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AMEND THE SHIPPING ACT OF 1916

DOCUMENTS

GOVERNMENT

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HEARING

BEFORE THE

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SUBCOMMITTEE ON
MERCHANT MARINE AND TOURISM

OF THE

COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION

UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

S. 2386

TO AMEND THE SHIPPING ACT, 1916, AS AMENDED, TO PRO-
VIDE FOR THE PROMPT AND EFFECTIVE IMPLEMENTATION
OF CERTAIN EQUAL ACCESS, POOLING, RATIONALIZATION,
APPORTIONMENT AND RELATED RECIPROCAL OCEAN TRANS-
PORTATION AGREEMENTS ENTERED INTO BETWEEN CAR-
RIERS OF THE FLAGS OF THE UNITED STATES AND OF THE
NATIONS WITH WHICH WE TRADE AND TO PROVIDE IMMUN-
ITY FOR SUCH AGREEMENTS FROM THE APPLICATION OF
THE ANTITRUST LAWS

MARCH 8, 1978

Serial No. 95-75

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AMEND SHIPPING ACT OF 1916

Section 1001. (a) The Secretary of Commerce shall, in accordance with the provisions of this Act, conduct a study of the shipping industry and the effect of the war upon it. The study shall include a study of the shipping industry in this country and in foreign countries, and a study of the effect of the war upon the shipping industry in this country and in foreign countries. The study shall be completed and reported to the Senate and the House of Representatives not later than the first day of January, 1918.

OPENING STATEMENT BY SENATOR HENRY

Senator Henry. The purpose of the committee is to study the shipping industry in this country and in foreign countries, and to report to the Senate and the House of Representatives not later than the first day of January, 1918. The committee will hold public hearings and will receive suggestions from the shipping industry and from the general public. The committee will also hold private hearings and will receive suggestions from interested parties. The committee will report to the Senate and the House of Representatives not later than the first day of January, 1918.

The Shipping Act (section 10) does however contain certain provisions which are aimed at preserving competition in the United States and it is aimed at preventing competition in the United States from the foreign countries of the United States. The Shipping Act (section 10) does however contain certain provisions which are aimed at preserving competition in the United States and it is aimed at preventing competition in the United States from the foreign countries of the United States. The Shipping Act (section 10) does however contain certain provisions which are aimed at preserving competition in the United States and it is aimed at preventing competition in the United States from the foreign countries of the United States.

Revised Statutes, Section 290 U.S.C. 1938

AMEND THE SHIPPING ACT OF 1916

WEDNESDAY, MARCH 8, 1978

U.S. SENATE,
COMMITTEE ON COMMERCE,
SCIENCE AND TRANSPORTATION,
SUBCOMMITTEE ON MERCHANT MARINE AND TOURISM,
Washington, D.C.

The subcommittee met at 10:05 a.m. in room 154, Russell Senate Office Building, Hon. Daniel K. Inouye (chairman of the subcommittee) presiding.

OPENING STATEMENT BY SENATOR INOUE

Senator INOUE. This morning the committee begins hearings on S. 2386, a bill to strengthen the authority of the Federal Maritime Commission (FMC) to approve equal access, pooling and rationalization agreements by immunizing them from the antitrust laws, provided they contain certain competitive safeguards which the bill spells out.

Although none of these agreements are unlawful under the Shipping Act, 1916, the manner in which they have been administered has largely frustrated the ability of the carriers to use them.

The Shipping Act, 1916, embodies the regulatory part of our national shipping policy. That policy is intended to safeguard against agreements and practices in the U.S. ocean liner trades which would be detrimental to the commercial interests of the United States. To that end, it is aimed at preserving competition in these trades. Thus, all carriers operating in the foreign commerce of the United States must compete openly and fairly with one another.

The Shipping Act (section 15) does immunize certain anticompetitive agreements among carriers from the impact of the antitrust laws, if, and only if, such agreements are filed with, and approved by, the FMC.

This provision is statutory recognition that economic cooperation through rate and pooling arrangements under Government supervision and control are necessary for greater regularity and frequency of service; stability and uniformity of rates; economy in the cost of service; better distribution of sailings; and equal treatment of shippers through the elimination of secret arrangements and underhanded methods of discrimination.

The FMC and the courts have held, however, that section 15 prevents the Commission from overriding antitrust policy more than is necessary to meet a serious transportation need public benefit or valid regulatory purpose. See *Federal Maritime Commission v. Svenska Aktiebolaget Linien*, 390 U.S. 238, 1968.

By appearing before the FMC and consistently opposing all conference control of ocean freight rates and practices, the Antitrust Division of the Department of Justice has in practical effect further restricted the narrow antitrust immunity provided by section 15. Indeed, the Chairman of the FMC testified before this committee that, in his opinion, the Antitrust Division does not regard the Shipping Act as the law of the land.

In the administration of our shipping laws and policies the FMC is thus forced to steer a course between the regulatory provisions of the Shipping Act permitting economic cooperation, and the procompetition policies of our antitrust laws.

Supporters of a strong and healthy U.S. merchant fleet are near unanimous in their opinion that the FMC has foundered on the shoals of our antitrust policy, and the liner agreement of our merchant fleet is in serious trouble as a consequence.

Former Chairman of the FMC, Karl E. Bakke, asked the question: Will the antitrust tail wag the dog, or will we establish a national ocean transportation policy, attuned to the real world and to the realities of the industry, that will serve the interests of a healthy U.S. merchant marine and of stable U.S. ocean trades?

S. 2386 is an attempt to answer his questions affirmatively for a strong U.S. merchant fleet.

During the subcommittee's recent hearings on rebating several witnesses advocated an approach such as S. 2386, as at least a partial answer to overtonnaging and therefore to rebating. These hearings are intended to explore that possibility.

I wish to emphasize that S. 2386 is not intended in any way to supercede or otherwise replace S. 2008.

S. 2008 and S. 2386 are neither mutually exclusive nor interdependent. In fact, they may well be complementary because each in its separate way would strengthen the FMC's ability to deal with rebating.

Originally, the Department of State, the Department of Justice, the Maritime Administration, and the FMC were scheduled to testify this past Monday, March 6. At the request of the administration, the appearance of these agencies has been postponed until a later date so that it may develop a unified position which would reconcile our antitrust and shipping policies.

I think this is long overdue.

Although it is encouraging to know the administration is facing this problem, the Chair cannot help but note that the issue is not one of first impression. Indeed, it is largely responsible for the predicament of our liner fleet today.

[The bill and agency comments follow.]

95TH CONGRESS
1st Session

S. 2386

IN THE SENATE OF THE UNITED STATES

DECEMBER 15, 1977

Mr. LONG introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend the Shipping Act, 1916, as amended, to provide for the prompt and effective implementation of certain equal access, pooling, rationalization, apportionment and related reciprocal ocean transportation agreements entered into between carriers of the flags of the United States and of the nations with which we trade and to provide immunity for such agreements from the application of the antitrust laws.

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

3 That the Shipping Act, 1916, is hereby amended as follows:

4 Add the following section 15 (a) following present sec-
5 tion 15 of the Shipping Act, 1916:

II

1 "United States-flag common carriers by water in foreign
2 commerce, hereinafter referred to as 'United States carriers,'
3 and common carriers by water in foreign commerce of the flag
4 of the nation which is the ocean port destination or origin
5 of the cargo which is the subject of such agreements, here-
6 inafter referred to as 'reciprocal carriers', are hereby author-
7 ized to enter into ocean transportation agreements, herein-
8 after referred to as 'reciprocal ocean transportation agree-
9 ments', which establish a cargo pool or pools, provide for
10 equal access to government controlled cargoes, provide for
11 rationalization of sailings and/or apportion earnings, losses
12 or traffic between such carriers and in which the United
13 States carriers have and receive a share equal to the share
14 or combined shares of and/or have rights equal to those of the
15 reciprocal carriers. Such reciprocal ocean transportation
16 agreements shall be lawful and shall be excepted and
17 exempted from all provisions of the Sherman Antitrust Act
18 of July 2, 1890, sections 73-77 of the Wilson Tariff Act
19 of August 27, 1894, the Clayton Act of October 15, 1914,
20 sections 1 to 11 and 15 of title 15, and all amendments and
21 Acts supplementary thereto, hereinafter referred to as the
22 'antitrust laws': *Provided, That—*
23 " (1) Such reciprocal ocean transportation agree-
24 ments shall not prohibit or otherwise prevent any
25 other United States or reciprocal carrier or any carrier of

1 any carrier of any other flag from entering the trade
2 either as parties to such reciprocal ocean transportation
3 agreements or as nonparties to such agreements and
4 to participate or compete on a fair, reasonable and
5 equitable basis for cargoes moving in the trade or trades;
6 and

7 “(2) Such reciprocal ocean transportation agree-
8 ments may provide for concurrence in and participation
9 by other common carriers by water of the United States
10 or of the flag of the reciprocal carriers or of any other
11 flag.

12 “Any such reciprocal ocean transportation agreements
13 and any amendments thereto shall become effective thirty
14 days after filing by the parties with the Federal Maritime
15 Commission and shall remain lawful and effective until can-
16 celled by the parties, or any of them, with forty-five days
17 notice to the Federal Maritime Commission, unless and
18 until disapproved by the Federal Maritime Commission on
19 findings, after notice and hearing and final determination on
20 appeal, if any, that the agreement violates subsections (1)
21 and/or (2) of this section, as hereinabove set forth.

22 “Whoever violates any provision of this section shall be
23 subject to a civil penalty of not more than \$25,000 for
24 each day such violation continues, after final determination
25 of such violation. In the event of any such violation, the

1 penalties, damages and/or reparations provided by this
 2 section and title shall be the exclusive penalties and/or
 3 remedies for all such violations and all such violations are
 4 hereby excepted and exempted from the antitrust laws and
 5 any and all penalties and/or remedies provided thereby.”

SECURITIES AND EXCHANGE COMMISSION,
 Washington, D.C., April 25, 1978.

HON. WARREN A. MAGNUSON,
 Chairman, Committee on Commerce, Science and Transportation, U.S. Senate,
 Washington, D.C.

DEAR CHAIRMAN MAGNUSON: This is in response to your request for the Commission's comments on S. 2388 (the "Bill"), which would amend the Shipping Act of 1916 (the "Shipping Act"). As you may be aware, on October 13, 1977, Harvey L. Pitt, General Counsel of the Commission, testified before the Subcommittee on Merchant Marine and Tourism of your Committee on S. 2008, a bill also intended to remedy the serious problems of rebating and other malpractices facing the nation's shipping industry. At that time, we expressed our support for legislation aimed at solving these vexatious problems. We pointed out, however, that the Commission has no experience with or responsibility for administering the Shipping Act. In the context of the issues to which the Bill relates, the Commission's expertise stems from its responsibilities under the federal securities laws to ensure appropriate disclosures by publicly-held corporations, including those companies engaged in the shipping industry. Thus, we have only limited comments on the Bill.

The Bill would authorize the creation of "reciprocal ocean transportation agreements" between United States carriers and "reciprocal" foreign carriers. The agreements would: "[a] establish cargo * * * pools, [b] provide for equal access to government controlled cargos, * * * [c] provide for rationalization of sailings * * * [and] [d] apportion earnings, losses or traffic between such carriers * * *." Additionally, the Bill would provide immunity for these agreements from the application of the antitrust laws.

Senator Long, in his comments accompanying the introduction of the Bill, stated that "once carriers reach, by mutual, negotiated agreements, fixed proportions of trades, equal access to cargos, scheduled participation in profits and/or rationalized limitations on services, the incentive to grant rebates largely disappears."¹

The Bill does not amend the federal securities laws, and generally deals with matters outside the Commission's jurisdiction. While we favor the goal towards which the Bill is directed, we take no position as to whether it would solve the problem of rebate and other malpractices in the ocean trades in an appropriate manner.

The views set forth in this letter are those of the Commission and do not necessarily reflect the views of the Administration. Copies of this correspondence have been forwarded to the Office of Management and Budget. We will, of course, inform you of any advice received from OMB concerning the relationship of our position to the programs of the Administration.

If you require any further information, please let me know.

Sincerely,

HAROLD M. WILLIAMS, *Chairman.*

¹ 123 Congressional Record S19765 (daily ed., Dec. 15, 1977) (remarks of Senator Long).

Senator INOUE. With these opening remarks, I would like to recognize my distinguished colleague from Louisiana, Senator Long.

Senator LONG. Thank you very much, Mr. Chairman.

I have no statement at this point. I would like to hear what the witnesses can offer us.

Senator INOUE. Our first witness this morning is the president of Delta Steamship Lines of New Orleans, La., Capt. Jay W. Clark.

Welcome to the committee, sir.

STATEMENT OF CAPT. J. W. CLARK, PRESIDENT, DELTA STEAMSHIP LINES, INC., NEW ORLEANS, LA.

Captain CLARK. Good morning, Mr. Chairman, Senator Long.

Mr. Chairman, I have prepared a statement, copies of which have been distributed.

Senator INOUE. We will receive that and without objection, the full statement will be made part of the record and you may proceed in any fashion you wish, sir.

Captain CLARK. If it's agreeable with the Chair, I will just read it and respond to questions.

Senator INOUE. Fine, sir.

Captain CLARK. My name is J. W. Clark. I'm president of Delta Steamship Lines, Inc., of New Orleans. I wish to express our appreciation and full support for S. 2386, as introduced by Senator Long.

I also subscribe to the statement in support of that bill which he introduced into the Senate on December 15, 1977.

The various statutes affecting our foreign commerce clearly recognize the importance to our national interests that the United States maintain a strong and efficient merchant fleet.

Delta Steamship Lines, Inc. is an example of our ocean common carriers or "liner operators" as they are usually called. Based on the U.S. gulf coast, we serve the east coast of South America, Central America, the Caribbean, and West Africa. Delta, founded in 1919, is presently operating its fourth fleet of vessels as a progressive component of America's modern capital intensive maritime industry. We are members of several shipping conferences and pooling agreements existing in the trades served by our operations. At the present time, we are engaged in extensive expansion planning, which includes the proposed acquisition of the Latin American services of Prudential Lines, Inc. That is the former Grace Lines.

Although our ocean commerce is also the ocean commerce of our trading partners, the 1916 Shipping Act imposes unilateral regulation, and attempts to "export" our antitrust philosophy.

While making conferences comparatively weak through the restrictions imposed on them, the act causes both the conferences and our trades generally to be open to all carriers which have tonnage which cannot be gainfully employed elsewhere. The resultant overtonnaging gives rise to malpractices and cutthroat rate-cutting practices which ultimately work to the detriment of our foreign commerce.

Since unilateral U.S. regulatory efforts do not fall evenly on U.S.-flag lines and on their foreign-flag competitors, the U.S.-flag lines have been and are at a substantial disadvantage.

We have created, through our regulatory system, an artificial climate in which a variety of problems have arisen, many of which are unique to the U.S. trades. At the same time, not all of our problems are inherent within our own system. I refer to the practices which have been adopted by predatory Communist-flag state-controlled shipping lines which have become increasingly active in the U.S. trades, engaging in "dumping" practices ostensibly to earn hard currency. These carriers, as cross traders, that is, operating in trades between the United States and countries other than their own, have created very substantial problems for the competing commercial carriers in our trade. This problem has its origin in the political motivation of the Communist states and the nature of their state economies. It can only be solved by legislative and/or political means through restricting their ability to pursue their sinister goals in our trades.

Other malpractices, more particularly the payment of rebates, are a product of overtonnaging. The difficulty of subpoena enforcement against non-U.S. carriers places the heavier burden on U.S.-flag carriers. This is a gross and obvious inequity for which there is no now full solution. The overtonnaging problem, again, is the product of our own legislation by which we encourage the entry of all carriers into our trades. This easy access to our tempting foreign commerce is, in effect, a "come one—come all" invitation to all carriers, thus creating a veritable "dumping ground" of essential U.S. trade routes.

Our regulatory statutes are such that shelter for all comers is assured without regard for our national flag interests, contrary to the promotional objectives of our various shipping acts. Hearing processes are lengthy, costly, and frustrating. In an abundance of caution, to assure antitrust immunity under section 15, endless documents are filed with FMC.

The proliferation of cargo reservation laws abroad, and the expanding fleets of developing nations, place still greater pressure on competitive commercial shipping services, which might best be illustrated by the UNCTAD code of conduct.

There are a number of bills presently pending before Congress which seek to bring a degree of order to our ocean trade.

The "Ocean Shipping Act of 1977," H.R. 9998, deals with "controlled carriers," that is, the state-controlled cross trading Communist-flag lines.

I understand that a companion bill will soon be introduced by this committee of the Senate. The bill would require such controlled carriers to justify their rates. It would not apply to vessels of nations with which the United States has a "most favored nation" treaty, to carriers which are parties to a "rate agreement or service agreement," or to a "controlled" carrier engaged in direct commerce between its flag state and the United States. I endorse this effort for its recognition of a problem and as a needed first step toward coping with it.

Companion bills described as antirebating legislation, S. 2008 and H.R. 9518, have been the subject of substantial hearings before both the Senate and House committees. They constitute an attempt to bring some degree of equality to the relationship between U.S.-flag and foreign-flag carriers.

I have proposed through testimony before the House and Senate committees that an effective alternative solution would be to require

that the U.S. based agents representing foreign-flag carriers found to be in noncompliance cease their representation during the term of noncompliance. This could be a persuasive and effective commercial solution, providing substantial incentive for obtaining the production of records.

The bill now being considered by this committee, S. 2386, promotes rationalization between carriers where we are dealing with those of our own Nation and of our trading partners, and represents an important step toward correcting some of the problems which we have created in our foreign commerce. I firmly believe that S. 2386 offers an effective device to control both overtonnaging problems and the problem of malpractices such as rebates, as outlined by Senator Long in his memorandum submitted with the bill. It is time for the United States to get out of its role as the dumping ground for surplus tonnage. We have been the recognized relief valve for every shipowner in the world which could not better employ its vessels. This was an artificial creature of our own making which we have paid for, continuously, over the years and which we must now bring to a point of reasonable control. This can be accomplished, in part, by the present bill and I commend it to your very serious and favorable consideration.

The pooling, equal access and rationalization agreements sought to be encouraged by the amendment have largely been developed and refined in the United States/Latin American trades. As Delta has been an active participant in these trades both prior to and during the development of these intercarrier agreements, we are familiar with the negotiation and implementation of such agreements and their beneficial effect on U.S. foreign commerce.

As a result of actual experience, there are a number of supporting statements which I can make at this time, as follows:

One, such agreements are the most effective means developed to date for eliminating malpractices such as rebates.

Two, such agreements tend to limit overtonnaging and strengthen freight conferences, providing rate stability for the benefit of both carriers and shippers.

Three, such agreements do not tend to increase freight rates but, on the contrary, as pointed out in Senator Long's memorandum, it has been demonstrated by the Department of Justice itself that during the decade from 1965 to 1975, average ocean freight rates increased by only 3.4 percent per year in the United States/Brazil and Argentina trades, as contrasted with an average 14.9 percent annual increase during the same period in the North Atlantic trades where such agreements did not exist.

I have had my staff prepare a list of all of the different conferences, showing increases since 1970 in freight rates.

In conference areas of 28, the average percentage increase where they did not have pooling agreements is 145.16 percent with the 100 as the starting factor.

In the areas where bilateral pooling agreements existed, it was only 105.39.

If you would like that as part of your record, I would be glad to submit it.

Senator INOUE. Without objection, that will be made part of the record at this point.

[The information follows:]

Total general rate increase since Jan. 1, 1970, including fuel supplement and currency adjustment surcharges, by representative conferences in U.S. foreign trade

[Using initial rate of \$50 W/M for basis comparison]

Conference:	Percent of increase
American West Africa Freight Conference.....	135.00
Atlantic and Gulf-Indonesia Conference.....	167.08
Atlantic and Gulf-Panama Canal Zone, Colon and Panama City Conference.....	91.64
Atlantic and Gulf-Persian and Arabian Gulf.....	214.08
Atlantic and Gulf-Singapore, Malaya, and Thailand Conference..	167.08
Atlantic and Gulf-West Coast of Central America and Mexico Conference.....	82.04
East Coast Colombia Conference.....	79.12
Far East Conference.....	123.80
Gulf-Mediterranean Ports Conference.....	197.80
Gulf-United Kingdom Conference.....	192.34
Leeward and Windward Island and Guianas Conference (except Trinidad).....	88.56
Leeward and Windward Island and Guianas Conference (Trinidad only).....	108.16
North Atlantic-Baltic Freight Conference.....	144.54
North Atlantic-Continental Freight Conference.....	166.70
North Atlantic-French Atlantic Freight Conference.....	155.20
North Atlantic-Mediterranean Freight Conference (except French ports).....	268.36
North Atlantic-Mediterranean Freight Conference (French ports only).....	197.60
North Atlantic-United Kingdom Freight Conference.....	159.44
South and East Africa-United States Atlantic and Gulf (East Africa).....	203.50
South and East Africa-United States Atlantic and Gulf (South Africa).....	181.06
United States Atlantic and Gulf-Australia-New Zealand Conference.....	218.00
United States Atlantic and Gulf-Haiti Conference.....	134.32
United States Atlantic and Gulf-Jamaica Conference.....	87.88
United States Atlantic and Gulf-Santo Domingo Conference.....	79.70
United States Atlantic and Gulf-South and East Africa.....	181.06
United States Atlantic and Gulf-Venezuela and Netherlands Antilles Conference (Aruba only).....	87.82
United States Atlantic and Gulf-Venezuela and Netherlands Antilles Conference (Curacao only).....	98.60
West Coast South America Northbound Conference.....	54.04
Total percentage increases.....	4,064.52
Conference areas 28—average percentage increase.....	145.16

Same information as above for typical areas (conferences) where bilateral agreements exist

Conference:	Percent of increase
Atlantic and Gulf-West Coast South America Conference.....	97.48
Inter-America Freight Conference (Atlantic and Gulf to Brazil and Uruguay).....	130.00
Inter-America Freight Conference (Atlantic and Gulf to Argentina).....	126.42
Inter-America Freight Conference (Atlantic and Gulf from Argentina and Uruguay).....	127.40
Inter-America Freight Conference (Atlantic and Gulf from Brazil).....	84.12
U.S. Atlantic and Gulf-Venezuela and Netherlands Antilles Conference (Venezuela only).....	66.94
Total percentage increases.....	632.36
Conference areas 6—average percentage increase.....	105.39

Captain CLARK. These are proven facts, not theories. They were developed in actual competitive conditions, not in hypothetical models.

We submit that they deserve the very close attention of the Congress and the Nation if we are to begin to remedy the problems which exist in our foreign commerce.

The utility of such agreements is not limited to our Latin American trades. On the contrary, we are seeing recognition by carriers in other major trades that, if they are to eliminate or reduce the problems in those trades, similar agreements must be adopted.

The bill does not provide for any form of agreement which is not already permissible under our shipping laws and represented by agreements on file with and approved by the FMC. At the same time, commercial activity and commercial decisions, to be effective, must be allowed to move at a pace more rapid than that of our regulatory agencies. Our carriers cannot remain embroiled in the delaying snarl which initial regulatory approval entails.

The bill does not remove such agreements from the jurisdiction of the FMC, but does allow them to be implemented, on 30 days' notice, unless disapproved by the Commission after hearing and appeal, if any.

I believe that this puts the emphasis on the right syllable, that is, the agreements are beneficial, should be promoted and should be permitted in all instances, save where it is actually demonstrated that they work in a manner contrary to the purposes expressed by this legislation. Further, it is to be noted that the bill does not permit agreements which will preclude the entry of other carriers either as participants in the agreement or as outside carriers. Such restriction of excess tonnage can be accomplished under agreements which rationalize sailings on a basis intended to best serve the needs of our commerce and such agreements could also effectively restrict the advances of predatory Communist cross-traders.

The bill further gives emphasis to the reciprocal needs and rights of both the carriers of the U.S. flag and of our trading partners—all of those trading partners—in the reciprocal trades with this country. There would be no discrimination against vessels flying the flag of any nation. Thus, a pooling agreement which did not include carriers of the U.S. flag and of the reciprocal flag would not be subject to the implementation-prior-to-approval provision of the bill but would require, if the FMC deemed it necessary, a hearing before the Commission prior to the implementation of the agreement. Again, I say that this places the emphasis where it belongs, on the reciprocal rights of this country and its trading partners and their legitimate interests in promoting the trades of their nations, their exporters, importers and carriers.

We should now turn to a system under which a substantial part of regulation can be accomplished through commercial negotiation between carriers and shippers, and S. 2386 would provide great assistance in this direction.

The United States now stands in splendid isolation from the real world of shipping. Our statutes invite destructive competition to U.S.-flag liner shipping, and our "open arms" policy attempts to perpetuate the outdated *mare liberum* philosophy of Grotius. It is time for reality. We are overregulated yet underprotected. We need greater freedom to

implement commercial solutions, but only governmental regulation can protect our shipping from predatory, politically motivated Communist fleets.

There are other proposals which have been discussed on Capitol Hill which I believe deserve serious consideration. These include the adoption of closed conferences coupled with the legalization of shipper councils in order to provide a system of checks and balances.

Mr. Chairman, no bill in that regard has yet been introduced. I understand that in the House of Representatives Merchant Marine and Fisheries Committee such a bill is being contemplated.

Mr. Chairman, in conclusion, I submit that several maritime bills introduced in the 95th Congress have considerable merit, and I respectfully suggest that the various bills proposing amendments to the 1916 Shipping Act, substantially complementary, should be considered as a whole bill—perhaps proposed as the 1978 Shipping Act.

Thank you, sir.

I would be pleased to answer any questions I can.

Senator INOUE. Thank you very much, Captain Clark.

Captain, I'm certain you have heard of the phrase "blocking statutes."

Captain CLARK. I'm sorry, sir. I'm not a lawyer. I'm not familiar with it.

Senator INOUE. Where he used the phrase "blocking statutes," the Attorney General was referring to those laws in foreign countries that prohibit their nationals from sharing documents with our law enforcement officials.

Captain CLARK. Yes, sir, I'm familiar with that.

Senator INOUE. It has been shown by the Attorney General that one of the chief obstacles to enforcement of our malpractice laws are these blocking statutes found all over the world.

That being the case, would you support an amendment to the law which would suspend a carrier's tariff for failure to produce documents when the FMC requests them pursuant to an investigation regarding malpractice?

Captain CLARK. Yes, sir. I understand that's the substance in great part of the bill now before the House. There's testimony being presented this morning on this. This is the so-called third flag bill if I'm correct, that contains such a provision.

I believe the companion bill is under consideration by this committee.

Is that correct, sir?

Senator INOUE. No; I had suggested that maybe an amendment can be put in the authorization bill.

Would you be in favor of that?

Captain CLARK. Yes, sir. The same thing could be accomplished by putting the burden on foreign-flag agents. This would be perhaps a more diplomatic way of achieving it, because the agents in their own self-interest would exercise a great deal of influence for their principals to produce documentation.

There's always a question about the production of foreign records, whether or not they are really accurate.

If someone is going to cheat, what's to prevent them from falsifying the records they do submit?

We don't have these people here to testify under oath and to be subject to the penalties for perjury such as the American carriers would have in this country. These principals are located abroad.

Senator INOUE. We are aware of that, sir, but right now we can't get anything. This measure, your measure, specifically refers to equal access agreements.

Could you define that so there won't be any ambiguity?

Captain CLARK. In the first place, this is Senator Long's measure. I fully support it. Equal access applies to the Government-controlled cargoes.

In many of the Latin countries, there are cargo preferences laws which reserve the cargoes of the respective countries to their flag vessels, in many cases up to 100 percent, unless there's reciprocity with the countries with which they trade on a direct bilateral basis.

The American-flag lines have been at great disadvantage because of this and, through the intervention of the U.S. Government such as in the instance of Brazil, where there's an intergovernmental agreement which was recently renewed, by the way, bilateral equal access agreements have been effective, whereby the flag vessels of both countries have access to the government cargoes of each country.

This country has the Public Resolution 17, and the various other type of cargoes that come within our cargo preferences laws. The cargo preferences laws of many of the developing nations are far more extensive. They extend to even where the letters of credit are issued.

Banks control exchange, exchange permits, import permits, anything which is financed by government banks and government authorities.

It all has to come to their national flag interest. This is often referred to as exonerated cargo, waived cargo when other people are permitted to participate.

Senator INOUE. In other words, this type of agreement is negotiated between government and government.

Captain CLARK. No, sir, mostly on a commercial level. Policywise, in the case of Brazil, where there was government confrontation in 1970, it would involve an intergovernmental agreement. It did not specify the terms of the agreement. That was left to the carriers to negotiate.

This was assigned by the officials of the Maritime Administration, Department of Commerce, State Department, and their corresponding authorities of Brazil. It was just renewed this past year. It was a 3-year agreement and the renewal time has come about, was overdue.

Senator INOUE. In this respect, if no equal access agreement were in existence then, this bill, S. 2386, would not be operative?

Captain CLARK. Yes, sir, it could be. It would provide sufficient incentive on the part of all fleets of all nations, to provide the cargoes under reciprocal bilateral basis.

It should be stated, of course, by including the equal access provisions within pooling agreements, that this makes all of the government cargoes equally available to the vessels of both nations. It's a great assist.

Senator INOUE. Would the measure immunize a pooling and rationalization agreement where the country of our trading partner has no cargo preference at all?

Captain CLARK. Senator, I don't quite understand the question.
 Senator INOUE. Would that law apply in those trades where the country has no cargo preference laws?

Captain CLARK. Yes, sir, it could.

Senator INOUE. It could apply?

Captain CLARK. Yes, sir.

Senator INOUE. How many of our trading partners have cargo reservations or cargo preference laws?

Do you have a listing?

Captain CLARK. Senator, the Maritime Administration effectively updates their list. I think they did it last year. There's hardly a nation on Earth with a maritime fleet that does not have some form of cargo preference or protective legislation for their national fleets.

Insofar as specific cargo sharing arrangements, this is prevalent in Latin American trades, in Africa, the developing nations. This is one of their big thrusts.

The code of conduct has not been adopted, as you know, but it has, in effect, been implemented in many, many of the so-called 77—it's really 130-odd now—originally there were 77 developing nations.

Senator INOUE. In your judgment, how many of our U.S. foreign trade routes are overtonnaged?

Captain CLARK. I believe most of them are, Senator.

Senator INOUE. Is there any way of determining whether a trade is overtonnaged?

Captain CLARK. Yes, sir.

Senator INOUE. How would you determine that?

Captain CLARK. The statistics are easily obtained. The total of the cargo in the trade, you divide it by the capacity of the vessels and you quickly find that most vessels are going out with less than full capacity.

Senator INOUE. That would indicate to you a route is overtonnaged.

Captain CLARK. Very much so. When a ship is going out with less than 75 percent of capacity, that's usually a losing voyage.

Senator INOUE. Can the agreements as set forth in S. 2386 be used within a conference system?

Captain CLARK. Yes, sir.

Senator INOUE. The cargo pools provided for in this bill are permissible, so long as they permit third-flag carriers to enter the trade as parties to the "reciprocal ocean transportation agreement," or as nonparties able to participate or compete on a fair, reasonable, or equitable basis for cargoes moving in the trade.

Suppose country X has a law which, as implemented by an equal access agreement between it and the United States, reserves 85 percent of the cargo moving in the trade between country X and the United States, to the carriers of the United States and country X, who are parties to a specific reciprocal ocean transportation agreement.

Under the circumstances of such an equal access agreement, how can a reciprocal ocean transportation agreement satisfy the requirement of this bill as to a third-flag carrier who wanted to enter the trade?

Captain CLARK. Mr. Chairman, I believe the bill goes on to state in those provisions, the only fair and reasonable basis. It would be up to the Federal Maritime Commission to find out if the parties to such agreements have acted on a fair and reasonable basis.

There's a provision, I believe—the bill is right in front of us—to the effect that there's a 30-day time period before implementation during which time the FMC may request comment from interested parties, and then they may proceed to hold hearings on whatever basis they wish.

The objective of this bill, as I understand it, is that carriers will not be harassed by these long, long periods of hearings, that whenever a protest arises, from any party, a hearing process ensues in the normal course of procedure. That delays the approval for up to a year.

In my company, we have been through this. We can attest to this. In some respects, it has been harassment on the part of some people to give them a better bargaining position or to delay the parties in achieving a greater degree of cooperation and bring stability to the trade.

This is to achieve stability in the conference, which in the past has been lacking.

Senator INOUE. Would you say this so-called delay and harassment is rather common?

Captain CLARK. Yes, sir. We have experienced it several times. We are experiencing it right now.

Senator INOUE. Some have suggested that pooling arrangements within conferences may be a way of limiting malpractices.

Are the pooling agreements within conferences which these people are speaking about the same as the pooling agreements in this bill which would be immunized from antitrust laws?

Captain CLARK. In general, yes, sir. In testimony that I have read, even the CENSA group—they have testified in favor of pooling agreements in which they have stated they found it as being conducive to eliminating malpractices.

Initially, the Europeans were very much opposed to it. I recall as an advisor to the U.S. delegation, the first meeting in Geneva, that the group B lines were opposed to cargo sharing as such. That was in 1970, as I recall.

Subsequently, they have come 180° and they are all supporting this.

The pooling agreements are in existence between Europe and Latin America and other nations.

Senator INOUE. Under this bill, if there was a pooling agreement, would military cargo or revenues from such military cargo be included in the pool?

Captain CLARK. It could or it could be exempted.

Senator INOUE. Under present law, it would be carried under the U.S. flag.

Captain CLARK. That's true. If it were included, it would be counted against the U.S.-flag share. This would not be in conflict with the law, the 1903 law, as the cargo would be carried by the American flag, but it would count as their share under a poolings agreement.

Senator INOUE. If this bill would immunize equal access agreements commercially negotiated, would it include agreements such as the one involved in the so-called United States-Guatemala trades?

In that case, the Guatemalan Government adopted cargo preference policies which favored a select group of Guatemalan-flag carriers, associated carriers, including certain U.S.-owned lines.

Captain CLARK. I'm very familiar with that case because my company was involved in it from 1973 until the recent resolution of it; through the action of the FMC.

We first preferred charges against the Guatemalan law 41-71 in 1973 with the FMC and before the Special Trade Representative under title 3 of the Trade Reform Act of 1974.

There are, to my knowledge, no pooling agreements with the Guatemalans. There were agreements with certain so-called associated companies with the Guatemalans whereby they agreed to pay them 5, 10, 15 percent for the revenues in exchange for being considered an associate under the conditions of the Guatemalan decree 41-71.

We would not pay that money to the Guatemalans. This is why we were in conflict. This is why Delta was prevented from carrying Guatemalan cargos reserved by that statute.

However, as we went forward and, following the proceedings before the Special Trade Representative, we did reach a pooling agreement with the Guatemalan state fleet which would have resolved the matter. However, the intervention of another American-flag line upset the entire thing. Despite the fact that they were given the opportunity to share within the American-flag portion, this didn't satisfy them.

Therefore, we withdrew the pooling agreement and went back to a section 19 type of hearing.

Senator INOUE. Would that agreement be immunized under this bill?

Captain CLARK. It certainly would. The type of agreement that we executed, Delta Line and Flomerca, the state fleet of Guatemala, was a bilateral agreement providing for entry of other carriers.

Senator INOUE. Did the FMC find this agreement discriminatory?

Captain CLARK. No, sir, it never came to a hearing. The intervention of Sealand and the conditions prevailing within the FMC at that time were such that we would have been facing a year's hearing process.

This was despite the fact that there was a specific provision in this for Sealand to share within the American-flag portion.

However, Sealand would not accept that and, therefore, the Guatemalans backed off and we therefore were forced to go to the section 19 route.

Senator INOUE. Does this article in American Shipper, January 1978 issue, cover that situation rather honestly?

Captain CLARK. You have me at a disadvantage. I haven't read the article, I don't believe.

The headline is correct in that had the Guatemalans not changed their law, which they did, it was proposed by the FMC that they would put a countervailing duty or fine or penalty, whichever term you wish to apply, against the revenues of the Guatemalan-flag ships, their chartered ships and any associated line.

However, the Guatemalan Congress acted rather expeditiously. They already had a bill going forward, but this enabled them to push it forward. And they enacted a new piece of legislation which eliminated the discriminatory aspects.

It was duly signed by the President of Guatemala within the time limit and the threatened countervailing action of FMC was dropped.

Senator INOUE. Captain, I thank you very much. I have several other questions I would like to submit to you for your study and consideration and, hopefully, some response.

Senator Long?

Senator LONG. Yes. As I understand it, Captain Clark, your testimony is that S. 2386 does not provide for any agreement that is not already permissible under the shipping laws, but it merely eliminates the delaying snarls which have prevented these laws from being effective.

Captain CLARK. That's correct, sir. The act specifically provides for approval of pooling agreements.

However, as I stated, the problem is constituted by the hearing process which can last up to a year. In the meantime, your trading partners—they are proud nations in the Latin American countries—they get upset by it.

We have no monopoly on FMC or regulatory bureaus. They have their own. When they approve it and they don't get action within a reasonable time, they disapprove it.

The whole thing goes down the drain to the detriment of the foreign commerce of the United States.

Senator LONG. I want to illustrate a problem, something having to do with my personal experience.

At the end of World War II, I was assigned the job as a young naval officer of reviewing court martials. Trying to be sure I was doing the right thing as the good Lord gave me the sight to see it, I found those court martials piling up on my desk to the point where I would come back and work most of the night and still couldn't dispose of them all.

Finally, a more experienced lawyer than I had ever been told me the only way to get those things off the desk was to go ahead and make a decision even if I was in error.

He pointed out that those poor souls were sitting in the brig waiting for a decision from up here and they weren't coming out of the brig in any event until I could decide about the court martials.

That being the case, I got busy and decided them, resolved my doubts one way or another and made decisions.

By the time I was through, I got the best fitness report I had had in the Navy and the officer didn't want me to get out of the service because he found me indispensable at that point.

You're doing a greater injustice in a situation like that, sitting around thinking about it. You ought to decide it.

There was reviewing authority above me. I was working for a reviewing authority, but it still had to go up to a higher authority.

To delay these matters was to deny justice. I learned that point in short order. Once I learned it, I was able to do the job I believe that I should have been doing.

Now isn't what we are talking about here the fact that you have certain rights under the law but the rights are effectively denied because of interminable delays?

Captain CLARK. Yes, sir.

Senator LONG. It gets down to the adage of justice delayed is justice denied. You have all kinds of rules in the Senate, but if it's debatable, unless it's a matter of high priority, you can't keep it before the Senate long enough to get a decision.

As you have indicated, there was an experience in Guatemala where you had to forgo your rights because it would take a year to ever get a decision. People don't feel like waiting a year for cargo to move from one place to another, do they?

Captain CLARK. No, sir. As a matter of fact, the Guatemalans themselves would not stand still or go through the hearing. They felt it was a fair proposition, that the interests of other parties were protected and other American-flag interests.

They were willing to go along with it, but one line alone was able to completely stop a peaceful settlement. Therefore, we suffered 5 years.

Now I don't want to belabor that fact, but in another instance was in a so-called coffee pool many years ago. One Norwegian line was able to take a year's delay in getting approval of the coffee pool. This pool was to stop rebating.

What we are asking for many, many times and what you have accomplished in this bill—as my Senator, I was talking to you about this—is to expedite the process. Otherwise, the other trading partners and the other governments say we can't do business.

Senator LONG. The point is that if the American carrier—and you represent one of the large American carriers—if the American carrier is subjected to all of the delays that are implicit in this situation that exists today, the remedy that's provided by the law is not really available in a great number of cases.

▶ Captain CLARK. Yes, sir, it is, unless somehow a meeting of the statutes of the other country, the other trading partner, is somehow resolved with our statutes.

Senator LONG. How would this bill, S. 2386, affect the Communist cross-traders?

Captain CLARK. That's a point I touched on in my testimony and which I'm delighted to elaborate on.

I think all American-flag lines have unanimously appeared either individually or collectively through associates to this committee and to the House committee with due concern for the encroachment of the predatory and Communist-type flag shipping menace.

With these type of agreements, there would be provision for third flag lines, whatever they are, to be within such agreements. But they would be boxed within a small part of it. The major share would go to the two trading partners.

Let's take, for example, the Brazil-United States agreements, following this principle of 40-40-20.

There was 40 percent for Brazil, 40 percent for the American lines, 20 percent for the third-flag lines.

If the Communists came into the Brazilian trade, they would be in the 20 percent along with the Norwegians, Mexicans, Colombians, and Argentinians, and so forth.

However, it would not be discriminatory because in our trades within the Communist nations, they would have the right to have the major share as principal trading partners.

It would be directed to each country you have business with, reserving a substantial share for American-flag ships.

It's no good to have all of these ships unless we have cargoes. That's an absolute must and the Communist menace is spreading every day. They are building more and more ships far beyond their needs. They are already in the Caribbean. They are in the Latin American trades, African trades from Europe.

They are coming fast.

Senator LONG. They are not limited by laws such as the antitrust laws that we pass in this country.

Captain CLARK. No, sir.

Senator LONG. What's your understanding of what our Government's policy has been on rebating practices, and enforcement over the past few years?

Captain CLARK. The FMC, within the limits of statutes and their competence, they have diligently tried to police this. They have insisted on neutral body agreements, some of which have been successful and others which have not been.

The real difficulty is that the—very little can be accomplished by the FMC except, say, in this country.

You may recall that most of the—if not all of the disclosures in this country have been made by the auditing committees of the large corporations and the auditors insisting that it be reported to the SEC and then on to the regulatory bodies.

Abroad, they don't have any of that type of procedure. Then you take the control of cargoes, a consignee or shipper, depending on the load or cargo, can direct the routing. They can direct it overseas and a foreign-flag line, it's the same old thing.

Their documents today are not accessible. They can be hidden, distorted, and the rebate paid abroad.

The only ones available for the submission of documents and control are the American-flag carriers.

Senator LONG. What has been the experience with shipping rates in these instances where voluntary pooling agreements have been entered into?

Captain CLARK. I gave the comparison here, Senator, and I quoted our own memorandum which you submitted. I completely agree with that. The rates have been much less in these trades. I think it averaged 3.4 percent per annum over 10 years in the Latin American trades where pooling agreements existed, compared to 14 something in the North Atlantic where there were no pooling agreements.

Senator LONG. Do you believe our liner trades are discriminated against by foreign shippers because of routine practice they engage in such as rebating?

Captain CLARK. The trade agreements in Latin America with the pooling agreements, I am convinced that rebates have been eliminated. It doesn't pay to rebate. If you take away the incentive to rebate, it's gone.

In the trades where we do not have pooling agreements, yes; it occurs.

Senator LONG. For the record, I would like for you to give us examples of the Communist carriers engaging in dumping practice with regard to U.S. shipping. You may have examples of that and if so, I would like to have that for the record.

Has this country, through its own laws, been responsible for over-tonnaging by encouraging a come-one, come-all policy?

Captain CLARK. Yes, sir, definitely. We invite anyone here and we keep no one out.

Senata Long. Thank you.

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

DELTA STEAMSHIP LINES, INC.,
New Orleans, La., March 22, 1978.

HON. DANIEL K. INOUE,
Chairman, Merchant Marine and Tourism Subcommittee, Commerce, Science and
Transportation Committee, Senate Office Building, Washington, D.C.

DEAR SENATOR INOUE: Thank you very much for the opportunity of appearing before your Committee and presenting my views on S. 2386 and other legislation related to improving the lot of the U.S. Merchant Marine, eliminating rebates, etc. I do believe that all of this adds up to a most constructive effort and I wish you and your colleagues success in achieving an early and effective resolution to the current problems affecting U.S. flag shipping.

At the end of my presentation, you handed me several questions and requested that I respond as soon as possible. Attached hereto is my response, which I trust you will find satisfactory. With all good wishes to you and the other distinguished members of the Committee, I remain

Sincerely yours,

J. W. CLARK,
President.

Attachment.

Question. S. 2008 is intended to strengthen the FMC's ability to deal with illegal rebating by increasing the penalties and giving the FMC additional authority to require the production of documents by foreign flags. The bill does not deal with Section 15 agreements, and the antitrust immunity that section provides. S. 2386, on the other hand, brings into issue antitrust laws and policies as they apply to certain section 15 agreements.

(a) Would you agree the two bills raise different issues?

(b) Would you also agree there is a fundamental difference in the scope and subject matter of the two bills?

Answer. (a) I fully agree that the two bills raise different issues and that there is a fundamental difference in the scope and subject matter of the two bills. As indicated by my testimony, I believe that there are a number of problems which our carriers must face and which must be met by a combination of legislative responses which will serve to place us on a course which will preserve U.S. foreign commerce and our merchant marine.

(b) However, the two bills (S. 2008 and S. 2386) do have one common objective—and benefit—that is to eliminate malpractices such as rebates.

Question. Under S. 2386, consider, for example, the North Atlantic trade where France, Germany, the Netherlands, United Kingdom, Scandinavian countries are all maritime countries. May a German carrier be a reciprocal carrier only as the United States/German traffic; a British as to only United States/United Kingdom traffic? What is the status of a carrier which is a consortium of carriers of several of the European nations? Would it be possible for the carriers in the North Atlantic trade to frame up an agreement which would meet the requirements of S. 2386?

Answer. It is correct that a German carrier would be a reciprocal carrier only as to United States-German traffic, etc. This is not a situation which is unique to the North Atlantic. In our South American trades, the Brazilian carriers would be reciprocal carriers only as to United States-Brazilian traffic; the Argentine carriers only as to United States-Argentine traffic, etc. U.S. carriers, in turn, have these rights only in the trades between the United States and Brazil and not between Brazil and the United Kingdom, Germany or some other area. I would suggest that it would equally be appropriate for a German carrier to be a reciprocal carrier in the U.S./German traffic and to be a third-flag carrier, as indeed it is, in U.S. traffic between France, the Netherlands, United Kingdom, etc.

In the case of consortiums, it is my view that it would not be inappropriate for them to have the reciprocal flag status of each of the countries whose flags are flown by their vessels. It must be borne in mind, however, that under the bill the interest of the carriers which are reciprocal to those of the U.S. flag must not exceed, in toto, the interests of the U.S. flag. It is my view that the carriers in the North Atlantic trade could produce an agreement which would meet the requirements of S. 2386, recognizing the differing status of the carriers in the varying segments of the trades. Similarly, a series of separate agreements covering the trade also could be utilized for the same purpose.

Question. It has been said that participation by subsidized lines in pooling agreements may, depending upon the particular agreement, violate various provisions of the Merchant Marine Act of 1936. For example, Section 804 prohibiting any

subsidized carrier from directly or indirectly acting as an agent or broker of a foreign line except with special permission for a limited time; and Section 601, precluding an operating differential subsidy award unless required to meet foreign-flag competition. Would you please comment as to these sections of the Act, and any other if you feel there is a conflict.

Answer. The standard operating differential subsidy agreement contract specifically requires the approval of any such agreement, under which approval the United States "shall consider whether such agreement contravenes, or may reasonably be expected to operate at any time so as to contravene the purposes, policy, or provisions of the (Merchant Marine) Act (of 1936)."

I do not believe that the relationship between parties to any forms of reciprocal agreements dealt with by the proposed amendment serves to establish the U.S. flag subsidized carrier as an agent or broker of the foreign line. As to foreign-flag competition, even under pooling agreements the reciprocal carriers will remain in competition for the more desirable cargoes and, further, will remain in competition with the third flag-carriers operating in the trade. As such, I do not believe that there is a conflict in this area.

Question. Some contend that pooling and similar agreements may raise particular issues when the participants include American subsidized lines, as they would under S. 2386.

They maintain that while conference agreements restrict rate competition among members, they allow for the full play of competitive forces insofar as service to shippers is concerned. Pooling agreements, on the other hand, eliminate this for of competition, at least as between their signatories, as it makes little difference from the standpoint of any pool participant whether he is more or less successful than the others is the agreements assures him a given of total joint revenues or cargoes. The whole purpose of the subsidy program, on the other hand, is to maximize American service and the success of the American operator. Therefore any arrangements to which U.S. subsidized lines adhere that detract from this objective are highly inconsistent with the objectives sought to be achieved by the Merchant Marine Act of 1936.

(a) Would you please comment on this statement?

(b) Inasmuch as pooling agreements are permitted pursuant to Section 15 of the Shipping Act, is there an inconsistency between that Section and our subsidy program?

Answer. (a) I do not believe that pooling agreements eliminate competition insofar as service to shippers is concerned. It will remain true that the pooling lines will compete among themselves for the better paying cargoes in the same manner as if the pool did not exist. This will be by providing, to the extent possible, superior service to the shippers in the trade. It does make substantial difference to the pool participant as to whether or not he is the more successful of the carriers within the pool, as well as within the trade.

As to the objectives sought to be achieved by the Merchant Marine Act of 1936, it is my view that the purpose of the Act is to enable tonnage constructed in the United States, repaired in the United States and manned by the United States citizens to maintain a long-term commitment to the various essential trade routes of our foreign commerce. The subsidy program equalizes our costs with those of our foreign flag competitors; beyond this the subsidy program does not genuinely serve to maximize our service or, in any manner, guarantee our success.

The reciprocal agreements sought to be fostered here, on the other hand, are intended to maximize the service and success of the U.S. flag operators in our trades in competition with third-flag carriers who have dumped their tonnage in those trades.

(b) As to the lack of consistency between Section 15 and the Merchant Marine Act of 1936, I believe that there is real reason for concern here. Section 15 is and has been used as an "equal rights amendment" for the third-flag carriers. This, in turn, is accomplished at the expense of the U.S. flag carriers both subsidized and unsubsidized. The subject is one which I believe can be substantially complemented by a "closed conference" bill, which I believe deserves the very careful consideration of the Congress.

Question. The cargo pools provided for in S. 2386 are permissible as long as they permit third flag carriers to enter the trade as parties to the "reciprocal ocean transportation agreement" or as nonparties able to participate or compete on a fair, reasonable, and equitable basis for cargoes moving in the trade.

Suppose country X has a law which, as implemented by an equal access agreement between it and the U.S., reserved 85% of the cargo moving in a trade between it and the U.S. to the carriers of the U.S. and country X who are parties to a specified "reciprocal ocean transportation agreement."

Under the circumstances of such an equal access agreement, how could a "reciprocal ocean transportation agreement" satisfy the requirement of S. 2386, as to a third flag carrier which wanted to enter the trade?

Answer. I do not believe that a third-flag carrier has any "birthright" to obtain any percentage of the cargo moving in our foreign trades. If one of our trading partners determines that 85% of the tonnage moving in the trade between itself and this country should be carried on vessels of the reciprocal flags, this would simply establish an equitable basis for third-flag carriers, i.e., the remaining 15%. As I have said before, we cannot "be all things to all people" as we have attempted to do under our Shipping Act, 1916. It is time that we recognize that fact, and give proper attention to our own interests and those of our trading partners.

Question. Suppose an equal access agreement between the U.S. and Brazil. And further suppose pursuant to that agreement there is a cargo pooling agreement under S. 2386 between X, a U.S.-flag and the Brazilian flag carriers, Netumar and Lloyd, for the trade between Puerto Rico and Brazil.

Now suppose X carries scotch whiskey from the U.K. to Puerto Rico, where it relays the cargo to another of its carriers, which in turn carries it to Brazil.

Under S. 2386 would the scotch whiskey be included as part of the cargo to be pooled under the agreement?

Answer. I do not believe that S. 2386 deals with or should deal with the question as to whether such cargo would or would not be included within the scope of the pool. This is purely a matter for negotiation between the pool carriers.

Question. Section 205 of the Merchant Marine Act of 1936, declares it unlawful for any carrier, through the medium of an agreement, understanding, etc. to prevent or attempt to prevent another carrier from serving any federally improved port designed for the accommodation of ocean-going vessels at the same rates which such carrier charges at the nearest port already regularly served by it.

Typically, as I understand it, pool arrangements are backed by rationalization agreements which divide output coverage.

For example, in a U.S.-Brazil trade, suppose if the agreement provided for the U.S. carrier to call at Philadelphia, and the Brazilian carrier to call at New York.

Would that agreement violate Section 205?

Answer. I am not aware of any pooling or other agreements under which ports have been allocated in the manner suggested by the question. Generally, it is the desire of the carriers to serve all of the ports within their range. Where rationalization agreements exist, they ordinarily serve to space the sailings of the carriers so that if a port requires, for example, weekly sailings, carrier "A" will serve the odd-numbered weeks, while carrier "B" will call during the even-numbered weeks.

Question. (a) Absent an inter-government negotiated equal access agreement, is it possible to guarantee that a U.S. carrier will have and receive "a share equal to the share and/or have rights equal to those of the reciprocal carrier?"

(b) Isn't this kind of guarantee necessary to bring a pooling agreement within S. 2386?

Answer. (a) Under S. 2386, unless the U.S. carrier does receive a share and/or rights equal to those of the reciprocal carrier, the agreement does not fall within the parameters established by the bill. If the carrier or carriers of the trading partner are not willing to accept the principle of an equal share and/or rights for the U.S. flag carrier, they will not be able to negotiate an agreement subject to the bill.

(b) I believe that the bill itself provides incentive that the carriers of our trading partners will be prepared to negotiate equal shares and rights for our carriers even without the necessity for an inter-governmental negotiated equal access agreement. This, of course, would be in the form of a pooling agreement between U.S. and reciprocal flag carriers in a trade where the government of our trading partner does not utilize such flag preference laws as those which have given rise to the inter-governmental negotiated equal access agreements.

Question. I understand that in addition to equal access agreements which are negotiated between governments, there are commercially negotiated access agreements subject solely to Section 15 of the Shipping Act.

(a) Could you explain what these do?

(b) Would these equal access agreements be immunized from the antitrust laws by S. 2386?

Answers. (a) & (b) Where a government establishes preferences for carriage of cargoes in its trade by its own carriers (or those with which its carriers have agreements), it is often possible to negotiate an equal access agreement without the intervention of our government. The effect of such agreements is the same as those which arise from inter-governmental standings and it is my view that they

would and should be immunized from the antitrust laws by S. 2386 in the same manner as agreements which result, in whole or in part, from the intervention of our government.

Question. (a) If S. 2386 would immunize equal access agreements commercially negotiated, would it include agreements such as the one involved in the U.S.-Guatemalan trades?

In that case, the Guatemalan government adopted cargo preference policies which favored select group of Guatemala-flag carriers and "associated carriers,"² including certain U.S.-owned lines.

(b) Didn't the FMC find that practice a "discriminatory shipping practice" and invoke Section 19 of the Merchant Marine Act of 1920, which empowers the Commission to impose sanctions on the national flag lines of countries that have enacted laws deemed harmful to U.S. foreign commercial shipping?

(c) If S. 2386 permits agreements like the one which existed in Guatemala, would it be narrowing the scope of Section 19?

Answer. I do not believe that the actions of the Guatemalan Government would have fallen, at any stage, within S. 2386. It should be noted, at the outset, that the bill provides that reciprocal agreements are those entered into by carriers of the United States flag and those of the flag of our trading partners. The inclusion of "U.S.-owned" carriers would not cause the agreements to come within the bill where those carriers did not operate U.S. flag vessels in the trade in question.

Rather than narrowing the effect of Section 19, I believe that the bill will give new meaning to the position of this country in fostering its own commerce and U.S. flag carriers.

Question. MarAd's role in negotiating equal access agreements has been described as guaranteeing that the national flag lines of a country shall have equal access to U.S. government controlled cargoes moving in the country's trade in exchange for a similar guarantee from the government of the other country.

According to some, the difficulty with such an agreement is that the other country's definitions of government controlled cargoes are far broader than the U.S. definition, encompassing, in some cases, a substantial majority of all cargoes moving in the trade.

(a) Would you please comment on this?

(b) Could S. 2386 operate where this was the case?

Answer. I agree that the definition of governmental controlled cargoes in other countries will vary from those of our own country and may be substantially more all-inclusive. I do not believe that this, in any manner, would serve as an impediment to the operation of S. 2386. This country must recognize that other nations may have much stronger views as to the roles which their merchant marines are to play in their economies and that we must respect their views, so long as our own carriers are given a status equal to those of the flag of the trading partner. This is what S. 2386 seeks to accomplish.

Question. A subsequent witness will suggest an amended version of S. 2386. The Committee will furnish you a copy. After you have had an opportunity to review it would you please furnish your comments to the Committee.

Answer. I do not believe that the amended version of S. 2386 will serve the purposes sought by that bill for several reasons, including the following:

1. The reference to Section 15, the "deemed approved" provision and the removal of language exempting the agreements from the antitrust laws will serve to place the agreements, effectively, in the same status which they have always occupied under Section 15. We believe that this uncertainty should not be removed.

2. The reference to the "complaint of an aggrieved carrier" presumably means that any third-flag carrier can delay/block, by its protest, the effectuation of the reciprocal transportation agreement. If this is the case, the bill will not be meaningful in any manner and will not serve to promote U.S. foreign commerce or our carriers.

3. The foregoing also applies to the finding that such an agreement is "unjustly discriminatory or unfair as between carriers." If third-flag carriers are to be guaranteed equal rights with the reciprocal carriers, the bill is simply not meaningful.

4. I believe that the bill has to have fixed and limited standards and that the "catch-all" language "to operate to the detriment of the commerce of the United States, or to be contrary to the public interest, or to be in violation of this Act" will return us to the same vague and unworkable standards which are already applicable under Section 15. The simple fact is that the amended version does little more than restate the provisions of Section 15 and does not serve to foster or promote such reciprocal agreements.

5. I do not believe that there should be a suspension provision in the bill and if the FMC has the power to suspend for seven months, carriers simply could not obtain meaningful action under the statute.

Senator INOUE. Our next witness is chairman of the board and chief executive officer of the Moore-McCormack Lines, Mr. James R. Barker.

STATEMENT OF JAMES R. BARKER, CHAIRMAN OF THE BOARD AND CHIEF EXECUTIVE OFFICER, MOORE-McCORMACK LINES, STANFORD, CONN.

Mr. BARKER. I'm James R. Barker, chairman and chief executive officer of Moore-McCormack Resources, Inc.

One of our subsidiaries, Moore-McCormack Lines, operates vessels in the U.S. east coast/South America and U.S. east coast/South and east African trades. I have been requested to testify on S. 2386 by and on behalf of the Committee of American Flag Steamship Operators—CASO—an organization of subsidized and unsubsidized U.S.-flag ocean common carriers.

I believe that the goals of S. 2386 are affirmative, and the realization of those goals would substantially aid many of the trades of the United States, and U.S. carriers and shippers. As I view it, S. 2386 is primarily intended as a procedural statute designed to overcome procedural delays which can disrupt commercial relations with our trading partners. The bill might also right the course of U.S. maritime policy which seems to be heading for a collision with our trading partners' laws and policies.

My company has had substantial experience with equal access agreements and pools over the last 15 or so years.

Many of these pools resulted from the legitimate desires of our South American trading partners to develop their own merchant marines. Many of the South American countries passed cargo reservation laws during the 1960's reserving some or all of their government impelled cargos to their own national flag merchant marine. Another purpose of these laws was to bring stability to trades which had been characterized as malpractices.

When first enacted, many of the South American maritime decrees had the effect of unfairly reducing shipper choice by precluding use of U.S.-flag carriers. Over a period of time, however, that situation was rectified in most trades by the development of equal access and pooling agreements in the affected trades. With these equal access agreements, U.S.-flag carriers were given the right to compete on an equal basis with the South American-flag carriers. In return, the South American-flag carrier was given reciprocal equal access to most government impelled U.S. cargo, such as Eximbank cargo.

Pooling agreements have been utilized as methods for implementation of the equal access agreements and to secure parity, that is, equal portions of the trade be shared by each of the trading nation's carriers.

It is my belief that in the South American trades where our line has had substantial experience with these equal access and pooling agreements, they have worked remarkably well.

Probably the best indicator of their success has been the absence of shipper complaints concerning the operation of the agreements. In

all the trades in which Moore-McCormack Lines has had equal access and pooling agreements, there has not been one shipper complaint to the FMC at the time the agreements were up for renewal.

The reason shippers have been satisfied is because these pooling agreements provide for adequate levels of service without unnecessary excess tonnage, enabling carriers to receive a fair return on their investment while keeping rates relatively stable in comparison with many other trades.

One of the prime benefits of these pooling agreements has been the ability to rationalize sailings and thus assure adequate levels of return and stable rates in previously tumultuous trades.

Both I and other members of CASO believe that there may be valuable lessons which can be transferred from the South American context to other trades. The use of equal access and pooling agreements eliminates malpractices more effectively than any other method. It does not pay to cheat in a pooling agreement. The benefits of rationalization of trades are substantial. In the rationalized trades in South America, rates have been reasonable, service has been adequate, and the shippers as well as carriers have received the benefit of full utilization of equipment in the trade.

These benefits can be relevant to other trades besides the South American. Pooling and equal access agreements could avoid some of the conflict between our trading partners which is so evident at the present time.

I believe that S. 2386 was chiefly aimed at reducing the time and expense of lengthy regulatory hearings. These procedural problems can effectively prevent agreements from ever being implemented even though there has been no determination that they are in any way harmful to the public interest.

Under present procedures, an agreement must be approved before implementation. In many cases, a hearing will be ordered even if no person or agency complains. Last summer the FMC in one order said a South American pooling agreement might be against the public interest even though not one shipper or carrier had complained. I think S. 2386 would overcome this pressing problem.

As presently drafted, however, S. 2386 does have certain technical problems. I do not wish to go into a detailed analysis of the bill, but will point out a few areas of concern.

The carriers with the important responsibilities and rights in all trade are the national-flag carriers of the trading partners. The bill recognizes that by defining U.S. carriers and reciprocal carriers. Unfortunately, however, there is an ambiguity in the bill which might allow third-flag carriers the same status as "United States" and "reciprocal carriers." It does not seem to me that third-flag carriers, such as the Soviet-line carriers, have any real right to equal access to government cargoes or, necessarily, any right to be automatically included in pooling agreements. Neither the United States, nor most of its trading partners, provide across the board equal access to government impelled cargo to third-flag carriers. In certain trades the definitions of reciprocal carriers may have to be broadened. The European Common Market or other such entities may desire to be treated as one trading unit. But I think third-flag carriers' rights must be subordinate to the national flags.

Second, since rationalization and the prevention of overtonnaging are important goals of pooling agreements and this legislation, the legislation should assure these objectives. The bill appears to require that pools be open to participation by all carriers regardless of flag. This, as I state, should be corrected.

Finally, as a technical matter, I think it should be made clear that military cargo is excluded from the definition of "government impelled."

I think the bill is fair to all lines. Despite my own personal enthusiasm for pooling and equal access agreements stemming from my own experience, Mr. Chairman, I would be the first to recognize that they are not a panacea for our maritime trades or for U.S.-flag carriers.

Conditions vary from trade to trade, and in some trades, this type of agreement is simply not appropriate. Moreover, other important problems, such as growth of the Soviet lines, are not addressed by this legislation. So my support for this legislation does not in any way diminish my belief that some of the other serious problems which this committee will face this session require decisive action as well.

In general, however, I would like to emphasize that we believe the goals of this legislation are worthy. The bill would have the effect of avoiding the kinds of procedural problems which now face pooling and equal access agreements and would minimize regulatory interference and delay with these commercial agreements.

Thank you, Mr. Chairman.

Senator INOUE. Do you believe that this bill will complement or conflict with the other bill which is now pending before the committee, S. 2008?

Mr. BARKER. Give me the name of the bill.

Senator INOUE. That's the so-called malpractice bill.

Mr. BARKER. I think it complements the malpractice bill in the sense that the record is clear in our South American trades where we have had pooling agreements. There's no evidence that any rebating has taken place. I think that the problem of rebating, as I know your committee has looked at it and you have personal experience in looking into it, has been rampant in the trans-Pacific, North Atlantic trades.

It's a serious problem, one that has to be addressed and a more comprehensive approach to it, I think, is required because it's a very serious problem and one which really has to be addressed.

On the initiatives that have been made already, I think rebating, from the American viewpoint is over. The problem you are addressing is rebating from the other carriers. It's a complicated problem. It's one that really needs a great deal of time and thought.

I'm pleased you're giving it that time and thought. It's one that—it's so complicated that I think a comprehensive bill on its own has to be looked at.

Just coming into a government confrontation on it in one blow might cause a lot of problems. But I think a thoughtful look at the escalation of initiatives that would eventually come up to that confrontation if nothing is done is that's required.

Senator INOUE. The Attorney General has suggested that one of the chief obstacles to the enforcement of the so-called malpractice laws, are the blocking statutes found in many countries which prohibit the liners of those countries from producing documents.

If these ships refuse to produce documents, should we empower the FMC to suspend their terms?

Mr. BARKER. That certainly has to be our last card. When all is over, we have to have the ability to throw that card. Before we get there, I think we would need to look at all kinds of a series of initiatives that might get us there before we have to throw that card.

I'm a little concerned on that card just being played initially, say, by a middle level FMC employee who would obey that kind of law without more government-to-government work on what the problem is.

As you know, rebating is legal in the European-Japan trade, European-Australian trade, or other trades like that.

We need substantial dialogue on that issue.

In terms of our pooling agreements, we have the right to that data. And that's worked out very well.

Senator INOUYE. Do you have questions?

Senator LONG. Yes. I have very little familiarity with these blocking statutes. Now if we are doing business with another country and we are trying to do business by the same rulebook, treat each other fairly, but the other country passes a law that says it's against the law for their carriers to provide the U.S. with the information that would let us know whether they are breaking our laws, that they are not doing business fairly, cheating, chiseling, stealing, should our carriers and our Government stand still for that and let them do business just as if no such law existed?

Is that like a fellow having to be in a duel with someone where he's standing in the open and the other guy is standing behind a tree?

Mr. BARKER. No question about it.

Senator LONG. The old story I heard many years ago, this old Kentucky colonel was telling about a duel he got in with a low-life character. He said after he paced off the dueling distance, he turned around and there that scoundrel saw standing behind the tree.

The question was asked what did you do about that? And he said, quite natural, "That throwed me behind the tree."

If they are going to do business that way, shouldn't we do business that way?

How can we compete by the Marquis of Queensbury Rules when the other fellow is fighting by the law of tooth and nail?

Mr. BARKER. I agree. One of the problems we have and it's in the record in the House—I think it's accurate. I heard it in testimony from the FMC in some cross-questioning—the fact is up until the last several years many of our characters weren't playing by the Queensbury Rules, either.

When you look at the record of investigation on rebate cases, I think the record shows that no one was ever prosecuted either way on it. I think what we have got to do is communicate in a series of initiatives that that has changed in the United States.

But to go from wide open rebating to full stop with no measures besides closing the ports to our trading partners immediately without the process of communication, could cause a lot of international problems. Those signals have got to be given—there have to be methods in the legislation so that signals can be given so that effective dialog can be established to soften the problem.

Otherwise, we are liable to have a confrontation that's tough to get out of.

Senator LONG. Isn't it possible for our Government to follow a policy that makes it possible for all of our carriers who are out there on the seas to do business and make a decent profit and attract capital

so that they can build whatever ships are necessary to stay modern so long as we follow the approach that we are going to treat the other fellow the way he treats us? When the other fellow doesn't treat us fairly, we are not going to treat him fairly.

Mr. BARKER. I think that's clear. When you look at the cause of rebating, malpractice, what you have as opposed to the action, is overtonnaging.

We are the largest trading Nation in the world. We carry 6 percent of our own trade. We are the only country that lets everybody in indiscriminately.

I understand on the trans-Pacific that now foreign companies coming under the trade which is overtonnaged already will be equal to three U.S. lines in the next year.

When you have that kind of situation where there's going to be cutthroat competition and more and more tonnage coming in, you certainly have the environment for that kind of malpractice.

We need also to look at the overtonnaging situation because it's absolutely out of control. That's the root problem. Until that problem is solved, there's going to be trouble and real trouble.

Senator INOUYE. As a Senator, may I recall in one of our hearings last year, two countries, or representatives of two countries, informed the committee and said in no uncertain terms that they will not permit their carriers to comply with the laws of the United States as far as the production of documents.

One was Israel and the other was Japan.

I gather many European countries were ready to testify the same way.

So the problem you spoke of is a real one.

Senator LONG. Let me make this point. If those people won't do business on our terms or by the route that we think is fair, I think they ought to come in and propose to us how they expect to do business.

Right now, I can't speak for the situation with Israel. I know more about the Japanese trading situation. Those people insist on the right to maintain a huge surplus trading with the United States, which is part of our overwhelming deficit which is destroying the value of the dollar and the world.

We have told them in no uncertain terms that we mean business. Either they trade in a way we can survive or we will not let them victimize us further.

Mr. BARKER. That's true. What's going on in the North Atlantic and the Mediterranean is that we are getting dumping. This is no different than the steel situation. There's wholesale dumping of excess tonnage in the world coming into our trade. There are no tariff restrictions on using ships. That coupled with the aggressive buildup by the Soviets in our trade—they are the largest single carrier, bigger than any single United States, American carrier in U.S. trades.

We have to find a way to stop the dumping. If we stop this dumping, the malpractice will end.

Senator LONG. In the trade area, the Japanese can't believe that this nation means business. And we are going to talk like an old Yankee trader for a change. They think at the last minute a fussy thinker down there in the State Department will represent all of the authority of the President and say this Nation will do nothing to protect its interest. We will suffer all sorts of discriminations and burdens we can't afford and we will put up with it forever.

It takes doing to convince them that we really mean business. I don't know how better to do it than to pass a law to say so. This is just one of the areas, but it seems to me that this is an area where we ought to say to them, if you want to do business obey our laws.

Mr. BARKER. I would come back to this. The piece of legislation has to go to the overtonnaging situation. Any ship that comes here can charge any price and dump tonnage on our trades. We are becoming less and less a participant in our own trade and we are the largest trading country in the world.

Mr. BRENNAN. I would like to add a few things to what Mr. Barker has commented to about the overtonnage situation and the concern of the American-flag carriers and specifically, Senator, you have mentioned the Japanese segment of the Pacific trade.

The American-flag carriers have under an agreement Federal maritime agreement, engaged in discussion with the Japanese-flag carriers. Hopefully, these discussions may lead to a type of consideration for approval of a pooling type situation to rectify or to help to rectify the imbalances between American flag and Japanese carriage in this particular trade route.

It's a grave concern.

Senator LONG. We had testimony before the Senate Finance Committee on the trade problem. If you are an industry competing with the Japanese industry, you are in about the same situation as if you were competing with the Government of Japan itself, because that government represents those industries and it works just as though it were on their payroll.

So that even if you are at General Motors, you can't compete effectively with what Japan can put behind its procedures.

Mr. BARKER. That's true.

Senator LONG. In that type situation, if we are going to be fair to the liners who fly under our flag, we have the right to expect the same consideration for our vessels from the Japanese as the Japanese Government expects be given to theirs.

Senator Talmadge went to Japan a while back. Someone asked if he criticized Japan for banking their procedures as they do and I'm sure the same thing applies to shippers. His remark was:

No, I don't criticize Japan for a moment for banking their manufacturers. I criticize the United States that it would compete with that type of thing without banking its procedures.

Mr. BARKER. Exactly so. If we had a simple law that said 40 percent of all cargo in and out of the U.S.-trade routes had to be our 40 percent, that's what we are doing. That's what South America did originally. We overcame the problems and got our share of it.

Senator LONG. Generally speaking, when we do that type of thing, we ought to reciprocate. If that's how you are going to do business, we ought to do business the same. That's the idea of the countervailing duty statute.

Thank you so much.

Senator INOUYE. How serious is the cross-trading by the so-called third flags like FESCO and the Baltic Steam Ship Co.?

Mr. BARKER. Serious. It's 10 percent of the trans-Pacific trade now and they have new ships being built just for that trade.

It's 10 percent in the trans-Pacific. They say their goal is 10 percent in the North Atlantic. They are going to Russia, the Mediterranean, and what have you.

It's a serious threat. The most serious threat in competing with them is meeting their prices. There were a bunch of buses coming in from Germany last week. The rate was \$10,000 a unit. They dropped the rate to \$6,500 to meet the Russians. The Russians dropped the rate to \$3,500 which, by our calculations, was the cost of fuel to bring it over and this was mass transit financing by the Government.

Are you going to drive the country of Russia under? When you say to your competitor, "I'm going to take you to the wall," that's how you're talking about taking to the wall. We can't compete against that.

Senator INOUYE. We still have pending a so-called third-flag carrier bill which has not met the approval of the administration.

Mr. BARKER. It's an important initiative.

Senator INOUYE. In each case, when we try to do something—I'm not saying this administration, but all of the administrations. They say we can't do this because other countries will reciprocate.

My position is they are already doing this. We are the last one to come in with this cargo preference. Every country I know of has cargo preference. We have cargo preferences on military cargo. That's basic. You expect every country to do that.

Mr. BARKER. I don't know how we stay on board. We had initial opposition to the Brazil-United States agreement. The Norwegians, Japanese were protesting. They had approved the first bilateral agreement with Brazil a year before we got into it. Yet they screamed.

Senator INOUYE. I wanted to tell one story which is apropos of the situation when you are competing with the Soviet Union.

An American company was hoping to get involved in transporting natural gas from the Soviet Union over here. They ran all of their studies in computers what it would cost to produce this gas and transport it. They told their Russian trading partners with whom they hoped to do business that they ought to alert them to the fact that this study indicated that the Russians would be killing their case. That the price that they would get for the gas in the United States would be consumed by its transportation expenses.

The Russians reacted to that—that's because you don't know how we keep our books.

Now if you're competing against that type of thing—state trading—you are a single American company out there owning some ships. And you are taking on the strength of the entire Soviet Union. What change do you have in that?

Mr. BARKER. None.

Senator INOUYE. Thank you very much.

Our final witness this morning is the present of the Adherence Group, Inc., Mr. Manuel Diaz.

STATEMENT OF MANUEL DIAZ, PRESIDENT, ADHERENCE GROUP, INC., NEW YORK, N.Y.

Mr. DIAZ. Mr. Chairman and Senator Long, my name is Manuel Diaz. I'm president of the Adherence Group, Inc., an independent organization dedicated to serving the steamship industry as a neutral self-policing authority.

Prior to establishing my present company, I was for 5 years executive director of Associated North Atlantic Freight Conferences, a

neutral body organization engaged in policing, enforcement, and cargo inspection activities for over twenty conferences covering more than 35 steamship services from Spain through Scandinavia to the United States and Canada.

Previously, I had been president of American Export Isbrandtsen Lines, West Coast Lines, and vice president of Grace Lines. For 30 years, I have been involved in transportation in the foreign commerce of the United States. I appreciate the opportunity to appear before this committee and to participate in these hearings.

For over 60 years, the Shipping Act, 1916, as amended, has been the bedrock of the U.S. commercial maritime policy. The amendments to the initial legislation have in actuality been minor, but we are now faced with the absolute necessity of updating our maritime legislation so that it reflects conditions that presently exist and that will exist in the foreseeable future in the ocean commerce of the free world.

The United States remains the singular example of open trade routes and open ports in the free world. The impact of this vestigial policy upon the U.S. foreign commerce and upon the American Merchant Marine has been appalling. This historical American policy of freedom of the seas and open ports has been the root cause for the ills and instability of liner shipping in U.S. foreign commerce and, in particular, for the poor plight of American-flag liner shipping today.

The U.S. trades are the dumping ground for excess liner tonnage for all flags with the result that with few exceptions, all U.S. foreign trade routes have become consistently overtonnaged.

The only way out of this nightmare is for the Congress to lead us with legislation by adapting measures that will fundamentally reduce overtonnaging on American trade routes. Therefore, I endorse S. 2386 as a bill to amend the Shipping Act of 1916, because even though the measures recommended and suggested by S. 2386 are acceptable and legal under that act, pressures from other departments of the Government, in particular, the Department of Justice, Antitrust Division, have in the past frustrated the implementation of the same effective measures offered under S. 2386.

Essentially, my views covering American-flag shipping and the foreign commerce of the United States are well known, and I refer to my testimony before your committee on another bill, March 25, 1977, in which I addressed myself to competitive conditions that pertain in liner shipping services in U.S. foreign trade routes.

Fundamentally, we must strive for the reduction of overtonnaging on American trade routes. This is paramount. Whether this be accomplished commercially, by treaty, by legislation, or by a combination of all three, should be a subject of weighty consideration and specific plans of action and implementation. However, the problem is immediate.

S. 2386, although limited in scope, is designed to foster commercial agreements among carriers which would result in control of excess shipping space, in itself a most constructive development. The schemes endorsed in S. 2386 would lead to more efficient vessel employment and deployment, maximizing vessel utilization, creating a more healthy investment climate for owners, and assuring the shipping public of continued long-term quality shipping service.

With efficient vessel utilization and reduction of overtonnaging, shipowners could expect a pattern of reasonable profits and return on

investments which would do much to stabilizing freight rates to the benefit of the shipping public.

With the development of door-to-door containerized shipping in our foreign commerce, the American businessman has not benefited as much as he should have because, practically without exception, the application of the capital intensive container system, with its tremendously productive container ships, to an archaic legislative and regulatory scheme resulted in instant overtonnaging and the exacerbation of an already chaotic situation. This can only be put right by a broad legislative approach strengthening self-regulation and the regulatory agencies.

There are certain fringe benefits that would accrue from the passage of S. 2386. The most important would be the immediate strengthening of American-flag liner services on those trade routes where the provisions of the bill were implemented, and there is no question that where rationalization schemes or pooling arrangements are operative, malpractices are inhibited.

Hopefully, if this bill is enacted, Congress will not be deterred from pursuing the cause of the ills in U.S. overseas trade routes, overtonnaging. Everything else is a symptom of the problem. Until we understand this and bring the supply and demand into sensible balance, overtonnaging and all its malaise will be with us forever.

S. 2386 is a recognition by Congress that commercial solutions to overtonnaging are to be encouraged. It also skirts recognition of the deplorable state of our regulatory process because it makes it more easy to achieve legally that which is already legal.

What Congress must address correctly, if we are to have order in our trade routes and if we are to have healthy American-flag liner shipping companies privately owned and operated, is the regulatory climate or lack of it that presently obtains.

The FMC should be strengthened so that its role fully reflects the intent of the Congress. The de facto regulation the liner shipping companies are now burdened with because of the intervention of the Antitrust Division of the Department of Justice in even day-to-day routine matters before the Commission has to be lifted.

S. 2386 is a small step in this direction, but on an extremely narrow front. Narrow because it is aimed at encouraging "reciprocal ocean transportation agreements" in those trades where there might be reservation of access to cargo, particularly government controlled cargo.

This situation does not arise on our major trade routes, United State/Europe, United States/Far East, because our major trading partners do not resort to cargo protection as a national policy, thank you, Mr. Chairman.

Senator INOUYE. Thank you very much, Mr. Diaz.

As you are aware, S. 2008 is intended to strengthen our ability to deal with malpractice by increasing penalties and giving FMC additional authority to require production of documents by foreign nations.

That bill does not deal with section 15 agreements and the antitrust immunity provided by that section.

This bill, as I read it, brings into issue antitrust laws and policies as they apply to certain section 15 agreements.

Would you agree that those two bills raise different issues?

Mr. DIAZ. Yes.

Senator INOUE. And they could be complementary.

Mr. DIAZ. Of course.

Senator INOUE. So there is a fundamental difference between the scope and the subject matter of the two bills.

Mr. DIAZ. Of course.

Senator INOUE. I have asked this question of other witnesses. What are your thoughts on blocking statutes and would you support an amendment to the present law which would authorize the FMC to suspend tariffs if they refuse to produce documents?

Mr. DIAZ. My thought on blocking statutes—I, of course, would support an amendment that would force foreign-flag operators to produce documentation or else have their tariffs blocked. This is a very radical and very tough measure. But I would support it because simply, as we stand now, the only ones forced to produce any documentation are the American-flag lines.

As Senator Long said previously, one of us is paying under a different set of rules. The blocking statutes of the European governments, and I am speaking because I'm familiar with those at the moment, are very clear. And you can go to jail just as quickly for—in those countries, for producing documents without their authority as you can here for not producing.

So there has to be, in my opinion, some countervailing measure. Otherwise, the—whatever problem that might surface under any investigation would fall only on American-flag lines.

Senator LONG. Do we have any blocking statute on our books?

Mr. DIAZ. To my knowledge, none.

Senator INOUE. Have other countries required our carriers to produce documents?

Mr. DIAZ. To my knowledge, they have not.

I think that whenever there has been a request for production of documents, and I can only think maybe of a collision case or cargo insurance case or something like this, I think they were obviously produced. I'm sure they were obviously produced. I don't know of any requests by a government for documentation from the U.S.-flag carriers simply because I don't believe—I don't think of any illegality terms of rebating and this kind of thing in those countries.

We seem to be the only country in the world where rebate is an illegal act.

Senator INOUE. So rebating is not illegal in most countries.

Mr. DIAZ. No; it is not.

Senator INOUE. What countries do make it illegal?

Mr. DIAZ. I'm not sure other than this country. In Switzerland, for instance, we have had a considerable problem opening up and setting up a policing organization in that country because the Swiss laws are very direct and very specific and in protection of their commercial secrets.

Part of the discussion which has ensued between ours and the council in Swiss justice department is what we consider illegal in the United States is not illegal in Switzerland. Very specifically, the cargo rebate situation.

They consider the negotiation of a freight rate between a shipper or forwarder and a carrier as the normal course of business. If the carrier—if the shipper can negotiate himself a rebate, so much the better for him.

But that's an integral part of the daily business and a confidential part of his transaction.

Senator INOUE. How serious do you consider the cross-trading by third-flag carriers?

Mr. DIAZ. Extremely serious. The North Atlantic is a case in point. The Russians have come in with the Baltic Steam Ship Co. They now have—they started with one ship a month, the small ship. Then they went to fully containerized tonnage, one a week. Now they have fully containerized, plus ROW—ROW, a minimum of one a week.

The last time I looked it was five to six sailings a month; 98 percent of the cargo they carry from the United States to Europe is for designations other than the Soviet Union; 99 percent of the cargo they carry from Europe to the United States is of origin in other than the Soviet Union.

It's all cross-trade traffic. They are for generation of hard currency plus the establishment of their own merchant marine.

Senator INOUE. We have heard a lot about predatory price fixing by the Soviets. Do you have examples of that?

Mr. DIAZ. Well, specific examples?

Senator INOUE. Yes.

Mr. DIAZ. They have been very successful, for instance, in carrying certain large blocks of cargo, machinery movements, particularly, of highly specialized German knitting machines and that kind of thing, which have pretty much gone entirely to Soviet-flag vessels.

There will be chemical movements out of France going to Soviet-flag vessels. They identified big blocks, important blocks of cargo segments where they definitely go after the cargo. It becomes a decision to the conference lines whether they want to meet those rates.

The examples given even here of buses, they can keep the cargo to their own because there's no limit to how low they can go to garner it.

There's no question that the Soviet-flag ships, for instance, trading between the United States and Persia are doing—wreaking havoc with the rates because in the first place, the Russians are not all that welcome in that area except maybe in South Yemen. Nobody else is very anxious to see them. And the Arabs aren't, the Saudis aren't, and yet, they go out with substantial cargo.

It's done, attracted by rate actions.

Senator INOUE. What percentage of the goods from the United States destined for Europe is now being carried by the Russian ships?

Mr. DIAZ. I think they are approaching 10 percent, Senator.

The last time I looked, they were in the neighborhood of 7 to 8 percent.

Senator INOUE. What percentage of goods destined from Europe to the United States are carried by American-flag carriers?

Mr. DIAZ. Somewhere in the neighborhood of, I think it's around 29 or 30 percent. I'm not sure now, but it's around 30 percent.

Senator INOUE. That includes mandated cargo.

Mr. DIAZ. The only mandated cargo there is is mandated. We would leave that out.

Senator INOUE. Around 30 percent.

Mr. DIAZ. Give or take a few percent.

Senator INOUE. What's the percentage of the Pacific trades?

Mr. DIAZ. American participation in Pacific trades outbound is low.

The exact percentage I don't know. I understand the Russians, as I heard, Mr. Barker mentioned 10 percent. That's a credible number. They have increased their service tremendously over the last 2 years.

Senator INOUE. Would that exceed the American participation?

Mr. DIAZ. I wouldn't be surprised that on a line-to-line basis, it might very well. I'm sure it's more than the U.S.-line carriers of the Pacific companies. I'm sure it might well be more than what the state lines carry of the U.S. companies.

Senator INOUE. Well, the record will be kept open to receive further statements.

I have been advised that several labor organizations, the National Industrial Traffic League, the Transportation Institute, Sea-Land Service, Inc., and others have requested opportunity to submit written comments for the record.

Senator Long and other Senators have indicated similar interest in submitting statements, so the record will be kept open for a reasonable time.

I thank you very much, Mr. Diaz. As I said, I would like to submit these questions for your consideration.

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

THE ADHERENCE GROUP, INC.,
New York, N.Y., April 18, 1978.

JOHN HARDY, Esq.,
Chief Counsel, Subcommittee on Merchant Marine and Tourism, Russell Senate Building, Washington, D.C.

DEAR JOHN: Please excuse the overlong delay in my response to your questions given to me when I testified before the Committee on S. 2386 last March.

Hopefully, my answers are responsive and will be of some use to you and your staff.

Looking forward to seeing you soon.

Yours most sincerely,

MANUEL DIAZ, *President.*

Attachments.

Question. S. 2008 is intended to strengthen the FMC's ability to deal with illegal rebating by increasing the penalties and giving the FMC additional authority to require the production of documents by foreign flags. The bill does not deal with Section 15 agreements, and the antitrust immunity that section provides.

S. 2386, on the other hand, brings into issue antitrust laws and policies as they apply to certain section 15 agreements.

Would you agree the two bills raise different issues?

Answer. Yes.

Question. Would you also agree there is a fundamental difference in the scope and subject matter of the two bills?

Answer. Yes.

Question. Would you agree that it is contradictory for the government to promote the U.S. merchant marine through subsidies, etc. on one hand, while failing to correct illegal practices such as rebating which threatens to destroy it on the other?

Answer. Yes.

Question. Inasmuch as "blocking statutes" are one of the chief obstacles to enforcement of our anti-rebate laws, would you support an amendment to the law which would suspend a carrier's tariff for failure to produce documents when the FMC requests them pursuant to a rebate investigation?

Answer. I would support an amendment to the law against "blocking statutes" if there were concomitant legislation strengthening the conference system, and the FMC as the regulatory authority. The suspension of a carrier's tariff, which in

fact would close U.S. ports to that carrier, is an ultimate move which places the carrier between U.S. law and the law of this own country. It's just too black and white. I believe that in return for strong conference legislation and effective tying devices between conference carriers and their customers, the "blocking statutes" question could be mitigated without necessitating the very actual danger of confrontation which would be highly disruptive to the foreign commerce of the United States, particularly with its allied trading partners.

Question. S. 2386 specifically exempts certain equal access agreements from the antitrust laws.

Is there a commonly agreed upon definition of "equal access agreements" so that there is no question of ambiguity in S. 2386 on that point?

Answer. The only definition of an "equal access agreement" is one that reserves the same percentage of cargo to the national flag liner and to the flag of its direct trading partner.

Question. How are equal access agreements negotiated? In other words, are they negotiated government to government?

Answer. Equal access agreements have been traditionally negotiated commercially even though their genesis has usually been government reservation of cargo to the national flag carriers.

Question. Would S. 2386 become operative if no equal access agreement were extant?

Answer. As I understand S. 2386, it would only be operative if there were underlying equal access agreements.

Question. Would S. 2386 apply in those trades where the U.S. trading partner has no cargo reservation laws? In other words does S. 2386 immunize pooling and rationalization agreements where the U.S. trading partner has no cargo reservation law?

Answer. S. 2386 would only be triggered through a cargo reservation action by a U.S. trading partner. Where no cargo reservation laws exist, there would be no necessity for an equal access agreement and, therefore, the provisions of S. 2386 concerning pooling and rationalization agreements would not be implemented.

Question. How many of our trading partners have cargo reservation laws?

Answer. It is difficult for me to list the number of cargo reservation schemes of U.S. trading partners. In Latin America there are eight that I know of. There is some type of reservation in South Africa and the Australian government has taken some steps to control the entry of carriers in the meat trade between that country and the U.S.. Also there are certain reservations of cargo imposed by the Indian government. I am sure there are more.

Question. In your judgment, how many of the U.S. foreign trade routes are over-tonnaged?

Answer. All the major trade routes of the U.S. are over-tonnaged with the possible exception of the U.S. Atlantic and Gulf to the East Coast of South America, U.S. Atlantic, Gulf and Pacific Coast to the West Coast of South America, the U.S. Venezuelan trade and maybe U.S. South African trade. All of the others are at this time over-tonnaged.

Question. Is there a way to determine precisely when a trade is over-tonnaged?

Answer. A trade is over-tonnaged when there is consistently more space available for cargo than there is cargo to fill that space so that vessels sail with less than a reasonably profitable cargo and often below break-even.

Question. Under S. 2386, consider, for example, the North Atlantic trade where France, Germany, The Netherlands, United Kingdom, Scandinavian countries are all maritime countries. May a German carrier be a reciprocal carrier only as to U.S./German traffic; a British as to only U.S./United Kingdom traffic? What is the status of a carrier which is consortium of carriers of several of the European nations? Would it be possible for the carriers in the North Atlantic trade to frame up an agreement which would meet the requirements of S. 2386?

Answer. This question is very complicated. The identification of a reciprocal carrier, particularly in Europe where consortia have flourished and where a port such as Rotterdam or Antwerp lives on cargo that does not emanate from the national territory, is extremely difficult. If one were to accept the strict interpretation under which a German carrier is reciprocal only for U.S./German traffic, then probably the only flag that could survive other than U.S. would be German flag, because much of the traffic from Rotterdam and Antwerp emanates from Germany and other points in Central Europe.

I believe that the solution for this problem lies with the Maritime policy of the European Community even though they have not addressed themselves to it at this time. For instance, if the UNCTAD Code were to obtain, it becomes im-

mediately incumbent upon the E.E.C. nations to develop a common denominator flag posture, otherwise only German flag carriers and possibly British flag carriers could survive. The consortia would present problems that could only be resolved through giving them common denominator nationality.

The essential organization for the development of this common nationality has already been established and it would not be particularly complicated to develop a workable and practical formula.

Question. It has been said that participation by subsidized lines in pooling agreements may, depending upon the particular agreement, violate various provisions of the Merchant Marine Act of 1936. For example, section 804 prohibiting any subsidized carrier from directly or indirectly acting as an agent or broker of a foreign line except with special permission for a limited time; and section 601 precluding an operating differential subsidy award unless required to meet foreign-flag competition. Would you please comment as to these sections of the Act, and any others, if you feel there is a conflict.

Answer. There have been many cases of subsidized American flag lines operating with pooling agreements over the past 40 years. Grace Line, since 1950 until the present, under its new name of Prudential, has had a pooling agreement with the Chilean Line. Since 1961, Grace/Prudential has had a pooling agreement with Venezuelan Line. Moore-McCormack and Delta Line have had pooling agreements with Brazilian and Argentine flag carriers. American Export Lines, for many years, was a member of a pooling agreement in the West Coast of Italy North America trade. Lykes Bros., had cotton pooling agreements with Harrison Line, a British carrier.

All of the above, and I am sure there are many more, are examples of subsidized U.S. flag lines operating within pooling arrangements. There is nothing in a pooling agreement which makes the U.S. flag line an agent or broker of a foreign line, and there is nothing within a pooling agreement that would do violence to Section 601 of the 1936 Act, because a pooling agreement would only be approved if it either improved or guaranteed the position of a U.S. flag carrier in the trade.

To my knowledge, there is no section of any act that would prohibit a subsidized U.S. flag carrier from entering either a pooling agreement or a rationalization scheme.

Question. Some contend that pooling and similar agreements may raise particular issues when the participants include American subsidized lines, as they would under S. 2386.

They maintain that while conference agreements restrict rate competition among members, they allow for the full play of competitive forces insofar as service to shippers is concerned. Pooling agreements on the other hand, eliminate this form of competition, at least as between their signatories, as it makes little difference from the standpoint of any pool participant whether he is more or less successful than the others if the agreement assures him a given of total joint revenues or cargoes. The whole purpose of the subsidy program, on the other hand, is to maximize American service and the success of the American operator. Therefore any arrangements to which U.S. subsidized lines adhere that detract from this objective are highly inconsistent with the objectives sought to be achieved by the Merchant Marine Act of 1936.

Would you please comment on this statement?

Answer. The performance level of an American subsidized carrier is spelled out very clearly in his contract with the FMC. He must maintain a specific number of sailings, calling at a specific range of ports in order to qualify for his subsidy. No subsidized operator would be allowed to enter into a pooling agreement that would minimize in any way the operational requirements of his Maritime Administration contract. Obviously, the philosophy behind the subsidy program is to assure the American shipping public, and in times of emergency, the American military, of continued American flag presence on the major liner trade routes of the world. This obviously means that a commercially oriented American flag Merchant Marine must be able to maintain itself and, at the same time, make provisions to replace its vessels in competition with its foreign flag competitors. If there is a pooling agreement in the trade route it would either include American flag operators or it would not be approved by the FMC and obviously, it would only include American flag operators, subsidized or not, who could improve their commercial position by being partners to a pooling scheme. The subsidy program has very stringent requirements that must be met by the American flag operator recipient of that subsidy. He would never be allowed to rationalize his contract with the U.S. Government just to satisfy a pooling scheme.

Question. Inasmuch as pooling agreements are permitted pursuant to Section 15 of the Shipping Act, is there an inconsistency between that section and our subsidy program?

Answer. I see no conflict or inconsistency between Section 15 of the Shipping Act or the subsidy program of the 1936 Act.

Question. As you read S. 2386, can the agreements under it be used within the conference system?

Answer. Yes, the agreements visualized under proposed S. 2386 are presently being used every day in the Latin American Conferences. All S. 2386 does is to expedite the approval procedures of the pooling or rationalization schemes based on "equal access agreements".

Question. The cargo pools provided for in S. 2386 are permissible as long as they permit third flag carriers to enter the trade as parties to the "reciprocal ocean transportation agreement" or as nonparties able to participate or compete on a fair, reasonable and equitable basis for cargoes moving in the trade.

Suppose country X has a law which, as implemented by an equal access agreement between it and the U.S., reserves 85% of the cargo moving in a trade between it and the U.S. to the carriers of the U.S. and country X who are parties to a specified "reciprocal ocean transportation agreement."

Under the circumstances of such an equal access agreement, how could a "reciprocal ocean transportation agreement" satisfy the requirement of S. 2386, as to a third flag carrier which wanted to enter the trade?

Answer. The point of conflict of all equal access agreements, whether they be those envisioned under the UNCTAD Code, or whether they be those that have been developed in the trades between Latin America and the U.S., is the percentage of cargo reserved for third flag carriers. There is nothing sacred as to the numbers. Possibly the only countries in the world that could survive from a maritime standpoint with modest equal access reservations would be the U.S., Japan and possibly Germany. These three countries generate and absorb enough cargo throughout the world to allow them to be magnanimous in their cargo reservation policies. The UNCTAG code reserves 40% to each national flag line and 20% to the third flag liners or cross traders, therefore, an 85% reservation possibly could be justified if there were not a traditionally important third flag commitment in the trade.

Question. Many have advocated pooling arrangements within conferences as a means of limiting malpractices.

Are the pooling agreements within conferences which they are advocating the same as the pooling agreements in S. 2386 which would be immunized from the antitrust laws?

Answer. The pooling agreements within the conferences are basically the same as those envisaged under S. 2386. Like any other agreements, pooling agreements can become highly complicated and technical, but essentially the underlying principles that apply to all of them are the same.

Question. Mr. Diaz, when you appeared before this Subcommittee last year, you said that "we have to go to rationalization. There is no question that we have to rationalize in terms of import calls and in terms of number of calls."

Does S. 2386 permit the kind of "rationalization" you feel is necessary?

Answer. S. 2386 really does not address itself to the kind of rationalization which I was considering in my statement. That rationalization really is taken care of by the cargo reservation practice of the U.S. trading partner involved. By implementing his cargo reservation scheme he immediately makes the trade between his country and the U.S. unattractive excepting for his own flag vessel or U.S. flag vessel. The rationalization to which I refer is a rationalization scheme arrived at through commercial negotiation between carriers aimed at efficient utilization of vessels and cargo space.

I believe that S. 2386 is a small step towards controlling over-tonnaging because it proposed expedited approval of pooling and rationalization schemes in certain trades where another country has taken steps to reserve cargo, but it does nothing in those trades where there has been no initiative to reserve cargo by a U.S. trading partner.

Question. You say that S. 2386 is limited in its scope because it is aimed at encouraging "reciprocal ocean transportation agreements" in those trades where there might be reservation of access to cargo, particularly government controlled cargo.

Would S. 2386 immunize agreements in our trade routes where the problem of overtonnaging is most severe?

Answer. No, simply because our major trading partners have not resorted to cargo reservation practices.

Question. Would S. 2386 immunize agreements in our trade routes where malpractices such as rebating are most prevalent?

Answer. No, because of the same reason. S. 2386 only applies where access to cargo has been controlled by another country. This reservation has not happened in Far East, Mediterranean or North Atlantic trades which are our major trade routes.

Question. MarAd's role in negotiating equal access agreements has been described as guaranteeing that the national flag lines of a country shall have equal access to U.S. government controlled cargoes moving in the country's trade in exchange for a similar guarantee from the government of the other country.

According to some, the difficulty with such an agreement is that the other country's definitions of government controlled cargoes are far broader than the U.S. definition, encompassing, in some cases, a substantial majority of all cargoes moving in the trade.

Would you please comment on this?

Answer. There is no question that in some Latin American areas those governments have encompassed a large percentage of cargo moving in what would be considered by us as normal commercial channels within the orbit of their reserved cargo decrees. For instance, in some Latin countries, if a businessman has borrowed from his government's development bank for plant expansion or acquisition of capital equipment, imports of machinery or equipment incident to these operations, must come via national flag liner. In habitually capital starved markets this means that virtually all imports of major machinery items automatically fall under cargo reservation decrees. The same applies on loans for imports of raw materials and other equipment such as road building material or equipment to be used in connection with government contracts, etc.

Question. Could S. 2386 operate where this was the case?

Answer. The pooling arrangements and equal access agreements that are extant operate in these cases on a daily basis at the present. S. 2386, to my mind, would in no way affect their operations.

[Whereupon, at 11:40 a.m., the hearing was adjourned.]

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ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

AMERICAN IMPORTERS ASSOCIATION, INC.,
New York, N.Y., March 13, 1978.

Senator DANIEL K. INOUE,
Chairman, Subcommittee on Merchant Marine and Tourism, Commerce, Science and Transportation Committee, U.S. Senate, Washington, D.C.

DEAR SENATOR INOUE: The American Importers Association is the only trade association representing importers on a national basis. Our membership includes large, medium and small importers who handle practically every kind of product imported into the United States.

Nearly all our importers use ocean carriers and are, therefore, affected in the limiting of their freedom of choice within this mode of transportation.

In analyzing S. 2386 one reaches the unfortunate conclusion that it is another "finger in the dike" approach to the problems of the maritime industry. What is needed is not another tire patch or band aid but rather a full review of our Shipping Act as it relates to Policy and Regulation and its relevance both to our conflicting laws and regulations as well as serving a viable purpose in the international arena.

While viewing the Shipping Act in the aforementioned context it should also take into consideration the needs and concerns of the consumers of the services which are operated under the Shipping Act. Concern is constantly expressed by vessel operators, labor and government—suggestions to convene these groups to address the problems of the maritime industry never suggest the inclusion of the consumer of the services, the user who in the final analysis determines the ultimate success of the proposals that would be developed, and who ultimately pays the bill.

Alarm is expressed at the constant increase in foreign flag vessels and the decrease in American Flag vessels in the trade routes of the United States. Since the influence of foreign flag vessels do not represent "trampers" but rather liner services generally on an independent basis by "for profit" foreign companies, it raises the question of whether the time has not come for a change away from the old protectionism and paternalism to force a new and vibrant viability into our creaking maritime industry.

As an example, does the conference system now over one hundred years old lead to a smug contentment, provide a protective cocoon, isolate and insulate the operators from the need to be innovative and exploitative of their abilities and services. Has the conference system provided operator management with a "security blanket" of excuses for inaction, lack of initiative and even failure to react in a constantly changing economic environment?

Have we in our present Shipping Act created an atmosphere more conducive to form rather than encouraging innovative substance in our maritime industry? Have we already, or are we in the process of creating another railroad industry type debacle in our shipping industry by encouraging a dependence on a government-created crutch rather than insistence on management initiative and action?

Without a Malcolm McLean there would have been no "container revolution." Mr. McLean was not a traditional or typical ship operator—he was a truck operator who realized there had to be a better way to handle cargo than man-handle it. The day of the container ship makes it mandatory that we reexamine our Shipping Act and policy to bring it up to date and to encourage the same innovation in all phases of our maritime industry that Mr. McLean displayed in the handling of cargo.

S. 2386 would authorize the establishment of cargo pools, rationalization of sailings, apportion earnings and losses on traffic between the agreement carriers. In the establishment of a new service such a rationalization is a very sensible approach. However, in an established service it would normally lead to a planned reduction in sailings to force the maximizing of load factors and thus profitability. In the process of forcing up load factors it would open up additional tonnage to the non-agreement carriers and thus a continuation of the shrinking participation of the pool carriers.

Non-agreement carriers are now allowed to compete on a fair, reasonable and equitable basis. There are no criteria spelled out for the determination of fair, reasonable or equitable. Each concept such as Container, Ro Ro, Lash or Break Bulk has its own and different cost factors. Size and speed of vessel will change cost, experience, design and operating efficiency can make dramatic differences in vessel performance.

Therefore since S. 2386 does not address nor remedy the root problems of our shipping industry it should be either tabled or failed of adoption by the Committee rather than adding to its future problems.

Sincerely yours,

EDWIN A. ELBERT.

THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE,
Stamford, Conn., March 14, 1978.

HON. DANIEL K. INOUE,
Chairman, Senate Commerce, Science and Transportation, Committee's Subcommittee
on Merchant Marine and Tourism, Russell Senate Office Building, Washington,
D.C.

DEAR CHAIRMAN INOUE: The National Industrial Traffic League submits these comments for the record of hearings on S. 2386, the cargo pooling bill. S. 2386, amends the Shipping Act, 1916, to provide for the prompt and effective implementation of certain equal access, pooling, rationalization, apportionment and related reciprocal ocean transportation agreements entered into between carriers of the flags of the United States and of the nations with which we trade and to provide immunity or such agreements from the application of the antitrust laws.

The National Industrial Traffic League is a voluntary organization of 1800 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 represents all types of shippers nationwide. Its members include large, medium, and small shippers who use all modes of transportation and who ship all types of commodities. The League is not a panel or committee or a trade group, nor a spokesman for a particular commodity or transportation point of view, and it does not permit carrier membership.

The League's primary concern is to provide for the nation and all its shippers a sound, efficient, well-managed transportation system privately owned and managed.

To arrive at positions reflective of the broad range of shipper interests within the League, the League membership, at its annual and special meetings, considers, debates, and votes on actions to be taken. During its more than 70 years of existence, the League has frequently been spokesman for the nation's shippers before Congress on proposed transportation and regulatory reform legislation.

The League, as policy, feels that an absolute minimum of regulation in connection with ocean transportation in foreign commerce is desirable, because the complexity of international trade does not permit any one nation properly to exercise jurisdiction. Reliable, frequent, common carrier service, providing adequate space for shippers and consignees at fair and reasonable, stable rates is essential. To achieve this, 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. Ocean freight conferences should not be permitted to require contracts to be binding upon any party other than the actual signatory. Contracts should exempt cargo on which the signatory shipper does not have the right to select the carrier and on specific commodities when it can be established that circumstances justify commodity exemption, as well as all cargo on owned and chartered vessels to permit fair and legitimate use of them. No contract should place any undue administrative burden upon the shipper in connection with the shipper's relationship with a conference, nor should it place any legal burdens upon the contract signatory other than those which would ordinarily face the shipper under an ordinary commercial contract.

The League opposed similar restrictive legislation in 1975 when testifying in opposition to S. 868 before the Senate Commerce Committee. The bill's provisions would have required that any non-national flag carrier in the foreign commerce of the United States shall not apply rates or charges that are lower than the lowest carrier rate or charge of any national flag carrier in the trade, unless the rate is determined by the Federal Maritime Commission to be compensatory on a commercial cost basis. Additionally, the legislation provided that rates or charges

may not be reduced without a 30-day notice. At the League's 1975 Annual Meeting in Houston, Texas the League membership approved its opposition to such legislation. Again in 1976 the League presented testimony in opposition to similar bills, H.R. 7940 and 14564 before the House Merchant Marine and Fisheries Subcommittee on Merchant Marine and the League members reaffirmed their opposition to such legislation at the League's 1976 Annual Meeting in Seattle, Washington.

We understand that the objectives of S. 2386 are to provide a solution to the malpractice or rebating in the foreign trades of the United States, and to secure for the U.S. Flag carrier an even-handed treatment under US law viz a viz the foreign flag carriers. The League wishes to advise its strong opposition to S. 2386 for the following reasons:

First, American industry faces serious worldwide competition for foreign markets. It is critically important that we maintain a maritime policy which will provide the range of liner services and rate levels required to be competitive in foreign markets. S. 2386 would essentially reduce the liner services available to the single rate and service level of the flag carriers of the origin and destination countries, which result cannot be tolerated.

Second, the definition of government-controlled cargoes is infinite, thus virtually guaranteeing the elimination of independent carriers from the U.S. liner trades. The League is adamantly opposed to any effort that would restrict or eliminate price and service competition in the U.S. trades.

Finally, the proviso that "reciprocal ocean transportation agreements shall not prohibit any other flag carrier from competing on a fair, reasonable, and equitable basis" would be virtually meaningless in practice. A study of the U.S.-Latin American trades where this reciprocal ocean transport agreement concept exists, quickly identifies the almost non-existent independent and 'other flag' conference carrier service in these trades.

We urge the Senate Committee to recognize that the many U.S. trades differ markedly one from the other, and that no single proposal is applicable to all U.S. trades. The common characteristic in all U.S. trades is the dynamic world competition for each foreign market. It is vitally important to American industry's competitive capability in foreign markets that the U.S. maritime policies secure the flexibility and variety of services and price levels required. We believe that the concepts espoused in S. 2386 would seriously constrict the liner carrier services available in the U.S. foreign trades, that this result would have a seriously adverse effect upon U.S. trade, and therefore urge that S. 2386 be rejected.

In lieu of S. 2386, the League has previously advised the Commerce Committee of its support for the objectives of S. 2008, and again in testimony before the House on companion bill H.R. 9518. The League supports H.R. 9518 as reported out of the House Merchant Marine Committee and therefore recommends the Senate Committee consider similar action to resolve the problems at issue.

Sincerely,

J. ROBERT MORTON
President.

TRANSPORTATION INSTITUTE,
Washington, D.C., April 20, 1978.

HON. DANIEL K. INOUE,
Chairman, Subcommittee on Merchant Marine and Tourism, Senate Committee on Commerce, Science and Transportation, Russell Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: The Transportation Institute, a research organization representing 160 U.S.-flag deepsea and domestic shipping companies, appreciates this opportunity to express our support of S. 2386, legislation to facilitate equal access and pooling agreements in the United States foreign trades.

The world shipping market is characterized by overttonnaging. Foreign nations like the Soviet Union which operate state-controlled fleets, and operators of foreign-flag vessels regularly "dump" their excess tonnage on the United States trades. These vessels freely enter our trade routes and, because many are not in the shipping business to make money but rather to spread political propaganda and influence, they are able to obtain U.S. exports and imports through predatory rate practices. This of course is done at the expense of American-flag operators who are attempting to compete for cargo in a forum in which neither free enterprise nor free trade exists.

Overttonnaging or dumping has therefore decreased American-flag cargo carrying opportunities in the United States liner trade. This legislation attacks this problem

and is intended to give American ship operators and those of our trading partners access to cargo on an equal basis. As set out in S. 2386, the solution is to provide such equal access through reciprocal ocean transportation agreements.

Section 15 of the Shipping Act of 1916 presently allows the establishment of pooling agreements. Some operators have stated, however, that approval of pooling agreements may take years due largely to the requirement that a hearing be held whenever a protest is filed against approval. We agree that this and other administrative delays be minimized to encourage the formation of reciprocal agreements. While providing for prompt approval is necessary, it is however equally important that extreme care be taken to guarantee that no carrier is unduly harmed by the

Section 15 of the Shipping Act of 1916 presently allows the establishment of pooling agreements. Some operators have stated, however, that approval of pooling agreements may take years due largely to the requirement that a hearing be held whenever a protest is filed against approval. We agree that this and other administrative delays be minimized to encourage the formation of reciprocal agreements. While providing for prompt approval is necessary, it is however equally important that extreme care be taken to guarantee that no carrier is unduly harmed by the implementation of a pooling agreement.

We strongly believe that the procedural reforms envisioned in S. 2386 provide all American shipping companies with the opportunity to compete equally and fairly for cargoes with each other and with foreign shipping. In this way, the legislation will rationalize the market shares between competing carriers and help reduce the chance of malpractices in our trade. Once carriers reach by mutually negotiated agreements fixed proportions of trades, equal access to cargoes, scheduled participation in profits and/or rationalized limitations on services, the incentive to engage in malpractices largely disappears. The experience with reciprocal agreements in the U.S. liner trade and with South American countries shows that malpractice as well as rate increases and Soviet carrier penetration have been kept to a minimum.

S. 2386 is an important step in the effort to assure the United States the shipping capability to respond to the nation's economic and defense needs. By facilitating the implementation of cargo sharing agreements, all segments of America's maritime industry and its related service and supply industries will be stimulated as operators have the assurances of cargo they need to build and operate ships. This legislation should not be viewed as a substitute for other necessary legislative incentives, and we would welcome the opportunity to work with this Committee to develop a comprehensive national maritime policy.

We request that this statement be made part of the hearing record on S. 2386.

Sincerely,

HERBERT BRAND,
President.

THE SEAFARERS INTERNATIONAL UNION
OF NORTH AMERICA, AFL-CIO,
Washington, D.C., April 25, 1978.

HON. DANIEL K. INOUE,
Chairman, Subcommittee on Merchant Marine and Tourism, Senate Committee on Commerce, Science, and Transportation, Russell Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: The Seafarers International Union of North America, AFL-CIO, wishes to express its support for S. 2386, legislation to facilitate equal access and pooling agreements in the United States foreign trades. The Seafarers International Union represents seamen manning American-flag vessels of all types engaged in our nation's foreign and domestic shipping trades.

The SIU is concerned that American-flag operators do not have the opportunity to equally and fairly compete for cargo with foreign-flag operators because of the overtonnaging that now exists on the world shipping market. Foreign-flag operators have engaged in "dumping" of this excess tonnage on the U.S. trades. These vessels have freely entered our trade routes, and have obtained much cargo at the expense of U.S.-flag shipping because of predatory rate cutting.

S. 2386 attacks these problems by increasing the ability of U.S.-flag operators to participate in the carriage of our liner trade. It provides equal access by American and foreign carriers to cargo by facilitating the adoption of reciprocal ocean transportation agreements. Such pooling agreements can be adopted under Section 15 of the Shipping Act of 1916, but the agreements brought under this section have seldom been implemented without detrimental administrative delays. Approval of pooling agreements by the Federal Maritime Commission (FMC)

often takes years due to the general requirement that a hearing be held before approval whenever there is a protest to an agreement. S. 2386 provides for prompt implementation of pooling agreements, allowing them to become effective 30 days after filing with the FMC unless the FMC exercises its power of suspension. This procedural reform will greatly promote the use of equal access and cargo sharing agreements and increase cargo carrying opportunities for United States-flag vessels.

In addition, the bill provides that all U.S. and foreign-flag carriers receive equal treatment under the law. All carriers have equal access to cargoes in the trade, and no pooling agreement is immune from antitrust laws if it prohibits other carriers from participating in the trade.

The SIU strongly supports S. 2386 because it contributes to the effort to insure that the U.S. will have a merchant marine capable of meeting our nation's economic and defense needs.

It is an important step in the development of a comprehensive national maritime policy to foster a strong and viable merchant marine. The legislation is of vital importance to the nation, and, therefore, the SIU strongly urges its adoption.

We request that this statement be made a part of the hearing record on S. 2386.

Sincerely,

PAUL HALL, *President.*

STATEMENT OF CHARLES I. HILTZHEIMER, CHAIRMAN OF THE BOARD, SEA-LAND SERVICE, INC.

Sea-Land Service, Inc. is grateful for this opportunity to submit comments on S. 2386, a Bill to amend the Shipping Act, 1916 in regard to what are termed, in that bill, "reciprocal ocean transportation agreements."

The Committee is aware that Sea-Land is the major American liner company which pioneered the development of containerization and now provides service to over 137 ports in more than 56 countries and territories. We have reviewed S. 2386 from the perspective of our experiences in differing trades in various parts of the world.

S. 2386 offers a basis for a reappraisal of substantive provisions of the Shipping Act, 1916 to bring them into line with the realities of international liner shipping today. Such a reappraisal is, as recognized by this Committee, overdue and must include determination of national maritime goals and policies.

For simplicity and ease, we will refer to all the various forms of "reciprocal ocean transportation agreements" for trade rationalization as "pools" in this statement.

Pools cannot be evaluated in a vacuum. Their desirability depends upon both conditions in the trade for which a pool is being considered and the objectives sought by carriers involved. That includes questions such as:

What is the nature of the competitive environment?

What share of the total liner commerce is to fall within the scope of the pool?

Do the governments of those countries served control cargo or access to the trade?

Is the governmental control by the other country or countries discriminatory against U.S.-flag shipping?

How will the pool and any applicable conference affect each other?

Due care in analysis will show that the purpose, structure, desirability and practicality of pools will vary from trade to trade. Pools are not necessarily as effective in all trades, may be desirable in some trades, are essential in others, and may not be in the public interest at all in still others.

Depending upon differing economic forces, types and volumes of cargo, numbers and nationalities of carriers, types of vessels employed and maritime policies of the trading nations; the need for and nature of the pooling agreement will vary greatly by trade. What might be an excellent commercial situation in one trade could prove a disaster in another.

In 1972, Sea-Land was signatory to, and a proponent of, Agreement 10,000 to form a pool in the North Atlantic. The effort to implement that agreement ultimately died after lengthy hearings before the FMC. We also were signatories to, and supporters of, Agreement 9981, the discussion agreement for exploring the possibilities of a pool for the Trans-Pacific trade. For the past year, we have been engaged in efforts to gain reasonable access to the pools which control the U.S.-Brazil trade. Sea-Land has thus far been excluded from those pools and, therefore, from the trade which is closed through the pool agreements.

S. 2386 addresses two issues which in our estimation deserve this Committee's attention:

First; the character of pools which ought to be allowed in U.S. trade; and Second; facilitation of the implementation of pooling agreements without the sometimes inordinate delays experienced by Section 15 applicants.

To underscore a most important point, we respectfully ask this Committee to use great care to assure that Congress does not create a law which would permit any existing or new pools to exclude any U.S.-flag carrier from a U.S. trade.

Sea-Land believes that it is in the public interest for Congress to dictate that every present and future pooling agreement subject to the Shipping Act, 1916 be required to satisfy the following mandatory criteria:

1. Membership and participation is open at all times, and without unreasonable delays, to all U.S.-flag liner companies applying and having ability and intention to serve the trade.

2. Membership and participation is open at all times, and without unreasonable delays, to all "reciprocal carriers" applying and having ability and intention to serve the trade; unless the Government of the reciprocal country elects to limit the participation of its carriers.

3. Third-flag carrier membership by carriers having ability and intention to serve the trade is not restricted unless there is a government-to-government agreement, between the United States and reciprocal country, which provides for restrictions upon such carriers.

4. The collective pool share of the U.S.-flag liner members is not less than the collective pool share of the reciprocal carrier members.

5. If the reciprocal country authorizes reciprocal carriers to use vessels registered in other countries, the U.S.-flag carriers are assured a right to use non-U.S.-flag vessels within the U.S.-flag pool share.

6. Cargo subject to the pool is only that cargo the ocean carriage of which originates and terminates in U.S. or reciprocal country ports within the geographic scope of the pool agreement.

7. There is full and free competition among U.S.-flag carrier members for cargo within the U.S.-flag pool share if the U.S.-flag members, including any newly admitted member, are not in unanimous commercial agreement as to negotiated subshares.

8. Military cargoes within the scope of the 1904 Act and U.S. mail are not included within the pool or subject to equal access. All other non-pool cargoes are subject to equal access by U.S. carriers and reciprocal carriers.

9. All matters pertaining to service, operating assets, port calls, cargo or vessel routing, and methods of physical operation applicable to U.S.-flag carriers are not imposed by governments, and if determined by the pool are to be determined by commercial negotiation among the pool members.

10. The pool and its members are subject to effective self-policing utilizing a strong neutral body.

11. There are no provisions of the pool agreement, or of any related conference agreement, and no requirements of the government of the reciprocal country which discriminate against, or limit entry by, or unreasonably inhibit or restrict operations of, any U.S.-flag liner company beyond limitations permitted under criteria 1-10 above.

We urge the foregoing as mandatory standards because we believe it would be inequitable for any U.S.-flag carrier willing and able to serve a U.S. trade to be barred from the trade due to inability to enter pools, or if admitted to pools to be placed under restrictions which prevent the public from receiving the highest level of service and technology that carrier can offer within the agreed U.S.-flag share of the pool.

S. 2386 should not be considered a substitute for S. 2008's anti-rebating provisions, or for the bill (H.R. 9518) passed by the House of Representatives on March 22.

S. 2386 contemplates that accelerated implementation of pooling agreements would be available only if independent carriers are able to enter and compete in the trade served by the pool. We do not object to that. However, we point out that where pools and independents operate side by side the incentives to rebate will still be present and the need for additional means to combat rebating will also remain. Even in a pool situation in which there are no independents there exists possibility for rebating. Therefore, this bill cannot be considered a substitute for S. 2008.

We also respectfully point out that few major U.S. ocean trades are served by as limited a number of carriers as found in the Latin American trades. Establishment of pools in other major trades would require hard and sophisticated negotiations

for a year or more before an agreement could be reached. S. 2008 is needed to provide effective means of combating rebating while any S. 2386 pools are being negotiated or if such negotiations fail.

We have concerns about the definition of "Reciprocal carriers." The United States ought not tell other countries that their carriers must meet a certain flag test. In fact, overly restrictive definitions can be damaging to U.S.-flag carriers. "Reciprocal carriers" should not be defined by flag. To do so would preclude a foreign nation with limited carrying capacity from appointing a U.S.-flag carrier as qualified to serve as its national carrier as well. This sort of designation is permitted under the UNCTAD proposed Code of Conduct for Liner Conferences.

We recommend that "reciprocal carriers" be defined as "any carrier designated as a national carrier by the government of the reciprocal nation which is the ocean port destination or origin of the cargo."

The foregoing definition will also accommodate multinational consortia.

With respect to the flag requirements of the U.S. carrier participants in any pool, the bill should require the use of vessels of United States registry for export voyage departures from the U.S. ocean port of origin and import voyage arrivals to the U.S. ocean port of destination.

That provision will thus accommodate the important use of small feederships in certain geographic regions of the world. The feederships are used to meet foreign cabotage requirements or to enhance and bolster the U.S. flag transoceanic or "line haul" vessels employed in the trade.

Turning to the second main issue addressed by S. 2386, facilitating implementation of pooling agreements, Sea-Land is entirely sympathetic to efforts to reduce delays in implementation of all Section 15 agreements, not only those relating to pools. We believe there is much in favor of amending Section 15 to avoid unreasonable delays.

However, our experiences in recent FMC proceedings regarding pooling make us extremely wary of the concept of permitting a pooling agreement to go into effect immediately upon filing with the FMC. We believe the public interest requires that there be public notice and some opportunity to be heard in opposition before a pooling agreement can go into effect.

We therefore recommend that there be opportunity for protestants to show, after hearing completed within not more than 60 days after Federal Register notice of the filing of a pool agreement, that the agreement does not satisfy the mandatory criteria we recommended earlier in this statement. The burdens of proof and persuasion in such an FMC proceeding ought to be the same as for a preliminary injunction action in a U.S. District Court. If the burdens are met by the protestant, the agreement ought not be allowed to go into effect until approved after a full hearing on the merits. Even then, a time limit for reaching final decision ought to be imposed. We suggest 180 days.

Sea-Land believes that, subject to the notice and protest rights which we have suggested, the broader concept of making all Section 15 agreements filed with the FMC lawful and enforceable until disapproved after hearing, and the concept of placing exclusive jurisdiction over activities subject to Section 15, including punishment for violations, in the FMC, both to be worthy of serious consideration by this Committee for possible incorporation into a revision of the Shipping Act, 1916.

For all the foregoing reasons, we think that S. 2386 serves as an effective vehicle for further analysis of Section 15 of the Act and determining the future direction of maritime industry regulation.

Sea-Land again thanks the Committee for this opportunity to comment upon S. 2386.

STATEMENT OF THE NEW YORK CHAMBER OF COMMERCE AND INDUSTRY

My name is Alfred D. Payne. I am Director of the Import-Export Department for the New York Chamber of Commerce and Industry. We welcome this opportunity to present our views on what we consider to be a critical aspect of the proposed legislation on S-2386.

For the record, the New York Chamber of Commerce and Industry is the oldest Chamber in the United States, having been founded in 1768. It is composed of about 2,000 members engaged in business or the professions, the majority of whom work and reside in the New York Metropolitan area. Its membership is broadly representative of the commerce and industry of New York City and the New York Metropolitan area and it includes banking, finance, trade, insurance,

shipping, transportation, construction, and public utilities, among others and all the ancillary services and professions which support the operations of the nation's and the world's leading business community. In addition, our membership contains a large group of firms involved in international trade.

The New York Chamber of Commerce and Industry opposes increased regulation of transportation in foreign commerce. We believe that no one nation can properly exercise jurisdiction over international commerce, and that efficient, reliable common carrier service, providing adequate space for American shippers and consignees at competitive rates is essential. We believe that the ocean freight Conference system with strong U.S. Flag participation, is the best vehicle for accomplishing this objective, but not to the exclusion of reliable Non-Conference carriers who wish to compete for the traffic.

In stating our objectives we use the terms "efficient, reliable . . . service . . . adequate space . . . competitive rates". These are relative terms which must be understood in the context of today's international trade environment: an intensely competitive environment, one which has changed dramatically since the enactment of the Shipping Act of 1916 and, indeed, since World War II.

In the post-war era, Western Europe and Japan underwent a new industrial revolution which, during the past fifteen years, has put them in a position to compete effectively for industrial product markets, not only in the United States, but also against United States producers in developing third world markets. This is the new reality of international trade. Our past concerns in regulating international shipping focused on assuring that Americans could compete against other Americans for foreign markets on an equal footing. Today our concern must focus on assuring that American industry, as a whole, is competitive with European and Japanese industry in cross trading as well as in third markets with respect to transportation costs. In this context, efficiency has two aspects. In cross trading between the United States and Europe, and the United States and Japan, we must be concerned with capacity utilization in both directions. Since complete balance is improbable, vessels serving these trades will be overtonnaged in one direction if service is adequate in the other. Our concern must be that the costs of this unavoidable inefficiency are distributed equitably among shippers in both trading countries within the Conference environment.

We should be concerned that Conference carriers in the major crosstrades are not subject to regulations, requirements or costs which are out of line with our partners at the other end of the trade.

We should be concerned that Conferences serving these trades are constituted so that developed, developing and underdeveloping markets or countries are not included under the same Conference umbrella.

We should be concerned that overtonnaging in both directions does not occur within a Conference serving developed nations due to individual members' poor investment or market judgment.

By holding out the plum of authority to rationalize service under specific conditions of Conference structure and reporting requirements, we might gain a medium of control over our destiny in the trades between highly developed countries. We view this as a problem of negotiation, not legislation.

In the area of trade with developing and underdeveloped countries, we have a different situation and a different aspect of efficiency. In these markets, we are competing with European and Japanese producers, and to make us effective competitors over the long term, the carriers serving us must be efficient or more efficient than those operating from Europe or Japan. If they are not as efficient, we must determine why and take appropriate steps to remedy the problem. Cargo sharing, revenue pooling or others in these trades will be counterproductive to U.S. producers, carriers and our economy if, in conferring the cargo on selected carriers, we do not demand rates which will allow U.S. shippers to compete with European and Japanese shippers.

In these trades, traffic moving to the developing country will bear the brunt of both volume and cost since the return of cargo tends to be lower valued, lower technology materials. In these circumstances, the connotations of terms such as efficiency, adequacy of space and competitive rates are entirely different.

The concepts embodied in S-2386, recently introduced in the Senate, which would confer rights upon carriers to establish agreements to pool cargo, rationalize sailings and/or apportion earnings between U.S. Flag and reciprocal carriers if they meet the simple test of 50-50 access to controlled cargo overlooks the realities of competition in today's world trade environment.

We believe that the Conference system with strong U.S. Flag participation is the best vehicle for accomplishing our objectives. We believe that the absence of

strong U.S. Flag participation would, in the long term, weaken our competitive position. Why? Because every major non-U.S. liner company in the world today is serving not only the U.S. trade, but trade between over-developed countries and developing countries where we compete for business. Without an efficient, cost competitive U.S. Flag fleet, what will prevent these carriers from subsidizing rates in other trades with high rate structures in the U.S. trade? When our business dries up, they will still have business. The U.S. Flag carrier does not enjoy this luxury.

Our support for the U.S. Flag merchant marine is based on today's critical issue, the success of American business in a tough, competitive, commercial world. The U.S. Flag carrier is a means to that success and not an end in itself.

ACTION RECOMMENDED

In order to achieve this objective, we would suggest that the FMC review existing Conference agreements in the context of today's commercial realities and revoke those agreements which do not meet the tests of existing law. We refer particularly to the discrimination provisions of sections 15 and 17 of the Shipping Act.

Finally, the FMC should be encouraged to promote negotiations between Conferences and shipper groups, perhaps a U.S. Shippers Council, to establish a pattern of information exchange and commitments in return for concessions with respect to increased Conference prerogatives. In this last area, the existence of a legally recognized U.S. Shippers Council operating in the role of negotiator with Conferences would strengthen the FMC by putting it in the role of arbitrator, interpreter and enforcer of maritime policy for the users and providers of liner services.

STATEMENT OF PURPOSE AND COMPOSITION OF THE U.S. SHIPPERS COUNCIL AGREED UPON BY THE JOINT COMMITTEE ON SHIPPERS COUNCILS OF THE INTERNATIONAL TRAFFIC COMMITTEE OF THE NEW YORK CHAMBER OF COMMERCE AND INDUSTRY AND THE AMERICAN IMPORTERS ASSOCIATION ON SEPTEMBER 2, 1976

1. OBJECTIVE

The foreign commerce of the United States plays a vital role in its overall economic stability and development. The objective of the council is to contribute to the orderly development of foreign commerce by promoting cooperation, understanding and efficiency among and between all of the services supporting international commerce and their principal users, United States importers and exporters. In pursuing this objective, the Council will concern itself with all matters relating to transportation and supporting services.

The Council, on behalf of U.S. importers and exporters, would:

Seek to obtain equitable and stable general rate structures and favorable terms and conditions of service from carriers and conferences of carriers;

Exchange information with carriers, conferences and rate bureaus concerning traffic and transportation data;

Provide for effective analysis of such information for improved decision-making on the part of individual importers and exporters;

Appear before the Federal Maritime Commission, the Civil Aeronautics Board, the Interstate Commerce Commission, port authorities and other federal, state and local governmental agencies to urge that the interest of shippers in sound, efficient and economical transportation and competitive alternatives in transportation be taken into account.

The Council would make its needs and positions known to the carriers and to conferences of carriers as well as all other providers of services affecting international transportation concerning rate, tariff and documentation matters, as well as general policy issues. The Council would, from time to time, seek legislation believed to be beneficial to international shippers and to the commerce of the United States, and would oppose legislation which, in the view of the Council is harmful to these vital interests. The Council would further provide for the education of importers and exporters concerning the intricacies of transportation and transportation regulation through the publication of instructional materials and the conduct of seminars. The Council would also seek to exchange information with agencies of foreign governments regarding transportation issues affected by such governments.

2. MEMBERSHIP

Any U.S. Firm or corporation or U.S. subsidiary of any non-U.S. firm or corporation engaged in or prospectively engaged in exporting or importing merchandise in which it has a proprietary interest is eligible for membership. It is intended that one official membership would be extended to a corporation or its subsidiaries.

Membership would not be extended to carriers of any mode in domestic or foreign trades, or non-vessel operating common carriers, freight forwarders, customs brokers, consolidators or trade associations.

Election to membership shall not abridge the right of individual action by any member, even though such action may be contrary to the Council's position.

JOINT COMMITTEE ON A U.S. SHIPPERS COUNCIL, NEW YORK CHAMBER OF
COMMERCE & INDUSTRY/AMERICAN IMPORTER'S ASSOCIATION

STRUCTURE AND RESPONSIBILITIES OF THE EXECUTIVE COMMITTEE

There shall be twelve members of the Executive Committee as follows:

1. *President.*—The President shall be the presiding officer of the U.S. Shipper's Council. It shall be the duty of the President to preside at all regular and special meetings of the Executive Committee and the Board of Directors, to establish all Standing and Special Ad Hoc Committees of the Council, unless otherwise provided for by resolution of the members, and he shall be a member ex-officio of all such Committees.

2. *1st Vice President.*—Chairman: Policy, Legal and Legislative Committee: Supported by counsel this committee will report upon and recommend national legislation affecting International Transportation and will present the Council's position to the Congress and/or Administration on all legislative matters as directed by the Executive Committee.

This committee will:

Analyze and report upon the activities of the federal international transport regulatory agencies;

Present the Council's position to regulatory agencies as directed by the Executive Committee;

Review and report upon organization, status, personnel and procedures, and matters affecting practice before such agencies;

Recommend policy positions the Council should take to the Board of Directors.

In the absence of the President, the 1st Vice President shall preside at meetings of the Council which would require the presence of the President and shall assume all duties of the President as necessary.

3. *Vice President.*—Chairman: Planning and International Liaison Committee: This committee will provide liaison between the Council and other Shippers Councils through the world. As appropriate it will recommend that the Council support positions and programs undertaken by the U.S. Council.

It will maintain liaison with other U.S.A. and foreign organizations to support all realistic programs to simplify international trade documentation, distribution and other areas related to the improvement of world trade.

It will review, organize and assign to appropriate committees all questions and projects referred to the Council for investigation or action.

4. *Vice President.*—Chairman: Nominating and Education Committee: This committee will be responsible for the nomination of members of the Board of Directors, Executive Committee, and Chairmen of Standing Committees. It will also be responsible for the structure and design of educational programs, seminars and provide liaison with Universities and other institutions having international transportation programs or curricula.

5. *Vice President.*—Chairman: Membership, Auditing and Finance Committee: This committee is responsible for:

Promoting membership in the Council, receiving applications of new members, approving or disapproving such applications and recommending the Board of Directors' acceptance of those applications approved by the committee.

Auditing or reviewing and making recommendations on audits performed on the national and regional levels of the financial and operational performance of each unit.

Reviewing and making recommendations on budgetary requirements of the Council, dues structure, and all other matters of a financial nature related to the Council's affairs and responsibilities.

6. *Treasurer*.—The Treasurer shall collect all membership dues, fees and assessments and receive all moneys donated or otherwise given to the Council which have been accepted by the Executive Committee. He shall maintain financial records and report results to the Executive Committee and the Board. He shall set standards and reporting requirements to be observed by regional treasurers.

7. thru 11. *Vice Presidents*.—*Regional*.—The Regional Vice Presidents will preside at meetings of the Regional Steering Committees, appoint regional committee chairmen unless otherwise provided for by resolution of the members, and he shall be a member ex-officio of all such committees.

The Regional Steering Committees shall be composed of the Regional Vice President, Treasurer, Administrator and Chairmen of the Regional Standing Committees.

12. *Executive Director*.—The Executive Director, subject to the orders of the Board of Directors, and under the guidance and supervision of the President, shall be responsible for the management of the offices of the Council; for the maintenance of informational services to the members; for liaison with Government agencies, and carrier conferences and associations, as well as the various regional groups within the Council.

The Executive Director shall also serve as the Corporate Secretary. In this capacity he shall cause to be kept a record of all meetings of the membership the various committees, the Board of Directors, and the Executive Committee. He shall perform such other duties as may be required by law.

He shall recruit hire and direct the activities of the executive staff including the Regional Administrators as approved by the Executive Committee and authorized by the Board. All salaries shall be determined each fiscal year by the Board. Regional staff shall be hired by the Regional Administrator subject to the approval of the Executive Director and the Regional-Vice President.

In addition to the Executive Committee and the committee organizations described therein, the headquarters organization will also contain national chairmen of the Liner Committee, the Ports and Intermodal Committee, the Air Transport Committee and the General Business Committee. The chairmen of these committees will be nominated by the Nominating and Education Committee and will be appointed by the Executive Committee after review by the Board. The responsibilities of these officers are as follows:

1. *Liner Committee*.—This committee will keep abreast of all activities and events in the areas noted below conduct research and recommend courses of action to the Executive Committee. In pursuit of their objectives the committee or sub-committees thereof may meet with carriers, conferences, associations, bureaus and government agencies to elicit information and help clarify issues and problems. With the approval of the Executive Committee the committee will negotiate agreements on specific subjects with the carriers and groups named above. Detailed minutes of all such meetings will be reported to the Executive Committee. The areas responsibility of the committee will include but not be limited to the following:

1. Ocean Freight Rates (not dry or liquid bulk charter): (a) General rate increases by individual carriers conferences or rate agreement groups. (b) Mini-land ridge rate levels, divisions of revenue and services (coordinate with Ports and Intermodal Committee).

2. Surcharges: (a) Congestion surcharges (coordinate with Ports and Intermodal Committee), (b) Bunker surcharges and (c) Currency adjustment surcharges.

3. Ocean Freight Tariffs: (a) Amendments or changes in rules or regulations (b) Tariff interpretation, and (c) Tariff structure and composition.

4. Port Charge (coordinate with Ports and Intermodal Committee): (a) Handling, (b) Wharfage, (c) Storage, (d) Equipment rental, and (e) Demurrage.

5. Carrier Service:

(a) Frequency of sailings; ports of call, (b) Level of direct or indirect port service, and (c) Equipment and facilities utilization and efficiency.

2. *Ports and Intermodal Committee*.—This committee will meet with officials of Ports, Port Authorities, associations of Ports and government agencies to discuss shippers' interests with the object of promoting the general efficiency of Port services at the least possible cost to the importer and exporter. The council would seek to maintain and improve consultation between Port users and Port management on all matters of common concern. The committee would further advise shippers on specific port problems and if need be, take up these issues on behalf of shippers with the authorities concerned.

The committee will also consider short and long term problems related to the transfer and interchange of cargo and equipment between modes including domestic transport, meeting as necessary with providers of service in these areas to clarify and resolve problems.

The committee will work to facilitate the movement of freight between U.S.A. and Canada/Mexico and U.S. freight via Canada/Mexico to overseas facilities; ease of customs clearance; availability of transportation services; port and inland facilities in Canada and Mexico; documentation requirements. In the course of its work, it should consult with, and request action, by other committees on matters pertaining to these activities.

3. *Air Transport Committee*: This committee will be organized and will operate in a fashion similar to that described for the Liner Committee above, addressing issues and problems related to the international transportation of cargo by air. In addition, it will concern itself with airport facilities and operations, functioning in a fashion similar to the Ports and Intermodal Committee described above.

4. *General Business Committee*: This committee will consider all matters related to international trade not covered by the activities of the standing committees described above. It will establish sub-committees described below. It will establish sub-committees at the national or regional level to consider matters in, but not limited to, the following areas:

1. *Data Collection-EDP*: To promote the utilization of all participants in international trade, of the most modern techniques of data collection, processing and distribution. To assist the Council in its research efforts by identifying and recommending existing EDP techniques to develop information for use by the Council.

2. *Documentation*: To keep completely current with developments and matters pertaining to simplification of international shipping documents, coding systems and customs documentation. The committee should work closely with NCITD and other similar organizations through the world.

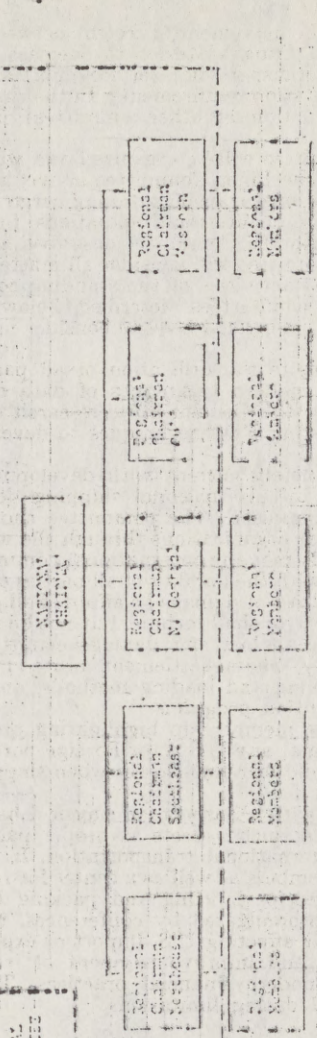
3. *Insurance*: To ensure that goods move in international commerce with adequate protection, commensurate with the liability of all parties concerned, and that equal protection in cases of loss or damage be afforded all parties to the movement. The Committee objectives shall include, but not be restricted to the following: matters pertaining to loss and damage claims, uniform claims forms; limitation of liability, claim settlement procedures, claim prevention activities, including packing and loading methods, and participation with carriers in claim prevention programs.

It will also issue advisories to the membership highlighting problems of excessive pilferage or damage existing at any U.S.A. or Foreign port together with recommendations on how to avoid or reduce losses when shipping to or from such locations.

4. *Distribution*: To concern itself with all aspects of physical handling of cargo in international trade including such aspects as proper packing and labeling for the various modes of international transportation. It will serve as an information resources to the members as well as a center for review and comment on any and all standards for labeling and packing (including hazardous materials), proposed or promulgated by conferences, regulatory bodies or other in the U.S. or abroad affecting U.S. import or export trade.

5. *Freight Payments*: To review and improve payment of freight and ancillary charges consistent with modern financial practices. To modify and improve payment systems and dating limitations.

U. S. Chamber of Commerce & Industry
 American Importers Association



COMMITTEE ORGANIZATION PLAN
 U.S. SHIPPERS BOARD

- NATIONAL COMMITTEES**
- INTERNATIONAL
 - AMERICAN
 - EUROPEAN
 - ASIAN
 - AFRICAN
 - AUSTRALIAN
 - NEW ZEALAND
 - OCEANIC
 - ANTARCTIC
 - ARCTIC
 - SUBARCTIC
 - SUBTROPICAL
 - TROPICAL
 - DESERT
 - MOUNTAIN
 - PLATEAU
 - VALLEY
 - PLAIN
 - COAST
 - INLAND
 - ISLAND
 - ARCHIPELAGO
 - PENINSULA
 - ISTHMUS
 - STRAIT
 - CANAL
 - BAY
 - GULF
 - SOUND
 - FJORD
 - TRENCH
 - RIDGE
 - SEAMOUNT
 - PLATEAU
 - TRENCH
 - RIDGE
 - SEAMOUNT
 - PLATEAU

- SUB-COMMITTEES TO BE FORMED AT NATIONAL LEVEL**
- INTERNATIONAL
 - AMERICAN
 - EUROPEAN
 - ASIAN
 - AFRICAN
 - AUSTRALIAN
 - NEW ZEALAND
 - OCEANIC
 - ANTARCTIC
 - ARCTIC
 - SUBARCTIC
 - SUBTROPICAL
 - TROPICAL
 - DESERT
 - MOUNTAIN
 - PLATEAU
 - VALLEY
 - PLAIN
 - COAST
 - INLAND
 - ISLAND
 - ARCHIPELAGO
 - PENINSULA
 - ISTHMUS
 - STRAIT
 - CANAL
 - BAY
 - GULF
 - SOUND
 - FJORD
 - TRENCH
 - RIDGE
 - SEAMOUNT
 - PLATEAU
 - TRENCH
 - RIDGE
 - SEAMOUNT
 - PLATEAU

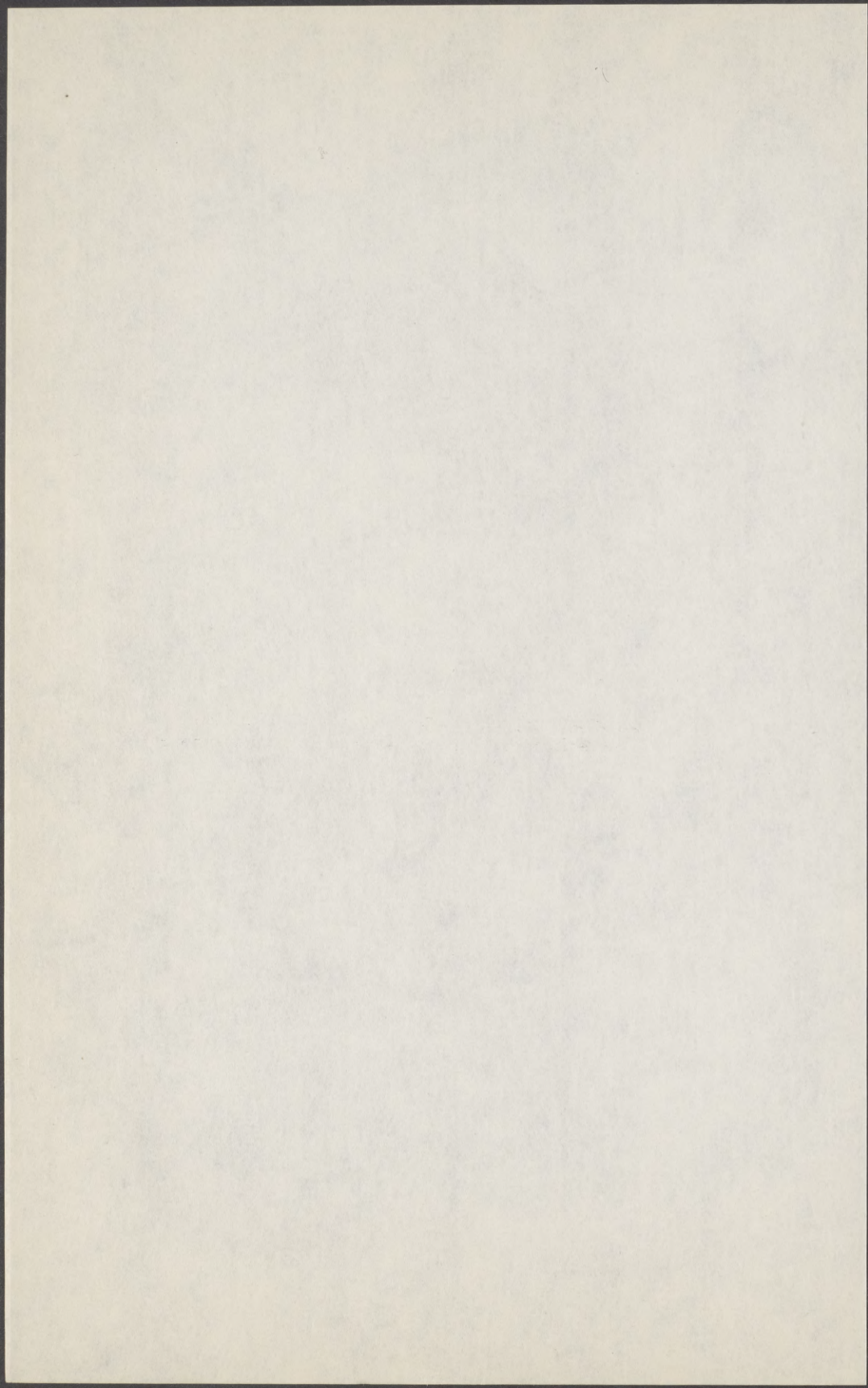
- AIR TRANSPORT COMMITTEE**
- Asia/Australia
 - South/Central America
 - North America
 - Asia
 - Europe, U.K.

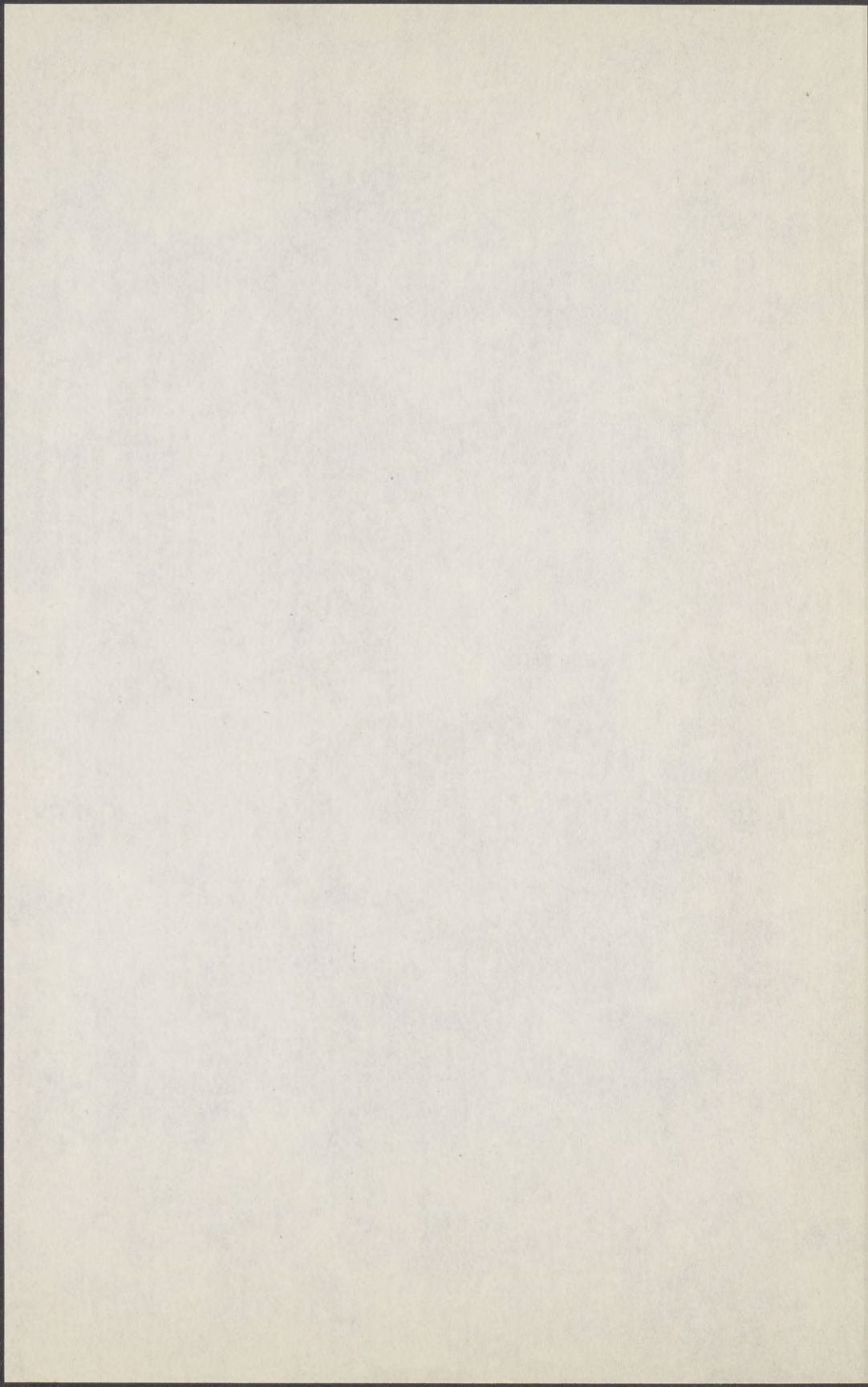
- GENERAL BUSINESS COMMITTEE**
- Asia/Australia
 - South America
 - North America
 - Asia
 - Europe, U.K.

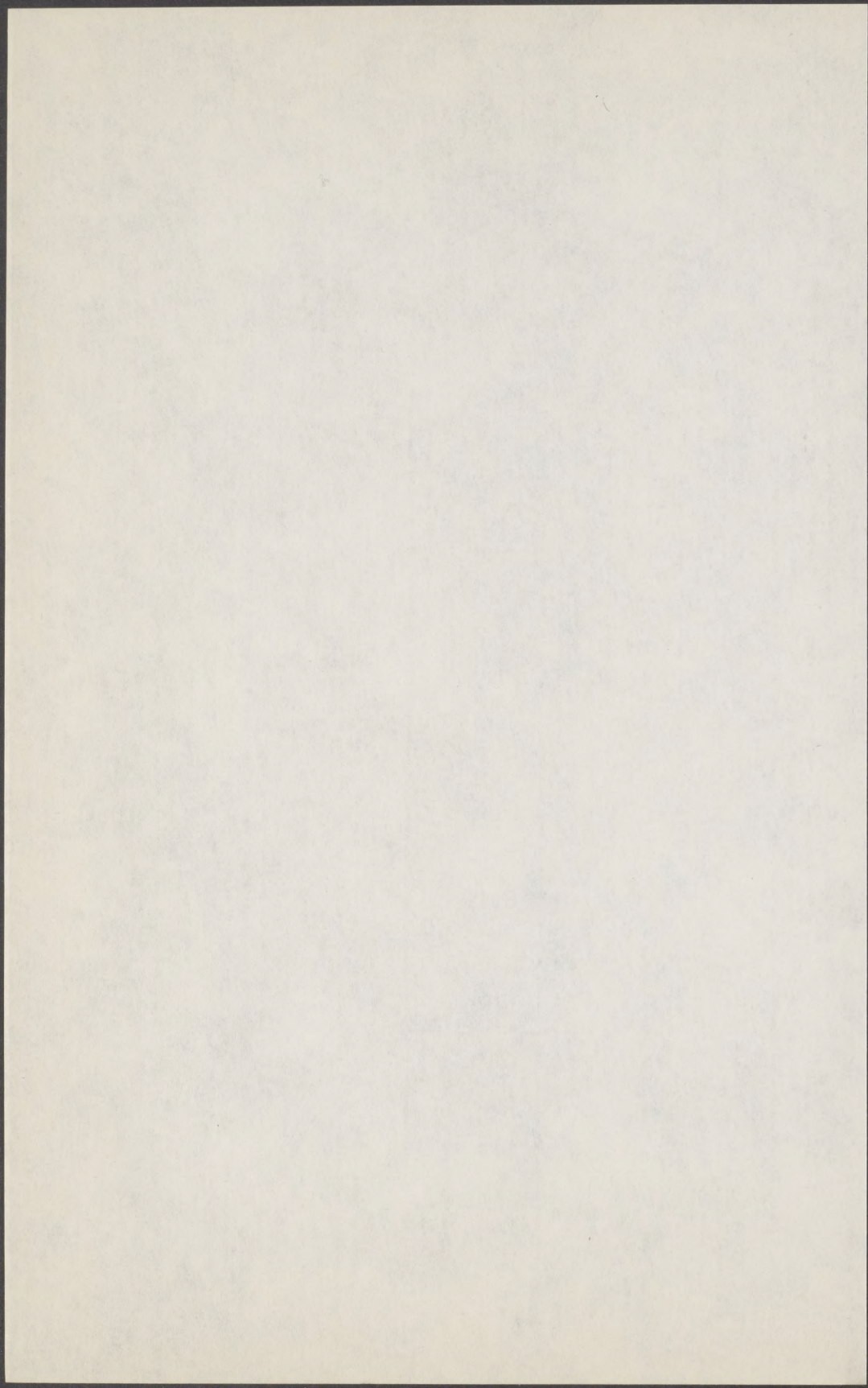
- PORTS, INTRAVOYAL COMMITTEE**
- Asia/Australia
 - South America
 - North America
 - Asia
 - Europe, U.K.

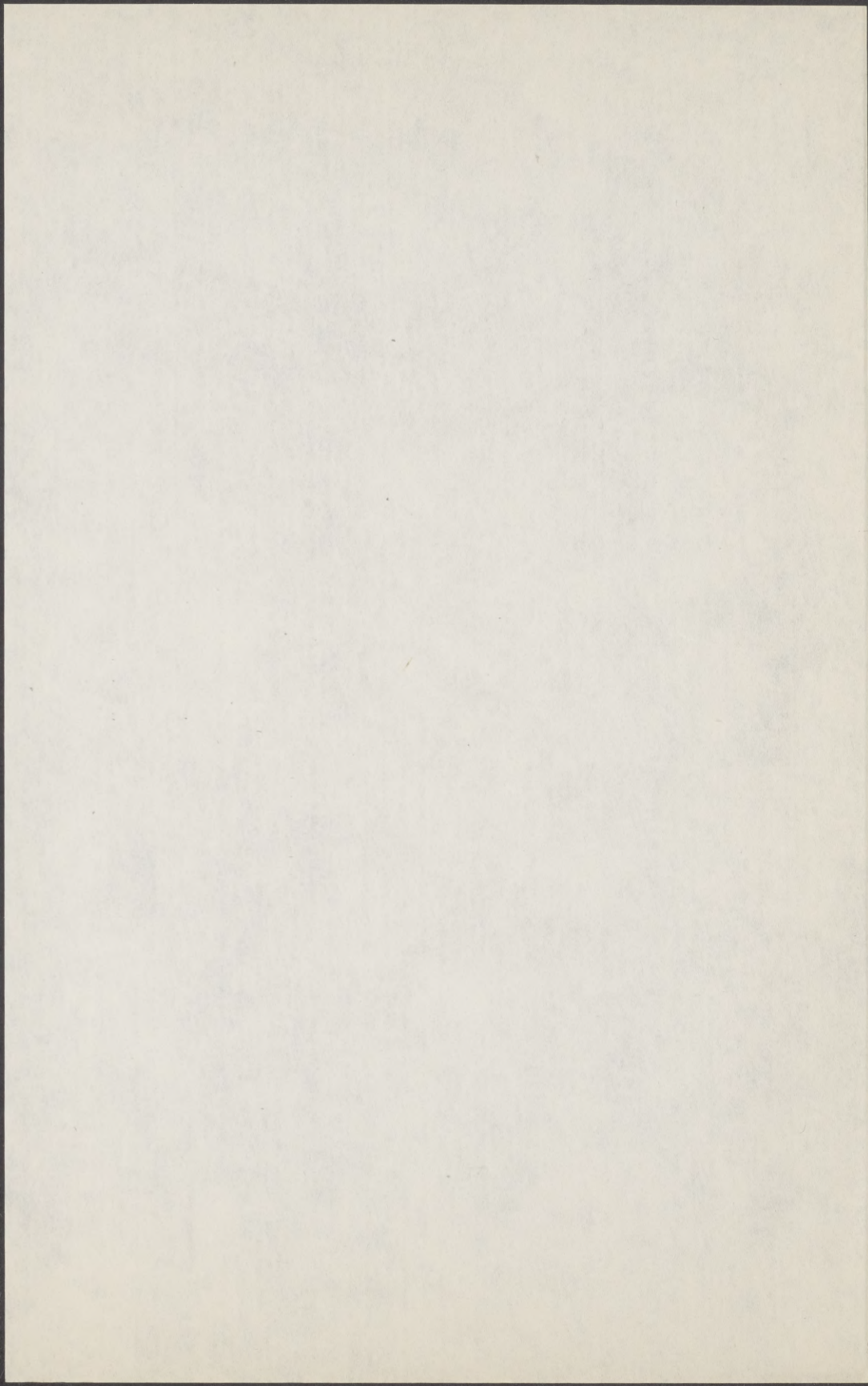
- Asia/Australia
- South America
- North America
- Asia
- Europe, U.K.











AMEND THE SHIPPING ACT OF 1916

HEARING

BEFORE THE

COMMISSION ON

MERCHANT MARINE AND LOGGING

AND

COMMITTEE ON COMMERCE

HOUSE OF REPRESENTATIVES

UNITED STATES SENATE

WASHINGTON, D. C.

SECOND SESSION

1917

2 3326

TO ALL WHOM THESE PRESENTS SHALL COME, I, THE PRESIDENT of the United States of America, do hereby recommend that the Senate ratify the amendments to the Shipping Act of 1916, as amended, which are contained in the bill of the House of Representatives, the title of which is "An Act to amend the Shipping Act of 1916, and for other purposes."

WILLIAM H. TAFT

President of the United States

Approved: _____

Secretary of the Senate



U. S. GOVERNMENT PRINTING OFFICE

WASHINGTON, D. C.

1917