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NONNATIONAL FLAG OCEAN RATES

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OCT 29 1975

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HEARING

BEFORE THE

SUBCOMMITTEE ON MERCHANT MARINE

OF THE

COMMITTEE ON COMMERCE

UNITED STATES SENATE

NINETY-FOURTH CONGRESS

FIRST SESSION

ON

S. 868

TO PROVIDE FOR MINIMUM RATE PROVISIONS BY NON-
NATIONAL CARRIERS IN THE FOREIGN COMMERCE OF
THE UNITED STATES, AND FOR OTHER PURPOSES

APRIL 11, 1975

Serial No. 94-14

Printed for the use of the Committee on Commerce

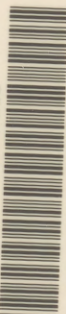


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NONNATIONAL FLAG OCEAN RATES

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Oct 29 1975

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BEFORE THE

SUBCOMMITTEE ON MERCHANT MARINE

COMMITTEE ON COMMERCE

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ARTHUR PANKOPF, Jr., *Minority Counsel and Staff Director*

PHILIP GRILL, *Minority Staff Counsel*

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| JOHN O. PASTORE, Rhode Island | J. GLENN BEALL, Maryland |
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| JOHN V. TUNNEY, California | |



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U.S. SENATE
COMMITTEE ON COMMERCE

NONNATIONAL FLAG OCEAN RATES

FRIDAY, APRIL 11, 1975

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

The subcommittee met at 10:05 a.m. in room 5110, Dirksen Senate Office Building, Hon. Daniel K. Inouye presiding.

Senator INOUE. The committee will come to order.

This morning the Merchant Marine Subcommittee meets to receive testimony on S. 868, legislation which I introduced on February 27, 1975.

S. 868 provides for minimum ocean rate provisions by nonnational or third flag common carriers operating in the foreign commerce of the United States.

On March 4, Chairman Magnuson announced that the Commerce Committee was considering this legislation and asked that parties interested in expressing their views on S. 868 submit them in writing to the committee. We have received a number of statements and ask that any others who wish to have their views recorded submit them promptly.

This morning we will receive testimony from a broad range of interested persons.

[The bill and agency comments follow:]

Staff member assigned to this hearing: **Richard Daschback.**

(1)

94TH CONGRESS
1ST SESSION

S. 868

IN THE SENATE OF THE UNITED STATES

FEBRUARY 27 (legislative day, FEBRUARY 21), 1975

Mr. INOUE introduced the following bill; which was read twice and referred to the Committee on Commerce

A BILL

To provide for minimum rate provisions by nonnational carriers in the foreign commerce of the United States, 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 18 of the Shipping Act, 1916 (46 U.S.C. 817),
4 is amended by—

5 (a) deleting from paragraph (2) of subsection (b)
6 the clause: “which results in an increase in cost to the
7 shipper,”;

8 (b) deleting the second sentence of said paragraph
9 (2), which reads: “Any changes in the rates, charges,
10 or classifications, rules, or regulations which result in a

1 decreased cost to the shipper may become effective upon
2 the publication and filing with the Commission.”; and

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

5 “(c) From and after 90 days following enactment of
6 this section, no nonnational flag carrier in any given trade
7 in the foreign commerce of the United States shall maintain
8 rates or charges in its tariffs filed with the Federal Maritime
9 Commission in that trade that are lower than the lowest
10 corresponding rate or charge of any national flag carrier in
11 that trade unless said rate or charge is first determined by
12 the Commission as provided herein to be compensatory on
13 a commercial cost basis. Whenever after said 90-day period
14 there shall be on file or newly filed with the Commission
15 by any nonnational flag carrier a rate or charge effective
16 in that given trade and whenever such rate or charge in the
17 given trade is lower than the lowest corresponding rate or
18 charge of any national flag carrier, then such filing shall be
19 rejected if newly filed, or deemed newly filed and rejected
20 if on file pending a final determination by the Commission,
21 after hearing, concerning the lawfulness of said rate or charge
22 if the Commission, in its discretion, determines that such
23 rate is probably not compensatory on a commercial cost basis
24 either through its own investigation or upon a reasonable
25 showing by a national flag carrier. However, the Commission

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

21 “(i) the term ‘national flag carrier’ means a com-
22 mon carrier by water operating vessels on regular berth
23 services to and from United States ports of call that are
24 documented under the laws of the United States or the
25 other country in the given trade;

- 1 “(ii) the term ‘nonnational flag carrier’ means any
- 2 common carrier by water operating in the given trade,
- 3 other than a national flag carrier; and
- 4 “(iii) the term ‘given trade’ means the trade be-
- 5 tween the United States and another country.”.

...the Commission has no objection to the inclusion of this matter in the report of the Commission on the subject of the proposed amendments to the International Maritime Convention, 1923, as amended, and the Commission will be glad to consider any suggestions that may be made in this regard.

Very truly yours,
 Director

In addition to the suggestions for amendments to the Convention, the Commission has no objection to the inclusion of this matter in the report of the Commission on the subject of the proposed amendments to the International Maritime Convention, 1923, as amended, and the Commission will be glad to consider any suggestions that may be made in this regard.

Very truly yours,
 Director

...the Commission has no objection to the inclusion of this matter in the report of the Commission on the subject of the proposed amendments to the International Maritime Convention, 1923, as amended, and the Commission will be glad to consider any suggestions that may be made in this regard.

FEDERAL MARITIME COMMISSION,
OFFICE OF THE CHAIRMAN,
Washington, D.C., April 11, 1975.

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

DEAR MR. CHAIRMAN: This is in reply to your request for the comments of the Federal Maritime Commission on S. 868, a bill:

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

You will recall that I testified last November in favor of S. 868's predecessor bill, S. 2576. During the course of that testimony I suggested amendments which were offered in the hope of strengthening the bill and after its enactment more readily accomplish its objectives. I trust you will give consideration to these amendments during the upcoming hearings on S. 868.

More importantly, however, the Federal Maritime Commission feels that enactment of legislation which meets the objectives of S. 868 is of paramount importance. S. 868 recognizes the need for action in protecting American carriers, importers, exporters and most importantly, the American consumer from predatory ratemaking nonnational flag carriers. Enactment of legislation will enable the Commission to take actions which will remedy what promises to be an increasingly troubling situation in the international waterborne commerce of the United States.

While the Office of Management and Budget has no objection to the submission of this report, it has advised us that the Administration opposes enactment of S. 868 for the reasons stated in the reports of the Departments of Transportation and State.

Assuring you of the continued desire of the Commission to be of assistance in this matter, I remain

Sincerely,

HELEN DELICH BENTLEY,
Chairman.

APRIL 11, 1975.

In addition to the suggestions for considerations of amendments the following thoughts are offered.

Third-flag carriers often offer necessary services without which some U.S. exports might not move because conference or independent national-flag lines do not provide such services. Also, where national-flag lines are independent some of the bill's objectives might be thwarted. In determining the final provisions to be included in the bill, Committee consideration should include whether its provisions permit extensive market control to such an extent that healthy and desirable competition is unnecessarily inhibited.

THE FEDERAL MARITIME COMMISSION.

FEDERAL MARITIME COMMISSION,
OFFICE OF THE COMMISSIONER,
Washington, D.C., April 10, 1975.

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

DEAR MR. CHAIRMAN: I respectfully refer to my letter of January 10, 1974, printed at page 63, Hearings before the Subcommittee on Merchant Marine of the Committee on Commerce, United States Senate, on S. 2576 (Serial No. 93-112) and request that the points therein raised be taken into consideration with regard to S. 868.

I have the following additional comments.

We are here speaking of rate rejection authority—a tool far more effective and final than even the limited rate suspension authority which is granted to this Commission in our domestic offshore trades by section 3, Intercoastal Shipping Act, 1933, or the even more limited authority granted to this Commission in our foreign commerce by the "Provided" clause in section 16 First, Shipping Act, 1916, or even by section 18(b)(4), Shipping Act, 1916. We are treading new ground when we speak of rate rejection authority in our foreign commerce.

The impact of S. 868 applies only to third flag carriers. Nonconference national flag carriers may file very low rates (rates which may be even lower than the rates of third flag carriers) with virtual impunity, for such rates may not be suspended at all, may not be rejected, except under the very limited authority of section 18(b)(4), Shipping Act, 1916, and may not be found unlawful except under the authority of section 18(b)(5), Shipping Act, 1916. Hence, S. 868 purports to restrict the rate of freedom of only one of the three "nonconformists"—the carriers who operate outside the conference—namely, the third flag operators, whereas the tramp operators who are entirely free of our jurisdiction and the nonconference national flag operators remain virtually free to go their own merry way in setting rates since they (the national flag common carriers) are restricted as to rate levels only by section 18(b)(5), Shipping Act, 1916.

In my letter of January 10, 1974, I expressed various objections to the 30-day delay provision for effectiveness of rate reductions. In addition, I respectfully suggest the 30-day delay provision for rate decreases is, operationally, impractical. Some shippers must meet fixed time schedules; hence, if so required, they would ship without regard to a rate decrease to be effective 30 days after filing. Other shippers which may have greater flexibility in their time schedules would hold up shipment until after the rate reduction becomes effective. Hence, because of tight scheduling, the conference vessels might sail light during this 30-day period and then, when the reduced rates become effective, might not have space to carry the "held up" cargo, in which event it would move by nonconference vessels. Does this serve the best interests of U.S. flag carriers?

I consider now the basic objective of S. 868. My reading indicates the basic objective is to protect U.S. flag common carriers by water from low freight rate competition by either third flag state-owned common carriers by water or by low-cost third flag privately-owned common carriers by water. To achieve this objective, S. 868 would authorize rejection of third flag carrier freight rates which are lower than lowest national flag carrier freight rates unless that third flag carrier's rates are justified as being "compensatory on a commercial cost basis." Will S. 868 achieve its objective? I think not.

To begin with, S. 868 does not purport to impose any floor to the level of rates charged by national flag carriers (whether state owned or privately owned). Hence, this large loophole remains.

Secondly, S. 868 does not purport to prevent either state-owned or privately-owned third flag common carriers from charging the lowest rates charged by national flag common carriers. At the present time in the U.S. Pacific Coast/Japan trade some of the lowest rates which are being quoted are those quoted by nonconference Japanese flag common carriers. While this may not be a loophole in S. 868 itself, the filing of low rates by nonconference national flag carriers is, nevertheless, as detrimental to the interests of U.S. flag carriers as are low rates filed by third flag carriers.

Thirdly, while it may be politically inexpedient, it would be a much more simple and workable standard for this Commission to apply if S. 868 straightforwardly stated that third flag carrier rates may not be below lowest national flag carrier rates or may not be more than, say, some stated fixed percentage below the lowest national flag carrier rates, instead of permitting third flag carriers to justify their low-low rates as being lawful by proving that they are "compensatory on a commercial cost basis." By such a straightforward approach, this Commission would have a guideline which could be applied easily and quickly, which is not the case if the standard of "compensatory on a commercial cost basis" applies. If the third flag carrier justifies its low-low rates under S. 868 standards, the rates become effective, albeit after a delay due to the time required to establish the rates are "compensatory on a commercial cost basis"—and therefore the basic objective of S. 868 is frustrated.

Assuming the Commission is able to find that such rates are justified as being compensatory on S. 868 standards, what has been accomplished, other than delaying the effective date of the rate? It is my belief that mere delay in rate effectiveness is not the basic objective of S. 868.

Assuming the Commission finds the rate is justified on a commercial cost basis, is it conceivable it could not nevertheless be found unlawful under section 18(b)(5), Shipping Act, 1916, as being so low as to be detrimental to the commerce of the United States? Hence, what is the need for S. 868? I believe we now have adequate authority in section 18(b)(5), Shipping Act, 1916, to control low-low rates, whether national flag or third flag, state owned or privately owned. All this Commission needs, under that section, are some policy guidelines from the

Congress—policy guidelines by way of a resolution from your Committee or from the House Merchant Marine and Fisheries Committee which would tell us, for example, that rates of a third flag carrier which are lower than the lowest rates of a national flag carrier in the trade are unlawful unless the Commission duly finds that those rates are required in the public interest, leaving for our determination only the public interest issue.

Conversely, it is not unthinkable that the rate could be found justified and needed in the public interest on the basis of transportation factors other than commercial costs.¹ Nevertheless, under S. 868, and despite a favorable finding of public interest requirement, we would be forced to reject such needed rate if it failed to meet the cost standards of S. 868.

In all events, the needs of our importers and exporters for low ocean freight rates should not be discounted. Finally, without the “governor” of nonconference competition there is danger that the conference rates might be higher than would be justified when one considers the needs of exporters and importers.

For the foregoing reasons:

(1) The 30-day delay for rate reduction effectiveness places an unnecessary cost burden on the shippers during that delay period and effectively weakens the competitive position of common carriers vis-a-vis tramps and vis-a-vis other carriers in trades to a common market area.

(2) The third flag operator in fact may be able to justify its rates on the basis of “commercial costs” and hence the only thing accomplished is the delay involved in convincing this Commission the rates are justified on S. 868 standards.

(3) The rates may not meet S. 868 commercial-cost standards but are nevertheless justifiable on other normal transportation factors or are needed in the public interest in support of our import or export programs.

(4) Operationally, the 30-day delay for effectiveness of reduced rates is unsound.

If the goal is to assure U.S. flag carriers the opportunity to carry 50%, more or less, of our foreign commerce, then to achieve that end consideration should be given to bilateral or multilateral government agreements which would effectively allocate all cargo in our trades between the national flag carriers and, perhaps, third flag carriers, or consideration should be given to favorable tax or customs treatment on cargo carried by U.S. flag carriers. If the goal is to assure that third flag nonconference carriers will not flood our trades and “skim off the cream” of our foreign commerce, consideration should be given to strengthening the conference system so as to permit closed conferences and deferred rebates, or even to grant this Commission power to establish minimum and/or maximum rates in our foreign trades. If any of these alternatives are considered, then a study in depth should be made to determine if such a drastic change in our shipping policies is, in fact, in our national interest.

Sincerely,

CLARENCE MORSE,
Commissioner.

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., Apr. 15, 1975.

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

DEAR MR. CHAIRMAN: This is in response to your request for Departmental comments on S. 868, a bill:

“To provide for minimum rate provisions by non-national carriers in the foreign commerce of the United States, and for other purposes.”

The Department opposes enactment of the legislation for several reasons.

The proposed legislation would restrict actual and potential competition by third-flag shipping lines by subjecting them to minimum rate controls to which national flag lines would not be subject. This discrimination is contrary to current U.S. maritime policy of leaving waterborne commerce open to all comers.

Historically, third-flag carriers have been reluctant to provide corporate data, and, in some instances, use accounting practices different from those used by

¹ For example, in our domestic offshore trades we have often approved freight rates which reflect revenue greater than out-of-pocket costs but less than full commercial costs as being required in order to meet tramp competition or as being needed in order that low-value cargo will move at all. For example, rates which are below full commercial-cost levels may be needed to enable our products to be competitive in markets with products from other producing areas.

U.S. carriers. The proposed legislation would impose an administrative burden upon third-flag carriers by requiring them to furnish data to prove their lower rates covered "commercial cost," but it would not place the same—indeed any—burden on the national carriers.

In general, this legislation would end effective competition between third-flag carriers and the rate conferences. There would be less incentive for national flag carriers to keep their rates close to cost but compensatory, because third-flag carriers could not compete by going below the lowest corresponding national flag rate without passing through a potentially heavy and delaying administrative burden. The net result of such anti-competitive rate regulation, in the absence of a carefully worded definition of "commercial cost," would likely raise prices to U.S. consumers for goods transported by water.

While the Department of Transportation is concerned about the use of predatory pricing in ocean shipping, we believe that the FMC could exercise greater supervision under the existing authority of Section 18(b)(5) of the Shipping Act of 1916 which states 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."

The Office of Management and Budget has advised 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,

RODNEY E. EYSTER,
General Counsel.

DEPARTMENT OF STATE,
Washington, D.C.

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

DEAR MR. CHAIRMAN: The Secretary has asked me to reply to your letter of March 6, 1975, requesting comment on S. 868, a bill "To provide for minimum rate provisions by non-national carriers in the foreign commerce of the United States."

The Department of State endorses the apparent thrust of S. 868; namely, the prevention of predatory rate practices in the U.S. foreign trade. At the same time, however, the Department questions whether new legislation to achieve this objective is necessary, and has reservations as to the desirability of certain provisions of S. 868.

The Department believes that until full use of existing legislation proves inadequate, new legislation in this area is not necessary. Section 18(b)(5) of the Shipping Act, 1916, already grants the Federal Maritime Commission authority to "... disapprove any rate or charge filed by a common carrier by water in the foreign commerce of the United States or conference of carriers, which after hearing, it finds to be so unreasonably high or low as to be detrimental to the commerce of the United States." (Emphasis added.) By utilizing this existing legislation in an expeditious manner, the FMC could take action to disapprove rates which it finds predatory.

If existing legislation and its implementation were to prove inadequate and new legislation were to be needed, the Department believes certain features of the proposed legislation would, nonetheless, be inadvisable. Under S. 868, certain non-national carriers would have to show that under circumstances described in the bill their "... rate or charge is not lower than the lowest corresponding rate or charge of any national flag carrier or that such rate or charge is compensatory on a commercial cost basis." When a non-national flag carrier in a given trade has a rate lower than the lowest corresponding rate of any national flag carrier, the non-national flag rates may be rejected pending a determination of the legality of the non-national flag carrier's rate. This shift in the burden of proof, tantamount to a finding of "guilty" until proven innocent, would place an onerous and unfair burden upon these carriers.

The bill proposes a standard of rate determination different from that now used by the FMC. Even if it were possible to adopt standards to determine rates that are "compensatory on a commercial cost basis," the bill imposes serious ad-

ministrative burdens on a carrier attempting to show that his lower rate did in fact meet such standards. The possibility of a protracted hearing and indefinite suspension of a rate would likely result in a cessation of certain services provided by third-flag carriers and a decrease in rate competition in the various trades and possible increases in overall freight rates. Rather than creating stability, the adoption of S. 868 could result in protracted instability and would be detrimental to the thousands of U.S. shippers who depend on such services. We have in fact received several letters from various U.S. shippers' organizations which indicate their opposition to this bill.

Moreover, this legislation would, with respect to rates, treat non-national carriers differently from national carriers and would thereby be discriminatory vis-à-vis the non-national carriers. In this respect the United States would be in violation of our obligations under the majority of our Friendship, Commerce and Navigation Treaties which assure national treatment to the carriers of our treaty partners. We fully expect, and in fact demand, national treatment for US-flag vessels in the ports of our treaty partners, and they have every right to expect such treatment from us.

Additionally, the United States continues to maintain multilateralism as a principle element in its shipping and foreign economic policy. We have felt the practice of setting rates is best left to the carriers involved, in the first instance, subject, of course, to appropriate government review. We believe the proposed legislation could encourage other countries to adopt similar, and perhaps broader, shipping policy restrictions to the overall detriment of world commerce, as well as to immediate U.S. shipping interests. A similar statute, for example, adopted by another country, could, as a matter of administrative practice, force US carriers to adhere to higher rates required by a less efficient carrier of that country. The Department believes, moreover, it would create pressures generally for foreign carriers to charge rates no lower than the national carriers of a country, whose trade is served, expanding the area of potential intergovernmental conflict. Thus the legislation would not only place governmental administrative bodies further into the rate-setting area as a matter of domestic law, but could foreshadow a requirement for greater government-to-government involvement in rate-setting as governments intervene to resolve rate disputes between them.

While the Department of State supports the objective of the maintenance of a stable tariff situation in our foreign trades and fully favors the elimination of predatory practices, we do not believe the proposed legislation would accomplish this end. This legislation may in fact be detrimental to United States foreign economic policies. We believe that the suppliers of shipping services—the carriers—should not be deprived of the right to set their freight rates and that the users of such services—the shippers—should not be deprived of the right to benefit therefrom. This legislation, if applied as broadly as apparently intended, could entirely eliminate competition based on divergence of rates.

To summarize, we believe the proposed legislation would be detrimental to our long-term foreign economic policies, would have a destabilizing effect in our trades, and would require over time an ever-increasing governmental role as international negotiations would be required to reduce conflicts produced by diverging national determinations on the appropriateness of rates.

We find the proposed legislation inadvisable because it inherently diminishes competition, since it aligns rates at a given level. The alignment of rates and burden placed on filing of lower rates will produce a natural tendency for rates to move upwards, not downwards. The legislation has a direct inflationary impact upon U.S. shippers and consumers by placing special burdens on lower rates, and has a direct anti-competitive impact by aligning rates at a national carrier level.

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.

Sincerely,

ROBERT J. McCLOSKEY,
Assistant Secretary for Congressional Relations.

Senator INOUE. Our first witness will be the Deputy Assistant Secretary of State for Transportation and Telecommunications, Raymond J. Waldmann, and he will be accompanied by Mr. Richard Bank, Director of the Office of Maritime Affairs, and Mr. Franklin Willis, Office of the Legal Adviser.

Welcome, sir.

STATEMENT OF RAYMOND J. WALDMANN, DEPUTY ASSISTANT SECRETARY, BUREAU OF ECONOMIC AND BUSINESS AFFAIRS, DEPARTMENT OF STATE; ACCOMPANIED BY RICHARD K. BANK, DIRECTOR, OFFICE OF MARITIME AFFAIRS; AND FRANKLIN K. WILLIS, OFFICE OF THE LEGAL ADVISER

Mr. WALDMANN. Mr. Chairman, thank you for this opportunity to allow the Department of State to testify on S. 868, a bill to provide for minimum rate provisions by nonnational carriers in the foreign commerce of the United States, and for other purposes. My name is Raymond J. Waldmann, and with me are Richard K. Bank, Director, Office of Maritime Affairs, Bureau of Economic and Business Affairs, and Franklin K. Willis, Office of the Legal Adviser.

The Department of State endorses the apparent thrust of S. 868, namely, the prevention of predatory rate practices in the U.S. foreign trade. The Department shares the sponsors' concern about practices which pose a serious threat to the stability of United States and world shipping services. At the same time, however, the Department questions whether new legislation to achieve this objective is necessary and has particular reservations as to the desirability of certain provisions of S. 868.

The Department believes that new legislation in this area should not be enacted until full use of existing legislation proves inadequate. Section 18(b)(5) of the Shipping Act, 1916, already grants the FMC authority to ". . . disapprove any rate or charge filed by a common carrier by water in the foreign commerce of the United States or conference of carriers, which, after hearing, it finds to be so unreasonably high or low as to be detrimental to the commerce of the United States." By utilizing this existing legislation in an expeditious manner, the FMC could take action to disapprove rates which it finds predatory.

If, however, new legislation is considered necessary, the Department believes certain features of the proposed legislation would, nonetheless, be inadvisable. Under S. 868, nonnational carriers would have to show that under circumstances described in the bill their ". . . rate or charge is not lower than the lowest corresponding rate or charge of any national flag carrier or that such rate or charge is compensatory on a commercial basis."

We find the proposed language inadvisable because it inherently diminishes competition. It alines rates at a given level and places the burden of justifying rates on those filing lower rates. This will produce a natural tendency for rates to move upwards, not downwards. The legislation would have a direct impact upon the costs of U.S. shippers and consumers by placing special burdens on those who file lower rates. This legislation, if applied as broadly as possible, could entirely eliminate competition based on divergence of rates, and could remove a restraint against the spectre of unrestricted higher rates and of monopolistic control. This may be the reason the bill has received support from some foreign flag companies which operate within conferences.

Because "compensatory on a commercial cost basis" is not clearly defined, the FMC would be accorded wide discretionary power to

apply any appropriate cost standard. However, even with such a grant of wide discretionary power, we do not believe that this kind of legislation could achieve its stated objectives. We have little doubt that certain nonnational carriers could resort to various means to exhibit compliance under the law, but nevertheless remain as predatory as before. They could, for example, report their financial transactions on a commercial cost basis. Alternatively, they could raise their freight rates to equal those of the lowest national carrier and at the same time resort to illegal but hard to detect rebate practices. In either instance, the nonnational carrier could continue to cut rates despite the provisions of S. 868.

Even if it were possible to adopt standards and procedures to determine rates that are "compensatory on a commercial cost basis," the bill compels a carrier to show that his lower rate did in fact meet such standards. This shifts the burden of proof and is tantamount to a finding of guilty until proven innocent. It would place an onerous and unfair burden upon any carrier filing such rates.

A hearing and indefinite suspension of a rate by the FMC would likely result in a cessation of certain services provided by third-flag carriers, a decrease in rate competition in the various trades, and possible increases in overall freight rates. Thus, rather than creating stability, S. 868 could result in protracted instability and would be detrimental to the thousands of U.S. shippers who depend on such services.

The Department of State has received diplomatic representations concerning this bill from a number of nations. These nations cited serious economic and diplomatic problems should this bill be enacted. If there is need to take legislative action, the problem should be solved without destroying the service so long provided by third flag vessels but operated by commercial enterprises.

This bill seeks to remedy unfair and predatory practices on the part of those nonnational carriers whose costs are not subject to the discipline of normal market forces. Any remedial legislation should be explicitly restricted to those operators who are prima facie not subject to the normal factors in a market economy.

In its present form, the application of S. 868 to all nonnational carriers goes further than necessary to deal with the intended purpose of the bill.

This legislation as written would treat a nonnational carrier differently from national carriers and would thereby be discriminatory vis-a-vis the nonnational carriers. That result, however protectionist, would nonetheless be an acceptable national practice under international law in the absence of international obligations to the contrary. We do have, however, international obligations in this area. Enactment of this bill, at this time, would put the United States in violation of certain obligations under the majority of our Friendship, Commerce and Navigation Treaties. These treaties assure national treatment of the carriers of our treaty partners. We fully expect, and in fact demand, that same national treatment for U.S.-flag vessels in the ports of our treaty partners, and they have every right to expect such treatment from us.

We have applicable shipping provisions in Friendship, Commerce and Navigation Treaties with the following nations:

Argentina, Austria, Belgium, Bolivia, Republic of China, Colombia, Costa Rica, Denmark, Ethiopia, Federal Republic of Germany, Finland, Greece, Honduras, Iran, Iraq, Ireland, Israel, Italy, Japan, Liberia, Luxembourg, Muscat, Nepal, Netherlands, Nicaragua, Norway, Paraguay, Thailand, Turkey, Vietnam, Yemen, and Yugoslavia.

We have attached as an annex 11 examples of the pertinent clauses within these Friendship, Commerce and Navigation Treaties.

As this committee is aware, the Department of State often cites Friendship, Commerce and Navigation Treaties when it comments upon commercial or economic legislation. Their frequency of citation should not diminish their importance as instruments of U.S. economic and foreign policy. They permit U.S. businessmen abroad to operate on a par with citizens of our treaty partners. They are tangible and living international obligations. All of us at one time or another have heard public figures who, in an attempt to belittle the trustworthiness or discredit a nation, refer to that nation's failure to live up to treaties they have signed. The United States should not be properly accused of that same practice. If the United States believes that certain treaty obligations are no longer beneficial to the interests of our Nation, we should, under the provisions set forth in the treaties, take steps to dissolve the relationships. However, we should not precipitously or unilaterally cast aside our Nation's adherence to the rule of law in order to attempt to more easily solve certain domestic problems. Since the United States is party to more treaties than any other country, we stand most to gain by promoting adherence to treaty obligations.

The United States maintains multilateralism as a principal element in its shipping and foreign economic policy. We feel that the practice of setting rates is best left to the carriers involved, in the first instance, subject to appropriate Government review. We believe the proposed legislation could encourage other countries to adopt similar, and perhaps broader, restrictions to the detriment of world commerce and U.S. shipping interests. A similar statute, for example, adopted by another country could force U.S. carriers to adhere to higher rates required by a less efficient carrier of that country. It could create pressures generally for foreign carriers to charge rates no lower than the national carriers of a country whose trade is served, expanding the area of potential intergovernmental conflict. Thus the legislation would not only further governmental intervention in rate setting, but could foreshadow a requirement for governments to resolve rate disputes between them.

In conclusion, we believe the proposed legislation as written would violate treaty obligations, would be detrimental to our long-term foreign economic policies, would have a destabilizing effect in our trades, and would require over time an ever-increasing governmental role as international negotiations would be required to reduce conflict produced by diverging national determinations on the appropriateness of rates.

Mr. Chairman, that concludes my testimony but I and Mr. Bank and Mr. Willis will be glad to answer any questions you may have.

Senator INOUE. Thank you very much.

I believe this country is the only country that insists upon open conferences. I believe it would be fair to characterize the United

States as being the only country that insists upon free foreign commerce. I think all of the other countries have certain other restrictions.

You have mentioned section 18(b)(5) of the Shipping Act as one that should be applicable and should resolve the problems we wish to resolve by this legislation. We find that several countries prohibit their national carriers to respond to FMC inquiries, which in essence would make this section inoperable from our standpoint.

How would you cure that, sir?

Mr. WALDMANN. Well, I think, Mr. Chairman, that use of 18(b)(5) has not been fully tested. I don't believe, although you may have cases to the contrary, that the FMC has made full use of the powers which that section of law grants it.

Senator INOUE. I can name three countries for you: Netherlands, Norway, and Belgium. All three by law and regulation would deny their carriers to respond to inquiries submitted by the FMC.

Mr. WALDMANN. I don't know whether those countries have in fact prevented their carriers from submitting testimony or data to the FMC. But this is a question of fact which ought to be easily interpreted.

Senator INOUE. This is the information we gathered from the FMC, sir.

Mr. WALDMANN. Well, I gather that this does not apply or has not been tested under section 18(b)(5) to which we refer.

Senator INOUE. The information we gathered from the FMC is that this section of the law for all intents of purposes is inoperable.

They tried to put it into effect, and they find it absolutely frustrating; and that is why many there support this measure.

Mr. WALDMANN. I think we should draw a distinction between the provisions of the law which deal with rates and the information or the furnishing of data to the FMC. These are two separate questions.

To the extent that rates are filed with the Commission, they have a power, an authority, under 18(b)(5), which does not deal directly with the information requirements.

Senator INOUE. If the data is not submitted, how can the FMC determine whether it is high or low and whether it is unreasonable at the same time?

Mr. WALDMANN. Well, the question is the standard of reasonableness. Do you rely entirely on the noncompliance or the failure of foreign carriers to file data to support their defense?

Senator INOUE. How can you determine the matter of being reasonable if you don't have data before you?

Mr. WALDMANN. If the carriers are not willing to defend their rates as being reasonable, then perhaps there is a prima facie case that can be made.

You have other sources available to the Commission, of course, including U.S. carrier filings.

Senator INOUE. Do you object to the filing of rates per se?

Mr. WALDMANN. This is provided in the existing legislation, Senator, and we do not object to that.

Senator INOUE. As to your criticism of the phrase "compensatory on a commercial cost basis," we would welcome an amendment, sir.

Mr. WALDMANN. Senator, we don't have any legislation to propose to the committee. But we do believe that there are ways of achieving

the objectives that the Senator would like to achieve in this area, and I think we have discussed some of the general principles in our testimony which should apply to any legislated solution.

I would be glad to work with the committee staff in an effort to develop that legislation.

Senator INOUE. I gather from reading your full report that you are sensitive to some of the problems faced by our carriers from certain other nonnational carriers who carry on predatory practices; not too long ago the Baltic Atlantic Line filed rates to carry wine and spirits from the United Kingdom to the United States. At the time of the filing, they had no shipment operation, and yet they were able to file rates that were significantly and considerably lower than that prevailing.

Mr. WALDMANN. Senator, we are aware of such cases, and we believe that predatory practices exist; and we are willing to work with the committee to try and find a way of dealing with those.

Senator INOUE. The impression I get is that attempts made by the Government—and I mean by that the executive and the legislative—have been to date wholly insufficient, and so this measure responds to the complaints submitted by our carriers.

Mr. WALDMANN. Well, as I said in this testimony, I believe that the draft legislation goes too far. That is, it addresses questions which need not be addressed and raises severe problems of international law for the United States in the way in which the legislation is currently drafted.

Senator INOUE. If I may, once again, invite the State Department to submit an amendment. We would be most pleased to receive one, because I for one just can't see this matter being set aside and continue to operate "business as usual." Because "business as usual" hasn't worked out so far. Something has to be done.

We don't think the measure goes too far. But if you would submit some amendment, we would be very happy to consider it.

Mr. WALDMANN. Thank you, Senator, for the invitation. I can't at this point commit the administration to any particular language, nor do I have authority today to suggest any such amendment or propose specific language.

Senator INOUE. I believe you have had discussions with the Soviet Union on maritime affairs and trade relations. Have you discussed this matter of predatory practices with the Soviet officials?

Mr. WALDMANN. Senator, this bill has come up in discussions with the Soviets; and Mr. Bank was present at the most recent bilateral discussions with the Soviets under the maritime agreement, and perhaps he would like to add a few words.

Mr. BANK. Thank you.

Senator, when we met with the Soviets as part of the discussions within the framework of the U.S.-U.S.S.R. Maritime Agreement of 1972 in Moscow during the second week of March, a copy of the bill was presented to Soviet shipping officials so that they would know that the bill exists and know of its exact language.

The reaction was interesting. They informally pointed out that they would have to give it some study. But at the same time they noted that under the law there would be a number of things that had to be done.

They made reference to "When in Rome do as the Romans do," and they talked about what a number of nonnational third-flag operators might do in this situation, leaving it in the abstract.

One of the things they mentioned that could be done, of course, is to file rates and information, background information, which would show their rates to be based on a purely commercial cost basis.

The second possible action that could be taken by a carrier in that area would be to raise their rates to the level of the lowest national carrier's rates during this period of time. But one or two of them mentioned to me that they are sure that some of these carriers would then have to operate in the way that they know other carriers operate now, that is by illegally rebating.

So they are aware of this.

Senator INOUE. If I may interrupt at this point, if rebates are illegal why are we permitting them?

Mr. BANK. We are not permitting them. I'm sure the FMC is as diligent as it can be in trying to rout out illegal practices in the entire area.

Senator INOUE. Then can't we cope with that even with this bills

Mr. BANK. I don't believe the bill really points to that, Senator.

Senator INOUE. Should we strengthen the present provisions?

Mr. BANK. Perhaps. This is, I am sure, a question that the FMC could best answer in regard to their activities in the past and their success or lack of success in particular trades in regard to discovering and routing out illegal rebating practices.

But these are the views that have been heard, not only from the Soviets in an abstract way but from others in the shipping community, that perhaps the bill would not successfully alleviate the practice that it seeks to.

As Mr. Waldmann pointed out, we would be very happy to work with you and the staff in working on legislation which can solve the problems of predatory rate practices.

We do not feel, however, Senator, that we should take on these challenges in a way which would violate certain treaty obligations—

Senator INOUE. Can you send us a memorandum showing where it violates them? We have tried to address ourselves to that problem, and our experts—maybe they are not as good as yours—have indicated that there is no violation whatsoever. I am going to request the American Law Division of the Library of Congress to examine this question and I will insert the opinion we receive in the record.

[The following information was subsequently received for the record:]

THE LIBRARY OF CONGRESS

Congressional Research Service

LEGAL ANALYSIS OF PROPOSED STATUTE PROVIDING FOR MINIMUM RATE PROVISIONS BY NON-NATIONAL-FLAG CARRIERS IN FOREIGN COMMERCE OF THE UNITED STATES (S. 868, 94TH CONG.) AS A VIOLATION OF U.S. FRIENDSHIP, COMMERCE, AND NAVIGATION TREATIES

Proposed by S. 868, 94th Cong., is an addition to section 18 of the Shipping Act, 1916, 46 U.S.C. §817, which would, from and after 90 days after its enactment, basically prohibit any nonnational flag carrier in any given trade in the foreign commerce of the United States from maintaining rates or charges in its tariffs filed with the Federal Maritime Commission in that trade which are lower than the lowest corresponding rate or charge of any national flag carrier in that

trade unless it is determined by the Commission to be compensatory on a commercial cost basis. The Commission will reject such lower rate or charge pending a final determination, after hearing, if in its discretion, it determines either through its own investigation or upon a reasonable showing by a national flag carrier that such rate is probably not compensatory on a commercial cost basis. The Commission may stay any such rejection at any time within 30 days after the filing of such complaint or issuance of such order, upon a good cause showing by the nonnational flag carriers that there is a reasonable probability that the nonnational flag carrier will be able to prove after hearing that the rejected matter is not in violation of this law. At any hearing thereunder, the publishing nonnational flag carrier would have the burden of proof to show that the rate or charge is not lower than the lowest corresponding rate or charge of any national flag carrier or that such rate or charge is compensatory on a commercial cost basis.

At the recent hearings held on this bill by the Senate Committee on Commerce, Raymond J. Waldman, Deputy Assistant Secretary, Bureau of Economic and Business Affairs, Department of State (accompanied by Richard K. Bank, Director, Office of Maritime Affairs; and Franklin K. Willis, Office of the Legal Adviser) testified in part as follows:

This legislation as written would treat a nonnational carrier differently from national carriers and would thereby be discriminatory vis-a-vis the nonnational carriers. That result, however protectionist, would nonetheless be an acceptable national practice under international law in the absence of international obligations to the contrary. We do have, however, international obligations in this area. Enactment of this bill, at this time, would put the United States in violation of certain obligations under the majority of our friendship, commerce and navigation treaties. These treaties assure national treatment of the carriers of our treaty partners. We fully expect, and in fact demand, that same national treatment for U.S.-flag vessels in the ports of our treaty partners, and they have every right to expect such treatment from us.

Before an analysis is undertaken of whether the provisions of S. 868 do amount to a violation of such treaties, it would seem helpful to discuss, in general, the design of State Department legal opinions and the nature of United States treaties of Friendship, Commerce and Navigation (FCN treaties).

"The Department of State's primary objective in the execution of our foreign policy is to promote the long-range security and well being of the United States. The Department determines and analyzes the facts relating to our overseas interests, makes recommendations on policy and future action, and takes necessary steps to carry out established policy." United States Government Manual, 1974-75, p. 349. "The Secretary of State shall perform such duties as shall from time to time be enjoined on or intrusted to him by the President relative to . . . matters respecting foreign affairs as the President of the United States shall assign to the Department . . ." 22 U.S.C. § 2656. Legal opinions on positions taken by the Department usually emanate from the Office of the Legal Adviser. "The Legal Adviser to the State Department is . . . charged with being an advocate for the Department—with defending, in legal terms, the Department's ultimate judgment, whatever that may be." Ehrlich, *The Legal Process in Foreign Affairs. Military Intervention—A Testing Case*, 27 Stanford L. Rev. 637, 642 (1975). In light of this one-sided legal approach, the author of this article advocates that what is needed and what can be of great value as part of the legal process in national decision-making in foreign affairs is a "multiple-advocacy arrangement", i.e., some form of adversary debate. This report, which does present an opposing stance than the one taken by the Department of State, may help to fill this recognized gap.

FCN treaties "are designed to establish an agreed framework within which mutually beneficial economic relations between two countries can take place." Statement of Charles W. Robinson, Under Secretary for Economic Affairs, Department of State, in *Hearings on Foreign Investment Act of 1975 Before the Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs*, 94th Cong., 1st Sess. (1975), at 29. Yet, merely because a group of treaties is categorized, this does not change the status of the treaties themselves. They are, after all, bilateral treaties as are any other international agreements between the United States and another country on any other matter, and as such are subject to legal rules and interpretations concerning treaties in general. From a legal point-of-view, they are not entitled to any "special" treatment as a political document.

According to the Department of State, as expressed by Mr. Waldmann, S. 868 would violate provisions of our FCN treaties that provide for equal treatment, i.e., those provisions which grant the right of national treatment to the contracting Parties. Those provisions, it is alleged, preclude the kind of distinction or discrimination which is inherent in this legislation between national carriers and non-national carriers. It distinguishes between national and nonnational carriers by placing burdens of proving rates and justifying rates on nonnational carriers which would not exist for national carriers.

In samples of shipping clauses in current FCN treaties, it would seem important to note that in conjunction with such clauses and not presented therewith is the definition of "national treatment" given in FCN treaties. They are usually quite similar. For example, Art. XXII(1) of the Treaty with Japan, 4 U.S.T. 2063, 2079, reads as follows: "The term 'national treatment' means treatment accorded within the territories of a Party upon terms no less favorable than the treatment accorded therein, in like situations, to nationals, companies, products, vessels or other objects, as the case may be, of such Party."

The key words and concepts for our purposes are "no less favorable" and "in like situations". Pursuant to the Vienna Convention on the Law of Treaties (which, while not yet in force, is generally recognized as the authoritative guide to treaty law and practice), a treaty is to be interpreted "in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose." It can be forcefully argued that S. 868 does not treat nonnational flag carriers less favorably as compared with national flag carriers in like situations. First, the evidentiary burden imposed upon a nonnational flag carrier arises only when there is an "unlike" situation, i.e., when the nonnational flag carrier is charging less than the lowest corresponding rate or charge of a national flag carrier in that trade (as determined by the Commission either through its own investigation or upon a reasonable showing by a national flag carrier that this lower rate is probably not compensatory on a commercial cost basis). Second, the treatment is not less favorable to the nonnational flag carrier but actually arises in conjunction with a situation which is more favorable to it than to a national flag carrier. It is to the advantage of a nonnational flag carrier to charge a rate that is lower than all rates of national flag carriers or is equal to the lowest thereof. The evidentiary burden, which as a practical matter could only be placed on the nonnational flag carrier, arises in the situation where the nonnational flag carrier is attempting to establish this "advantage".

Therefore, it appears that the stronger argument can be made that S. 868 does not violate current FCN treaties which provide for national treatment for vessels of either Party. It should also be noted that these treaties generally provide for a submission to the International Court of Justice if any dispute arises as to the interpretation or application of the treaty. If S. 868 is enacted, and one of the nations with which we have a FCN treaty feels that a violation has been committed thereby, and no diplomatic or other pacific settlement is forthcoming, the International Court of Justice might be called upon to resolve the issue. Again, however, it would seem that only a strained reading of both FCN treaties and S. 868 would seem to present the legal possibility of a violation of such treaties.

DANIEL HILL ZAFREN,
Legislative Attorney.

Mr. WALDEMANN. Senator, the Senator refers to certain provisions of existing Friendship, Commerce and Navigation Treaties, and in an annex to the testimony we have listed the applicable provisions in some of the treaties.

It is the view of the Office of the Legal Adviser at the State Department that these would preclude the kind of distinction or discrimination which is inherent in this legislation between national carriers and nonnational carriers with those countries with whom we have such FCN treaties, because the very essence of those treaties is to guarantee to the companies of both parties, the private entities, equal treatment.

Senator INOUE. This bill is an equal treatment bill that will apply to all carriers.

Mr. WALDMANN. It would distinguish, however, by its very terms between national and nonnational carriers.

It would place burdens of proving rates and justifying rates on nonnational carriers which would not exist for national carriers.

Senator INOUE. And you feel that this is in violation of the treaty provisions?

Mr. WALDMANN. Yes, we do.

Senator INOUE. We have noted time and again where the U.S. Government has just gritted its teeth and stood aside when other countries have imposed restrictions upon our trade. Just recently we went through extended debate on the oil cargo preference bill, and to some extent this was in response and in reaction to the laws of other countries where they have by legislation required consumers to purchase, when they purchase their goods, to have those goods shipped on their carriers.

We have no such laws here. This, incidentally, is a violation of treaties, and we haven't done a thing about that.

Mr. WALDMANN. That is not quite true, Senator. We do have certain distinctions, again, which we should draw here.

Fundamentally, if we are objecting to commercial cargo preference laws, either in this country or overseas, the way to object to them is not to enact them ourselves. It is rather to firmly distinguish between the commercial cargo preference which would have been involved in that bill and the kinds of preferences which we engage in, which are defensible, which relate to government activities, not commercial activities. This is the kind of distinction which should be drawn and has been drawn and must continue to be drawn.

We cannot change our policies with respect to the Friendship, Commerce and Navigation Treaties in an indirect way by undercutting their provisions explicitly to solve a particular problem, as this legislation would propose to do.

Senator INOUE. It is your feeling, then, that if we just permitted section 18(b)(5) to put into operation the predatory practices that concern us would disappear?

Mr. WALDMANN. Senator, I am not sure that is the whole answer. It may have to be coupled with some form of increased FMC authority in the area of rebates. I am not sure.

Senator INOUE. Oh, I thought the authority was sufficient.

Mr. WALDMANN. The authority to deal with the rate question is sufficient, in our view, under 18(b)(5). That is, the provisions of law so far in existence enable the FMC to do the job.

What is not clear is whether they have the ability to adequately examine the rebating practices to which Mr. Bank referred.

But, should that prove inadequate, and it hasn't been tested, then legislation could be enacted; but it would have to conform to certain more general requirements, and one is that it not violate our treaties in friendship, commerce and navigation.

Senator INOUE. I am certain you are aware of a communication which we received from the chairman of the FMC. Without objection, this statement will be made part of the record¹ which supports this measure.

Senator INOUE. Have you seen this letter?

Mr. WALDMANN. Senator, I have not seen that letter, but I do know of the FMC's support of this bill.

¹ See p. 19.

Senator INOUE. Once again, I invite you to submit any appropriate amendments which you feel would strengthen this measure and put this measure in line with the treaty obligations. We would be most pleased to receive them and consider them.

Mr. WALDMANN. Thank you, Senator.

We would be glad to continue to work with the staff, as we have already, on this problem.

Senator INOUE. Once again, thank you very much for your presentation this morning.

[The attachment referred to follows:]

SAMPLES OF THE SHIPPING CLAUSE IN CURRENT FRIENDSHIP, COMMERCE AND NAVIGATION TREATIES WITH VARIOUS COUNTRIES

BELGIUM

Treaty of Friendship, Establishment & Navigation. Entered into force October 3, 1963. 14 UST 1284:

Article XIII (2): "Vessels of either Party en route to or from the territories of the other Party shall be accorded national treatment and most-favored-nation treatment with respect to the right to carry all cargo that may be carried by vessel".

DENMARK

Treaty of Friendship, Commerce & Navigation. Entered into force July 30, 1961. 12 UST 908:

Article XIX (4): "Vessels of either Party shall be accorded national treatment and most-favored-nation treatment by the other Party with respect to the right to carry all articles that may be carried by vessel to or from the territories of such other Party; and such articles shall be accorded treatment no less favorable than that accorded like articles carried in vessels of such other Party, with respect to: (a) duties and charges of all kinds, (b) the administration of the customs, and (c) bounties, drawbacks and other privileges of this nature".

FEDERAL REPUBLIC OF GERMANY

Treaty of Friendship, Commerce & Navigation, with protocol and exchanges of notes. Entered into force July 14, 1956. 7 UST 1839:

Article XX (2): "Vessels of either Party shall be accorded national treatment and most-favored-nation treatment with respect to the right to carry all cargo that may be carried by vessel to or from the territories of the other Party".

IRAN

Treaty of Amity, Economic Relations & Consular Rights. Entered into force June 16, 1957. 8 UST 899:

Article X (4): "Vessels of either High Contracting Party shall be accorded national treatment and most-favored-nation treatment by the other High Contracting Party with respect to the right to carry all products that may be carried by vessel to or from the territories of such other High Contracting Party; and such products shall be accorded treatment no less favorable than that accorded like products carried in vessels of such other High Contracting Party, with respect to: (a) duties and charges of all kinds, (b) the administration of the customs, and (c) bounties, drawbacks and other privileges of this nature".

IRELAND

Treaty of Friendship, Commerce & Navigation, with protocol. Entered into force September 14, 1950. 1 UST 785:

Article XVIII (4): "Vessels of either Party shall be accorded national and most-favored-nation treatment by the other Party with respect to the right to carry all articles that may be carried by vessel to or from the territories of such other Party; and such Articles shall be accorded treatment no less favorable than that accorded like articles carried in vessels of such other Party, with respect to: (a) duties and charges of all kinds, (b) the administration of the customs, and (c) bounties, drawbacks and other privileges of this nature".

ISRAEL

Treaty of Friendship, Commerce & Navigation, with protocol and exchange of notes. Entered into force April 3, 1954. 5 UST 550:

Article XIX (4): "Vessels of either Party shall be accorded national treatment and most-favored-nation treatment by the other Party with respect to the right to carry all articles that may be carried by vessel to or from the territories of such other Party; and such articles shall be accorded treatment no less favorable than that accorded like articles carried in vessels of the other Party, with respect to: (a) duties and charges of all kinds, (b) the administration of the customs, and (c) bounties, drawbacks and other privileges of this nature".

ITALY

Treaty of Friendship, Commerce & Navigation, protocol, additional protocol, and exchange of notes. Entered into force July 26, 1949. 62 Stat. 2255:

Article XX (5): "The vessels and cargoes of either High Contracting Party shall not in any case, with respect to the matters referred to in this Article, receive treatment less favorable than the treatment which is or may hereafter be accorded to the vessels and cargoes of any third country".

JAPAN

Treaty of Friendship, Commerce & Navigation, protocol, and exchange of notes. Entered into force October 30, 1953. 4 UST 2063:

Article XIX (4): "Vessels of either Party shall be accorded national treatment and most-favored-nation treatment by the other Party with respect to the right to carry all products that may be carried by vessel to or from the territories of such other Party; and such products shall be accorded treatment no less favorable than that accorded to like products carried on vessels of such other Party, with respect to: (a) duties and charges of all kinds, (b) the administration of the customs, and (c) bounties, drawbacks and other privileges of this nature".

NETHERLANDS

Treaty of Friendship, Commerce & Navigation, with protocol and exchange of notes. Entered into force December 5, 1957. 8 UST 2043:

Article XIX (3): "Vessels of either Party shall be accorded national treatment and most-favored-nation treatment with respect to the right to carry all cargo that may be carried by vessel to or from the territories of the other Party".

THAILAND

Treaty of Amity and Economic Relations. Entered into force June 8, 1968. 19 UST 5843:

Article XX (4): "Vessels of either Party shall be accorded national treatment and most-favored-nation treatment by the other Party with respect to the right to carry all products that may be carried by vessel to or from the territories of such other Party, and such products shall be accorded treatment no less favorable than that accorded like products carried in vessels of such other Party, with respect to: (a) duties and charges of all kinds, (b) the administration of the customs; and (c) bounties, drawbacks and other privileges of this nature".

NORWAY

Treaty of Friendship, Commerce and Consular Rights, with exchange of notes and an additional article. Entered into force September 13, 1932. 47 Stat. 2135:

Article VII: "Each of the High Contracting Parties binds itself unconditionally to impose no higher or other duties, charges or conditions and no prohibition on the importation of any article, the growth, produce or manufacture of the territories of the other Party, from whatever place arriving, than are or shall be imposed on the importation of any like article, the grown produce or manufacture of any other foreign country; nor shall any duties, charges, conditions or prohibitions on importations be made effective retroactively on imports already cleared through the customs, or on goods declared for entry into consumption in the country.

"Each of the High Contracting Parties also binds itself unconditionally to impose no higher or other charges or other restrictions or prohibitions on goods exported

to the territories of the other High Contracting Party than are imposed on goods exported to the territories of the other High Contracting Party than are imposed on goods exported to any other foreign country.

"Any advantage of whatsoever kind which either High Contracting Party may extend by treaty, law decree, regulation, practice or otherwise, to any article, the growth, produce, or manufacture of any other foreign country shall simultaneously and unconditionally, without request and without compensation, be extended to the like article the growth, produce or manufacture of the other High Contracting Party".

Senator INOUE. Our next witness is Mr. R. L. Gardner, Jr. of the Heidner International Co., of Tacoma, Wash.

He will be accompanied by C. R. Merritt, export traffic manager of the American Smelting & Refining Co. of New York; Carol L. Nett, manager of Southeast Asia & Specialty Products, Simpson Timber Co. of Seattle; and Mr. Lee F. Bettinger, manager, Ocean Freighting, Georgia-Pacific Corp., Portland, Oreg.

I have been advised that Mr. Merritt, Ms. Nett, and Mr. Bettinger have statements they wish to submit and without objection, those statements will be made part of the record of this hearing.

Mr. CLAREY. My name is John Clarey, associate counsel to the National Industrial Traffic League, and I am appearing here with these gentlemen.

Senator INOUE. Ms. Nett and gentlemen, welcome.

Please proceed, sir.

STATEMENT OF R. L. GARDNER, JR., HEIDNER INTERNATIONAL CO., TACOMA, WASH., ACCOMPANIED BY C. R. MERRITT, EXPORT TRAFFIC MANAGER, AMERICAN SMELTING & REFINING CO., NEW YORK; CAROL L. NETT, MANAGER, SOUTHEAST ASIA & SPECIALTY PRODUCTS, SIMPSON TIMBER CO., SEATTLE, WASH.; LEE F. BETTINGER, MANAGER, OCEAN FREIGHTING, GEORGIA-PACIFIC CORP., PORTLAND, OREG.; AND JOHN CLAREY, ASSOCIATE COUNSEL, NATIONAL INDUSTRIAL TRAFFIC LEAGUE

Mr. GARDNER. My name is Raymond Gardner, Senator, and I am representing the Pacific Lumber Exporters Association.

I have presented written testimony on behalf of the Pacific Exporters Association and I am not going to read that testimony unless that is your wish.

Senator INOUE. Without objection, your full statement will be made a part of the record, sir.

Mr. GARDNER. I don't think it's necessary to read the testimony, so I will not do so.

Now, however, the members of the Pacific Lumber Exporters Association total 21 and we are engaged exclusively in the wood products industry.

Late in December, we became aware of S. 2576 as it was proposed by the last Congress. It frightened us greatly. And with this S. 868 being proposed, the association felt that our position as shippers of wood products, that our position should be made known.

We oppose S. 868 primarily on its principle. We think the legislation is very dangerous, extremely dangerous. It's opening a broad, new spectrum within our maritime industry and the control of rates.

Today, briefly—I am only speaking now of the west coast products industry and forest products industry.

It's a tremendous trade, a very large trade. We are in competition with many countries, severe competition with the Russians; timber, wood supplies from South America, Central America, the Scandinavian countries, the growing producing nations in Africa and particularly we are in competition with the Canadian forest products industry.

I will briefly relate some figures here.

From the standpoint of timber in 1974, from the American west coast, excluding shipments from the Atlantic coast and the Gulf producing areas there was shipped in excess of 370 million feet of lumber of sawn timber and in 1973, 483 million feet of timber. This excludes plywood, the shipments of paper and pulp and all of the other affiliated wood products that we trade commercially in.

Now, let me just comment on what takes place in our business. For instance, to north Europe, we use nonnational flag carriers, the members of our association. They also use conference carriers. But the majority of our shipments of sawn lumber are shipped on non-national flag carriers to north Europe.

We are enjoying rates which are about 35 percent less than those rates which we would be charged by the conference carriers. These rates are reasonable rates for what is being done at the present time by the nonnational flag carriers.

To London, the principal discharge port of timber from the west coast, we have a rate approximately 40 percent less than what the conference carriers will charge. These rates are competitive rates in the timber trade.

To the Mediterranean, which is a very large market, we have a rate saving of approximately 30 percent, 35 percent. The nonnational flag carriers in the last 10 years have spent tremendous sums of money in providing us on the west coast with bulk carriers and other specially built carriers for timber and other wood products.

They have spent large sums of money on loading facilities, on discharging facilities. I cannot emphasize enough the tremendous trade that is encompassed with wood products. There is no purpose in repeating basically the principal points about S. 868 to which we disagree.

It's dangerous legislation because it's going to force us into a situation where we must use conference vessels.

The conference carriers are not competitive for our products from the standpoint of rates. I have been in the business since 1947. It has been a daily, constant battle to retain competitive rates on our products from the conference. They will not provide these rates for our products.

Senator, we are fearful of this legislation, the way it's proposed now, because it's going to force the nonnational flag carriers into the conferences.

We oppose the Conference system, to be honest with you. If the American Government, if Congress feels—and perhaps there is merit to it—that the Soviet bloc nations or the Soviets are undertaking a program with their maritime fleet so that it places America in a position of uncertainty, we won't necessarily oppose just legislation along those lines.

But to destroy all of these nonnational flag carriers, we cannot accept that principle. We must have competition. We must be provided rates that are reasonable for our products.

It's a trite phrase, but it's a situation now where we are facing "heads you win, tails we lose," if this legislation becomes law.

Senator, I am going to conclude my remarks and if you have questions, I will do my best to answer them.

Senator INOUE. I note in your statement you refer in several places to sawn timber. This measure amends section 18(b) of the Shipping Act and sawn timber or soft wood lumber is specifically exempt. It's not covered.

So that section should not give any concern to you; and secondly, you have mentioned bulk cargo or bulk commodity.

In a similar fashion, that is also exempt so that is not covered by this bill, because S. 868 amends 18(b).

Mr. GARDNER. Senator, in reading the prior bill, S. 2576 and also this bill, we are somewhat confused because constant reference is made to tariffs on file or rates on file with the FMC. We have no objection to rates being on file to the FMC but we are opposing these rates if they include our wood products, sawn timber, plywood and the other products which I mentioned.

Our shippers participate in the trade for all of these products, not just sawn timber.

Senator INOUE. We feel that your concern about timber does not have merit because it's specifically exempted by section 18(b).

I am certain your counsel has advised you of that.

Mr. GARDNER. We don't really know whether it does or not, this new legislation.

Senator INOUE. I shall read from section 18 of the Shipping Act, 1916.

The requirement of this section shall not be applicable to cargo loaded and cargo carried in bulk without mark or count or to cargo which is soft wood lumber.

Mr. GARDNER. As I recall, the provision also covers plywood. It does not exclude plywood.

Senator INOUE. That's correct, sir.

Mr. GARDNER. Plywood is one of our products along with paper, wood pulp and these other products which I mentioned. We don't want these products restricted. We require suitable carriers, proper carriers to ship all of these bulk products.

Senator INOUE. We have no objection to the operations of your members. We hope that you can continue to carry at the lower rates. I don't think this measure would prohibit that to be continued.

In no way does this bill require any carrier to meet conference rates. They can carry on the way they are. The bill specifically is concerned with predatory rates.

Mr. GARDNER. Yes.

Senator INOUE. I am certain that those who carry your cargo do so on a compensatory basis, on a commercial basis.

Mr. GARDNER. May I clarify one more point, please, Senator. We are opposed to the principle of this bill, but today I am primarily interested in the products that our people ship, all wood products.

It's not clear about many of our wood products. I think you agree with how this bill affects us. If we are restricted severely, you will see a surge of charter tonnage off the coast to take these products.

Senator INOUE. Do you believe that the requirement set forth in this bill to demonstrate that your rate is compensatory on a commercial basis, would be sufficient to drive carriers out of business?

Mr. GARDNER. I will try to answer the question. We have been receiving excellent service in the past several years from nonnational flag vessels.

It is my personal opinion that the nonnational flag vessels with which I am familiar with have no fear of publishing their rates, no fear of providing data that the FMC might require.

I can't speak of all nonnational flag carriers, only those I do business with and our members do business with.

Senator INOUE. I recall in another field when legislation similar to this was being considered, the business community suggested that it will drive grocery stores and supermarkets out of business, so-called fair pricing where the companies have to demonstrate that their advertised prices are commercially compensatory and instead of driving them out of business, I think they are flourishing; and at the same time the consumer has not suffered at all.

Mr. GARDNER. We are getting into a broad spectrum here.

Senator INOUE. I am speaking of a principle.

Mr. GARDNER. Yes, Senator, I will be honest with you. As an individual, I am opposed to the conference system. I have had to appear at FMC hearings on more than one occasion where the principal thrust has been to promote monopolistic practices.

In the Argentine, we are being forced only to ship our cargo either with American-flag or Argentine-flag vessels. We have the same situation in Peru. We have these pooling agreements. We have these cargo sharing agreements. It is all to control these rates and to control this competition.

But at a very high cost. That is why we oppose it. That is why I think this legislation—we don't oppose it entirely. But I think it is the way it is proposed now. I think it's too far reaching.

Senator INOUE. Maybe it is. But I would like to assure you that the intention of this bill is in line with your intention and that is to foster competition, believe it or not.

I am convinced if we permit predatory ratemaking to continue, it will in time effectively drive out other carriers.

Mr. GARDNER. Well, Senator, today for instance, we have a situation in the world trade routes and world merchandising—however you wish to phrase it—where rates are under a great deal of pressure. Rates are coming down. They have been coming down recently.

We have a situation. It's up, it's down. It's never the same. But the conferences simply don't compete, they don't want to compete, and maybe they can't compete. But in our industry we must have competitive rates because we are competing in this trade with so many others.

They are not restricted. We would be, if I may use the word, crucified if this should become law and try to compete with the Canadians. They have no legislation which restricts their shipping on nonnational flag carriers. We would be shipping lumber by the millions of feet to British Columbia to get it out.

Senator INOUE. This measure does not restrict shipping on nonnational flag carriers.

Mr. GARDNER. But the gimmick is we realize that, we realize that, but the nonnational flag carriers are going to be forced to join into these conferences and establish and fix these conference rates.

Senator INOUE. No. If they are still making money at the lower rates and they are compensatory on a commercial basis, I see no reason for them to join—

Mr. GARDNER. I can't speak, as I mentioned earlier, for the non-national flag carriers, but I feel that many of them that I am familiar with will file rates, can support their rate charges, but then I think perhaps as well, the conference vessels should be required to furnish like data.

Senator INOUE. Fine. I think that might be a good idea.

Mr. GARDNER. Now, maybe a further investigation can be made along the lines of the conferences establishing proper proof that the rates they are charging are reasonable. Since my testimony was written which was on Monday, we have already been notified of another conference increase on the rates of our products effective July 1.

It is the same old situation. The conference always up and never down. I have been in it for 30 years.

Senator INOUE. Thank you very much.

Mr. Merritt?

Mr. MERRITT. My name is Curtis Merritt, and I am the next member of this panel, and I would like to offer a statement on behalf of the National Industrial Traffic League.

Senator INOUE. Your statement will be made a part of the record.

Mr. MERRITT. I will not read the statement in its entirety, but I would like to refer to a couple of particular points.

My name is Curtis Merritt and I am export traffic manager of the American Smelting & Refining Co., and I am appearing on behalf of the National Industrial Traffic League, as chairman of the league's export, import and maritime committee.

In the statement that we have submitted, which incidentally I would mention is a consensus of opinion drawn from the members of our league who have reviewed this legislation, we note that the current practices allow the U.S. shippers to negotiate overseas sales on a worldwide, competitive basis.

This legislation would tend to negate this procedure.

We further note that for shippers using conference vessels, this bill will remove the effectiveness of competition on the level of freight rates.

We believe the freedom of the shipper's choice of carriers and most importantly the flexibility to negotiate prompt rate adjustments to meet immediate foreign competition are necessary to international trade.

This bill would virtually eliminate the prerogatives to the U.S. shipper.

These are just a few of the points I wanted to emphasize this morning. That is all I have, Senator.

Senator INOUE. Thank you, sir.

Mr. BETTINGER. I should like to be heard. I realize my statement in its entirety has been submitted and accepted, but I should like to read for emphasis certain portions and add a few comments if I may, sir.

My general observation is that the transport of forestry products and I don't use the word "lumber", but rather, "forestry products"

s only possible at reasonable levels of ocean rates. The independent third flag competition is the only real check on exorbitant levels of conference rates.

S. 868, if passed, reducing—if not eliminating—nonconference rate competition would be a fact, I believe. Almost all nonconference carriers are third flag. This legislation will strongly tend to either run them out of U.S. trades altogether or force them to join the conference rate cartels.

S. 868 will put us and other U.S. exporters totally at the mercy of the rates unilaterally set by steamship conferences.

Secondly, we object because we use and are dependent upon third flag nonconference carrier services and independent, nonconference carrier rates to enable us to compete in foreign import and export markets.

We object to S. 868 because, at the same time that it eliminates competitive checks on ocean cartel ratemaking, it provides no regulatory or other controls whatsoever on the levels of the conference rates.

We object fourthly because, instead of addressing itself to this problem, it seeks to curtail or eliminate all third flag competition which is virtually all the independent nonconference competition there is.

Finally, we object to S. 868 because we believe in free enterprise and competition.

Specific objections: The misleading argument that S. 868 is merely aimed at Russian and Polish flag competition. If national flag ocean carriers really need protection from alleged predatory rates of government owned east bloc carriers, it would be easy to deal with that problem directly without wiping out all the third flag independent, nonconference competition.

If S. 868 were really aimed at controlling possible predatory practices of the Communist flag fleet, it could state something like the following:

No common carrier by water in foreign commerce, which has been determined by the Commission to be owned by a foreign government or agency of same, shall charge any rate which is below the lowest rate charged by any privately owned common carrier in the same trade.

I find it hard to believe that American ingenuity and American competitiveness cannot meet challenges. And I have had this illustrated to me quite graphically by one of our American-flag carriers. I'm proud of them. It is Lykes Bros. They have an innovative system. They operate from the Gulf to northern Europe with their Seabee vessels.

They have nonnational flags that they compete with and they compete effectively. We favor them. They give us the best rates. They give us the best service. Such is not always the case in all trades.

My second specific point is, the rate suspension features of S. 868 would shield conference rate cartels from outside competition and raise the conference rates to a point where U.S. forest products companies cannot compete in world markets.

In press reports I have noted two points stressed concerning rate cutters and one point is that they're in and they're out. I have seen the names of three of the companies that operate in the Pacific coast trade to Japan mentioned by name; and, having seen that, I shall

repeat the names. They are Star Shipping, Orient Overseas Line or O.O.C.L.—whichever—and the third carrier is Fesco.

Those people have been labeled apparently the worst of the accused carriers, but they're not in and out. They have been in this trade now for some number of years and they give to me the appearance of somewhat permanent carriers. So I think that is an interesting point. But to carry on, under S. 868, not only are independent third flag rates subject to suspension for short periods of time, they are subject to suspension indefinitely while litigation goes on over whether they are compensatory on a commercial cost basis, and I use in quotes "compensatory on a commercial cost basis." Since no one I have talked to has the faintest idea what "commercial cost basis" means, it is obvious that independent third flag lines will be buried under the costs and delays of litigation. What are we supposed to do for rates or services while this litigation goes on?

And my third point specifically is, the Shipping Act presently provides that the Federal Maritime Commission has the authority to disapprove any rate which, after hearing, it finds to be so low as to be detrimental to the commerce of the United States.

If, in fact, some ocean carriers, be they national flag (conference) or independent third flag, are charging unreasonably low predatory rates, and if we are to believe that this is detrimental to the commerce of the United States, then apparently the FMC is not enforcing the law as provided.

The Shipping Act, section 18(b)(5) reads—and you have read it, I won't read it again—this provision does give the FMC not only the authority, but the instructions to disapprove the very rates that supposedly prompted this bill, S. 868.

I would therefore take my same strong position that we oppose the bill in its entirety and that the FMC should proceed under 18(b)(5).

I would make one comment that I think there was a misunderstanding in a statement made by Mr. Gardner. He referred to bulk carrier and I believe you interpreted that as being one who's carrying bulk cargoes. Within our jargon, when we refer to a bulk carrier we refer to a type of vessel as opposed to a carrier of bulk cargoes and both you and I appreciate that the existing act does exempt tramp carriers from the necessity of filing tariffs and rates and it does exempt the necessity for filing rates on the commodity, softwood lumber.

Originally, I shouldn't say that, previously it had been lumber and it has since been amended to read "soft wood lumber" and included in this softwood lumber are piling, cross arms, this sort of thing.

Sawn lumber in no way includes woodpulp, not pulpwood, but woodpulp, a semimanufactured product. Nor does it include liner board or paper which are properly forest products.

I solicit your cooperation in helping us to remain in this market and ask respectfully that this S. 868 be something that passes away.

Senator INOUE. Well, I would like to concur with you that we are also trying to further free enterprise. That is our intention. We are afraid if predatory practices are permitted to continue, free enterprise might just disappear.

Secondly, like you, I'm proud of what our national carriers have done in order to provide the best service for our consumers. As an example, containerization. So I think we have a few points on our side.

As to your reference to in and out carriers, was it a statement we made?

Mr. BETTINGER. I have read—

Senator INOUYE. Because I have never made that statement.

Mr. BETTINGER. Sir, I had an interesting evening last night. I read the proceedings of the previous hearing and testimony was submitted and I can't remember by whom, but it was submitted in support. I believe it was Mrs. Bentley speaking about in and out carriers, skimmers, et cetera, and it tied it to the three carriers that I named.

Senator INOUYE. We felt as you have that section 18(b)(5) was not effective and this measure is intended to remedy that, to give the FMC sufficient authority.

What would your statement be if the products mentioned were exempted?

Mr. BETTINGER. I gave that considerable consideration, and I spent a night of soul searching. I thought possibly I could approach a compromise and it would benefit my company. I can't accept that. There is a principle involved that I can't sell. I'm sorry.

I have since spoken to my superior and have told him of my position, and he concurs that Georgia-Pacific will not compromise on that which benefits only them when we have a broader principle involved.

Senator INOUYE. Well, I thank you very much. I know in our laws that we do have exemptions for soft wood lumber for one.

Mr. BETTINGER. Yes, sir. I note that.

Senator INOUYE. So, should that be taken out, too, on a matter of principle?

Mr. BETTINGER. I don't believe that was the question that I was involved in.

Senator INOUYE. I was just thinking what if we added to that exemption? What if we added to the softwood lumber other wood products?

Mr. BETTINGER. Well, sir, my first point is that I'm totally in objection to your bill S. 868. If, in fact, S. 868 were not, repeat, were not to be approved and then you were to remove the exemptions on lumber, I don't believe that we would have the problem, would we?

The third flag carriers would still be allowed to operate. They would not be subjected to the formality of determination as to compensatory level of rates. I'm sure that Norwegian carriers are profit oriented.

Senator INOUYE. I'm certain of that.

Mr. BETTINGER. They make jokes about it themselves, and I'm sure that they would be wanting to lift the cargo at no different rates than they're presently enjoying, and they're making a profit, and we're getting competitive rates. The Japanese, I'm sure, would not object. They would still have their vessels coming to carry the logs from the west coast to Japan. They would come with their own vessels to carry chips.

Senator INOUYE. It wouldn't change that situation.

Mr. BETTINGER. I don't believe that it would adversely affect a large corporation. A small company, a man who was a lumber broker, conceivably could be hurt because he is dealing in small volumes and can't get, always, enough to warrant a vessels call. The larger corporations would not be adversely affected, I'm sure.

Senator INOUE. Thank you very much.
[The statements follow:]

STATEMENT OF RAYMOND GARDNER REPRESENTING THE PACIFIC LUMBER EXPORTERS ASSOCIATION, SEATTLE, WASH.

My name is Raymond Gardner, President of Heidner & Company, Inc., Tacoma, Washington, a Washington State Corporation. My firm is engaged exclusively in the International marketing of United States West Coast Forest Products. Mr. Hans Heidner founded our company in 1900, and my business affiliation started with Heidner in 1947.

I have been requested to appear before this committee by the Pacific Lumber Exporters Association which is comprised of 21 individual American firms engaged in the production and/or sales and distribution of forest products, which encompasses sawn timber, plywood, logs, poles and piling, pulp, paper, liner-board, wood chips, etc. Our membership comprises publicly owned American corporations and privately owned companies as well. A Membership list of our members with their addresses is attached to this testimony.

The PLEA is opposed to passage of S. 868 because it is protectionist legislation, and would be most harmful to American International Trade, the United States West Coast Forest Products Industry, and to our Association members. The committee will appreciate that our United States West Coast Forest Products Industry competes in all International markets for the sale of our forest products. This competition is severe from the Russian, Scandinavian, South American, Central American and African producing areas. We emphasize in particular the vigorous competition which exists between our industry and the Canadian Forest Products Industry.

A most important prerequisite in the sale of our products is for proper ocean transportation to be available at reasonable levels of ocean freight rates. Independent, Nonnational flag tonnage is extensively used in the transportation of our products to all international markets. Independent, Nonnational flag tonnage has been available on a regular and satisfactory cost basis in past years for shipment of our products and this is still the situation. To illustrate, members of our Association are presently contracting for forward freight on sawn timber from United States West Coast ports to North Europe with Independent, Nonnational flag carriers at freight savings in excess of 35% when compared to the present Conference rates which are exorbitant and have been established at artificially high rates by the Conference cartel system. Savings in excess of 40% apply to the United Kingdom, and savings of 30% to the Mediterranean for shipments of sawn timber from the United States West Coast ports. All of these markets are very large buyers of West Coast timber. The importance of the timber trade to our Nation's balance of payments is well documented by the following statistics covering shipments of sawn timber from ports of Washington State, Oregon and Northern California to world markets:

1971—Loaded from U.S. West Coast ports, about 306,000,000' BM.

1972—Loaded from U.S. West Coast ports, about 342,000,000' BM.

1973—Loaded from U.S. West Coast ports, about 483,000,000' BM.

1974—Loaded from U.S. West Coast ports, about 370,000,000' BM.

Independent, Nonnational flag carriers are doing a commendable job in transporting our commodities which for the most part are of a bulk nature. Reasonable and fair ocean freight rates are charged by the Independent, Nonnational flag carriers which is absolutely essential to the International marketing of our products. Large capital investments in bulk carriers and specialized wood products vessels have been undertaken in recent years by Third flag vessels, which is vital to the transportation of our products. Extensive investment in loading and discharging facilities to facilitate the handling of our bulk cargoes likewise has been undertaken by these carriers. Third flag vessels are a viable part of our Maritime industry, and our members take exception to general accusations by proponents of S.868 that "predatory" rate practices by the Nonnational flag operators prevail. Ocean freight rates which are employed within our sphere of trading are dictated by normal competitive factors of supply and demand and competitive conditions within the International market.

The PLEA is most disturbed that if S.868 becomes law the competitive disadvantage of the United States West Coast shipper as compared to the competitive position of the Canadian shipper will necessitate a very substantial diversion of

large quantities of our forest products to Canadian ports for shipment. No artificial controls are placed on the Maritime industry of Canada against Third flag vessels by the Canadian government. Transshipment of cargo through Western Canadian ports will, needless to say, hurt many segments of our West Coast economy including our port communities and related industries. This Legislation also will increase the immediate requirement for charter tonnage so that our products can be competitive in International markets. Some of our members will suffer economic disaster if dependency on charter tonnage becomes the only manner in which they can be a competitive factor within the export trade.

In fear of being redundant the PLEA Association objects also to the following features of S.868.

1. This Legislation would effectively eliminate Independent Nonnational flag vessels and/or force these carriers to join the Conference cartels. S.868 will open a Pandora box of problems that are frightful to contemplate which will include rate fixing by unilateral Conference action, rebating and malpractices by Conference carriers, arbitrary space allocation practices, and complete domination by the National flag carriers of the shipper and cargo. The Conference system is supposedly a legally recognized form of restraint of trade, but it was not the intent of Congress that the Conference system is to be so manipulated that the shipper will be destroyed.

(a) The Bill provides for no control and no supervision of Conference rate making practices. The Legislation suspends rates which are lower than Conference rates and in effect gives carte blanche authority to the Conferences to fix rates at their discretion. The bill establishes that Nonnational flag carriers must substantiate their cost structure on a "Commercial Cost Basis", but the mechanics of determining this cost is left in abeyance and is only an exercise in futility. The Legislation provides no safeguards whatsoever against cartel rate making procedures by the Conference carriers and provides no control over the Conference carriers.

(b) S. 868 provides that whenever there is on file with the FMC by any Nonnational flag carrier a rate that is lower than the rate charged by any National flag carrier then such rate is subject to suspension by the FMC. The rate suspension features of S. 868 will preclude our members utilizing the services of the Independent Nonnational flag vessels as continuity of shipments is vital and litigation to determine the legality of freight rates is unthinkable. The suspension powers authorized to the FMC by S. 868 are dangerous and contrary to American justice, and establishes an entirely new concept within the rate making process of the American Maritime Industry.

2. Proponents of S. 868 contend that complete and total control of "State" owned Nonnational flag carriers is essential. Reference is made to the practices of the Far Eastern Shipping Company (FESCO) and other Soviet "State" operations and/or Soviet State "Bloc" operations. If Congress should determine after due deliberation that "State" dominated fleets are harmful to the United States, then perhaps appropriate Legislation or other corrective measures should be considered; however, S. 868 will destroy *all* Independent Nonnational flag carrier competition outside the Conference cartel system. We maintain that the Independent, Nonnational flag operator is entitled to participate in the Maritime Commerce of the United States.

In conclusion, the Administration, the State Department, and the Justice Department continue to oppose all endeavors to illegally reduce competition within our Maritime Industry. The Shipping Act of 1916 specifically provides that the Federal Maritime Commission has the authority to disapprove of any rate filed by a common carrier which if it is so unreasonably high or low is detrimental to the Commerce of the United States. The Maritime Industry of our country is continually being prostituted by cargo pooling arrangements, space allocation proposals, and bilateral cargo agreements all of which are motivated to perpetuate Conference cartel practices and reduce competition. We respectfully urge the committee not to pursue Legislation S. 868.

Members of Pacific Lumber Exporters Association; American Lumber Manufacturing, Inc., Tacoma Wash.; Balfour Guthrie Forest Products, Portland, Ore.; P. H. Barnett International, Inc., Tacoma, Wash.; Boise Cascade Portland, Ore.; Champion International, Eugene, Ore.; Georgia Pacific International, Portland, Ore.; Heidner International Co., Tacoma, Wash.; K & J, International, Seattle, Wash.; Lake Logging and Lumber Co., San Francisco, Calif.; Louisiana-Pacific, Portland, Ore.; J. J. Moore & Co., San Francisco,

Calif.; North Pacific Lumber Co., Portland, Oreg.; Oregon Lumber Export Co., Portland, Oreg.; Pacific Lumber & Shipping Co., Seattle, Wash.; Patrick Lumber Co., Portland, Oreg.; Publishers Forest Products, Portland, Oreg.; W. C. Stripp Lumber Co., Seattle, Wash.; Tree Products Co., Portland, Oreg.; United States Trading Co., Eugene, Oreg.; West American International, Portland, Oreg.; and Weyerhaeuser Co., Tacoma, Wash.

STATEMENT OF THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE

My name is Curtis R. Merritt. I am Export Traffic Manager of American Smelting and Refining Company. I am appearing on behalf of The National Industrial Traffic League. I am Chairman of the League's Export, Import and Maritime Committee. I have been Chairman of this Committee for the past two years and a member for the last eight years.

I have been employed by American Smelting & Refining Company in various traffic department capacities for over 29 years and in 1973 assumed my present responsibilities as Export Traffic Manager. In this capacity I regularly and daily deal with transportation functions, services and economics in international trade involving movements to and from the United States as well as movements to and from other nations in international trade. My principal duties involve the logistics and transportation functions in the movement of metals and the movements of materials and supplies as necessary for the development of large mining and smelting functions.

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 types 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 where a spokesman for a particular commodity or transportation point of view and does not permit carrier membership.

The fundamental object of the League and some of the methods of furthering it are stated in Article II of its constitution:

"... to promote adequate national and international transportation, and to this end: to interchange ideas and information concerning traffic and transportation matters; and to cooperate with the Interstate Commerce Commission, the Federal Maritime Commission, the Civil Aeronautics Board and other regulatory bodies, both federal and state, with the Department of Transportation, and with the transportation companies, in developing a thorough understanding by the public, the carriers and the national and state governments, of the transportation requirements of industry; to obtain legislation that will be helpful to commerce, and to secure the modification of laws, rulings, and regulations that may be found harmful; and to promote cordial relations between shippers and carriers..."

To arrive at positions reflective of the broad range of shipper interest within the League, the League has 34 standing and special committees. Each stays abreast of current events in its particular area of transportation activity and recommends a League position or reports developments on specific subjects such as the proposed bill which your subcommittee is presently considering.

As shippers we are concerned in considering the proposal before you today with whether or not it will provide better, more efficient productive service to the public of which we are a part. We believe it essential that federal regulatory laws serve to advance and not to obstruct efficient transportation service at the lowest cost to the nation.

The proposed legislation is contrary to League Policy K-1 whereby the League "recognizes the need to support the principle of the ocean freight conference but not to the extent of the elimination from world trade of reliable non-conference carriers who also provide a valuable service to shippers". This legislation may very well result in the elimination of non-conference carriers serving the U.S. shipper.

The following are some of the reasons why we oppose this legislation.

The adoption of this legislation will place U.S. shippers in the untenable position of being unable to negotiate reasonable rates for the movement of their products in international trade. The current rate practices allow the U.S. shippers to negotiate overseas sales on a worldwide competitive basis. This legislation would tend to negate this procedure. Adoption of this bill would immediately

increase the cost of transportation and in many cases would eliminate U.S. shippers in the worldwide market.

The flag discrimination, which is already strangling free enterprise on the open seas, will be enhanced. Certainly retaliatory actions of foreign governments to this legislation could be anticipated thereby further impeding international trade.

For shippers using conference vessels this bill will remove the effectiveness of competition on the level of freight rates.

The freedom of the shipper's choice of carriers and, most importantly, the flexibility to negotiate prompt rate adjustments to meet immediate foreign competition, are necessary in international trade. This bill would virtually eliminate such prerogatives to the U.S. shipper. These impediments can certainly lead to a further deterioration of this Country's balance of trade deficit. Such impediments would adversely affect our international competitive position and adversely affect our Country's balance of trade.

In most cases, the only non-conference ocean carriers are those which are of third flag registry. These carriers serve a vital role in providing reasonable rates and regular service, both break bulk and container, in competition to the conference rates. The adoption of this legislation will lead to unjust punishment to such carriers.

The definition and identification of costs applicable to non-national flag carriers as it appears in this legislation is unworkable and likely to create repeated injustices. Ultimately these injustices would act to the detriment of the commerce of the United States and prove destructive to the individual U.S. shipper. The legislation fails to define what is included in the phrase "compensatory on a commercial cost basis".

The 30-day filing requirement for rate reductions would certainly impair the ability of the U.S. shipper to market in international trade. Many sales opportunities would be missed as a result of the inability of the U.S. shipper to immediately obtain reasonable freight rates for the movement of his products on the high seas. While long protracted rate investigations are being made as required under this bill, substantial business of the U.S. exporter will be lost.

Needless to say the regulation itself will be costly to all concerned, including the government.

We respectfully urge that the proposed legislation not be approved.

We thank the Committee for the opportunity to appear and for the consideration given to our position.

STATEMENT OF LEE F. BETTINGER, MANAGER, OCEAN FREIGHTING, GEORGIA-PACIFIC CORPORATION, PORTLAND, OREG.

My name is Lee Bettinger. I am "Manager, Ocean Freighting," of Georgia-Pacific Corp., 900 S. W. Fifth Ave., Portland, Oregon 97204. In my position I deal primarily with the export shipping of pulp and paper from our mills and the chartering of vessels to carry salt from the Bahamas to the company's mill at Bellingham, Washington. I've been employed by Georgia-Pacific for thirteen years. For the first nine years, I worked with a former subsidiary, Monarch Steamship Corp., as Operations Manager, Vice-President and General Manager. For the last four years I have held my present position. Prior to joining Georgia-Pacific, I was employed for two years by Sea Charter Co. as traffic manager and by International Shipping Corp. and Coastwise Line. During this time I have acted as agent for both conference and non-conference carriers. I have booked cargo with both conference and non-conference carriers. Most of the cargo I have dealt with has been forest products.

Georgia-Pacific is a manufacturer of lumber, plywood, paper, pulpboard, converted paper products, woodpulp, chemicals, gypsum products, as well as other building and forest products. We employ approximately 34,000 people and have 194 manufacturing plants, with 10 more scheduled to come on stream during 1975. Additionally we maintain over 130 wholesale distribution warehouses throughout the Continental United States. Our net sales for 1974 were in excess of two billion dollars. Included in these net sales figures is over \$200,000,000 in total export sales and sales of some \$40,000,000 of imported building materials such as plywood, veneer, lumber, etc.

Georgia-Pacific is one of the nations 10 largest producers of pulp paper, having produced 1,911,200 tons in 1974. Our mills produced approximately 660,000 tons of market paper grade pulp i.e. approximately 19% of the total U.S. industry production of 3,492,000 tons. Georgia-Pacific exported 252,000 tons of this paper

grade wood pulp in 1974, about 15% of the total U.S. exports and with the completion of expansion project at our Port Hudson, Louisiana pulp mill in early 1977 we will have increased our market woodpulp production by 210,000 tons, all of which we expect to put into the export market. Our export sales of plywood and lumber contributed about \$48,000,000 to the total export sales.

The woodpulp for export is produced in mills at Woodland, Maine, Port Hudson, Louisiana and Bellingham, Washington with Woodland production being exported through St. John, New Brunswick, the Port Hudson production through Baton Rouge, Louisiana, and the Bellingham production shipping either from Bellingham or Vancouver/Squamish, B.C. We export newsprint from our Woodland, Maine mill through the Port of St. John, New Brunswick; milk carton stock and other paper products from our Crossett complex through U.S. Gulf ports; linerboard from our Toledo, Oregon mill through the Ports of Newport and Portland, Oregon. Lumber and plywood we export thru most Pacific Northwest ports as well as Gulf and South Atlantic Ports.

Our imports of plywood, veneer and core stock originate mainly in Southeast Asia, the Orient and Brazil; they enter the United States through ports on all three coasts.

A very large share of our woodpulp and paper exports moves on third flag carriers. By far the greatest part of our import tonnage arrives on third flag vessels. Again lumber is one of our products which moves mostly by third flag carriers.

We do not discriminate against National Flag Carriers; we treat them equally as long as they offer competitive rates and service.

Georgia-Pacific is strongly opposed to passage of S. 868. This bill would be extremely damaging to this country's foreign trade and to the Forest Products industry in particular. I would like to explain why.

GENERAL OBJECTIONS

We of Georgia-Pacific object to S. 868 first because many of our exports are shipped on conference vessels. The export of forestry products is only possible at reasonable levels of ocean rates the independent third flag competition is the only real check on exorbitant levels of conference rates. S. 868, if passed reducing, if not eliminating, non-conference rate competition. Almost all non-conference carriers are "third flag" carriers. This legislation will strongly tend to either run them out of U.S. trades altogether, or force them to join the conference rate cartels. S. 868 will put us and other U.S. exporters totally at the mercy of the rates unilaterally set by steamship conferences. If this nation wants our exports to continue and to grow, the Congress should not pass this bill.

We object to S. 868 secondly because we also use and are dependent upon third flag independent non-conference carrier service and independent non-conference rates to enable us to compete in foreign import and export markets. This legislation will curtail or eliminate independent rates to and from the United States and, by destroying that rate competition, will in all likelihood destroy independent service as well. Of course our foreign competitors will continue enjoying third flag service.

We object to S. 868 because at the same time that it eliminates competitive checks on ocean cartel ratemaking, it provides no regulatory or other controls whatsoever on the levels of the conference rates. There are no controls over conference rate levels under present law. (and no controls feasible?)

We object to S. 868 fourthly because it's like using a shotgun blast to do the work of a single pellet. Proponents say it is necessary in order to deal with communist flag competition in ocean trades. Instead of addressing itself to this problem, however, it seeks to curtail or eliminate all third flag competition—which is virtually all the independent non-conference competition there is.

Finally, we object to S. 868 because we believe in free enterprise and competition. The effects of S. 868 are necessarily and demonstrably highly anticompetitive and contrary to American free enterprise principles.

SPECIFIC OBJECTIONS TO S. 868

1. *The misleading argument that S. 868 is merely aimed at Russian and Polish flag competition.*—Much of the publicity released as a justification for S. 868 suggests that the bill is aimed solely at vessels owned by Communist governments which allegedly charge predatory rates. If this is the basis for S. 868, it should be amended to apply solely to that threat. S. 868 will wipe out or severely curtail virtually all non-conference independent competition, not just Communist

flag competition. Gentlemen, when competition by independent third flag lines flying friendly or neutral flags disappears, so will U.S./foreign trade in forest industry products.

At Georgia-Pacific we ship much of our cargo on independent non-conference vessels flying Norwegian, Liberian, English, German, Turkish and other friendly flags. Our shipping via Russian flag vessels has been quite limited from the United States. Georgia-Pacific's importation and exportation depends in great part on third flag rates and third flag service provided by independent non-conference carriers flying flags of NATO and other U.S. allies, or neutral countries. There is no excuse for making S. 868 applicable to privately operated third flag carriers.

If "National" flag ocean carriers really need protection from alleged predatory rates of government-owned East-bloc carriers, it would be easy to deal with that problem directly without wiping out all the third flag independent, non-conference competition. If S. 868 were really aimed at controlling possible predatory practices of the Communist flag fleet, it could simply state something like the following:

"No common carrier by water in foreign commerce which has been determined by the Commission to be owned by a foreign government or agency of same, shall charge any rate which is below the lowest rate charged by any privately owned common carrier in the same trade."

It appears, however, that the proponents of S. 868 are not just interested in the Communist flag fleet. They want to eliminate virtually all non-conference independent competition. S. 868 will do just that. It will leave the U.S. exporter and importers at the total mercy of the conference rate cartels.

2. *The rate suspension features of S. 868 will shield conference rate cartels from outside competition and raise conference rates to a point where U.S. forest products companies cannot compete in the world markets.*—It is essential to understand that S. 868's impact is not on "third flag carriers" generally. The bill's impact is on non-conference carriers, most of which are third flag. Third flag carriers who are members or become members of ocean conference rate groups are unaffected by S. 868, no matter how low or how high the conference rates are. This occurs because conference members charge identical rates on most items so that third flag members of conferences have the same rates as national flag rates.

S. 868's impact is to eliminate or drastically curtail independent non-conference rate competition. It does so mainly by giving the federal maritime commission virtually unlimited power to suspend existing or new independent third flag rates. In outbound trades from the U.S. West Coast, virtually all non-conference independent competition comes from third flag carriers. To provide for suspension of third flag rates as S. 868 does, it to suppress virtually all non-conference rate competition.

Forestry products are generally low-rated cargo which conference carriers are only interested in carrying when better paying cargo is not available. When other cargo is available, rates on these products go up to levels not allowing us to ship with conference carriers and still make our sales in foreign markets. Also, when better paying cargo is available, conference vessels often refuse to carry our cargo.

S. 868 will remove the one competitive check of conference rates. Any time an independent rate would fall below the level of the lowest corresponding rate of any national flag (i.e. conference) carrier, the independent rate would be subject to suspension by the Federal Maritime Commission. This would be true even though the independent rate remained the same and the conference or national flag rate was raised. The independent rate might remain suspended indefinitely while litigation went on over whether the independent rate was "compensatory".

Obviously, suspension of rates makes it virtually impossible for independent lines to charge any rates below the conference or national flag rates. By the time the litigation over one rate is completed, the next rate suspension and litigation begins. Every feature of S. 868 is an anti competitive feature designed to suppress non-conference rate competition. By this I include (a) rate suspension, (b) use of a vague and meaningless "Commercial cost" standard and (c) putting the burden of proof on the independent carrier to justify his rate.

Let me give you an example of exactly how S. 868 will work. Suppose the conference and the independent rate on woodpulp is \$50 per ton for competitive reasons, but the conference then raises its own rate to \$100 per ton. The non-conference third flag rate is now below the level of "any" national flag carrier in the trade. At this point, the conference will allege to the FMC that the third flag rate is "non-compensatory." The FMC then has the power to suspend the third flag independent rate indefinitely pending litigation over whether the independent rate is compensatory, under the 'vague, meaningless' "commercial

costs" standard in the bill. The suspension of its rates alone plainly destroys the independent carrier's ability to engage in rate competition.

By the process of suspension and litigation, independent rate competition will be eliminated. It doesn't matter much whether the independent rates are finally proven compensatory or not. If independent rates are suspended pending litigation, the suspension itself destroys the rate competition. The rate suspension features of the bill are grossly anticompetitive. They are not justified. They will seriously impair U.S. trade.

The rate suspension features of S. 868 are intolerable. Suppose our company has made a sale to a foreign buyer based on a long-existing third why I say that S. 868 will either force the independent carriers into the conference cartel or force them out of business in the U.S. trade.

Georgia-Pacific and many other forestry products companies compete in highly competitive world markets with foreign producers of the same products. Without independent third flag competition, I seriously doubt that we can compete. If you wish to cripple U.S. exports and yes, imports too, I can't think of a much better way to do it than to pass this bill. Our Canadian and Scandinavian forestry products competitors must certainly like S. 868 because it will be a wonderful aid to them in taking over our markets. I trust the unemployed and presently employed workers in the U.S. Forest products industry, as well as the U.S. Longshoremens and others in the United States who derive their livelihood from our industry will be able to appreciate the sacrifices the bill is calling upon them to make for the "National Flag" ocean carriers.

The only way that the disastrous effects of S. 868 that I have just outlined can be avoided is to remove in their entirety from this bill its "rejection" and "suspension" features.

Even without the rate suspension features of S. 868, the bill still has glaring defects. Unless the presently meaningless cost standard used in S. 868 is carefully and narrowly defined in the bill, it will result in unending and wasteful litigation before the FMC. Further, if the standard is to apply to third flag carriers, it should apply to all carriers. If it is wrong for third flag carriers to fall below certain cost standards on particular rates, why is it right for national flag carriers or conference members to do so? This discrimination on the basis of flag seems most unfair.

S. 868 has yet other defects. It puts the burden of proof on the third flag independent carrier to prove that its rates meet the meaningless "Commercial cost" standard. How can anyone prove to a government agency that he is innocent of wrong doing? This burden of proof puts third flag carriers totally under the thumb of and subject to possible whims of the FMC. Instead of proving a violation of law, all the FMC has to do is to sit back and say "we aren't satisfied with your proof of your innocence". This is simply an impossible burden for a carrier to bear. It is designed to and will eliminate third flag independent rate competition. It seems reasonable that the proponents of S. 868 did not intend that an independent third flag carrier's rates could be no lower than the highest national flag rate. I ask that you look at the use of the word "any" on lines 10 and 18 of page 2, subject bill. If literally read this would be the case. To me, the use of the word "any" makes this seem ambiguous.

I would suggest that if the intent is to limit the third flag carriers lowest rate to the lowest conference or lowest national flag rate, then delete "any" from lines 10 and 18 of page 2 and change the word "carrier" to "carriers" on these same lines.

3. *The Shipping Act presently provides that the federal maritime commission has the authority to disapprove any rate which, after hearing, it finds to be so low as to be detrimental to the commerce of the United States.*—If in fact some ocean carriers, be they national flag (conference) or independent third flag, are charging unreasonably low predatory rates, and if we are to believe that this is detrimental to the commerce of the United States, then apparently the F.M.C. is not enforcing the law as provided. The Shipping Act, 1916 (46 U.S.C. 817) 18 (b) (5) reads:

"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."

This provision does give the Federal Maritime Commission not only the authority but the instruction to disapprove the very rates that supposedly prompted this bill S. 868.

If there is basis for the bill, S. 868 there must surely be basis for the F.M.C. to take action in getting rates to a level where they are no longer detrimental to the United States. Let's be sure and remember, these "predatory" rates, of which the conferences as well as United States Ocean Carriers complain have all been accepted by the F.M.C.

Either the F.M.C. is not doing its job by failing to investigate and disapprove these alleged "predatory rates" or the rates are not really "predatory".

I think it highly unlikely, but if the F.M.C. is at fault please take appropriate action in that direction. If on the other hand the rates are not "predatory", then S. 868 is intended, as stated before, to eliminate now and henceforth the independent non-conference carrier. Without these independent non-conference vessels our foreign commerce would be in a sad state.

I thank you for your time and with all due respect urge that the Committee defeat bill S. 868.

STATEMENT OF SIMPSON TIMBER Co.

My name is Carol L. Nett. I am Marketing Manager, Southeast Asia and Specialty Products for Simpson Timber Company, 900 Fourth Avenue, Seattle, Washington 98164. My job entails responsibility for marketing one product line of woodpulp worldwide plus a commodity grade of woodpulp to Southeast Asian countries. In addition I am responsible for shipping all of my firm's sales of its various products to world markets. Simpson Timber Company is a privately held corporation with sales in excess of \$300 million annually. Exports of lumber, plywood, doors, pulp, paper and allied products constitute 10 percent of our gross annual sales.

I am here today to discuss the probable effects of S. 868 upon the pulp and paper sector of the forest products industry. I have already outlined my firm's position on S. 868 which I respectfully include as Exhibit I of this testimony.

A LOOK AT THE PULP AND PAPER SECTOR OF THE U.S. FOREST PRODUCTS INDUSTRY

The pulp and paper sector of the forest products industry produces some 62 million tons of paper and paperboard annually. Net sales of paper and allied products for 1973 were \$26 billion.

The U.S. paper industry operates in all but one state of the Union (the exception: Hawaii). It employs over 700,000 people. In 1973 our industry's exports amounted to \$1.4 billion.

WHY S. 868 THREATENS THE PULP AND PAPER SEGMENT OF OUR INDUSTRY

1. *It will have an adverse effect on our ability to meet competition from Canada and Scandinavia.*—Ours is an international industry. Woodpulp, linerboard, and newsprint are commodities which are marketed worldwide. They are commercially produced in three primary regions of the world: Canada, the U.S., and Scandinavia. In 1972 the enlarged European Economic Community represented 42% of our industry's export market for woodpulp, 25% for paper and 45% for paperboard (linerboard). To maintain our share of these markets we must remain competitive with Canada and Scandinavia. The Scandinavian countries have a natural transportation advantage into EEC markets. In addition as a result of agreements concluded in 1972 between the enlarged EEC and EFTA countries including Sweden and Finland, all tariffs on industrial goods (including paper and paperboard) will be eliminated for EFTA nations between 1973 and 1983. Through negotiations with the EEC U.S. exporters of these products are granted a near parity tariff basis until 1 January 1979. We hope this near parity can be maintained and even improved after 1979 through GATT negotiations.

However under the circumstances any and all economies in moving our products to European markets must be continued. As indicated in Exhibit I of this testimony, we have found third flag carriers more responsive to our competitive needs as shippers than many of the national flag lines and freight conferences serving the same trade areas. Apart from ocean freight rates the third flag shipping lines are generally better equipped to handle our products because they are more often non-container bulk or break-bulk lines. Woodpulp in 500 lb. bales and rolls of linerboard weighing up to 500 lbs. each are not well suited to containerization. They are products which are simply too cumbersome to load and unload efficiently via containers, thus defeating one purpose of containerizing—to lower shipping costs by eliminating costly handling.

2. *S. 868 will add significant costs and reduce operating profits in the forest products industry.*—To generate adequate capital for items such as new production capacity for future world demand, pollution abatement costs and healthy return to investment, our industry must remain profitable. S. 868 would remove an estimated \$30 per ton from profits of most U.S. West Coast woodpulp producers selling their product to EEC nations (about 7 percent of the gross sales price). It would remove \$10 to \$20 per ton in profit from sales to Japan. Based on 1974 exports the pulp sector of our industry would lose some \$20 million annually in profits, or to put it another way, if we add the increased cost or S. 868 onto the prices of our products we are at a \$20 million disadvantage with our Canadian neighbors, who will continue to have the services of third flag carriers at their disposal without substantial rate regulation.

3. *S. 868 amounts to a trade barrier at a time when our industry is negotiating through GATT for removal of trade barriers.*—S. 868 would probably eliminate competition to U.S. flag carriers from Russian and Polish state owned shipping lines. But it would be a deterrent to many state-owned and non-state-owned lines of varying registry, among them British, Nationalist Chinese, Irish, Liberian, Norwegian, South Korean, Greek, Indian, and Pakistani. For some of these third world nations the shipping services they are able to offer in world trade contributes significantly to their own economies. Most of these nations are our customers for exports of pulp, paper and paperboard. We need their continued good will as our partners in trade. To summarize this testimony, Simpson Timber Company feels the enactment of S. 868 would hamper our efforts in international competition by increasing our delivered prices to our customers through increased ocean freight rates. We are seriously concerned about the economic impact S. 868 would make on our firm and the entire forest products industry, since much, if not most of our exported products are shipped via third-flag carriers of many nations.

We are concerned about the impact of S. 868 upon many of the smaller ports on the Pacific Coast. With the exception of occasional calls by conference carriers the non-conference third-flag carriers are the only lines serving small "outports" such as Aberdeen-Hoquiam, Coos Bay, Astoria, Eureka and Longview, where many of our forest products exports originate. Apart from the cost to our firms to transport our products via inland freight to larger ports served by national flags and conference carriers, we are concerned about the impact on our communities. A decline in exports from these port communities would almost certainly result in a decline in employment of longshoremen and would have secondary repercussions for service industries related to shipping.

We urge the Senate Commerce Committee to consider carefully the economic impact of S. 868 as weighed against its other stated objectives of strengthening United States flag service and stabilizing ocean freight rates. Surely there are other methods by which we can work together to study the transportation requirements of industry as well as the stated objectives of S. 868 and arrive at workable compromises which support both our industry and the U.S. merchant marine.

We appreciate the opportunity to express our views today.

EXHIBIT I

March 17, 1975.

Re S. 2576, Reintroduced as S. 868 by Senator Daniel K. Inouye.

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

DEAR SIR: I am writing on behalf of Simpson Timber Company to express my firm's strong opposition to proposed legislation to amend Section 18 of the Shipping Act, 1916, particularly the addition of a new subsection (c). Mr. J. L. Leitzinger of our office has discussed our position with Mr. Norm Dieks. We note from recent local press announcements that the Pacific Lumber Exporters Association has presented the views of the building products segment of our industry concerning S. 868. We wish to add our statement from the viewpoint of the pulp and paper segment of the forest products industry.

The proposed legislation provides that no nonnational flag carrier in a given trade in the foreign commerce of the United States shall file or maintain rates in its Federal Maritime Commission tariffs lower than the lowest rates maintained by national flag carriers in that trade.

The purposes of the proposed legislation are to stabilize ocean freight rates in United States foreign trade and thereby strengthen the United States merchant marine service.

Simpson Timber Company opposes the proposed amendment to the Shipping Act, 1916, on several points.

1. IT REDUCES OUR ABILITY TO MEET FOREIGN COMPETITION IN OFFSHORE MARKETS

The forest products industry has become an international industry. Forest products such as lumber, plywood, woodpulp, linerboard, and newsprint are commodities which are marketed worldwide. However they are produced in commercial quantities in only three major areas of the world: the United States, Canada, and Scandinavia. (Thus far the forest products manufactured within the Soviet Union are consumed largely within the Soviet Union, where demand for those products has grown more rapidly than their supply.)

Because utilization of our products is closely related to the economic trends of the industrialized nations prices for our products fluctuate with demand and supply. In time of lessened demand we find we must remain keenly competitive offshore to maintain our share of foreign markets against our Canadian and Scandinavian competitors. Maintaining the most favorable transportation services at the most competitive rates is imperative to our survival in foreign markets. We have found that third-flag carriers are often more responsive to this need of ours as shippers than are the national flag lines and freight conferences serving the same trade areas. Legislation aimed at placing a floor on third-flag rates would dispel the competition from third-flag carriers and thus create for the forest products industry a handicap in meeting, in particular, Canadian competition in offshore markets. The Canadian forest products industry would in most instances maintain access to third-flag shipping services and their lower rates. This would come at a time when our industry is already seriously curtailed owing to poor markets in the United States.

2. IT THREATENS AVAILABILITY OF SHIP SPACE IN PACIFIC COAST TRADES

Secondly, we feel that placing a floor on the rates of third-flag carriers might so restrict their competitiveness as to force them from the Pacific Coast trades they serve. This would leave our industry and the Pacific Coast short of adequate ship space and would subject us to competing with all other West Coast shippers of higher-value products for available space. During the Arab oil embargo of late 1973 and 1974 Simpson Timber Company could not find adequate ship space to any major market area, and particularly to Japan and Southeast Asia, in order to make timely deliveries of our contracted sales. The third-flag carriers provided us with much needed service, and even that was not sufficient to meet all our needs. Without the services of third-flag carriers in a similar situation in the future space availability on national flag lines may become acutely short and rates would escalate rapidly—this is quite the reverse of one of the stated objectives of S. 868, which is to stabilize freight rates in the foreign commerce of the United States.

3. NATIONAL FLAG LINES ARE NOT ALWAYS BEST SUITED TO THE CARRIAGE OF BULK CARGOES

Many of the national flag lines offering services between the Pacific Coast and major offshore markets are almost exclusively containerized. While container ships are an innovative mode of water-borne transportation, they are not always best suited to large bulk movements, such as our products entail. For example, lumber and plywood products are not well suited to container loadings and are difficult for our customers to unload. Woodpulp is shipped in 500 pound bales; many of our smaller papermaking customers offshore literally cannot unload a fully loaded container of woodpulp. Third-flag carriers often operate smaller break-bulk ships which can accommodate noncontainerized cargo, facilitating our shipments and our customers' receipts.

We strongly support the objectives of S. 868 to stabilize ocean freight rates and promote a strong United States merchant marine. However we feel the issue is too complex to be resolved satisfactorily by such a simplistic measure as placing a floor on tariff rates which foreign flag carriers may charge in designated trades. The merchant marine services offered to us as United States shippers constitute an exportable service from the nations offering them. To place restrictions on the

rates which are offered by third-flag nations constitutes a protectionist measuer as surely as any other trade barrier. Also it creates a trade barrier to certain exportable items manufactured by United States firms, as we have already pointed out. Such protectionism is contradictory to the interests of international free trade and the spirit of United States foreign policy, and is damaging to the best interests of the forest products industry.

We strongly oppose the enactment of S. 868 and would like to present our statement at the upcoming Senate hearings on 10 April.

Yours sincerely,

CAROL L. NETT,

Manager, Southeast Asia and Specialty Products.

Senator INOUE. Our next witness is Mr. Curt Marx, Bardon, Inc., Los Angeles, Calif.

Mr. MARX. Thank you, sir. Mr. Chairman, I am accompanied by Mr. Edward Shea, counsel.

Senator INOUE. Welcome, sir.

**STATEMENT OF CURT MARX, EXECUTIVE VICE PRESIDENT,
BARDON, INC., ACCOMPANIED BY EDWARD SHEA, COUNSEL**

Mr. MARX. My name is Curt Marx, and I am executive vice president of Bardon, Inc. I am accompanied by Edward Shea as counsel and I am here in support of S. 868. I would also like to submit for the record a statement from Mr. Steven Lazarus, executive vice president of Travenol International, a division of Baxter Laboratories, Inc., who could not be here today, and a wire from John C. Howard of Bethlehem Steel, who could not be here today but also supports the legislation.

One of the primary goals of American businesses is to get their products from point of manufacture to point of consumption, or to get raw materials from source to point of manufacture, at the lowest possible total cost. It might then appear anomalous to some that we appear here today to support the provisions of S. 868. However, we are not so shortsighted as to fail to realize that other transportation factors are equally important to our long-term interests. Those factors include the quality of service; the scope, frequency and regularity of service, the integrity and responsiveness of the carriers; and the certainty of continuity and even-handedness by the carriers.

These are all to be added to constitute the transportation factors which must continue to be available to use. This is what has motivated us to come before your committee today to testify on behalf of Senate bill S. 868.

Bardon, Inc. is one of the largest importers of high-quality, medium-priced men's shirts and sportswear on the west coast, or in fact the entire United States. We placed special emphasis on quality, service and reliability. Since all our products are manufactured in the Far East, we are dependent upon the shipping industry to provide us with reliable service and follow through in top quality equipment. We must be serviced by companies that have efficient and sufficient personnel to work in close conjunction with brokers and Customs to expedite the movement of merchandise once it has arrived in port.

Additionally, we should comment on the fact that ocean transportation freight rates represent approximately 6 percent of the total landed cost of the goods. Savings in freight costs are of course important. However, a 10 percent savings in freight cost translates into 0.6 percent of landed cost for the buyer, whereas the same 10 percent to

the ocean carriers may be the difference between survival as a viable transportation system and nonsurvival.

While we expect fair and reasonable rates, we also expect and demand quality service, frequency of service, and service response to our needs as importers. This is the type of service that we have come to know and expect from the national flag lines serving the market to and from which we are involved. In the past, during certain emergency periods, we have been forced to use secondary shipping lines and invariably have experienced problems such as shortages, pilferage, wet or damaged cargo, lack of followthrough on paperwork, and insufficient or late arrival of documentation. Although I am in some disagreement with the autocratic and outdated ratemaking practices of some conferences, as American businessmen, experienced in the necessity of stable and reliable sources of supply, we are not unmindful of the cost of producing a product or service and providing sufficient return for the maintenance of the manufacturing or service facility in order to cover replacement and to maintain a reliable source of supply.

It is for these reasons, Mr. Chairman, that we have come here today to lend our support to S. 868. We thank you for your courteous attention.

Senator INOUE. Mr. Marx, I thank you very much.

My only comment is I wish I had said those words before.

Thank you very much. Then you don't believe that this measure is antifree enterprise, do you?

Mr. MARX. No, sir.

Senator INOUE. Do you think this would defeat competition?

Mr. MARX. No, sir. Not in the long run at all.

Senator INOUE. And so from the standpoint of a shipper and consumer you are for this measure?

Mr. MARX. Yes, sir.

Senator INOUE. I thank you very much, sir.

[The statements referred to follow:]

STATEMENT OF STEVEN LAZARUS

My name is Steven Lazarus. I am Executive Vice President of Travenol International, a division of Baxter Laboratories, Inc. I am, however, speaking here in a private capacity. I have been asked to comment on the objectives of Senate Bill S.868 introduced by Senator Inouye on February 27, 1975. Although I have had no recent first hand experience with comparative oceanborne cargo rates, I have served in the past both as an Assistant Maritime Administrator and a Deputy Assistant Secretary of Commerce for East-West trade. This combination of experience may add some relevance to my comments.

In my judgment, the objectives of S.868 are consistent with the aims of the Soviet-American trade agreement. Although this agreement at this time appears to be somewhat illusory, its commercial elements remain a satisfactory basis for trade between the U.S. and the U.S.S.R. This trade agreement provided for safeguards over and above those embodied in existing U.S. law.

S. 868 offers a degree of protection to the United States national flag merchant marine. Its efficacy depends on the ability to analyze accurately international shipping costs. Although the analysis of costs in a socialist economy is difficult, there is enough generalized information available on international shipping costs to make the task feasible.

I remain a firm believer in the promotion of the freest possible East-West trade. I remain convinced, however, that the free enterprise system can on occasion find itself dangerously vulnerable to a concerted effort on the part of a centrally planned economy. The mammoth grain purchase of 1972 is but one example. In order to reduce the possibility of such occurrences it is sometimes useful for the government to insure that all parties to a free economic competition are playing

by the same set of rules. The enactment of S.868 would go a long way toward providing such insurance in this year of United States ocean-borne cargo carriage.

STATEMENT OF JOHN C. HOWARD, VICE PRESIDENT, TRANSPORTATION, BETHLEHEM STEEL CORP., BETHLEHEM, PA.

S. 868 would amend section 18 of the Shipping Act to empower the Federal Maritime Commission to reject tariffs publishing rates of nonnational carriers when it appears that a rate published by such carriers is less than the lowest rate published by any national carrier and it appears that the rate is noncompensatory to the nonnational carrier. The practical effect of the bill is to preserve legitimate competition among all common carriers engaged in the foreign commerce of the United States and to stabilize the ratemaking practices of the carriers by forbidding the disruption of the trade which normally accompanies short term publication of non-compensatory rates.

Bethlehem Steel Corp. has for many years been a shipper party to conference agreements and has used conference carriers where available for its common carrier shipments in foreign commerce. It has followed this practice in the belief that its interests are best served by the conference method of rate publication and the stability and reasonableness of the rates which result from conference procedures.

We are pleased to support S. 868 and extend our hope that your efforts will be successful.

Senator INOUE. Our next witness is Mr. Edward J. Heine, accompanied by Paul Richardson, president, Sealand Service, Inc., Elizabeth, N.J.; Norman Scott, president, American President Lines, San Francisco, Calif.; Herb Brand, president, Transportation Institute, Washington, D.C.; James J. Reynolds, president, American Institute of Merchant Shipping, Washington, D.C.; Alfred Maskin, president, American Maritime Association, Washington, D.C.; O. William Moody, administrator, Maritime Trades Department, AFL-CIO, Washington, D.C.; E. L. Formosa, vice president, Far East Lines, Washington, D.C.; and Tal Simpkins, Labor-Management Maritime Committee.

Gentlemen, I welcome you to the committee. We are not only pleased to have you here, we are much impressed by all of the presidents here. What's happening to your companies while you are gone?

Mr. SCOTT. They are running a lot better, Senator.

STATEMENT OF EDWARD HEINE, PRESIDENT, UNITED STATES LINES, NEW YORK, N.Y.; ACCOMPANIED BY NORMAN SCOTT, PRESIDENT, AMERICAN PRESIDENT LINES, SAN FRANCISCO, CALIF.; PAUL RICHARDSON, PRESIDENT, SEALAND SERVICE INC., ELIZABETH, N.J.; HERB BRAND, PRESIDENT, TRANSPORTATION INSTITUTE, WASHINGTON, D.C.; JAMES J. REYNOLDS, PRESIDENT, AMERICAN INSTITUTE OF MERCHANT SHIPPING, WASHINGTON, D.C.; ALFRED MASKIN, PRESIDENT, AMERICAN MARITIME ASSOCIATION, WASHINGTON, D.C.; O. WILLIAM MOODY, ADMINISTRATOR, MARITIME TRADES DEPARTMENT, AFL-CIO, WASHINGTON, D.C.; E. L. FORMOSA, VICE PRESIDENT, PACIFIC FAR EAST LINES, WASHINGTON, D.C.; JAMES HORN, PRESIDENT, AMERICAN EXPORT LINE, NEW YORK, N.Y.; AND TAL SIMPKINS, LABOR-MANAGEMENT MARITIME COMMITTEE

Mr. HEINE. Thank you.

I had intended to give each of the panelists here a chance to introduce themselves, but you have taken care of that chore for me.

I believe the reporter here can identify them by virtue of the name tags in front of them.

As you indicated, I am the president of the United States Lines. Seated with me are members of every segment of the American flag liner shipping industry—that is, representatives of labor, management and various associations. I am sure the committee will recognize the unanimity in the industry behind this legislation.

Mr. James Barker, president of Moore-McCormack Resources, Inc., had intended to be present at the previous scheduled date, but unfortunately previous business required him to be elsewhere today. However, Mr. Barker and members of this group and others who could not be here present to you a panel of all segments of industry to illustrate the unanimity of the American maritime industry behind S. 868.

I am honored to be the single spokesman for the group. While I will present the only prepared statement, it is the statement of all concerned. Any members of the panel will answer any questions that you may have. I believe it is probably the first time in the history of this committee, that labor, management and associations representing all segments of the American-flag liner industry have appeared together in unanimity supporting a particular piece of legislation. We are proud of this unanimity, and we are most appreciative of your sponsorship, Mr. Chairman, of S. 868.

Before going into the merits and the reasons for S. 868, let me state what we believe S. 868 is not. Perhaps this approach may disabuse some of those who may have apprehensions concerning the legislation.

1. S. 868 is not a conference bill. There is nothing in S. 868 that in any way gives the conference a control over rates or a control over rates of other parties or of other carriers who are not members of the conference. S. 868 merely states that when a national flag carrier has set the rate, if a third flag carrier's rate is below that rate, that third flag carrier must be able to justify his lower rate as compensatory on a commercial basis.

In virtually every major trade where there are conferences, there are national flag nonconference operators. These operators are just as entitled to set the guide rate as are the conference carriers.

2. S. 868 is not an antithird flag bill; quite to the contrary. S. 868 will, in effect, protect the legitimate third flag carriers. Those carriers who operate in the U.S. trades with third flag vessels under normal competitive pressures need have no fear of this legislation. In fact, these carriers should be supporting the bill, since it will likewise protect them against the destructive rate practices of others.

3. This bill is not an inflationary bill. It requires no appropriation. It will cause a stability of rates under a free competitive system which, if anything, is anti-inflationary in nature. If the practices which we mention below are allowed to continue, many of the present carriers, American flag as well as other flags, will no longer be able to compete. Jobs, both at sea and on the shore, will be affected. Some of the shippers will have to bear disproportionately high rates to subsidize those commodities being carried as cut rate loss leaders by the predatory carriers.

4. This bill is not a bill that will invite retaliation, but rather international cooperation and hopefully create the beginning of a period of stability in world trade where real competition will prevail. Your committee has already received a statement of the Council

of European and Japanese National Shipowners Association (CENSA) involving this legislation. This group has stated:

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

This group of shipowners represents almost 50 percent of the world gross registered tonnage in virtually every major world trade country, including Belgium, Denmark, Finland, France, Germany, Greece, Italy, Japan, Holland, Norway, Sweden, and the United Kingdom.

Additionally, it should be noted that the president of the Common Market Shipping Association has also publicly stated he hopes other nations will follow the lead of S. 868. This spirit could hardly be called retaliatory.

U.S. companies are today beginning to make inroads into some of the cross trades where we will be the third flag carriers. In every case where we can, we have joined the conferences in those trades and have abided by their rates, but where we cannot join the conferences, or where the conferences do not exist, we have followed the prevailing rates in the trade. So, if other nations will enact similar stabilizing legislation comparable to S. 868, it will be to our advantage, and will be with our support. This is not retaliation; this is international cooperation.

This bill is in no way intended to affect the equal access or pooling arrangements that have been approved in certain trades by the Federal Maritime Commission, nor to in any way restrict or modify the authority or flexibility of the FMC to approve such agreements in the future.

5. This bill will not discriminate between shippers. S. 868 applies only to the liner services, and to the liner carriers, that is, the common carriers who must file tariffs under section 18 of the Shipping Act, 1916. It will not affect the tramp carriers, nor will it affect those movements presently excluded from tariff filing requirements under section 18(b)(1) of the aforementioned Shipping Act; that is, cargo loaded or carried in bulk without mark or count, or softwood lumber products, as defined in that particular statute.

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

The U.S. foreign trade is the single largest foreign trade in the world, in excess of \$200 billion a year, yet our commerce is virtually the only open free trade in the entire world. It is open to one and all, and believe me, one and all are in it at some time or another. The U.S. liner segment of our merchant marine consists of approximately 300 vessels, 137 of which are intermodal, which must compete against five times that number of liner carriers of foreign flags for its own share of the U.S. trade. We hold no brief against the legitimate foreign flag carrier. We do compete for this trade, and we compete effectively and efficiently against these legitimate foreign flag operators.

Today, the American-flag liner cargo segment which, in the last few years, has struggled through an innovative period, faces the loss of the momentum of such innovation by the destructive practices of a few predators. We are proud of our innovations.

Never forget that containerization was born in the United States. The Lash concept was also an American innovation. The use of the ro-ro concept in international trade is also an American innovation.

All of these innovations are now being emulated on a worldwide scale. Where once we led the world in the intermodal shipping concepts, today we have been reduced to one-third of the world's intermodal fleet and that percentage is fast dropping.

As an example, between 1970 and 1975, the Soviets introduced 21 container ships into service for their 16 state-owned shipping companies. The second stage from 1976 to 1980, a Defense Department spokesman has indicated, will make: "containerization with the Soviets the main means of transportation of general cargo and an unspecified number of ships with 1,200 to 1,400 20-foot equivalents will be procured. * * *" The same spokesman indicated that the Soviets will have over 300 container vessels in its fleet by 1980. The total intermodal U.S. flag fleet today is only 137.

In fair and open competition we have no fear that we cannot carry our own weight, but we and the other national flag carriers of different nations are now facing a crisis, a crisis that is here now—the incursion into our foreign trade of predatory carriers, who for one reason or another are determined to destroy existing competition. These carriers are really two in nature.

The first, for lack of better title, I will simply call the "opportunistic carrier." He sees a movement, dumps his ships into the trade, drops the rate on some commodities as much as 25 percent in order to fill his ship to seek out other trade, to seek out other commodities.

He causes havoc on the market by causing some commodities to subsidize others. He cuts rates to attract.

This results in one of two alternatives. First, he may see a better opportunity for more profit elsewhere. With no obligations to the trade, with no affiliations to the nations involved, he pulls out of the trade, leaving a path of chaos behind, instability for the shippers, and in many cases having caused the shippers to lose markets, or the second alternative is that he will destroy the legitimate national flag carrier who can no longer compete so that the shipper is left at the mercy of the predators. The antidumping laws of the United States protects the commodities in their foreign trade, and until this legislation, no such concept was available to the carriers in their foreign trade.

I might say here, parenthetically, in response to the delegation from the lumber industry, attention was called to the fact that they face serious competition from other countries, Canada, Russia and so forth. Yet they receive the protection of antidumping legislation which you have had here on the books of our statutes for years. This is very comparable to nothing more than the antidumping provisions applied to a service rather than to products.

The second form of destructive competition is the state-owned or state-sponsored carrier. This form of stateownership is becoming more and more predominate in international shipping. We have recently read of 17 nations in Latin America, including Venezuela, who are planning to form a state-owned merchant marine, including Venezuela, who recently announced contracts for 10 ships to be run by their national shipping companies. To the extent these carriers will serve the United States, we presume they will be national flag carriers. To the extent these carriers go into the cross-trades they will be third flag carriers.

But we do not know yet the plans of these 17 nations. Seventeen nations is a large order. The Arab nations, as you are well aware, are establishing their own state-owned merchant marine.

But more predominant in the spotlight today, probably because of their lead time if for no other reason, are the Communist countries' owned shipping companies, because they have come into the trade with such an impact that they make the best example of illustrating the crisis that we are facing today.

Let me cite but just a few examples of the Communist bloc trade practices in shipping. In 1970, the Far Eastern Shipping Co., whose acronym is FESCO, a Soviet-owned line, did not have a single containership. Today, it has one sailing every other day off the west coast of the United States on six different trade routes to the Far East without calling at a single Soviet port. The rate cutting practices of this particular carrier are almost unbelievable.

FESCO has reduced the rates on TV sets from Japan to the United States by 15 percent. It has reduced toy rates by 21.4 percent, and as yet another example, has reduced the rates on bicycles by 13.8 percent. These reductions were put into effect as soon as FESCO entered the trade. In electrical commodities, Japan to the United States, the national flag rate was \$49.50, but with the advent of FESCO, FESCO reduced the rate to \$43.50, a 12-percent reduction. To meet this reduction, the national flag carrier reduced its rate to \$45. FESCO immediately dropped its rate to \$38.25, a 15-percent discount, forcing over a 20-percent reduction from the original rate held by the national flag carrier. The impact of this is obvious.

The impact of the intrusion of this company is multiple. Only recently the Philippines announced that it was entering into a joint venture with FESCO, and note a joint venture with a Soviet-owned company, yet the Philippine Government does not have diplomatic relations with the Soviets; a joint venture to enter into trades between the Philippines, the United States, Japan, and Europe. The announced rates by FESCO to Europe and Japan "would be 15 percent lower than those charged by shipping organizations while to the United States would be 10 percent less."

In the European-U.S. trade, the situation is the same. In 1970, Polish Ocean Lines had no container ship sailings. Today they offer 10,000 20-foot containers annually in 18 different vessels and monopolize even the carriage of U.S. mail to their ports.

In 1970, Baltic Atlantic Lines, a Soviet state-owned company, east coast trade to Europe was zero. Today that company is operating 12 ships with weekly voyages to the east and gulf coasts of the United States. As an example of the rate antics of this carrier, within the last several months, Baltic Atlantic Lines offered to carry wines and spirits from the United Kingdom at 17 percent below the national carrier rate. This offer was made at a time Baltic Atlantic did not have a single vessel in that particular service.

Polish Ocean Lines, again a Soviet bloc-owned company, has slashed the rates in its trade by 25.9 percent on tobacco, 20.4 percent on rages, 27.7 percent on plastic sheets, and has but another example on asphalt shingle, 38.8 percent, and these are but a few examples of the rate practices this company has imposed since its advent into the trade in 1971.

This Soviet bloc commercial fleet, a nonprofit motivated fleet, has grown from 641 vessels and 3 million tons in 1960, to 1,707 vessels and 10 million tons in 1974, or from ninth in the world fleet rank to No. 1 today.

In containerships, it is No. 2 today, only to the United States, and with the advent of the 44 new container-ships contracted for, it will soon replace the United States as the No. 1 container carrier.

It is simple to sum up the motivation of the state-owned fleets by a statement that appeared in "Pravada" on March 4, 1974, in dealing with the Soviet Merchant Marine. That statement was "Moscow is as interested in political profit as it is in shipping revenues."

It would be unfair to leave the comments on the Soviet-owned fleet without noting that due to the potential of the legislation we are here today considering, we understand at least their carriers in the North Atlantic are reconsidering their policies. We are certain that this potential change of attitude would not have come about had not this legislation posed the threat that it does to these predatory practices.

As to the proposed law itself, we see no problem in its administration. The Federal Maritime Commission has not stated it could not cope with its requirements.

The filing of tariffs and the time elements are substantially the same as already set forth in section 18 of the Shipping Act, 1916. We understand under this bill the FMC would review the overall rate structures of the carrier to determine if there is a predatory intent, and not simply let the FAK rates or the NOS rates be the controlling factor; the whole tariff would be reviewed.

This the FMC is equipped to do and does so. The only addition is the right of rejection if the tariff is predatory. With a filing and justification there would be no rejection. If the rates filed on the whole are, as shown by the costs submitted, compensatory, even though a complaint has been filed, the FMC can refuse rejection. What is required is that the rates be based upon a commercial basis and not on a state absorbing the cost for political reasons. This is the crisis we face today.

Finally, Mr. Chairman, we would like to leave with the committee, and as part of the record of this hearing, a pamphlet we have prepared which further illustrates in more specifics, the problem as it is now, and which by inserting into the record will save a considerable amount of time in this hearing.

On behalf of the panel, I thank you for the opportunity of appearing today in support of S. 868.

Senator INOUYE. Without objection, the pamphlet will be made a part of the record.¹

I have a few questions I would like to ask you and the panel if I may.

As you may be aware, there is a change in the present bill, S. 868 from the former bill S. 2575, which gives the FMC relatively wider latitude in the FMC's discretions to reject third flag carrier rates. The language used is reasonable probability that the given rate is not in violation. What's your reaction to that, sir?

¹ See p. 65.

Mr. HEINE. As a matter of general principle, it does not. We are confident that the FMC will implement the provisions of this section in the spirit of, and consistent with the intent of, the well documented purposes of this legislation. However, we do believe that there is one aspect of this that the committee would be well advised to deal with in this legislative history. That is, as this legislation has evolved; it is apparent that the committee has consciously considered, and then rejected, the concept that the third flag rate should be tied to some percentage of the conference rate. That is, that a third flag rate would be determined *prima facie* reasonable if it was no more than—as an example—10 percent lower than the conference rate on a given commodity. Since the committee has rejected that approach, and we agree that the committee should have rejected this approach; the FMC should not use any such standard in weighing “reasonable probability.” Rather, a demonstration of “reasonable probability” ought to be in the context of a substantial showing based on summary cost information that the rate is compensatory on a commercial cost basis. Put another way, simple comparison of tariff rate levels should not carry the day under this test.

Senator INOUE. Thank you very much, sir.

All of you have read the statements submitted by the panel representing I believe primarily the forest products industry here. Would any of you wish to comment on their position?

Mr. SCOTT. Mr. Chairman, we heard the testimony this morning by representatives of the Pacific Lumber and Exporters Association and also earlier we were aware of that general position.

We have a copy of a letter which on March 18 we sent copies to members of the committee and to other members of the Senate responding to this position and I have a copy of that with me and I would like to incorporate that into the record.

Senator INOUE. Without objection, this letter will be made a part of the record.¹

Mr. SCOTT. It is our position, Senator, that since approximately 5 percent of the lumber exports are outside of the particular legislation, the impact of the passage of S. 868 would be extremely slight on anybody engaged in the shipment of lumber.

Furthermore, a percentage which according to our statistics is in excess of 95 percent of their total shipments moves not on what we call liner carriers which is the type of movement referred to in the pending legislation, but rather moves on tramp vessels, and thus is not affected by the proposed legislation.

I can't help but also commenting that in listening to the comments of the spokesmen earlier this morning, the major thrust of their testimony came across to me as essentially against the conference system, and I think we have gone to considerable pains to try to differentiate in the instance of this pending legislation that S. 868 if enacted into law will not be proconference.

All this is prepared to do is to protect national flag carriers from the predatory practices of nonnational flag lines.

We do not think that this will impede any of the flow of lumber products from the Northwest.

¹ See p. 77.

Nonnational flag carriers who are engaged in tramp activities are not covered. Nonnational flag operators who are in liner service, if they can prove that their rates are compensatory, will have no problem insofar as the legislation is concerned.

So I believe it is our position that while we certainly are aware of and sympathetic to the concerns of the lumber shippers, we do not think that the legislation would in any significant way impact adversely on their activities.

Senator STEVENS. Mr. Scott, there is a change in the timber industry in terms of primary manufacture. I know in my State they were shipping more pulp, pulpboard and paper products. Your statistics cover the past practices.

Would your group have any objection to making certain that, as this amendment passes, we exempt the other 4.6 percent or whatever it is of the forest product industry?

It would seem to be deserving of the exemption at this point if we are going to tighten up the law so far as third flag carriers are concerned.

In effect it is a question Senator Inouye asked Mr. Bettinger. I understand his comment based upon his position. But what would be your position if we did exempt pulp and paper products in primary manufactured timber?

Mr. SCOTT. Senator, I think that without having had the benefit of examining all the statistical information with respect to the other forest products that there are a number of these commodities which do move in liner trades and accordingly I would be opposed to a blanket exemption of all forest products.

I was speaking principally of lumber here.

Senator STEVENS. What you are saying, though, is that as we get to the point where we can within our State, for instance, or the Pacific Northwest, employ American labor and put them to work in terms of primary manufacturing methods, we in fact take them out of the exemption area as far as softwood is concerned.

I think that there has to be a trade-off here if we are to have this type of amendment, because we have objections voiced from people in my State and in the Pacific Northwest about this legislation. It is based on the fact that there has been this change.

We are now engaged in primary manufacturing.

I urge you to study the statistics to see what is actually happening in terms of this trade. I don't think it would be that detrimental to your position to extend the exemption to the current modes of primary manufacture to give them the same advantage that the existing law intended to give to softwood.

Under the current law, if we saw this wood into cants, it could be exported under the exemption. If we turn it into pulp, as I understand it, it is not under the exemption, and yet it is the pulp that provides the additional labor in my State.

Mr. SCOTT. Senator, I certainly am willing on behalf of my associates here to take a very careful look at this. I think that there may well be a perfectly valid basis for excluding these other types of wood products.

I would, however, if I may, just complete the one thought that was in my mind earlier, and that is that I think we believe, quite sincerely,

that this legislation is not intended to deprive anybody of low cost shipping if it is available to them.

All we are out to do is to try to prevent in the liner trades operators coming in and providing services at a noncompensatory level of rates. That is the reason I wanted to keep some kind of a caveat on agreeing otherwise to the understandable concern you have.

Senator STEVENS. Well, I want you to know I am certainly sympathetic and cannot understand the type of predatory rates that the Soviet carriers have engaged in. We certainly don't want to encourage that.

I think eventually that would leave us in the position where we would be completely dependent upon their vessels. They are also now increasing their production of timber and could well get us in the position where we couldn't service our own markets in the Pacific.

But, on the other hand, as we move forward with this type of protection, I think we also ought to be cognizant of the change in the industry, the forest products industry itself, and if there is a change in mode of their type of support that that type of exemption should be continued where we are trying to induce the growth of that industry in the Pacific and its competitiveness as opposed to the other forest resources industries of the Pacific.

I would hope you would take a look at it.

Mr. SCOTT. We certainly will.

I suggest we undertake to cooperate with not only the members of the Committee staff but also any members of your staff that might be able to give us some inputs on this matter.

Senator STEVENS. Thank you.

Mr. HEINE. Mr. Chairman, could I comment again on this question of exemption? That exemption that we are speaking about exists today. It has nothing to do with this bill. And if the products you are talking about that are now going to be produced in Alaska, if they fall into the category for transportation purposes outside the scope of common carriage, any rates in the world could be charged.

In other words, if you were to bring that down under private carriage or something of that nature, you won't even have to worry about the 1916 act in any event.

So when you speak of exemption, the exemption is merely an exemption in those instances where a particular commodity, whether it lumber or anything else, is carried by liner operators on a common carriage basis.

So I would think that perhaps insofar as the new industry being developed in Alaska is concerned, you may not even have to be subject to this is in fact private carriage or non-common carriage is utilized.

Senator STEVENS. I understand that, and most of the past traffic has been as you suggest, but I think there is a growing feeling in our State that, if the exemption is not broadened, and this is enacted, it would in fact inhibit the growth of that export trade and it is a fear more than anything else, as I understand it, at the present time.

We also have other resources.

One interesting thing about it is it is a softwood exemption and, strangely enough, our hardwoods remain totally undeveloped.

I don't see that that exemption of softwood is very meaningful at the present time in view of the fact that no one I know of is exporting raw timber—softwood in that sense—other than to the Japanese interests that in fact have already purchased an interest in the product in its raw state, and I would like to encourage the utilization of our hardwood statistics and also, as I said, encourage the primary manufacture of any of the resources on our shores.

That seems to me consistent with our total objectives to involve American labor to the maximum extent possible.

And yet they are competing with the Soviet-produced timber. I think that there has to be a trade-off there, as I said.

Anyway, I would encourage your study and I am pleased that Mr. Scott and yourself—

Mr. HEINE. I think that is fine. I can't speak for my panel, but my guess would be that they would be receptive to that.

Mr. BRAND. I think Senator Stevens is well known to most of us in the maritime industry for being at all times considerate of the problems that this industry has experienced.

We understand your problem in Alaska. We feel you understand our problem. I am sure that we can consider those points which you have raised and get back with you and your staff and find some resolution that would be satisfactory to both.

Senator STEVENS. Thank you very much.

Senator Pearson received a telegram from the National Association of Stevedores which raises a question and, if you don't mind, I would like to read it at this point and see if the panel has any comments about it.

Re: S. 868. The National Association of Stevedores whose 49 members are US stevedore companies and marine terminal operators doing business on all four of the nation's sea coasts and Hawaii call to your attention that S. 868 contains no provisions to protect US stevedore/marine terminal industry from effects of cancellation of a carrier's ocean tariff which terminates further legal operations of that carrier.

Our problems are:

One, care, custody and payment for cargo in our possession consigned to cancelled carrier.

Two, collection of unpaid stevedore bills from a foreign carrier who has had its service terminated by the FMC.

Three, collection of unpaid tonnage assessments for employee benefits, welfare funds, which are owned by a foreign flag carrier but unpaid at time of cancellation.

The industry could be faced with uncollectable receivables in the millions as well as legal problems regarding custody and delivery of cargo of the cancelled carrier in our possession.

We respectfully request that this telegram be made a part of the record and that your Committee and proponents of S. 868 take all necessary steps to protect the U.S. stevedore and marine terminal industry.

Thomas B. Wilcox, Executive Director and General Counsel, National Association of Stevedores, 919 18th St. N.W., Washington, D.C. 20006.

I just call that to your attention and I think it is a problem that we probably ought to address if we are to deal completely with the subject, and I must confess I am not an expert on the area to know what would happen to these cargoes which are in possession of the stevedore or terminal operators under the terms of this bill.

But I would urge that your counsel advise the Committee whether you think anything could be added to this bill to take care of the problem.

Mr. HEINE. I think if it is a problem, certainly we would have no objection to adding something to the bill.

I think that they misconceived the way this bill would operate, and I fail to see how any problem would arise.

Certainly if anything were to happen whereby payments to stevedores, ultimate payments of the unions working for those companies, were to be impaired, it falls on the rest of the industry to pick up those.

So we certainly don't want to see something of that nature.

But I fail to see how there could be any immediate implementation or effect of this act that would affect cargo that is in the process of being loaded or discharged or delivered to the customer or so forth.

Certainly we must assume that the cargo that would be subject to a lien by stevedores or something of that nature would have been cargo carried under an approved rate. If a rate is rejected, no cargo is going to pass under this newly filed rate since the effect of this piece of legislation would take effect.

We can look at it, but I really don't think the fear is well founded.

Senator STEVENS. There isn't any provision for a phasing-in of this new concept, is there, for those goods that are in transit at the time this is passed? There would seem to be a problem.

I think it is a transition problem rather than a long-range problem.

Maybe there ought to be some savings clause put in here to deal—

Mr. HEINE. They would have been moving under the approved tariffs and, you know, there may well be a credit problem here if, for example, by virtue of a rejection of a tariff a carrier could no longer come in, and maybe some outstanding bills, but that is a day-in and day-out problem that is faced all the time.

Nevertheless, if it does pose a serious problem, I can't visualize any of us would have any problem in trying to accommodate them in some way.

Senator STEVENS. I think it is incumbent upon them to come forward with some suggested language, but I thought you ought to know the objection has been raised.

Senator INOUYE. I think the point you brought, it made very little difference that this bill passed or not as far as the problem of cancellation is concerned. You have them now at the present time, don't you?

Mr. HEINE. That's correct.

Senator INOUYE. Prior testimony indicated some difficulty in determining the meaning of "compensatory on a commercial basis." Do you have any difficulty in defining "compensatory on a commercial basis"?

Mr. HEINE. We have discussed this particular problem and I would like to ask Mr. Richardson to comment on this.

Mr. RICHARDSON. The term [compensatory on a commercial cost basis] means covering all direct and indirect costs, including depreciation, interest, and reserves for operating asset replacement, earning a rate or charge plus producing profit after taxes such as would be acceptable to a prudent business investor in common carriage by water in foreign commerce.

If a nonnational flag carrier is not subject to income tax in the country of its nationality or domicile it shall be deemed, for purposes of determining whether its rates or charges are compensatory on a

commercial cost basis, subject to a hypothetical tax at the lowest rates applied by the United States or its trading partner in the given trade to its national flag carriers.

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

Because of direct or indirect government subsidy not received by national flag carriers in the given trade, or because policy or practice of the country of its nationality or domicile shifts the burden of such costs from the carrier to another segment of the national economy for political or diplomatic gain or consideration, or because of economic or social or political philosophy alien to one or the other of the trading partners, then the nonnational flag carrier shall be deemed to have incurred such cost for the purposes of this section.

Senator INOUE. Do you all share that view?

Mr. HEINE. I think it's a consensus, Mr. Chairman, needless to say the panel has been subjected in recent years to a tremendous amount of proceedings before the FMC on this very issue. What are compensatory rates and so forth as you probably know has arisen even in connection with the military rates versus the commercial rates and we have been called upon to offer our comments and we have been involved in proceedings with general rulemaking that the FMC has had and we feel that this type of definition that Mr. Richardson has just alluded to is workable.

Now, there may be some terms that need further refinement within that definition itself, but we think it's something that could be used as a measure for any of our particular companies.

Senator INOUE. Many of you have had personal experience appearing before the FMC in similar type proceedings. What would you anticipate would be the length of time involved for third-flag carrier to demonstrate its rates are compensatory?

Mr. HEINE. In the context of this particular piece of legislation?

Senator INOUE. Yes, sir.

Mr. HEINE. Well, as you know, the way the legislation is framed, the nonnational carrier is given the opportunity of affording that 30-day period and demonstrate in some reasonable probability, I think is what the language says, that it is compensatory.

We think that it would not be too difficult for that carrier, in that period of time, to come forward and show what—and he can use just the normal commercial documents to demonstrate the revenue that would be derived from the carriage of a particular group of commodities, and apply it to some reasonable cost items, direct and indirect. And I think that the FMC would have the latitude to allow that rate to go into effect if it clearly met all such cost criteria.

Now, of course it would go into effect subject, of course, to further study or further hearing, and when you do get into problems before the FMC it's usually not so much on your direct cost but it's on your so-called indirect cost, your various costs that are allocated on some particular basis including depreciation cost, cost of money, cost of overhead, and things of that nature.

They do cause some problems. But in the context of this particular statute, I think the language is broad enough so that if a nonnational carrier were to come forward with some reasonable business plans of

what is involved here, I think the FMC could act rather expeditiously on it.

Senator INOUE. One possibility cited by one of the witnesses is that you will have greater use of illegal rebates.

Mr. HEINE. Well, we have that problem today. This is not a new problem. It's a violation of the law and the penalties are very serious. And it's something that is constantly being worked on. It's a never-ending problem.

In good times we don't have the problem because there is plenty of cargo and in bad times you see these practices arise and the FMC has made great strides in the North Atlantic trades in bringing about stability by approving a very, very extensive self-policing program. And it's a problem we are not going to see disappear.

I must agree that if a low-cost carrier were to be able to charge more than what some of his costs were, it might give him the vehicle he is looking for for rebating. But I think it would be something that through either self-policing arrangements or the general policing that the FMC is able to do under the 1916 act, it could be controlled. I think it's being controlled pretty well today.

Senator INOUE. We have been told that there is something either unfair or novel about placing the burden on the third-flag operator to establish their rates to meet the criteria that is set forth in this bill. Do any of you have comment on that?

Mr. SCOTT. Senator, as to the novelty, I would like to comment first, the Intercoastal Shipping Act of 1933 provides that where a rate is suspended in our domestic commerce, the burden to show that the rate is just and reasonable is on the operator publishing the rate. Indeed, our courts have held that even where the rate is not suspended under this section, the burden of coming forward with evidence is on the operator. That was in a case, Puerto Rico versus the FMC and the United States.

In that decision, the court pointed out "the overriding qualifications placing burdens on those initially possessed of pertinent evidence." In the context of that, it's obvious there is no way that an American carrier can prove the cost of a third-flag operator if those companies chose not to supply their information.

Many foreign governments prohibit their operators from producing such information even in response to FMC subpoenas. As examples, the United Kingdom by an act dated July 31, 1964, prohibits a response to a subpoena. So does the Netherlands, Belgium, Sweden, and Norway. We are also sure that with regard to the European bloc of companies, the same rules would apply.

In that regard I have difficulty visualizing how accounting Soviet-style could be accepted without some pretty careful examination in terms of commercial practices in this country.

In these circumstances it would not only be unfair but impossible for either a national flag carrier or the Commission itself to try to carry the burden of whether the nonnational flag operator's rate was compensatory. Therefore, that burden must lie with the nonnational flag operator who after all desires to have rates on file which are below the lowest rates published by any national flag operator in the trade. He is the one possessing the relevant information and he should be motivated to quickly bring it to the attention of the Commission to vindicate his position that the rate is lawful.

So it think it's a completely rational, equitable process.

Senator INOUE. It's your view that this is adequately supported by this law?

Mr. SCOTT. Yes, sir.

Senator INOUE. We have had some statistics in the evidence taken here, but could someone provide us with further detailed statistics on what has happened in the North Atlantic and the Pacific trades that give you special concern?

Mr. HEINE. Yes, we do have.

Mr. BRAND. I don't want to burden the record here unnecessarily, so if I may, Mr. Chairman, I will submit a paper showing it, giving a table which will clearly demonstrate the comparisons of what we are discussing here. But, for example, just in one area, between 1973 and 1975 in the North Atlantic trade, third-flag capacity has gone from 12.34 percent to 17.9 percent. And by the end of this current year will reach in excess of 20 percent.

SHIPS IN SERVICE

	Worldwide			U.S. trade worldwide		
	Total	U.S. flag	Foreign	Total	U.S. flag	Foreign
1970						
LASH.....	1	0	1	1	0	1
Ro-ro ¹	21	6	15	18	6	12
Container vessels ²	70	25	45	50	25	25
Total.....	92	31	61	69	31	38
1975						
LASH.....	24	20	4	24	20	4
Ro-ro ¹	102	10	92	60	10	50
Container vessels ²	365	104	261	210	104	106
Seabee.....	3	3	0	3	3	3
Total.....	494	137	357	297	137	163

¹ Includes all cellular ships with ro-ro capability.

² Includes only fully containerized vessels. Part containerships not included.

Now, in the Pacific, the third flag carrier capacity has jumped from 33 percent in 1973 to 40 percent now and in all likelihood will go over 45 percent by the end of the year. In one other area, in containerized vessels alone, a foreign flag operations in U.S. trade has jumped from 50 in 1970 to 210 in 1974. I think these implications are rather ominous and that's what we are concerned about. If we do not get some kind of relief, American flag shipping of the type we are discussing here will be routed from the seas. One by one, these ships will be knocked off and I submit, my own personal view is that is one of the obvious intentions of some of the discriminatory rate practices that we are discussing here. And we have no other place to go but to the Congress of the United States.

We have no relief. We are fighting this thing with our hands behind our back. And I think an example of the kind of situation we are in was demonstrated this morning when the representatives of the State Department made a number of misleading comments to the effect that we can be relieved from the FMC under the present ground rules.

That's not the case. If it were, we would not be considering this very fine piece of legislation here this morning.

Thank you.

Senator INOUE. Thank you. I believe you are aware that the Port of Seattle has submitted a proposed amendment to this bill to prevent third-flag carriers from avoiding this legislation by diverting trade from American ports to foreign ports. Have you any comment on that amendment?

Mr. HEINE. Yes. I am familiar with that. I just learned of it in the last 24 hours and we think that their information is well-founded. Because we see the possibility where cargo could be diverted to a neighboring foreign port up in Canada and be perhaps a device or a loophole to evade the authority of the FMC. A suggestion has been made by counsel for the Port of Seattle whereby they think this loophole could be corrected. We have read this over and we have no objection to the inclusion of this as an amendment.

Senator INOUE. As you have indicated in your statement, this rather unusual panel made up of labor and management sitting together, voicing support for this measure. I know a very dear friend of mine sitting here. Mr. Moody, would you care to say something?

Mr. MOODY. Thank you, Mr. Chairman. I assure you that when the legislation that affects the jobs of our members we're on the same side with management and that's the case here. Mr. Heine spoke early today about dumping. The matter of dumping has been of great concern to all of American labor. But as far as the maritime workers of this country are concerned, we were the first to suffer from this practice and we have been suffering from it ever since the end of World War II. We think that this legislation is desperately needed if we are going to prevent the continuation of this practice by the third-flag carriers. We hope that the Committee would give it a favorable recommendation and the Senate would pass it.

Senator INOUE. I would like to point out that the subcommittee is very eager to act on this measure expeditiously and so as I indicated, we would like to close the record. If any of you here would like to submit further statements in support or in opposition, I would like to receive them by this weekend if at all possible.

The subcommittee intends to hold an executive session at the first available date, and if it is the wish of the Committee to report this to the Senate expeditiously.

Once again I would like to thank all of you ladies and gentlemen who took part in the hearings this morning. We appreciate your presence and your assistance.

Thank you very much.

[Whereupon, at 12:15 p.m., the hearing was adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF JESSE M. CALHOON, NATIONAL MARINE ENGINEERS BENEFICIAL ASSOCIATION

My name is Jesse M. Calhoun, and I am President of the National Marine Engineers Beneficial Association. I submit this statement in support of S. 868. Over the last several years, our Union has watched the intrusion of the Third Flag fleets, and particularly of the state owned fleets into the American foreign commerce. Over the years, the American flag liner industry has fought against overwhelming odds to even survive. Since 1950, with the cooperation of our Union and other Unions, the American liner industry has been able to develop innovations in the foreign trade which has made it competitive on the open market. We feel today, with the Merchant Marine Act of 1970 and the other Acts, that the U.S. liner segments can compete and hold its own with legitimate competition. However, no industry can survive against predatory "dumping" tactics and that is exactly what is going on in the carriage of American foreign trade.

Irresponsible Third Flag carriers have come into our free trade and created chaos for the legitimate carrier, whether he is American flag or otherwise. More importantly is the state owned carrier, who uses his Merchant Marine for political purposes, whose tactics are even worse. We firmly believe that the legislation that you are considering today will go a long way to protect against these tactics and keep competition fair and open.

We strongly urge the prompt enactment of S. 868.

STATEMENT OF JOHN F. O'CONNELL, PRESIDENT, NATIONAL ASSOCIATION OF ALCOHOLIC BEVERAGE IMPORTERS, INC.

The National Association of Alcoholic Beverage Importers, Inc. (NAABI) is the only trade association which represents the importers of distilled spirits, wines and beers on a nationwide basis. Slightly more than 100 such importers hold membership in this Association.

NAABI urges that the Senate Subcommittee on Foreign Commerce and Tourism decide not to approve Senate Bill 868 for the following reasons:

1. If S. 868 were to become law it would virtually eliminate all competition for the shipping conferences which even now enjoy near monopoly control of the freight rates for shipments of alcoholic beverages from European countries to the United States.

While NAABI does not oppose the existence and operation of shipping conferences per se, it does denounce the monopolistic control of freight charges for trans-ocean carriage of alcoholic beverages imports into this country.

NAABI members have dealt with—indeed, still deal with—conference members for many years. Until recent years there was evident a willingness of conference members to deal with NAABI members as businessmen in a free enterprise environment usually deal with one another. The spirit of give-and-take could be said to have characterized their negotiations.

This spirit has in recent years become a casualty of the growing monopolistic powers of the conferences, who appear to resent efforts of NAABI members to discuss and negotiate freight rate increases. New rates have been filed without prior consultation with NAABI, actions accompanied and permeated by an attitude of take-it-or-leave-it.

The fact is that in renegotiation of existing contracts with conferences, NAABI has had no viable alternative to "taking it"—and the conferences knew it and acted accordingly.

Monopoly has traditionally had overtones, at least, which are quite distasteful for American business and American consumers. The word connotes unbridled power which is inconsistent with the principles of the free enterprise system which is the base and fulcrum of the U.S. economy. And the thought persists that "power corrupts," in the words of an old and respected adage.

2. While NAABI recognizes that the objectives of S. 868 are laudable, it is apparent that the conferences are using the authors' laudable purpose to cloak their monopolistic objectives to destroy all viable competition.

3. The provision that "non-national" flag carriers cannot charge rates lower than those of national flag carriers unless they are compensatory is, in and of itself, an arbitrary criterion.

4. Discrimination against the non-national carriers runs through the Bill. Rejection of lower rates by non-national flag carriers "pending a final determination by the Commission" could take years for resolution.

5. The standard for out-of-hand rejection of rates is vague and uncertain, and the language that a rate is "probably not compensatory" in the "discretion" of the Federal Maritime Commission hardly provides a criterion that is objective, readily ascertainable and just.

6. The Bill appears to run counter to the Congressional intent in the Shipping Act which seems to contemplate the existence and viability of non-conference competition. In our view, the enactment of S. 868 will force the non-national carrier into the conferences or out of business.

7. Importers and exporters should be able to avail themselves of non-conference competition in their efforts to operate their own businesses at a profit and to keep consumer prices at non-inflated levels.

8. The present is a most inopportune time to move legislatively in support of monopoly when the prevailing sentiment in the public and private sectors is leading in the direction of reducing or eliminating monopolistic powers wherever found.

9. We have no brief for shipping operations by national monopolies or in opposition to protecting this country's merchant marine from foreign aggression. We do, however, oppose strongly the use of measures aimed at that objective as a cloak to protect—indeed, to foster the expansion of the existing powers of—the virtual monopolies that exist in the form of shipping conferences.

All of which is respectfully submitted in support of this Association's opposition to S. 868.

STATEMENT OF RICHARD T. WELSH, RETLA STEAMSHIP COMPANY

My name is Richard T. Welsh, and I am Vice-President-Traffic of Retla Steamship Company, headquartered in Long Beach, California. This statement is submitted by Retla for the consideration of the Senate Commerce Committee with respect to S. 868, a bill providing minimum rate standards for nonnational carriers in the foreign commerce of the United States.

Retla operates as a common carrier in the foreign commerce of the United States, and although controlled by U.S. citizens, Retla utilizes time-chartered vessels of various foreign registries to conduct its business. Thus Retla would be a nonnational flag carrier under the bill with respect to mostly all trades it serves. For the reasons outlined below, Retla would be adversely affected by the enactment of S. 868 even though its common carrier operations can in no way be characterized as predatory or detrimental to United States commerce.

The common carrier operations of Retla (conducted under tariffs filed with the Federal Maritime Commission) are generally confined to the inbound trades of the United States, principally from the Far East and Europe. Steel products (sheet steel in coils, semi-fabricated steel products, etc.) and wood products (plywood, hardwood lumber, and semi-fabricated lumber products) are by far the major commodities carried by Retla in these inbound trades. As a specialty carrier of steel and wood products, Retla transports these products in bulk carriers, not the conventional liner-type breakbulk and intermodal vessels used by general-cargo common carriers. In outbound trades, Retla uses these same bulk vessels to transport bulk commodities, the carriage of which is not subject to the Shipping Act, 1916.

Because of its specialized common carriage, Retla is able to charge rates on steel and wood products which are somewhat below the rates of general cargo carriers, whether these carriers are national or nonnational flag carriers in a given trade. That specialization in any commercial activity effects cost savings for both a seller and a buyer is an economic principle which I think is self-evident. In Retla's case, specialization results in operating costs lower than the costs of general cargo carriers because—

(a) lower stevedoring rates can be negotiated; stevedoring rates are primarily based on longshore labor and the handling of one or two commodities in volume allows for labor utilization better than that of general cargo carriers;

(b) better stowage is experienced; the volume shipment of one or two product types results in a lower broken stowage factor, thus effecting better vessel utilization;

(c) less cargo is damaged; a specialty carrier's knowledge of the handling characteristics of specific commodities results in the filing of fewer cargo claims;

(d) lower-cost vessels are used; steel and wood products (both are neobulk commodities) can be carried in bulk vessels, which are less expensive to charter or operate than liner vessels.

It is thus apparent why Retla's steel and wood rates to its customers are lower than those of its general-cargo competitors. Since there are very few other operators specializing in steel and wood carriage, under S. 868 Retla's rates would be measured against the steel and wood rates of national-flag general-cargo carriers, which rates are invariably higher than Retla's. Retla would therefore be in a position of having to justify each of its steel and wood rates in each of the bilateral trades it serves. In effect, Retla would have to justify its very existence before an agency which is empowered under the bill to reject its rates indefinitely.

S. 868 and the rhetoric surrounding it, are apparently aimed at the cut-rate practices of certain general cargo carriers which may be controlled and subsidized by foreign governments. Retla, in common with many other nonnational flag carriers which would be affected by S. 868, is purely a private enterprise which is not and cannot be the economic or foreign policy tool of any third-flag government. This legislation creates a bureaucratic web ensnaring private carriers not guilty of any of the abuses which the bill is designed to eliminate.

Indeed, S. 868 would have the anti-consumer, anti-competitive effect of reducing competition from independent foreign-flag lines by subjecting these lines to the burden of justifying their rates (in nonnational trades) at lengthy Federal Maritime Commission hearings before the rates can be applied. And it is important to remember that all foreign-flag common carriers are nonnational flag carriers under the bill except in the single bilateral trade between the U.S. and the country of vessel registry. Nonnational flag conference carriers, however, do not need to justify any rates under the bill because these carriers are charging conference rates, adhered to by national flag conference members. It is the independent foreign-flag carriers, and their customers, who are injured by this bill. While the rates of independent lines are indefinitely suspended, the trade is denied the benefits of their competition, and this denial is permanent if the Federal Maritime Commission—with the help of conference interveners—decides that an independent's rates are not compensatory on a "commercial cost basis." Indeed, the standards under which the Federal Maritime Commission makes a determination that a rate is or is not justified by "commercial cost" are unarticulated in the bill and in regulatory law generally. The Commission thus has wide latitude to fashion its own standards of compensatoriness, with the consequence that an independent line has no idea, in advance, whether a particular rate will meet the unarticulated test.

It must be recognized that S. 868 would severely disrupt the delicate balance between conference and nonconference competition which the Congress struck in the 1961 amendments to the Shipping Act. Then, the Congress deliberated long and hard to come up with a formula that would retain a modicum of independent competition in the conference-dominated shipping industry. The harm that S. 868 would cause consumers and independent carriers such as Retla far outweighs the advisability of handing conference lines yet another anticompetitive device to add to their already-sizable array, made possible by shipping legislation as it now exists.

For the foregoing reasons, Retla urges the Committee not to favorably report S. 868.

STATEMENT OF GEORGE K. ELIADES, EXECUTIVE VICE PRESIDENT, IMPORTED HARDWOOD PRODUCTS ASSOCIATION, INC.

Mr. Chairman: Thank you for this opportunity to allow the Imported Hardwood Products Association (IHPA) to submit testimony on S. 868, a bill "To provide for minimum rate provisions by non-national carriers in the commerce of the United States, and for other purposes." My name is George K. Eliades and I submit this statement to you as Executive Vice President of IHPA, Arlington, Virginia, on behalf of the membership as the statement of all concerned.

The Imported Hardwood Products Association, Inc., is a national trade association representing 113 active regular members employing many thousands of people in the United States. The regular members of IHPA represent more than 75 percent of all hardwood products imported annually into this country.

In addition, IHPA has 120 associate member firms involved in serving the imported hardwood industry such as shipping companies, customs brokers, warehouse companies, ports and organizations engaged in the use, processing and/or resale of imported hardwood products which includes hardwood plywoods, veneers, lumber, core stock, doorskins, wood turnings and hardboard.

While the Imported Hardwood Products Association appreciates the apparent thrust of S. 868, which is concern about priorities which pose a serious threat to the stability of U.S. and world shipping services, we question the need for new legislation to prevent predatory rate practices in U.S. foreign trade, and harbor strong reservations about certain provisions of S. 868.

In view of the fact that the Shipping Act of 1916 specifically provides authority for the Federal Maritime Commission (FMC) under Section 18(B)(5) to disapprove any rate filed by a common carrier it deems so unreasonably high or low as to be detrimental to the commerce of the United States, the IHPA believes new legislation in this area should not be enacted until full use of existing legislation proves inadequate. By utilizing this existing legislation in an expeditious manner, the FMC could take action to disapprove rates it finds predatory.

On the other hand, we strongly object to certain features of S. 868 as now worded. Specifically, S. 868 would eliminate competition from independent non-conference carriers which is necessary for reasonable levels of ocean rates and essential to the import and export of forest products. Generally, forest products are low rated cargo which conference carriers are interested in only when better paying cargo is not available. When other cargo is available, the rates on these products are at such levels as to make it impossible to ship forest products with conference carriers and be competitive in the marketplace. Too, when better paying cargo is available, conference carriers often refuse to carry forest products. In addition, "third flag" non-conference carriers have in the past been more responsive to the needs and desires of the industry in importing and exporting forest products. It is a fact that "third flag" carriers are better suited to transport large bulk movements such as lumber and plywood because "third flag" lines often operate smaller break-bulk ships which can accommodate non-containerized cargo, facilitating shipments and customer receipts.

Most national flag lines offering services between the U.S. and offshore markets and sources of supply are almost exclusively containerized. While container ships are an innovative mode of water-borne transportation, they are not always best suited for large bulk movements such as forest products entail.

Too, independent non-conference carriers often offer the only service in and out of American "outports" such as Coos Bay and Astoria. This fact, coupled with transshipment and receipt of goods through some Canadian ports, will hurt many segments of the American economy, including port communities, related industries and longshoremen. No artificial controls are placed on the maritime industry of Canada against "third flag" carriers by the Canadian government.

The proposed language in S. 868 would have a negative impact on the overall growth of United States' importing and exporting trade if American business is forced to operate in the face of rates unilaterally established by steamship conferences by inherently diminishing competition. The bill would align rates at a given level and place the burden of justifying rates on those filing lower rates. This will produce a natural tendency for rates to move upward, not downward. The application of this legislation would eliminate competition based on divergence of rates and would remove a restraint against monopolistic control. It, in effect, amounts to a trade barrier at a time when American business is negotiating through GATT for removal of trade barriers.

Passage of S. 868 would cripple American businesses dependent upon "third flag" independent, non-conference carriers, such as the wood products industry, because foreign competition will not and practically cannot be prohibited from using "third flag" service.

While eliminating competitive checks on ocean cartel ratemaking, passage of S. 868 would not provide for regulations or other controls of the levels of conference rates. Anytime an independent rate would fall below the lowest corresponding conference rate, the independent rate would be subject to suspension by the Federal Maritime Commission. This would be true even when an independent rate remained unchanged and a conference rate was increased. The independent rate could be suspended indefinitely while litigation continued in determining if the independent rate was "compensatory." By the time litigation on one rate is completed, the next rate suspension and litigation would begin. Clearly, S. 868 is an anti-competitive measure designed to suppress and eliminate non-conference

rate competition. It doesn't matter whether independent rates are proven to be compensatory or not; if independent rates are suspended pending litigation, the suspension itself destroys the rate competition.

While aimed at carriers allegedly charging predatory rates, such as government-owned Eastern-bloc flag lines, passage of S. 868 would eliminate all "third flag" competition instead of addressing itself specifically to the problem of communist flag competition. The proposed language would, in effect, eliminate U.S.-foreign trade in wood products with the disappearance of independent carriers flying friendly or neutral flags.

It is important at this point to distinguish that S. 868's impact is not on "third flag" carriers generally, but on non-conference carriers, most of which are "third flag." "Third flag" carriers who are now members or become members of ocean conference cartel rate groups will not be affected by S. 868 because such carrier rates will obviously be identical to conference national flag rates.

In conclusion, we believe the practice of setting rates is best left to the carriers involved subject to appropriate government review. Secondly, to protect "National" flag ocean carriers from the threat of alleged predatory rates of government-owned Eastern-bloc carriers, the Federal Maritime Commission could deny any rate not lower than the lowest privately-owned carrier in the same trade under existing legislation. And lastly, we believe passage of S. 868 would have a destabilization effect in U.S. trades and world markets rather than achieving the stated objectives. We respectfully urge the Committee to sustain our opposition to passage of S. 868.

We appreciate the opportunity to express our views.

STATEMENT OF GEORGE F. GALLAND ON BEHALF OF ATLANTIC CONTAINER LINE, LTD.

1. My name is George F. Galland. I am a member of the law firm of Galland, Kharasch, Calkins & Brown, 1054 Thirty-first Street, N.W., Washington, D.C. This statement is submitted on behalf of Atlantic Container Line, Ltd. (ACL) in my capacity as attorney for that carrier.

2. ACL requests that if S. 868 is reported to the Senate, it be reported with the following amendment, to be inserted at line 25 of page 3, immediately following the definition of "national-flag carrier."

"A multinational consortium is a national-flag carrier if—

(a) it includes members who are citizens of or incorporated in two or more countries, and

(b) its fleet consists of two or more ships, and

(c) at least one ship in its regular fleet is registered in each country of which a member of the consortium is a citizen, or in which the member is incorporated, and

(d) the 'other country' is the country of registry of at least one ship in the regular fleet."

3. The amendment relates to a problem which concerns ACL as a multinational consortium. ACL is a Bermuda corporation whose shares are held by six European shipping companies:

Cunard (British), French Line (French), Intercontinental Transport (formerly Holland America Line—Dutch), Swedish Transatlantic Line (Swedish), Swedish American Line (Swedish), and Wallenius Line (Swedish). The ACL fleet consists of ten combination container/roll on-roll off ships of which two are under British registry, two French, two Dutch, and four Swedish. ACL operates various services between United States North Atlantic ports and the four countries in which its ships are registered, and also between the United States and Canada, Belgium and Germany.

4. The ACL fleet consists of two groups of ships of somewhat different size, speed, and design characteristics. These ships are assigned to the several ACL services on the basis of suitability, and without regard to flag. The result is that a ship registered in a particular country may operate in a service which does not touch that country; or it may touch the country of registry plus one or more other countries. Consequently, any particular ship in the ACL fleet might be a "non-national" vessel under the definition of that term in S. 868. It might be nonnational as to all of the countries it serves if it does not serve the country of its registry at all; or it might be nonnational as to countries it serves in addition to the country of its registry.

5. ACL is a member of the rate-making conferences on the routes it serves, and is committed to the philosophy of rate-making under conference auspices. ACL is not engaged in any of the rate-making practices which S. 868 condemns or seeks to control. Nevertheless, prudence requires ACL to anticipate that it could find itself operating in some trades, under some circumstances, outside the conference-system. This could happen, if for no other reason, because conferences sometimes go out of existence, leaving no available conference sanctuary. Further, even under conference auspices, some rates are purposely left "open"—meaning that conference has relinquished control over them—in which event the open rates are fixed on a strictly competitive basis.

6. In any case where ACL might find itself operating outside the conference system for any reason, or publishing open rates within the conference system, its competitively-adopted rates could trigger the machinery established under S. 868 and lead to the enforced cancellation of ACL tariffs insofar as ACL might be regarded as a nonnational carrier. Cancellation of a common carrier's tariffs puts the carrier out of business under Section 18(b) of the Shipping Act.

7. Without the amendment which ACL proposes, ACL would be a nonnational carrier under S. 868 in circumstances such as those suggested in paragraph 4 above. For example, a Swedish ship serving only Holland and France would be non-national in trade between those countries and the United States. A Swedish ship serving Sweden, Holland, and France would be national as to Swedish/United States trade but nonnational elsewhere.

8. The amendment would insure national-flag status for all vessels operating in the regular ACL fleet, with respect to their service between the United States and any of the four countries under whose laws the ACL member lines are organized, provided at least one ACL ship was registered in each such country. The amendment would thus recognize a Swedish vessel sailing in the regular ACL fleet even if it called at no Swedish port, provided it did call at ports of any of the other three countries represented in the consortium (France, U.K., Holland). (ACL also serves Belgium, Germany, and Canada, but the amendment would not make ACL vessels national-flag carriers as to those countries.)

9. The amendment finds justification in the unitary character of the ACL structure. The company was organized under Agreement 9498, approved by the Federal Maritime Commission pursuant to Section 15 of the Shipping Act. The preamble of that agreement recited that each of the original parties was constructing a new ship of such size and characteristics "that each will have to load at several ports served by the parties if the vessels' inherent operating economies are to be realized." It provided also that the objectives of the parties required "a cooperative arrangement among the parties looking towards coordinated management of their vessels and all related activities." It would be impossible to achieve the contemplated coordination and economy of operation if particular ships in the ACL fleet were tied to particular countries or excluded from other countries represented in the consortium. Accordingly, the amendment is so drafted that if at least one ship in the ACL fleet is registered in each consortium country, any ship in the ACL fleet would be recognized as a national-flag carrier of any of the consortium countries.

10. ACL believes that the proposed amendment is consistent with the objectives to which S. 868 is addressed and urges that the amendment be included in the bill if reported to the Senate.

STATEMENT OF GEORGE F. GALLAND ON BEHALF OF ATLANTIC GULF SERVICE

1. My name is George F. Galland. I am a member of the law firm of Galland, Kharasch, Calkins & Brown, 1054 Thirty-first Street, N.W., Washington, D.C. This statement is submitted on behalf of Atlantic Gulf Service (AGS) in my capacity as attorney for that carrier.

2. AGS requests that if S. 868 is reported to the Senate, it be reported with the following amendment, to be inserted at line 25 of page 3, immediately following the definition of "national-flag carrier."

"A multinational consortium is a national-flag carrier if—

(a) it includes members who are citizens of or incorporated in two or more countries, and

(b) its fleet consists of two or more ships, and

(c) at least one ship in its regular fleet is registered in each country of which a member of the consortium is a citizen, or in which the member is incorporated, and (d) the 'other country' is the country of registry of at least one ship in the regular fleet."

3. AGS is an ocean common carrier in the trade between the United States Gulf ports and ports in northern Europe, with emphasis on Scandinavian countries—particularly Sweden and Finland. AGS is a Swedish corporation. Its stock is owned half by Swedish American Line and half by Finnlines. Its present fleet consists of six ships owned by Finnlines, but the composition of the fleet can change from time to time, and ships under the flag of Sweden (or another country) can readily be introduced as required. Both Finish and Swedish personnel serve in the direction and management of AGS. Because of its Finnish and Swedish ownership and other close connections with those countries, AGS falls within the concept of a multinational consortium.

4. AGS is a member of the conferences or rate agreements having jurisdiction of the trades it serves, and adheres to the rates prescribed under their authority. It does not engage in any of the practices which it understands that S. 868 is designed to prevent. Nevertheless, AGS, despite its dedication to the conference system, could find itself outside that system in various circumstances—for example, if a conference broke up—in which event each member would have to pursue an independent rate policy—at least until the trade was reorganized under conference discipline. In such event, any “nonnational” carrier could find its rates below the standard tolerated by S. 868—which could lead to rejection or de-filing of its tariffs. Without tariffs on file, the carrier could not operate.

5. Because of its dual Swedish/Finnish ownership and orientation, AGS believes that it should be recognized as a national carrier of both Sweden and Finland in trade with the U.S., when conducting such trade with either a Swedish or Finnish ship. Under the proposed amendment, it would be so recognized as long as it had at least one ship of each nationality in its regular fleet. The present fleet is exclusively Finnish, for reasons of commercial convenience, but as noted above, Swedish ships can be brought into the fleet, and will be whenever necessary. Consequently, under the amendment, AGS would have power to protect itself against the attributed status of a nonnational carrier in Sweden/Finland-U.S. trade.

6. While AGS advocates the proposed amendment if S. 868 is to be favorably reported to the Senate, it prefers that the bill be not reported and that the problem to which it is addressed be attacked by other means. AGS believes that if the bill passes, nonnational lines which are determined to undercut conference rates will do so by secret rebates payable abroad—a practice which the FMC has never been able to control. AGS believes that the only effective way to maintain a compensatory rate structure in U.S. foreign trade is through an effective dual rate system. In the AGS view, the type of dual rate contract authorized under Section 14(b) of the Shipping Act requires some changes in order to be fully effective, and AGS would support U.S. legislation to that end. It believes that passage of S. 868 would merely divert the attention of the Congress from the need for an improved dual rate system, without securing the reforms of ocean rate-making which the sponsors of the legislation hope to achieve.

STATEMENT OF ALFRED MASKIN, EXECUTIVE DIRECTOR
AMERICAN MARITIME ASSOCIATION

The American Maritime Association consists of 46 companies operating 127 American-flag merchant ships in the foreign and domestic commerce of the United States.

Sixty-one of these vessels are containerships operating in the trans-Atlantic and trans-Pacific trades, as well as on other trade routes in U.S. foreign commerce.

While the enactment of S. 868 would have its most immediate effect on the containerships, all the members of AMA endorse the legislation which, as Senator Inouye stated in introducing the bill on February 27th, would provide for minimum rate provisions by non-national carriers in U.S. foreign commerce.

I shall not burden the record by reiterating the circumstances which have given rise to the need for this legislation, nor repeat the beneficial effects which its enactment would have upon the U.S. liner fleet; for these considerations were well enunciated by the proponents of the predecessor bill S. 2576, on which hearings were held by the Senate Commerce Committee in December of 1973, and were set forth in S. Report 93-1426, submitted on December 20, 1974.

I would, however, state, with respect to S. 868, that in the view of AMA the need for this legislation has intensified since the end of last year, since all reports reaching this country indicate that the Soviet Union has been stepping up its efforts to increase its container-carrying capacity and to achieve its avowed goal of 300 containerships by 1980.

The reports indicate that these vessels—a substantial number of which already are under construction in Soviet bloc and other European shipyards—will have the performance capabilities of the most modern Free World intermodal tonnage; and their completion undoubtedly will permit the U.S.S.R. to penetrate even more deeply into the trade routes of the world, including those trades which were the subject of most concern during the hearings on S. 2576.

The first of the newly-commissioned ships, for example, reportedly assigned to the West Coast-Far East route served by the Far Eastern Shipping Company of Vladivostok (FESCO), some of whose competitive practices were detailed during the 1973 hearings; and the building program also will enable the Soviets to upgrade the service between U.S. East Coast ports and the Continent, begun some 18 months ago by the Baltic Shipping Company of Leningrad, as well as to increase their participation in other trades in which they are now either non-existent or a negligible factor.

Moreover, the completion of these vessels and their entry into the various trade routes of the world undoubtedly will exacerbate the competitive pressures which led to the introduction of S. 2576 in October of 1973; for, as I believe the hearings on that bill made clear, the normal competitive pressures which exist in the shipping world become distorted when one views the state-dominated fleets of the Soviet bloc nations which are motivated by the desire to acquire foreign currencies and to achieve other objectives which are political rather than profit-oriented.

The impact on the western nations of such competition and particularly on the United States, interestingly enough, has perhaps been set forth most forthrightly, not by an American ship operator, but by the newly-elected president of the Common Market Shipping Association (CAACE), Karl-Heinz Sager, who, speaking recently at CAACE's annual meeting in Hamburg, with respect to the East European Council for Mutual Economic Assistance (COMECON), referred to the "tremendous expansion" of the East European merchant fleets, and warned that their practices on many trade routes represent the most serious threat to the viability of the western cargo liner operators.

Citing the practice of these fleets to "usually pick the best paying cargo and leave the rest to the liners which cater to the entire trade," Mr. Sager identified the trade route between the U.S. West Coast and Far East as a "classic example" of this behavior, and went on to assert that "since Soviet competition cannot be fought with commercial means, state regulatory measures are necessary."

This is precisely the purpose of S. 868; and the members of AMA therefore hope that the Senate Commerce Committee will favorably report this bill promptly, and speed it on its way to enactment.

STATEMENT OF THE COUNCIL OF EUROPEAN AND JAPANESE NATIONAL SHIPOWNERS' ASSOCIATIONS

1. To the extent that the principles of Bill S. 868 are essentially the same as in Bill S. 2576, introduced in the last Congress, CENSA wishes to underline its support for the objectives which lie behind it.

2. CENSA, as may be known, comprises the National Shipowners' Associations of Belgium, Denmark, Finland, France, Federal Republic of Germany, Greece, Italy, Japan, the Netherlands, Norway, Sweden and the United Kingdom, together with individual lines and international groups operating in the foreign commerce of the United States. CENSA shipowners own some 50 percent of the world's gross registered tonnage.

3. Its membership comprises both conference and non-conference lines, nearly sixty of which are non-national carriers for the purposes of the Bill. All lines, however, whether conference or non-conference, national or non-national, have a keen interest in the Bill, although that interest may stem from different factors.

4. CENSA is very concerned about the shipping policies of state trading countries, the rate dumping practices of whose enterprises pose a serious threat, not only to Western shipowners but to the stability of world liner trades and, therefore, the commerce of all major trading nations.

5. Whilst CENSA believes that governments should only be involved in commercial aspects of shipping to the least extent necessary, such practices call for effective action by them, if possible on a co-ordinated basis. Thus, CENSA supports any legislation directed solely at preventing non-commercial practices by non-national lines resulting from measures taken by their governments, agencies or authorities.

6. Time has not permitted CENSA to formulate other views on the provisions of the Bill. It is nonetheless grateful for the opportunity to put forward these views, even if limited.

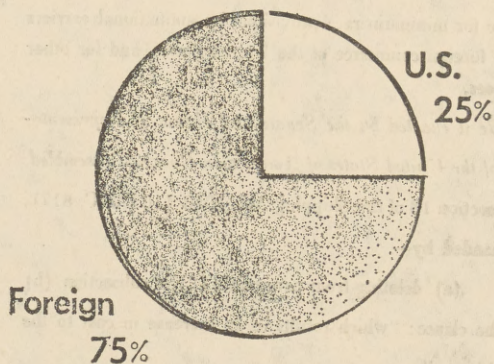
This material is transmitted by Peter G. Sandlund, 919 18th Street, N.W., Washington, D.C., who is registered under the Foreign Agents Registration Act of 1938 as amended, at Washington, D.C. Representative of the Council of European & Japanese National Shipowners' Associations, 30-32 St. Mary Axe, London EC3A 8ET, England. This material is filed with the Department of Justice where the required registration statement is available for public inspection. Registration does not indicate approval of this material by the United States Government.

[The following was referred to on p. 47:]

AN ARGUMENT FOR FAIR COMPETITION

(Produced on behalf of the American flag liner industry)

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



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

SOLVING A SERIOUS INEQUITY

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

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

94TH CONGRESS
1st Session

S. 868

IN THE SENATE OF THE UNITED STATES

FEBRUARY 27 (legislative day, FEBRUARY 21), 1976

Mr. ISHAYE introduced the following bill; which was read twice and referred to the Committee on Commerce

A BILL

To provide for minimum rate provisions by nonnational carriers in the foreign commerce of the United States, 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 18 of the Shipping Act, 1916 (46 U.S.C. 817),

4 is amended by—

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

8 (b) deleting the second sentence of said paragraph
9 (2), which reads: "Any changes in the rates, charges,
10 or classifications, rules, or regulations which result in a

II

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

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

The Bill does not bring under regulation non-regulated carriers. Nor does it in any way affect the ships of any nation in its own trade routes with the United States.

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

RATE DESTRUCTION FOR POLITICAL PROFIT

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

In the words of Pravda, the Soviet Communist Party's own newspaper, on November 4, 1974:

"Moscow is as much interested in the political profit as it is in shipping revenues."



PRAVDA
NOVEMBER 4, 1974



"... Moscow is as much interested in the political profit as it is in shipping revenue."

Most countries subsidize their merchant navies. They do so to underpin them in their own trades or to make them competitive in world trade. But some governments use huge subsidies basically to support their fleets in "raiding" trades other than their own for political purposes.

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

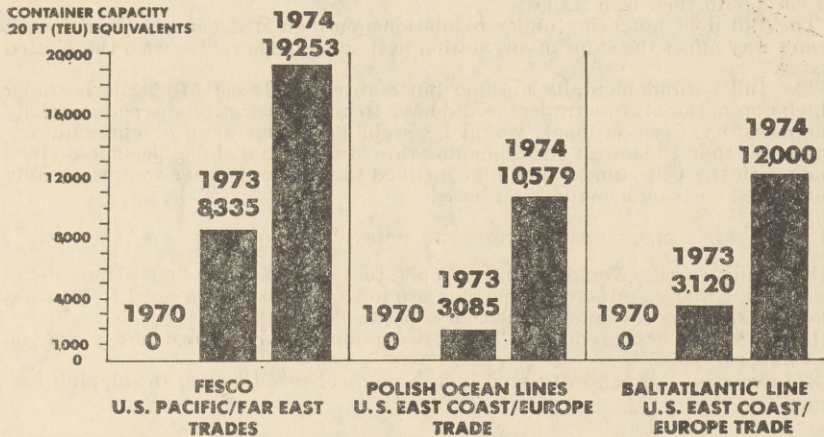
The Bill is intended to create a compromise. It does not dictate that nonnational competition be forced to establish rate parity with the national lines serving trading nations in their own trade, but rather it requires that any proposed rate lower than the lowest national flag line rate be justified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

ALARMING CROSS TRADE GROWTH

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

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

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



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

UNDERCUTTING

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

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

In 1973, in the U.S./Japan trade, rates of U.S. and Japanese flag carriers on TV sets, toys, and bicycles were \$45.00, \$42.00, and \$36.00 respectively; FESCO's rates on those commodities were \$38.25, \$33.00, and \$31.00 respectively—undercutting from 13.8 percent to 21.4 percent.

RATES, UNITED STATES/JAPAN TRADE

[Rates per revenue ton]

	National lines	FESCO	Undercutting (percent)
TV sets.....	\$45	\$38.25	15.0
Toys.....	42	33.00	21.4
Bicycles.....	36	31.00	13.8

1973 FESCO electronic rate slashing, eastbound Japan/United States: ¹	
Original national flag rate	\$49.50
Original FESCO rate	\$43.50
FESCO discount (percent)	12
Reduced national flag rate	\$45.00
New FESCO rate	\$38.25
New FESCO discount (percent)	15

¹ Rates per revenue ton.

One might properly wonder whether the non-national operators are merely reducing selected rates that are on the high side to begin with. Events point in quite another direction. In early 1973, FESCO had been operating for about six months in the Japan/U.S. trade, with the eastbound electronics rate 12 percent below the applicable rate of national carriers. Feeling the adverse effects of that reduced rate, the national carriers reduced their rate to a level of \$1.50 per revenue ton above the FESCO rate, which was 3.4 percent above the FESCO rate. Effective six days later, FESCO slashed its electronics rate by yet another 12 percent, to a level 15 percent below the reduced rate of the national lines.

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

RATES, UNITED STATES/WEST GERMAN TRADE (EASTBOUND)

[Rates per revenue ton]

	National flag	Polish ocean lines	Undercutting (percent)
Tobacco	\$75.75	\$56.00	25.9
Rags	70.00	55.75	20.4
Plastic sheets	55.00	39.75	27.7
Asphalt shingles	58.50	38.75	33.8

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

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

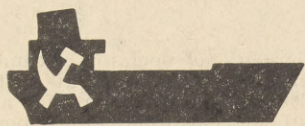
COMMISSION REPORT

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

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

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

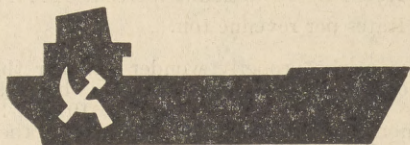
SOVIET MERCHANT FLEET AND GROWTH IN TONNAGE



1960

4.9 MILLION DWT.

1345 VESSELS



1974 (JUNE)

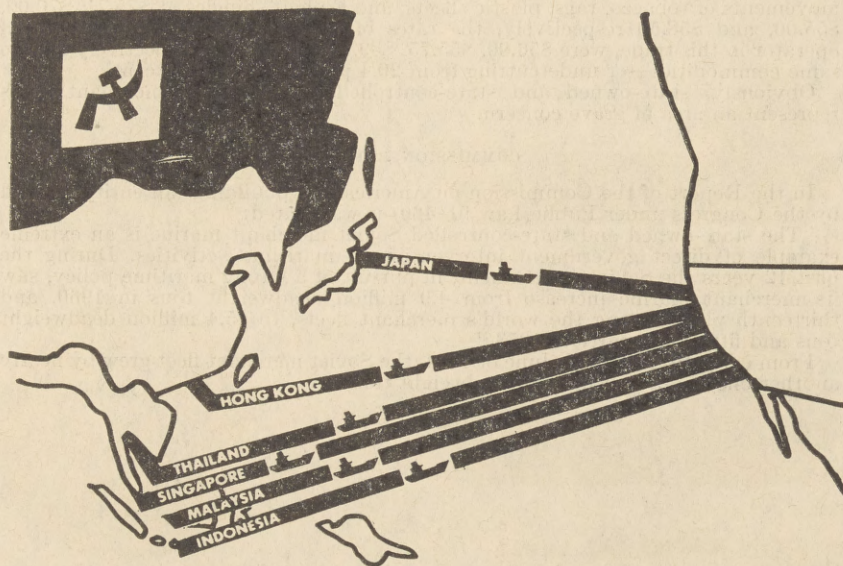
16.8 MILLION DWT.

2306 VESSELS

The Report continues:

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

Since that time, FESCO has instituted non-national service between Southeast Asia and the United States West Coast and now has ships 17 engaged in U.S. West Coast Transpacific service, and not one of those vessels calls at a Russian port. Along with some 40 other U.S. and foreign flag shipping companies, FESCO-Pacific operates outside every existing Transpacific Conference.



And the Report goes on to say:

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

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

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

U.S.S.R. merchant liner type vessels on order August 1974: Dry cargo vessels number 210—world rank 1st (by tonnage); container vessels number 29—world rank 2nd (by tonnage).

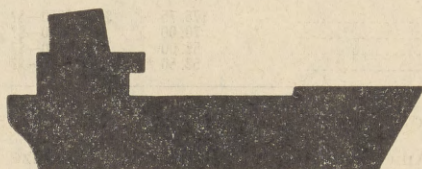
This is but one example of the growth and scope of state-owned competition that faces us.

RESTORING FAIR COMPETITION

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

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

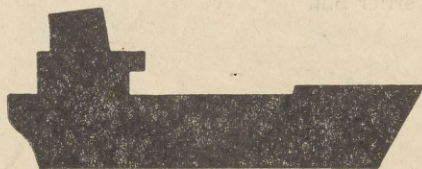
GOALS OF NATIONAL VS. NON-NATIONAL LINES



**U.S. AND OTHER
NATIONAL FLAG LINES**

GOALS

**RATES
MUST COVER:
PROFIT, CAPITAL
FOR
RE-INVESTMENT**



NON-NATIONAL LINES

GOALS

**HARD
CURRENCY/
POLITICAL
ADVANTAGE**

With non-national carriers continuing to seek control of the seas, the only logical outcome, in addition to the disappearance of many national flag lines, would be the complete dependence upon non-national carriers for all ocean going commerce. It would mean the dominance of the seas by the FESCO's and their counterparts.

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

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

GRAVE ALTERNATIVES

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

American seamen will have fewer and fewer ships to sail.

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

And American shipyards will have less and less to build.

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

U.S. TRADE ROUTES—FUTURE RATES?

[Rates per revenue ton]

	Current national flag rates	Future non-national flag rates
Tobacco.....	\$75.75	\$100-\$200—\$?
Rags.....	70.00	100-200—\$?
Plastic sheets.....	55.00	100-200—\$?
Asphalt shingles.....	58.50	100-200—\$?

ACTION

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

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

94TH CONGRESS
1st Session

S. 868

IN THE SENATE OF THE UNITED STATES

FEBRUARY 27 (legislative day, FEBRUARY 21), 1975

Mr. ISOUYE introduced the following bill; which was read twice and referred to the Committee on Commerce

A BILL

To provide for minimum rates
in the foreign
purpo

1 B
2 lines of Congress assembled,
3 That section 801 of the Shipping Act, 1916 (46 U.S.C. 817).

4 is amended by—

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

8 (b) deleting the second sentence of said paragraph
9 (2), which reads: "Any changes in the rates, charges,
10 or classifications, rules, or regulations which result in a

II

QUESTIONS AND ANSWERS ON S. 868

Question 1.—What is the meaning of the phrase “compensatory on a commercial cost basis?”

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

Question 2. How will the FMC choose to define and use the term “compensatory on a commercial cost basis?”

Answer. The same way it determines the meaning of any Shipping Act term.

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

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

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

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

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

Answer. Yes, any rate now in effect can be challenged upon complaint.

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

Answer. No—only those that are challenged.

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

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

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

Answer. Rates set under “open rate” rules would be subject to the same cost justifications applicable to any other non-national rate.

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

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

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

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

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

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

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

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

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

Answer. Non-national competition will not be removed if they can justify their lower rates. Once proven, their lower rates will offer plenty of competition in the U.S. trade.

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

Answer. No. S. 868 is not keyed to conference rates but to the rate of "any national-flag carrier" in the trade; there are many national flag non-conference lines in the U.S. foreign commerce.

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

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

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

Answer. There is a provision for lifting the suspension of a rate—furthermore, in the language of S. 868, suspension is not automatic.

Question 17. Will this bill eliminate non-conference lines . . .

- (a) by making them join the conference?
- (b) by making them meet conference rate levels?
- (c) by putting them out of business?

Answer.

No. See Answer 14.

No. See Answer 14.

No. See Answer 13 and 16.

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

Answer. The lack of an automatic suspension.

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

Answer. Because there is more than one non-national third flag carrier dumping capacity in U.S. trade routes.

Question 20. Will the bill affect "detente"?

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

Question 21. What should I do if I am in favor of the bill and would like to see it pass Congress?

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

TRANSPORTATION INSTITUTE,
Washington, D.C., March 13, 1975.

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

DEAR MR. CHAIRMAN: The Transportation Institute strongly supports the early and favorable consideration of S. 868, a bill which would significantly strengthen the safeguards against unfair and discriminatory rate practices by third-flag shipping companies operating on U.S. ocean trades.

The Transportation Institute which has as its members a number of U.S.-flag liner companies engaged on the major U.S. trade routes, is convinced that passage of effective legislation to halt the use of these extremely harmful shipping rate practices is necessary if the U.S. fleet is to retain its share of the world shipping market.

S. 868, which was introduced by Senator Daniel Inouye (D-HA), has already undergone extensive hearings in the last session of Congress at which the testimony overwhelmingly demonstrated the need for prompt passage of this legislation. The Transportation Institute congratulates the Senate Commerce Committee for its prompt action in again focusing attention on this important legislation early in this Congressional session. We feel that if the economic strength of the U.S. liner fleet is to be preserved, then legislation such as S. 868 must be one of the Congress' main priorities.

Of all the segments of the U.S. merchant marine, the U.S. liner fleet is the most modern and competitive. Many U.S. liner companies are able to operate without the assistance of Federal construction and operating subsidy. Yet, these companies, and even those receiving Federal subsidy assistance, are extremely vulnerable to unfair and discriminatory rate cutting practices that other world fleets resort to in order to gain a share of the lucrative U.S. liner market.

While the United States and its trading partners have been able to control the rate practices of their own national fleets, the United States liner trades have been subject to particularly flagrant violations of normal shipping practices by the tremendous number of third-flag non-national foreign carriers that participate in the U.S. trades. In this regard, the United States is particularly vulnerable because U.S. trades alone in the world are open to all companies that wish to participate. As a result, U.S. liner trades have become a dumping ground for the world's surplus foreign liner tonnage, all of which is operated at the most minimal rates.

The world's recent economic problems have further worsened the glut of liner tonnage in the U.S. trades so that the rate competition has grown more serious. Correspondingly, the rate abuses which have been prevalent in the past by third-flag non-national carriers have also increased.

What has long been needed to deal with this cutthroat competitive situation is the kind of legislation introduced by Senator Inouye which would give the Federal Maritime Commission the power to monitor rates charged by all carriers serving the United States and to step in to examine those rates which appear to have as their motive to drive out or destroy other competitors. Unless the Federal Maritime Commission is given these broadened powers to intervene in rate situations and to set minimal rates where necessary, it will remain unable to prevent third-flag carriers which may be operating outside the normal conference rate structure from dropping their rates so low that no U.S. operator, subsidized or not, can hope to compete.

The Committee's record in the last session of Congress is replete with examples of the fantastically low rates charged by these third-flag carriers in order to skim off the most lucrative cargoes. Often these third-flag rates are 10 to 20 percent below what any U.S. operator charges.

Another reason why the Federal Maritime Commission must be given new powers to control shipping rates such as provided through S. 868 is the recent entry in increasing numbers into the U.S. trades of State-owned Communist shipping companies for whom shipping rates bear no relation to commonly used accounting methods or procedures for reflecting the cost of doing business. For these countries, the shipping rates are whatever the government decides.

The Russian fleet operating on the U.S. West Coast is already one of the world's most modern and the Russians have announced plans to supplement this fleet with newer container vessels double the size of the existing vessels. In addition, the Russians have embarked on a program to build a large fleet of roll-on/roll-off liner vessels that will also likely be used on U.S. trades. The Russian liner fleet has been operating outside of the conference structure on the West Coast and has maintained rates significantly below those of any other shipper. When U.S. and other carriers have attempted to compete with the Russian liner fleet by also lowering their rates, the Russians have responded by a further round of rate reductions that have put them out of reach competitively.

For the U.S. fleet, which operates on a more narrow profit margin than any other fleet, such competition can only further weaken its financial strength and sap it of funds needed for new vessel construction. Should these companies succeed in driving out the U.S. fleet through the use of such rate practices, we shudder to think what would then happen to the shipping rates. It seems clear that the low rates these foreign carriers had once employed would be abandoned for much higher charges.

S. 868 would thus be a significant step towards a rationalization of the non-national liner shipping rates in the U.S. trades. It would protect the U.S. liner operator, thereby preserving a vital national economic and security asset and

yet would not prevent vigorous competition by the carriers that benefits the American consumer. However, it would insure that when competition becomes discriminatory and threatens to drive out U.S. shipping companies, the Federal Maritime Commission, the agency in charge of U.S. ocean trades, will have the power to act quickly and effectively to maintain minimal rates.

The Transportation Institute therefore urges the immediate passage by the Senate Commerce Committee of S. 868 and again commends your Committee for its prompt action on this important legislation which will be so beneficial to the nation's commerce and its merchant marine.

Sincerely,

HERBERT BRAND,
President.

[The following information was referred to on p. 48:]

RAGAN & MASON,
Washington, D.C., March 18, 1975.

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

DEAR SENATOR MAGNUSON: You have recently received a letter from the Pacific Lumber Exporters Association objecting to S. 2576, now S. 868.

It is not the purpose of this letter to ask you to do anything other than to be acquainted with the inaccuracies set forth in the subject letter. Obviously the Association has been misinformed as to the intent of the bill and indeed, this is clear by the reference to the bill number which was the bill number in the 93rd Congress. The bill was re-introduced in the 94th Congress by Senator Daniel K. Inouye, as S. 868.

Set forth below is a clarification of the erroneous concepts of the association. The points set forth are not set forth with any rancor, since it is certainly the Association's right and indeed duty to acquaint the members of Congress with what it feels may be ill-conceived legislation. It is, however, unfortunate that in this case they are in error. For ready reference we have numbered the remaining paragraphs that set forth the true position of the legislation.

1. The bill is not a rate-making bill. It merely states that the trade between two nations, as in a trade between the United States and another nation, that if a third flag carrier cuts the rate on a given commodity below the lowest rate of either the United States flag carrier or the flag of the other nations involved (both of which are referred to as the "national flag carrier") unless that rate of the third flag carrier is commercially compensatory, it can be rejected by the Federal Maritime Commission. The Federal Maritime Commission need not reject and indeed may accept the rate before a hearing if it felt reasonably certain that the rate will prove itself to be commercially compensatory. Examples of the third-flag activities are best found in the Soviet owned Far Eastern Steamship Company (FESCO) now operating on six trade routes between the United States West Coast to the Far East, i.e., Japan, Hong Kong, Malaysia, etc. and which Company in these services makes no calls whatsoever at any Soviet ports, yet this common carrier has come into the United States foreign trade and has cut rates below the national carrier as much as 25%. The philosophy behind this was well expressed in *Pravda* on March 4, 1975, when the publication stated:

"Moscow is as much interested in the political profit as it is in shipping revenues."

The American flag profit-motivated carrier simply cannot compete against such avowed concentrated predatory rate practices that are clearly intended to destroy American flag shipping. S. 868 is aimed specifically at this problem, as a detriment, perhaps not as a total detriment, but at least to give the American flag carrier a fighting chance.

2. The bill applies only to the liner segment of the Merchant Marine, not to the tramp segment, which are not required to file rates. It is well provable that over 90% of the Association members ship by tramp vessels and not on liner carriers. Indeed, the larger of the members of the Association, such as Georgia Pacific and Weyerhaeuser and others actively charter in their own foreign flag tramp vessels. By their own testimony in various hearings, before the Federal Maritime Commission and before the Congress in 1963 and 1965, and by figures which we will

set forth below, the bill is not applicable to the Association members on 90% of their movement.

3. The national carrier that sets the lowest rate for the particular commodity involved may or may not be a member of a conference. All he need be is a liner company with rates filed with the Federal Maritime Commission. In every trade where there are conferences, there are non-conference carriers under the national flag. This bill is not a conference bill.

4. Despite the statement in the letter, there is nothing in S. 868 that refers to the requirement of proving rates on a fully distributed cost basis.

5. The Pacific Lumber Export Association, in its protest has completely overlooked the fact that the commodity that it is seeking to protect is now substantially all exempted from the Shipping Act and thus from S. 868 itself, (See Section 18(b) (1) of the Shipping Act of 1916) which states as follows:

"The requirements of this section shall not be applicable to cargo loaded and carried in bulk without mark or count or cargo which is soft wood lumber. As used in this paragraph, the term "soft wood lumber" means soft wood lumber not further manufactured than passing lengthwise to the standard planing machine and cross cut length logs, poles, pilings and ties, including such articles preservative created or board or frames, but not including plywood or finished articles, knocked down or set up."

6. By testimony of experts, 95% of the timber movement from the Pacific Northwest Coast is soft wood lumber. See the hearings setting up the exclusion mentioned in 5. above, which hearings were held in 1963 and which were further legislated in 1965 (H.R. 2593, H.R. 3891 before the House Subcommittee on Merchant Marine of The Committees on Merchant Marine and Fisheries, House of Representatives, 89th Congress, 1st Session, to accompany H.R. 10198, September 23, 1965).

7. What was stated in the above referred to testimony as to the exclusions has proven itself true today. Set forth below are the figures of the movement of lumber products from the Pacific Northwest ports of California and Oregon and Washington in 1973.

NET TONS OF 2,000 POUNDS

	By liner service	By tramp ships	Total
Lumber (not manufactured)-----	610, 902	13, 324, 516	13, 935, 418
Plywood-----	68, 855	6, 385, 087	6, 453, 942

Thus it will be noted not only is soft wood lumber not only expressly excluded from Section 18(b), but it will be seen from this that 95.6% of the lumber exports move in tramp sailings which are not subject to the requirements of Section 18(b). Thus it will be seen that the impact of S. 868 to the Pacific Lumber Exporters Association is in fact de minimus, and really does not warrant the position taken by the Association.

8. It does seem that the Lumber industry that gets its vast quantity of its raw material from the National forests and pays only a small portion of the normal corporate income tax paid by other corporations due to special tax benefits somewhat similar to depletion, should be supporting any legislation which in fact helps the American Flag carrier compete in the world markets, particularly so when the legislation is without cost to the taxpayer.

Again as stated in the beginning, we seek no action by you from this letter, but merely wish to have your file reflect the true facts of the situation with regard to S. 868.

We would be happy to respond to any questions you may have.

Very truly yours,

WILLIAM F. RAGAN.

AMERICAN INSTITUTE OF MERCHANT SHIPPING,
Washington, D.C., March 19, 1975.

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

DEAR MR. CHAIRMAN: The American Institute of Merchant Shipping (AIMS), on behalf of its members serving the foreign commerce of the United States with liner vessels, would like to reaffirm its strong support for the objectives sought

by S. 868, a bill to give the Federal Maritime Commission additional regulatory authority with regard to rates filed by non-national flag steamship lines which are lower than the lowest corresponding rates of national flag lines.

AIMS believes that the stability of liner service in U.S. trades is being threatened by predatory pricing practices of certain third-flag, or non-national, lines. We view the bill as a conservative approach to a problem which, if not met now, will require more drastic measures in the future.

AIMS appreciates that S. 868 would expand considerably the statutory basis for FMC action with regard to rate levels. However, we regard the proposed authority as essential and minimal under the circumstances. Under S. 868, the Commission would simply be empowered to reject a rate filing below a certain level, unless such rate is found to be compensatory on a fully distributed commercial cost basis. The challenged rate would be permitted to go into effect if the non-national flag carrier manifests that the rate is justified and not injurious to U.S. commerce.

Arguments have been made that the bill is impractical because implementation would be difficult if not impossible and that the bill would cause inconvenience to legitimate steamship lines due to the proposed new requirement for 30 days notice on rate reductions. Indeed, AIMS has made these arguments itself. However, our members unanimously agree that third-flag rate-cutting is an extremely serious problem which warrants the proposed remedy. If improvements can be made in the bill—and no one has been able to suggest any to date without departing radically from existing U.S. law—we are assured that there will be ample opportunity to offer them before the House of Representatives takes action. Meanwhile, prompt Senate action on S. 868 introduced by Senator Inouye is imperative.

Members of AIMS Liner Council who support S. 868 have asked that I identify them for the benefit of members of the Committee. They are:

American Export Lines, Inc.; American President Lines, Ltd.; Delta Steamship Lines, Inc.; Farrell Lines Inc.; Lykes Bros. Steamship Co., Inc.; Moore-McCormack Lines, Inc.; Prudential Lines, Inc.; States Steamship Co.; and United States Lines, Inc.

A recent representation made on behalf of a number of Conferences whose membership includes many of these lines is inconsistent with this letter and should not be interpreted as expressing their views on S. 868.

Sincerely,

JAMES J. REYNOLDS,
President.

MARITIME TRADES DEPARTMENT,
AMERICAN FEDERATION OF LABOR AND
CONGRESS OF INDUSTRIAL ORGANIZATIONS,

Hon. WARREN G. MANGUSON,

Washington, D.C., March 20, 1975.

Chairman, Senate Commerce Committee, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

Dear Mr. CHAIRMAN: The AFL-CIO Maritime Trades Department, a constitutional arm of the AFL-CIO comprised of 44 international unions representing eight million American workers, strongly supports S. 868, a bill to provide for minimum rate provisions by non-national carriers in the foreign commerce of the United States. We commend the sponsor of this bill, Senator Daniel K. Inouye, and your Committee for your prompt action on this vitally important matter.

We are convinced that S. 868 represents a much needed solution to the problems faced by U.S. berth liner operators who face cutthroat and noncompensatory rate competition on many international shipping routes. This legislation would take the first steps toward creating an equitable and fair freight rate system for American international common carrier shipping companies.

America's common carrier ocean transportation companies are one of the largest and most competitive segments of the American merchant marine. The operators of this fleet have pioneered many of the shipping innovations that have led to stable and even reduced shipping rates; including such innovations as container carriers, LASH and SEABEE barge carriers, and roll-on/roll-off vessels.

At the same time, a number of these U.S. common carrier companies built and operated their liner fleets without government construction or operating subsidies. They have been able to compete on equal terms with other members of liner conferences, including some of the most aggressive foreign liner companies.

All of these achievements have culminated in U.S. international liner companies carrying a greater portion of U.S. import-export trade than any other segment of the U.S. merchant marine. In 1973, U.S. liner companies carried about 25 percent of America's liner cargo. This is by far the most outstanding accomplishment of the U.S. ocean transportation industry. It demonstrates that the U.S. fleet is able to compete equally, at world rates, and carry a major share of U.S. cargo.

These outstanding achievements of America's international, oceangoing common carriers are being threatened by the predatory and cutthroat rate practices of a number of foreign national shipping lines that operate as third-flag carriers between the United States and its major trading partners. These foreign carriers—not members of the conferences that normally determine the world rate structures for the various U.S. trade routes—have established rate levels so low that they fall below both the conference rate structure and the level of compensatory operation for American operators.

This predatory, unregulated rate situation created by national carriers operating outside of the conference structure has often led to the skimming off from America's foreign trade the most lucrative and substantial cargo-carrying opportunities for American operators who adhere to the conference rates set by the conference members and approved by the Federal Maritime Commission. In these cases, the conference rate becomes an umbrella for the predatory rate practices of these third flag national carriers.

There are several reasons why the problem of predatory rates has become so severe in the U.S. trades:

First, the United States is the world's greatest trader, and competition is keen among ocean carriers of all nations for the lucrative trade that results. However, most legitimate liner companies will seek to join rate conferences soon after they begin to serve the United States.

Second, the United States trade routes have been the object of dumping by foreign shipping interests of their excess liner tonnage. Trade routes around the world are saturated with liner vessels, and even large, competitive shipping companies have been forced to sail vessels with unfavorable load factors. The current world shipping depression has further aggravated this serious problem.

In looking for a trade to better utilize their excess tonnage, third flag foreign operators have sought entry into the lucrative American trades which, although overtonnaged, have a bigger cargo pool available. These operators will charge any rates that enable them to keep their vessels operating, even if only at break-even rates.

Third, we face the problem of competing against foreign shipping lines that are not required to earn a profit. This is particularly true of the State-owned Russian fleet. The vessels of this fleet are built in Soviet yards and those of its satellites are manned by State-compensated crews and operated by State-owned shipping companies. They operate among the most modern vessels in the world. The Soviet fleet is designed to carry a major portion of Russian commerce, but it is also employed by the U.S.S.R. as a political, economic and military tool of the Soviet State.

For U.S. liner companies—which are built and manned in the free enterprise system to U.S. standards and which pay U.S. wages to workers and dividends to American stockholders—to compete at the rate levels of the Soviet fleet is asking the impossible. Yet, this is the task confronting many of America's liner companies today.

S. 868 is an important step toward resolving the serious rate problems faced by U.S. operators in competing against third flag national carriers which charge noncompensatory rates. We urge prompt passage of this legislation.

S. 868 represents what we feel must be the trend of the future in international shipping. We are pleased that representatives of our trading partners have similarly expressed their approval of legislation such as this. As noted by Senator Inouye, Mr. Karl-Heinz Sager, President of the European Economic Community Ship-owners Association and Vice Chairman of Hapag-Lloyd, a West German-flag containership operator, has stated: "European governments should follow the example of the third-flag carrier bill now in Washington's legislative mill."

The Maritime Trades Department feels it is vital for the U.S. government to take the initiative in ensuring that a healthy U.S. fleet is maintained and that it is protected from the predatory rate practices of unfair competitors. This country must not allow this destructive rate situation to continue to the detriment of the U.S. liner fleet and at the risk of greater unemployment among American shipyard workers and seamen.

We agree with Senator Inouye when he says that S. 868 "is a fully justified and restrained approach to a serious problem which is at once retaliation-proof and not inconsistent with the goals of regulatory reform."

We request that this letter be included as a part of the hearing record on S. 868.

Sincerely,

O. WILLIAM MOODY, JR.,
Administrator.

LABOR-MANAGEMENT MARITIME COMMITTEE,
Washington, D.C., March 21, 1975.

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

DEAR SENATOR MAGNUSON: The Labor-Management Maritime Committee, comprised of major steamship lines and labor organizations, heartily supports the enactment of S.-868, a bill to give the Federal Maritime Commission power to suspend shipping rates in the foreign trade of the United States under certain conditions. Predatory rate undercutting is now taking place whereby steamship lines of certain non-national or third flag countries, operating solely in the foreign-to-foreign trades and without engaging in the foreign commerce of their own nations, constitute a menace to the merchant fleets of trading nations.

Operating outside regularly constituted steamship conferences, they capture cargo by the rate undercutting process—a practice denied those who are conference members. This practice is becoming so widespread, particularly on the part of the Soviet Union and other communist bloc countries, as to endanger cargo potential for the U.S. merchant marine and impair our balance of payments and balance of trade.

The bill, S. 868, would correct this situation by providing that all third flag ships meet the lowest rate of any national flag operator in a given trade or prove conclusively that the rate is compensatory on a commercial basis before a given rate can stay in or go into effect. This cannot be considered contrary to our own merchant marine practice since our steamship companies engaged in the foreign-to-foreign commerce do not participate in rate undercutting. Our steamship lines in the foreign-to-foreign trades join the steamship conferences which are effective in the trade.

Passage of S. 868 could in no way invite any justifiable retaliation since ours is the only foreign trade already open to any flag of any nation. Cargo movement in the U.S. foreign commerce must be motivated through the competitive profit making process. Practices engaged in by some of the third flag shipping companies are in many cases motivated otherwise, including political and other non-economic purposes.

We only want to be fair in the quest for moving commercial cargo at appropriate and compensatory rates. S. 868 would require that, in the foreign commerce of the United States, others in competition with us do the same. We strongly urge passage of S. 868 and respectfully request that this statement be made a part of the record in the subject hearings.

Respectfully,

EARL W. CLARK
TALMAGE E. SIMPKINS,
Co-Directors.

LOUISIANA-PACIFIC CORP.,
Portland, Oreg., April 4, 1975.

Re Senate bill 868
MAJORITY STAFF,
Senate Commerce Committee, Dirksen Senate Office Building, Washington, D.C.

GENTLEMEN: Louisiana-Pacific Corporation is a major producer and exporter of forest products with sales in excess of \$460 million and operations in Alabama, Alaska, California, Idaho, Louisiana, Michigan, Montana, Ohio, Oregon, Texas, Washington, Wisconsin, and Wyoming. The growth and strength of our export sales of woodpulp and lumber have been directly influenced by the availability of regular vessel service to our important markets which are Japan, Germany, France and Italy.

Third flag, nonconference carriers, such as Star Shipping, are a vital part of our export distribution system and without their cooperation and support, our expanding business would be significantly curtailed.

Senate bill 868 is designed to eliminate or drastically restrict third flag nonconference carriers. If this occurs, and our shipments by these carriers permanently suspended, our company would suffer great loss of income and position in our export markets. For example, Star Shipping lifts volumes of woodpulp up to 10,000 tons monthly in single vessels from Humboldt Bay, California to Japan, and in 1974 they lifted 149,972 tons, which amounted to 70% of our 214,664 tons shipments. This is a service without which we could not compete successfully with our major competitors in British Columbia.

No conference carrier has offered such regular, specialized forest products service. The emphasis of conference carriers has been upon shipment of general merchandise cargo where seasonal and unpredictable market changes substantially disrupt our regular shipments. Our customers count on us for regular monthly deliveries of large quantity and of high cubic volume lumber and woodpulp. Star Shipping, a nonconference, third flag carrier introduced such service to the West Coast, U.S.A. We have come to rely almost exclusively on that service.

Louisiana-Pacific Corporation needs third flag, nonconference carriers in order to continue the growth of our important export business. We therefore urge that S.B. 868 be defeated.

Yours very truly,

MICHAEL R. SMITH,
Manager-Export Sales.

NATIONAL FOREST PRODUCTS ASSOCIATION,
Washington, D.C., April 16, 1975.

HON. JAMES B. PEARSON,
*Committee on Commerce,
U.S. Senate, Washington, D.C.*

DEAR SENATOR PEARSON: The National Forest Products Association is opposed to S. 868, a bill to provide for minimum rate provisions by non-national carriers in the foreign commerce of the United States.

NFPA is a federation of 26 species and regional associations representing over 2,500 manufacturers and distributors of lumber, plywood, flooring, veneer, particleboard, millwork, shingles, and treated and laminated wood products.

In 1974, 1.5 billion board feet of lumber and 2.5 billion board feet (log scale) of logs were exported from the United States. The enactment of S. 868 would seriously impede our ability to continue to export solid wood products.

As we understand S. 868, it would require non-national carriers to show that their rates are at least as high as the "lowest corresponding rate or charge of any national flag carrier" or, in the alternative, that their rate is "compensatory on a commercial basis". This would have the effect of raising the rates of third flag carriers to the fixed rates charged by national carriers since it would be nearly impossible for non-national carriers to carry the burden of proof imposed by the bill.

We oppose S. 868 for several reasons:

1. It would impair our ability to compete in world markets for the sale of solid wood products by substantially raising the cost of ocean-borne shipping. Our principal competitors in the export trade of wood products are Canada and the Scandinavian countries. By raising our shipping costs, these countries would gain a significant competitive advantage over domestic forest products exporters. This in turn would have a negative impact on our balance of trade.

2. It is inflationary. S. 868 would raise the prices of national and conference carriers as well as the prices of nonnational carriers. Third flag carriers serve as a competitive force to keep down the conference-established rates of national carriers. If this competitive force is removed, conference rates could be set monopolistically at very high levels.

3. It could result in a reduction of available ship space for lumber and wood products exports, particularly from Pacific coast ports. A floor on rates could drive third flag carriers from the Pacific coast trade. This would force forest products exporters to compete with West Coast shippers of higher-value commodities for reduced ship space.

4. It is protectionist. S. 868 is clearly designed to protect national carriers from price competition by third flag shipping. This amounts to a trade barrier at a time when we are attempting to reduce or eliminate trade barriers through our present GATT negotiations.

5. It is unnecessary. The proponents of S. 868 argue that the bill is designed to stop the predatory pricing practices of the communist-flag carriers of such countries as Russia and Poland. If it is determined that competition from these state-

owned carriers is unfair and should be curtailed, the Federal Maritime Commission already has ample regulatory authority to accomplish this. Section 18(B)(5) of the "Shipping Act of 1916" grants the FMC authority to "... disapprove any rate or charge filed by a common carrier by water in the foreign commerce of the United States or conference carriers, which, after hearing, it finds to be so unreasonably high or low as to be detrimental to the commerce of the United States."

For these reasons, the National Forest Products Association urges you to vote against S. 868. We are grateful for this opportunity to express our views on this legislation, and respectfully request that this letter be made a part of the official record of the Commerce Committee's deliberations on S. 868. Thank you.

Sincerely,

JOSEPH B. McGRATH,
Vice President.

CHAMPION INTERNATIONAL,
New York, N.Y., April 16, 1975.

HON. WARREN G. MAGNUSON,
*Chairman, Commerce Committee of the U.S. Senate,
Dirksen Senate Office Building, Washington, D.C.*

DEAR SENATOR MAGNUSON: On behalf of the U.S. Plywood Division of Champion International Corporation, I express grave reservations concerning Senate Bill 868. Our industry for years attempted to obtain adequate transport from conference shipping lines for the necessary importation of wood products, with little or no success. We were able to bring such products into the United States for resale at a reasonable price only after the entry of non-conference lines into the marketplace.

The great majority of non-conference shipping companies are not subsidized by their respective governments and have provided their services on a profitable basis at rates which are set by the forces of competition, a fundamental business precept of the United States. Conversely, this interplay of competition is not present in the establishment of conference line rates. As the Committee is undoubtedly aware, conference rates are set collectively among carriers who are members of the Conference and, although filed with the Maritime Commission, have the effect of allowing companies who should be competing with each other to agree among themselves not to do so and to keep their rates at common levels. To extend the force of such agreements to all other carriers, as Senate Bill 868 would do, in effect, seems to us to be patently unfair to carriers who do not participate in conference discussions. More importantly, by destroying the rate of competition now prevalent in the shipping industry, certain imports such as ours certainly will be increased in cost and some may be precluded because of increased cost.

Moreover, the adverse impact of such provisions on the cost of imported wood products will adversely affect the American consumer. In the case of U.S. Plywood, the raising of all freight rates to conference line rates would result in an estimated increase in costs—if we continue to do business at present volume of imported woods—of approximately \$3 million annually and when compounded throughout our industry that estimate would result in an increase of approximately \$27 million annually. Such increased cost inevitably would increase consumer costs of housing, furniture and home improvements.

Likewise, there would be an adverse effect on the ability of American forest products companies to compete effectively in the world market for the exportation of their products if American products were to bear enforced increased costs of conference line freight rates. We doubt, for example, that U.S. Plywood could compete effectively in European markets with Canadian producers if the cost of transporting our products to the European marketplace were increased to conference line rates when Canadian exporters remain free to utilize non-conference carriers at lower, competitive rates.

On the supposition that it is the desire of the supporters of Senate Bill 868 to protect American flag carriers from the disadvantageous consequence of foreign flag carriers being subsidized by their governments, thereby lowering rates to a level at which American flag carriers cannot compete economically, we respectfully submit that a solution exists under present law. Section 15 of the Shipping Act (46 U.S.C. Sec. 17(b)(5)) gives the Maritime Commission, on its own motion or upon complaint, the right to initiate a hearing on the level of freight rates of any carrier or group of carriers. If after such hearing, the Commission finds any such rate "... to be so unreasonably high or low as to be detrimental to the commerce of the United States," the Commission *shall disapprove* such rate. It

therefore appears to us to be much more appropriate to request the Federal Maritime Commission to initiate such a hearing or hearings rather than to effect the sweeping dislocation of importing and exporting which we believe would be caused by enactment of Senate Bill 868.

Very truly yours,

JOHN A. BALL,
Executive Vice President.

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