to the liability problem because of the multiplicity of mode and methods of liability.

As you pointed out in your questioning earlier, Mr. Chairman, there are all kinds of different intermodal segments and different liabilities and problems.

Mr. OBERSTAR. I wanted to raise that question on the single party liability and the point that I reviewed with Mr. Bakke about the lower liability rate for ocean trade. What benefits accrue from that situation, is it a significant element in the development of a rate or how would you do it?

Mr. TURK. I think if I may, Mr. Chairman, the benefit attached to the single factor rate and through bill of lading really is directed toward the merchants in allowing them the ability to know beforehand at the point of sale and movement from the interior point what his fully landed costs are about to be as opposed to today dealing with the differing forms of transportation and getting separate quotations on different bases, in fact, one on a weight basis, predominately so in domestic transportation, and in international field predominantly on a measurement basis, so that there are several calculations eliminated insofar as the merchants are concerned and assumed by, I would believe, the ocean carrier in the quotation of through rates based upon hoped-for approval of the bill before you today.

Mr. OBERSTAR. We have a number of other questions that we would like to submit to you for the record. We have several witnesses yet remaining and restraints on time.

Counsel, do you have any questions?

We will submit those questions to you for response in writing for the record. Thank you very much for your presentation here this morning.

Mr. DAY. Thank you, Mr. Chairman.

Mr. OBERSTAR. On page 9, you point out "the absence of interior point intermodal service." Tell me, how does this affect the foreign commerce of the United States?

On page 3, you say that your "principal concern with intermodal legislation from the very beginning has been over the question of conference authorization to make intermodal rates for carriers desirous of participating in the conference and channeling their competition in the direction of service competition, rather than rate competition". Would you please explain what you are referring to here; especially the part about "conference authorization to make intermodal rates"?

What is a joint through rate?

Do you believe that another comprehensive study of the ocean conference system such as that undertaken by the Alexander committee in 1914 and by the Cellar committee in 1961 is warranted in the near future? If so, why? If not, why not?

What is an intermodal tariff?

Next, we have Mr. George Begnal of the General Electric Co. Welcome to the committee. We thank you for your presentation this morning and you may proceed to read it in whole or in part and in any event, it will appear in its entirety in the committee record.

STATEMENT OF GEORGE F. BEGNAL, JR., MANAGER-FACILITATION, GENERAL ELECTRIC CO., INTERNATIONAL SALES DIVISION

MR. BEGNAL. Thank you very much, Mr. Chairman.

Specifically, as concerns H.R. 1080, I do believe that this bill is long overdue and should be passed by the 94th Congress. The principal purpose of H.R. 1080 is to enable through intermodal transporta-

tion of property between vessel-operating common carriers by water, and a common carrier regulated under part I, II, and III of the Interstate Commerce Act and/or direct air carriers regulated under the Federal Aviation Act. In view of the importance of the nonvessel operating common carrier and/or the foreign freight forwarder—for convenience I will hereafter refer to them both as NVOCC—in international trade, we believe that they should be included in this legislation.

These NVOCC's have the background and expertise to be a valuable assistance to shippers of all sizes, as they have been for over a hundred years. We see no good reason why shippers should be denied their valuable services on through movements. H.R. 1080 presently provides for the services of the vessel operator only. Why not allow the NVOCC to compete in the market place for the through movement?

Participation by the NVOCC in through routes and through rates in international trade would permit American exporters to compete more efficiently in the world market place.

In our view, it is ironic that it was American technology that developed the container, and it was American capital that provided the largest investment in containers, container ships, container port facilities and interchange service between modes, yet it has been the European countries that have made the first, and most practical application of true international intermodal transportation.

They have had the services of the Combined Transport Operator—CTO—for many years, yet we have not been able to use the services of their counterpart, the NVOCC. Currently, American business is denied the full economics and benefits of increased productivity that should have followed from the "container revolution." This is, in our opinion, chiefly due to the outdated laws and regulations which govern and inhibit the fulfillment of what could, and should, be ours.

It was the Congress, which long ago wrote the laws which created the regulatory agency—the Interstate Commerce Commission, the Federal Maritime Commission and the Civil Aeronautics Board—and it is the Congress which must amend such laws, in such a way that they serve the general public, for the benefit of the country and not any particular special interest group or groups. It is the Congress that the people elected to do just that; to keep America updated, and to provide the opportunity that is best for all to enjoy, even including the citizens of other nations. It is you in the Congress who are the only ones that can solve this problem once and for all.

It is my intent, in this paper, to set forth what many of these benefits are, as seen from the shipper's point of view. I believe they should be taken into consideration when you deliberate the subject bill.

General Electric, as mentioned above, is a decentralized company. Each product department, division or group is a profit center and as such has the responsibility for management decisions affecting its own operation, including, but not limited to, the use of our international division's pool export services or the use of a particular NVOCC, as best suits their business needs. This information is supplied to illustrate the point that many large American exporters, as well as the small to medium size concerns will benefit from the ser-

vices of the NVOCC's. They would provide a viable alternative to the present outdated practice of shipping modally, step by step, with its hidden costs involved in the paperwork, warehousing, rehandling costs, local trucking, capital lockup, et cetera.

I have attached exhibits. I certainly do not intend to go into them. I will leave them as part of the records and for the Congressmen and their staffs to study.

Exhibit A is a flow chart depicting the flow of paperwork that is involved on the vast majority of less than container load shipments under the present system of shipping modally. Bear in mind that this occurs on each separate shipment. [Placed in the files of the subcommittee.]

Exhibit B is a flow chart depicting the greatly simplified flow of paperwork that would be involved under the proposed system of shipping intermodally, under single factor rates on a through bill of lading with single carrier responsibility for the entire transportation, using the services of an NVOCC at inland points of origin. Note that on each separate consignment, the shipper provides only those documents necessary to turn the shipment over to the NVOCC. From that point on, the NVOCC supplies only a single set of documents for each consolidated container—which may contain as many as 100 separate consignments. [Placed in the files of the subcommittee.]

Exhibit C illustrates the elements that comprise the current expenses that could be eliminated on each shipment if made under the proposed system of shipping intermodally as outlined in the flow chart of exhibit B. We do not contend that amending H.R. 1080 regarding the services of the NVOCC will, in and of itself, produce the projected savings. However, favorable congressional action will remove one import deterrent, which when coupled with other substantial changes in business practice, will provide an opportunity to an exporter like General Electric to effect substantial savings.

To assure you on the House Merchant Marine and Fisheries Committee, as well as the entire Congress, that the views expressed above are not just my own, or those of the General Electric Co., but do represent the views of the vast majority of the shipping public, might I submit the following for the record.

[Exhibit C follows:]

[EXHIBIT C]

ELEMENTS OF CURRENT EXPENSE THAT COULD BE ELIMINATED ON EACH SHIPMENT MADE UNDER THE PROPOSED SYSTEM OF SHIPPING INTERMODALLY AS OUTLINED IN THE FLOW CHART OF EXHIBIT B

Paperwork—Elimination of the following documents: Inland Bill of Lading, Inland Freight Bill, Shipping Order and Dock Receipt.

(Note: Based upon the lowest cost estimates contained in the documentation study "Paperwork or Profits? in International Trade" jointly sponsored by the National Committee on International Trade Documentation and the U.S. Department of Transportation, this set of documents costs \$17.24 per set to prepare, let alone to process and to distribute.)

Warehousing and Rehandling Charges.—The in-transit warehouse expenses are billed in various ways, however, generally include the following:

In and out handling and first 30 days storage.—charges at a negotiated rate per hundred weight subject to a minimum charge per incoming receiving report.

Monthly storage charge after the first 30 days.—charged at a negotiated rate per hundred weight, subject to a minimum charge per receiving report, and billed

monthly for a full 30 day period, regardless of the date outbound shipment is made, which is also subject to a minimum charge per month.

Local trucking (Drayage).—These charges are for local trucking to the steamship pier or to the airport and are billed on an incremental weight basis, with a minimum charge for shipments below a given total weight per shipping order.

Capital lock-up.—To the extent that collection is covered by sight drafts, either under a documentary letter of credit or by negotiated terms of payment established with the customer, there would be a cash flow advantage for the U.S. Exporter, since such sight drafts would be drawn based upon shipment from inland point of origin instead of shipment from the port of exit, as is common under the present modal system. This change would advance receipt of payment by 20 to 30 days on the average. With the present high interest rates this savings would be substantial.

Mr. BEGNAL. Exhibit D. Findings of the Containerization Institute Review Board, National Conference and Shippers Dialog that was held in Washington, D.C. on October 8 and 9, 1974.

[Exhibit D follows:]

[EXHIBIT D]

SUMMARY OF THE CONTAINERIZATION INSTITUTE REVIEW BOARD

(NATIONAL CONFERENCE AND SHIPPERS DIALOG—OCT. 9, 1974, WASHINGTON, D.C.)

The subject before us has been "Intermodal Action: The Challenge of Today." To expand on that title, we have been here to discuss how the application of separate regulatory responsibilities to the several modes of transportation may be improved to achieve international intermodalism (multimodalism) in the international commerce of the United States.

We have heard from the users of transportation; the carriers; from those who aspire to serve in foreign commerce as non-vessel operating common carriers (NVOCCs or CTOs or foreign freight forwarders or call them what you will); from the three U.S. Federal regulatory agencies, and from the Interagency Committee on Intermodal Cargo (ICIC), as well as from the Assistant Secretary of Transportation and the Chairman of the Export-Import Bank.

Surely, this has been an assembly of skilled technicians and practitioners whose money and professional reputations are on the line. The investment of this talent in two days of meetings here in Washington must not be wasted. This is our own specialized economic summit conference. We too can fight inflation by achieving, through intermodalism, lower-cost efficient transportation of goods, door-to-door in international commerce.

What have you heard? What is the challenge? What is the action that will clarify the application of regulatory responsibility to international intermodalism? What can be done to benefit the user of intermodalism? How can the major shipper and how can the smaller shipper benefit from clarifying the application of regulatory responsibility?

We are addressing ourselves to the five most important subjects discussed. There were many individual references to operating matters, of immediate concern to the one raising each subject, on the various aspects of developing intermodalism for the benefit of the American exporter/importer, his carrier, forwarder, banker, attorney, insurance broker, and insurer.

The five subjects we are reviewing are presented in ascending order of importance in the sense that there is a gathering storm of protest to the lack of resolution of our national need—the need for American exporters and importers to be made more competitive in an intermodal world. This is what it is all about.

1. Deep concern has been expressed regarding the competitive position of the American commercial interests in relation to their foreign competition. The major function of the Containerization Institute is to facilitate the international commerce of the United States. The consensus is that the American trader in international commerce will benefit significantly from less complicated and more sharply defined regulation of intermodal transport.

2. The voice of the American shipper/consignee in international commerce—the man who pays the bill, the man who sells or buys the goods, the man who buys ancillary services, must be clearly heard. There must be a "lead" regulatory agency to which he can go.

3. Shippers—particularly smaller shippers—benefit from the services of international freight forwarders. Therefore, applicable regulations should not prevent an NVO from functioning in the international commerce of the United States. Let the NVO find himself in the marketplace.

4. Simplified paperwork and information exchanges that would be afforded by through documentation and by single factor rates were expressed as ultimate goals by many parties. While such possibilities now exist, their practical usage will continue to be hampered until the regulatory responsibilities are more clearly resolved. In the meantime, simpler documents and procedures that are already available should be fully utilized; and continuing dialogue to explain this usage should be encouraged and supported through all possible forums.

5. The sense of the meeting is that one regulatory agency must promptly take the initiative (by legislative enactment, if that be necessary) to coordinate the development of intermodalism in the international commerce of the United States.

The discussion leads to the conclusion that the Federal Maritime Commission is the regulatory agency most involved in the regulation and development of international intermodal commerce; the Civil Aeronautics Board is less but increasingly involved, and the Interstate Commerce Commission is minimally involved.

This appraisal of the situation does not ignore the significant need for the ICC aggressively to assist the practical development of domestic intermodalism nor how domestic intermodalism efficiently supports the international intermodalism transport needs of American exporters and importers.

Exhibit E. Editorial—"Intermodalism—Where It Stands" together with an article "Intermodalism: What Shippers Want" written by Stephen Tinghitella, editor of *Traffic Management*, the magazine of physical distribution/logistics/material control, as well as the final results of this magazine's intermodal survey.*

It is the shipper who must be competitive in the world marketplace. It is the shipper who must route the freight, wade through horrendous volumes of tariffs, rules, and rates for each sector of the movement. It is the shipper who must pay the bills. If the shipper is unable, or unwilling, to go through such a maze of archaic paperwork and procedures to obtain an order from a foreign customer, then the entire matter is academic anyway. There will be no need to carry on the discussions of through routes, through rates, et cetera, as there will be no business and therefore no need for any of the carriers services.

Passage of comprehensive intermodal legislation will permit us to fully utilize the U.S. standard master format which involves a single preparation of one through bill of lading, with each leg of the journey clearly defined; that is, domestic export and onward inland routing being clearly spelled out. Here again, the United States, through the leadership of NCITD has the documentation and the procedures all worked out, but full implementation is denied us because of our outdated laws and regulations. It is up to you, the honorable Members of Congress to give us these tools for increasing the productivity of the entire transportation industry. Our foreign competitors have this tool available to them right now, yet again, I repeat, we are prohibited from fully utilizing this integrated transportation system until you act.

To further illustrate the impact that intermodal transport has had on international trade in recent years, we call your attention to the fact that the "Uniform Customs and Practice for Documentary Credits" were revised as recently as October 1, 1975, and they now provide for combined transport documents.

* See appendix to Karl E. Bakke's statement on p. 144

These revisions were made by the International Chamber of Commerce's Commission on Banking Technique and Practice and adopted by their executive committee as further contribution to the facilitation of international trade by updating its rules to allow for developments in transport technology and changes in commercial practices.

For all of the above reasons, and to improve upon our balance-of-trade and balance-of-payment problems that have befallen our Nation over these past several years—and, by the way, they are still with us—please take the necessary action to release us from these shackles that were by and large designed for an earlier time, not the 20th century. In the interest of increasing job opportunities through export expansion, I strongly urge you to take prompt action and pass H.R. 1080 amended to include the nonvessel operating common carrier in through routes and through rates.

Enact legislation that will permit American business to become more competitive abroad through increasing our productivity all along the line. Such action will bring about a greatly improved domestic economy that will give our people work, and provide the opportunities for our young.

I thank you.

Mr. OBERSTAR. Thank you very much.

Why can't the paperwork that you allude to, and believe me I have great sympathy for you, as I said earlier, serving as many years as you have in that sector of the business. Why can't the paperwork be eliminated without this legislation?

Mr. BEGNAL. Because the regulations do not permit it. Each mode of transportation today is a separate contract of carriage and as a separate contract of carriage, it has its own archaic paperwork patterns. I will admit the ocean carrier and the airlines will accept our U.S. standard master as a shipper's letter of instruction, and so will the trucking lines when you are shipping internationally, if you are going across the borders. However, each one of those separate segments of transportation is, in fact, documented separately and it is separate billing, separate rates, separate rules, separate regulations.

I can go back to my exhibit C and I can talk specifically of the documentation that intermodal legislation will eliminate. An inland bill of lading, there is no need for it. I have mentioned that, instead of having 100 separate inland separate bills of lading and 100 separate ocean bills of lading as we do today, you would have 100 intermodal ladings to the NVO and the only 1 to the port and 1 overseas. You would also eliminate inland freight bills and special shipping orders and dock receipts which are currently involved. Just to give you an idea, taken from a study performed by a joint group of NCITD and the Department of Transportation, these four documents that I have listed would save \$17.24 per shipment.

In addition to that, we would eliminate warehousing and rehandling charges, we would also eliminate local drayage or local trucking, and finally we would improve upon the capital lockup, because we would be able to draw our draft on the basis of turning the shipment over to the NVOCC at inland point instead of waiting until we actually exported it by the ocean carrier.

You would save anywhere from 20 to 30 days in capital lockup.

Mr. OBERSTAR. Is that going to allow you to lower your prices?

Mr. BEGNAL. I should hope so. That is what we are looking for. We have to be more competitive abroad. The days that "Buy America" or "Made in U.S.A." in itself was enough to sell your product are gone. We have to compete for every piece of business. Fortunately we have been able to do it, but not through any help that we are getting from our present transportation industry.

Mr. OBERSTAR. You allude to foreign competition. Do German shippers, English shippers have the same advantages that you are arguing for?

Mr. BEGNAL. They have the advantages of not having all of the regulations that we have here. They have the advantages of being able to use a combined transport operator, one set of documents, through movements. They do have this right now; yes sir.

I don't know if that answers your question specifically. I hope so.

Mr. OBERSTAR. That is the answer to the question I asked.

Mr. BEGNAL. I might just mention, I wrote to the chairman of your Merchant Marine and Fisheries Committee a year ago last January. I am sure Mr. Corrado has the letter. I was very anxious to have H.R. 12428 and H.R. 12429 acted on or resubmitted in the 94th Congress. Here we have gone 1 year and 8 months and we still haven't had any legislative action. In the meantime we have to be competitive. We have to keep going after than export business and we are just not getting the action out of the Congress that we need.

We need this legislation badly. I submit that the articles that I have attached to my statement fully explain the shippers' needs and I suggest you read them. In particular I suggest you pay attention to the intermodal survey, where it tells you that 68 percent of the respondents say they will save on cost, 89 percent on time, 80 percent on work effort, 89 percent on paperwork simplification, and 37 percent on insurance. The survey goes on to state that 79 percent of the shipments go as less than container load and this is why we need the services of an NVOCC, to do the consolidation at inland points and then ship as containers.

Mr. OBERSTAR. You are certainly making a very strong case for the legislation. In fact, we are having the hearings as a recognition of the problems you have brought to the committee's attention. There are other problems as you heard this morning with the Justice Department being opposed to the bill on the grounds of the antitrust—

Mr. BEGNAL. Am I not correct, sir, that the Justice Department should act on the laws as written by the Congress? This would put it right back where it belongs with the Congress. You are the ones that make the law.

Mr. OBERSTAR. They are raising a very serious question that we do have to resolve and we are looking for reasons to resolve the questions.

Mr. BEGNAL. Speaking on behalf of the shipper, we are the ones that they are supposed to be protecting; we want this legislation. We want this so we can be as good as we are capable of being and not being held up by people who say they are protecting us.

Mr. OBERSTAR. You feel you are being protected to death; is that it?

Mr. BEGNAL. We sure are. I don't know how that will go over in the record.

Mr. OBERSTAR. On page 6, you say you represent the views of the vast majority of the shipping public. Are there any who don't agree with you?

Mr. BEGNAL. Oh, I am sure you can always find someone who doesn't agree with me.

Mr. OBERSTAR. On this particular point, on this particular issue?

Mr. BEGNAL. I can't be too specific in that respect. However, I will say that shippers that participated, and there were several hundred of us here in Washington in October of 1974, these shippers, particularly small shippers, benefit from the services of international freight forwarders. Therefore, applicable regulations should not prevent an NVO from functioning in the international commerce of the United States. Let the NVO find himself in the marketplace.

The review board highlighted the importance of simplification of paperwork, and finally, reported that the sense of the meeting was that there be one regulatory agency that must promptly take the initiative, by legislative enactment if this be necessary, to coordinate the development of intermodalism in the international commerce of the United States.

The discussions led to the conclusion that the Federal Maritime Commission is the regulatory agency most involved in the regulation and development of international intermodal commerce. The Civil Aeronautics Board is less, but increasingly involved, and the Interstate Commerce Commission is minimally involved. Yet this was 2 years ago almost to the day and we still do not have this bill.

Mr. OBERSTAR. Help me with a specific example. The only thing I have ever shipped was a trunk in the days before intercontinental air travel and I went onboard the *Queen Mary* to study in Belgium. The only thing I ever shipped was a trunk containing my worldly possessions. I had more papers than I ever knew what to do with.

I don't know what you ship or how you ship it or any of those things. You take me on a typical consignment now of whatever it is—G.E. televisions or generators, probably more like it, that you are shipping overseas, from start to finish, and you tell me how much this is going to save you and what kind of a problem it is going to eliminate for you and how it is going to make you more competitive, let's say, with the Swedish company that produces generators, I forget their name.

Mr. BEGNAL. I can take you through a flow chart which is really drawing you a picture. If you look at exhibit A it will show you exactly what we are doing today. The domestic shipping instructions are sent with the purchase order from an export shipper to a domestic shipper. After the material is ready, they prepare a domestic bill of lading, that is the domestic shipper does, and turns it over to a domestic carrier.

Now, the domestic carrier has not only a domestic freight bill, but a domestic waybill that he prepares over and above the bill of lading that we have given him.

The domestic carrier finally sends copies of these back to the domestic shipper and he in turn pays for the domestic freight charges. That is one step.

Mr. OBERSTAR. For each of these four documents here, there are costs involved, is that right?

Mr. BEGNAL. Substantial. I will send you down a copy of "Paperwork for Profit in the International Trade." Would you believe that the documentation costs an average of \$375 per export shipment and \$325 to import a shipment into the United States? Believe me, these are not guesses. Bob Redding is sitting right here. He was the Director of the Office of Facilitation in DOT when this study was underway. We spent 2 years and \$200,000 to get these figures and it spells it out in spades, dollar for dollar of what it costs on each one of these documents.

Mr. OBERSTAR. Can you submit that to the committee?

Mr. BEGNAL. I will be very glad to.

[The material was placed in the files of the subcommittee.]

Mr. OBERSTAR. The chart that shows all these other documents, eight different steps, and all of these, of course, will be submitted and be included in the record so we will have that. There are charges for each one of those separate steps?

Mr. BEGNAL. Absolutely.

Mr. OBERSTAR. You are saying now that H.R. 1080 would eliminate all this in between and we would have just one piece of paper?

Mr. BEGNAL. Exhibit B shows you what it will be. We still have the single delivery to a nonvessel operating common carrier on a set of papers that would be the international intermodal through bill of lading. Then from there on, all of these hundreds of separate consignments are packed into a single container and that, in turn, travels on one set of documents, not 100 sets of documents or however many consignments there happens to be in the particular container.

This is why I believe, Mr. Chairman, that the NVOCC should be involved in this legislation because they are a consolidator of many small shipments.

Mr. OBERSTAR. Has the Justice Department seen these charts?

Mr. BEGNAL. I have submitted these charts to the ICC as part of my testimony on ex parte 261, subnumber 1, which is considering within the ICC framework whether or not the NVOCC should participate. They were not drawn at the time I wrote Mrs. Sullivan, although I had other attachments.

Mr. OBERSTAR. You ought to send this to the Justice Department and maybe they would like to fill out some of those documents.

Minority counsel?

Mr. SANDS. Mr. Begnal, would you support the bill if it was not expanded to include NVOCC?

Mr. BEGNAL. Half-heartedly. Only as a first step. Why do we have to keep taking first steps? In my time, I remember, testifying on a trade simplification act that DOT submitted back in 1968 or 1969. In that bill the NVOCC was a part of it. Then along came another session of Congress and they made a new submission of a new trade simplification act and they excluded the NVOCC. Then comes the 93d Congress, and there was a bill H.R. 739 and it included the NVOCC only to have H.R. 12428 and H.R. 12429 exclude them.

Now, of course, you have H.R. 1080 and H.R. 1069 pending before this Congress. They have been excluded from each one. Let's get on and give us some legislation that we, the shipping public, need. It is supposed to be aiding and assisting American industry to participate in international trade on a competitive basis and we do not have that advantage today.

Mr. SANDS. It is a matter of major controversy over whether the NVOCC is included. Do you think the steamship operators and the conferences would support the bill if it included the NVOCC?

Mr. BEGNAL. Do I think they would support it if they were included? I don't know. Obviously, if they are opposed to the NVO, it is because they want the whole thing themselves. But they are not there to provide the kinds of consolidation service in a place like Peoria, Ill., or Oshkosh, Ind., where a NVOCC would be. Furthermore, if they were there, any given ocean carrier, then they would have a monopoly on that movement because they would only use their own services, whereas with with an NVOCC they would have the option of taking the best vessel, with the earliest arrival time, and so forth.

Let's put it another way: The railroads no longer bother with less than carload shipments. You turn it over to a domestic freight forwarder, who does the consolidating, puts it in the carload and turns the carload over to the railroad. The railroads should be busy running railroads now packing freight cars.

I submit the same thing should apply with the ocean carriers. They should be picking up containers, putting them on vessels, getting them to their destination port as fast as possible, and not have consolidation being done at the piers, at the ports in the United States.

There is continuing complaints about port congestion. I suggest we move consolidation away from the port and back to the hinterlands. The NVO can do the consolidation back there, by someone who is an expert in the field. They are also available to give the shipper advice and counsel on how to prepare the paperwork. This is what we need, to get the small- to medium-sized company in the United States to participate in our international trade.

Are you aware that over 80 percent of all of the international trade in the United States is conducted by less than 300 companies? That, in itself, epitomizes the inefficiency of what we have to work with today. I am sorry, I am on a pulpit, but that is the way I feel about this.

Mr. OBERSTAR. We are glad to have your comments for the benefit of the committee.

Counsel asked, and I think it is an appropriate question to ask the conferences, would you support the legislation if the NVOCC were not included—if they were included?

Mr. DAY. It is a matter I would say, just off the top of my head. I don't have any particular direction from my member lines at this particular time on that particular matter, but there might be a problem.

Mr. CORRADO. Mr. Chairman, we held some hearings on a different intermodal bill, but the same time of intermodal legislation in San Francisco 4 years ago this month, and without exception the con-

ferences and steamship lines all testified in opposition to inclusion of the NVO. That is a matter of record for anybody who wants to read those hearings. In addition, Mr. Chairman, I would like to take this opportunity to make it crystal clear that H.R. 1080 is a simple first step along the perilous intermodal path. This short bill would only extend section 15 antitrust immunity to agreements between the ocean carriers and conferences and the inland modes, plus calling for the implicated agencies to promulgate regulations thereto and to come back to Congress with recommendations. In no way will this short bill, H.R. 1080, shorten or improve the paperwork problem. Nor is this the legislative vehicle to make the decision as to whether to include or exclude the NVOCC's. These latter two matters are not involved in this short bill which is just a first step. I want to be sure the members understand this, Mr. Chairman, so that there is not any confusion on this point.

Mr. BEGNAL. The Congress will have to decide. I don't mean this belligerently. I have listened to this debate truthfully for 15 years and I have not seen where we are any closer to a solution today than we were back then. Granted, the ICC has mellowed somewhat.

Mr. OBERSTAR. Including the NVO's, in your judgment, would cut down on a lot of this paperwork. You are the people we really have to look to, you are shipping and if it reduces your costs, I would think that the conferences and all the rest of them ought to be interested in that.

Mr. BEGNAL. I am glad you see it that way, Mr. Congressman.

Mr. OBERSTAR. Thank you very much. You have been a helpful witness and if you have that other documentation, we would like to have it for the record.

Mr. BEGNAL. I will send it down to you.

[The documents were not received at time of printing.]

Mr. OBERSTAR. Our final witness is Mr. Gerald H. Ullman. We have just been called on a quorum call so if you want to make yourself comfortable, I will recess for a few minutes and be right back.

[Short recess.]

Mr. OBERSTAR. The subcommittee will come to order, and we will resume with Mr. Ullman.

Thank you for your patience.

STATEMENT OF GERALD H. ULLMAN, NATIONAL CUSTOMS BROKERS & FORWARDERS ASSOCIATION OF AMERICA

Mr. ULLMAN. Thank you, Mr. Chairman.

My name is Gerald H. Ullman. I am an attorney at 120 Broadway, New York City. Unfortunately, I didn't know about these hearings until a few days ago, so I cannot furnish you with a prepared statement, but I would like, with the chairman's permission, to have perhaps 10 minutes where I can explain the position of my clients.

Mr. OBERSTAR. We welcome your statement, and I always appreciate someone who speaks from the fullness of knowledge and does so without reading every jot and title about the presentation.

Mr. ULLMAN. I won't read, Mr. Chairman, but whether I speak with the fullness of knowledge, my steamship friends sometimes question.

Mr. Oberstar, I appear on behalf of two associations, the National Customs Brokers & Forwarders Association of America, which has 400 members who are licensed ocean freight forwarders and custom-house brokers and 20 affiliated forwarder associations around the country located at major ports. It is safe to say that our membership in the international market processes the bulk of general cargo that moves in our inbound and outbound trades to overseas destinations.

I also appear here on behalf of the New York Foreign Freight Forwarders & Brokers Association, a 60-year-old organization consisting of licensed freight forwarders in New York who move the vast bulk of general cargo through that port and other major ports.

Ocean freight forwarders, Mr. Chairman, arrange for the exportation of goods in port areas. Custom brokers arrange for the importation of goods into the United States from overseas. Now, both the forwarder and the broker are experts in this business of moving goods to and from inland points. They were intermodalists long before that phrase was ever coined because they took hold of a shipment from an interior point and do everything necessary to get it to an overseas destination and the custom broker does that vice versa on an inbound ship.

They would, if this Congress would permit, expand their operations to become NVO's or NVOCC's in order to provide not just a port-to-port service, but a point-to-point service, interior United States to overseas or vice versa.

Now, the NVO or NVOCC is the nonvessel operating common carrier by water, is not statutorily recognized. But it is by the Federal Maritime Commission in various decisions of that agency. He is a person who holds himself out to provide transportation in our interstate or foreign commerce, he assumes responsibility as a carrier by the issuance of a bill of lading for the transportation of the goods and he arranges in his own name for transportation by underlying water carriers.

The NVO does not himself own or operate the equipment, but in every other sense he is a true common carrier by water, and the FMC has said so. As a matter of fact, in amending the Interstate Commerce Act, sections 216 and 305, some years back, Congress has said so, because there, in dealing with the joint rates between motor carriers and common carriers by water in Alaska and Hawaii trades Congress defined a common carrier by water to include "persons who hold themselves out to transport goods by water, but who do not own or operate the vessels."

So with respect to that amendment to the Interstate Commerce Act, we do have a congressional recognition of the somewhat strange animal known as the nonvessel operating common carrier by water.

Now, that kind of an operator, Mr. Chairman, performs a very worthwhile service to our LCL shipper. For illustrative purposes, if I can take an exporter, a manufacturer in Duluth who would like

to do some exporting, perhaps 5 or 10 percent of his gross products is in exports, and this is rather common. If he can turn that LCL package over to an NVO located at a warehouse in Duluth, what that NVO can do is efficiently load that package with the packages of other LCL shippers in the Duluth area, put it into a container, and then arrange for the movement by an underlying ICC carrier, and finally by an underlying ocean carrier. So that saves this LCL Duluth shipper the job of trying to arrange for the whole movement himself and sending that package not in the container but loose to the port where it is then containerized at the pier, possibly the worst place in the world to do that.

Mr. OBERSTAR. Let's hope they don't go by ICC, that they go right through the Duluth port.

Mr. ULLMAN. That happens at times. Now, of course, when you have that kind of a containerized movement from an interior point as Mr. Begnal, who is probably one of the most knowledgeable witnesses in this field, has said, you eliminate a great deal of paperwork, and paperwork is time. If you can eliminate the inland bill of lading, the freight bill, the dock receipt, you are saving the exporter time and time is money. You save the local drayage charge from the inland carriers terminal to the pier because the individual package is not being moved, the container containing that package is moved right to the pier and you don't have a delivery of that sort. You eliminate all kinds of delays because when the single package gets to the pier, if a vessel is missed that package lays there until perhaps 2 weeks later when it goes aboard another vessel, but if an NVO has that package in the container and it misses the U.S. lines, 2 days later he directs that container to another steamship line going to the same destination and that saves 12 days of time.

If you are dealing with a bill of lading moving under letter-of-credit conditions, you are able to save a considerable period of time when the exporter gets paid. So there isn't any question, and even the opponents of the NVO inclusion in this bill, I think, would concede this, there isn't any question but what the NVO does and could do from inland points if he is permitted to do it, is to provide a beneficial service to the LCL shipper who is usually but not always a small shipper.

Some of our bigger firms like G.E. do a tremendous amount of LCL shipments, but for the most part, what we are proposing by way of NVO inclusion in this bill confers upon the smaller shipper the same advantages that containerization offers to the shipper who can fill up a full container at his own plant, because by allowing the NVO to do it inland, that small shipper gets the same service that a full container load shipper can get when he fills it up himself.

Now, everybody agrees who studied this matter that there should be no restrictions on the NVO's ability to service these type of shippers in our intermodal service.

Chairman Bakke of the FMC did not comment on that phase of the matter in his prepared testimony this morning, but the FMC has always taken the position that the NVO should be encouraged in through rates and through movements and the FMC has, in fact, included the NVO in its own through rate and through route rule which is General Order 13. They recognize the NVO as a common

carrier by water who should be treated no differently for through rates than the vessel operator himself.

In the recent brief submitted only this June by the FMC General Counsel to the ICC, it was said "participation by NVO's in international joint rates will provide a unique and valuable transportation service to small shippers." Now, the reason we are here today is that this legislation, H.R. 1080, unfairly restricts the ability of the NVO to compete with the vessel operator in intermodal service, because this bill confers antitrust immunity on joint rate agreements only between the VO's, the vessel operators, and the underlying ICC carriers.

It excludes from its coverage the NVO, the part IV forwarder, who is the domestic consolidator, and the CAB air freight forwarder who is the consolidator of freight by air. But the impact of that exclusion on the part IV forwarder or the air freight forwarder contained in this bill is minimal.

I think the proof is they are not here today to protest the thing. The part IV forwarder, who is excluded, concerns himself mostly with domestic movements and not international movements, so he is not bothered by this exclusion. The air freight forwarder is not concerned either because as an air freight forwarder under the CAB he can issue a through bill of lading from interior points and it is a rarity where he has to worry about the freight moving by another mode. So the one who is hurt by this exclusion is the NVO, because the NVO, being excluded, cannot make a joint rate arrangement with either a motor carrier rate bureau or a railroad rate bureau, and he doesn't have the same advantages that the vessel operator would have under this bill when he can deal with groups of ICC carriers together rather than going around and trying to make individual rates with individual carriers. So what this bill does is it confers a competitive advantage on the vessel operators.

He not only gets the antitrust law immunity he is looking for, but he is making it very difficult for the nonvessel operating common carrier to compete with him, because the nonvessel operators do not have the same ability to make the same sort of arrangements with inland carriers that the vessel operator could do if this bill passes.

In effect, it seems to me, that this bill is saying that the NVO is a second-class carrier, despite the fact that the Federal Maritime Commission has said that the NVO should be treated no differently than the VO.

We don't see any reason why there should be this difference in treatment as far as the ability of one type of ocean carrier to make rate arrangements with underlying carriers as distinguished from another type of ocean carrier. We see no reason why the ability of the NVO to make these rate arrangements which benefit the smaller LCL shipper should be restricted. That is where we are here today. We recommend, Mr. Chairman, respectfully, that you delete the phrase, "vessel operating" so that the immunity being conferred would be conferred on common carriers by water which includes not only the vessel operating common carrier, but the nonvessel operator as well.

Thank you very much, sir.

Mr. OBERSTAR. Thank you for shedding some light on another aspect of the legislation that we had not considered earlier.

The Justice Department witness did not address himself to this issue and I am glad you have raised it because it reflects again on the competitive implications of the legislation. Your statement supports the bill, but with the coverage extended to the NVO, right?

Mr. ULLMAN. If the NVO were included in the bill, Mr. Chairman, we would support it. If the NVO is excluded we oppose the bill because that puts the NVO in the disastrous competitive relationship with the vessel operator. Now, in connection with the Justice Department, they didn't cover that either, but I think the record will show that in prior testimony of Mr. Rose's predecessor, whom he referred to, Mr. Clearwaters, who was then the Deputy Assistant Attorney General, he did cover that subject. He very specifically said that they see no reason why the NVO should not be included as a common carrier by water for intermodal purposes.

Mr. OBERSTAR. What is likely to happen in the competition in the industry if NVO's are not included in the bill? Are the vessel operators likely to operate their own carrying business?

Mr. ULLMAN. Their own consolidation function. That has not been the experience to date, Mr. Chairman. The vessel operators have shown absolutely little or no inclination to get into the business of consolidating freight away from the piers. What they look for is the full container loads, either inland or from the local port area. They haven't encouraged the LCL shipper in any respect in that regard. If an LCL shipper has a 300-pound package, the bulk of our trade are those kinds of packages, by the way, the vessel operator does not offer him any consolidation services from inland. As I indicated in my earlier remarks that LCL shipper has to send that package into the port loose, right to the pier, and then it is containerized by the vessel operator who has shown no interest in offering the service from inland which is the full benefit of containerization.

Mr. OBERSTAR. Are the nonvessel operators going to lose business; is that your contention?

Mr. ULLMAN. What will happen is the nonvessel operator, if he is unable to make these arrangements, will not be able to offer the business from inland points with any ability to be competitive because they are not going to have—

Mr. OBERSTAR. Who will then?

Mr. ULLMAN. We will continue with the old system, the cargo will just come in loose, as it has been for 100 years, so we are not improving ourselves any by denying to the LCL shipper the benefits of this great innovation, containerization. The LCL shipper will suffer while the full container load shipper gets his container at his plants in Duluth and ships it right to the port. But the little fellow won't be able to do that.

Mr. OBERSTAR. Does it hurt people like G.E. and other major industrial firms?

Mr. ULLMAN. It most assuredly does and that is why G.E. has been strongly in support of this because as Mr. Begnal points out over 70 percent of their shipments are LCL shipments. They originate from inland and they would rather have an NVO take hold of it in the inland point, issue one bill of lading for the whole voyage

than have to go through a clipper sailing ship procedure in today's kind of routing that they engage in now.

We have not improved that a bit in the last 100 years despite the hundreds of millions of dollars we have spent on containerization. The LCL shipper has to handle it the way he did 100 years ago unless he has somebody inland to take hold of the shipment and offer him a through service at an inland point.

Mr. OBERSTAR. Will there be cost disadvantages or penalties from not including the NVO's in the bill?

Mr. ULLMAN. Yes. As I pointed out, it is much more expensive—and Mr. Begnal confirms that—much more expensive and time consuming to ship loose as they do now than to give it to an NVO at an inland consolidation point to handle from there. You save a lot of documents, a lot of time, and a lot of money.

Mr. OBERSTAR. Why, if inclusion of NVO's in the bill would in your view, and as you have outlined it, help the competitive position of American industry and the American shipping industry, why would the conferences and the vessel operators be opposed to it?

Mr. ULLMAN. Well, I have tried to explore that with them. The answer, apparently, is that they are worried about how strong the NVO's could become. They are afraid that if the NVO's take hold of these shipments and build up very strong volume movements that in some way the NVO's are going to be able to overawe the steamship lines and tell them how to run their ships and what to charge. That is their fear. I think it is completely unjustified. I don't think the NVO is at all interested in how the steamship lines run their own affairs. The NVO is interested in tendering them a box and seeing to it that the box is carried. They are not going to meddle in the steamship company's affairs, as I see it, but some of my steamship friends disagree with me.

Mr. OBERSTAR. If NVO is not included in the bill, how are the people you represent affected?

Mr. ULLMAN. The people I represent, who are forwarders and brokers, operate from the piers, now. What they want to do, and this bill would help them do it, is to extend their movement inland because the ports have really moved inland now. The major business is in the hinterlands. What my people want to do, rather than processing the loose cargo that comes into the piers now at the seaboard, they want to be able to say to the shippers, "We will handle your goods now from Chicago, St. Louis, Duluth, Des Moines, just send it to the warehouse there, we will containerize it there and move it in instead of getting the cargo for the first time when it gets to the seaport." So all we ask, really, is the same opportunity to make the rate arrangements with the inland carriers from those interior points that the steamship lines want to make under this 1080. We are not asking for any advantages, we are just asking to be treated equally.

Mr. OBERSTAR. In your judgment, would the traffic on the Great Lakes be benefited by enactment of this legislation?

Mr. ULLMAN. In the current form, or with the amendment we suggest.

Mr. OBERSTAR. With the amendment you suggest?

Mr. ULLMAN. Yes. I think anytime that NVO service is encouraged, and incidentally NVO's can operate from the Great Lakes as well as they can operate from the Atlantic or the Gulf or the Pacific where they are operating now, it is a benefit to the shipper. If the shipper has that service in a Great Lakes port, it could only be a plus, Mr. Chairman.

Mr. OBERSTAR. Does counsel have any questions?

Thank you very much. You have been very helpful. We appreciate your participation.

Mr. ULLMAN. Thank you, Mr. Chairman.

Mr. OBERSTAR. The subcommittee will stand adjourned until call of the Chair.

[The following material was submitted for inclusion in the record:]

STATEMENT OF
MANUEL DIAZ, EXECUTIVE DIRECTOR
OF THE ASSOCIATED NORTH ATLANTIC
FREIGHT CONFERENCES

JOINED IN BY
THE LINER COUNCIL OF THE
AMERICAN INSTITUTE OF
MERCHANT SHIPPING

THE MEMBERS OF THE
UNITED STATES/EUROPE DISCUSSION AGREEMENT
(FMC AGREEMENT NO. 10022)

AND
LABOR-MANAGEMENT MARITIME COMMITTEE

My name is Manuel Diaz. I am the Executive Director of the Associated North Atlantic Freight Conferences (known as "ANAF"). Joining in this statement are (1) the Liner Council of the American Institute of Merchant Shipping ("AIMS"), the members of the United States/Europe Discussion Agreement (FMC Agreement No. 10022), and the Labor-Management Maritime Committee. Attached to this statement are lists of the members of the organizations joining in this statement.

This is a joint statement on behalf of these groups within whose memberships are included most of the American-flag lines operating in the foreign oceanborne commerce of the United States and of most of the conference lines operating in the trades between ports in Europe and the Mediterranean and ports on allcoasts of the United States.

This statement is basically one in support of H.R. 1080, although we have a few amendments to offer which we believe are in accordance with the purpose of the bill. H.R. 1080 is intended to

enlarge the permissible area of antitrust immunity under Section 15 of the Shipping Act so as to enable steamship conferences to function effectively in the area of intermodal transportation. This bill recognizes that the broad subject of this proposed legislation, dealing with intermodal transportation, is a complicated one, and it would therefore be required that the chairman of each of the regulatory agencies report to Congress within one year from the enactment of the Act on

- "(1) the need for additional legislation to further facilitate the through intermodal transportation of property in foreign and domestic non-contiguous trade, and.
- (2) conflicts between the statutes administered by their respective agencies which may inhibit the full development of intermodal services and systems, together with such legislative recommendations as they may deem appropriate to accomplish the foregoing."

We concur in the approach of H.R. 1080. It is in our opinion the only sensible and rational way to proceed.

STATEMENT OF THE PROBLEM

H.R. 1080 is of vital importance to the common carrier steamship industry. With the advent of improved and simplified forms of cargo handling by the steamship lines (including containerization, roll-on/roll-off systems, barge carriers and palletization), intermodal transportation has become an important part of international transportation. Never before has it been so readily convenient to ship cargo from the place of origin to the place of destination in a single cargo packing unit, usually without rehandling or repacking. This advancement in cargo handling, brought about by gigantic capital investments by the common carrier steamship lines,

has also presented an urgent problem that could cause irreparable injury to the common carrier steamship industry, particularly the American Merchant Marine, and could be injuriously disruptive to the foreign commerce of the United States.

The problem before us arises because it is now economically practical for individual steamship lines to file intermodal tariffs naming through rates between interior points in the United States and points abroad. If such intermodal rates are filed by individual conference steamship lines outside of the existing conference tariff structure, a veritable Frankenstein will have been created, and it is difficult to see how the conference rate system in the major United States trades could be maintained. However, in order for any existing conference to extend its jurisdiction inland, special permission would have to be obtained from the Federal Maritime Commission, and it is not clear that the FMC has the enabling authority under Section 15 of the Shipping Act to grant such extension of conference jurisdiction or to grant antitrust exemption to agreements between individual steamship lines or conferences and inland carriers or groups of inland carriers. As set forth, the problem is one of frightening proportions and consequences to the stability of the common carrier steamship industry.

It is obvious that we are dealing with a situation where new legislation in the form of an amendment to the Shipping Act has become necessary. The conference system cannot survive unless the conference can extend their rate-making jurisdiction to embrace intermodal movements, and unless they and those carriers whose services are used for non-ocean modes can enjoy the same antitrust immunity for all necessary agreements

involved in intermodal transportation.

Basically, what is urgently needed is an enlargement in the scope of Section 15 so as to permit an antitrust exemption for the full range of conference agreements involved when conferences engage in intermodal transportation. This area of antitrust immunity should include (1) agreements among the common carrier steamship lines either collectively as a conference or individually, on the one hand, and inland carriers (other than NVOCC's) or organization of such inland carriers approved under Section 5a of the Interstate Commerce Act, or air carriers or organization of such carriers under Section 408 of the Federal Aviation Act, 1958, on the other, and (2) agreements among or between common carrier steamship lines involving intermodal transportation. The latter type of agreements would include conference agreements involving such important matters as uniform through intermodal rates, inland rules and charges and positioning of equipment.

In assessing the merits of this proposed legislation, the Shipping Act should be viewed in proper perspective. It has two primary aspects. First, it is a fair trade practices act in that it undertakes to prevent unfair or unjustly discriminatory practices between carriers, shippers, other persons subject to the Act and ports, etc. Secondly, and most importantly, it permits (under Section 15) common carriers (and in some instances "other persons") to form rate-making conferences and pooling agreements, and it gives the FMC the power to grant immunity from the antitrust laws to those agreements which it approves.

LEGISLATIVE HISTORY OF THE SHIPPING ACT

The enactment of the Shipping Act, 1916, was preceded by a thorough investigation beginning in 1912 by the Committee on the Merchant Marine and Fisheries of the House of Representatives [so-called

Alexander Committee - 4 volumes, entitled Proceedings of the Committee on Merchant Marine and Fisheries (Washington 1913, 1914), 62nd Cong., 2d Sess., Vols. I - IV, 4th Volume published as H.R. Doc. 805, 63rd Cong., 2d Sess. (1914)]. Although this investigation was undertaken in an atmosphere of hostility to combinations of ocean carriers (H.R. Doc. 805, 63rd Cong., 2d Sess. (1914) 8 - 10), the conclusion was reached that cooperative working agreements (including conference agreements) among common carriers by water in foreign commerce were necessary in order to secure advantages to American merchants which are enjoyed by their foreign competitors, and that abolition of conferences would not result in free competition, but rather in monopolies more complete than any that could exist by virtue of such agreements (*id.* at 416). The Committee recommended that all such agreements should be subjected to publicity and to regulation by an administrative agency and that unless they complied with legislative and administrative requirements they should be cancelled (*id.* at 418-420). However, the Committee did recommend that certain abuses found by it to exist should be absolutely prohibited (*id.* at 421). It is clear from this legislative history that Congress endorsed the concept of cooperative working arrangements among common carriers as a beneficial instrumentality of United States oceanborne commerce.

The Shipping Act, 1916, reflects Congressional policy and an underlying economic philosophy first embodied in the Interstate Commerce Act of 1887, to subject to regulation those industries in which the presumed benefits of a free competitive order are not present or in which competition would produce economically or socially undesirable

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results. Moreover, the Shipping Act, as contrasted with the Interstate Commerce Act, deals with transportation which by definition involves more than one sovereignty in the course of each voyage. By virtue of treaties of friendship and commerce, the United States cannot, by the issuance of certificates of convenience and necessity, limit the number or character of the vessels of friendly countries which serve its commerce. The only possible limitation would be to decrease the number of America-flag vessels serving United States ports -- a limitation which runs counter to the declared policy of our basic shipping legislation embodied in the Shipping Act of 1916, and the Merchant Marine Act of 1936. There is, therefore, no governmental control upon oversupply of tonnage.

Stability of rates is vital to maritime commerce. In all maritime nations, the regulation of ocean common carriers has been achieved by permitting those carriers engaged in each trade to form conferences which determine the uniform rates to be charged by the conference members and permitting them to form pooling agreements or other cooperative working arrangements for the purpose of rationalizing sailings and services. In many nations these agreements are undertaken without government control, it being the notion that enlightened self-interest will prevent carriers from injuring their shippers. However, in the United States, the Shipping Act, 1916, solved the problem by authorizing the organization of conferences and other groups of carriers, but required complete publicity of all agreements among carriers and subjected them to control and to regulation by the Board, who monitor self-policing by the conferences.

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Under these circumstances, the Shipping Act of 1916, adopted for the regulation of the oceanborne commerce of the United States, has as its central thread a provision subjecting agreements and arrangements among ocean carriers in derogation of free competition to administrative sanction and visitation, and exempting approved agreements from the antitrust laws. Thus the very core of the Shipping Act is to be found in § 15.

There is no better statement of the economic problems of ocean common carriers than that found in the Report of the Alexander Committee. The Committee studied, from 1912 through 1914, a great mass of evidence, contributed by all segments of the foreign commerce of the United States. It concluded that to forbid all combined carrier action (such as conference agreements, tying agreements with shippers and pooling agreements) would harm the economy of the United States. The Committee chose a middle course. It allowed such agreements, but only under proper regulation and control. Shippers and carriers alike would suffer from cutthroat competition. Both shippers and carriers would stand to benefit from Congressional safeguards. In its penetrating and through analysis of the steamship industry, the Committee said:

" . . . It is claimed that the adoption of the first course - the prohibition of cooperative arrangements between practically all the lines in nearly all the divisions of our foreign trade - would not only involve a wholesale disturbance of existing conditions in the shipping business, but would deprive American exporters and importers of the advantages claimed as resulting from agreements and conferences if honestly and fairly conducted, such as greater regularity and frequency of service, stability and uniformity of rates, economy in the cost of service, better distribution of sailings, maintenance of American and European rates to foreign markets on a parity, and equal treatment of shippers through the elimination of secret arrangements and underhanded methods of discrimination.

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"These advantages, the Committee believes, can be secured only by permitting the several lines in any given trade to cooperate through some form of rate and pooling arrangement under Government supervision and control. It is the view of the Committee that open competition cannot be assured for any length of time by ordering existing agreements terminated. The entire history of steamship agreements shows that in ocean commerce there is no happy medium between war and peace when several lines engage in the same trade. Most of the numerous agreements and conference arrangements discussed in the foregoing report were the outcome of rate wars and represent a truce between the contending lines. To terminate existing arrangements would necessarily bring about one of two results: the lines would either engage in rate wars which would mean the elimination of the weak and the survival of the strong, or, to avoid a costly struggle, they would consolidate through common ownership. Neither result can be prevented by legislation, and either would mean a monopoly fully as effective, and it is believed more so, than can exist by virtue of an agreement. Moreover, steamship agreements and conferences are not confined to the lines engaging in the foreign commerce of the United States. They are as universally used in the foreign trade of other countries as in our own. The merchants of these countries now enjoy the foregoing advantages of cooperative arrangements, and to restore open and cutthroat competition among the lines serving the United States would place American exporters at a disadvantage in many markets as compared with their foreign competitors." [Emphasis added.] H.R. Doc. 805, 63rd Cong., 2d Session. (1914), pp. 416-417.

The above statement embodies the Congressional expression of the economics of the common carrier steamship business. It constitutes the economic analysis on which the Shipping Act is based.

OTHER GOVERNMENTAL STUDIES

Every responsible governmental study, both in the United States and abroad, concerning the steamship industry that has been undertaken in the last 100 years has concurred with the conclusion reached by the Alexander Committee and has concluded that destructive

and ruinous competition must in the public interest be limited. See, for example, Report of the Royal Commission on Shipping Rings (London, 1909, 5 volumes); Inter-American Maritime Conference (Washington: U. S. Govt. Printing Office (1941); Report of Senate Interstate and Foreign Commerce Committee, "Merchant Marine Study and Investigation", 81st Cong., 2d Sess. (1950); Senate Rep. No. 1709, 85th Cong., 2d Sess. (1958); House Report No. 2055, 85th Cong., 2d Sess. (1958); Senate Report No. 860, 87th Cong., 1st Sess. (1961); Rochdale Report - Committee of Inquiry into Shipping (London, 1970).

THIS LEGISLATION IS ESSENTIAL IN ORDER
TO PERMIT THE FULL DEVELOPMENT OF
INTERNATIONAL INTERMODAL TRANSPORTATION

The basic purpose of H.R. 1080 is essentially to bring the Shipping Act up to date and to recognize the changes brought about by recent improvements in cargo handling that have made international intermodal transportation an important matter.

For the past 50 years there have been perennial suggestions that the immunity granted under Section 15 of the Shipping Act should not be extended, or, indeed that it should be restricted. These suggestions have emanated primarily from the Antitrust Division of the Department of Justice. Such suggestions reflect a basic insensitivity of and refusal to understand the economics and problems of how the common carrier steamship business is conducted. As the above-quoted statement from the Alexander Committee concludes, the benefits of free competition are not inherent in a situation where competition would produce economically or socially undesirable results. In this respect, the Shipping Act reflects Congressional policy first embodied in the

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Interstate Commerce Act of 1887 that a limitation on competition in these essential transportation areas is necessary. Obviously, the treatment under the Interstate Commerce Act is different than that of the Shipping Act because the former deals with transportation which is under the control of one nation, whereas international ocean transportation by definition involves more than one sovereignty.

It is just as essential to our national transportation policy that the conference system and its dual-rate contract system be preserved for the establishment of intermodal rates in foreign commerce as it is to protect domestic land, water and air common carriers in their rate-making practices within the United States. Transportation conditions within the United States would indeed be chaotic if all of the Rates Bureaus and Conferences which have been granted price setting immunity from the antitrust provisions under the Reed-Bullwinkle Act [section 5 of the Interstate Commerce Act] were by some chance eliminated. It would therefore be consistent with all existing transportation legislation to expand conference authority to rate making in intermodal foreign commerce.

The steamship conferences operate under a system of self-regulations which no nation by itself could ever impose. These conferences attempt to establish uniform rates and practices among their members and undertake the policing of such rates and practices. In some cases pooling agreements among carriers serving a particular trade have been initiated or proposed. The situation in American trades is to some extent unusual because of the existence of the Shipping Act.

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A complete erosion of the conference system in the American trades would mean that the carriers serving those trades would face serious financial problems and would be forced to curtail their services. They could not be expected to continue their substantial investments in the trades and certainly would not implicate further investment money to these services. These problems would be more acute for the higher cost American operators who have limited ability to switch vessels to other trades. The result would be that the United States trades would end up with the worst tonnage and with the most inadequate services of all the ocean trades in the world. Such a result, which would flow from a completely free competitive order, would hardly be in the interests of our foreign commerce or in the interests of American shippers and importers.

The common carrier steamship lines serving the major trades of the United States have within the past eight years invested more than \$4 billion dollars in the improvement of their transportation services. For example, in the U. S. Atlantic/European trade, the ANAFC lines collectively have an investment in excess of \$800 million dollars, which has been committed since 1966. These lines are fully aware of the intricacies of through intermodal transportation. In addition to the investment in vessels, they each have substantial investments in containers, chassis, trucks and related equipment and in terminals and terminal equipment. Furthermore, the ocean carriers not only maintain offices at practically every major port, but in addition, have offices staffed at many key interior cities in the United States and abroad. Such offices are currently used in

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effectively serving the shipping public on all of the "intermodal" traffic presently moving in through containers to and from interior points. They are all fully able to handle the through movements of containers in conjunction with inland carriers either in the United States or abroad.

If steamship conferences were to be precluded from establishing through intermodal rates with inland carriers, the steamship conferences would lose control over the major part of the liner movement in the principal trades in the foreign oceanborne commerce of the United States. There would be no way that these steamship conferences could continue. Each carrier would be forced to publish its own point-to-point rates and the chaotic effects of cutthroat competition envisioned by the Alexander Committee would occur. The conference port-to-port tariff structure would be quickly eroded and rendered meaningless, and the steamship conferences would lose the ability to stabilize port-to-port rates. The carriers would thus be jeopardizing their own existence if they should promote the growth of uncontrollable through rates, which explains the failure of intermodal through rates to supplant the port-to-port system.

Since Congress has recognized the essentiality of the conference system in the foreign commerce of the United States and in view of the fact that the Federal Maritime Commission and its predecessor agencies have also repeatedly concluded that the conference system is essential, it follows that faced with the realities of intermodal transportation brought about by improved methods of cargo handling, the legitimate scope of authority of the conferences must be extended to include point-to-point as well as port-to-port movements in our foreign commerce. Any other conclusion would be completely

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unrealistic and would fail to recognize the commercial requirements of the container age.

The primary developer and promoter of international intermodal through cargo movements has been the international common carrier steamship industry which has already created and expanded intermodalism through the development of new vessels and new techniques of cargo handling. This industry is the only component of the international transportation complex with the necessary equipment, knowledge and connections at the origin and final destination of international cargo movements to be able to promote and develop intermodal traffic. Their success over the last five years in expanding containerization and other methods of unitized cargo handling is clearly reflected in cargo statistics. Their equipment is already moving cargo from interior points to interior points between various countries. It remains to establish a simplified rate and documentation system, and this can only be accomplished by the ocean carriers already carrying the cargoes. As we have stated, the main reason why this expansion has not been fully extended beyond the port-to-port leg of the through movements is the legal barrier under U. S. shipping laws preventing ocean carriers from agreeing on through rates covering the combination of the inland as well as the ocean leg of the through movement. If this legal barrier were removed, we predict that a comprehensive intermodal transportation system will soon be established to the ultimate benefit of American exporters and importers.

THE PROVISIONS OF H.R. 1080

We are entirely in agreement with the basic theory and approach of H.R. 1080, which is to deal with the essential and

-14-

immediate problem of enlarging the permissible scope of Section 15 immunity in order to permit steamship conferences to operate in the area of point-to-point intermodal transportation, and to leave other important questions concerning the need for legislation covering the facilitation of intermodal transportation to separate legislative proposals and to separate hearings.

In any proposed legislation, it is necessary, of course, to have the purpose of the legislation clearly defined. Once there has been such a statement of purpose, it is a relatively simple matter to have the language of the legislation conform to the legislative intent. There are two fundamental areas where Section 15 should be enlarged so as to bring the Shipping Act up to date. First of all, since steamship lines now offer intermodal transportation from point of origin to point of destination, the conferences must have the same jurisdiction to consummate agreements among the conference lines relating to the point-to-point transportation as they now do with respect to port-to-port transportation. Secondly, the conference lines need the authority to conclude agreements with inland carriers and air carriers, or their approved organizations, relating to the intermodal movements. If the enlargement of Section 15 jurisdiction, as set forth in H.R. 1080, were not to be enacted, there is a real and imminent danger that the conference system in the major United States trades could erode and be destroyed. This would be a disaster for the lines serving these trades and to the foreign oceanborne commerce of the United States as well. It would mean that the evils of cut-throat competition and rate wars, as foreseen by the Alexander Committee, would emerge.

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Of course, if Section 15 is amended as contemplated by H.R. 1080, it would not mean that all conferences would have the permission ipso facto to conclude agreements of the type set forth above relating to intermodal transportation. Each conference desiring such permission would have to request it from the FMC by way of an amendment to its basic conference agreement, and the FMC would have to find that the permission fulfilled some transportation need. All that H.R. 1080 would do, in this respect, is to give the FMC the enabling statutory authority to enlarge the scope of particular conference agreements where transportation reasons so justified.

With respect to the language of H.R. 1080, we have several suggested amendments. First of all, we are not sure that the amendatory language relating to Section 15 accomplishes the purposes for which it is intended. We accordingly suggest that the paragraph in the bill which would amend Section 15 be changed to read as follows:

"This section shall apply to agreements involving the through intermodal transportation of property between points in the United States and points abroad or between points in the Continental United States and points in noncontiguous [states,] territories and possessions between or among vessel-operating common carriers by water, and between or among a vessel-operating common carrier by water or a conference of such carriers and a common carrier regulated under Parts I, II or III of the Interstate Commerce Act and/or one or more organizations representing such carriers approved under Section 5a of the Interstate Commerce Act and/or a direct (not an indirect) air carrier regulated under the Federal Aviation Act and/or one or more organizations of such carriers approved under Section 408 of such Act, and/or [a carrier operating transportation company located in a foreign country whose] a carrier operating company or companies (other than those providing only a non vessel operating or forwarding service) where the equipment of such company or companies is utilized in a foreign country for a portion of such through intermodal transportation." [New words

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have been underlined. Words to be deleted have been bracketed.]

These changes will meet the vital need that water carriers and conferences be able to make agreements with rate bureaus and similar approved organizations. The change in regard to foreign transportation is a clarification needed to avoid any possibility of intrusion of foreign carriers into U. S. protected domestic carriage.

The second amendment which we would like to suggest is one that would require that any through intermodal rate filed with the FMC, either by a conference or an individual carrier, clearly identify the components of the through rate, and that any joint rate arrangement between common carriers by water and domestic land carriers or air carriers be fully described. The reason for this requirement is to prevent the cutthroat competition that could otherwise result if only the through rate were filed. It should be recognized that Section 18(b) (5) provides that -

"The Commission shall disapprove any rate or charge filed by a common carrier by water in the foreign commerce of the United States or conference of carriers, which, after hearing, it finds to be so unreasonably high or low as to be detrimental to the commerce of the United States."

There would be no reasonable way that the FMC could carry out the above function unless the components of any through intermodal rate were to be identified in the tariff filing with the Commission and unless the terms of any joint rate arrangement are required to be described. Accordingly, we suggest that H.R. 1080 include the following provision that would amend Section 18 of the Shipping Act:

"Section 18 is hereby amended by adding a new subsection (c) as follows:

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'(c) The rates quoted by a common carrier for an intermodal service over a through route shall be set forth in a tariff, filed, posted and published with the Commission. Such tariff shall clearly identify each of the components of the through rate, and it shall further identify any joint rate arrangement with other common carriers subject to the Interstate Commerce Act or the Federal Aviation Act. If the individual components of the through intermodal rate involve a joint rate arrangement, the terms of the joint rate arrangement shall be filed with the Commission including an explanation of (a) the division of revenues, (b) the apportionment of liability, (c) the pooling or interchange of equipment, and (d) any other operating matters agreed to by the carriers participating in the joint rate arrangement.'"

We appreciate the Committee's consideration of our position and our comments.

FREIGHT CONFERENCES

NORTH ATLANTIC CONTINENTAL FREIGHT CONFERENCE

American Export Lines, Inc.	Atlantic Container Line, Ltd.
Dart Containerline Company, Ltd.	Hapag-Lloyd AG
Sea-Land Service, Inc.	Seatrain Lines
United States Lines, Inc.	

NORTH ATLANTIC FRENCH ATLANTIC FREIGHT CONFERENCE

American Export Lines, Inc.	Atlantic Container Line, Ltd.
Dart Containerline Company, Ltd.	Hapag-Lloyd AG
Sea-Land Service, Inc.	Seatrain Lines
United States Lines, Inc.	

CONTINENTAL NORTH ATLANTIC WESTBOUND FREIGHT CONFERENCE

American Export Lines, Inc.	Atlantic Container Line, Ltd.
Dart Containerline Company, Ltd.	Hapag-Lloyd AG
Sea-Land Service, Inc.	Seatrain Lines
United States Lines, Inc.	

SCANDINAVIA BALTIC/U.S. NORTH ATLANTIC WESTBOUND FREIGHT CONFERENCE

American Export Lines, Inc.	Atlantic Container Line, Ltd.
Dart Containerline Company, Ltd.	Hapag-Lloyd AG
Sea-Land Service, Inc.	Seatrain Lines
United States Lines, Inc.	

NORTH ATLANTIC UNITED KINGDOM FREIGHT CONFERENCE

American Export Lines, Inc.	Atlantic Container Line, Ltd.
Dart Containerline Company, Ltd.	Furness Warren Line
Hapag-Lloyd AG	New England Express Line
Sea-Land Service, Inc.	Seatrain Lines
United States Lines, Inc.	

NORTH ATLANTIC BALTIC FREIGHT CONFERENCE

American Export Lines, Inc.	Atlantic Container Line, Ltd.
Dart Containerline Company, Ltd.	Hapag-Lloyd AG
Norwegian America Line	Sea-Land Service, Inc.
Seatrain Lines	United States Lines, Inc.

NORTH ATLANTIC WESTBOUND FREIGHT ASSOCIATION

American Export Lines, Inc.
Atlantic Gulf Service A.B.
Combi Line
Hapag-Lloyd AG
New England Express Line
Seatrain Lines

Atlantic Container Line, Ltd.
Bristol Channel Line
Dart Containerline Company, Ltd.
Johnston Warren Lines, Ltd.
Sea-Land Service, Inc.
United States Lines, Inc.

AMERICAN INSTITUTE OF MERCHANT SHIPPING

MEMBER COMPANIESOctober 1974

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1 Hess Plaza
Woodbridge, New Jersey 07095

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New York, New York 10004

American President Lines, Ltd.
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Chicago, Illinois 60680

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Calmar Steamship Corporation
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New York, New York 10004

P. O. Box 6656
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Chevron Shipping Company
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San Francisco, California 94105

Delta Steamship Lines, Inc.
1700 International Trade Mart
New Orleans, Louisiana 70130

Dover Shipping Company
313 Chestnut Street
Philadelphia, Pennsylvania 19103
(see Keystone Shipping for reps.)

El Paso Natural Gas Company
P. O. Box 2185
Houston, Texas 77001

Exxon Company, U. S. A.
Marine Department (Attn.: O. R. Menton)
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Houston, Texas 77001

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International Ocean Transport Corporation
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New York, New York 10005

Interstate Oil Transport Company
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Keystone Shipping Co.
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Eastern Office: 17 Battery Place
New York, N. Y. 10004

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States Steamship Company
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American Pilots Association 331-9277
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212 482-8048

Ira Lewis, V.P.

Peter Karnacewicz, Res.Rep.

Senior
Lloyd Fitzpatrick, V.P.
504 523-6611

Theodore St. Pierre, Res.Rep.

Vincent Fiorenza

Martin F. Ytuarte, V.P.

Warren Myers, Res. Rep.

John F. Kolibachuk, V.P. &
Controller

(Associate Member)

Mel Barisic, Sec.-Treas.

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Philadelphia, Pennsylvania 19105

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215 Wa. 3-1300

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215 922-2380

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212 757-2600

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New Orleans, Louisiana 70130

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New York Office

212 944-8250



PPG INDUSTRIES, INC./ONE GATEWAY CENTER/PITTSBURGH, PENNSYLVANIA 15222

October 8, 1976

Distribution and Transportation Department

Mr. Ernst J. Corrado
Chief Counsel
U.S. House of Representatives
Committee on Merchant Marine and Fisheries
Room 1334
Longworth House Office Building
Washington, D.C. 20515

RECEIVED
OCT 13 1976
COMMITTEE ON
MERCHANT MARINE AND FISHERIES

File: Export -- HR 1080 -- Intermodal Transportation

Dear Mr. Corrado:

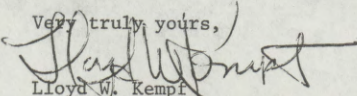
It is our understanding that the records of your hearing on HR 1080 are being held open several weeks pending further testimony from shippers and others interested in the bill. We, therefore, want to take advantage of this opportunity and reiterate our approval of this legislation covering intermodalism. Back in October 13, 1975 we wrote to Mrs. Sullivan and expressed our approval of the intermodal bills then pending before the Congress.

PPG Industries exports substantial quantities of products from its four major divisions and several subsidiary companies. These plants are scattered throughout the United States with major emphasis in the area East of the Mississippi. We feel very strongly that through movements of our container shipments without interruptions because of the use of combination inland ocean rates, separate documentation, etc. would be a distinct service and cost advantage and enable us to better compete in foreign markets throughout the world.

Unfortunately, HR 1080 lacks provisions for the use of Non-Vessel Operators. In our opinion, NVO's are an integral part of and a necessary adjunct to complete intermodalism, especially as it affects the ability of large and small businesses to ship in relatively limited quantities at competitive shipping costs. We cannot emphasize too forcefully our conclusion that this type of operation should be included in the bill along with the regular vessel operators.

It will be appreciated if you will include these thoughts in the Committee records with respect to public testimony on HR 1080.

Very truly yours,


Lloyd W. Kempf
Manager, International Traffic

cc: Mr. George F. Begnal, Jr.
General Electric Company

**AMERICAN
TRUCKING
ASSOCIATIONS, INC.**

1616 P Street, N.W., Washington, D. C. 20036

PRESIDENT
Bennett C. Whitlock, Jr.
(202) 797-5212

September 29, 1976

The Honorable Thomas N. Downing, Chairman
Subcommittee on Merchant Marine
Merchant Marine and Fisheries Committee
United States House of Representatives
Rm. 2135 ROB
Washington, D. C. 20515

Dear Mr. Chairman:

This letter presents the views of American Trucking Associations, Inc. (ATA), on H.R. 1080, a Bill "To amend the Shipping Act, 1916, in order to facilitate intermodal transportation, and for other purposes." ATA is the national trade association of the trucking industry which is composed of fifty State trucking associations and the District of Columbia. The members of these State associations include every type and kind of motor carrier, for-hire as well as private, handling all types and kinds of commodities moving in both interstate and foreign commerce.

The carriers ATA represents have participated in intermodal transportation within the United States for many years, e.g., piggyback operations with the railroads, and have already begun to transport traffic moving intermodally between points in the continental United States, on the one hand, and, on the other, points abroad as well as Alaska and Hawaii. ATA, therefore, is keenly interested in legislation which will facilitate these movements. As an example of our interest, the Equipment Interchange Association, originally an arm of ATA's Regular Common Carrier Conference, assumed, in 1971, the role of dispensing TIR carnets issued by the International Road Transport Union for facilitation of containers across international boundaries without the necessity of inspection of each container at the border crossing.

The bill before this Subcommittee, H.R. 1080, contains three distinct provisions. The first section would extend protection from antitrust prosecution for collective agreements between the various modes of transportation on intermodal movements internationally and between noncontiguous U.S. points. The second section would require the three involved agencies -- the Interstate Commerce Commission, the Civil Aeronautics Board and the Federal Maritime Commission -- to promulgate uniform rules and regulations governing intermodal tariffs. Finally,

- 2 -

the third section of the bill would give the three involved agencies a mandate to present to Congress within one year a plan for legislative action to further facilitate such through intermodal transportation.

The first section would accomplish a very worthwhile goal, but not in the best possible manner. The antitrust exemption provided in section 5a of the Interstate Commerce Act, 49 U.S.C. §5a, would provide a much better vehicle to afford carriers participating in intermodal transportation in foreign and domestic noncontiguous trade the necessary antitrust immunity. Motor carriers have rather limited antitrust immunity under section 5a and would feel more assured if that section were specifically amended. The amendment should also provide immunity for agreements involving more than one carrier in each mode of transportation. Allowing carriers to act jointly through their rate bureaus would do much to encourage intermodalism.

The second section of the bill requiring tariff rules and regulations has already been met by the Interstate Commerce Commission for land and water movements. Last year, the I.C.C. in Ex Parte No. 261, In The Matter Of Tariffs Containing Joint Rates And Through Routes For The Transportation Of Property Between Points In The United States And Points In Foreign Countries, issued rules to cover international through rates by land and ocean carriers. The only remaining aspect of the requirements of this section of H.R. 1080 would be the requirement for uniformity. How the I.C.C., C.A.B. and F.M.C. are to achieve such uniformity is not explained in the bill and, in reality, may be extremely difficult to obtain. A requirement that the rules of the three agencies not be incompatible may be more realistic.

Finally, the third section would require the three agencies to come up with recommendations within a year for further legislation. The problem with this requirement is that Congress may well receive three individual recommendations not in harmony with one another and varying little from the legislative proposals which these agencies have been proposing for years. The joint board approach, urged several years ago, may be the more likely course to insure that the three agencies act jointly and in some sort of harmony on intermodal through routes and joint rates tendered by carriers regulated by them.

Thank you for the consideration which you may give to the aforementioned comments.

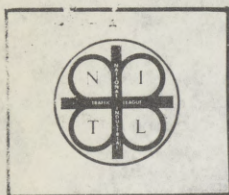
Very truly yours,

AMERICAN TRUCKING ASSOCIATIONS, INC.

Bennett C. Whitlock, Jr.

Bennett C. Whitlock, Jr.

cc: Members,
Subcommittee on Merchant Marine



THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE

PROMOTER OF SOUND
ECONOMICAL TRANSPORTATION

Office of the Executive Vice President • 1909 K Street, NW • Washington, DC 20006

September 29, 1976

PRESIDENT AUGUST HEIST

Director of Traffic & Distribution
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Vice President
Corporate Trans. & Dist.
Combustion Engineering, Inc.
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JOSEPH W. AYRES
LEGISLATIVE LIAISON

LYNNETTE S. HANTHORN ASSISTANT TREASURER

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ASSISTANT TO
EXECUTIVE VICE PRESIDENT

DONALD E. TEPPER DIRECTOR OF INFORMATION

Suite 410
1909 K Street, NW
Washington, D.C. 20006
(202) 296-4535

The Honorable Thomas N. Downing
Chairman
Subcommittee on Merchant Marine
House Merchant Marine and Fisheries Committee
2135 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Downing:

Enclosed for inclusion in the official hearing record is a copy of The National Industrial Traffic League's statement on H.R. 1080, a bill to amend the Shipping Act of 1916 to facilitate intermodal transportation.

The League is a voluntary organization of shippers, shippers' associations, boards of trade, chambers of commerce and other entities concerned with rates, traffic and transportation services of all carrier modes. It is the only shipper organization which is both nationwide and consisting of all type of shippers geographically, by commodity, and large, medium and small, using all modes of transportation. The League is not a panel or committee of a trade group, or a spokesman for a particular commodity or transportation point of view, and does not permit carrier membership.

At the League's 1974 Annual Meeting the membership debated the topics of intermodal transportation and regulation and voted to adopt the following position:

"The League should generally favor the implementation of such intermodal transportation to foster and develop the foreign commerce of the United States with an absolute minimum amount of regulation. Such regulation should be limited to that reasonably necessary in the public interest and not encroach upon the proper sphere of managerial discretion and responsibility either in the field of traffic or actual physical operation."

The Fall adjournment is imminent with no action on H.R. 1080. The League would therefore like to offer its recommendations and suggestions prior to the introduction of legislation to facilitate such intermodal transportation.

The weeks prior to the convening of the 95th Congress would provide an excellent opportunity for such a discussion. If subcommittee staff would advise the League's Executive Vice President, Mr. James E. Bartley,

Chairman Downing

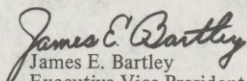
-2-

September 29, 1976

or Mr. Joseph W. Ayres, the League's Legislative Liaison, of a convenient date for your, the League would be happy to arrange a meeting with a group of shippers interested and knowledgeable in this important area of intermodal transportation.

The League appreciates the opportunity to present its views on this bill and thanks you, Congressman Downing, for including the League's statement in the record of hearings on H.R. 1080.

Sincerely,


James E. Bartley
Executive Vice President

JEB:mah

cc: Members, House Merchant Marine and Fisheries Committee

STATEMENT OF THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE

TO THE

SUBCOMMITTEE ON MERCHANT MARINE
OF THE COMMITTEE ON
MERCHANT MARINE AND FISHERIES
UNITED STATES HOUSE OF REPRESENTATIVES

ON

H.R. 1080

A BILL TO AMEND THE SHIPPING ACT, 1916
TO FACILITATE INTERMODAL TRANSPORTATION

September 29, 1976

The League's primary concern is to provide for the nation and all its shippers, a sound, efficient, well-managed transportation system, privately owned and operated.

To arrive at positions reflective of the broad range of shipper interests within the League, the League membership at its annual and special meetings considers, debates and votes on actions to be taken. During its almost 70 years of existence, the League has frequently been the spokesman for the nation's shippers before Congress on proposed transportation legislation.

H.R. 1080 would amend Section 15 of the Shipping Act, 1916. Section 15 applies to agreements involving the through intermodal transportation of property between points in the continental United States and points in non-contiguous states, territories, and possessions, between a vessel-operating common carrier by water, and a common carrier regulated under I, II, or III of the Interstate Commerce Act and/or a direct (not an indirect) aircarrier regulated under the Federal Aviation Act and/or a carrier operating transportation company located in a foreign country whose facilities or instrumentalities are utilized for a portion of such through intermodal transportation.

Section 2 offers amendments in order to facilitate through intermodal transportation of property in foreign and domestic non-contiguous commerce, the Federal Maritime Commission, the Interstate Commerce Commission, and the Civil Aeronautics Board shall within six months of the date of enactment of H.R. 1080 promulgate uniform rules and regulations governing the content, format, and filing of tariffs providing for intermodal services and systems.

H.R. 1080 amends the Shipping Act of 1916 calling for the Federal Maritime Commission, the Interstate Commerce Commission, and the Civil Aeronautics Board to report directly to the Congress with respect to -

- (1) the need for additional legislation to further facilitate the through intermodal transportation of property in foreign and domestic non-contiguous trade, and
- (2) conflicts between the statutes administered by their respective agencies which may inhibit the full development of intermodal services and systems, together with such legislative recommendations as they may deem appropriate to accomplish the foregoing.

At the League's 1974 Annual Meeting on November 20-22, the League membership considered H.R. 12428, and H.R. 12429, similar bills to H.R. 1080. They considered further whether any one regulatory agency should have jurisdiction over intermodal transportation utilizing combinations of domestic and/or international transportation modes. The membership also considered League Policy C-16 as applied to inter-

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modal TOFC and COFC service between land and water carriers. The concept of inter-modal service is valuable to shippers in eliminating the costs, delays, and risks of re-handling freight at transfer points and its effectiveness depends upon the establishment of joint rates and through service arrangements. Finally, the membership considered League Policy K-1, which states the principle that an absolute minimum of regulation of ocean transportation in foreign commerce is desirable because the complexity of international trade does not permit any one nation to exercise jurisdiction. As a guide to League action in this area, the membership voted to adopt the following position:

"The League should generally favor the implementation of such inter-modal transportation to foster and develop the foreign commerce of the United States with an absolute minimum amount of regulation. Such regulation should be limited to that reasonably necessary in the public interest and not encroach upon the proper sphere of managerial discretion and responsibility either in the field of traffic or actual physical operation."

Since Congress will adjourn within the next several days, and no action has occurred in regard to H.R. 1080, the League believes it can best implement its membership action by an effort directed towards legislation in the coming 95th Congress. To this purpose, the League wishes to offer its recommendations and suggestions prior to the introduction of legislation to facilitate such intermodal transportation.

The weeks prior to the resumption of the 95th Congress would provide an excellent opportunity for such a discussion. If subcommittee staff would advise the League's Executive Vice President, Mr. James E. Bartley, or Mr. Joseph W. Ayres, the League's Legislative Liaison, of a date convenient for you, the League would be happy to arrange a meeting with a group of shippers interested and knowledgeable in this important area of intermodal transportation in our foreign commerce.

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September 27, 1976

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The Honorable Leonor K. (Mrs. John B.) Sullivan
Chairman
House Merchant Marine and Fisheries Committee
House of Representatives
Suite 1334
Washington, D. C. 20515

Dear Madame Chairman:

This statement is submitted on the subject of H. R. 1080, Amendment of the Shipping Act of 1916 to facilitate intermodal transportation, with the assurance of Acting Chairman James L. Oberstar at the September 15th hearings, that this statement would be included in the record.

The International Association of NVOCCs (non-vessel operating common carriers) is an association of NVOCCs who are directly and adversely affected by H. R. 1080, in that the proposed legislation, as presently drafted, excludes NVOCCs from competing in the market place for intermodal, through movement traffic and trade.

In today's complex transportation networks, goods moving in offshore domestic and foreign commerce must travel by two or three modes before reaching their final destinations. For instance, they can originate by truck, be transhipped via rail, then be loaded aboard a steamship for shipment to domestic or foreign points overseas.

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 Chairman
 House Merchant Marine and Fisheries Committee
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To assure that goods reach their final destinations through this maze, close coordination between shipper, carrier, terminal operator and insurer, among others, is essential. It requires a kind of quarterback to call the signals for the transportation team. This team must be efficiently co-ordinated to offer secure and fast transportation of goods from shipper to customer.

Where small, less-than-container or trailerload shipments are involved and where a portion of the route these shipments follow is by water to an overseas destination, the quarterback who calls the transportation signals is more than likely the Non-Vessel Operating Common Carrier, commonly known as the NVOCC. The NVOCC has brought to international transportation flexibility, greater efficiency, speed and economy on small less than containerload (LCL) or less than truckload (LTL) shipments, giving small export shippers a competitive edge on the export market.

Non-Vessel Operating Common Carriers assume responsibility for shippers' cargoes from the point of origin to final destination where a portion of their route covers water to an overseas point.

Once the water portion of the cargo movement is completed, the NVOCC sees that the cargo reaches its final destination from the overseas port of entry.

To assure that goods moving intermodally reach their destinations quickly and safely, the NVOCC:

- Coordinates transportation of goods overland from and to port areas.
- Assembles and consolidates small shipments into larger containerloads, then transfers the container to the pier for shipment overseas.
- Picks up the containers at the overseas port and delivers them either to terminals for breakdown and rerouting, or directly to their destinations.

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- Expedites transportation of small shipments by guaranteeing space on the first available sailing.
- Provides regularity of service.
- Pinpoints single carrier responsibility to shippers.
- Publishes tariffs and issues bills of lading to shippers.
- Prepares waybills, bills of lading and manifests.
- Collects through charges.
- Furnishes fast routing and tracing of shipments.
- Provides prompt settlement of claims for damage, losses.

Through his expertise in providing this multiplicity of services, the NVOCC also:

- Promotes export trade by providing advice and counsel on international trade, transport and foreign markets for domestic manufacturers and shippers -- furthering U. S. foreign policy.
- Promotes export trade by developing new foreign markets for domestic manufacturers and shippers.
- Reduces shipper personnel costs by providing expert international traffic management services.

NVOCCs pinpoint responsibility for a shipper's goods in intermodal transit, provide speedy through service to final destination and save the less-than-containerload shipper money on the transportation charges he pays.

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Chairman
House Merchant Marine and Fisheries Committee
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By issuing a bill of lading, the NVOCC eliminates the multiple check-points which the shipper would have to monitor otherwise. There is just one responsible party for the shipper's cargo, the NVOCC. This saves the shipper a substantial investment in time, communications and manpower involved in keeping track of his shipment along a chain of two or three intermodal carriers -- from truck to rail to ship, for example.

By coordinating and controlling traffic in order to maintain a continuous flow of goods, the NVOCC can guarantee delivery in a relatively short time.

Finally, the NVOCC saves the shipper money by offering generally lower rates through consolidation of cargoes. For example, a manufacturer's shipment of parts may total only 12,000 pounds, much less than the 20,000 pounds required to fill a container. If he deals directly with a steamship line he will be charged per unit at a rate higher than the container rate. The manufacturer can pass along this savings to his customer. The resulting lower rate also allows the small manufacturer to compete more favorably in the foreign markets with large volume shippers who obtain container rates.

In furtherance of these international traffic management functions, the NVOCC in effect becomes the export marketing and traffic management arm of the small shipper.

The NVOCC plays a valuable role in coordinating small freight shipments between large carriers. These carriers -- railroads, long haul motor carriers and steamship lines -- are not geared to coordinating small shipments between their terminals. An inland carrier hauling cargoes to the pier has no idea of making a particular sailing. Similarly, a steamship line is not inclined nor does it have the facilities to redirect shipments. This can result in a shipment sitting on the dock for days between transfers.

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Chairman
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By maintaining close liaison on scheduling with all carriers involved in a cargo movement and by prenotifying destination terminals of the contents of shipments, the NVOCC can bring about a smooth flow of goods, cutting delivery time substantially and assuring steady shipments for the carriers involved.

For the steamship lines, the NVOCC performs many of the incidental services required in moving freight including a great deal of paperwork. The NVOCC collects through charges, provides handling services, routes and traces shipments, settles claims, performs transfer services and actively solicits business. The steamship lines have neither the facilities nor trained personnel to provide any of these services to the less-than-containerload shipper.

By furnishing containerloads of consolidated shipments the NVOCC generates new traffic for the steamship company, traffic which the steamship company would otherwise not gain.

Non-Vessel Operating Common Carriers have grown substantially in recent years to form a sizeable transportation service industry in the United States. At the present time there are 184 NVOCCs filing tariffs with the Federal Maritime Commission.

Their terminals are located in the major port cities of the United States, with truck and rail lines extending inland to many points. In addition, NVOCCs operate terminals and transportation facilities abroad, including major U. S. possessions, Europe, Africa, the Asian sub-continent, the Far East and South America. NVOCCs operate worldwide communications networks, providing the capability to quote timely and complete transportation charges and the monitoring of shipments in the transportation system.

The far-flung operations of today's NVOCCs represent a huge investment not only in capital goods and plant -- warehouses, terminals, materials handling equipment and rolling stock, but in highly skilled, specialized personnel required to perform their many and varied services. In addition, the NVOCC has considerable amounts of money tied up in the

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flow of goods for which he has issued bills of lading.

With the continued growth of international commerce fostered by the multinational trend and other international economic forces, the Non-Vessel Operating Common Carrier will play an expanding role in assisting both shippers and carriers, if the NVOCC is not excluded from H. R. 1080.

The NVOCC is now the one and only true intermodal carrier in the foreign and domestic ocean born commerce of the United States. It is indeed a giant step backward in intermodalism and a gross perversion of the entire concept of intermodal movement to deny the NVOCC the right to participate, to compete for traffic and to continue to serve the small shipment shippers of the United States. Yet that is precisely what H. R. 1080 in its present form does.

As George F. Begnal, Jr., Manager for Facilitation of International Sales for General Electric testified before this committee on September 15, 1976:

"these NVOCCs have the background and expertise to be a valuable assistance to shippers of all sizes, as they have been for years. We see no reason why shippers should be denied their valuable services on through movements. H. R. 1080 presently provides for the services of the vessel operator only..... Participation by the NVOCC would permit American exporters to compete more effectively in the world market place.

"....many large American exporters, as well as the small to medium size concerns will benefit from the services of the NVOCCS. They would provide a viable alternative to the present outdated practice of shipping modally, step-by-step with its hidden costs....".

Mr. Begnal strongly endorsed H. R. 1080 provided it is amended to include the NVOCC in through routes and through rates.

We believe that the NVOCC with the experience and expertise developed

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over the years and the NVOCCs expert signal calling, the goods of American shippers will be delivered swiftly and economically to everyone's benefit. The legislation before this Committee, H. R. 1080, will permit United States business to become more competitive, providing greatly increased benefits to all sectors of the American economy if H. R. 1090 does not exclude NVOCCs but is amended to include NVOCCs.

H. R. 1080 Page 1, line 10, and page 2, line 1, should be amended either to delete the phrase "vessel-operating" or to add the phrase "non-vessel-operating" after "vessel-operating".

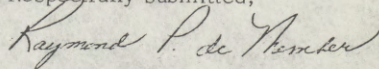
Since the Federal Maritime Commission already regulates the NVOCC as a common carrier, the language in line 10, page 1 and line 1, page 2 of H. R. 1080 could read:

"...between a common carrier by water, and a common carrier regulated....".

If H. R. 1080 is so amended, NVOCCs and American exporters would strongly support the legislation and the Congress will have taken a giant step in promoting American business here and abroad by timely "facilitating intermodal transportation".

We greatly appreciate this opportunity to present our views to your Committee.

Respectfully submitted,



Raymond P. de Member
Vice-President - General Counsel

RPdM/gr

cc: Subcommittee on Merchant Marine



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September 16, 1976

Honorable Thomas J. Downing, Chairman
 Merchant Marine Subcommittee
 Committee on Merchant Marine & Fisheries
 House of Representatives
 Washington, D. C. 20515

Re: HR 1080

Dear Mr. Downing:

We refer to the above bill which would provide antitrust exemption under Section 15 of the Shipping Act of 1916 (46 U.S.C. 814) to vessel-operating common carriers by water and a common carrier regulated under Part I, Part II or Part III of the Interstate Commerce Act and a direct carrier regulated under the Federal Aviation Act in the establishment of intermodal rate agreements.

This bill does not provide the same exemption to Non Vessel Operating Carriers (NVO) or air freight forwarders.

The American Importers Association is the only national trade association representing importers and has among its members many small importers who find it not only convenient but also a monetary saving to use NVOs and air freight forwarders in moving their merchandise intermodally.

The limitation in the present bill would force importers to deal only with operating carriers and would remove any possibility of their securing more favorable rates and conditions which might be offered if they could use customs brokers and freight forwarders. Furthermore, competition in the moving of freight would be greatly reduced if brokers and forwarders are excluded. We, therefore, urge that the bill be amended to include non-vessel operating carriers such as customs brokers and freight forwarders.

Very truly yours,

Gerald O'Brien
 Executive Vice President

GO:jp

cc: Subcommittee Members
 Robert H. Binder, Asst. Secy., DOT
 Karl Bakke, Chairman, FMC

[Whereupon at 1 p.m., the hearing was adjourned to reconvene subject to the call of the Chair.]

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