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HEARING

BEFORE THE

SUBCOMMITTEE ON MERCHANT MARINE AND TOURISM

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

S. 2873

TO PROVIDE FOR THE REGULATION OF RATES OR CHARGES BY CERTAIN STATE-OWNED CARRIERS IN THE FOREIGN COMMERCE OF THE UNITED STATES, AND FOR OTHER PURPOSES

MAY 17 AND SEPTEMBER 6, 1978

Serial No. 95–121

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CONTENTS

	Page
Opening statement by Senator Inouye	1
Text of S. 2873	4
Agency comments, Securities and Exchange Commission	13

CHRONOLOGICAL LIST OF WITNESSES

MAY 17, 1978

Atwood, James, Deputy Assistant Secretary of State for Transportation Affairs, Department of State	14
Letter of June 19, 1978	20
Ewing, Ky P., Jr., Deputy Assistant Attorney General, Antitrust Division, Department of Justice; accompanied by Elliott Seiden; and Paul Mapes	25
Prepared statement	30
Questions of the committee and answers thereto	33
Moakley, Thomas, Commissioner, Federal Maritime Commission; accompanied by Leslie Kanuk, Commissioner; Merrill Simpson, Assistant Chief, Office of Tariffs and Intermodalism; and Robert Ellsworth, Chief, Office of Industry Economics	41
Questions of the committee and answers thereto	49
Additional questions and answers	59

SEPTEMBER 6, 1978

Opening statement by Senator Inouye	71
Amoss, W. J., Jr., president, Lykes Bros. Steamship Co., Inc., appearing on behalf of the Council of American Flag-Ship Operators	177
Attachments	184
Avery, George, chairman, Export-Import Maritime Commission, appearing on behalf of the National Industrial Traffic League	150
Prepared statement	154
Questions of the committee and answers thereto	155
Brand, Herbert, president, Transportation Institute	158
Prepared statement	162
Questions of the committee and answers thereto	166
Additional questions and answers	
Hiltzheimer, Charles I., chairman of the board, Sea-Land Service, Inc	81
Attachments	88
Questions of the committee and answers thereto	117
Hufbauer, Gary, Deputy Assistant Secretary for International Trade and Investment Policy, Department of the Treasury; accompanied by Henry Berghoef	73
Prepared statement	78
Questions of the committee and answers thereto	79
Hunter, Robert, Hunter & Gill, on behalf of Capt. J. W. Clark, president, Delta Steamship Lines, Inc., New Orleans, La	135
Questions of the committee and answers thereto	139

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

	Page
Amoss, W. J. Jr., president, Lykes Bros. Steamship Co., Inc., letter of June 30, 1978	200
Bank, Richard K., Director, Office of Maritime Affairs, Department of State, letter of May 18, 1978	13
Comments on "A Study of Ocean Rate Disparities", article	125
Daschbach, Richard J., Chairman, Federal Maritime Commission, letters of:	
September 8, 1978	204
September 19, 1978	204
Gleason, Thomas W., international president, International Longshoremen's Association, letter of July 14, 1978	200
Labor-Management Maritime Committee, statement	165
Marcus, Henry S., associate professor of Marine Systems, MIT, statement	197
Shefler, Stephen A., Deputy Assistant Secretary for Policy and International Affairs, Department of Transportation, statement	202
Wertheimer, S. S., director, WITASS, letter with enclosures of June 21, 1977	192

OCEAN SHIPPING ACT OF 1978

WEDNESDAY, MAY 17, 1978

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

The subcommittee met at 10 a.m. in room 235, Russell Senate Office Building, Hon. Daniel K. Inouye (chairman of the subcommittee) presiding.

OPENING STATEMENT BY SENATOR INOUYE

Senator INOUYE. The hearing will come to order.

Today the subcommittee begins hearings on S. 2873. The legislation has, as its primary objective, the regulation of rate-cutting practices of certain state-controlled carriers operating in the U.S. trades. In essence, it would require these carriers in certain cases to prove to the satisfaction of the Federal Maritime Commission that their rates are just and reasonable.

Excluded from the bill's provisions are carriers accorded most-favored-nation treatment; carriers controlled by governments which have subscribed to annex A lot of the Code of Liberalization of Current Invisible Operating; [1] and controlled carriers which are parties to certain conference agreements approved under section 15 of the Shipping Act, 46 U.S.C. subsection 814.

Also excepted from the scope of the proposed law are the rates charged by a controlled carrier for service between the United States and the country whose government is in control of the carrier.

The Commission may by order reject, suspend, or disapprove any rates it finds are not just and reasonable. When it does so, the rates are void and their use unlawful.

The President may request the Commission to stay the effect of its order for a period not to exceed 120 days for national defense or foreign-policy reasons.

The U.S.-U.S.S.R. Maritime Agreement, signed on October 14, 1972, provided, among other things, for open access to 40 specified ports in the Soviet Union and United States by vessels of the other country, upon 4 days' advance notice to the appropriate authorities.

The 1972 agreement thus provided the Soviet merchant fleet with necessary operating access for establishing a liner service in the U.S. oceanborne trades. With open access to 40 ports on a 4-day ad-

[1] See p. 13, Department of State letter to committee counsel, dated May 18, 1978.

vance notice, Soviet liner vessels have been able to trade without the restrictions that existed prior to the agreement.

As a consequence of the 1972 agreement, the following growth trends occurred in the liner segment of the Soviet merchant fleet operations in the U.S. trades. Between 1971 and 1976, there was more than an eight-fold increase in the tonnage of liner cargoes carried, and nearly a 45-fold increase in the value of liner cargoes carried.

In order to achieve this phenomental growth in the U.S. liner trades, the various Soviet companies have actively pursued a practice of rate cutting, generally as an independent carrier, to enable their capture of an intial share of the trade and then expand upon that share in successsive years.[1]

Experience with Soviet rates since the early 1970's indicates that its carriers penetrate our trades and remain there by charging whatever rates are necessary to attract cargo.

While this principle is substantially followed by any independent carrier who enters a trade, it is the degree to which the Soviets can cut rates, the period of time which such rates can be maintained, and the Soviets motives for cutting rates, which distinguishes carriers of that nation from other independents.

When a U.S. carrier and a German cross trader compete in our trades, it is one privately owned carrier competing against another. Their "bottom lines" are the same, that is, to make a profit. Their costs are similar, and include items such as depreciation, interest, and reserves for operating asset replacement.

When a U.S. carrier and Baltic Shipping Co.—Soviet carrier—compete in a trade, however, it is a privately owned carrier competing against the U.S.S.R., the second most powerful nation in the world. And Baltic has all the resources of the nation at its command.

Unlike the U.S. carrier, therefore, Baltic Shipping Co., because it is the state, does not have costs such as depreciation, interest, and reserves for operation asset replacement.

Most importantly, Baltic does not have to operate for profit. Therefore, if it is in the interest of the U.S.S.R. to penetrate and eventually dominate our trades, Baltic can enter those trades and cut rates as much as is necessary, for as long as is necessary, to accomplish the U.S.S.R.'s purposes.

Against that background, it becomes essential, therefore, to understand the objectives of Soviet merchant marine policy. According to the Maritime Administration, the Soviet merchant marine has a number of essential missions, among which are: To provide shipping capacity to reduce dependence on Western shipping; to earn foreign currency to assist in the balance of payments; to provide the shipping capacity necessary to transport military cargoes; and to assist in the expansion of Soviet policy throughout the world.

When these objectives and Soviet rate-cutting practices are considered alongside of the fact that the carrying capacity of the Soviet liner fleet now, and as projected, far exceeds the requirements of the Soviet foreign seaborne trade, it is difficult to conclude other than that the Soviets intend to dominate our trades.

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[1] Source: Expansion of the Soviet merchant marine into the U.S. Maritime Trades: A Report of the Maritime Administration.

The Soviet state-owned and managed shipping companies can set rates in particular U.S. trades that influence: The viability of competitors and the dependency of foreign shippers on their services; the competitiveness or price of particular exports versus imports in selected trades; and the incidence and degree of Soviet dominance in the transportation of military, electronic and other high-value cargoes.

Late yesterday afternoon the committee received a reply to an earlier letter it had written to the Federal Maritime Commission.

The FMC's letter, which will be made part of the record, makes the following points.[1]

First: FMC believes it is necessary to control the rates of state-controlled carriers in our liner trades, and that legislation is necessary.

Second: FMC supports S. 2873.

Third: if S. 2873 were amended as the Department of Justice will recommend, the legislation would be ineffective.

It is against this background, therefore, that the subcommittee will consider S. 2873.

On May 4, in my capacity as chairman of the Merchant Marine Subcommittee, I formally invited the Assistant Secretary of Commerce for Maritime Affairs, Robert Blackwell, to appear and testify before the subcommittee on May 17, on S. 2873. Several days earlier, at my direction, committee counsel had confirmed the May 17 hearing date with Mr. Blackwell's office.

The committee was especially interested in Mr. Blackwell's testimony because we felt, in view of the report of the Maritime Administration on "Expansion of the Soviet Merchant Marine into the U.S. Maritime Trades," he was in the best position to inform us of the threat posed by Soviet penetration into our liner trades. If there was no threat, of course, there is no rationale for S. 2873.

Yesterday, less than 24 hours before his scheduled appearance, Mr. Blackwell had his general counsel inform the committee's counsel that he had changed his mind and would not honor the committee's request to appear and testify on S. 2873.

The reason for Mr. Blackwell's flat refusal, committee counsel was told, was that, at OMB's direction, all Government agencies would have to take the same position on S. 2873, and Mr. Blackwell, therefore, felt his testimony would only be repetitive.

Committee counsel pointed out the chairman felt that Mr. Blackwell could contribute a special expertise to the hearings that was beyond the expertise of the Justice Department, the State Department, or any other Government agency.

The general counsel of the Maritime Administration replied that he would bring my views to Mr. Blackwell's attention and call committee counsel back.

Shortly thereafter, he did, and informed counsel that Mr. Blackwell still would not honor the committee's request to appear and testify.

In my 19 years in Congress, I have participated in and chaired hundreds of hearings. On numerous occasions Government witnesses have been unable to appear and testify as requested, because of illness, conflicting engagements, and emergencies of one kind or another.

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[1] See p. 49.

Never, however, has a Government witness refused to testify because other Government witnesses are going to take the same position on a bill.

After all, how does a witness know what special questions the committee may wish to ask?

It is not, therefore, for the witness to decide whether his testimony would be redundant. Thus, it seems to me, is for the committee to decide.

On many occasions, the President has said that he is desirous that the executive agencies maintain amicable working relations with Congress.

I believe Mr. Blackwell's cavalier refusal to honor the committee's request in this instance is contrary to the President's desire.

The committee has a number of questions it had intended asking Mr. Blackwell. Inasmuch as he has chosen not to appear, the committee will send them to the Secretary of Commerce and request that Mrs. Kreps arrange for their answer.

[The bill and agency comments follows:]

95TH CONGRESS
2D SESSION

S. 2873

IN THE SENATE OF THE UNITED STATES

APRIL 11 (legislative day, FEBRUARY 6), 1978

Mr. INOUYE (for himself and Mr. CANNON) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To provide for the regulation of rates or charges by certain State-owned carriers in the foreign commerce of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Ocean Shipping Act of 1978".

SEC. 2. The first section of the Shipping Act, 1916, as amended (46 U.S.C. 801), is further amended by inserting the following at the end thereof:

"The term 'controlled carrier' means a common carrier by water operating, offering or proposing to offer service in the foreign commerce of the United States which carrier is or

whose operating assets are, directly or indirectly owned or controlled by a government or governments. Ownership or control by such government shall be deemed to exist if a majority portion of the interest in the carrier is owned or controlled in any manner by such government, by any agency of the government, or by any person, corporation, or entity controlled by such government. Ownership or control shall also be deemed to exist if the government has the right to appoint or disapprove the appointment of a majority of the directors or the chief operating or executive officer of the carrier.".

SEC. 3. Section 18 of the Shipping Act, 1916, as amended (46 U.S.C. 817), is further amended by adding at the end thereof, the following new subsection:

"(c) (1) No controlled carrier subject to this Act shall establish or maintain rates or charges in its tariffs filed with the Commission that are below a level which is just and reasonable, or shall any such carrier establish or maintain unjust or unreasonable classifications, rules, or regulations in such tariffs. An unjust or unreasonable classification, rule, or regulation means one which results or is likely to result in the carriage or handling of cargo at rates or charges which are below a level which is just and reasonable. The Commission may, upon petition, or upon its own motion, at any time after notice and hearing, disapprove any rates, charges, clas-

sifications, rules, or regulations which the controlled carrier has failed to demonstrate to be just and reasonable. In any proceeding under this subsection, the burden of proof shall be on the controlled carrier to demonstrate that its rates, charges, classifications, rules, or regulations are just and reasonable. Rates, charges, classifications, rules, or regulations filed by a controlled carrier which have been rejected, suspended, or disapproved by the Commission are void, and their use is unlawful. Whenever the Commission finds that any rate, charge, classification, rule, or regulation of a controlled carrier is unjust or unreasonable, it may determine, prescribe, and order enforced a just and reasonable minimum rate or charge or a just and reasonable classification, rule, or regulation.

"(2) For the purpose of this subsection, in determining whether rates, charges, classifications, rules, or regulations of a controlled carrier are just and reasonable, the Commission may take into account appropriate factors, including, but not limited to, whether—

"(A) the rates or charges which have been filed or which would result from the pertinent classifications, rules, or regulations are below a level which is fully compensatory to the controlled carrier based upon that carrier's actual costs or upon its constructive costs;

"(B) the rates, charges, classification, rules, or regulations are the same as or similar to those filed or assessed by other carriers in the same trade; or

"(C) the rates, charges classifications, rules, or regulations are required to assure movement of particular cargo in the trade.

"(3) Notwithstanding the provisions of subsection (b) (2) of this section, rates, charges, classifications, rules, or regulations of controlled carriers shall not, without special permission of the Commission, become effective within less than thirty days following the date of filing with the Commission. Following the enactment of this subsection, each controlled carrier shall, upon the request of the Commission, file within twenty days of request, with respect to its existing or proposed rates, charges, classifications, rules, or regulations, a statement which sufficiently details the controlled carrier's justification for such rates, charges, classifications, rules, or regulations, upon which the Commission may reasonably base its determination of the lawfulness thereof.

"(4) Whenever the Commission is of the opinion that the rates, charges, classifications, rules, or regulations filed by a controlled carrier may be unjust or unreasonable, the Commission may issue an order to the controlled carrier to show cause why such rates, charges, classifications, rules, or

regulations should not be disapproved. Pending a determination as to their lawfulness in such a proceeding, the Commission may suspend such rates, charges, classifications, rules, or regulations at any time prior to their effective date. In the case of any rates, charges, classifications, rules, or regulations which have already become effective, the Commission may, upon the issuance of an order to show cause, suspend such rates, charges, classifications, rules, or regulations on thirty days notice to the controlled carrier. During any period of suspension hereunder, the Commission shall prescribe the minimum rates or charges, or other classifications, rules, or regulations that may be assessed or implemented by the controlled carrier.

"(5) The provisions of this subsection do not apply to rates, charges, classifications, rules, or regulations governing the transportation of cargo by a controlled carrier between the country by whose government it is owned or controlled, as defined herein, and the United States, or any of its districts, territories, or possessions.

"(6) For the purposes of paragraph (2), the term 'constructive costs' means the costs of another carrier, other than a controlled carrier, operating similar vessels and equipment in the same or a similar trade. For the purpose of determining constructive costs, the Commission shall be given access to all data relating to the cost of performing ocean transporta-

tion available in the files of any other agency of the United States. The data shall be made available upon written request of the Chairman of the Commission, which request shall state that the data is to be used for the purpose of evaluating rates under this subsection. Access to such data shall only be denied to the Commission upon certification by the possessing agency that release of such data would endanger national security. The Commission and the agency upon which it may make such data request shall not disclose to the public nor to any competing carrier the name of the carrier whose data is obtained in this manner.

"(7) The provisions of this subsection shall not apply—

"(A) to any controlled carrier of a state whose vessels are entitled by a treaty of the United States to receive national or most-favored-nation treatment;

"(B) to any controlled carrier of a state which, on the date of enactment of this subsection, has subscribed to the statement of shipping policy contained in note 1 to annex A of the Code of Liberalization of Current Invisible Operations, adopted by the Council of the Organization for Economic Cooperation and Development; or

"(C) in any particular trade to any controlled carrier which offers service in that trade under rates,

charges, classification, rules, or regulations which are covered by a rate agreement or service agreement approved under section 15 of this Act, other than a rate or service agreement in which all of the members are controlled carriers not otherwise excluded from the provisions of this subsection.

"(8) Concurrently with the publication thereof, the Commission shall transmit to the President any order of suspension or final order of disapproval of rates, charges, classifications, rules, or regulations of a controlled carrier subject to the provisions of this subsection. Within ten days after the receipt or the effective date of such Commission order, whichever is later, the President may request the Commission to stay the effect of the Commission's order for a period not to exceed one hundred twenty days from the effective date of the order if he finds that such stay is required for reasons of national defense or foreign policy. Notwithstanding any other provision of law, the Commission shall immediately grant such request by the issuance of an order in which the President's request shall be described. During any such stay, the President shall, whenever practicable, attempt to resolve the matter in controversy by negotiation with representatives of the applicable foreign governments.".

SEC. 4. There are hereby authorized such sums as may be necessary for purposes of carrying out the provisions of subsection (c) of section 18 of the Shipping Act, 1916, which sums are to remain available until expended. This authorization is in addition to those contained in Public Law 95–86.

SECURITIES AND EXCHANGE COMMISSION,
Washington, D.C., July 3, 1978.

Hon. HOWARD W. CANNON,
Chairman, Subcommittee on Merchant Marine and Tourism, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.

DEAR CHAIRMAN CANNON: This is in response to your request for the Commission's comments on S. 2873, the Ocean Shipping Act of 1978 (the "Bill"), which would amend the Shipping Act of 1916 (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 companies engaged in the shipping industry. In this connection, as you may recall, we have submitteed to your Subcommittee and to the Committee on Commerce, Science, and Transportation, testimony and comments on other bills which would amend the Shipping Act to remedy certain problems of rebating and other malpractices in the ocean shipping trades.[1] As we have previously stated, however, the Commission has no experience with or responsibility for administering the Shipping Act. Thus, we have no comments on the bill, since it does not amend the federal securities laws, and generally deals with matters outside the Commission's jurisdiction.

This letter does 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 program of the Administration.

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

Sincerely,

HAROLD M. WILLIAMS,
Chairman.

[The following information was referred to on p. 1:]

DEPARTMENT OF STATE,
Washington, D.C., May 18, 1978.

Mr. JOHN HARDY,
Senate Commerce Committee Counsel,
Washington, D.C.

DEAR JOHN: Per our conversation, I am enclosing a list of countries which are parties to Treaties of Friendship Commerce and Navigation (or similar treaties) with the United States, or subscribe to Note 1 to Annex A of the Code of Liberalization of Current Invisible Operations.

The OECD Invisible Code is an agreement between OECD members to eliminate, to the greatest degree possible, restrictions on invisible transactions and transfers between those countries. Major areas of invisible operations which the Code covers include insurance, transportation, banking transactions, and films.

The United States is, of course, a signatory to the Invisible Code. We do not subscribe to the second sentence of Note 1 to Annex A and had indicated our reservation to that sentence to avoid possible conflict with U.S. laws, particularly those which provide U.S.-flag cargo preference for U.S. Government-owned, financed or impelled cargoes.

However, those twenty countries which have subscribed to the full text of Note 1 have, by doing so, pledged that their shipping policies are based on the principle of "free and *fair* competition". Hence, while the United States cannot subscribe to Note 1 in its entirety, we recognize that those countries which have done so have promised to avoid the kinds of unfair competitive practices at which S. 2873 is aimed. We therefore consider it appropriate that S. 2873 explicitly exempt from its application subscribers to Note 1.

I hope the foregoing will be helpful. If I can be of assistance in any other way, please feel free to contact me.

Sincerely,

RICHARD K. BANK
Director, Office of Maritime Affairs.

Enclosure.

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[1] *See*, Testimony of Harvey L. Pitt, General Counsel, Securities and Exchange Commission on S. 2004, Oct. 12, 1977, and my letter dated April 25, 1978 on S. 2386 to Chairman Magnuson.

NATIONS NOT AFFECTED BY S. 2873 BECAUSE OF FCN/OECD/OTHER QUALIFICATIONS

Argentina—FCN.
Australia—OECD.
Austria—FCN.
Belgium—FCN/OECD.
Bolivia—FCN.
Canada—OECD.
Republic of China—FCN.
Colombia—FCN.
Costa Rica—FCN.
Denmark—FCN/OECD.
Ethiopia—FCN.
Finland—FCN/OECD.
France—OECD.
FRG—FCN/OECD.
Greece—FCN.
Honduras—FCN.
Iceland—OECD.
Iran—FCN.
Iraq—FCN.
Ireland—FCN/OECD.
Israel—FCN.
Italy—FCN/OECD.
Japan—FCN/OECD.
Korea—FCN.
Liberia—FCN.
Luxembourg—FCN/OECD.
Muscat—FCN.
Nepal—FCN.
Netherlands—FCN/OECD.
New Zealand—OECD.
Nicaragua—FCN.
Norway—FCN/OECD.
Paraguay—FCN.
Portugal—OECD.
Romania—Trade Agreement 1975; Maritime Agreement 1976.
Spain—FCN.
Sweden—OECD.
Switzerland—OECD.
Thailand—FCN.
Turkey—FCN.
United Kingdom—OECD.
Yemen—FCN.
Yugoslavia—FCN.

NOTE.—Certain operators of other nations would also be exempt depending upon trade route or conference membership.

Our first witness is the Honorable James Atwood, Deputy Assistant Secretary of State for Transportation Affairs, Department of State.

STATEMENT OF JAMES ATWOOD, DEPUTY ASSISTANT SECRETARY OF STATE FOR TRANSPORTATION AFFAIRS, DEPARTMENT OF STATE

Mr. ATWOOD. Thank you, Mr. Chairman. Mr. Chairman, my name is James R. Atwood, Deputy Assistant Secretary of State for Transportation Affairs. Accompanying me is Richard K. Bank, Director of the Office of Maritime Affairs of the Department; and Judith H. Bello, Office of the Legal Adviser.

Thank you for this opportunity to permit the Department to testify on S. 2873, a bill to provide for the regulation of rates or charges by certain State-controlled carriers in the foreign commerce of the United States, and for other purposes.

Specifically, I am pleased to be invited to testify, because the Department shares the concern of the sponsors of this legislation over the rate practices of certain state-controlled operators. Those practices have the potential to pose a serious threat to shipping in the U.S. foreign trades. The support of national treasuries which certain of these lines enjoy, plus the mix of commercial and noncommercial motives which may govern their business decisions, make the possibility of predatory conduct by state-controlled carriers a different phenomenon from that experienced where more traditional carriers are involved. state-owned carriers may sustain very low rates for far longer periods than normal commercial carriers, and those rates could prove to be predatory to the commercial carriers.

Undeniably, all countries are entitled to have a merchant marine, and the United States should not attempt to prevent any carrier, including a state-controlled carrier, from participating in interna-

tional trade. On the other hand, it is legitimate to ask that state-controlled carriers operate in accordance with ordinary commercial principles, or at least that their conduct be generally consistent with commercial principles.

As you are aware, Mr. Chairman, the Department has in the past expressed its concern about legislative proposals similar to this bill. We have been cautious with respect to administrative or legislative action which might be thought by some to be discriminatory in nature or to restrain competition unduly. We have also been concerned that any such actions not conflict with our international obligations.

Nonetheless, we have concluded that the special problem of state-controlled carriers should be addressed by special solutions. We therefore favor enactment of S. 2873, provided certain changes are made in it.

First, perhaps our most serious concern is that authority be granted to the President to preempt Federal Maritime Commission actions when foreign policy considerations so require. We note, of course, that under S. 2873 section 18(c)(8) would authorize the President to stay Commission actions under subsection 18(c) for a maximum period of 120 days. While we welcome this recognition of the requirements of foreign policy, we are concerned that this provision, with its 120-day limit, may not provide the President with sufficient flexibility to meet the requirements of all foreign policy exigencies. We therefore urge that 18(c)(8) be deleted and the following language added to 18(c)(1):

Provided, however, that the President may, for reasons of foreign policy, cancel or stay any tariff rejection, suspension or disapproval authorized under the provisions of this subsection.

Second, we believe that any rate suspension imposed by the Commission should be of a limited duration. We therefore believe that the phrase "but not for a longer time period than 180 days beyond the time when they would otherwise go into effect," should be added to subsection 18(c)(4) after "controlled carrier" in line 9 on page 5.

We believe that such a limitation on the duration of suspensions would reduce the possibility of unnecessary friction in our foreign relations, as well as encourage prompt action by the Commission. 180 days appears to be a reasonable time period; however, we believe that any other reasonable time limit would serve the purpose.

Third, we are concerned by the final sentence of subsection 18(c)(1), which empowers the Commission to prescribe minimum rates whenever it has found that the rates charged by a controlled carrier are unjust or unreasonable and by the final sentence of subsection 18(c)(4) which similarly empowers the Commisssion to prescribe minimum rates for the period of suspension. The administration is reluctant to grant regulatory or administrative agencies any greater authority over the level of ocean freight rates than is absolutely necessary, and we believe the purposes of this legislation can be met fully without extending ratemaking authority to the Commission.

We believe that the power to suspend rates under subsection 18(c)(4) grants to the Commission, will enable the Commission to insure that rates filed by controlled carriers following suspension or disapproval will be just and reasonable. We therefore urge the deletion of the last sentences of subsections 18(c)(1) and (4).

Finally, Mr. Chairman, we are deeply concerned by the language in line 2 of page 2 which would make the legislation applicable to any carrier controlled by "a government or governments" regardless of flag of registry. We recognize that this language is designed to insure that controlled carriers do not evade the provisions of the legislation by registering their vessels in one of the open-registry countries. We consider it extremely unlikely, however, that any major state-trading shipping nation would register vessels under an open registry flag.

The state-trading countries have, for the most part, made a point of publicly opposing flags of convenience in international forma—a popular stance with many developing countries—and they could not register their ships under such flags without a radical change of policy. Furthermore, most observers would agree, I think, that a major noncommercial motive for the expansion of the major state-trading country merchant fleets has been the desire to gain political prestige by "showing the flag," something they could not do if they registered vessels under other flags.

Particularly since the prospect of controlled carrier fleets evading this legislation by registering under other flags seems largely academic, we believe that efforts to plug that loophole would do more harm than good. Our bilateral treaties of friendship, commerce, and navigation—and the world in general—define the nationality of a vessel in terms of its flag and documentation. Legislation which looked behind the flag of a vessel to determine its nationality or ownership would be inconsistent with these treaties and with general international practice.

We would in effect be informing certain treaty partners that we do not recognize the sovereignty of their flags and would treat certain of their vessels differently than others. Should a state-owned carrier register its vessels under the flag of a country with which we have such a treaty, any effort to enforce this legislation with respect to those vessels would, of course, be a violation of that treaty.

Furthermore, the complex and frequently multinational corporate structures of many shipping enterprises today often render it almost impossible to identify fully the nationality of a ship's owners. Even a vessel wholly or largely owned by a state enterprise would, if registered under a foreign flag, almost certainly be hidden behind one or more corporate veils. Hence, legislation which attempted to define the nationality of vessels in terms other than their flags could set an unfortunate precedent and greatly complicate our maritime relations.

Moreover, by providing a procedure whereby operations of a potential competitor might be significantly impeded by a mere accusation of state ownership, such provisions could subvert the intention of this legislation. We, therefore, urge that the words "a government or governments" on page 2, line 2, be replaced by the following phrase:

"The government under whose registry the vessels of the controlled carrier operate."

With the changes I have outlined, plus additional changes which other agencies will propose, the administration is prepared to support S. 2873. It would, we believe, provide a reasonable, credible and long-term deterrent to predatory rate practices, and would thereby con-

tribute to shipping in the foreign commerce of the United States. At the same time, it would conform to our international obligations and to our commitment in shipping to competition based upon commercial principles.

Mr. Chairman, that ends my testimony. We would be pleased to answer any questions.

Senator INOUYE. Your testimony here differs considerably from that made in the House, primarily because of your adoption of the amendments recommended by the Justice Department.

Is this new position the result of a meeting that was called yesterday morning, by OMB?

Mr. ATWOOD. Mr. Chairman, I don't believe that our testimony does materially differ from that which I gave before the House committee. I do not cover all of the points addressed before the House, because, as a result of the OMB coordination process, we are now aware of what other agencies will be testifying with respect to and stating the administration position on other points.

I think with respect to the matters that I do address we are consistent with the House testimony. Indeed, I would think that in all significant respects the administration position which will be taken before this committee is consistent with the position we presented in the House.

Senator INOUYE. Why was the Federal Maritime Commission not invited to participate in this OMB meeting?

Mr. ATWOOD. I don't know the answer to that, Mr. Chairman. I am not aware of whether or not it is traditional practice for an independent regulatory agency to participate in the formulation of executive branch positions with respect to the bill. I can see reasons why executive branch agencies might not necessarily include an independent agency in that process.

Senator INOUYE. As a practical matter, doesn't the Executive Office oftentimes dictate to FMC whether it could or could not testify on certain subject matters?

Mr. ATWOOD. I just don't know the answer to that practice to answer that question. There are others in the Government who could give you a far better answer than I can.

Senator INOUYE. I can assure you that is the practice. We have received a letter from FMC suggesting that the amendments that you subscribe to will literally gut the bill and that your testimony this morning differs considerably from that which was given before the House.

I would gather that this testimony here reflects the view of the administration?

Mr. ATWOOD. Yes, it does, Mr. Chairman. Again, I really don't understand the point made by the FMC that there is a substantial difference. The one point we emphasized, the one new aspect of our present testimony relates to this issue of flags of convenience. I think in other respects our testimony before the House is exactly the same.

Senator INOUYE. We will wait until FMC gets on deck here.

The Maritime Administration projects that by 1986 Soviet flagships will be carrying some 6.6 percent of this country's liner cargo. Do you agree with this projection?

Mr. ATWOOD. I have no reason to doubt their competency in that area, Mr. Chairman.

Senator INOUYE. And about that time we will be—U.S. flagships will be carrying about 15 percent of this country's non-Government line cargo. Would that be correct?

Mr. ATWOOD. We are just not in a position to second-guess those estimates. We are not in a position to disagree.

Senator INOUYE. As a general rule, what percent of the landed costs of goods of commodities is applicable to ocean transportation freight rates?

Mr. ATWOOD. I would guess it is a relatively small percentage.

Senator INOUYE. It is said that a 10-percent saving in freight costs translates to 0.6 percent of the landed costs, whereas the same 10 percent to the ocean carriers may be the difference between survival in the transportation system and nonsurvival.

Is there any validity to that?

Mr. ATWOOD. That strikes me as an accurate statement.

Senator INOUYE. If a 10-percent saving in freight costs translates to a 0.6 percent of landed costs for the buyer's goods, does the buyer pass that 0.6 percent saving on to the consumer?

Mr. ATWOOD. I think that would depend, Mr. Chairman, on the buyer's competitive situation within the U.S. markets. If the buyer is operating in an independent market, he has little discretion but to pass the cost savings on, because if he fails to do so, his competitors might.

Senator INOUYE. The report of the Maritime Administration on Soviet expansion suggests that one of the essential missions of the Soviet merchant marine is to assist in expansion of Soviet policy throughout the world.

Do you concur with that conclusion?

Mr. ATWOOD. Well, "Soviet policy" is a broad phrase. Certainly, there are political aspects, one would believe, to the expansion of the Soviet shipping that we have seen. So to that extent I agree.

I think one has to be somewhat careful, though, before concluding that this is—that the expansion of Soviet shipping is going to have a major political impact worldwide. I think it is a worthy factor, though.

Senator INOUYE. Earlier I asked you if you concurred with the estimate of MarAd where it is suggested by 1986 the Soviet participation in U.S. landed trade will be 6 percent. Many experts have suggested this is too conservative and too low, that it would be closer to 10 percent.

Assuming that it is 10 percent, what effect would it have on the American economy if as a result of some disagreement, the Soviet Union should decide that none of its ships would carry American cargo?

Mr. ATWOOD. Well, in our immediate bilateral trades, I would think that the absence of Soviet participation would not have major consequences. That 10-percent figure is a large figure, but given the relative freedom which most shipping companies have to fill commercial gaps in the shipping market, I think withdrawal of the Soviets from U.S. bilateral trades would result in other operators' moving in quite quickly to take their place.

There would be a disruptive effect, and there might be short-term adverse consequences. I don't think it would rise to the level of a disaster.

Could I ask Mr. Bank to see if he would like to elaborate on that response?

Senator INOUYE. Certainly.

Mr. BANK. I generally agree, Mr. Chairman, with what Mr. Atwood said. It would depend upon the trade involved and the situation that exists with regard to the shipping market at the time.

If we should project this to a period, let's say, 5 years from now and with the current ship market the way it is, I would agree with Mr. Atwood that, except for some dislocation, that that gap could be filled by existing vessels. That is to assume that rationalization in all trades around the world will not have been achieved. Therefore, a vessel could be operating at a certain capacity less than 100 percent, and therefore vessels could move into this new trade.

That is not to say, of course, that there will not be disruptions further down the road or that specific targeting of a specific trade might be affected and the unique type of vessel or unique type of services provided, or one grows to depend on the unique service. If that is all of a sudden removed during a critical period, it would be a serious disruption.

Senator INOUYE. For example. on a percentage basis, at the present time the Soviets have gained the largest market share in trade route 34: U.S. Great Lakes, Mediterranean, Black Sea, Portugal, Spain, Morocco. It has 22.7 percent of the market. By 1986 this may go as high as 40 percent.

Would it have any effect?

Mr. ATWOOD. Well, certainly, if a 40-percent participant withdrew from the trade, there yould be a very substantial effect, at least for a period of months, until——

Senator INOUYE. What about the Soviet penetration of the U.S.-North Atlantic-West Germany trade route 7? At the present time, it is 13.1 percent. In 10 years that could easily double.

Mr. ATWOOD. Well, Mr. Chairman, I don't have any familiarity with the figure you state.

Senator INOUYE. But should we be concerned? Aren't these statistics a matter of concern to us?

Mr. ATWOOD. Yes, I think we should be concerned. That is why we are testifying in support of this bill. That is why the administration supports the bill. I think we are agreed, Mr. Chairman, that one has good reason to be worried about an expansion of the controlled carrier's share of the market when it is not based on commercial principles, when it is not based on fair commercial competition, and when there is the threat which you indicate that the carrier may suddenly disappear for the same noncommercial reasons that the carrier appeared in the first place.

Senator INOUYE. It has been suggested that high-value-cargo skimming is a Soviet practice that is particularly damaging to the economic health of U.S. shipping companies that have been heretofore unable to defend themselves. Research on this point of view is that the domi-

nance of foreign flagships, including state-controlled, such as the Soviets', in the carriage of strategically important raw material imports to the United States by liners should be a matter of concern.

For example, at the present time, foreign liners carry 92 percent of the tungsten that is now being carried on regularly scheduled routes, 100 percent of the platinum, 60 percent of the tin ore, and about 100 percent of manganese. In this context, is it really significant whether the level of Soviet rates is 10, 15, or 40 percent below the conference rates or whether Soviet returns are 5, 10, or 15 percent below fully distributed costs of comparable operations?

Should this be a matter of concern to us?

Mr. ATWOOD. Yes. I think one would want to explore those statistics further and identify if it is the case that strategically important materials are being carried on Soviet bottoms. I would agree fully, if that is the case, knowing the danger of noncommercial considerations' having a major impact on the availability or not of that shipping in that critical period——

Senator INOUYE. My concern is that whenever these situations are described, the Government always says, Yes, we are concerned. But beyond the expression of the concern, very seldom do we find any action.

For example, explain to me why the administration wants to permit more Government cargo to be carried by non-American flags.

Mr. ATWOOD. I'm not sure that is the position of the administration, and we do support the bill.

Senator INOUYE. There is the amendment that is presently pending in the Foreign Relations Committee. At the present time I believe that 50 percent of the so-called foreign aid cargo is carried by American bottoms, and they want to reduce this further.

Mr. ATWOOD. I am sorry; we are not aware of the bill you are referring to, Senator. We will get it.

Senator INOUYE. I am sure it is in the Foreign Relations Committee. We will be hard pressed to explain to our constituents why Soviet ships are carrying foreign aid supplies to a country, the purpose of which is to cover Soviet influence.

Mr. ATWOOD. I see your point.

Senator INOUYE. I would like to have the Secretary of State explain that to us. But that is what would happen.

Mr. ATWOOD. Thank you for calling this legislation to our attention. We will look into it.

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

DEPARTMENT OF STATE,
Washington, D.C., June 19, 1978.

Hon. DANIEL K. INOUYE,
U.S. Senate.

DEAR SENATOR INOUYE: When I testified before the Subcommittee on Merchant Marine and Tourism on May 17, you raised a question concerning the Department of State's position on certain legislation under consideration affecting the scope of acrgo preference for the U.S. merchant marine. I promised at that time to look into the matter. From a subsequent conversation with Mr. John Hardy of the Subcommittee staff, I understand that the legislation you had in mind is S. 2385 (H.R. 10377), H.R. 10434, and H.R. 11101 which would extend the credit terms which the Commodity Credit Corporation may offer under its Export Credit Sales Program.

H.R. 10434 and H.R. 11101 define the extended credit sales which they would authorize as "commercial and not concessionary". As a result, the extended credit sales these bills would authorize would not be subject to the cargo-preference provisions of Section 901(b) of the Merchant Marine Act of 1936 (46 U.S.C. 1241 (b)), since a series of Attorney General opinions have concluded that transactions under the CCC Export Credit Sales Program, as opposed to concessional sales under Public Law 480 (a substantial purpose of which is to assist the economies of the recipient countries), are purely commercial and hence not subject to the Cargo Preference Act (cf. 42 Op. A.G. No. 14, p.12). S. 2385, whose intent is similar to that of H.R. 10434 and 11101, explicitly states that the provisions of 46 U.S.C. 1241(b) would not apply to the extended credit sales it would authorize.

The Department of State and the Administration oppose the sweeping extension of credit terms which Section 4 (b) of S. 2385 (and comparable sections of H.R. 10434 and 11101) would authorize, unless they are restricted to sales with very limited purposes, i.e., the export of breeding cattle. (The Administration is also examining the question of using such credits for export sales in building up grain reserves under an International Wheat Agreement.) The Department opposes intermediate credits as a general commercial instrument because we believe they would trigger a credit race with our major agricultural export competitors, which would be detrimental to all agricultural exporting countries, and because we fear that they could result in a blurring of the present distinction between commercial credit (CCC) and concessional credit. (Title I of Public Law 480) sales, thereby eroding international acceptance of our concessional sales program.

The Department thus opposes the enactment of these bills in their present form. As regards the question of applying cargo-preference requirements to the commodities sold under the extended credit terms authorized by these bills (should they be enacted either in their present form or in a form acceptable to the Administration), we do not believe that it would be either consistent with present U.S. policy or beneficial in the long run to U.S. carriers to do so. While the Department is troubled by the possibility that enactment of any of these three bills in their present form could, in the eyes of foreign competitors, blur the distinction between commercial and concessional credit sales, it is clear that the intent of these bills is the promotion of commercial sales; furthermore, the program which they would affect has repeatedly been defined as having a purely commercial purpose. For the United States to apply cargo-preference requirements to this program would be a departure from long-standing U.S. policy of restricting cargo-preference requirements to non-commercial government-owned or financed cargo. Furthermore, if the United States were to apply cargo-preference requirements to a program whose purpose has frequently and publicly been defined as commercial, such action could stimulate emulation by other countries which could well be of net detriment to U.S. carriers in the long run.

I hope that the above will be helpful to you.

Sincerely,

JAMES R. ATWOOD,
Deputy Assistant Secretary
for Transportation Affairs.

Senator INOUYE. In the 1972 maritime agreement between the United States and the U.S.S.R. we gave the Soviets access to 40 U.S. ports with a 4-day notice. As a consequence, Soviet ships have been able to trade without the restrictions that existed prior to the agreement. What were the restrictions that existed before this agreement?

Mr. BANK. Senator, before the U.S.-U.S.S.R. agreement in 1972, Soviet vessels could enter the U.S. ports after 14 days' advance request. The request was made 14 working days prior to the entry.

The situation at the time, however, was that Soviet flag vessels did not call on U.S. east coast and gulf ports and Great Lakes ports because of a position taken by maritime labor, longshoremen primarily, with regard to servicing the Soviet vessels—a boycott, if you will, following the outbreak of the Korean war. So prior to October of 1972 there was realistically no Soviet calls on U.S. ports.

Senator INOUYE. Do you think that we made a good deal with respect to the 1972 agreement?

Mr. BANK. Mr. Chairman, like all agreements, there is a quid pro quo. In return for the items which you mentioned, the opening of 40 main ports to Soviet vessels at a 4-day-notice procedure, we, of course, received 40 Soviet ports for our flag carriers there.

Moreover, in anticipation of what had been expected to be a large bilateral trade between the United States and the Soviet Union based on a trade agreement which was later renounced by the Soviet Union, provisions were made at the request of maritime labor, and U.S. Merchant Marine community, that a significant and substantial portion of the bilateral trade between the United States and Soviets be carried on U.S.-flag vessels. Within the agreement, that substantial portion was defined as one-third.

So, therefore, in the quid pro quo, with regard to Soviet calls on U.S. ports, U.S.-flag vessels were to receive a guaranteed one-third, or at least one-third of the bilateral trade between the United States and the Soviet Union. In 1972, when the agreement was signed, it was anticipated that the U.S. merchant marine would benefit tremendously from the trade which was anticipated. It was that which was the quid pro quo.

History has now put us into a position where trade between the Soviet Union and the United States is not as great as anticipated, and although the U.S.-flag vessels in the export of agriculture bulk commodities between the United States and Soviet, or from the United States to the Soviet Union, have carried more than Soviet-flag vessels, and they are closer to that one-third.

One could decide for themselves whether the Soviets had received more out of the agreement than we have.

Senator INOUYE. What is the value of Russian trade?

Ours is valued at about $200 billion.

Mr. BANK. I don't know the exact value, Mr. Chairman. You mean the export? You mean the overall to the world?

Senator INOUYE. Yes.

Mr. BANK. I can't give that.

Senator INOUYE. What percentage of the Soviet ships at our ports are there as cross-traders?

Mr. BANK. I can't give you an exact percentage. I think the MarAd study does.

The majority of the liner vessels are participating in the cross-trades rather than the bilateral trades since the bilateral trade between the United States and Soviet Union is quite small.

Senator INOUYE. Less than 5 percent.

Mr. BANK. Excuse me. Less than 5 percent of the Soviet vessels calling in U.S. ports are involved in bilateral trade? If that is the figure, that sounds correct, I would say that the vast majority of Soviet vessels operate in cross-trades.

Senator INOUYE. So from any vantage point, the 1972 agreement was a good deal for the Soviets.

Mr. BANK. From the point of view of their liner operators, I would say so. Yes, I agree with you.

Senator INOUYE. Beside the Soviets, what other nations have or soon will have state-owned fleets which pose the kinds of problems this bill is trying to resolve?

Mr. ATWOOD. I think there are some 40 countries around the world which would fall within the provisions of the bill before the committee.

Thus far, the Soviet Union is certainly the principal state-controlled operator that engages in cross-trading.

The China fleet, for instance, is growing rapidly, but it is engaged almost exclusively in bilateral trades.

Senator INOUYE. According to an FMC staff analysis, Soviet vessels' itineraries over the past years indicate one of the primary reasons for the Soviet presence in our gulf coast trades to Europe and the Far East is their active trade with Cuba. According to that analysis, it is normal for Soviet vessels to carry cargo from Eastern Europe to Cuba and then load cargo at U.S. gulf and east coast ports for return trips to Europe.

Likewise, in the trade between Far East and U.S. Atlantic gulf coast, the Soviet vessels carry inbound cargo to Cuba because our trades are the most lucrative and attractive in the world.

Is it possible that somehow we are responsible for facilitating or subsidizing trade between the U.S.S.R. and Cuba?

Mr. ATWOOD. As I understand it, Mr. Chairman, the extent to which Soviet vessels are engaged in the cross-trades and in direct bilateral trades between the U.S.S.R. and Cuba has declined.

I would also make the general observation that any facilitation of trading by Soviet carriers is certainly going to benefit their bilateral trade with a number of countries, and that includes other Communist countries. I don't think we can deny that for a moment.

Senator INOUYE. On March 30 of this year the committee wrote to the Secretary of State inquiring about the Department's role, if any, in the matter of the 25 German buses purchased with Federal funds and shipped with U.S.S.R.—Soviet vessels. The Department replied that they heard of the bus shipment on the late afternoon of February 3 and that upon receipt of this information a staff of the Office of Maritime Affairs and an assistant legal adviser for Economic and Business Affairs had telephone conversations with members of the staff of the Office of General Counsel with the Department of Transportation, the Urban Mass Transit Administration, and the Maritime Administration.

In the course of these conversations we were asked whether there was any legal means to prevent the imminent shipment of 25 buses aboard the *Magnito*.

"We advised that in our opinion, there was not."

Was it the Maritime Administration or the Department of Transportation which asked the State Department whether there was any legal means to prevent the shipment of the vessels?

Mr. ATWOOD. It was the Maritime Administration.

Senator INOUYE. Did they wish to prevent shipment?

Mr. ATWOOD. Yes. I think they were interested in exploring possibilities to do that.

Senator INOUYE. Did they give you any reason why they wanted to prevent shipment?

Mr. ATWOOD. Well, I think their position was quite evident, Mr. Chairman. They were concerned that there would be adverse public reaction to having these buses carried on Soviet vessels, and they were interested in securing for the American fleet as much business. In general, that is their statutory responsibility.

Senator INOUYE. Was there any rate cutting involved in this transaction, as far as you could see?

Mr. ATWOOD. I am advised that the Soviet vessel did have a low bid for the carriage of that cargo. I believe the FMC now has in process a proceeding to investigate the details of that.

Senator INOUYE. We have been advised that the final rate offered by the Soviets would hardly cover the cost of the port; is that correct?

Mr. ATWOOD. I don't know the details.

I believe that is the sort of issue the Commission is going to look into in its proceeding on the subject. It was a low rate.

Senator INOUYE. You recommend that the bill require the FMC to rule on suspended rates within 180 days rather than leave the date open, as this bill does.

Given the difficulty of obtaining information from foreign carriers, isn't 180 days an unrealistic limit and too restrictive on the FMC?

Mr. ATWOOD. The burden is on the state-controlled carriers, so I think this has changed the balance substantially.

Also, the bill does provide for analysis of constructive costs and analysis of the relationship of the state carriers' rate with the rates of other participants in the trade.

So I think, for both of these reasons, an expeditious Commission action is possible, and it should be encouraged.

Senator INOUYE. Under the amendments you provide it is possible that, say, for the Soviets to stall it for 180 days and, in effect, nothing would happen?

Mr. ATWOOD. Well, I believe——

Senator INOUYE. And it would be business as usual?

Mr. ATWOOD. I believe the way our amendment would operate is this. If the Soviets do file an unusually low rate, the Commission will suspend the rate immediately, at which point cargo cannot move under those rates. And so if the Soviets do stall, they are left out of the trade.

Now, they can refile during this period of suspension, refile a new rate so that they can participate in the trade during the period of suspension. But the Commission would have full authority to suspend that refiling if that refiling was also suspiciously low, predatory.

I don't think, under the amendments we formulated, that there is any benefit——

Senator INOUYE. What keeps the FMC from prescribing a minimum rate?

Mr. ATWOOD. I think this is a dangerous precedent, Mr. Chairman, and one that is likely to start spreading into other areas. We have to recognize that foreign shipping, the shipping of U.S. foreign commerce is inherently bilateral and multilateral in nature. Other governments, other carriers, are deeply involved and have legitimate reason to be nervous about U.S. regulatory agencies getting into the business of fixing international rates.

Senator INOUYE. Isn't that a common practice? CAB does it.

Mr. ATWOOD. They pass upon rates that are filed by carriers, but they do not have rate-setting authority.

Senator INOUYE. Don't they have rate-setting authority right now?

Mr. ATWOOD. I'm sorry?

Senator INOUYE. The CAB?

Mr. ATWOOD. No, they do not set rates; they pass upon rates filed by carriers, accept or reject, but they do not prescribe rates.

Senator INOUYE. What about FCC?

Mr. ATWOOD. FCC?

Senator INOUYE. Communications.

Mr. ATWOOD. I'm sorry. I don't know the answer to that, Mr. Chairman. Telecommunications is obviously a much smaller business.

Senator INOUYE. Under the law, the FCC is authorized to determine and prescribe what will be a just and reasonable charge or the maximum or minimum, or maximum and minimum charge, to be thereafter observed. However, you do support the general thrust of this S. 2873?

Mr. ATWOOD. Yes, we do.

Senator INOUYE. I am pleased to note that, because for the past many years the administration has consistently opposed this for one reason or another.

Mr. ATWOOD. I think some of our concerns in the past were legitimate ones. We are pleased that the legislation you are now sponsoring has taken into account, we think, some of the earlier concerns. We think this is a very constructive piece of legislation.

Seantor INOUYE. Thank you very much, Mr. Atwood.

Mr. ATWOOD. Thank you, Mr. Chairman.

Our next witness is the Deputy Assistant Attorney General for the Antitrust Division, Mr. Ky P. Ewing.

STATEMENT OF KY P. EWING, JR., DEPUTY ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION, DEPARTMENT OF JUSTICE; ACCOMPANIED BY ELLIOTT SEIDEN; AND PAUL MAPES

Mr. EWING. I am accompanied by Elliott Seiden, chief of our transportation section and by Mr. Paul Mapes of that section.

I am pleased to appear this morning to present the views of the Department of Justice and, along with my colleague, Mr. James Atwood of the State Department, the views of the administration on S. 2873.

Mr. Chairman, I have a prepared 10-page statement, which, if it would be acceptable with the chairman, can simply be put in the record. and I can summarize it.

Senator INOUYE. We have received the statement, and, without objection, the full statement will be made part of the record.

Mr. EWING. Thank you.

As I understand this, the purpose of the bill is to empower the Federal Maritime Commission to prevent ocean steamship companies owned and operated by foreign governments from charging rates which are, in effect, "predatory." This is a matter of special concern because state-controlled carriers, unlike their privately owned competitors, are uniquely able to sustain operating losses for as long as is necessary in order to drive their competitors from the marketplace.

Moreover, it is entirely possible that foreign governments may be

motivated to engage in such practices as part of an overall military or economic strategy.

The administration recognizes the theoretical dangers posed by the involvement of the foreign governments in the ocean shipping industry and supports, as a matter of general principle, legislation such as S. 2873.

However, our support is qualified in two important respects. First, it has not been demonstrated that any state-controlled carrier presently serving the U.S. trade routes is now or ever has engaged in predatory rate practices on a systematic basis.

We note in this regard, Mr. Chairman, the May 3, 1978 statement of Mr. Robert Ellsworth, Chief of the FMC's Office of Economic Analysis before the House Subcommittee on Merchant Marine and Fisheries, who testified that "we do not have any evidence that Soviet rates are below Soviet costs," a type of evidence Mr. Ellsworth indicated is essential to establishing predatory behavior.

Second, our support for S. 2873——

Senator INOUYE. Would you identify Mr. Ellsworth again?

Mr. EWING. Yes, sir, he is the Chief of the Federal Maritime Commission's Office of Economic Analysis.

Senator INOUYE. Thank you.

Mr EWING. Second, Mr. Chairman, the administration's support is contingent on the bill's being revised to avoid the possibility of curtailing legitimate cost-justified competition.

In this regard, we proposed six substantive changes to the bill.

First, the bill should specifically define a zone of reasonableness in which rates will be presumptively just and reasonable.

Second, the bill should grant the President authority to override the actions of the FMC when such action is necessary for reasons of foreign policy.

Third, the bill should not give the FMC authority to prescribe minimum rates.

Fourth, the bill should more precisely define the standards set forth in proposed section 18(c)(2).

Fifth, controlled carriers should not be required to file rate reductions 30 days prior to their effective date.

And sixth, the bill should require the FMC to rule on suspended rates within 180 days.

Mr. Chairman, that concludes a brief summary of testimony, and I will be happy to address any questions that you may have.

Senator INOUYE. In reaching your conclusions, did you have any discussions with FMC?

Mr. EWING. It is my understanding, Mr. Chairman, that the staff of our transportation section has been in communication with various other agencies of the Government, including staff members of the FMC.

Senator INOUYE. Do you have any reason why FMC was not invited by OMB at yesterday's meeting?

Mr. EWING. Mr. Chairman, I do not know whether the Federal Maritime Commission was invited by the Office of Management and Budget or not. I can tell you that I personally did inquire, through one of my staff, of the Office of Management and Budget if I could see the proposed testimony of the FMC today, just as I am sure they saw my

prepared testimony. I was told that such testimony had not been delivered to the Office of Management and Budget, and indeed, I did not see any proposed testimony from FMC until about 5:30 yesterday afternoon.

I can also say, Mr. Chairman, that I had never seen, until I sat in this hearing room this morning, the letter you referred to from the chairman of the FMC.

While sitting here, I did ask to see a copy. I was allowed to see it, and was asked to give it back, which I did.

Senator INOUYE. How would you describe predatory rate practice?

Mr. EWING. Predatory rate practices would be those which entail, on a systematic basis, rates below cost with an intent to drive a competitor out of the market.

Senator INOUYE. How does one determine cost of Soviet shipping?

Mr. EWING. Admittedly, Mr. Chairman, that is a very difficult thing to do.

Senator INOUYE. How can you say if it is predatory or not?

Mr. EWING. In the context of this bill, provision is made for the Federal Maritime Commission to deal in the area of constructive costs, that is, to see what costs are among the other affected participants, and to make a judgment based on that.

Senator INOUYE. What would be considered systematic? That is the word you used—"systematic," in describing predatory rate practice, what is systematic?

Mr. EWING. I would suggest, Mr. Chairman, that a systematic approach to it would be a pattern of conduct over a long enough period of time that demonstrated, not only rates well below costs as best we can construct them, but also rates that have as their intent driving other competitors out of the market.

That is to be contrasted, I believe, with simple acts of setting a lower rate than a conference for the purpose of getting business onto your ships, something independent lines do all the time, and something independent lines have managed to do for years. And we still have a conference system in place with rates higher than the independents charge.

Senator INOUYE. Are you familiar with the so-called shipment of the 25 buses on Soviet vessels?

Mr. EWING. I am only vaguely familiar with it, Mr. Chairman. I do not know the details of it.

Senator INOUYE. On your vague knowledge, would you consider that to be a predatory rate practice?

Mr. EWING. Not necessarily. I am told that there is the possibility, at least, that the Soviet Union in that case simply had the proper kind of equipment that legitimately occasioned the rate it charged versus the rate the conference had available for that cargo.

I don't think you can generalize from that one instance the conduct of predatory practice on the part of the Soviet fleet.

Senator INOUYE. In determining what is predatory, must the pricing below the cost be known?

Mr. EWING. I believe it would be.

Senator INOUYE. And yet you have indicated that it would be very difficult, if at all possible, to determine what the Soviet costs would be.

Mr. EWING. Yes.

Senator INOUYE. So, we end up where we started from. According to your information, then this bill is of no use.

Mr. EWING. I wouldn't agree. I think that your bill does have some use. I think that it puts a legitimate tool into the hands of the FMC, and with those amendments the administration has suggested I believe that the Federal Maritime Commission could effectively use it to prevent actual predatory behavior on the part of any state-controlled fleet.

Senator INOUYE. Do the Soviets have any depreciation schedules as part of their costs?

Mr. EWING. I can't say whether Mr. Guzenko, Minister of the Soviet Union Merchant Marine, has had presented to him any kind of depreciation schedules or not. I don't know. In the allocation of their resources, they clearly must have some kind of system for dealing with the aging of ships and equipment.

Senator INOUYE. How would the Soviet system—how does it deal with taxes? Our liner companies have to deal with taxes.

Mr. EWING. Yes, sir. They do not have to deal with it in the same sense that we do at all. I agree.

Senator INOUYE. How does the Soviet Government deal with the cost of capital and costs related to interest rates in capital markets?

Mr. EWING. Mr. Chairman, I genuinely do not know the answer as to how the Soviet managers allocate resources, for example, to newer ships as opposed to other uses within the Soviet economy. I am not familiar with the type of material served up to a Soviet manager for that decision to be made.

Senator INOUYE. Would you consider a rate to be below cost if the rate does not cover the cost of fuel? I am not talking about labor or depreciation or taxes.

Mr. EWING. By definition, Mr. Chairman, I believe that a rate that does not cover the cost of the fuel used to move the goods would, by definition, be below the carrier's cost.

Senator INOUYE. If we are unable to determine the Soviet costs, how, then, can we effectively determine whether the rate is predatory?

Mr. EWING. The mechanism that could be used is the mechanism of constructive costs—a look at what others in the trade have as their costs—to form the basis for a judgment as to whether the Soviets could be expected to have costs reasonably near that for purposes of determining whether the rate is significantly below that level.

Senator INOUYE. Do you consider the danger imposed by the Soviets to be theoretical or real?

Mr. EWING. It depends on how you define the word "danger," Mr. Chairman. Certainly, the Soviet Union has made a decision to have its fleet carry more of its own goods, to have its fleet participate in the world carriage of cargo. In many instances that have come to our attention, the Soviet rates being charged are higher than the rates being charged by other independent carriers that are not state-owned. Thus, I can't draw the conclusion—I simply am unable to draw the conclusion on the evidence so far presented to us—that there is any danger of widespread systematic predation by the Soviet Union designed to drive our operators off the seas. There is just no such threat in that sense.

It is a matter, obviously, that we must watch. It is a matter of concern. It is not, however, in our view, at this point, a danger.

Senator INOUYE. Then the concern expressed by—I would say unanimously—by all of the American flag carriers has no validity?

Mr. EWING. The concerns I have heard expressed by the American flag carriers are that in particular instances a competitor charging a lower rate has gotten business away from them. The American flag carriers can, of course—do, of course—compete with many independent carriers around the world. And in essence, I believe, they can continue to compete against the independents, including those that are state-owned.

Senator INOUYE. If the Soviets make frequent use of the so-called FAK rates—freight all kinds rate—and the United States and other carriers make use of specific commodity descriptions, how can they be compared for purposes of determining whether rates are fully compensatory?

Mr. EWING. I might add, Mr. Chairman, to your qeustion, one further element. And that is that the American companies—the conference carriers can, of course, file their own FAK rates. And what we are talking about when you ask that question are the competitive responses, in terms of what kinds of rates are actually filed with the Commission.

That is the best answer I can give you on that rather technical subject.

Senator INOUYE. One of your recommendations is against giving the FMC authority to prescribe minimum rates during the period when the carriers' rates are in suspension. Rather, you would permit the carrier to file a new rate. If the carrier has one rate under suspension which is presumptively not just and reasonable, is it reasonable to expect the one he files as an interim to be just and reasonable?

Mr. EWING. As a practical matter, yes. There is some indication, sir, that, I think, would be the case.

If you file a rate and it is suspended, and you want to carry the goods, then you will file a rate which is not going to be suspended, which is high enough hopefully to nevertheless, let you carry those goods and be permitted to carry them by the government regulatory authority.

Senator INOUYE. Under the amendment, the FMC would have no discretion to suspend or disapprove of the controlled carrier's rates if those rates are not below those of an independent, noncontrolled carrier offering similar transportation services. Thus, the FMC might have to compare the Soviet rates with the rate of an infrequent or irregular carrier, if that carrier has a rate on file.

Do you think that would limit severely the activities of the Commission?

Mr. EWING. Not improperly, sir; no, sir. The Commission would still be enabled to take steps to prevent the real problem which this bill is designed to attack, namely, the problem of a state-owned fleet that systematically sets about the business of predation. It would not leave in the FMC, however, the power to prevent genuine, cost-justified competition by state-owned carriers.

In short, with the amendments proposed by the administration, I believe it would fully allow the FMC to deal with the real problem while preventing any possibility that the FMC would curtail legitimate cost-justified competition by any carriers in our trades.

Senator INOUYE. I have several questions I would like to submit to you. Many of them are of a technical nature, involving statistics and such. May I request that you look them over and submit appropriate responses.

Mr. EWING. We would be happy to do so, Mr. Chairman.

Senator INOUYE. We will submit them to you.

Thank you very much, sir.

Mr. EWING. Thank you.

[The statement follows:]

STATEMENT OF KY P. EWING, JR., DEPUTY ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION, DEPARTMENT OF JUSTICE

I am pleased to appear before you today and give the views of the Department of Justice and the Administration on S. 2873.

In essence this bill would require certain foreign-government controlled ocean carriers to prove to the satisfaction of the Federal Maritime Commission that their rates are just and reasonable. Excluded from the bill's provisions are carriers accorded most-favored-nation treatment, carriers controlled by governments which have subscribed to Annex A of the Code of Liberalization of Current Invisible Operations, and controlled carriers which are parties to certain conference agreements approved under Section 15 of the Shipping Act, 46 U.S.C. section 814. Also excepted from the scope of the proposed law are the rates charged by a controlled carrier for service between the United States and the country whose government is in control of the carrier.

Although this bill is generally similar to H.R. 9998, there are several provisions of S. 2873 which differ from those contained in the House bill. Specifically, S. 2873 applies to all controlled carriers, not just those offering "regular" service or those operating under the registry of the owner government. Moreover, this bill, unlike H.R. 9998, expressly confers authority upon the FMC to determine and prescribe just and reasonable rates for a controlled carrier whenever it determines that the carrier has been engaged in unjust or unreasonable practices. Most significantly, this bill differs from the House bill in that it would give the Federal Maritime Commission access to certain cost data held by other government agencies and would permit the President to, in effect, stay the effect of a Commission order for a period not to exceed 120 days.

As I understand it, the purpose of this bill is to empower the Federal Maritime Commission to prevent ocean steamship companies owned and operated by foreign governments from charging rates which are in effect "predatory." This is a matter of special concern because state-controlled carriers, unlike their privately-owned competitors, are uniquely able to sustain operating losses for as long as is necessary in order to drive their competitors from the marketplace. Moreover, it is entirely possible that foreign governments may be motivated to engage in such practices as part of an overall military or economic strategy.

The Administration recognizes the theoretical dangers posed by the involvement of foreign governments in the ocean shipping industry, and supports as a matter of general principle legislation such as S. 2873. However, our support is qualified in two important respects.

First, it has not yet been demonstrated that any state-controlled carrier presently serving United States trade routes is now or ever has engaged in predatory rate practices on a systematic basis. We note in this regard the May 3, 1978 statement of Mr. Robert Ellsworth, Chief of the Federal Maritime Commission's Office of Economic Analysis, before the House Subcommittee on Merchant Marine and Fisheries, who testified that "we do not have any evidence that Soviet rates are below Soviet costs," a type of evidence Mr. Ellsworth indicated is essential to establishing predatory behavior.

Second, our support for S. 2873 is contingent upon the bill's being revised to avoid the possibility of curtailing legitimate cost-justified competition.

In light of the qualification stated above, we propose the following substantive changes in S. 2873:

1. The bill should specifically define a zone of reasonableness in which rates will be presumptively just and reasonable

As S. 2873 is presently drafted there is considerable doubt as to what exactly constitutes a rate which is not "just and reasonable." Although the bill does state that the FMC may take into account a variety of factors specified in the bill, there is no specific formula which indicates presently how a just and reasonable rate should be calculated. Factors mentioned in the bill which are to be taken into account in determining whether a controlled carrier's rates are just and reasonable include rates charged by other carriers operating in the same trade, the rate levels necessary to assure movement of a particular cargo, and a controlled carrier's actual or constructive costs. (Under proposed section 18 (c) (6) constructive costs are defined as the costs of another carrier, other than a controlled carrier, operating similar vessels and equipment in the same or similar trade.)

While the Administration acknowledges that these factors, among others, are appropriate considerations in determining whether a rate is just and reasonable, we believe that language should be added to the bill to insure that this legislation is not misinterpreted to mean that any controlled-carrier rate below a competing conference rate is not "just and reasonable."

As the members of this subcommittee realize, conference rates are not established through the competitive process. Rather, a conference tariff is the product of an agreement among the various carriers which participate in the conference. Economic theory and practical experience have shown that when prices for any product or service are established in this manner, the charge to the consumer is almost always higher than it otherwise would be in a competitive environment. For this reason, we submit that many carriers could charge rates below a conference rate which would be fully compensatory, and therefore, just and reasonable. In fact, as a general rule, privately-owned, non-conference ocean carriers have traditionally been able to operate profitably by charging rates significant below those charged by the conferences. Because of this fact, we propose that language be added to S. 2873 expressly to provide that rates which do not fall below those charged by a non-controlled independent carrier offering similar services in the same trade shall be considered presumptively just and reasonable.

Of course, we recognize that in some trades there may not be any non-controlled independents offering similar services under similar trade conditions and tariff descriptions. In this situation we propose that controlled carriers be permitted to offer, without the threat of FMC suspension, rates which are 85 percent of those offered by the competing conference. We believe this is a standard which fairly approximates what compensatory independent rates have been, based on historical experience. Specifically, we propose that the following language be added to the proposed section 18(c) (2):

"Provided, however, that the Commission may not disapprove, reject or suspend a controlled carrier's rates, fares, charges or classifications under section 18(c), or find them to be either unjust or unreasonable if either of the following conditions is met: (1) the controlled carrier's rates, fares, or charges are not below those charged by any independent, non-controlled carrier offering similar transportation services under similar transportation conditions of carriage, and under similar tariff description between the same points or ports over the same route or, (2) the controlled carrier's rates, fares, or charges are not below 85 percent of the rates charged by any conference operating in the same trade."

In some circumstances a controlled carrier may offer special rates not offered by other carriers in the same trade (e.g., a freight-all-kinds rate). In such a case it would be difficult to compare the rates of the controlled carrier with those offered by other independents or the conference carriers. To deal with this contingency we propose that the following proviso also be incorporated into section 18(c) (2):

"Provided further that if a controlled carrier offers special rates, fares, charges, or classifications which are not comparable in form to the rates, fares, charges and classifications offered by other carriers in the same trade, the Commission may not disapprove, reject, or suspend such rates, fares, charges or classifications under section 18(c) unless following a full evidentiary hearing, it has been determined that such practices are unjust or unreasonable."

As a practical matter this additional proviso is intended to simplify the Commission's task by encouraging conference carriers to adopt additional rates and practices comparable to those offered by controlled carriers. Moreover, this provision will avoid any disincentives to innovation which might otherwise result from the statutory scheme.

2. The bill should grant the President authority to override the actions of the FMC when such action is necessary for reasons of foreign policy

We are also concerned about the terms of proposed subsection 18(c)(8), the foreign policy override provision. While this provision does permit the President to stay the effect of a Commission suspension or disapproval of controlled carrier's tariff, such a stay can last no longer than 120 days. If the President has been unable to resolve the dispute within this period the Commission would be free to reinstate the suspension notwithstanding the possibility that the same foreign policy condition which originally prompted Presidential intervention continued to exist beyond the 120-day period. Such an arrangement we believe represents an unnecessary encroachment on the President's authority to conduct our foreign relations. Accordingly, we suggest that the present language of draft section 18(c)(8) be deleted and that the following language be inserted in its stead:

"Provided, however, that the President may, for reasons of foreign policy, cancel or stay any tariff rejection, suspension or disapproval authorized under the provisions of this subsection."

3. The bill should not give the FMC authority to prescribe minimum rates

The Administration is also opposed to enactment of those provisions of S. 2873 which would confer upon the FMC authority to prescribe minimum rates for a controlled carrier. We take this position because we are reluctant to grant administrative agencies any greater authority over the level of ocean freight rates than is absolutely necessary. Accordingly, we recommend that the last sentences in proposed sections 18(c)(1) and 18(c)(4) be deleted. It is anticipated that in the absence of these provisions, controlled carriers whose rates had been suspended would have to establish rates which would be lawful under the first proposed proviso to section 18(c)(2).

4. The bill should more precisely define the standards set forth in proposed section 18(c)(2)

Proposed section 18(c)(2) specifies certain factors which the FMC may take into consideration in determining whether a controlled carrier's rates are just and reasonable. The bill also sets forth a definition of one of these factors—a controlled carrier's "constructive costs." While the definition now contained in S. 2873 may possibly be adequate, we suggest that the legislative guidance given to the FMC be more precise. Accordingly, it is proposed that the first sentence of proposed section 18(b)(6) be redrafted as follows:

"For purposes of paragraph (2), the term 'constructive costs' means the costs of another carrier, other than a controlled carrier, operating similar vessels and equipment and offering similar transportation services under similar transportation conditions of carriage and under siminlar tariff description between the same points or ports over the same route;"

We believe this language will avoid any possibility that the term "constructive costs" will be given an interpretation which does not take into account all of the many variables involved in ocean freight rates.

5. Controlled carriers should not be required to file rate reductions 30 days prior to their effective date

The first sentence of proposed section 18(c)(3) would require controlled carriers to file all rate changes with the FMC at least 30 days prior to their effective date. Although the bill's language is addressed to all rate changes by controlled carriers, under Section 18(b)(2) of the Act all carriers are already required to file rate increases at least 30 days in advance of their effective date. Thus, the only change to be accomplished by this provision would be the requirement that controlled carriers file rate decreases 30 days in advance. The Administration believes this new requirement would place an unnecessary restriction on competition between controlled and noncontrolled carriers. Under proposed section 18(c)(3) controlled carriers would be unable to promptly react to changing market conditions and would even be unable to make timely responses to rate decreases implemented by competing noncontrolled carriers.

6. The bill should require the FMC to rule on suspended rates within 180 days

As presently drafted S. 2873 would permit the FMC to suspend a controlled carrier's rates for an indefinite time period. The Administration, however, believes that the Commission should be required to act within a certain time period. Specifically, we suggest that the FMC be required to act within 180 days. Such time limitations are routinely included in the various laws governing transportation regulation. See, for example, sections 15(7), 216(g), 218(c), 307(g), 307(i), and 406(e) of the Interstate Commerce Act (49 U.S.C. Sections 15(7), 316(g), 907(g), 907(i), and 1006(e)); section 1002(g) of the Federal Aviation Act, (49 U.S.C. Section 1482(g)) and section 3 of the Intercoastal Shipping Act of 1933, as amended (49 U.S.C. Section 845).

Mr. Chairman, this concludes my prepared statement. I would be happy to address any questions the subcommittee may have.

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

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., June 9, 1978.

Hon. DANIEL K. INOUYE,
Chairman, Subcommittee on Merchant Marine and Tourism,
U.S. Senate, Washington, D.C.

DEAR SENATOR INOUYE: During my testimony on S. 2873 on May 17, you requested that I supplement my testimony with responses to certain written questions from you concerning this particular legislation. Pursuant to that request I am submitting the following responses:

Question. In its testimony the Department of Justice stated that the legislation should contain a "zone of reasonableness" in which rates will be presumptively just and reasonable; and that a State-controlled carrier's rates would be considered just and reasonable if they were no more than 15 percent below conference rates.

It has been said that such a provision would appear to ratify the espoused Soviet criterion of penetration, based on their own selected level of price cutting. The 15 percent level of spread that is advocated by the Department of Justice as just and reasonable happens to be the level below conferences rates that is admitted to by Soviet shipping officials (The Journal of Commerce, March 1978, page 1). Of course, on particular trade routes the Soviet rate has been much more than 15 percent below established rates. Would you please comment on this criticism?

Answer. The Administration has proposed a zone of reasonableness 15 percent below the conference rate level because traditionally privately-owned, profit-motivated independent carriers have offered rates which are approximately 85 percent of those offered by competing conference carriers. Accordingly, we have concluded that such a rate level is compensatory and hence just and reasonable. We note, as well, that shippers would probably not patronize independents unless offered such discount rates. This is because independents, due to their limited capacity, offer service which is relatively infrequent when compared to that of the conferences and often inferior in other respects as well. In short, the report that the Soviets price only 15 percent below conference rates tends to suggest that the Soviets have not adopted any strategies which are non-commercial in their intent.

Question. The report of the Maritime Administration on expansion of the Soviet fleet into our liner trades states that the Soviet fleet is carrying sizeable amounts of "high-valued" line cargoes such as sound recorders, machinery, and telecommunications apparatus.

(*a*) What precisely is meant by "high-valued" cargoes?

(*b*) Why is it more desirable to carry "high-valued" cargoes?

(*c*) Is the fact that the Soviet fleet is carrying sizeable amounts of "high-valued" cargoes the result of a deliberate effort on the Soviet's part to go after that kind of cargo; and if so why?

Answer. "High-valued" cargoes are products which have a significantly higher dollar value than other merchandise of similar size and weight. Since transportation costs generally constitute only a small percentage of the retail price of these products, it is possible, in a non-competitive transportation environment, for ocean carriers to charge substantially higher rates for the movement of such commodities. Thus, since revenues are greater, from a carrier's point of view it is more desirable to carry high-valued commodities. Apparently, the

Soviets are trying to obtain these cargoes for the same reason every other liner carrier is: they mean significantly greater earnings per voyage.

It is generally agreed among economists that the ability to charge higher rates for high-valued commodities is an indication of a lack of competition. This is so because in a fully competitive market, the rates charged for transporting a particular commodity would generally be related primarily to the costs of carriage, not the value of the commodity.

Question. If U.S.-carriers are forced to respond continually to Soviet rate-cuts in trades where the Soviets compete, is it not entirely possible that these same U.S.-carriers will raise rates in other trades to compensate or subsidize their operations in the trades where they are competitive with the Soviets?

Answer. It is unlikely that this would happen. Absent special facts, it must be assumed that in all trades all carriers—both U.S. and foreign—charge a profit-maximizing rate. Hence it would not be feasible for U.S. lines to raise their rates in other trade routes to subsidize operations in a trade route where they face Soviet competition. Moreover, even if U.S. carriers could increase the profits they earn in trades where the Soviets do not compete, it would make little sense to dissipate these earnings by subsidizing an unprofitable operation in another trade. Of course, as we have previously noted, it cannot be assumed that the mere presence of a Soviet-flag carrier in a particular trade will necessarily mean that the operations of U.S. flag carriers in the same trade will be unprofitable.

Question. According to one economic study, even in the absence of legislation such as S. 2873, the rate reductions provided by Soviet-carriers are, in fact, unlikely to benefit the consumer. Thus, the study concluded, even where the rate differentials are the greatest, the result would be a negligible or almost imperceptible short-run increase in the Consumer Price Index. And that in the long run the effects will be non-inflationary.

(*a*) Do you agree with these conclusions?

(*b*) If not, the Committee would appreciate your rebuttal for the record, and we will give more detailed information for that purpose.

Answer. Presumably, this question is based on the May 3 testimony of Dr. Robert A. Kilmarx on H.R. 9998 before the House Subcommittee on Merchant Marine. The premise of Dr. Kilmarx's conclusion is that Soviet competition will force U.S. carriers to reduce their participation in liner shipping and that eventually the Soviet operations would lead to "oligopolistic dominance of segments of shipping by consortia of foreign state carriers."[1] Dr. Kilmarx suggests that these developments would be inflationary in three responses: (1) U.S. carriers will raise their rates in trades where there is no Soviet participation, (2) U.S. carriers will reduce the level of capital investment, and (3) once they have achieved "oligopolistic dominance" in certain trades the Soviets and other state-controlled carriers will raise their rates substantially.

In responding to the previous question we have already shown the fallacy in the first presumptively inflationary factor listed by Dr. Kilmarx. The two latter factors cited by Dr. Kilmarx would be relevant only if it is assumed that the Soviets will substantially increase their existing operations. So far we have seen no evidence that the Soviets have any such intention. Moreover, we note with regard to the third factor that it is unlikely that any group of state-controlled carriers would be able to use oligopolisic market power to significantly increase the rates on U.S. trade routes. This is unlikely because unless there are legislative restrictions on the types of carriers permitted to serve U.S. ports, independent, privately-owned carriers would be allowed to enter the U.S. trades and offer rates below those offered by the state-controlled carriers. Ironically, at present the rates on U.S. trade routes are in fact largely set through the collective action of ocean carrier conferences and the only check on their rates is the threat of competition from independent carriers. It is for this reason that the Depatrment of Justice is particularly concerned that S. 2873 be revised to insure that non-conference carriers are allowed to continue to perform this important prophylactic role.

Question. According to one economic study, in the absence of relief, as would be provided partially by legislation such as S. 2873, U.S. carriers will face further declines in profits. They will be forced to seek relief by increased rates on trades in which they do not face cut-rate competition; they will have to revise downward ship and equipment replacement, i.e., capital investment plans,

[1] Testimony of Dr. Robert A. Kilmarx, Congressional Information Bureau Bulletin of May 3, 1978, at 6.

resulting in a decline in future productivity. This will result in increased future costs and, where possible, higher rates or withdrawal from competition. This, the study concludes, is an inflationary outlook, with adverse impacts on U.S. employment. Would you comment on these conclusions, and tell the Committee if you considered the possibility of these consequences in preparing testimony on S. 2873?

Answer. It is assumed that the economic study to which you refer is the one by Dr. Kilmarx which we have already discussed in some detail. We do not concur in Dr. Kilmarx's economic predictions. As noted previously, we do not expect that U.S. carriers will increase their rates in trades where there is no Soviet competition. Nor do we necessarily believe that U.S. carriers will have to reduce their capital investment if legislation such as S. 2873 is not enacted. Such an exception would be valid only if it is assumed that: 1) the Soviets will significantly increase their participation in U.S. trades and 2) it will be primarily U.S. carriers which suffer from the increased competition. Neither of these assumptions has sufficient factual support. As already noted, it is not expected that the Soviets will significantly increase their role in the U.S. trades. Moreover, even if the Soviets do obtain a substantially greater share of market, it does not necessarily follow that it will be U.S. carriers which suffer economically. It may well be that even in the face of Soviet competition, the American lines, as a result of their operating efficiencies, will be able to hold or even expand their market shares.

We have, however, given consideration to the theoretical possibilities raised by Dr. Kilmarx. It is for this reason that we support S. 2873 if the revisions, including the zone of reasonableness described in my testimony on May 17 are adopted. We believe that incorporation of a zone of reasonableness into S. 2873 will avoid the type of hypothetical dangers mentioned by Dr. Kilmarx while at the time ensuring that legitimate competition is allowed to continue.

Question. Although strictly speaking, the issue of marine insurance in the U.S.-Soviet trades is not involved in S. 2873, it may be relevant as an example of where state-controlled monopolies dealing with the West have a tremendous advantage.

The contention, as I understand it, is the Soviets have frozen U.S. underwriters out of insuring cargoes to and from the Soviet Union by purchasing all U.S. goods on a free-on-board (FOB) basis, and selling goods to the U.S. on a cost, insurance, and freight (CIF) basis. The practice has reportedly deprived U.S. underwriters of about $14 million in fees over the few years.

Do you believe this example sheds some light on the motives of the Soviets in entering our liner trades as cross traders?

Answer. It is apparently true that the Soviets are preventing U.S. underwriters from participating in the insurance of cargoes moving between the United States and the Soviet Union. It is not surprising that the Soviets are attempting to maximize their profits and hard-currency earnings. However, it cannot be assumed merely on the basis of this fact that the Soviets have any intention of driving other ocean carriers from participation in the U.S. trades.

Question. It has been said that in dealing with Soviet cost practices we have to allow for their unique practices.

(*a*) Could you explain to the Committee the Soviet depreciation rates, which have been described as artificial; Soviet costs of capital that are unrelated to interest rates in our capital markets; the Soviet system for dealing with taxes; and the different values placed on foreign exchange costs and earnings?

(*b*) If not, how can you make recommendations for amendments designed to "avoid the possibility of curtailing legitimate cost-justfied competition?" How can you say, for example, that a Soviet rate that is 15% below a conference rate should be presumptively just and reasonable?

Answer. The Department of Justice has no specific information regarding the techniques used by the Soviets to consider such economic factors as capital investment, depreciation, interest rates, taxes or foreign exchange rates. We do not believe, however, that such information is particularly relevant since under S. 2873 the FMC would be permitted to evaluate Soviet rates on the basis of the costs incurred by other carriers which do have methods of properly allocating the various costs of operating a commercial liner service. Moreover, the Department believes that regardless of the factors utilized by the Soviets in establishing their rate levels, it is proper legislatively to assume that a rate as much as 15 percent below the comparable conference rate is a rate which is cost justified.

We take this view because it is well established that private-owned, non-conference carriers have traditionally been able to offer such rates and still make a profit. We note further that it is, in fact, frequently necessary that non-conference carriers offer this level of discount. If they did not, shippers would be inclined to patronize only the conference carriers, which offer service which is more frequent and sometimes superior to that offered by the independents.

Question. It has been said that high value cargo "skimming" is a demonstrable Soviet practice that is particularly damaging to the economic health of U.S. shipping companies that have been heretofore without legitimate counter-weapons to defend themselves. Research on this point reveals that the dominance of foreign flag ships, including state-controlled, in the carriage of strategically important raw material imports to the United States for liners should be a matter of concern. For example, foreign liners carry 92 percent of the tungsten and tantalum, that is carried on regularly scheduled routes; 100 percent of the platinum; 65 percent of the tin ores; and almost 100 percent of the manganese that is carried by liners in U.S. oceanborne trades.

In this context, is it really significant whether the level of Soviet rates is 10, 15, or 40 percent below conference rates; or whether Soviet returns are 5, 10, or 15 percent below fully distributed costs of comparable operations by three-world shipping companies?

I mean these factors don't change the objective or nature of Soviet trade practices. And shouldn't this be our primary concern?

Answer. Continuation of our supply of strategically important raw materials is of course a matter of great importance. It is noted, however, that statistics regarding the percentage of these commodities carried on foreign flag liner vessels are not particularly meaningful. Most raw materials, because of their bulk, are carried on bulk vessels, not liner vessels. Hence any satistical study of the transportation of these commodities must take into account both types of service. It is also noted that references to the foreign registry of the vessels engaged in the transportation of these commodities is not particularly meaningful. It is entirely likely that foreign flag vessels may in fact be owned by American corporations or other Western interests which could be expected to make their ships available in times of crisis.

We do not mean to suggest that we should be unconcerned about the volume of strategic materials moving to the United States in Soviet bottoms. However, before implementing legislative changes it is vital that we know 1) precisely what percentage of these commodities is actually being transported by the Soviets, and 2) whether or not in times of crisis U.S. or other Western carriers could immediately provide the necessary service.

Question. You state that the bill should not give the FMC authority to prescribe minimum rates.

Is there any difference between giving the FMC this authority, and giving the FCC authority to prescribe minimum and maximum charges for communications common carriers? The FCC is given this authority under Sec. 205 of the Communications Act.

Answer. Yes, there are important differences between giving the FMC rate setting authority and giving such authority to the FCC. The FMC regulation encompasses a type of commerce which affects not only the United States but at least one other country. Hence, an attempt by the FMC to establish a particular rate is in effect a direct involvement of the United States government in the economic affairs of a foreign nation. While clearly some rate regulation is justified, prudence suggests that such an involvement be restricted as much as possible. This consideration is particularly relevant to S. 2873 since the authority which would be conferred on the FMC affects not only the commerce of another nation but also the operations of carriers controlled by foreign governments.

While it is true that the FCC also has authority over international telecommunications, this authority is substantially different from authority over international ocean freight rates. The rates charged for the transportation of a country's imports or exports may frequently have a significant effect on that country's economic health. In contrast, the rates applicable to international communications cannot be expected to have such an impact. Moreover, we believe that it would be more appropriate to analogize the FMC's regulatory powers to those of the CAB. In this regard it is noted that Congress has given the CAB less regulatory authority over international air transportation than over domestic air service. Under section 1002 of the Federal Aviation Act, 49 U.S.C. section

1482, the CAB may suspend and prescribe domestic air rates, but may only suspend the international rates of foreign air carriers.

Question. According to an FMC staff analysis, Soviet vessel itineraries over the past three years indicate that one of the primary reasons for the Soviet presence in our Gulf Coast trades to Europe and the Far East is their active trade with Cuba.

According to that analysis, it is normal for a Soviet vessel to carry cargo from Eastern Europe to Cuba and then load cargo at U.S. Gulf and East Coast ports for the return trip to Europe. Likewise, in the trade between the Far East and U.S. Atlantic and Gulf ports, the Soviet vessels carry inbound cargo to Cuba.

Because our trades are the most lucrative and attractive in the world, is it possible that somehow we are responsible for facilitating or subsidizing trade between Cuba and the U.S.S.R.?

Answer. While it may be true that come Soviet vessels are calling on Cuban ports in conjunction with service to U.S. ports, it cannot be assumed that U.S. shippers are in any way subsidizing trade between Cuba and the U.S.S.R. This would be true only if the Soviets were able to charge disproportionately high rates for service from the U.S. ports. This appears unlikely in view of the contentions that Soviet rates are unnecessarily low.

Question. The FMC has told the Committee that your amendments would under S. 2873, be ineffective because, among other things, "it is too easy for any carrier to construct a rate which is not comparable in form to other carrier rates." Therefore it would be difficult for the FMC to suspend the rates for controlled-carriers pending hearings thereon.

Answer. The FMC is correct in noting that it would be possible for a controlled carrier to file rates which are not comparable to those of other carriers. However, this does not mean that the FMC would be prevented from suspending such rates. In drafting this provision we concluded that if a controlled carrier filed a special rate not comparable to that filed by the conferences, the conferences would have an incentive to formulate their own version of such rates in response. Thus there would be comparability of rates and the FMC would be able to suspend improper rates without holding a full evidentiary hearing. We anticipate that the only time the conferences would not want to formulate comparable rates is when the special rates offered by a controlled carrier are not regarded as a competitive threat.

Question. You recommend that the bill require the FMC to rule on suspended rates within 180 days, rather than leaving the date open as S. 2873, does.

Given the difficulty of obtaining information from foreign carriers, isn't 180 days an unrealistic limit and two restrictive on the FMC?

Answer. We do not believe that 180 days is an unreasonably short period for the FMC to arrive at a final ruling. For instance, we note that under the Interstate Commerce Act, the ICC cannot suspend rates for longer than seven months. See, e.g., 49 U.S.C. sections 15(7), 316(g), and 907(g)(i). Of course if the Soviet lines or any other controlled carriers failed to promptly produce the necessary documents, the FMC would apparently have the authority to disapprove the challenged rates until the information it needed was supplied. See, e.g., *Calcutta, East Coast of India and East Pakistan/U.S.A. Conference* v. *FMC*, 399 F.2d 994 (D.C. Cir. 1968).

Question. In your opinion, does the present and projected penetration of the Soviet fleet into our liner trades, pose strategic or security problems for the United States?

Answer. The Department does not have any expertise on questions of military strategy or security.

Question. Does your testimony on S. 2873 reflect the views of the Administration?

Answer. Yes.

Question. (*a*) As a general rule, what percent of the "landed cost" of goods or commodities is attributable to ocean transportation freight rates?

(*b*) It has been said that a 10 percent savings in freight costs translates into 0.6 percent of landed cost for the buyer, whereas the same 10 percent to the ocean carriers may be the difference between survival as a viable transportation system and non-survival. Would you care to comment on that statement?

(*c*) If a 10 percent savings in freight costs translates into a 0.6 percent of landed costs for the buyer of goods, does the buyer in turn usually pass that 0.6 percent savings on to the consumer?

(*d*) In either event does the American consumer receive any great cost saving when he purchases a commodity which was carried on a ship whose rates were 10 percent below the conference rate for that commodity?

Answer. (*a*) The Department does not have any statistics indicating what percentage of the "landed cost" of goods is attributable to ocean freight rates. However, it seems likely that only a small percentage of the retail cost of most commodities can be traced to transportation charges.

(*b*) It may be true that a large percentage increase in transportation rates will produce only a small percentage increase in the cost to the consumer of a particular product. We note, however, that in terms of absolute dollars, the increased costs to the consumer, when increases on all products are considered, can be expected to be equal to the corresponding increase in ocean freight rates. In any event, we do not believe that comparisons of this type are of any particular relevance in determining the proper rate levels for ocean carriers. To the contrary, we submit that ocean freight rates should ordinarily be determined according to the economic principle of supply and demand. Only in this way can we be sure that efficiency is maximized and that consumers are not required to pay any more for transportation services than is absolutely necessary.

(*c*) We believe that the middlemen involved in the importation and distribution of foreign merchandise do in fact pass any savings in transportation costs along to the ultimate consumer. This result is only the natural result of competition; if a distributor doesn't reduce his prices in recognition of reduced costs, his competitors surely will.

(*d*) As noted above, the total savings to the consumer from a change in ocean freight rates is generally equal in terms of dollars to the difference in freight rates. The fact that the economic cost to consumers is widely distributed is not a relevant consideration. As you know, the Antitrust Division frequently seeks criminal sanctions against antitrust violators who have engaged in conduct which has only slightly increased the price paid by any individual consumer. Congress has directed that we do this because it has been recognized that when considered on an aggregate basis, such conduct can produce serious economic inefficiencies and unjustifiable disparities in the distribution of wealth.

Question. In 1975 this Committee held hearings on a third-flag bill which, of course, differed substantially from the legislation we are considering today. Nevertheless, many of the issues and concerns are identical.

At those hearings a U.S. shipper testified as follows:

"While we expect fair and reasonable rates, we also expect and demand quality service, frequency of service, and service response to our needs as importers. This is the type of service that we have come to know and expect from the national flag lines serving the market to and from which we are involved. In the past, during certain emergency periods we have been forced to use secondary shipping lines and invariably have experienced problems such as shortages, pilferage, wet or damaged cargo, lack of followthrough on paperwork, and insufficent or late arrival of documentation."

Would you please comment on that testimony?

Answer. We have no doubt that in many instances the established conference lines offer service that is superior in quality to that offered by secondary or nonconference lines. This is, of course, one of the reasons why it is reasonable for non-conference carriers to charge rates significantly below those charged by the conference lines. We note further in this regard that at least one major shippers' organization, the National Industrial Traffic League, has testified in opposition to enactment of H.R. 9998, the House version of S. 2873. In fact, the shippers opposed this legislation even if it were amended in the manner proposed by the Administration. See the Journal of Commerce, April 27, 1978.

Question. The Maritime Administration projects by 1978 Soviet-flag ships will be hauling some 6.6 percent of this country's liner cargoes.

Do you agree with this projection?

Answer. The Department does not have the resources which would be necessary to project precisely the degree of future Soviet participation in the United States liner trades. However, we have no reason to doubt the validity of the Commerce Department's estimate.

Question. (*a*) In your judgment, should the extent of Soviet penetration into our liner trades be regarded strictly as a commercial matter and therefore treated purely from the standpoint of whether or not it is detrimental to the commerce of the United States?

(*b*) If your answer is yes, what criteria should be used to determine if that penetration is detrimental to our commerce?

(*c*) If you believe Soviet penetration raises more than commercial considerations, what are the other considerations it raises?

Answer. (*a*) We believe that the Soviet participation in the U.S. liner trades presents issues which are both military and commercial.

(*b*) With respect to the commercial considerations we believe that the criteria set forth in the Administration's proposed amendments to S. 2873 are the ones which should be used to determine what types of Soviet activities are detrimental to our commerce.

(*c*) For strategic reasons the activities of the Soviet merchant marine may also involve considerations of national defense. However, it is our understanding that those agencies primarily responsible for raising such issues have not yet expressed serious concern about the present or projected activities of the Soviets in the U.S. liner trades.

Question. S. 2873 provides the Commission shall have the authority to prescribe minimum rates during a suspension period. Do you agree with this provision.

Answer. No. As I indicated in my testimony, the Administration as a general matter opposes any further extensions of rate setting authority to regulatory agencies. For the reasons set forth in response to question 9, we believe it would be particularly inappropriate to give this kind of authority to the FMC.

Question. In its testimony the Department of Justice stated that any legislation should contain a provision that, for purposes of determning whether a rate is just and reasonable, in the event a rate of a State-controlled carrier is not in any way comparable to another in the trade, it could not be suspended except after a full hearing before the Federal Maritime Commission.

Of course, for the legislation to be meaningful these matters must be decided quickly. Ordinarily how long the "full hearing" take?

Answer. It is impossible to estimate how long it would take to hold a full hearing on such a matter since the length of the hearing would vary according to the complexity of the issues involved. Of course, it should be noted that this provision would be applicable only in the event that a controlled carrier offered a rate which was not comparable to a conference rate and the competing conference failed to respond by adopting similar rate practices.

Question. It has been said that the Conference system has given rise to "value pricing".

That is, Conference members join together and decide on a rate for moving specific commodities, which they may legally do under the Shipping Act.

The rate decided upon for a specific commondity is determined by "what the traffic will bear" rather than the actual cost to the carrier of moving the commodity.

Shippers will pay a higher rate to ship a container of diamonds that they will to move a container of rags, even though the actual cost of moving both commodities may be about the same.

Thus, the contention goes, the Soviets will go into a trade and seek the high priced cargo such as diamonds. Because the rate for moving that commodity is related to "what the traffic will bear" rather than the cost of moving it, the Soviets will be able to offer a rate drastically below the Conference rate, and still meet costs and make a profit.

(*a*) Would you comment on this?

(*b*) If so, isn't this also what other independents in our trades do?

Answer. (*a*) It is indeed correct that the conference system promotes value-of-service pricing. Generally, such pricing practices can exist only where there is little or no competition.

(*b*) To the extent that the Soviets and other independent carriers increase the level of competition in ocean transportation, there will also be a breakdown in the system of value-of-service ratemaking. Many economists would regard this result as particularly desirable since in the absence of a competitive check, there is little to prevent the conferences from exacting monopoly profits from shippers of high value commodities.

Question. In 1976, the then Chairman of the FMC and his Soviet counterparts signed a "memorandum agreement" known as the Leningrad Agreement, concerning principles that are to govern participation of Soviet water common

carriers in the U.S. oceanborne trades. The Agreement contains two key features:

(1) That all ocean cargo rates contained in tariffs of Soviet carriers now engaged as independents in the liner trades of the United States will, as promptly as feasible, be adjusted to a level no less than that of the lowest rate in use for the same commodity of any other independent carriers in those trades.

(2) That negotiations be conducted promptly with a view toward bringing the Soviet carriers into the Atlantic and Pacific conference systems.

(*a*) In your opinion, have the Soviets lived up to their part of the agreement?

(*b*) In your opinion, has the United States lived up to its part, keeping in mind that since the Agreement the Department of Justice has successfully opposed attempts by the Russians to join conferences on a "two-tier" basis?

Answer. (*a*) It is our understanding that the Soviets have not in fact complied with the terms of the so-called "Leningrad Agreement." However, since the Department did not participate in the negotiations and does not routinely monitor the activities of the Soviet merchant marine, we cannot comment on this question with any degree of expertise.

(*b*) We are advised that Chairman Bakke was not acting as an official representative of the United States government when the "Leningrad Agreement" was reached and that accordingly that understanding is not regarded as binding on the United States. For this reason, the action of the Justice Department in protesting the "two-tier" rate agreement could not have been in violation of any understanding with the Soviets.

Question. (*a*) Does the Department support the anti-dumping laws?

(*b*) There is considerable opinion that the amendments which Justice recommends be made to S. 2873 and the companion bill in the House would in fact render those bills meaningless and ineffective.

How can you support strong laws which protect domestic manufacturers of goods and commodities and yet oppose similarly strong laws to protect our carriers and the stability of our trades?

Answer. (*a*) The Department of Justice of course supports the enforcement of all legislation which is designed to prevent various forms of unfair competition. We also believe, of course, that such laws should be examined and improved upon where appropriate.

(*b*) The Administration does not believe that its proposed amendments will render S. 2873 meaningless or ineffective. To the contrary, we believe that under our proposed changes the FMC will be able to deal promptly and effectively with any controlled carrier practices which are truly unjust or unreasonable. We do not desire to emasculate this bill, but do wish to insure that the bill does not prevent legitimate, cost-justified competition which is beneficial to American shippers and consumers.

Question. In your judgment is the incentive to rebate greater among conference members in trades where Soviet liners are cutting rates by 20% and more?

Answer. Whenever a conference is confronted by increased competition from non-conference carriers it is more likely that the conference members will engage in competitive rate practices. It is not necessarily true, however, that conference members would be compelled to engage in illegal malpractices. For instance, a conference member may (1) attempt to persuade the other conference members to make conference rates more competitive (2) take independent action (if permissible under the conference agreement), or (3) withdraw from this conference altogether.

Question. Besides the Soviets, what other nations have or soon will have state-owned fleets which pose the kinds of problems S. 2873 is trying to protect against?

Answer. The Department would defer on this question to other agencies possessing intelligence on this question.

I hope that this is responsive to your inquiries.

Very truly yours,

KY P. EWING, JR.,
Deputy Assistant Attorney General,
Antitrust Division.

Senator INOUYE. Mr. Moakley.

STATEMENT OF THOMAS MOAKLEY, COMMISSIONER, FEDERAL MARTIME COMMISSION; ACCOMPANIED BY LESLIE KANUK, COMMISSIONER; MERRILL SIMPSON, ASSISTANT CHIEF, OFFICE OF TARIFFS AND INTERMODALISM; AND ROBERT ELLSWORTH, CHIEF, OFFICE OF INDUSTRY ECONOMICS

Mr. MOAKLEY. Good morning, Mr. Chairman. I appreciate this opportunity to appear here today on behalf of the FMC to testify on S. 2873, a bill which would give the Commission certain authority over the rates of certain state-controlled carriers in our foreign commerce.

I am accompanied today by Dr. Leslie Kanuk, our newest Commissioner; by Merrill Simpson, Assistant Chief of our Office of Tariffs and Intermodalism; and by Mr. Robert Ellsworth, Chief of our Office of Industry Economics.

As Chairman Daschbach indicated in his testimony before the House Merchant Marine Subcommittee on March 17, the Commission fully supports the concept of regulation of the rates of state-controlled carriers in our foreign commerce, and we favor enactment of S. 2873 to accomplish that purpose. We believe that this legislation is necessary to control the ability of state-controlled carriers in our liner trades to establish and maintain rates at levels that cannot be matched by commercially motivated carriers. While there is ample existing evidence of such rate-cutting practices, it is the awesome potential of state-owned carriers in the future and particularly those of the Soviet Union for disrupting our trades by cutting rates which causes our greatest concern.

The carriers that would be affected by the provision of this bill would be those carriers which may be owned or controlled by governments and which operate in trades other than those between the United States and the country by whom they are owned or controlled. These nations, listed in enclosure (1) to this testimony, include Algeria, East Germany, Poland, and, of course, the U.S.S.R. Under present circumstances, the greatest potential impact of the bill would be upon carriers of the Soviet Union in most of the U.S. foreign trades in which they operate.

Soviet and other controlled carriers would not be subject to the regulatory provisions of the legislation in trades where such carriers operate under rate or service agreements approved pursuant to section 15 of the act. For example, the Soviet-owned Baltic Shipping Co. and the Polish-owned Ocean Lines would both be exempt from the provisions of the bill in the inbound Germany/United States North Atlantic trade by virtue of their membership in agreement No. 9427, a rate agreement among those lines and the conference in that trade.

The dramatic growth of the Soviet fleet in our trades in recent years has been unprecedented. Prior to 1971, the Soviets had only limited tramp service in the U.S. foreign commerce to and from the west coast ports. Now, less than 6 years after the U.S.-U.S.S.R. Maritime Agreement opened up 40 of our ports to their vessels, they are now operating very significant liner services in 17 U.S. trade routes.

The exact extent of Soviet penetration into U.S. trade routes can be seen in the attached tables, enclosure 2, depicting the Soviet share of the U.S. oceanborne foreign trade. The overall share of the liner market which the Soviets captured was 2.5 percent in 1976. Since they have concentrated their tonnage on 16 specific U.S. trade routes, however, this minimal market penetration portrays an incomplete picture. On a selected basis, analyzing only those routes where penetration is the highest, the Soviet market share is 4.1 percent in 1976. According to our data, excluding the U.S./U.S.S.R. bilateral trade, Soviet penetration in 1976 was the heaviest in tonnage terms on (1) trade route 7, U.S. North Atlantic/West Germany, 13.1 percent; (2) trade route 8, U.S. North Atlantic/Netherlands, Belgium, 3.7 percent; (3) trade route 10, U.S. North Atlantic/Mediterranean, Black Sea, Portugal, Spain, Morocco, and Azores, U.S.S.R. ports excluded, 2.9 percent; (4) trade route 17, U.S. Atlantic, Gulf and Pacific/Indonesa, Malaysia and Singapore, 5.4 percent; (5) trade route 21, U.S. Gulf/United Kingdom, Ireland, Continental Europe north of Portugal, U.S.S.R. ports excluded, 2.7 percent; (6) trade route 29, U.S. Pacific, Hawaii and Alaska/Far East, 5.6 percent.

While on a percentage basis other trade routes show greater levels of penetration trade route 29 has, in tonnage terms, experienced the greatest overall pentration levels. In fact, 37 percent of the total tonnage carried by the Soviets in 1976 in these selected trades was on trade route 29.

Soviet penetration into the U.S. North Atlantic/West Germany—North Sea—trade route 7, trade is also great. In 1976 the Soviets captured 13.1 percent of this market, carrying over 175,000 tons of cargo.

On a percentage basis, the Soviets have gained their largest market share on trade route 34, U.S. Great Lakes/Mediterranean, Black Sea, Portugal, Spain (south of Portugal), Morocco (U.S.S.R. ports excluded). Their phenomenal 22.7 percent of the market is partially explained by the nature of the trade route. With the Black Sea Shipping Co. serving the Black Sea area and the 1976 low levels of U.S. carrier activity in the trade, it is not surprising why the Soviets have such high levels of penetration in this trade.

Data for the first 9 months of 1977, which has recently become available, show significant penetration by the Soviets on 7 of the 16 routes where they have the largest tonnage penetration.

The 1977 data show the following penetration levels: Trade route 7, 12.3 percent; trade route 8, 4.1 percent; trade route 10, 4 percent; trade route 17, 10.1 percent; trade route 21, 3.6 percent; trade route 22, 11.6 percent; and trade route 29, 6.4 percent.

The most important increase occurred on trade route 29 where the Soviet's current penetration level of 6.4 percent is higher than the 5.6-percent level achieved in 1976. This rate of growth of penetration does not appear excessive, but if the volume of total trade on trade route 29 is considered, the small increase in percentage becomes more significant.

On the other hand, the Soviet share of trade route 34 fell slightly from 22.7 percent to 19.5 percent. Because of seasonal fluctuations, the

closing of the Great Lakes during the winter, these data now that I have given you may not be comparable. During the first 9 months of 1977 the Soviets increased their overall share of the total liner trades to 3.4 percent and their share of the selected routes increased to 5.2 percent.

Currently the Soviet carriage of cargo in bilateral U.S./U.S.S.R. trades accounts to only 10 to 15 percent of their total cargo in U.S. commerce. Thus 85 to 90 percent of their U.S. cargo is carried in cross-trades.

As of the end of 1976 more than 10 percent of the total liner tonnage of the Soviet Union had been placed in service in U.S. foreign commerce. Moreover, a recent European study estimates that 54 percent of the total Soviet liner tonnage devoted to international cross-trading is utilized in U.S. cross-trades. Of the 23 new Soviet liner vessels delivered in 1976, 10 were immediately placed into service in U.S. trades, including their two largest RO/RO vessels of some 1,368 TEU's each.

Given the fact that the Soviet's shipbuilding in the current 5-year plan, 1976 to 1980, projects a threefold increase in containerships and RO/RO vessels, it is reasonable to expect continued growth of Soviet penetration in the U.S. cross-trades.

S. 2873 would require that a controlled carrier's rates not be below a level which is just and reasonable and that the classifications, rules, and regulations in the controlled carrier's tariff not result in rates that are below a level which is just and reasonable.

As with most other laws which use these terms, the bill does not define the terms "just and reasonable." It does, however, suggest certain factors which the Commission may consider in determining whether these standards are met.

These factors are: costs, relationship to other rates, and whether the rates are necessary in order for certain cargo to move.

The Commission would interpret the terms "just" and "reasonable" in this context to mean a level below which commercially motivated carriers could not compete for any sustained period of time. In other words, in the context of an entire rate structure, just and reasonable rates would generally be those which recover appropriate costs plus a reasonable profit. Because of the anticipated difficulties of obtaining, converting and verifying costs of state-controlled carriers and because many of the costs of state-owned or controlled enterprises may be absorbed by the state, the bill permits the use of constructive costs, that is, the costs of commercially motivated carriers operating similar vessels in the same or a similar trade.

For individual commodity rates, the test of "just and reasonable" would have to focus more upon the disruptive effect that the rate is creating or is likely to have upon the trade as a whole. Here, the relationship of the rate to those charged by other carriers and the necessity of those rates to assure the movement of particular cargo would play a larger role than in testing the reasonableness of an entire rate structure.

Another factor not specifically mentioned in the bill, but which the Commission would certainly consider in determining whether to

suspend or disapprove a controlled carrier's rates would be the impact of its actions upon the level and quality of service in the trade. If, for example, a particular area were served primarily by controlled carriers, the Commission would have to consider whether any action to raise the rates of any of those carriers would result in a reduction of service to that area. Moreover, if the rates offered by the controlled carrier were encouraging the movement of particular cargo through U.S. ports instead of Canadian or Mexico ports, this would be a major factor in deciding whether to suspend or disapprove rates.

In short, the determination of justness and reasonableness of rates requires the application of a number and variety of factors depending upon the particular circumstances of each case. S. 2873 is well written in that it provides the flexibility necessary to make these determinations.

Experience with Soviet rates since the early 1970's indicates that those carriers penetrate our trades, and remain there, by charging whatever rates are necessary to attract cargo. While this principle is substantially followed by any independent carrier who enters a trade, it is the degree to which the Soviets can cut rates and the period of time over which such low rates can be maintained that distinguishes carriers of that nation from most other independents.

As indicated above, by using these tactics and their economic advantage in applying them, Soviet carriers have in a period of 6 or 7 years successfully penetrated and remain as important competitors in 17 of our essential trade routes. The most recent examples of their tactics are in the Australian trade, where the Soviet Far Eastern Steamship Co. (FESCO) is charging rates that are generally more than 10-percent below the rates of the only other independent in the trade and as much as 44-percent below conference rates. Soviet rate-cutting practices in other trades are indicated by the following examples.

In the North Atlantic/Continental trade, we have compared 13 rates on 12 different commodities. Of these 13, Baltic Shipping Co.'s rates ranged from 9 percent to 60 percent below those of the conference. The average reduction was 25.7 percent, with over one half of the reductions exceeding 29 percent.

Another state-owned carrier in this trade, Polish Ocean Line, maintains rates on the same commodities that average some 19.38 percent below those of the conference. Over one half of these reductions exceed 20 percent.

The Soviet share of this trade has steadily increased at the expense of commercially motivated carriers in the trade. It appears from trade history that the Soviet line increased its share by maintenance of rates generally 15 percent below the conference and selectively as much as 60 percent below these commercial operators.

During this period of Soviet growth, two other independent lines, Cargo Lines, Ltd., and NEEL, attempting to follow similar pricing policies, terminated their operations in bankruptcy, and Finn Lines, another outsider, withdrew from the trade and put their ships into a much more profitable trade.

In the U.S. Pacific Coast/Europe trade, we compared Soviet minibridge rates with those of the all-water conference. Of the seven commodities compared, the Soviet rates averaged some 13.7 percent below those of the conference. Additionally, in this trade, the Soviet carrier has published in its tariff an arrangement whereby a nonvessel operating common carrier, an NVO, may charter space on the Soviet vessels if 20 or more containers are booked weeks in advance. The rates charged the NVO are minimum container rates and are apparently siphoning off some of the more important commodities in this trade. This practice is currently being investigated by the Commission through a section 21 order.

Conference carriers in the U.S. Atlantic/Scandinavian trade have published a mixed commodity rate of $65 under which a wide variety of cargo moves. Baltic Shipping has published a mixed commodity rate in this trade of $50, or 23 percent below that of the conference.

In the U.S. Pacific Coast/Japan trade, we compared nine rates on seven commodities. FESCO's rates on these ranged from 5 percent to 48 percent below those of the conference, with an average reduction of some 30.6 percent. The rates of the Orient Overseas Container Line in this trade on the same commodities average some 15.59 percent below those of the conference. One of these OOCL rates was the same as the conference, while the others ranged from 9.9 percent to 24.7 percent below the conference level.

Virtually all of the experts who have studied the dramatic growth of the Soviet presence in our liner trades in recent years have concluded that their operations and motivations are simply not comparable to those of a commercial steamship line. One of the primary missions of the Soviet merchant marine, for example, is to obtain foreign currency. The Soviets' need to earn hard currency is illustrated by the fact that the Soviet Union currently has an accumulated hard currency trade deficit of approximately $16 billion. It has also been reported that about 25 percent of the Soviet hard currency earnings are required just to enable them to cover their interest payments on the massive hard currency debt obligations that they have contracted in the West.

As an example of the means utilized to obtain such currency, the Soviets have been requiring that insurance on cargoes moving between the United States and U.S.S.R. be placed with the Soviet Government's insurance agency, INGOSSTRAKH. As I'm sure this committee is aware, the American Institute of Marine Underwriters has recently complained of this practice.

In March of this year, the Commission experienced another peculiar incident involving Soviet practices. Notice had been given to the Commission on February 3, 1978, by a Bermuda-based insurance company that the casualty insurance and insurance for nonperformance of service applicable to the Soviet passenger vessel *Mikhail Lermontov* would expire 30 days from that date.

The Commission immediately advised the appropriate Soviet officials, both by phone and in writing, that this insurance termination would render the certificates on file with the Commission null and void

and that without such certificates no passengers could be solicited or embarked from U.S. ports. Despite this advice the Soviets took no action to renew their insurance coverage.

Notwithstanding the termination, on March 5, of their insurance and the necessary certificates, the Soviets embarked passengers in both San Francisco and Los Angeles and attempted to sail the *Mikhail Lermontov* from Los Angeles on March 7. Even after the Commission caused the vessel to be held in port as required by the statute, it took the Soviets 1½ additional days to realize that they must comply with our law and conduct business on our terms in order to operate from our ports. With the necessary insurance, the vessel sailed from Los Angeles on the morning of March 9.

In closing, let me assure you that the Commission, in supporting this legislation, is not seeking to foreclose legitimate rate competition in our foreign trades. Rather, the bill would give the Commission some authority over rate practices which cannot be controlled by the normal competitive factors. This type of Government control to offset the market impact of state-owned enterprises exists in many other industries, through our antidumping statutes and other laws. In the liner shipping industry, moreover, our European, Japanese, and Australian trading partners seem to be coming to the same conclusion as the authors of this bill—that is, normal market forces cannot restrain the power of a state-controlled fleet such as that of the Soviet Union. Legislation such as S. 2873 is necessary and, perhaps, overdue.

Mr. Chairman, that concludes our prepared testimony. We would be happy to respond to any questions the committee may have.

[The material referred to follows:]

[Enclosure 1]

NATIONS WHOSE CONTROLLED VESSELS WOULD BE DEEMED "CONTROLLED CARRIERS" UNDER H.R. 9998

Algeria
Bangladesh
Brazil
Bulgaria
Burma
Chile
People's Republic of China
Czechoslovakia
Egypt
German Democratic Republic (East Germany)
Ghana
Guatemala
Hungary
India
Indonesia
Ivory Coast
Kenya
Kuwait
Libya
Malaysia
Malta
Mexico
Nigeria
Oman
Pakistan
Peru
Philippines
Poland
Saudi Arabia
Sierra Leone
Singapore
South Africa
Sri Lanka
Syria
Tanzania
Trinidad
Turkey
U.S.S.R.
Venezuela
Zaire

NOTE: Vessels of these nations would be exempt from the regulatory controls of H.R. 9998 if they operate only in bilateral trades or within approved rate or service agreements with noncontrolled carriers.

[Enclosure 2]

SELECTED TRADE ROUTES U.S.S.R.-FLAG SHARES OF COMMERCIAL LINER CARGO CARRIED IN U,S, OCEANBORNE FOREIGN TRADE, IMPORTS AND EXPORTS, JANUARY TO SEPTEMBER 1977

[In long tons]

	Trade routes [1]	U.S.S.R. Total tons	U.S.S.R. Share	U.S.S.R. Percent
6	United States North Atlantic/Scandinavia and Baltic	629, 900	15, 600	2.5
7	United States North Atlantic/West Germany (North Sea)	1, 038, 700	127, 600	12.3
8	United States North Atlantic/Netherlands, Belgium	1, 705, 700	70, 600	4.1
10	United States North Atlantic/Mediterranean, Black Sea, Portugal, Spain, Morocco and Azores (U.S.S.R. ports excluded)	1, 910, 300	75, 600	4.0
11	United States South Atlantic/United Kingdom and Ireland, Continental Europe (North of Portugal), (U.S.S.R. ports excluded)	1 318, 100	36, 600	2.8
12	United States Atlantic/Far East	3, 073, 900	50, 800	1.7
13	United States South Atlantic and Gulf/Mediterranean, Black Sea, Portugal, Spain (south of Portugal), Morocco and Azores (U.S.S.R. port expanded)	1, 519, 500	52, 800	3.5
17	United States Atlantic, Gulf and Pacific/Indonesia, Malaysia, Singapore	1, 457, 000	147, 700	10.1
21	United States Gulf/United Kingdom, Ireland, Continental Europe (North of Portugal), (U.S.S.R. ports excluded)	2, 705, 600	97, 800	3.6
22	United States Gulf/Far East	828, 500	96, 400	11.6
28	United States Pacific/India, Pakistan, Ceylon, Burma, Persian Gulf, Gulf of Aden, Red Sea	323, 900	1, 300	.4
29	United States Pacific, Hawaii and Alaska/Far East	6, 844, 500	436, 500	6.4
32	United States Great Lakes/United Kingdom, Ireland, Continental Europe (North of Portugal), (U.S.S.R. ports excluded)	354, 800	13, 100	3.7
34	United States Great Lakes/Mediterranean, Black Sea, Portugal, Spain (South of Portugal), Morocco. (U.S.S.R. ports excluded)	137, 700	26, 800	19.5
56	United States Great Lakes/Red Sea, India, Persian Gulf, Indonesia, Malaysia, Singapore	60, 800	----------	----------
71	United States Atlantic/West Coast Central America and Mexico	82, 300	----------	----------
	Total, selected trade routes	23, 991, 200	1, 249, 200	5.2
	Grand total, all U.S. trade routes	38, 582, 400	1, 309, 100	3.4

[1] The trade route selection was made on the basis of the significance of the U.S.S.R. share in 1976.

Note: Preliminary data.

Source: Department of Commerce, Maritime Administration.

SELECTED TRADE ROUTES U.S.S.R.-FLAG SHARES OF COMMERCIAL LINER CARGO CARRIED IN U.S. OCEANBORNE FOREIGN TRADE, IMPORTS AND EXPORTS, 1971 AND 1974 TO 1976

[In long tons]

	Trade routes [1]	1971 Total tons	1971 U.S.S.R. share	1971 U.S.S.R. percent	1974 Total tons	1974 U.S.S.R. share	1974 U.S.S.R. percent
6	United States North Atlantic/Scandinavia and Baltic				994, 460	994	0.1
7	United States North Atlantic/West Germany (North Sea)				1, 429, 206	180, 080	12.6
8	United States North Atlantic/Netherlands, Belgium				2, 655, 885	98, 268	3.7
10	United States North Atlantic/Mediterranean, Black Sea, Portugal, Spain, Morocco and Azores (U.S.S.R. ports excluded)				2, 709, 233	----------	----------
11	United States South Atlantic/United Kingdom and Ireland, Continental Europe (north of Portugal), U.S.S.R. excluded				1, 500, 818	3, 002	.2
12	United States Atlantic/Far East				3, 952, 830	----------	----------
13	United States South Atlantic and Gulf/Mediterranean, Black Sea, Portugal, Spain (south of Portugal), Morocco, and Azores (U.S.S.R. ports excluded)				1, 609, 725	----------	----------
17	United States Atlantic, Gulf and Pacific/Indonesia, Malaysia, Singapore				1, 750, 165	80, 508	4.6
21	United States Gulf/United Kingdom, Ireland, Continental Europe (north of Portugal), (U.S.S.R. ports excluded)				3, 934, 202	98, 355	2.5
22	United States Gulf/Far East				1, 847, 839	1, 848	.1
28	United States Pacific/India, Pakistan, Ceylon, Burma, Persian Gulf, Gulf of Aden, Red Sea						

SELECTED TRADE ROUTES U.S.S.R.-FLAG SHARES OF COMMERCIAL LINER CARGO CARRIED IN U.S. OCEANBORNE FOREIGN TRADE, IMPORTS AND EXPORTS, 1971 AND 1974 TO 1976—Coninued

[In long tons]

Trade routes [1]	1971 Total tons	1971 U.S.S.R. share	1971 U.S.S.R. percent	1974 Total tons	1974 U.S.S.R. share	1974 U.S.S.R percen
29 United States Pacific, Hawaii and Alaska/Far East	5, 298, 708	153, 518	2. 9	7, 203, 720	461, 038	6. 4
32 United States Great Lakes/United Kingdom, Ireland, Continental Europe (north of Portugal), (U.S.S.R. ports excluded)				454, 711	35, 922	7. 9
34 United States Great Lakes/Mediterranean, Black Sea, Portugal, Spain (south of Portugal), Morocco (U.S.S.R. ports excluded)				175, 475	27, 725	15. 8
56 United States Great Lakes/Red Sea, India, Persian Gulf, Indonesia, Malaysia, Singapore				73, 711	1, 843	2. 5
71 United States Atlantic/West Coast Central America, and Mexico						
Total, selected trade routes	5, 293, 708	153, 518	2. 9	30, 291, 980	989, 583	3. 3
Grand total, all U.S. trade routes [2]	44, 209, 000		. 3	51, 418, 000		1. 9

Trade routes [1]	1975 Total tons	1975 U.S.S.R. share	1975 U.S.S.R. percent	1976 Total tons	1976 U.S.S.R. share	1976 U.S.S.R percent
6 United States North Atlantic/Scandinavia and Baltic	854, 032	4, 270	0. 5	1, 002, 649. 5	12, 178. 7	1. 2
7 United States North Atlantic/West Germany (North Sea)	1, 132, 318	132, 481	11. 7	1, 336, 443. 9	175, 225. 9	13. 1
8 United States North Atlantic/Netherlands, Belgium	1, 920, 727	76, 829	4. 0	2, 200, 624. 4	81, 538. 4	3. 7
10 United States North Atlantic/Mediterranean, Black Sea, Portugal, Spain, Morocco, and Azores (U.S.S.R. ports excluded)	2, 552, 929	5, 106	. 2	2, 680, 248. 1	77, 891. 6	2. 9
11 United State South Atlantic/United Kingdom and Ireland, Continental Europe (north of Portugal), (U.S.S.R. ports excluded)	1, 153, 548	8, 075	. 7	1, 651, 923, 7	48, 560. 9	2. 9
12 United States Atlantic/Far East	3, 006, 430			3, 735, 125. 7	43, 699. 5	1. 2
13 United States South Atlantic and Gulf/Mediterranean, Black Sea, Portugal, Spain (south of Portugal), Morocco, and Azores (U.S.S.R. ports excluded)	1, 597, 155	7, 986	. 5	1, 940, 884. 7	54, 553. 5	2. 8
17 United States Atlantic, Gulf and Pacific/Indonesia, Malaysia, Singapore	1, 576, 447	135, 574	8. 6	1, 841, 463. 6	99, 786. 1	5. 4
21 United States Gulf/United Kingdom, Ireland, Continental Europe (north of Portugal) (U.S.S.R. ports excluded)	3, 305, 321	52, 885	1. 6	3, 600, 393. 3	97, 550. 4	2. 7
22 United States Gulf/Far East	1, 188, 778			1, 209, 361. 0	45, 877. 4	3. 8
28 United States Pacific/India, Pakistan, Ceylon, Burma, Persian Gulf, Gulf of Aden, Red Sea	409, 469			519, 499. 4	1, 731. 4	. 3
29 United States Pacific, Hawaii and Alaska/Far East	6, 185, 317	358, 748	5. 8	8, 145, 810. 0	458, 822. 8	5. 6
32 United States Great Lakes/United Kingdom, Ireland, Continental Europe (north of Portugal), (U.S.S.R. ports excluded)	410, 745	10, 679	2. 6	542, 584. 6	8, 959. 5	1. 7
34 United States Great Lakes/Mediterranean, Black Sea, Portugal, Spain (south of Portugal), Morocco (U.S.S.R. ports excluded)	138, 609	21, 762	15. 7	183, 072. 3	41, 475. 7	22. 7
56 United States Great Lakes/Red Ses, India, Persian Gulf, Indonesia, Malaysia, Singapore	121, 484	1, 579	1. 3	81, 951. 3		
71 United States Atlantic/West Coast Central America and Mexico				140, 971. 1	1, 785. 8	1. 5
Total, selected trade routes	25, 553, 309	815. 974	3. 2	30, 813, 006. 6	1, 249, 637. 6	4. 1
Grand total, all U.S. trade routes [2]	44, 250, 000		1. 8	[3] 49, 987, 000. 0		2. 5
Grand total, all U.S. trade routes, 1976 [4]				50, 448, 414. 5	1, 276, 895. 8	2. 5

[1] The trade route selection was made on the basis of the significance of the U.S.S.R. share in 1976.

[2] Percentage figures represent the U.S.S.R. tonnage share for the selected trades as a comparison with the total tonnage on all U.S. trade routes for the calendar years. Tonnage figures were obtained from a MARAD report prepared by the Division of Trade Studies and Statistics, Office of Subsidy Administration.

[3] Preliminary data.

[4] Tonnage figures were derived from MARAD computer printout showing Soviet-flag liner movements for calendar year 1976.

Source: Department of Commerce, Maritime Administration.

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

On May 15, I received a letter in response to my letter of May 8, from the Chairman of your Commission.

Without objection, that letter will be made a part of the record.

[The letter follows:]

[The following information was referred to on p. 3:]

FEDERAL MARITIME COMMISSION,
Washington, D.C. May 15, 1978,

Hon. DANIEL K. INOUYE,
Chairman, Committee on Commerce, Science and Transportation,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In response to your letter of May 8, 1978 in which you raised certain questions relating to S. 2873, the following answers and supporting information are forwarded.

Question 1(a). Does the Commission believe it is necessary to control the ability of state-controlled carriers in our liner trades to establish and maintain rates at levels that cannot be matched by commercially-motivated carriers; and if so, is legislation necessary?

Answer. The Commission does believe that it is necessary to control the rates of state-controlled carriers in our liner trades and that legislation is necessary in order to effectively accomplish this.

Question (b). Do the provisions of S. 2873 reflect the minor changes which you recommended be made to H.R. 9998, in your testimony before the House Committee on Merchant Marine and Fisheries; and, if not, in what particulars does S. 2873 fail to do so?

Answer. Yes; S. 2873 does reflect these changes.

Question (c). Does the Commission still support H.R. 9998 or the alternative S. 2873; and if not, please explain?

Answer. The Commission continues to support H.R. 9998 as indicated in our testimony of March 17, 1978, and would also support S. 2873.

Question 2(a). If H.R. 9998 were amended as suggested by the Department of Justice, would it be more difficult for the Commission to conclude that a controlled carrier's rate was not "just and reasonable", than it would for the Commission to make that finding under H.R. 9998, as drafted?

Answer. Yes, it would be far more difficult to conclude that a controlled carrier's rates are not "just and reasonable" if the amendments suggested by the Department of Justice were adopted. The most dramatic effect of these suggested amendments, however, would be upon the Commission's ability to suspend the rates of a controlled carrier pending hearings thereon. For example, the Commission could not, under new section 18(c)(2) as it would be amended by Justice, suspend FAK or other per container rates of a controlled carrier unless those rates were comparable in form to the rates of other carriers. It is too easy for any carrier to construct a rate which is not comparable in form to other carriers' rates.

Question (b). If H.R. 9998 were amended as suggested by the Department of Justice, is it the Commission's view that the legislation would still be effective to control the ability of state-controlled carriers in our liner trades to establish and maintain rates at levels that cannot be matched by commercially motivated carriers?

Answer. It is our view that the legislation would be ineffective if amended pursuant to the suggestions of the Department of Justice.

Question (c). If your answer to (b) is affirmative, would the amended version of H.R. 9998 be as effective as the unamended version?

Answer. In view of our answer to question 2(b), this question is moot.

In answer to Question 3, you may find helpful an up-to-date list of all Commission decisions involving section 18(b)(5) attached hereto as an appendix. It will also be easier, in the following answers, to refer to the Docket Numbers set forth in that appendix rather than the full case title of those decisions.

Question 3(a). Has the Commission ever disapproved rates under section 18(b)(5)?

Answer. In a few cases, the most significant of which was Docket No. 65–45. There, 6 rates (out of over 1,000) were found to be unreasonably high under section 18(b)(5), and this was affirmed by the D.C. Court of Appeals. This case most nearly approaches an actual adjudication in a contested, adversarial proceeding, but actually, the finding was based upon failure of the conference to present any evidence in rebuttal to a *prima facie* case.

Other cases involving findings are:

Docket No. 65–13—rates were found unreasonable but could not be disapproved since no longer effective.

Docket No. 72–56—rate was found unreasonable but case was uncontested.

In all other cases involving section 18(b)(5), the rate was either found not in violation of this section, or, the carrier voluntarily changed it.

Question 3(b). What criteria does the Commission use to determine if a rate is so unreasonably low as to be detrimental to the commerce of the United States?

Answer. As reflected in the appendix, the following criteria have been employed by the Commission in section 18(b)(5) cases to determine if a rate is so unreasonably high or low as to be detrimental to the commerce of the United States:

Constructive costs, e.g., of complaining carrier (Docket 1083)

Effect on movement of cargo (Dockets 1114, 1157, 65–7, 70–12)

Comparison with rate of other carriers in reciprocal or similar trade (Docket 1114, Fact Findings Nos. 2 and 6, Dockets 1171, 1176, 65–45, 70–12, 74–17)

Admittedly non-compensatory (Docket 65–13).

Question 3(c). What evidence would the Commission need to make such a determination; and, based on the Commission's experience, is it realistic to assume all the necessary evidence would be forthcoming from a Soviet-flag ship?

Answer. As mentioned above, a *prima facie* case can be made by the application of the criteria mentioned in 3(b), evidence of which has been developed by Commission counsel—for example, costs or rates of other carriers and cargo movement patterns in the same or similar trades. Such evidence has been documentary, such as tariffs and cost information from other carriers; or oral, such as testimony of shippers. Once there is substantial evidence that the rate appears to be unreasonable under one or more of the criteria, the burden of going forward shifts to the carrier whose rate is being questioned. Of course, if he does nothing, as in Docket 65–45, an adverse finding could be made.

If the carrier puts any rebuttal case at all, however, the burden-of-proof (as opposed to merely a burden of going forward) in an 18(b)(5) proceeding still lies with the person challenging the rate, unlike a domestic carrier who has the burden of proving a rate reasonable under the Intercostal Act. This is the reason, in my opinion, why there have been few, if any, actual adjudications under section 18(b)(5) and the reason we need more effective procedures to regulate rates of controlled carriers, such as imposing upon them the burden of proof.

With the ultimate burden of proof placed upon the party who has the necessary factual data, we believe it is realistic to assume the controlled carrier will come forward with evidence sufficient for the Commission to make a proper adjudication with respect to the challenged rate.

I hope that these answers are sufficiently responsive to your inquires. Please let me know if we can be of further assistance.

Sincerely,

RICHARD J. DASCHBACH,
Chairman.

Attachment.

TABLE OF FEDERAL MARITIME COMMISSION CASES INVOLVING SECTION 18(B)(5) OF THE SHIPPING ACT, 1916

Docket 1083—*Investigation of Rates in the Hong Kong-U.S. Atlantic and Gulf Trade*, 11 FMC 168 (1967). An Order of Investigation was issued on December 18, 1962 to determine whether or not the rates of carriers involved in a rate war were so unreasonably low as to be detrimental to the commerce of the United States under Section 18(b)(5). After hearing, the presiding Examiner found that all the respondent carriers except Sabre Line charged unreasonably low rates under Section 18(b)(5). By the time the case reached the Commission, the rate war, which was the occasion of the investigation, was over and the trade had regained an element of stability. The Commission concluded, therefore, that the investigation should be discontinued on the grounds that it had become moot but attempted to establish some criteria for findings under Section 18(b)(5) with respect to how a complaining carrier can show that the complained of carriers' rates are lower than his out-of-pocket costs (11 FMC 174). In the five years that the case took before Final Decision, there were over 190

docket entries and a Court case involving subpoenas issued in connection with the investigation. See *Federal Maritime Commission* v. *Caragher, et al.*, 364 F.2d 709 (2nd Cir., 1966), Reversing the Southern District of New York (243 F. Supp. 136, 1965).

Docket 1114—*Iron and Steel Rates, Export-Import*, 9 FMC 180 (1965) [Investigation]. Even though the outbound rate on iron and steel items was higher than the inbound rate, the Commission upheld the Examiner's finding that the burden of showing the outbound rates were too high (or that the inbound rates were too low) under Section 18(b)(5) had not been met. Specifically, the Commission found that evidence was lacking to show that the rate had a detrimental effect on commerce, e.g., that tonnage was handicapped in moving because the rate was too high (9 FMC 191). As dictum, however, the Commission said, "When a rate disparity in reciprocal trades on similar commodities appears, and when a movement of goods under the higher rates has been impaired, the carrier quoting the rates must determine that the disparate rates are reasonable." (Ibid.)

Fact Finding Investigation No. 2—*Possible Discrimination Against Port of Duluth, Minnesota, By Activities of Carriers Operating in Trades Between Great Lakes Ports and Foreign Ports*, 2 SRR 391 (1963). The finding by the investigative officer, i.e.—that the complained of practice of quoting rates differentially higher to and from Duluth than rates to or from other Great Lakes ports did not result in undue discrimination or prejudice against the Port of Duluth—involved no finding within the ambit of Section 18(b)(5).

Fact Finding Investigation No. 6—*The Effects of Steamship Conferences' Organization Procedures, Rules, Regulations and Practices upon the Foreign Commerce of the United States*, 9 SRR 547 (1967). The broad general purpose of this proceeding, instituted on October 22, 1963, was to determine how the conference system functions and the affects of the system upon the commerce of the United States. In connection with this proceeding, the Commission, in December 1963, issued Section 21 Orders to various conferences to obtain information. Accompanying these Orders were letters asking the conferences to adjust rates on commodities or produce data to justify the conferences' higher export rates. On appeal, the D.C. Circuit found that the Section 21 Orders requesting data relating to disparities between the import and export rates were valid. The Court indicated that the ". . . Commission's concern [under Section 18(b)(5)] is not solely with the detrimental effect of rates on the commerce of the United States but with the reasonableness of rates to which the information sought is related." *Far East Conference* v. *Federal Maritime Commission and United States*, 337 F.2d 146 (1964). The report recommended *inter alia* that conferences should improve their tariffs and that the Commission give priority study to disparity of rates from the United States as compared with rates from foreign sources of supply to the same destination, 9 SRR 547.

Special Docket 374—*Department of State, Agency for International Development, U.S. Aid Mission to Dominican Republic v. Lykes Bros. Steamship Co., Inc.*, 8 FMC 153 (1964). Since the shipment of used auto moved on a government bill of lading, it was determined that it was not a commercial shipment and that the rate could not be detrimental to commerce under Section 18(b)(5). The application to waive collection of over-charges was granted on other grounds.

Special Dockets 377 and 378—*Ludwig Mueller Co., Inc. v. Peralta Shipping Corporation, Agents of Torm Lines* and *Lykes Bros. Steamship Co., Inc. Application to Refund Part Freight Charges Collected on Shipment via SS NANCY LYKES From LeHavre, France to Galveston, Texas*, 8 FMC 361 (1965). Where Section 18 does not apply, i.e., where it is a commercial shipment, Section 18(b)(5) was held not to give the authority to set or prescribe a reasonable rate so that applications for waiver of the difference between a rate which appears unreasonable and whatever the reasonable rate would be cannot succeed in a Special Docket type proceeding. Later, Section 18(b)(3) was amended to provide a procedure for waiver of collection of over-charges erroneously assessed (P.L. 90-298, April 29, 1968).

Docket 1118—*Pacific Coast European Conference—Increased Handling Charges*, 12 FMC 351 (1966) [Investigation]. The only intervenor that was interested in obtaining lower handling charges did not participate in the hearing. After motions, therefore, the proceeding was discontinued by the presiding Examiner who also indicated that there was no evidence that the charges were too high or too low but that "all the evidence is to the contrary." His Decision became the Decision of the Commission.

Docket 1127—*Overseas Freight and Terminal Corporation (All Cargo Line)—Extra Charges Due to Delay in Unloading Caused by Longshoremen Strike*—[Investigation], 8 FMC 435 (1965). The Initial Decision of the presiding Examiner became the Commission's Decision. Even though the Section 18(b)(5) issue was not included in the Notice of Investigation and intervenor contended that the strike surcharge was unreasonably high. The issue was stricken, the Examiner noting that the facts necessary to prove the violation were not included in the stipulation to which the intervenor agreed.

Docket 1155—*Imposition of Surcharge on Cargo to Manila, Republic of the Philippines*, 8 FMC 395 (1965) [Investigation]. The Section 18(b)(5) finding by the presiding Examiner that a strike surcharge at Manila was not unreasonably high was not challenged at the Commission level and the finding was affirmed (8 FMC 399).

Docket 1157—*United States of America (by General Services Administration)* v. *American Export Line, et al.*, [Complaint], 8 FMC 280 (1964). The Initial Decision of the Examiner became the Commission's Decision. The complainant failed to meet the burden showing that the rate on natural rubber from U.S. to Turkey and Morocco was unreasonably high under Section 18(b)(5); specifically, complainant failed to establish that it had been hindered in marketing natural rubber by reason of the rate (8 FMC 291).

Docket 1171—*Outbound Rates Affecting the Exportation of High Pressure Boilers (Utility Type), Parts and Related Structural Components*, 9 FMC 441 (1966) [Investigation]. Hearing Counsel did not Except to the Examiner's finding that the evidence did not show that the rates were unreasonably high under Section 18(b)(5) but recommended that the Commission require the conferences to establish rates on a parity with rates from the United Kingdom or the Continent to such destinations or that in the alternative, the Commission withdraw Section 15 approval of the conference agreements under which the rates were established (9 FMC 452). The Commission indicated that if circumstances warranted, the Commission can act against conference rates under Section 15 based upon a finding that such an agreement operated in a manner contrary to the public interest or upon one of the other prohibitions of Section 15. Here, however, there was no tangible showing that the agreement operated in a manner contrary to the public interest.

Docket 1176—*The Government of Pakistan v. The India, Pakistan, Ceylon & Burma Outward Freight Conference, et al.*, 5 SRR 259 (1964) [Complaint]. The originally challenged surcharges of 30 percent and 40 percent on cargo to Chittagong had been reduced to 15 percent by all carriers except one and the Section 18(b)(5) issue became moot. The presiding Examiner found that neither complainant nor Hearing Counsel extended his burden of proof to show that the 15 percent surcharge was unreasonably high under Section 18(b)(5) and found that the 40 percent surcharge still in the tariff of one carrier was unreasonably high to the extent it exceeded 15 percent. This case was discontinued on September 16, 1965 without a written opinion by the Commission.

Docket 65-7—*Imposition of Surcharge at U.S. Atlantic and Gulf Ports on Cargo Moving Between Said Ports and Latin American Ports*, 10 FMC 13 (1966) [Investigation]. No Exceptions were filed to the Examiner's conclusion that the record did not support a Section 18(b)(5) finding that the strike surcharge was too high since there was no evidence that it caused loss of sales or prevented the movement of cargo. This finding was affirmed by the Commission.

Docket 65-13—*Rates on U.S. Government Cargoes*, 11 FMC 263 (1967 [Investigation]. The Commission affirmed the Examiner's finding that the rates were unreasonably low under Section 18(b)(5) because they were admittedly noncompensatory and were reduced in order to unfairly drive a competitor from the trade. Since the rates were no longer effective, however, they were no longer "amenable" to Section 18(b)(5), i.e., they could not be disapproved by the Commission (11 FMC 279). This finding was held by the Second Circuit to be *res judicata* with respect to a similar issue in a Maritime Administration proceeding under Section 810 of the Merchant Marine Act of 1936. *Safir, et al.* v. *Givson, et al.*, 432 F.2d 137 (1970).

Docket 65-45—*Investigation of Ocean Rate Structures in the Trade Between United States North Atlantic Ports and Ports in the United Kingdom and Eire*, 12 FMC 34 (1968) [Investigation]. The Examiner found that the outbound rates on 10 commodities were too high under Section 18(b)(5), one of which appeared to be inhibiting the movement of cargo. The Commission affirmed his finding on some of these rates, i.e., General Cargo, N.O.S., Egg Albumen, Meat Offal, Onions, Plastic Sheeting, Sleds and Toys. Since the carriers refused to submit the appro-

priate data, the Examiner ruled that rates which appear to be unreasonable by virtue of their comparision with other rates were, in fact, unreasonable because of lack of proof to the contrary. The Commission said, "Many of the findings in this case depend upon the absolute refusal of NAUK [the Conference] to cooperate in any respect in accordance with the Commission's prior cases. The record does establish the *prima facie* showing expected of opponents of a rate, but there is absolutely no showing whatsoever in rebuttal." The D.C. Circuit, on appeal, noted that the outbound tariff challenged in the Commission docket contained some 1,650 items (6 of which were found contrary to Section 18(b)(5)); the record contained about 5,000 pages plus 1,000 of exhibits; the Examiner's Initial Report was 100 legal sized pages; and the Commission's Final Report another 42 pages. The Court upheld the Commision's Order that the Conferences cancel the 6 rates and to file lower rates on those items as well as the Order that the Conference "file a rate justification of the level of the new rates based upon cost, value of service, or other transportation conditions...." *American Export Isbrandtsen Lines, Inc. et al.*, v. *Federal Maritime Commission and United States*, 417 F.2d 749 (1969).

Docket 66–42—*In the Matter of the Carriage of Military Cargo*, 10 FMC 69 (1966) [Petitions for Declaratory Order]. The Commission's Order instituting the proceeding declined to consider the lawfulness of the proposed competitive military cargo procurement system under Section 18(b)(5) because the issues raised under this Section were premature and did not present the Commission a justiciable controversy (10 FMC 72).

Docket 66–49—*North Atlantic Mediterranean Freight Conference—Rates on Household Goods*, 11 FMC 202 (1967) [Investigation]. The lower rates of certain conference members for carrying military household goods were found by the Examiner to be unjustly discriminatory in violation of Section 17 when compared to the rate on State Department household goods. This latter rate was not found to be too high under Section 18(b)(5), the Commission stating that "It is not entirely unlikely that a reduction in that rate will come about as a result of the removal of the discrimination found herein."

Docket 68–47—*Valley Evaporating Co.* v. *Grace Line, Inc.*, 14 FMC 16 (1970) [Complaint]. Since the complained of rate, for which reparations were sought on the grounds that it was allegedly unreasonable and discriminatory, was no longer in effect, the Commission had nothing before it to consider for disapproval under Section 18(b)(5). Reparations, however, were awarded because of a violation of another Section of the Act.

Docket 70–12—*Commodity Credit Corporation and United States Agency for International Development* v. *American Export Isbrandtsen Lines, Inc., et al.*, 15 FMC 171 (1972 [Complaint]. Even though complainants showed a substantial disparity between the rates of the Canadian conference and the rates charged by respondents from U.S. ports, and that identical relief commodities were carried by respondents in both trades on the same outbound voyage, the Administrative Law Judge found no violation of Section 18(b)(5) because the disparity was eliminated and there was no allegation in the complaint that like cargoes were carried under similar transportation conditions. This decision was adopted by the Commission after Exceptions were filed.

Docket 72–15—*Rates, Practices, Rules and Regulations of North Atlantic Mediterranean Freight Conference Relating to the Movement of Heavy Lift Cargo*, 16 FMC 68 (1972) [Investigation]. Unexcepted to Initial Decision adopted by Commission. After the investigation was instituted to determine whether the heavy-lift charges were too high under Section 18(b)(5), the conference proposed new heavy-lift tariff rules resulting in a compromise reduction of such charges and moved to discontinue. The proceeding was discontinued after the conference filed the tariff rules.

Docket No. 72–43—*Regulations Governing Level of Military Rates*, 13 SRR 411 (1972) [Rulemaking]. The FMC, jointly with Maritime Administration, prescribed a uniform industry cost accounting and a uniform cost information reporting system by which the Commission may determine the level below which rates quoted pursuant to the Military Sealift Procurement System for the transportation of Military cargo became detrimental to the United States within the meaning of Section 18(b)(5). After a D.C. Circuit decision remanded the case for the purpose of taking further evidence (*Sea-Land Services, Inc.* v. *Federal Maritime Commission*, No. 73–1204, December 19, 1974), the Commission reopened the case for this purpose, affirming jurisdiction under Section 18(b)(5). 16 SRR 191 (1975). The proceeding was later dismissed when the reporting system was

found to be undesirable and the regulations prescribing it were revoked. Orders of June 1, 1977 and June 10, 1977 in Docket 72–43 and Revocation of Certain Rules, 17 SRR 569 and 42 F.R. 31161 (June 20, 1977), respectively.

Docket 72–56—*United Nations Children's Fund* v. *The Delta Steamship Lines, Inc.*, 16 FMC 424 (1972) [Complaint]. After the respondent failed to apply timely for permission to refund overcharges in a special docket proceeding, complainant brought this uncontested action to effectuate the same refund of charges erroneously collected. The Initial Decision found the overcharges to be unreasonably high under Section 18(b)(5) and ordered them refunded. This became the Decision of the Commission, no Exceptions having been filed.

Docket 73–58—*United States Line, Inc. Violation of Section 18(b)(5) of the Shipping Act in Connection with Rates on Military Cargo*, 14 SRR 917 (1974). Since the rates under investigation were no longer in effect, stipulation between Hearing Counsel and respondent to resolve the issue of the use of "net income—military inland transportation" without the necessity of a complex hearing was accepted by the Administrative Law Judge and the proceeding was discontinued.

Docket 74–17—*Agreement No. 9955–1—A/S Billabong; Westfal-Larsen and Company, A/S; Fred Olsen and Co., and Star Shipping A/S*, 16 SRR 141 (1975). The Commission upheld the Administrative Law Judge in its finding that Star's FAK rates were not shown to establish a rate which was so high or so low as to violate Section 18(b)(5).

Since 1970, because of some of the difficulties we have had with Section 18(b)(5) procedures, the Commission has attempted to resolve rate disparity cases under Section 17 of the Shipping Act, 1916 on the basis that they are unjustly discriminatory or prejudicial. And of the following cases were instituted by Order to the respondents to show cause why certain rates did not violate Section 17.

70–48—Publication of Discriminatory Rates by Hapag-Lloyd Aktiengesellschaft

70–49—Publication of Discriminatory Rates by Sea-Land Services, Inc.

70–52—Publication of Discriminatory Rates by Atlantic Container Line, Inc.

71–1—Publication of Discriminatory Rates by Seatrain Lines, Inc.

71–3—Publication of Discriminatory Rates by American Export Isbrandtsen Lines, Inc.

72–40—Publication of Discriminatory Rates in the North Atlantic/Continental European Trade.

73–28—Publication of Discriminatory Rates in the U.S. West Coast/Japan Trade.

73–29—Publication of Discriminatory Rates in the Atlantic and Gulf/Japan Trade.

All of the rates remaining in question after Oral Argument were resolved by the respondents in the first five cases. In the last three cases, a modified procedure was utilized where the respondents voluntarily attempted to resolve the disparities on a piece-meal basis. After corrective action was taken, the cases were discontinued.

Since then, one other cases involving 18(b)(5) was instituted:

Docket No. 75–14—Pacific Far East Lines, Inc.—Possible Violations of Section 18(b)(5) of the Shipping Act, 1916, in Connection with Rates on Military Cargo (Discontinued July 24, 1975 on the grounds that the rates were no longer in effect.)

Senator INOUYE. One of the questions I asked was if this bill were amended as suggested by the Department of Justice, would it be more difficult for the Commission to conclude that controlled carriers rate was not just unreasonable, that it would for the Commission to find that finding under the bill as drafted?

Mr. MOAKLEY. It would be much more difficult, if not impossible, Mr. Chairman.

Senator INOUYE. Why would you say that, sir?

Mr. MOAKLEY. In effect, and I have only listened to them briefly this morning, it appears that they have extracted most of the teeth from that which would make our enforcement authority greatest. The idea of suspending rates and then getting another filing in the next day and then continuing the filing would be a delaying tactic that I

assume they would use. Not to be able to prescribe a rate when we see the effect of the rate that they have now is siphoning off the cargo from other commercially motivated operators is not realistic.

I personally was involved in the operation of two liner companies that we talked about here today that came into the port that I was close to, New England Express Line is one. There were also Trans-Omega and Cargo Lines Ltd. They all attempted to set the same types of rates that would compete effectively with the Russians. They all lasted for about a year or a year and a half and went bankrupt and left behind a lot of unpaid bills.

Senator INOUYE. Is it possible to determine the cost of operating a Soviet-flag ship?

Mr. MOAKLEY. If one will assume that the information that we would require will be freely submitted by the Soviets and that there is some way of comparing what the cost of building the vessels are, and if we can set up depreciation schedules for them, which I am sure that they don't have, however, the only way that I think that we can do it is on a constructive cost basis.

Senator INOUYE. Now, to use a constructive cost to test the reasonableness of the controlled carriers' rate would require you to select a carrier whose cost would be utilized for this purpose?

Now how would you select this carrier?

Mr. MOAKLEY. You would have to select a carrier that is in a similar trade route using a similar type vessel. And then, from that point, it shouldn't be terribly difficult.

In many instances, maybe we would seek several carriers in a similar trade route using similar vessels and average out a fair cost basis for the Russians.

Senator INOUYE. What if you don't have similar vessels such as the Soviet use of RO/RO ships, in the case of the 25 buses?

Mr. MOAKLEY. You don't have a similar vessel in the same trade route, but I am sure that you could take other RO/RO vessels that are in different trade routes. If you could get them at an approximate distance, that gives you the similarity that you are talking about. I am sure you could work out the rate from there.

Maybe Mr. Ellsworth would like to answer that.

Mr. ELLSWORTH. I think you have just about answered it as much as I could, Mr. Moakley.

As the Commissioner is saying, one problem would be the RO/RO's serving the gulf trades carrying the buses. We have a steamship company serving the Pacific trades, State Steamship Co. It has vessels very similar to those kinds of vessels.

So we would attempt to get data on those vessels, cost data, trying to make some kind of comparison on a length-of-voyage basis, although that is not always that critical. Most costs will not be that directly related to the length of voyage. There is some relationship, but it won't be proportional.

I think there would be—there are many, many possibilities that we could seek other kinds of vessels, similar types of trades that would come up with something very close to what the Soviets would be paying if they were, in fact, forced to purchase their equipment in the free market as we are.

Senator INOUYE. In your statement you say the following: "In the U.S. Pacific coast Europe trade, we compared Soviet minibridge rates with those of the all-water conference."

Are you sure you are comparing unlike services?

Mr. MOAKLEY. I will let Mr. Simpson answer that.

Mr. SIMPSON. Yes. The comparison, I believe, is valid. The Soviet carrier in this trade is competing directly with the all-water services for important commodities. The rates that we have compared are those the shipper would pay, in the one case, for an all-water conference service, and in the other, for Baltic's minibridge service.

The Soviet rate is a through-rate, including a rail division. Moreover this comparison points out a special tactic that the Russians have used in this particular trade to attract important cargos.

It appears that the tariff space chartering arrangement described in the testimony is permitting nonvessel operating carriers to charge very low rates on staple trade commodities such as dried fruits, almonds, and canned goods, and to make a profit on those shipments by routing them through Baltic's minibridge service under extremely low per-container rates.

As the statement indicates, this matter is currently under investigation pursuant to the Commission's section 21 order served on Baltic Shipping.

Senator INOUYE. I understand that one of the devices traditionally used by Soviet carriers to attract cargo is the payment of greater commissions for the freight than other carriers.

Is this correct?

Mr. MOAKLEY. We will ask our newest Commissioner to respond.

Ms. KANUK. Yes; this is generally true. As a matter of fact, the Soviets pay just about double the normal freight forwarding commission. For example, in some trades they pay 2½ percent, whereas the normal commission is 1¼ percent.

However, in the U.S.-U.S.S.R. bilateral trades, they pay U.S. freight forwarders nothing. They are getting the trade anyhow. They feel it is unnecessary to pay the commission.

Senator INOUYE. The socialists are pretty good businessmen, aren't they?

Ms. KANUK. I would say so.

Senator INOUYE. There have been many allegations from the industry and elsewhere that Soviet carriers are selective in their rate-cutting practice and that they go after the cargo that is most lucrative, either from the point of view of volume or rates.

Does the FMC have any evidence of this?

Mr. MOAKLEY. Yes. I feel safe in saying, and I will be backed up by my industry analyst, but again, because you are talking about an area of the country in which I was involved with shipping, I will take it from the reverse side and focus on commodities up in the Northeast that move with some degree of regularity, that is, rags and wastepaper to the Mediterranean.

In those cases, the Soviets don't want that cargo. They have pegged it as high in some instances as 70 percent higher, and then other times about 5 percent higher than the conference going to the Far East.

Another product which is of a low value is chrome splits. In that instance, the Soviets don't compete for that product, but the regular

conference lines and the solid independents that come into our ports have to take that product.

If the good cargo and the high value cargo is siphoned off, then the freight charges for that low price cargo are going to have to go up with the conferences and the other independents. The result is that there are certain industries that are flourishing now which will disappear in the United States.

Mr. ELLSWORTH. We have attempted, Mr. Chairman, to answer this question of the Soviets skimming the cream. It is alleged by most carriers that they are, in fact, doing this. We have analyzed the MarAd data which is very poor for this because it is on an aggregated basis.

We are looking at a trade route and trying to see what is the value per ton carried by the Soviets, versus other carriers.

The problem with that analysis is it includes in the data many bulk Soviet carriers which are carrying wood products from the Pacific Northwest, a low rated commodity.

We have noticed that there has been an increase in the value per ton that the Soviets carry since they began serving our trades in 1971–72.

Furthermore, of course, the FAK rate structure will automatically attract to that carrier the high rated cargoes. The low rated cargoes simply cannot bear the FAK rate because it will be, in most cases, higher than it would be under a normal tariff and the commodity may not move.

This is one great problem with FAK rates. They do discriminate against low rates cargoes.

As Commissioner Moakley has said, those cargoes may not move and they are important, especially in the agricultural trades, waste paper, wood products, things like that, which are carried under the conference system of differential pricing.

We refer this to as basing prices on elasticity of demand. If you use an FAK rate, it would probably diminish the total world trade, and it would certainly affect the low rated cargoes.

As I say, we are in many respects exporters of those products. An FAK structure, although it is held by some as innovative—I think it is the wrong way to go. It would have an adverse effect on our economy.

Senator INOUYE. How would you define predatory rate practices?

Mr. ELLSWORTH. Well, the Department of Justice defines it as we have already heard, rates below the full cost for a long period of time and must somehow show the intent to destroy a competitor.

Of course, they quoted my statement in their presentation today, and I did say, as a quote: "We do not have any evidence that Soviet rates are below Soviet costs."

I did go on to say, however, that the fact is that we have little or no cost data from Soviet carriers.

What I was trying to get at is being saddled with this very strict predation rule. You have to show intent. You have to show it doesn't cover their cost. And that would be, as far as I was concerned, very difficult and probably would gut this bill.

We would be stuck with something we could not handle.

So they took a part of my quote. And, of course, it is a little bit out of context. I was trying to show that we don't have that data. And according to their definition, we would have to have the data.

I think, as defined in our bill, that we have to take a broader approach to what is reasonable. We have to look at the impact on our carriers, in fact on our trades. Showing an intent, showing the Soviets were intending to destroy, that would be difficult.

Senator INOUYE. Do your studies and analyses convince you that the Soviets have been involved in predatory rate practices?

Mr. ELLSWORTH. From what we have seen, I think that is certainly true. They can be selective. They can go after the cargo they want. There is no barrier. They can charge whatever they wish. They don't have to meet the same kinds of financial standards as our carriers.

They can do whatever they please.

I think we have seen this. They come into our territories. They initially want to get a lot of cargo. They will go after almost anything.

As time goes by, they will begin to narrow their focus and try and get a better commodity mix. And they can do this without any problem.

Senator INOUYE. It is predicted that by 1986, 6 percent of our liner trades will be in Soviet hands.

Is that a realistic number?

Mr. ELLSWORTH. I have said before that I think that that is probably low. They have obviously made a forecast. I think the facts are showing that they're throwing newer vessels in the trade. They are tripling the building of their capital vessels—the big RO/RO's, the big vessels, and of course, they now have a new lash vessel, coupled with the fact that their trade doesn't really require this kind of vessel.

The Soviet Union is basically an exporter of bulky products—timber, et cetera.

I think given those facts, I personally think that 6.6 percent is a little bit low. I don't have any number, but I think that is low.

Senator INOUYE. Were you invited to participate in the OMB meeting of yesterday?

Mr. MOAKLEY. I have no knowledge that we were invited, sir. No.

Senator INOUYE. On matters of this sort, are you usually invited?

Mr. MOAKLEY. I am afraid I must, because of my newness, plead ignorance on that one. I do not know if, in the past, they have been invited by OMB.

Senator INOUYE. Have you asked the staffers what sort of communication they have had with State and Justice?

Mr. MOAKLEY. Sure; could I ask Mr. Haslup, who might be able to answer that.

Mr. HASLUP. I am legislative counsel for the Commission. We have had very little communication with the Department of Justice on the administration's position on this bill. Since the initial drafts of this bill and its predecessor before the House, we have had a great deal of communication with the Department of State, and we had worked relatively close with the Department of State, if that answers your question.

Senator INOUYE. I ask these questions, not because I want to be critical of OMB or Justice or State or of FMC, but just to point out

one of the weaknesses that we find in our U.S. maritime industry—that is the lack of a coordinated, coherent policy, and cooperation.

I think this exercise clearly indicates that we have departments and agencies going on their different ways.

If you feel it is difficult, remind yourself of how difficult, the difficulty we find ourselves in. What is the policy of the United States? The policy of the United States apparently seems to change every other week.

I hope that something can be done to bring about some coherent, reasonable, and rational policy that all of us can look up to and point to as the maritime policy of the United States.

Do you agree that we don't have a policy?

Mr. MOAKLEY. We would like to work with you to that end. We are dealing with countries that have a firm maritime policy and they speak with one voice. The sooner we do, the better off and more secure we will be, sir.

Senator INOUYE. It is your contention that we do not have a policy at this time?

Mr. MOAKLEY. It is my contention that I would have a hard time defining what our maritime policy is at this time, sir.

Senator INOUYE. Have you indicated your concern to the Executive Office?

Mr. MOAKLEY. Since I have been on the Commission, the Chairman has placed me on a task force for the organization of the FMC. And I think once we have our own house firmly in order, then, we will go on from there, Senator.

Senator INOUYE. We now have the difficulty of determining who to follow, who to believe. Do we follow the FMC or the Justice Department? We hate to follow one and not the other, but it is not possible to follow both.

Mr. MOAKLEY. I understand that.

Senator INOUYE. I hope you understand our concern and our chagrin.

We have many, many questions here which we have prepared. Most of them are very technical in nature. We would like to submit them to you and your staff and hope that you will respond with answers.

Mr. MOAKLEY. We will, promptly, sir.

Senator INOUYE. Thank you very much, sir.

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

QUESTIONS OF THE COMMITTEE AND ANSWERS THERETO

Question. I believe there was an attempt by two North Atlantic conferences to obtain conference membership for the Russian-flag line, the Baltic Shipping Co., under a noval "two-tier" rate structure, which had its genesis in the so-called "Leningrad Agreement" worked out by former Chairman Bakke in July of 1976. That effort collapsed a year later when, at the insistent urging of the Department of Justice, the Commission reversed its earlier-announced decision to approve the new agreements and instead set them down for lengthy formal investigation (FMC Docket 77–6). Recognizing that the economic conditions prompting the two-tier concept would have become moot long prior to the conclusion of any such formal proceeding, on July 20, 1977, the conferences announced their withdrawal of the agreements.

Is the "two-tier" rate structure concept a realistic solution to the problems which S. 2873 is intended to solve?

Answer. The "two-tier "rate structure concept, developed on a commercial basis, was an attempt to reach a solution to the problems which S. 2873 is intened to

solve. It may have been viewed as a viable solution at the time it was proposed. It does not appear to be a workable solution today. While this system was designed to draw a less sophisticated carrier into a conference, it was intended as an interim measure to be applicable only until such a carrier became more competitive. Not only was the proposed agreement embodying this concept withdrawn in Docket 77–6, but a similar one was also withdrawn just recently. The advantages of such an arrangement would be conference control of or influence over the level of rates charged by a controlled carrier, and the probability, that the controlled carrier would eventually become a full member of the conference, thereby abandoning the two-tier concept. Whether such an arrangement would ever be approved is questionable, but it is certain that the process leading to approval would be a lengthy one. More importantly, we have no assurances that a controlled carrier would accept the invitation to become a member of a conference on such a basis, nor can we be certain that the carrier would not resign after becoming a member.

Question. In your opinion, does the present and projected penetration of the Soviet fleet into our liner trades pose strategic or security problems for theUnited States?

Answer. Yes. If the Soviet liner fleet is allowed to penetrate our foreign trade routes to the point where it weakens or destroys our merchant marine, it would seriously erode our capability to independently supply our own forces, when and where required. Moreover, we may be financing a portion of the Soviet fleet. Already, many Soviet vessels are off-loading supplies at Cuba prior to calling at our Gulf ports. In effect, our freight payments are helping the Soviets to pay for those voyages.

Question. Does your testimony on S. 2873 reflect the views of the Administration?

Answer. No. Our testimony does not reflect the views of the Administration if those views are as set forth in the testimony of the Department of Justice. In that testimony DOJ has suggested certain modifications to S. 2873 which, in our opinion, would render the bill ineffective. We believe that the bill should be enacted substantially in its present form in order to make the legislative effort meaningful.

Question. In its testimony, the Department of Justice stated that the legislation should contain a "zone of reasonableness" in which rates will be presumptively just and reasonable; and that state-controlled carriers' rates would be considered just and reasonable if they were no more than 15 percent below conference rates.

It has been said that such a provision would appear to ratify the espoused Soviet criterion of pentration, based on their own selected level of price cutting. The 15 percent level of spread that is advocated by the Department of Justice as just and reasonable happens to be the level below conference rates that is admitted to by Soviet shipping officials (*The Journal of Commerce*, March 1978, Page 1). Of course, on particular trade routes the Soviet rate has been much more than 15 percent below established rates.

Question. Would you please comment on this criticism?

Answer. We feel that the FMC needs discretionary flexibility to suspend and investigate rates only when it appears to the FMC that such rates are below a level which is just and reasonable. We agree that in many instances 15 percent below conference levels would not be unreasonable. However, in certain trades where rubber, jute, cotton, scrap metal, and many other heavy moving commodities are prominent, 15 percent might very well be unreasonable. To statutorily fix standards such as proposed by Justice would be unwise. The determination of justness and reasonableness of rates requires the application of a number and variety of factors depending upon the particular circumstances of each case.

Moreover, should the conference find that it had to drop rates to obtain cargo after experience with a Soviet 15 percent differential, the Soviet carrier could repeatedly drop 15 percent below the new rates with impunity.

Question. One of the factors the FMC may consider in determining whether a rate is just and reasonable, is "whether the rate is lower than necessary to assure movement of particular cargo in the trade."

What do you understand this criterion to mean?

Answer. This standard is apparently meant to apply to cargo that would not move in the applicable trade without a particularly low rate. While this circumstances would generally exist with respect to low value cargo, it could also apply to any commodity for which there were other competing sources of supply.

For example, steel products shipped from the U.S. are often in direct competition with steel products manufactured in other nations. An increase in the freight rate on such a commodity could mean that the customer would shift to another source of supply.

Another aspect of this standard is the cross-border movement of export traffic, particularly through Canada. If it appears to the Commission that a particularly low rate is necessary to compete with rates via nearby Canadian ports, the Commission would very seriously consider this factor in acting upon the rate.

Question. As a general rule, what percent of the "landed cost" of goods or commodities is attributable to ocean transportation freight rates?

Answer. General opinion indicates that between 5 and 15 percent of the landed cost of a good can be attributed to ocean freight rates. Even this range, however, must be qualified, as the proportion depends to a great extent on the nature and value of the commodity carried, and the trade in which it is carried.

The attached table, prepared by UNCTAD, reflects the fact that the percentage of C.I.F. value accounted for by freight rates does in fact vary considerably. (The C.I.F. value represents the cost of the goods, insurance, freight, and other charges, excepting U.S. import duties, incurred in entering the merchandise into the U.S.). Comparison of jute and tin exemplify this variation. In 1974, the freight rate for jute carried between Bangladesh and Europe accounted for 18.1 percent of the C.I.F. price, while the freight rate for tin carried between Singapore/Malaysia and Europe accounted for only 1.1 percent. Two other distinct extremes can be found in comparing timber and certain drugs. In some instances the freight rate on timber is equal to 50 percent of its C.I.F. value, while certain pharmaceuticals incur a freight rate equal to only 2 percent of their C.I.F. value. In general there is an inverse relationship between the value of the commodity, and the proportion of the C.I.F. value accounted for by ocean freight rates. It is clearly difficult to develop a general rule regarding the proportion of landed price accounted for by ocean freight rates, however, a range of 5 to 15 percent appears to be an acceptable average.

Question. It has been said that a 10 percent savings in freight costs translates into 0.6 percent of landed cost for the buyer, whereas the same 10 percent to the ocean carriers may be the difference between survival as a viable transportation system and non-survival.

Would you care to comment on that statement?

Answer. It is possible that a 10 percent reduction in freight costs may result in a 0.6 percent savings in landed cost for the buyer of a given commodity. For this to be true, one must assume that for a given product the freight rate accounts for 6 percent of the landed cost. As was pointed out in the previous answer, this 6 percent may be accurate for some commodities in certain trades. If this is so, then a 10 percent reduction of freight rates would translate into a 0.6 percent reduction in landed cost.

The effect of this 10 percent reduction in freight costs may, in fact, have a detrimental effect on carriers of these commodities. Recent empirical evidence indicates that the average return on equity for both subsidized and unsubsidized U.S. flag carriers is slightly below 10 percent. Moreover, the return on total assets for these carriers is below 5 percent. Clearly then, for certain carriers a 10 percent cut in freight rates would negatively impact on their profitability levels and possibly hamper their ability to effectively compete in the liner market.

Question. If a 10 percent savings in freight costs translates into 0.6 percent of landed costs for the buyer of goods, does the buyer in turn usually pass that 0.6 percent savings on to the consumer?

Answer. Although possible, it is highly unlikely that if a 10 percent reduction in freight costs does, in fact result in a 0.6 percent reduction in landed costs, that the entire costs savings would be passed on to the ultimate consumer. Quite probably, a good portion of the 0.6 percent would be absorbed through markups by the various channels of distribution that would be utilized in delivering the good to the final consumer.

Question. In either event, does the American consumer receive any great cost saving when he purchases a commodity which was carried on a ship whose rates were 10 percent below the conference rate for that commodity?

Answer. The American consumer may derive some short run benefit if freight rates were reduced by 10 percent. In the short run the cost savings reflected to the consumer would be de minimus at best—certainly not "great." As the previous response indicated, after various markups were taken into account, the

actual cost savings would be negligible. However, assuming that this question has ramifications beyond just the concern over actual cost savings, the reduction of a rate by 10 percent has certain long run implications for the consumer.

The motive behind a 10 percent rate reduction plays a determinate role in assessing consumer impact. If the intent of such a savings by reducing freight charges is solely to stimulate competition within a trade, then the consumer may receive long-run benefits which one would expect to occur as a result of the free market system functioning efficiently. If, however, the intent of the cost savings is merely to destroy competition and engage in predatory pricing practices, then in the long run such actions would have an adverse impact on consumers.

The destruction of competition through such practices would result in an increase of prices to the consumer in the long run, a limitation on the freedom of choice of the consumer as various carriers are driven out of the market, and unquantifiable increased costs as a result of eventual complete dependence upon state-owned controlled carriers—in many instances carriers whose flag is not one of our most favored trading partners.

In short, a 10 percent reduction in freight costs may afford a minimal short run benefit to the consumer, while, depending upon the intent of the carriers engaging in such practices, long run adverse impacts may occur.

Question. Section 18(b)(5) of the Shipping Act provides that:

"The Commission shall disapprove any rate or charge filed by a common carrier by water in the foreign commerce of the United States or conference of carriers which, after hearing, it finds to be so unreasonably high or low as to be detrimental to the commerce of the United States."

(*a*) Is this provision an effective tool to deal with the problems at which S. 2873 is directed?

Answer. In any proceeding involving possible violations of Section 18(b)(5), the burden of proof is upon the Commission to prove detriment to the commerce of the United States at a hearing before disapproving a rate. This requirement has made the application of Section 18(b)(5) impractical. Moreover there is no suspension power in Section 18(b)(5). A thorough review of the Commission's experience under this section was included in the Commission's letter to you dated May 15, 1978.

Question. Besides the Soviets, what other nations have or soon will have state-owned fleets which pose the kinds of problems S. 2873 is trying to protect against?

Answer. Besides the Soviet Union, another potential threat to privately owned carriers is the merchant marine of the Peoples Republic of China (PRC). The Chinese fleet is large and is expanding rapidly. The PRC fleet grew at a 22.5 percent annual rate between 1971 and 1975 and doubled to approximately 7.5 million DWT between 1975 and June 30, 1977. This total tonnage includes all types of vessels, however, and it is not certain just how much of the 7.5 million DWT is freighter tonnage. Data available for 1975, however, show that the PRC freighter fleet represented 55 percent of the total fleet tonnage. Assuming the new growth was evenly distributed among freighter, bulk and tanker fleets then approximately 55 percent of the 7.5 million DWT—4.13 million DWT—would be devoted to the freighter fleet.

The PRC practices the same tactics that the Soviets do, exporting on a C.I.F. basis and importing on a F.O.B. basis. In addition, the Chinese impose an export tax on foreign flag vessels carrying Chinese exports. This 3 percent tax is levied on the gross transportation income derived from each outbound voyage.

These tactics have enabled the Chinese to carry 71 percent of their ocean-borne foreign trade in 1975 compared to 13 percent in 1965. Clearly the Chinese merchant marine will pose a threat to privately-owned operators should we open our ports to their flag vessels.

Question. Given the reasons why the Soviets are cross-trading, and given the capability of Soviets to cut rates as much as is necessary to achieve their purposes, would you agree that it is fair to say that Soviet economic and political decision-makers can, if they so choose, place significant burdens and disadvantages on competitor U.S. shipping companies and the U.S. national defense interests?

Answer. It is quite likely that not only the Soviets, but the governing bodies of other state-controlled carriers can, almost at will, create competitive disadvantages for U.S. carriers with the result that our national defense may be impaired.

Question. Are they presently doing so, in your judgment?

Answer. While we do not have any evidence with respect to Soviet costs, research has indicated that the Soviets have indeed begun engaging in unusual marketing practices in certain trades, which are creating a negative impact on U.S. carriers. Probably the best example of this is Trade Route 29 which encompasses trade between the U.S. Pacific Coast, Hawaii, and Alaska, and the Far East. This is a trade where there have been numerous allegations concerning overtonnaging and a major U.S. carrier, Pacific Far East Lines is currently in bankruptcy proceedings. This is also a trade where the Soviets carried 6.4 percent of the total liner cargo during the first half of 1977. In tonnage terms Trade Route 29 has experienced the greatest overall penetration level, as that trade has accounted for about one-third of the tonnage carried by the Soviets on all U.S. trade routes.

The Soviets quite clearly have selected Trade Route 29 as a test of their ability to enter the U.S. trades, and the impact is already being felt by U .S. carriers.

Question. The Department of Justice recommends that in certain instances, before suspending a rate, as not just and reasonable, the FMC hold a full evidentiary hearing on the question.

How long do you estimate such a hearing to take?

Answer. Before answering this question, it would be beneficial to clarify what may be a misunderstanding of terms. In rate-making cases, at any tribunal, suspension of a rate is usually ordered for the purpose of allowing the agency time within which to hold hearings, the result of which will be a final adjudication or determination that the rate is or is not just and reasonable. For this reason, suspension, under whatever statutory authority, is discretionary because the legislators believe it is warranted on short notice. If a full evidentiary hearing is required for suspension, you would be talking about two full evidentiary hearings, one for suspension and one for final determination with respect to the lawfulness of the rates. By doing this, you would obviate the purpose of suspension powers, and the Commission might as well just start the hearing which will result in the final decision. Any full evidentiary hearing will take time in order to develop a proper record. The length of time such a hearing would take on suspension would most likely be the same as that for a final determination since the issues would be similar. We are hopeful that we could structure the case in the most expeditious fashion, perhaps something like proceedings on domestic offshore rates as prescribed in current, pending legislation H.R. 6503, leading to a final decision in 180 days.

Question. Do the Soviets make greater use of FAK (Freight all kinds) rates in their tariffs, than most of the conference members in U.S. trades?

If so, will it be more difficult to use comparative rate standards in determining whether a Soviet rate is just and reasonable?

Answer. Yes, most Soviet tariffs utilize some form of FAK rates as well as "per container rates." Any time that two tariffs have commodities described differently, comparison becomes more difficult.

Question. If S. 2873 were enacted, would the FMC require additional funds to enforce it?

Answer. Yes.

Question. How much additional funding?

Answer. Approximately $240,000.

Question. The test for justness and reasonableness in S. 2873 have been criticized (National Industrial Traffic League) as follows:

"Ocean liner rates are basically commodity rates, established for specifically named commodities. It may very well be that other carriers in the trade might not have published a rate for the product listed. The rates therefore, in comparison with the rates of another carrier in the trade might not be identifiable under the same name.

"Or, the rates of other carriers in the trade for commodities similar to the named commodity may be significantly lower than the named commodity rate: therefore, under the test in the bill the use of other carrier rates for comparison could be considered only in the context of comparing the lowest rate offered of an entire commodity group."

Would S. 2873 cause these difficulties for the Commission?

Answer. When commodities are not listed the same in both tariffs, rates might not be identifiable under the same name.

The rates of other carriers may be significantly lower on a similar commodity than on the named commodity.

This is one of the reasons that we oppose any further restrictions on the standards of comparison such as the modifications suggested by the Department of Justice. The bill reads that the Commission may take into account appropriate factors, including, but not limited to the factors described therein. This, it is felt, allows the Commission sufficient flexibility to analyze the rates in question so that the shipping public is not deprived of reasonable rates and at the same time carriers are not unduly prejudiced by rates which cannot produce a profit on a commercial basis.

Question. Under S. 2873, one of the indicia for determining whether a rate is just and reasonable, is whether the rate is below a level which is fully compensatory. Given the Soviet cost structure is different than ours, what items or cost would have to be included to determine whether a rate is fully compensatory?

Answer. The items to be included in an analysis of whether the Soviets are establishing rate levels below full costs would have to include all those cost elements that a privately-owned firm would have to meet. These costs would include all vessel and voyage operating costs, including depreciation, amortization, interest, and all taxes. The Commission may also consider the appropriateness of including a rate of return commensurate with the cost of capital (normal economic profit) in the rate structure.

Probably we would use our existing General Order 29 as a point of departture. We visualize some significant problems in terms of understanding Soviet accounting methods, techniques and principles as these features are highly diverse among commercially oriented nations let alone within a controlled economy. We do know that the Soviets use double entry bookkeeping but that is the limit of our knowledge of their accounting activity.

Proper evaluation of all of these Soviet expense items would require that FMC accountants and economists look beyond the accounting statements that the Soviet carrier might provide to estimate whether items such as depreciation, interest, profits and taxes really reflected a market-value equivalent expense. In many cases we may have to impute a market value to some of these Soviet cost items.

Furthermore, it is also alleged that many of the Soviet costs—such as seamen's benefits, bunker fuel—are subsidized by the State and may not reflect true economic values. Again some surrogate may have to be used to construct a market value for these expense items.

Question. Would the FMC be able to make such a determination now?

Answer. The FMC staff has been following Soviet economic and accounting practices for the past few years and has accumulated some expertise in this area. To make a proper determination of Soviet costs, however, would require much more extensive training in the area than has heretofore been possible with our limited staff.

Question. It has been said that high value cargo "skimming" is a demonstrable Soviet practice that is particularly damaging to the economic health of U.S. shipping companies that have been heretofore without legitimate counter-weapons to defend themselves. Research on this point reveals that the dominance of foreign flag ships, including state-controlled, in the carriage of strategically important raw material imports to the United States by liners should be a matter of concern. For example, foreign liners carry 92 percent of the tungsten and tantalum, that is carried on regularly scheduled routes; 100 percent of the platinum; 65 percent of the tin ores; and almost 100 percent of the manganese that is carried by liners in U.S. oceanborne trades.

In this context, is it really significant whether the level of Soviet rates is 10, 15, or 40 percent below conference rates; or whether Soviet returns are 5, 10, or 15 percent below fully-distrubuted costs of comparable operations by free-world shipping companies?

I mean these factors don't change the objective or nature of Soviet trade practices. And shouldn't this be our primary concern?

Answer. The development of maritime policy must be centered around one major premise; namely, that the maintenance of a viable merchant marine is, in the long run, essential to the general well-being of the United States. This premise must be considered when examining the structure of our shipping policy.

It is very easy to argue that increased competition in the form of lower rates will result in the greatest good for the largest number of people. However, it is doubtful that any economist could realistically argue that a free market

does or could exist in the liner industry, and that comparative advantage does, in fact, account for the Soviet incursion into the U.S. trades.

In the liner industry short run rate cutting would provide some benefits, especially for the shipper. It is the long run implications which policy makers should be concerned with, and the long-run outcome is essentially dependent not only upon the amount of rate cutting but also the intent of the carrier engaging in such practices. In the long run, as a result of the objective of Soviet actions it is quite likely that the viability of the merchant marine would be tested. When the Soviets and other state-controlled carriers are carrying such a high level of our imports of strategic materials, we must be concerned. While protectionism just for the sake of protectionism is not a valid goal, when such transport occurs as a result of government decision-making and interference, then we must be concerned as to the long run implications of such actions.

The ability of carriers to cut rates drastically, and possibly even below costs should concern us greatly. In those cases economic forces are not at work, having been replaced by political ones. Clearly the intent of those political actions should be considered.

If the free market were, in fact, functioning in the liner industry, then one might find it somewhat easier to accept such practices. However, injection of the political element requires us to be especially concerned over the goals and objectives of such actions, as the intent may be to test the viability of our merchant marine.

It is critical for the U.S. to consider the long-run implications of allowing a vast supply of strategic raw materials to be transported by carriers that are in most cases, not our favored trading partners, and are those whose marketing practices are outside the realm of economics and reflect primarily political goals.

Question. The report of the Maritime Administration concludes that Soviet penetration into our liner trades is largely successful because of rate-cutting.

The Soviets counter-charge that conference members are rebating shippers with amounts greater than the alleged rate-cutting by the Soviets.

In view of the widespread rebating in many of our liner trades, it would appear that there may be some validity to what the Soviets say.

Would you please comment?

Answer. This allegation raises the question, "Which came first, the chicken or the egg?" If the Soviets were to enter a particular trade by engaging in selective rate-cutting, it could result in the initiation of or an increase in malpractices as the conference members attempted to meet the rate-cutting. However, while the Soviet theory is appealing, there is some evidence which leads us to question whether facts will support it. For example, to date we have developed no information which indicates that rebating is a problem in the Australian trades. Yet, at the same time, as we have testified, in those trades Fesco is charging rates that are as much as 44 percent below conference rates and 10% below other independents. Therefore, the Soviets' "counter-charge" does not appear to be compeltely valid.

Moreover, the imminent passage of H.R. 9518 will do much to correct the rebating problems which have heretofore plagued most of our foreign trades. This legislation should foreclose any possible Soviet argument along these lines in the future.

Question. If U.S.-carriers are forced to respond continually to Soviet rate-cuts in trades where the Soviet compete, is it not entirely possible that these same U.S.-carriers will raise rates in other trades to compensate or subsidize their operations in the trades where they are competitive with the Soviets?

Answer. The U.S. carriers must have sufficient profits to attract capital for vessel replacement, service maintenance and other operating needs. If the profit level goes down in one trade it must be made up somewhere else, giving rise to this stated possibility. This, of course, is one of the most dangerous aspects of having to compete with carriers whose cost levels might not be the same as yours.

Question. In 1976, the then Chairman of the FMC and his Soviet counterparts signed a "memorandum agreement" known as the Leningrad Agreement, concerning principles that are to govern participation of Soviet water common carriers in the U.S. ocean borne trades. The Agreement contains two key features:

(1) That all ocean cargo rates contained in tariffs of Soviet carriers now engaged as independents in the liner trades of the United States will, as promptly as feasible, be adjusted to a level no less than that of the lowest rate in use for the same commodity of any other independent carriers in those trades.

(2) That negotiations be conducted promptly with a view toward bringing the Soviet carriers into the Atlantic and Pacific conference systems.

In your opinion, have the Soviets lived up to their part of the agreement?

Answer. The Soviets, through their rate adjustments, made an apparent effort to take the actions that were required to fulfill their responsibilities under the Agreement. However, the actions taken were too slow to be commercially productive.

Question. In your opinion, has the U.S. lived up to its part, keeping in mind that since the Agreement the Department of Justice has successfully opposed attempts by the Russians to join conferences on a "two-tier" basis?

Answer. It is difficult to say just how detrimental to the overall agreement were the actions taken by the Department of Justice. However the efforts put forth by this Commission in this area, such as the recording of rates, discussions with western carriers etc., were, we feel, in compliance with the agreement.

Question. The report of the Maritime Administration concludes that Soviet penetration into our liner trades is largely successful because of rate-cutting.

Is the service the Soviets offer comparable in quality? In other words, are shippers more concerned with lower rates, than dependability of service, etc.?

In previous hearings the Committee heard testimony from a U.S. importer as follows:

"In the past, during certain emergency periods, we have been forced to use secondary shipping lines and invariably have experienced problems such as shortages, pilferage, wet or damaged cargo, lack of follow-through on paper work, and insufficient or late arrival of documentation."

Answer. In most cases Soviet service is not comparable with the most sophisticated conference carriers. In certain trades they compare well with many of the conference operators. On the question of which is more important, service or rates, certain judgments must be made by the exporter or importer. In some instances fast and efficient service is required. In others the sale cannot be consumated at the higher rates.

Question. The report of the Maritime Administration on expansion of the Soviet fleet into our liner trades states that the Soviet fleet is carrying sizeable amounts of "high-valued" liner cargoes such as sound recorders, machinery, and telecommunications.

(*a*) What precisely is meant by "high-valued" cargoes?

Answer. Marad defines high value cargo basically as finished consumer products such as stereo equipment, machinery, office equipment, etc. A broader definition would include all cargoes which were valued above a certain amount on a per ton basis, e.g., all cargoes valued at over $1,000 per ton basis might be considered high valued cargo. This type of split between low value and high value cargoes must also consider stowage factors to be an accurate picture of the attractiveness of a commodity to the ocean carrier.

Question. Why is it more desirable to carry "high-valued" cargoes?

Answer. The reason carriers wish to maximize their carriage of high-value cargo is because many ocean rates are partially determined by the value of the product shipped. Ocean carriers have, for many years, followed the railroads' practice of using "value-of-service" pricing as a corollary of cost-of-service pricing when establishing freight rates.

The value of the cargo determines, to some extent, the elasticity of demand for transportation since the higher the value of the cargo the less will be the importance of freight rates as a final determinant of total landed costs. This theory makes good economic sense and differential pricing such as this should not be dismissed out of hand as unduly discriminatory.

Question. Is the fact that the Soviet fleet is carrying sizabl amounts of "high-valued" cargoes the result of a deliberate effort on the Soviets part to go after that kind of cargo; and if so, why?

Answer. Appendix I to the Marad report demonstrates that, since their initial entry into the U.S. cross-trades, the Soviets have shown a systematic design towards attracting higher valued and therefore, higher rated cargoes. The reason the Soviet's would like to attract more high-valued cargo is because these commodities are usually shipped at higher rates and are, therefore, greater revenue producers. By concentrating on higher valued cargo consignments the Soviets will be able to maximize their foreign exchange earnings, which is one of the major economic goals of the fleet.

Question. Doesn't every carrier in a given trade go after "high-valued" cargo?

Answer. While it is true that the system of pricing which is partially based on the value of the commodity will encourage carriers to go after higher valued cargoes, conference members are restrained somewhat in their behavior.

The conference, as a *quid pro quo* for its collective ratemaking authority, ensures that all cargoes which wish to move via liners be given adequate service. Acting as a responsible transport agency the conference is not in a strong position to successfully ward off outsiders who snipe at the conference by draining off its higher rated cargoes. The loss of this high rated cargo means that either rates on lower valued cargo must be raised or the conference members will suffer financial difficulties.

This is a matter of critical importance since the system of differential pricing maximizes the movement of cargo in our international trade and thus encourages the members of the world community to realize their comparative advantage.

If low valued commodities don't move, then, assuming the rates were above variable costs, a greater burden of meeting fixed costs will be shifted to higher valued goods which may discourage the movement of some of these items. This vicious spiral of rates could ultimately lead to a serious diminution of world trade.

Question. In your judgment, is the incentive to rebate greater among conference members in trades where Soviet Liners are cutting rates by 20% or more?

Answer. In any of our trades where an independent carrier, such as the Soviets would selectively cut rates by 20% and more, the reactive incentive to rebate would be intensified. Of course, there is also another alternative and that is for the conference members to legitimately reduce their tariff rates to meet those of independents such as the Soviets. In this context S. 2873 would be a positive factor in eliminating rebating, since another legitimate means of dealing with this type of competition would be available—i.e. a petition to the FMC to act on the controlled carrier's rates.

Question. S. 2873 provides that the Commission shall have the authority to prescribe minimum rates during a suspension period.

Do you agree with this provision?

Answer. This provision would be helpful in making the bill more effective. Without it, a carrier who rates were suspended could merely refile at a level a few cents higher than those suspended. This could be continued *ad-infinitum* and thus unduly complicate administration of the bill. Any rates set by the Commission pursuant to this provision are clearly intended to be temporary rates. It would be the intent of the Commission to use either the previous rate level of the controlled carrier or a level related to the same or similar items appearing in other carriers' tariffs as the basis for minimum rates.

Question. With reference to rates, in your judgment, do the Soviet rates compare with other independent, non-controlled carriers in our trades?

If not, how do they differ?

Answer. Rates of Soviet carriers have always been difficult to compare with those of other carriers because of the existence of special types of rates or allowances in one or both of the tariffs being compared. For example, the Soviets may offer a per container rate for a mixture of commodities whereas another carrier or conference may offer a rate per 2,000 pounds or 40 cubic feet on each of the same commodities. While the actual rates of both the Soviet carriers and other non-controlled independents may not differ substantially, it is our experience that the Soviet carriers will adjust descriptions and set their rates at a level that will maximize their earnings. It is this tendency to continually adjust rates and descriptions that a "commercial" carrier views with anxiety.

Question. In 1975 this Committee held hearings on a third-flag bill which, of course, differed substantially from the legislation we are considering today. Nevertheless many of the issues and concerns are identical.

At those hearings a U.S. shipper testified as follows:

"While we expect fair and reasonable rates, we also expect and demand quality service, frequency of service, and service response to our needs as importers. This is the type of service we have come to know and expect from the national flag lines serving the market to and from which we are involved. In the past, during certain emergency periods, we have been forced to use secondary shipping lines and invariably have experienced problems such as shortages, pilferage, wet or damaged cargo, lack of follow-through on paperwork, and insufficient or late arrival of documentation."

Would you please comment on that testimony?

Answer. While it is true that the secondary carriers usually cannot compete with the most sophisticated national flag or conference carriers, it does not necessarily always mean that lower rates always means lower or worse service. When controlled carriers do not have to maintain profits at a level to attract capital and their expenses are not consistent with those of commercial carriers, it

is quite possible for them to offer comparable service at a rate level that would be impossible for a commercial carrier to meet.

Question. It has been said that the Conference system has given rise to "value pricing".

That is, conference members join together and decide on a rate for moving specific commodities, which they may legally do under the Shipping Act.

The rate decided upon for a specific commodity is determined by "what the traffic will bear" rather than the actual cost to the carrier of moving the commodity.

Shippers will pay a higher rate to ship a container of diamonds than they will to move a container of rags, even though the actual cost of moving both commodities may be about the same.

Thus, the contentions goes, the Soviets will go into a trade and seek the high priced cargo such as diamonds. Because the rate for moving that commodity is related to "what the traffic will bear" rather than the cost of moving it, the Soviets will be able to offer a rate drastically below the Conference rate, and still meet costs and make a profit.

Would you comment on this?

Answer. When a conference is given anti-trust exemption, one of the requirements of the agreement is that the members serve in the public interest. It is just this that the conference members must bear in mind when setting a rate on a specific commodity. In working toward the public interest, if the conference carriers set all the rates at the same level, many commodities simply could not move. This is obviously not in the public interest. Therefore some balance must be reached for setting of rates on varying commodities at levels that will permit the sale of these commodities overseas and yet return a profit to the carrier sufficient for him to maintain and improve his service. An independent carrier has no such obligation to operate in the public interest. That carrier's only responsibility is to his ownership, and it may be in the interest of the owners to seek only high rated cargo.

Question. If so, isn't this also what other independents in our trades do?

Answer. In one important respect state-controlled independents must be analyzed separately from privately-owned carriers. Privately-owned independents will be somewhat tempered in their attempts to skim the cream by realizing that the conferences may match their rate reductions and precipitate a rate war. Clearly the conferences have the collective power to discipline a non-conference operator if he is small and not state-owned. The Soviets, of course, don't qualify on either grounds. Not only are the Soviet vessels part of a much larger, integrated fleet, but they can also withstand the rigors of competition since they are not constrained by the financial markets.

Question. In your judgment, should the extent of Soviet penetration into our liner trades be regarded strictly as a commercial matter and therefore treated purely from the standpoint of whether or not it is detrimental to the commerce of the United States?

Answer. While Soviet maritime activities in our trades as well as worldwide do have political significance, we believe the regulation of Soviet liner activities should be treated as a commercial matter.

Question. If your answer is yes, what criteria should be used to determine if that penetration is detrimental to our commerce?

Answer. The criteria we believe to be essential to a determination of whether Soviet penetration into our trades is detrimental to commerce must be flexible and determined on an *ad hoc* basis for each trade. Certainly the level of Soviet rates in relation to commercial (or market economy) costs is essential. Also the quality of service i.e., frequency of service, degree of mechanization of vessels, voyage patterns, types of cargoes carried or refused by Soviet vessels, amount of competition and finally the cargo share of the trade.

Question. If you believe Soviet penetration raises more than commercial considerations, what are the other considerations it raises?

Answer. As regulators, the non-commercial considerations should not concern our formal or informal regulation of Soviet or national flag lines. As Americans though, the political and military implications of Soviet activities in the maritime arena are of concern but these should be kept separate from commercial concerns. The decision upon whether a country's vessels should be allowed to service our trades because of the political environment or the military dangers should be determined by those makers of foreign policy. However, once the policy judgment is made then the impact of controlled carrier activities on U.S. trade and commerce must be viewed from a commercial standpoint.

Question. What authority does the FMC now have to ascertain whether rates are too high or too low, as to adversely affect American commerce?

Answer. Section 18(b)(5) requires the Commission to disapprove any rate or ducted formally with the burden of proof upon either a complainant, or if one finds *after hearing* to be so unreasonably high or low as to be detrimental to the commerce of the United States.

Question. Do you believe this authority is sufficient to protect adequately American economic and commercial interests, and national security?

Answer. No. Action under 18(b)(5) requires a proceeding drawn and conducted formally with the burden of proof upon either a complainant, or if one the Commission's own motion, upon the Commission. Relevant data to prove the violation is primarily in the hands of the carrier while other data is in the hands of other sources—not parties to the proceedings, and is difficult at best to obtain. Further, 18(b)(5) proceedings have proven to involve extensive periods of time and have been relatively few in number, largely due to the weight of the burden of showing a violation.

Question. S. 2873, would, of course, give the FMC limited rate suspension authority in the U.S. liner trades

It has been said (National Industrial Traffic League) that the "international trading capability of U.S. industry will be severely handicapped if, uniquely in the world, commercially-negotiated ocean rate levels become subject to regulatory suspension."

(*a*) Would you please comment on that statement?

Answer. It cannot be denied that any rates which might be suspended by the regulatory agency may interfere with the ability of industry to negotiate transactions predicated on such rates. However, since the Commission would be obligated by the bill to suspend a newly filed rate within a 30-day period after filing the carrier would need to ensure that any such rate were promptly filed following any commercial negotiation. Normally, the shipper-carrier rate negotiations precede the time of shipment (and even the attempt to market abroad) by a considerable period of time.

Moreover, in the case of rates which are already effective, the bill requires the Commission to give substantial notice before its suspension order becomes effective.

It would be unfortunate, indeed, if U.S. industry would find it necessary to rely on state-controlled carrier rates in order to conduct their international trading. The purpose of the bill is to protect the broad public interest and we would suggest that that interest cannot be well-served by reliance upon rates which would otherwise have the detrimental impact on our trades which the bill is intended to prevent.

Question. Recently the Commission has initiated investigations into Soviet liner fleet activities.

Would you describe what the Commission is doing?

Are you experiencing any difficulty in obtaining documents or other needed information from the Soviets?

Answer. The Commission has served two Section 21 Orders on Baltic Shipping Company. The first seeks information concerning Baltic's rates and arrangements for the transportation of buses from Germany to the United States Gulf, possibly in violation of section 18(b) of the Shipping Act. This information will also enable the Commission to determine whether a proceeding, pursuant to section 18 and 22 of the Act, should be initiated to determine whether Baltic is charging or receiving less compensation for the transportation of cargo than that specified in its tariffs on file with the Commission or whether further investigative or enforcement action should be undertaken. The second Order served on Baltic Shipping Company seeks information concerning Baltic's rates and practices in the same trade route for a full year. This order requires that Baltic furnish the Commission information including the name of each vessel, the ports served, the commodities carried, the rates assessed, the basis of rate assessment, the additional or accessorial charges and the commodity's tariff item number and tariff authority. Information is also being sought concerning a rule in their tariff that, it is felt, could lead to possible antitrust violations. This rule describes a space chartering arrangement that is apparently attracting NVO traffic.

Baltic Shipping Company requested enlargements of time to supply this information and the Commission partially granted their requests. On May 30, 1978, Baltic responded to the first of these orders, refusing to supply certain of the documents because they are allegedly not located in the United States.

Question. In its testimony, the Department of Justice stated that any legislation should contain a provision that, for purposes of determining whether a rate is just and reasonable, in the event a rate of a State-controlled carrier is not in any way comparable to another in the trade, it could not be suspended except after a full hearing before the Federal Maritime Commission.

Of course, for the legislation to be meaningful these matters must be decided quickly.

Ordinarily how long would the "full hearing" take?

Answer. As we indicated in our answer to number 9 above, any requirement of a hearing prior to suspension, as opposed to a final adjudication, would be ineffective and would defeat the purpose of having suspension powers. As in traditional ratemaking such as at the ICC, or such as the FMC exercises in domestic offshore commerce, suspension authority, to be effective, must be discretionary. We would find it difficult to exercise this discretion in favor of suspension of a rate which is not in any way comparable to another in the trade. At the same time, however, other circumstances may dictate that such a rate should be suspended because it is obviously below a level that appears to be just and reasonable. For example, a rate of $10 to carry a container from Europe to the U.S. would clearly be unreasonably low no matter what the cargo was. Again, as we indicated in our answer to number 9 above, a full evidentiary hearing, whether on suspension or final adjudication of a rate, would hopefully take no longer than 180 days.

Question. The Maritime Administration projects by 1986 Soviet-flag ships will be hauling some 6.6 percent of this country's liner cargoes.

Do you agree with this projection?

Answer. The MARAD forecast of Soviet liner fleet penetration level of 6.6 percent is, as it must be, based on assumptions. Therefore, its validity depends on the correctness of its assumptions. For instance, after a rapid growth from the 1973 level of 0.9 percent to a 5.0 percent level in 1980, the forecast shows a noticeable leveling off from 1980 to 1985 when the 6.6 percent penetration level is reached.

Apparently, this leveling off is due to two assumptions, (1) A logistics curve (which is based on a mathematical formula) is the most appropriate curve used to forecast this phenomenon and, (2) Soviet rates will move into line with existing conference rates. While we can neither prove nor disprove these assumptions, the forecast is critically dependent on their correctness.

At present, however, it is not certain that the growth of the Soviet fleet in our cross trades will peak out in 1980 as is inferred from the use of a logistics curve approach to forecasting. We are also not convinced that Soviet rate will fall into line with conference rates in the 1980's.

More importantly, even if the 6.6 percent overall figure is correct, it is somewhat misleading to give this one statistic too much weight. First of all the 6.6 percent refers to Soviet penetration in all of our trades whereas, for instance, they are virtually excluded from many of our Latin American trades because of our bilateral treaties with those nations. Thus, while all of the tons moving in these trades are included in the denominator of the equation, they should be excluded to gain a more meaningful interpretation of Soviet penetration.

A better representation of the extent of Soviet penetration can be gained by focusing on those specific trade routes where they have made their heaviest penetration. For instance, data for the first 9 months of 1977 show that the Soviets had an overall penetration level of 3.4 percent. Isolating those 16 trade routes where the Soviets had heavy penetration, however, shows there penetration level at 5.2 percent. On an individual trade route basis the extent of penetration is more ominous: on Trade Route 7 (U.S./West Germany) the Soviets had 12.3 percent of the market and on Trade Route 17 (U.S./Indonesia, Malaysia and Singapore) they had 10.1 percent of the market.

Thus, regardless of the accuracy of the overall MARAD forecast, on a selected basis Soviet penetration has already reached disturbing levels and will no doubt become worse unless it is checked.

Senator INOUYE. The hearings will continue tomorrow morning at 11 a.m. in this room. Until then, the hearing is recessed.

[Whereupon, at 11:53 a.m., the hearing was adjourned, to be reconvened at 11 a.m., on Thursday, May 18, 1978.[3]

[3] The hearing was postponed and rescheduled to be reconvened at 2 p.m. on Wednesday, Sept. 6, 1978.

OCEAN SHIPPING ACT OF 1978

WEDNESDAY, SEPTEMBER 6, 1978

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

The subcommittee met at 2 p.m. in room 235 of the Russell Senate Office Building, Hon. Daniel K. Inouye (chairman of the subcommittee) presiding.

OPENING STATEMENT BY SENATOR INOUYE

Senator INOUYE. This afternoon, the committee continues its hearings on S. 2873, the Ocean Shipping Act of 1978.

The purpose of this bill is to strengthen the provisions of the Shipping Act, 1916, and thus, the powers of the Federal Maritime Act Commission to regulate the rate-cutting practices of state-controlled carriers.

The objective of strengthening the 1916 act is to provide a means to monitor and, if necessary, check the future penetration of state-owned carriers into the U.S. trade, and thereby preserve legitimate competition among all common carriers engaged in the foreign commerce of the United States, insure the survival of the American merchant marine, and maintain and promote our international trade.

Soviet penetration of U.S. liner freight routes has grown substantially since 1971. From a relatively insignificant penetration level of 0.3 percent in 1971, the Soviet merchant marine has increased its share of the U.S. commercial liner cargo market to 3.4 percent as of the first 9 months of 1977. This represents a 10-fold increase in the Soviet's market share during the 6-year period.

But even this sizable increase in market share does not measure the true extent of Soviet penetration. A more meaningful view of the level of Soviet activity in the U.S. trade can be gained by focusing on those trade routes where they have made their heaviest penetration. On Trade Route 7—U.S. North Atlantic, West Germany (North Sea)—the Soviets controlled 12.3 of the market for the first 9 months of 1977.

The Far East trades have also been heavily impacted by the Soviet merchant marine as the following Soviet market shares demonstrate: T.R. 17—U.S. Atlantic, Gulf and Pacific, Indonesia, Malaysia, and Singapore—10.1 percent.

Trade Route 22—U.S. Gulf, Far East—11.6 percent. Trade Route 29—U.S. Pacific, Hawaii and Alaska, Far East—6.4 percent.

In tonnage terms, the Soviets have their largest market share on Trade Route 29. For the full year of 1976, the Soviets carried 458,823 tons of cargo on this trade route. The problems that could develop in the future because of the presence of the Soviet's fleet can only be appreciated if this selective penetration tactic is understood. Forecast out to 1985, Soviets will command a 6.6-percent market share. That forecast, however, is predicated on the entire U.S. liner trade, not the selective routes the Soviets have chosen to penetrate.

The forecast 6.6-percent market share is approximately a 100-percent increase over the 1977 penetration level of 3.4 percent. If the past patterns hold true, this means that on selected trade routes such as those already mentioned, the Soviet market share will be in the range of 20 percent on Trade Routes 7, 17, and 11, and over 10 percent on the all-important Trade Route 29.

Existing authority for the Commission to disapprove any rate or change by common carrier by water in the foreign commerce of the United States which, after hearing it, finds it to be so unreasonably high or low as to be detrimental to the commerce of the United States, is found in section 18 of the Shipping Act, 1916. Rates which are unreasonably high can be established with comparative ease.

But the ability to determine andc ontrol unreasonably low rates have been found wanting in this section of the act. Existing law neither specifies the standards which may be used to judge unreasonably low rates, nor does it permit the Commission to suspend such rates pending the outcome of the hearing required by that section.

Most importantly, the burden of establishing that the rate is unreasonably low is upon the Commission or the complaining party. Without substantial modification and amendment, the Shipping Act is therefore ineffective against the problems created by the rate-cutting practices of state-controlled carriers.

At earlier hearings on S. 2873, the Department of State and the Department of Justice testified and offered heavily qualified support for the legislation. The Federal Maritime Commission, on the other hand, not only supported S. 2873 as necessary and perhaps overdue, but also testified that some of the amendments on which the Department of Justice conditioned its support would in fact gut the legislation and render it ineffective.

Although the Maritime Administration has declined to testify, the record should show that, on March 17, the agency did appear before the House Committee on Merchant Marine and Fisheries and testified on H.R. 9998, a bill which is substantially the same as S. 2873, and I would like to quote from MarAd's testimony.

> The Department of Commerce supports the enactment of H.R. 9998, in our opinion, this or similar legislation is necessary to provide a viable procedure for meeting the present problem of predatory rate practices engaged in by controlled carriers operating in the foreign water-borne commerce of the United States.

Unlike the Department of Justice, MarAd's support for the legislation was not conditioned upon the crippling amendments which the Department witness recommended at the May 17 hearing.

Today, the committee will hear testimony from the Treasury Department as well as several individual industry witnesses. The De-

partment of Transportation was also invited to appear and testify, but it requested that the committee permit written testimony instead.[1]

The first witness this afternoon is Mr. Gary Hufbauer, Deputy Assistant Secretary for International Trade and Investment, Department of the Treasury.

STATEMENT OF GARY HUFBAUER, DEPUTY ASSISTANT SECRETARY FOR INTERNATIONAL TRADE AND INVESTMENT POLICY, DEPARTMENT OF THE TREASURY; ACCOMPANIED BY HENRY BERGHOEF

Mr. HUFBAUER. Thank you, Senator.

Senator INOUYE. Welcome, sir.

Mr. HUFBAUER. Mr. Chairman, I would like to introduce my colleague, Mr. Henry Berghoef, who has assisted me in the preparation of this testimony.

Mr. Chairman, I am pleased to discuss with you the Treasury Department's views on this bill. We share the concern reflected in this bill that certain carriers may be competing unfairly in our ocean trades by engaging in "predatory" pricing. Laws to prevent unfair practices in our foreign merchandise trade are already on the books—specifically, the Antidumping Act of 1921, as amended, and section 301 of the Trade Act of 1974. We should also be able to deal with similar unfair competition in international shipping.

Pricing below cost by carriers—whether or not the carriers are "controlled"—may well occur under current market conditions. Overtonnage is a prominent characteristic of our ocean trades today. Goods or services provided by state-controlled economy countries pose an additional problem since their prices are not necessarily established even in the long run by market considerations.

We wish to avoid prejudging whether controlled carriers are actually engaging in pervasive unfair pricing practices. However, the administration is prepared to support this legislation, but we would recommend certain amendments. My colleagues from other departments have presented these to you in detail. Therefore, I would like to touch briefly on aspects of particular concern to the Treasury.

First, we fear that the bill's grant of authority to the FMC to determine whether rates are "just and reasonable" is too broad and vague a standard. We also oppose FMC authority to set minimum rates during any period a rate suspension is in effect, or after the FMC has found that rates are not "just and reasonable."

Finally, we believe that controlled carrier rate decreases should become effective on the same conditions as rate decreases by other carriers. Under present law, there is no waiting period for rate decreases by any carrier, but the bill as drafted would impose a 30-day waiting period selectively on controlled carriers.

We think the level of rates subject to FMC suspension should be more carefully delineated. Suspension should take place only when unfair practices are occurring, and not to defeat fair competition. We think the benchmark of rates charged by independent noncontrolled

[1] See p. 202.

carriers, or 85 to 90 percent of the rate charged by the lowest price conference operating in the same trade, represents a fair standard. Controlled carriers should be allowed to be as competitive as any other carrier in a trade.

We believe that granting rate-setting authority to the FMC is not warranted. If a controlled carrier's rates are suspended or disapproved, the carrier should be able to file and operate under new tariffs as long as those traiffs meet the standard the administration proposes.

Finally, controlled carriers should not be required to file rate decreases 30 days in advance. Currently, as I noted, all carriers are required to file rate increases 30 days before they become effective with an exception for dual-rate contracts, but rate decreases may take effect immediately upon filing.

If a waiting period is required for the rate decrease of some carriers, we believe it should be required for the rate decreases of all carriers. We think these proposals would assure that U.S. carriers are not victimized by predatory controlled carrier pricing.

At the same time, they will allow controlled carriers to continue in the trade as long as they compete fairly. Competition will encourage cost-effective service. This is an important consideration, especially in view of President Carter's emphasis on curbing inflation.

Mr. Chairman, we believe that S. 2783, with the suggested amendments, can effectively prevent predatory pricing by controlled carriers without discouraging desirable competition in shipping.

Thank you.

Senator INOUYE. If the FMC is not provided this authority to suspend and declare that a rate is unjust and unreasonable, who should make that determination?

Mr. HUFBAUER. Mr. Chairman, we don't believe anyone should make that determination. The proposal we offer is the standard of the rates of independent carriers or the standard of 85 to 90 percent of the conference rate.

Senator INOUYE. Do you believe in reciprocal treatment?

Mr. HUFBAUER. Do I believe in reciprocal treatment?

Senator INOUYE. Yes.

Mr. HUFBAUER. In trade policy there are two strong and sometimes conflicting principles which have formed our trade policies in goods and services for over 40 years. One of them is reciprocity, and I believe in reciprocity. The other principle is most-favored-nation treatment. For obvious reasons, most-favored-nation treatment in the present context is a less important principle.

But in other contexts, where one is talking about reciprocity, most-favored-nation treatment is an important competing consideration.

Senator INOUYE. This bill provides that the President may stay any order of suspension or final order of disapproval of rates for a period not to exceed 120 days if we find such stay is required for reasons of national defense or foreign policy. On the other hand, the House bill gives the President authority to stay permanently such suspension or final order.

Do you wish to comment on one or the other? In other words, given the choice, which one would you take?

Mr. HUFBAUER. Mr. Chairman, I would have to defer to my colleagues in the State Department. I am reminded that they testified in favor of a stay without the 120-day limit.

Senator INOUYE. You want the stay to be permanent?

Mr. HUFBAUER. Yes.

Senator INOUYE. Then you prefer the House provision. Under the House bill in determining whether the rates are just and reasonable, FMC may consider whether suspension or disapproval of the rate would unduly affect the quality of service provided in any trade route. This consideration, of course, would have great impact in areas such as the Great Lakes where Soviet carriers provide a very significant portion of the liner service. The Senate bill has no such provision.

Given the choice, which would you prefer,

Mr. HUFBAUER. Certainly if we were to go down this road, we would prefer a bill which allowed consideration of the quality of service.

Senator INOUYE. In other words, the House provision is preferable.

Mr. HUFBAUER. Yes, that's right.

Senator INOUYE. As to rates already in effect, the Senate bill provides that the FMC may suspend them on 30-days notice. The House bill, on the other hand, requires 60-day notice. Do you prefer the House 60 days or the Senate version?

Mr. HUFBAUER. Between those two——

Senator INOUYE. It does not make any difference.

Mr. HUFBAUER. It really makes no difference.

Senator INOUYE. The Senate bill provides that pending the determination of the lawfulness of a controlled carrier's rates the FMC may suspend the rates in question indefinitely.

On the other hand, the House bill says that the suspension may be for a maximum of 180 days. Do you prefer the 180 days?

Mr. HUFBAUER. Well, Mr. Chairman, I think whichever route is chosen, the end result would be to bring the state-controlled carriers, principally the Soviet carriers, into the conference system. And I don't think there is any practical difference.

Senator INOUYE. Is the Department concerned about the extraordinary growth of the Soviet merchant marine in the American trade?

Mr. HUFBAUER. Yes; we are concerned about the overall competitiveness of the American merchant marine which is the reciprocal side of this coin. It seems to use that when the access to ports agreement was negotiated some years ago—and of course the Treasury Department did not participate in those negotiations—it would have been contemplated that there would be some growth in the Soviet merchant marine. Whether this amount of growth was contemplated, I cannot say.

Senator INOUYE. Does it concern you that as the years go by, less and less of the foreign commerce of the United States is being carried by American-flag ships?

Mr. HUFBAUER. It does, because I think that reflects the corroding result of a system which provides greater and greater assistance to American flag carriers, coupled with more and more regulations. I cannot pretend to keep up with the very thick and rapidly expanding extent of subsidies and regulations.

Senator INOUYE. What would you suggest to beef up the American flag?

Mr. HUFBAUER. Our objectives are different than yours, Senator. We should not have illusions about this. We would like to see a system of more open competition in the liner trades as a whole, as I have testified before you on previous occasions. We think that in such a system, the American carriers would fare better than their own worst expectations.

Senator INOUYE. Do you think we can meet the Soviets in open competition?

Mr. HUFBAUER. Yes.

Senator INOUYE. How come the statistics don't bear that out?

Mr. HUFBAUER. Well, the statistics reflect a system which, from the United States side, is far from one of open competition. It is simply not a free market system at work as far as U.S.-flag carriers go or as far as most of the trades go.

It has been for many years a system exempt from the antitrust laws, a system of price-fixing conferences and a system in which very substantial subsidies are granted, but also a system in which very high-cost operating regulations are imposed.

So the present system is far from a competitive system.

Senator INOUYE. How would you control the increasing cost of operating an American ship?

Mr. HUFBAUER. I would have to, frankly, go back and look at that question more closely before giving a thoughtful answer. It does seem to me, and here I am recalling from memory, that the regulations we impose require a far higher number of men to the number of berths than is customary in competing lines. That would, of course, be an important contributing element to the higher cost of the American merchant marine.

Senator INOUYE. Do you think we should set up by law a limitation on the number of personnel per ship?

Mr. HUFBAUER. I would think if we went a direction of more open competition, one of the first things one would do is afford a right of independent action in terms of rate setting by carriers. In addition, we should seriously consider some deregulation in respect of other operating characteristics which are cost raising.

Senator INOUYE. The legislation is based upon the assumption that in an open competitive system, it would be very difficult for the United States to compete with a Soviet character.

Mr. HUFBAUER. Yes.

Senator INOUYE. You don't agree with that assumption?

Mr. HUFBAUER. No. As a general proposition I do not agree with that assumption. There are a number of industries where U.S. industry does very well in competing with the Soviets.

Now, it is possible, as I noted in my testimony that we are faced with a situation analogous to dumping under the trade laws. As you know, the dumping laws cover merchandise, not services. If I could just digress here a moment, since the Treasury handles dumping investigations, I would note that there have been relatively few dumping charges filed in respect of goods exported by communist countries.

That has not been a major problem, certainly not the problem anticipated when the Trade Act of 1974 was enacted.

Senator INOUYE. Because they don't have that much to dump.

Mr. HUFBAUER. That's right. As a general practice these economies are not engaging in large scale dumping. There are cases from time to time, but they tend to be of the minor variety compared to, let's say, what we have been dealing with in the steel situation.

I think it's possible that Soviets are in effect dumping in the controlled carrier area. But I would note that, if that is in fact the case, it represents something of a divergence from their practice in other areas of trade.

I would further note, as I have many times before Mr. Chairman, that this is a period of widespread overtonnage and a lot of rate cutting, controlled carrier or otherwise.

Senator INOUYE. At one time we controlled the high seas. In more ways than one. And much of the tonnage was carried on American-flagships. And, for that matter, most of the passengers, whether in the Mediterranean, Caribbean, the Atlantic, or the Pacific, were carried on American vessels.

Today there are none in the Caribbean, none in the Atlantic, none in the Indian Ocean, and none in the Pacific. And this is the result of open competition, so I have been told.

Maybe my history is wrong. Is my history wrong?

Mr. HUFBAUER. As I noted, the Shipping Act of 1916, contained an exemption from the antitrust laws for shipping. Since then, there has been a progressive accretion of Government involvement in the shipping industry of the United States.

And that period corresponds with the declines we are talking about. I'm not leaping to a cause and effect analysis, but I do think the record at least requires us to question whether the course we are on is one which is adding to the health of the American flag fleet.

Senator INOUYE. So your feeling is that if we reduce Government involvement, Government controls, and let the trade operate in open competition, we would be supreme?

Mr. HUFBAUER. No. But I think we would do better than we are. Supreme, no.

Senator INOUYE. We have another measure here that has merited the eye of the administration, and that deals with illegal rebating.

At the present time, the FMC can issue a subpena duces tecum to an American carrier and it would have to produce all documents necessary for investigation. You try to do that with foreign carriers, and you would get a very gracious shrug and a brushoff.

Mr. HUFBAUER. Yes.

Senator INOUYE. They have told us openly in committee—the Japanese have told us that; the Israelis have told us this; and most of the countries have laws that prohibit their officials from sharing with the United States necessary documents for the administration and enforcement of our laws.

And so we continue to prosecute our flags. That is open competition?

Mr. HUFBAUER. My recollection on this topic is not as fresh as it should be. But again, our view is that we should allow American car-

riers more freedom to set rates and so that they cannot come under the prosecutorial authority of which you are speaking.

While I cannot recite the details, I know the thrust of the bill was to close U.S. ports to foreign carriers which did not come forth with the——

Senator INOUYE. For carriers who refuse to comply with the laws of the United States.

Mr. HUFBAUER. Right.

Senator INOUYE. They do the same thing to us overseas.

Mr. HUFBAUER. The administration finds it difficult to support the approach in the bill.

Senator INOUYE. What I am trying to get at is the strange attitude that our Government has been taking over the years.

For example, just recently it was brought to our attention that a foreign national can sue an American corporation, get treble damages. But if an American or an American corporation tries to do the same thing in his country, we'd get nothing. That's fair treatment, is it?

Mr. HUFBAUER. I am not here with a brief for the whole Justice Department and the system of antitrust law in its worldwide application today.

Senator INOUYE. Well, we could go on like this for many hours. But I would like, if I may, to submit to you for your consideration several questions which involve numbers and statistics.

Mr. HUFBAUER. Certainly.

Senator INOUYE. If you could share with us your responses, I would be most appreciative, sir. Can we see your response within a week, because we are coming to the close of this session.

Mr. HUFBAUER. Certainly. We will do our best. I haven't seen the questions, but we will certainly do our best.

Senator INOUYE. Senator Griffin.

Senator GRIFFIN. Thank you, Mr. Chairman. Mr. Secretary, can you speak to the effect and impact of this legislation on the Great Lakes?

Mr. HUFBAUER. Did I hear you ask whether I can speak to the effect on the Great Lakes?

Senator GRIFFIN. Yes.

Mr. HUFBAUER. No. I cannot in detail speak to the effects on the Great Lakes.

Senator GRIFFIN. We don't have a great deal of U.S.-flag service (offered on the Great Lakes,) as I understand. I will ask some of the other witnesses to speak to that point.

Mr. HUFBAUER. I am sorry not to be able to respond to that, Senator.

Senator GRIFFIN. You have many witnesses Mr. Chairman. I guess I have no other questions.

[The statement and questions and answers follow:]

STATEMENT OF GARY C. HUFBAUER, DEPUTY ASSISTANT SECRETARY FOR INTERNATIONAL TRADE AND INVESTMENT, DEPARTMENT OF THE TREASURY

Mr. Chairman, I am pleased to discuss with you the Treasury Department's views on S. 2873, a bill to provide for the regulation of rates and charges by certain state-owned carriers in the foreign commerce of the United States.

We share the concern reflected in this bill, that certain carriers may be competing unfairly in our ocean trades by engaging in "predatory" pricing. By persistently selling shipping services below cost over a large number of routes, those carriers may be driving out U.S. vessels and capturing a larger share of the

trade. Laws to prevent unfair practices in our foreign merchandise trade are already on the books—specifically, the Antidumping Act of 1921 (as amended) and Section 301 of the Trade Act of 1974. We should also be able to deal with similar unfair competition in international shipping.

Pricing below cost by carriers—whether or not "controlled"—may well occur under current market conditions. Overtonnaging is a prominent characteristic of our ocean trades today. Oversupply of any good or service, including ocean shipping, can lead to temporary pricing below cost. Goods or services provided by state-controlled economy countries pose an additional problem since their prices are not necessarily established even in the long run by market considerations.

We wish to avoid prejudging whether controlled carriers are actually engaging in pervasive unfair pricing practices. Such practices may not be as widespread as it is frequently asserted. Nevertheless, the United States Government should have the tools available to prevent unfair competition.

The Administration is prepared to support this legislation, but would recommend certain amendments. My colleagues from other Departments have presented these to you in detail. I would like to touch briefly on aspects of particular concern to the Treasury.

First, we fear that the bill's grant of authority to the FMC to determine whether rates are "just and reasonable" is too broad and vague a standard. We also oppose FMC authority to set minimum rates during any period a rate suspension is in effect, or after the FMC has found that rates are not "just and reasonable". Finally, we believe that controlled carrier rate decreases should become effective on the same conditions as rate decreases by other carriers. Under present law, there is no waiting period for rate decreases by any carrier, but the bill as drafted would impose a 30 day waiting period selectively on controlled carriers.

We think the level of rates subject to FMC suspension should be more carefully delineated. Suspension should be more carefully delineated. Suspension should take place only when unfair practices are occurring, and not to defeat fair competition. We think the benchmark of rates charged by independent noncontrolled carriers, or 85 to 90 percent of the rate charged by the lowest-price conference operating in the same trade, represents a fair standard. Controlled carriers should be allowed to be as competitive as any other carrier in a trade. An 85 or 90 percent test is reasonable because independent carriers generally underprice conference carriers by approximately that amount. Independent carriers have been able to offer shipping services at rates below those charged by conferences and still earn a profit.

We believe that granting rate-setting authority to the FMC is not warranted. If a controlled carrier's rates are suspended or disapproved, the carrier should be able to file and operate under new tariffs as long as these tariffs meet the standard the Administration proposes. Finally, controlled carriers should not be required to file rate decreases 30 days in advance. Currently, all carriers are required to file rate increases 30 days before they may become effective (except carriers employing dual rate contracts, which must give 90 days notice), while rate decreases may take effect immediately upon filing. Controlled carriers should be able to compete on an equal basis. If a waiting period is required for the rate decreases of some carriers, it should be required for the rate decreases of all carriers.

These proposals will assure that U.S. carriers are not being victimized by predatory controlled carrier pricing. At the same time, they will allow controlled carriers to continue in the trade as long as they compete fairly. We believe that competition in shipping should be strengthened. Competition will encourage cost-effective service. This is an important consideration, especially in view of President Carter's emphasis on curbing inflation.

We believe that S. 2873, with the suggested amendments, can effectively prevent predatory pricing by controlled carriers without discouraging desirable competition in shipping.

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

QUESTIONS OF THE COMMITTEE AND ANSWERS THERETO

Question. On page 2 of your statement you say you fear that the bill's grant of authority to the FMC to determine whether rates are "just and reasonable" is too broad and vague a standard. In response to a question from this Committee,

the FMC said it has employed the following criteria in determining whether a rate is so unreasonably high or low as to be detrimental to the commerce of the United States:

Constructive costs, e.g., of complaining carrier
Effect on movement of cargo
Comparison with rate of other carriers in reciprocal or similar trade
Admittedly non-compensatory.

These criteria are all included in the criteria set out in S. 2873 for determining whether rates are "just and reasonable". Do you therefore still maintain that the criteria in S. 2873 is "too broad and vague a standard"?

Answer. Yes. As I indicated in my testimony before your subcommittee, we do not believe the FMC should make any judgments on whether rates are "just and reasonable". The government should regulate shipping less, not more. Controlled carriers should be allowed in our trades unless they are found to be competing unfairly, in effect dumping shipping, as measured by the objective standards the Administration proposes.

Question. Under S. 2873, during the suspension period the FMC could prescribe minimum rates to be charged by the controlled carrier. H.R. 9998, on the other hand, does not give the Commission authority to prescribe minimum rates, and carriers may file new rates which would take effect immediately during the suspension. Even then, however, the Commission may reject it as unjust and unreasonable. Do you believe the provision in H.R. 9998 gives the FMC adequate authority for the purposes of this legislation?

Answer. We oppose granting the FMC authority to set minimum rates. We also oppose suspension of rates found to be not "just and reasonable" as these bills define that term.

Question. H.R. 9998 would not apply to any trade served exclusively by controlled carriers. This provision is intended to assure that the bill would not restrict service in the Great Lakes where Eastern bloc carriers provide a significant percentage of the sailings. S. 2873, on the other hand, has no such provision. In your view, does this provision in H.R. 9998 raise any problem in terms of what the legislation is trying to achieve?

Answer. We would endorse an exclusion for trades served exclusively by controlled carriers. We can only support the bill as a whole, however, if the amendments proposed by the Administration are adopted.

Question. S. 2873 gives the FMC specific authority to secure access to the data of other government agencies for the purpose of determining "constructive costs". This provision has been criticized on several grounds, including one that it would discourage people from volunteering proprietary information to other agencies—particularly the Maritime Administration. Would you please comment on whether you believe this provision is necessary for the FMC to achieve the objectives of S. 2873?

Answer. We do not believe that either the FMC's regulatory authority or its ability to obtain documents from other government agencies should be expanded. On the contrary, the FMC's regulatory role should be reduced.

Question. One expert had said that without legislation such as S. 2873, U.S. firms are at a competitive disadvantage, and the Soviets can reappraise trade route penetration targets selectively, and lower managed rates further to drive out more competition. They are sophisticated enough to judge levels of political and economic tolerance in the West. This in principle could lead to the point of oligopolistic dominance of segments of shipping by consortia of foreign state carriers, leading to much higher future rates because of comparative elasticities of demand for services versus supply. Indications of the validity of this outlook are available, he said. For example, in the case of the transportation of jute from Thailand to Europe, the Soviets reportedly gained a monopolistic position because the conference lines could not keep up with the competition. The Soviets then gradually increased their freight rates which in 1977 almost reached the original conference level.

Would you please comment on this statement?

Answer. We think controlled carriers should be treated on the same terms allegations of such Soviet practices. We question whether Soviet activity of this type exists on a wide scale; in any case, the legislation proposed by the Administration would prevent unfair Soviet rate practices.

Question. On page 4, you state that controlled carriers should not be required to file rate decreases 30 days in advance, as S. 2873 would require. That requirement is in the bill because a controlled carrier desiring to engage in predatory

practices or use its greater financial resources in unfair competition could significantly distrupt the market by lowering its rates immediately without notice. On the other hand, a controlled carrier which desired to lower its rates only to meet rates lowered immediately by its competitors could do so since the bill allows immediate rate reductions by the controlled carrier on "special permission of the Commission". Isn't this authority which the bill gives the Commission adequate to meet your objection? Furthermore, in the Committee's report couldn't we say that the Committee expects the special permission authority to be granted when these latter circumstances exist?

Answer. We think controlled carriers should be treated on the same terms as other carriers. If a Soviet carrier were to violate the standards the Administration proposes, the FMC could act speedily to suspend its tariffs. The burden of proof should be one the FMC to find that a given rate is illegal; a controlled carrier should not have to request special permission to implement a rate immediately.

Question. By virtue of the definition of "controlled carrier" in S. 2873, the FMC would be able to look behind the flag of a vessel, and have the bill apply where a government controls a vessel, but operates it under a foreign flag. H.R. 9998, on the other hand, would not permit the FMC to look behind the flag of a vessel. Do you believe the provisions of H.R. 9998 are adequate to safeguard against governments evading the legislation?

Answer. The FMC should not be able to look behind the flag of a vessel. The Department of State presented lengthy testimony on this issue to your subcommittee; we defer to that statement.

Senator INOUYE. Thank you. Our next witness is Mr. Charles I. Hiltzheimer, chairman of the board, Sea-Land Service, Inc., of New Jersey.

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

Mr. HILTZHEIMER. Good afternoon, Mr. Chairman.

Senator INOUYE. Welcome, Mr. Hiltzheimer.

Mr. HILTZHEIMER. Thank you, Mr. Chairman. Members of the committee, it's a pleasure to appear before you today to voice Sea-Land's support of S. 2873. As the largest U.S.-flag container carrier, we are particularly gratified that the committee is considering action on this legislation.

For the sake of the record, I would like to point out that Sea-Land operates scheduled liner service in domestic commerce with Alaska and Puerto Rico, and in U.S. foreign commerce with countries in Central America, the Caribbean, North Europe, the Mediterranean, the Middle East, and the Far East. Sea-Land operates 58 full container vessels providing service to 137 ports in over 50 countries and territories.

Let me say at the outset that regardless of the particular trade routes served by U.S.-flag carriers, there is a clear and unqualified consensus among us on the need for action by the United States in response to the challenge which state-controlled carriers present to our country.

The huge growth and expansion of Soviet liner shipping as third flag carriers in our country's foreign commerce has been well documented. Since the previous hearings of this subcommittee, that growth has continued unabated. In addition to service to Europe, the Mediterranean, the Middle East, the Far East, Australia, and India, new Soviet services have been announced to Central America and the Caribbean. Coupled with extensive use of minibridge rail connections across both North American and Euro-Asia, the Soviet liner

fleet now spans the globe. The Soviet fleet is actively increasing its market share in all but a few of the U.S. liner trade lanes.

Fifty-seven Soviet liner vessels now call at more than 30 U.S. ports and more than 60 foreign ports in U.S. trades. Only 4 of the 60 ports overseas are in Russia, and only 5 percent of the cargo carried by these Soviet liner vessels is carried between the United States and the Soviet Union. The Soviets are essentially third flag carriers.

A list of the Soviet liner vessels now calling at U.S. ports is attached to my prepared statement.

You will note that these are not a fleet of old, outmoded vessels; 34 of the 57 ships employ modern container or RO/RO technology; 36 are less than 5 years old. This is a huge, modern, and highly sophisticated fleet operating all over the world in conjunction with Russia's naval and intelligence activities.

Based on the number of ships and deadweight tonnage, the Soviet now calls a larger fleet of ships directly at U.S. ports than any U.S. or other foreign carrier. Comparisons with the U.S.-flag carriers and foreign flag carriers and consortia in U.S. trades are also attached.

When looking at the Russians' maritime growth, the following quotes from the admiral of the Soviet Navy, Admiral Gorshkov's book, "The Seapower of the State," are worth noting; and this is a quotation:

> Shipping is an important component of a nation's seapower * * *.
>
> The goal of Soviet seapower is to effectively utilize the world ocean in the interest of building communism * * *.
>
> The maritime shipping of the U.S.S.R. has become a dominant, technically well-equipped and highly profitable branch of the national economy, which fully meets the economic needs of the nation.

For further reference, I will leave with the committee an English language translation of that chapter of Admiral Gorshkov's book which focuses upon merchant fleets. It shows clearly that the Soviet Union has a keen and thorough understanding of the merchant shipping element of seapower.

Other nations have already reacted in varying ways to this disruptions thrust upon international liner shipping by the tactics of the Soviet merchant marine. For example:

Japan, in 1977, enacted a new maritime transportation law to authorize better government control over nonconference shipping operations in Japan's foreign commerce.

The Japanese approach is to enable action to be taken against foreign enterprises in oceangoing shipping operations that employ practices which may weaken the competitive position of Japanese carriers.

Hollands' Maritime Shipping Retortion Act came into force June 14, 1977, in response to the Soviet problem and allows retaliatory actions.

Copies of the new Japanese and Dutch laws have been provided to this committee.

It has been reported that other European countries, including Belgium the United Kingdom, and West Germany, have protested the rate-cutting activities of Soviet liner carriers in their foreign commerce and are considering legislation. Last June, the European transport ministers, meeting in Brussels, called for action against Soviet

and East European state-owned carrier rate cutting. A monitoring system was considered to constantly identify the extent of the Soviet intrusion there.

Here in the United States, as you know, there has long been a recognition of the gravity of state-controlled carrier rate-cutting tactics. Sea-Land has testified in favor of previous efforts to enact legislation to remedy this problem. It is fair to note that heretofore one of the main impediments to a solution has been the administration's indecisiveness. I am encouraged by signs that such will not be the case again in 1978.

This committee requested that Sea-Land present some examples of specific cargo shipments lost by us to Soviet carriers as a consequence of their lower rates. We have complied a sampling of such commodities and I submit it with my prepared statement. These are all actual movements identified by field personnel in our Atlantic and Pacific divisions.

Some of the more striking examples include: (a) importated shoes from North Europe with 44 percent rate variance; (b) commercial household goods from the United States to Europe with a 33-percent rate variance; (c) textile machinery from the United States to Europe at a 42-percent rate variance; and (d) rattan furniture from the Philippines to the United States at a 31-percent rate variance.

Sea-Land's Atlantic division prepared a report which identifies total Soviet flag liftings between U.S.A. and North Europe in 1976. It is based upon statistics provided by the Department of Commerce, Bureau of the Census, Division of Foreign Trade. The report reflects, by commodity, the total long tons, and percentage of total, by trade lanes handled by the Soviets. I have presented a copy of that report to the committee.

Although Russian ships in our trades use various company names, all are owned and operated by the Soviet Government. When we speak of "Baltatlantic," "Fesco," "Blasco," or "Balt-Gulf," we are really speaking of one state-owned fleet. It is the largest and fastest growing such fleet in the world.

This carrier arm of the U.S.S.R. functions in close step with the Soviet Government's absolute monopolistic control over Russia's own imports and exports. Terms of sale of Soviet imports and exports are so tightly controlled by the Russians that all ocean carriage, except that allowed to other flag lines by a government-to-government agreement, is handled on Soviet vessels. Even the total marine insurance coverage is reserved for the Russians in the absence of such agreements.

Some of our fellow citizens have been deluded into believing that the current Soviet share of our trade at 3½ to 4 percent is inconsequential. It is not.

First, that 3½ to 4 percent consists, to a great extent, of high value, high revenue cargo which is the "cream" of U.S. liner commerce.

Second, the percentage is much higher on certain key trade lanes. It is about 7 percent on the U.S. Pacific-Far East trade routes and about 13 percent in trade between the United States and Germany. Furthermore, the percentage is steadily increasing.

About 5 months ago, Sea-Land testified on H.R. 9998 before the House Merchant Marine Subcommittee. That bill has since been passed

by an overwhelming House vote. At that committee's request, we submitted a lengthy and detailed analysis of rates on key Atlantic and Pacific routes for more than 100 commodities. Soviet rates ranged from 10 percent to 40 percent lower than existing conference rates. Consistently the greater variance existed in the higher valued commodities.

In the more recent study which I have provided to this committee, we identified 23 key commodities moving on Atlantic routes. The Soviets were offering rates of between 11 percent and 44 percent below the conference tariffs on those commodities. They include such high-value cargo as glassware, shoes, household effects and photo equipment.

We then looked at the other end of the scale—the lowest rated commodities such as rags and wastepaper—and found that Soviet rates were actually 40 to 70 percent higher than conference rates.

The Russians are out to "skim the cream" from U.S. liner commerce and they are doing it by cutting rates on cargo they want and raising them on cargo they don't want. This disruptive and destructive foreign governmental pricing policy, if unchecked, can only lead in the long term to drastic changes in cargo patterns and grave harm to U.S. liner shipping.

All this information leads us to the real point of the hearing today: Whether, and in what form, the United States should amend its shipping law to arrest the disruptive and damaging pricing practices of certain state-controlled carriers, especially those of the U.S.S.R.

Foreign and U.S. commercial liner carriers cannot effectively meet unfair competition from state-controlled carriers of nations with nonmarket based economies. The very nature of our free enterprise system requires that we return an adequate profit in order to remain in business over the long term. State-controlled carriers not only do not have such requirements but can call upon unlimited resources of governments who will subsidize shipping in order to achieve strategic, economic, and political objectives.

As we have testified on previous occasions, the Federal Maritime Commission urgently needs new authority to review the tariffs of the growing number of foreign state-controlled carriers and to intervene when rates are below a just and reasonable level.

The administration has proposed certain amendments to S. 2873 and has indicated that it will support the bill if so amended. Sea-Land offered detailed comments on administration proposed amendments to H.R. 9998. Rather than repeat those comments here, I would like to now state that we think that the need for legislation is so critical, and action is so overdue, that we support adoption of H.R. 9998, as passed by the House, in lieu of S. 2873.

Mr. Chairman, I would be pleased to respond to any questions you and the committee may wish to ask.

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

I believe you were here when Mr. Gary Hufbauer, the Deputy Assistant Director for International Trade and Investment, Policy of the Department of the Treasury, testified.

Mr. HILTZHEIMER. Yes, sir.

Senator INOUYE. And his testimony indicated that on an open competitive system, with less Government intervention, but strong

insistence upon the adherence to antitrust laws, that the American-flag ships could increase their participation in the foreign commerce of the United States.

Do you agree with that?

Mr. HILTZHEIMER. No, sir, I do not agree. I personally think that it is naive to consider the Soviet merchant marine as just another competitor. It is unbelievable that some could argue that private carriers in the U.S. merchant marine, whether subsidized under existing law or not subsidized as in the case of Sea-Land, could over the long term effectively compete with a merchant fleet that is the actual arm of a government whose motivation and objective goes beyond, far beyond return on investment, far beyond earning profits.

We all know that it is a combination of the need for dollar exchange, political, economic, and military, and intelligence reasons. So I just consider that the argument made by the gentleman that preceded me is invalid.

Senator INOUYE. What would be necessary to make it possible for Sea-Land to compete openly with the Soviets?

Mr. HILTZHEIMER. Well, I will give you a very candid opinion. If we were to build our ships in Polish yards—and we have received some unsolicited bids from Poland on some ships we are now planning to build—if we were to choose to build in Polish yards, and we could man our vessels with Russian seamen, or pay Russian wages to our seamen, and the Government would subsidize us in similar ways as the Russians do, which I am not even familiar with, but I know that they do, then you get the picture that, from the major capital area and cost area, you would be on a competitive basis.

The Russians are building, the Soviets are building technologically advanced vessels.

What we are doing today is, to the best of our ability, is to keep our costs, both in equipment and productivity, as low as possible on a world standard so that we can compete.

But we don't kid ourselves into thinking that we are going to be even on a cost basis with the Russians.

Senator INOUYE. Are you being subsidized at the present time?

Mr. HILTZHEIMER. No, sir.

Senator INOUYE. Not at all?

Mr. HILTZHEIMER. No, sir.

Senator INOUYE. Do you believe that from the Russian standpoint, the rates they charge are cost compensatory?

Mr. HILTZHEIMER. That is a very difficult question, because we can't accurately predict what the Russian costs are in every instance.

I think that our business is a very incremental business. That is, if you have so many available spaces and you are sailing a vessel across the ocean, the cost is pretty well fixed. And so in order to fill that vessel and all those spaces, you can logically argue that rates can be reduced until you get the vessel full, and then you start upgrading.

This is a practice that is not unusual for Western trading nations or anyone in the business.

However, we see a different pattern here. The Russians started with antiquated vessels, more of a small general cargo nature right after the United States agreed to open the ports in 1972 to Russian liner

ships which was a result of the grain agreement. And they started handling steel and low-rated commodities at very reduced rates until they were able to make some penetration. Then they replaced those vessels in a few years with semicontainer ships. And then, a few years later, with modern container ships and RO/RO ships.

The whole pattern has been to make a fast penetration of that segment of markets which they chose to penetrate. And our studies have shown that, in many instances they have not wanted and they have discouraged the low-rated commodity and they have encouraged penetration of the high-rated commodity by reducing the rates.

Again, I don't think it is a question of saying that we want to be protected from foreigners who come into U.S. trade. That's not the case at all.

If you look at the statistics, the foreigners dominate the U.S. trade today. We are not asking for protection from that. What we are asking for is a recognition that when a government of a large country such as Russia, which has very little export of its own of a general cargo nature, decides to go out and penetrate the cream trades of the world, and the U.S. foreign trade is the largest and most lucrative, and they decide to do that by making multiple sailings into all of the ports and setting up agencies in our country and coming forth with a pricing policy that is undoubtedly designed to make a rapid penetration of our market, then I think we have to ask ourselves the question: Are we going to allow this to create the instability that it is obviously going to create and eventually weaken the U.S. merchant marine?

That is the question before us.

Senator INOUYE. If the Congress or the Government refuses to or is unable to assist the industry with legislation of this sort, what alternatives would you have? By "you" I mean Sea-Land.

Mr. HILTZHEIMER. Well, I suppose the only alternative is—part of our strategic planning today. And that is to make sure that every vessel we build and every piece of equipment we purchase, we get it at the best price, competitive price that is possible to procure it in relation to its quality, that we build into our new vessels the lowest operating cost over the long term that we possibly can achieve. Good fuel economy and so on and so on. And then, as far as our land operations, we want to find ways to more effectively manage and get our productivity up.

It is just a case of trying to make our company a more productive, better low-cost carrier, because we are competing in a world environment and not just with American companies.

Senator INOUYE. In other words, you say you will be operating foreign bottoms with foreign personnel?

Mr. HILTZHEIMER. Well, there is no doubt that this is an alternative that we have got to seriously consider. There is no question about it.

Senator INOUYE. And it is your view that under the present circumstances it is not posible under the open competitive system to compete with the Russians with American bottoms and American personnel?

Mr. HILTZHEIMER. Well, not if you are going to charge the same rates they charge and expect to get any respectable return so that you

can eventually replace your assets. You cannot do that at the rates they are charging today.

Now, if they are successful, as they have been in recent years, of continuing to grow as rapidly and fill up their vessel space, I would expect their rates to begin to come up, to become higher.

Then, if they were ever in the position of dominating certain trade lanes, then I would expect their rates to be substantially higher.

This is generally the pattern.

Senator INOUYE. With your present equipment and present personnel, if you charged similar rates as the Soviets, penny for penny, what sort of report would you be making to your stockholders?

Mr. HILTZHELMER. Well, it would be hard to give you an honest specific answer without making a calculation on a certain mix of cargo on a given vessel and then annualize that.

But if you took a mix of percent over the current rate today, let's say 15 to 20 percent over the current rate today, and applied it against what Sea-Land is handling, then it would—every penny of that reduction would fall out of your profit line because it is an incremental business.

So I would have to just answer in a general sense and say that you would be making a very, very poor report to your stockholders that would be hard to explain. And it would be hard for them to justify adding any capital to our business.

Senator INOUYE. And you would get fired.

Mr. HILTZHEIMER. Well, they should fire me; yes, sir.

Senator INOUYE. We have a whole stack of questions we would like to submit to you. These are statistical type questions.

Mr. HILTZHEIMER. All right.

Senator INOUYE. I hope that your staff can look this over and give us a response within a week.

Mr. HILTZHEIMER. Yes, sir. Be glad to.

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

[The material referred to follows:]

TABLE 2.—U.S.S.R. VESSELS CALLING U.S. PORTS—MARCH TO MAY 1978

Year built and vessel name	Type Vessel				Capacity		Service		
	C/S	P/C	Ro/Ro	General	Speed	TEU	DWT	West coast	Atlantic and gulf coast	West coast/Australia and Japan
1975 Khudozhnk Saryan	X				20	825	14,490	X		
1976 Khudozhnik Ioganson	X				20	825	14,490	X		
1976 Khudozhnik Zhukov	X				20	825	14,490	X		
1977 Khudozhnik Prorokov	X				20	825	14,490	X		
1973 Putivl		X			18½	368	12,000	X		
1973 Pestovo		X			18½	368	12,000	X		
1973 Pskov		X			18½	368	12,000	X		
1974 Kapitan Bakanov		X			16	368	14,254	X		
1975 Pavlodar		X			18½	368	12,000			X
1973 Pervomaysk		X			18½	384	12,000			X
1974 Privolie		X			18½	368	12,000			X
1974 Pravdinsk		X			18½	368	12,000			X
1968 Alexandr Serafimovich				X	18		14,390	X		
1970 Alexandr Vermishev				X	10		14,390	X		
1969 Alisher Novoi				X	18½		15,100	X		
1968 Anton Chekov				X	18½		14,390	X		
1969 Gavril Derzhavin				X	18½		14,390	X		
1970 Ivan Kotlyarvesky				X	18		15,145	X		
1969 Makhtum Kuli				X	18½		15,100	X		
1971 Gamzat Tasdasa				X	18½		15,145		X	
1970 Konstantin Paustovsky				X	18½		15,145		X	
1969 Nikolay Karamzim				X	18½		15,145		X	
1968 Novikov Prlboy				X	18½		15,145		X	
1970 Ovanes Tumanyan				X	18½		15,145		X	
1968 Sergey Esenin				X	18½		15,145		X	
1968 Suleyman Stalsky				X	18½		15,145		X	
1968 Vladimir Mayakovsky				X	18½		15,145		X	
1969 Vladimir Korolemko				X	18½		15,145		X	
Subtotal—United States/Far East service: 4 cellular container vessels, 8 part-container vessels, 16 general czrgo vessels	4	8		16		6,260	395,000	15	9	4

								Services: U.S.–Europe–Mediterranean–Mid East					
								U.S. gulf/ Europe	U.S. Atlantic/ Europe	Great Lakes/ Europe	U.S. Atlantic Mediter- ranean	U.S. gulf/ Mediter- ranean	U.S. Atlantic gulf/ Mid East
1975	Petrodoverts	X		20	368	12,050		X					
1973	Palekh	X		20	368	12,050		X					
1974	Warnemunde	X		20	368	12,050		X					
1977	Sovetskiye Profsoyuzy	X		20	388	13,500		X					
1977	Sk. Golubkina		X	20	798	18,460		X					
1976	Sk. Konenkov		X	20	798	18,460		X					
1976	Sk. Vuchetich		X	20	798	18,460		X					
1975	Magnitogorsk		X	22	1,368	21,000		X					
	Subtotal—U.S. gulf/Europe	4	4		5,254	126,030		8					
1974	Polessk	X		20	368	12,050			X				
1975	Primorsk	X		20	368	12,050			X				
1976	Dekabrist	X		20	368	11,817			X				
1975	Walter Ulbricht	X		20	368	11,817			X				
1974	N. Krupskaya	X		20	368	12,050			X				
1977	Khudozhnik Pakomov	X		20	825	14,490			X				
	Subtotal—U.S. Atlantic/Europe	1	5		2,665	74,274			6				
1970	Nina Kukoverova		X	14		5,000				X			
1956	Nina Stanislavsky		X	14		6,000				X			
1975	Kapitan Panfilov		X	18		14,130				X			
	Subtotal—Great Lakes/Europe		3			25,130				3			
1974	Nikolay Ananjev	X		18	342	13,500					X		
1973	Vasily Klochkov	X		18	342	13,000					X		
1975	Ivan Shepetkov	X		18	342	13,500					X		
1973	Salvador Allende	X		18	368	12,000					X		
1975	Ivan Moskalenko	X		18	388	13,500						X	
1975	Nikolay Maksimov	X		18	258	13,500						X	
1975	Pyotr Emstov	X		18	388	13,500						X	
1973	Geroi Panfilovtsky	X		18	388	13,500						X	
	Subtotal—U.S./Mediterranean	8			2,816	106,000					4	4=8	
1970	Marneuli			16		[1] 12,000							X
1970	Ernst Thalmann			16⅔		12,700							X
1970	Romen Rollan			17		9,300							X
1970	Karl Liebknecet			16⅔		12,600							X
	Subtotal—U.S./Mid East					46,600							4
	Overall total (57 vessels)				16,973	773,000							

COMPARISON OF THE SOVIET STATE-OWNED FLEET TO U.S. PRIVATELY OWNED FLEETS (LINER VESSELS CALLING AT U.S. PORTS)

	Vessels	Deadweight tons
Soviet shipping	57	773, 000
Lykes Brothers	41	628, 600
Farrell Lines	40	598, 000
Delta SS Lines	24	395, 400
APL	23	442, 500
States SS Co	19	170, 900
Sea-Land Service, Inc	16	373, 800
U.S. Lines	16	289, 000
Waterman SS Corp	16	305, 300
Moore McCormack Lines	13	175, 100
Central Gulf Lines	8	175, 100
Prudential Lines Inc	3	90, 900

COMPARISON OF SOVIET STATE-OWNED FLEET TO FOREIGN-FLAG LINES AND CONSORTIA (LINER VESSELS CALLING AT U.S. PORTS)

	Vessels	Deadweight tons
Soviet shipping	57	773, 000
Japan consortium:		
Japan Line	6	134, 900
K Line	4	110, 100
Mitsui	5	155, 000
Nyk	7	149, 100
Showa	2	44, 400
YS Line	4	70, 000
Total	28	663, 500
Barber Line	28	456, 800
Hapag-Lloyd	22	457, 400
Maersk Line	14	315, 600
Orient Overseas Line	13	231, 600
Hoegh Line	12	367, 400
Zim Line	12	259, 300
Evergreen Line	11	189, 900
Jugolinija	11	101, 800
Atlantic Containerline	10	192, 600
Hellenic Line	10	121, 700
Polish Ocean Line	6	67, 800
Dart Line	4	117, 100

Cargo and Merchant Fleets—Components of a Nation's Sea Power

(By Gorshkov, S. G.)

(Source: Morskaya Moshch' Gosudarstva [The Nation's Sea Power], Moscow, Military Publishing House of the U.S.S.R. Ministry of Defense, 1976. pp. 51–81.)

Shipping is an important component of a nation's sea power; it has been one of the most important forms of transportation since the earliest times. At present, it accounts for 75–80% of international shipments. It is the most economic form of transport, in view of the large carrying capacity of ships, the relatively small capital investments required for equipping the sea lanes, and the extremely low unit expenditure of power required to transport goods at a given speed. For these reasons, the net cost of shipping by sea is 40–45% below the cost of shipping the equivalent material by rail and more than 20 times cheaper than by road [1].

As production has grown worldwide, the need to move these products both within the boundaries of a given country and between different countries has increased as well. It is completely natural for each nation to try to make these shipments using its own resources. This makes it necessary to have a merchant fleet to ensure economic and political independence of foreign trade and to make it possible not only to avoid spending foreign currency on shipments by sea, but even under certain conditions, to make considerable profits. For many of the so-called maritime nations of the world, with a well-developed merchant fleet, the financial gain from shipping goods by sea is an important source of income for covering the balance-of-payments deficit. As V. G. Bakayev, who headed the Soviet navy for a

long time, writes in his book "SSSR na Mirovykh Morskikh Putyakh" [The USSR in the Sea Lanes of the World], ". . . a large capitalist country like England, which routinely suffers from a negative balance of trade, makes up this deficit to a large extent from its profits from using approximately half of its fleet to carry the cargo of foreign shippers.

"The shipping of Norway, Denmark, Greece, Sweden and several other countries plays an equally important role in the balance of payments. For example, the annual net profit of the Norwegian merchant fleet is in excess of $700 million. Profits from shipping make up 17–19% of the balance of payments of Sweden . . ." [2].

The volume of shipments by sea continues to increase throughout the world. In the early 1950s, ships carried about 600 million tons of cargo annually between countries and continents; in 1970, they carried 2.4 billion tons.

If we also recall that the merchant fleet is practically the only form of transport which can carry enormous quantities of goods between continents, and the profits from shipping play an important role in the balance of payments of many nations, its enormous economic and political importance becomes evident.

The merchant fleet is also considered by many countries not only as an important economic tool, but also as an important reserve for the navy in the event of war. For example, the United States Navy considers the merchant fleet to be a component part of the armed forces in wartime. In this connection, the construction of the U.S. merchant fleet and its development reflects not only economic factors but also the need to solve purely military problems which would unavoidably be faced by the merchant fleet in time of war. This means keeping the military and economic potential of the nation at the necessary level by ensuring regular shipments of strategic raw materials and finished products, providing military bases located on the territories of other countries with all manner of equpiment, as well as the transport of troops and military hardware across the seas and oceans.

The British journalist David Fairhall, in his book "Russia Yearns for the Sea" write very frankly that when it builds new merchant vessels, ". . . the American government spends money on fulfilling 'special military requirements', which make it possible to convert a ship rapidly for military purposes as an auxiliary vessel in the U.S. Navy.

"During the post-war years, the U.S. Government has paid ship-owners nearly $80 million annually on the average as a subsidy. In 1960, it subsidized half of the 500 or so U.S. ships used in foreign trade . . ." He goes on: ". . . If a merchant vessel is built with Government subsidies, the Navy Department has the right to require that the ship fulfill those military characteristics, according to a 1936 law, which guarantee that the vessel is 'capable of serving as an auxiliary Navy vessel'." "American commentators on Soviet sea power," this British journalist goes on, "love to point out how the new Russian merchant ships can be converted for military purposes in the event of war. However, these same commentators forget to remind their readers of the completely obvious nature of the measures taken by their own governments in this regard."

He then goes on to outline these measures: ". . . The military characteristics which a merchant vessel must have include the following: lifting equipment for heavy loads; provisions for loading machinery directly onto the ship and unloading it on the dock; additional facilities for desalination of seawater to provide troops with water; providing backup control equipment to make them less vulnerable to damage. If the U.S. Maritime Commission decides that there is no commercial need for such equipment, the Government pays for it. For example, if the cost of building a cargo vessel is about 13 million U.S. dollars, $90,000 may may be spent for equipment of a military nature."

It has been reported in the press, for example, that the liner "United States", which can carry 2,000 passenger, could be rapidly converted for transporting a division numbering 14,000 men.

American military experts emphasize that when landing forces are to be transported, planning must be based on the following ratio: each soldier in a modern mechanized army, with full military equipment, requires 4 tons' displacement and another 2 tons for every month that he is to be supplied.

As we know, cargo vessels are widely used for supplying military vessels at sea with equipment and supplies. Therefore, the navies and merchant fleets of many countries have recently placed considerable emphasis on developing means and organizations for transferring cargo at sea, as well as refueling boats and ships at sea while the vessels are under way. The press has stated that tankers planned

by the United States (with nuclear power), having a displacement of 31,400 tons, must be able to transfer 2380 m^3 of fuel per hour to another vessel at sea, while traveling at 15 knots.

Hence, the merchant fleets of the capitalist countries are developing with military needs in mind, as an important way of supplying naval fleets, and for transporting large contingents of troops, their equipment and supplies.

Hence, the merchant fleet must be viewed at a universal component of the sea power of any country which plays an important role in both peace and war.

In this connection, the development and utilization of cargo fleets of various countries in peacetime must always be viewed in the light of the economic and political struggle in the international arena which continue to be a constant feature of antagonistic social systems. This struggle, which can be characterized as a battle for influence over the world sea lanes, is steadily intensifying as worldwide production grows, and more and more trade and economic agreements are forged between nations. The problems of national and international merchant shipping continue to become larger and more acute.

All of this has resulted in a rapid growth of flag fleets.[1] While in 1950 there were 30,852 flag-fleet vessels, as of July 1, 1973, 59,606 were registered. The total gross tonnage of these ships has increased nearly threefold in 20 years, and now amounts to 289,927,000 registered tons.

At the present time, according to Lloyds' dato, 110 nations have flag fleets. The total investment in shipping by capitalist countries as of July 1, 1973, was 264.2 million registered tons compared with 224 million registered tons on July 1, 1971; this represents an increase of nearly 18 percent in 2 years.

Table 6 shows the concentration of tonnage in a small number of countries. This, six capitalist maritime powers (Liberia, most of whose fleet belongs to American and Greek shipowners, Japan, Great Britain, Norway, Greece and the United States) account for nearly 55 percent of the total gross tonnage.

The development of the world merchant fleet following World War II, and especially during the last 10 to 15 years, took the form of an increase in the speed of vessels, their size, tonnage and specialization.

TABLE 6.—NUMBER AND GROSS TONNAGE OF VESSELS IN WORLD FLAG FLEETS BY COUNTRIES FOR 1974 [1]

Country	Number of vessels	Gross tonnage, registered tons
Liberia	2,332	55,321,641
Japan	9,974	38,707,659
Great Britain	3,603	31,566,298
Norway	2,689	24,852,917
Greece	2,651	21,759,449
USA	4,086	14,429,076
Panama	1,962	11,003,227
Italy	1,710	9,322,015
France	1,341	8,834,519
West Germany	2,088	7,980,453
Sweden	785	6,226,659
Holland	1,358	5,500,932
Spain	2,520	4,949,146
Denmark	1,349	4,460,219
India	451	3,484,751
Cyprus	722	3,394,880
Singapore	511	2,878,327
Canada	1,231	2,459,998
Brazil	471	2,428,972
Somalia	276	1,916,273
Total	61,194	311,322,626

[1] Table 6 does not present data in accordance with the rank of the countries. These data have been included in the final total.

Cargo vessels have continued to increase in size and capacity. Thus, in 1968 there were 12 "super" ships and especially tankers with a gross tonnage of 100,000 registered tons or more; in 1973 there were 293 such vessels. It should also be pointed out that while the group of vessels with a gross tonnage of up to 4,000 registered tons, intended primarily for shipping in limited areas, makes up more than 65 percent of the total cargo shipping, the total gross tonnage of

[1] Here and in the following, statistical data on world shipping will be based on Lloyds' Handbook, in which the term "flag fleet" includes both cargo (merchant) and fishing fleets.

these vessels makes up only 13 percent of the total tonnage in the world cargo fleet.

The increase in the average size of ships has been accompanied by a rapid rejuvenation of the fleet, resulting in a considerable improvement in its quality. The rejuvenation process is clearly shown in table 7.

Hence, in 1973 more than 62 percent of the gross tonnage consisted of vessels less than ten years old. At the present time, the largest percentage as far as number and gross tonnage is concerned consists of vessels which have not been in operation for more than 4 years.

One of the most important qualitative changes that has been taking place in merchant vessels is the increase in speed (see table 8). During World War II, most merchant vessels did not travel faster than 8–10 knots; now they can travel as rapidly as 14–16 knots and many container ships travel at 22–24 knots.

On the average, over the last 30 to 35 years, the speed of the "mean statistical" vessel in the world merchant fleet has increased 60 to 70 percent, while the vessels of different types have not shown a universal tendency toward an increase in speed. The speed of tankers has increased comparatively slowly. During the prewar years, oil and refined oil products could be transported by sea at an average speed of 11 knots. Modern tankers transport their loads with an average speed of 16 knots, and only a few fast tankers, which can be counted on the fingers of both hands, travel at about 19 knots.

TABLE 7.—CHANGE IN DISTRIBUTION OF GROSS TONNAGE OF WORLD FLAG FLEETS BY AGE OF VESSELS

[Registered tons in thousands]

	1951		1957		1963		1971		1973	
Age of vessels	Registered tons	Percent	Registered tons	Percent	Registered tons	Percent	Registered tons	Percent	Registered tons	Per cent
Less than 5 yr	12,427	15.3	23,080	22.1	60,806	31.3	91,750	37.1	111,628	38.2
5 to 9 yr	40,667	49.4	16,130	15.4	44,035	22.7	55,074	22.3	70,280	24.3
10 to 14 yr	6,141	7.5	36,668	35.1	33,949	17.7	43,292	17.5	43,997	15.3
15 to 19 yr	2,569	3.2	10,380	10.0	17,952	9.2	24,653	10.0	32,600	11.2
20 to 24 yr	5,446	6.7	3,124	3.0	19,096	9.8	11,120	4.5	13,660	4.7
Over 25 yr	14,500	17.9	15,075	14.4	18,314	9.3	21,313	8.6	17,762	6.3
Total	81,750	100.0	104,457	100.0	194,152	100.0	247,202	100.0	289,927	100.0

TABLE 8.—SPEED OF VESSELS OF DIFFERENT TYPES

[In knots]

Vessel	Prewar years	1950's	1960's
All-cargo	10–11	12–15	18–20
Container	13–15	14–20	20–26
Tankers	10–11	14–15	15–17
Factory ships	8–10	12–14	15–17

The most pronounced tendency toward an increase in speed can be seen in liners. Until recently, these ships did not travel faster than 16–18 knots. However, in 1970 the world merchant fleet contained about 230 dry-cargo vessels which would travel faster than 20 knots. Cargo liners now travel at 20–24 knots, and container ships at 22–27 knots. The average speed of container ships now under construction will be 35% greater than the same parameter for conventional vessels now being built, intended for carrying general cargo. The American Container Company has ordered construction of eight container ships to be able to travel at 33 knots.

Diesel engines have become predominant in the merchant shipping trade. The power of these marine diesels is continuing to increase. Only 15 years ago, 10,000 horsepower was the limit for a single unit. Now it is more than 40,000 horsepower; at the same time, there has been a 20 percent crease in unit consumption of fuel and the efficiency of these diesels is now 42%. In the near future, all marine power plants up to 25,000 horsepower will be diesels.

A comparatively new type of main engine for cargo vessels is the gas turbine. There are only a few gas turbines at the present time and most of them are in experimental ships. However, this type of engine holds out considerable promise for extensive introduction in cargo shipping due to its considerable economy and the ability to produce compact units with considerable power.

The increase in the size of ships and their speeds means that power plants of increasing capacity must be built to match them.

In the power range from 60,000 to 150,000 horsepower it appears that nuclear power plants will be used. At the present time, the USSR, USA, and West Germany are operating nuclear-powered vessels. The United States is in first place as far as the construction of nuclear power plants by capitalist countries is concerned. However, work on the construction of nuclear ships has still not gone beyond the experimental stage.

As we can see, the influence of scientific and technological progress is making itself felt to an increasing extent in the field of merchant shipping; it is being employed by developed countries which have a powerful shipbuilding capacity and a high industrial potential. As a result of this influence and because of the ever-increasing needs of many countries for massive cargo shipments by sea, there have been some very interesting developments (from the military and economic viewpoint as well) in marine cargo vessels of new types being built by the world merchant shipbuilding industry.

These include in particular vessels which are wholly or partially equipped for carrying cargo in containers. There are container ships or cellular container ships, in which all of the cargo space consists of cells for carrying and holding containers, semicontainer carriers, in which some of the holds or only one hold has cellular construction (if necessary, they can also be used as container vessels, or as ordinary all-cargo vessels) and finally, combination ships which are both roll-on, roll-off vessels and lighter ships.

In 1970, container shipments were as follows: USA—14.3 million tons, Great Britain—9.7 million tons, Japan—4.8 million tons, Holland—3.2 million tons, Belgium—2.9 million tons, West Germany—2.1 million tons.

On July 1, 1973, 394 modern container vessels with a total gross tonnage of 5,899,000 registered tons were in operation throughout the world; most of these were accounted for by the U.S.A. with 104 ships, Great Britain with 92, Japan with 37, and West Germany with 48.

Approximately 60 percent of the container ships are used on two main routes: Europe-North America and USA-Far East and Southeast Asia. The rest are used on routes between Europe and Australia, North America and the Mediterranean, the USA and Australia, and other routes.

It should be pointed out that most of the military cargoes are also shipped in containers as indicated by the experience with supplying U.S. forces in Vietnam.

There has been a considerable development of ships employing a horizontal approach to loading operations (the RO-RO type). In early 1971, there were more than 130 such vessels in the world fleet, of which about 80 percent have been built in the last 4 years. They had a deadweight of 14,000 to 23,000 tons and traveled at 20–25 knots. These ships are usually equipped with stern gates. In addition, in some instances bow gates and side ports are provided to speed up loading operations. Special features of these vessels include bow and stern controls (for large tonnage ships), suspended decks for automobiles (interdecks), absence of cargo-handling equipment, as is characteristic of conventional cargo vessels, and a considerable degree of automation.

Vessels with horizontal cargo-loading facilities are particularly effective as military transports, since they can handle military equipment and containers. The efficiency of the cargo-handling operations is higher than for container ships, since they can take on containers located on the dock at the same time as they are unloading equipment. One large shortcoming of roll-on, roll-off ships, which consisted in their having to be moored only at the stern, has been eliminated in RO-RO ships of the "Paralla" type. These ships have their ramps mounted at an angle to the center line of the vessel, making it possible to dock in the usual fashion with the side of the vessel against the pier. Hence, the role of such vessels in military transport has increased even more.

Such specialized vessels as lighter ships, which can also be used extensively for military purposes, have also become widespread.

The first lighter vessels began to appear in the United States in the late 1960's, with the construction of LASH-type vessels. They were intended to carry shallow-draft lighters weighing 500–1000 tons. As on July 1, 1973, 20 lighter vessels of

various types with a total tonnage of 565,000 registered tons were in operation; of these, 16 belonged to the United States, two to Norway, and one each to Holland and West Germany.

Every lighter vessel is a multipurpose dry-cargo vessel. It can carry not only lighters but containers, wheeled vehicles, helicopters, cargo in crates and on pallets, and bulk cargo.

Modern American lighter ships of the "See Bee" type can transport a motorized rifle brigade (formerly, five transports of the "S-3" type were required). Troops can be landed on poorly equipped coasts.

Special basins and coastal facilities have been built to receive and unload lighter vessels in many ports throughout the world (at Los Angeles, San Francisco, Houston and Galveston in the United States and at Rotterdam, Bremerhaven, and Barcelona in Europe). Specialists in the field are of the opinion that the use of lighter carriers will make it possible to increase the efficiency of shipping operations by comparison with conventional cargo vessels by a factor of 5–10, reducing the time the vessels spend in port and the number of facilities required for transshipment, and also to cut back on the capital investment required for the building of port facilities, reducing the total expenditure on cargo-handling operations.

The changes taking place in the tanker fleets are very interesting. Tankers play a very important role in providing countries with raw materials and energy resources, as well as supplying armed forces with fuel. The average annual growth rate for the world tanker fleet from 1965 to 1971 was 10.4 percent. In 1970, international shipments of liquid fuel rose to 1,370 million tons.

The gross tonnage of the ships in the world's tanker fleet in 1973 was 115,365,000 registered tons, in other words 39.8 percent of the gross tonnage of the entire cargo fleet. Most of the tankers are registered in Liberia (29.4 million registered tons), Japan (14.2 million registered tons), Great Britain (14.1 million registered tons), and Norway (11.2 million registered tons).

More than 60 percent of the tonnage making up the world tanker fleet consists of tankers of 50–372 thousand tons deadweight. A definite trend in the development of the tanker fleet consists in the increasing importance of the role played by large bulk oil carriers with 100–300 thousand tons deadweight.

The maximum tanker size increased 17-fold in the last 20 years. This is because the operation of high-tonnage vessels has proved to be more economical. For example, the cost of shipping petroleum aboard a tanker with a tonnage of 100,000 tons for a distance of 10,000 miles is only 31 percent of the cost of shipping it over the same distance aboard a tanker with a tonnage of 10,000 tons. It is no accident, therefore, that there has been a sharp increase in the number of orders for tankers with capacities of 250–300 thousand tons, although their share of the number of tankers currently under construction is still small, amounting to only 1.3 percent.

There are important reasons which limit the construction of large tankers. In particular, they include the inability of ports to receive them, owing to shallow depth and the danger of serious pollution of the area in the event of an accident or the loss of such a supertanker.

Due to their considerable mass and high inertia, even at speeds of 14–16 knots and with a steering system, they are poorly maneuverable. To slow them down, special parachutes have even been developed in Japan which reduce the distance a ship will travel after its main engine has been shut down.

Gas carriers have become very important in the cargo fleet; they are designed to transport compressed petroleum gas and natural gas. On July 1, 1973, 374 gas carriers with a gross tonnage of 2276 thousand registered tons were in operation.

The largest vessels of this class have a capacity of up to 71,000 cubic meters. However, their average capacity is on the order of 6500 cubic meters. At the present time, vessels are under construction which will have a capacity of 95,000 m^3 and will carry liquefied petroleum gas; others, with a capacity of 125,000 m^3, will carry natural gas. The main routes for transportation of these compressed gases are as follows: Algeria—France, Great Britain, the United States, Italy, Spain; Libya—Italy, Spain; Alaska—Japan, USA.

Let us briefly examine the principal data which characterize the cargo fleets of several maritime capitalist powers.

The merchant fleet of Japan is in second place in the world in terms of gross tonnage of its ships, and 86% of the total capacity of the Japanese merchant fleet consists of ships that have been in service less than ten years. The rapid growth of the Japanese merchant fleet in recent years has resulted from the

support which the Japanese government gives to shipbuilders and shipping companies.

Since 1956, the shipbuilding industry of Japan has taken first place in the world in gross tonnage of merchant vessels under construction. Estimates indicate that if Japan were to utilize its production capacity to the full, it could build cargo vessels with a total tonnage of more than 9 million registered tons each year.

As Japanese specialists emphasize, in the event of a rapid increase in their country's requirements for military vessels, such an industrial base for shipbuilding could build ships of all classes with a total displacement of up to 300,000 tons annually while simultaneously constructing merchant vessels with a total gross tonnage of 4–4.5 million registered tons.

Despite the fact that Great Britain is still one of the leading maritime powers, its share of merchant shipping has steadily decreased. The gross tonnage of the vessels in the merchant navy during the period from 1968 to 1972 rose by more than 5 million registered tons, but its share of the world cargo fleet shrank from 11.6 to 10.6 percent. The British merchant navy at the present time is in third place in the world in terms of gross tonnage, lagging behind the merchant fleets of Liberia and Japan. The increase in the number of ships in the merchant navy of Great Britain corresponds to the average world level, i.e., 60 percent consists of ships less than 10 years old.

In recent years, there has been a considerable increase in the tanker fleet of Great Britain, with 40 percent of the gross tonnage of the ships in the British merchant navy consisting of tankers. There is a total of 600 ships in the tanker fleet, 50 of which are supertankers; the largest British tanker, "Universe Ireland", has a deadweight of 326,000 tons.

Great Britain has a well-developed shipbuilding industry with a production capacity capable of turning out cargo vessels at the rate of up to 3 million registered tons per year, and could also build military ships of all classes in large numbers.

The Norwegian merchant fleet is in fourth place in the world. It is of primary importance for the economy of the country: 90% of the tonnage carried by its vessels is in transit between the ports of other countries, 8 percent between Norwegian ports and harbors in other countries, and 2 percent between its own ports.

About 80 percent of the gross tonnage of the Norwegian fleet consists of vessels less than ten years old. The fleet consists mainly of high-tonnage vessels, and there is no doubt that the capacity of its ships will increase in the future, especially since Norway is a nation with a highly developed shipbuilding industry.

The Norwegian shipbuilding industry numbers about 150 enterprises which build ships with a total tonnage of up to 500,000 registered tons each year.

As of July 1971, the Greek merchant fleet numbered 2,241 vessels with a total gross tonnage of 15,329,000 registered tons (5.8 percent of the world tonnage), including 304 tankers (5,205,000 registered tons). In addition, Greek shipowners own about 1250 ships (18 million registered tons) registered under the flags of other countries.

On July 1, 1973, the Greek merchant fleet was in fifth place among the cargo fleets of the world, and had increased by 4,166,000 registered tons in two years.

The Greek shipbuilding industry is poorly developed, and most of the vessels in its fleet are being built in foreign shipyards.

The United States of America has a merchant marine which is in seventh place among world merchant fleets. According to the Law on the Merchant Marine which was passed by the United States Congress in 1936, the United States must not become dependent upon foreign shipowners and shipyards, but must have its own merchant marine, consisting of ships built in the United States, belonging to U.S. citizens, and manned by U.S. crews. Such ships must provide all coastal shipping and a considerable share of foreign cargo. In wartime, they could be used by the armed forces as auxiliary vessels.

During World War II, the United States built a very large merchant fleet. In 1945, its gross tonnage amounted to about 59 percent of the tonnage of the merchant fleets of all of the capitalist countries, but this fleet was poorly balanced and was marked by low operating parameters. Therefore, in 1946 the United States began to sell off some of these ships, mothball others, and scrap still others.

A new law on the merchant marine and the shipbuilding program undertaken in 1970 was aimed at enabling the United States to recover its former maritime

power in the competition for handling world shipping cargo. As of July 1, 1973, the United States merchant marine has vessels amounting to a gross tonnage of 14,312,000 registered tons, of which 5 million registered tons were in the mothball fleet. It should be pointed out that most of the merchant fleets of Liberia and Panama belong to American shipowners. They use the "flags of convenience" of these countries to extract excessive profits by paying minimum wages and hiring low-paid crews whose salary levels are beyond the control of the United States unions.

Approximately 60 percent of the gross tonnage of the United States merchant marine consists of ships with a useful life of more than 20 years. The U.S. Government has launched a 10-year program to replace its fleet, and intends to build 300 ships. The new vessels will be designed with an eye toward using them for military purposes on the basis of the experience gained in the Vietnam War, when the merchant marine supplied a large share of the military supplies. It is planned in particular to concentrate on building tankers, lighter vessels, and multipurpose ships.

The United States has a well-developed shipbuilding industry, whose productive capacity in the event of mobilization would be able to turn out military vessels of all classes with a total standard displacement of about 1.7 million tons and cargo vessels with a total capacity of about 16 million tons annually.

The cargo fleet of West Germany is in 11th place. Most of its ships (80 percent) are less than 10 years old, and an insignificant percentage consists of ships that have been in operation for more than 25 years. West Germany rebuilt its shipbuilding industry quite rapidly during the postwar years. At present, there are more than 50 shipbuilding companies in the nation. There are about 80,000 persons employed in the shipbuilding industry. They have built container ships, high-tonnage tankers, and an atomic freighter. The West German shipbuilding industry is concentrated in a few cities—Hamburg, Bremen-Bremerhaven, Kiel, and Emden account for 88 percent of the production capacity.

The largest container ships are built by the Howaldstwerke-Deutsche Werft AG shipyards. Container ships designed to operate at high speed (up to 33 knots) are built in the yards of AG Weser and Rheinstahl-Nordseewerke.

An analysis of the date published in the foreign press indicates that the following trends are under way in the development of the world cargo fleet in the near future.

Dry-cargo vessels will continue to be supplemented by the large fast container ships without their own unloading facilities for operation on lines with stable cargo traffic, and by smaller and lower-speed container ships with cargo-handling cranes to unload containers at ports without the proper equipment. Third-generation container ships with a gross tonnage of up to 40,000 tons are becoming increasingly numerous; they can carry 2,000 or more 20-foot containers. A further increase in container ships will be limited not so much by the technical possibilities as by the competition and by the sizes of the canals and locks.

For operation on short lines, linking regions with a well-developed network of highways, trailer ships will be built with horizontal provisions for loading and unloading (the so-called roll-on, roll-off ships).

To ensure through-transit between ocean and river ports, LASH vessels will be built. They will be used extensively for transshipment at sea, as a way of reducing the time spent by vessels in port. The "ultimate" version of such ships may be the sectional vessels with a completely removable and replaceable cargo section.

Construction of multipurpose dry-cargo vessels will decrease, and the number of specialized ships capable of carrying limited types of cargo will increase. There will be an increase in the number of freighters under construction intended for traversing waters subject to ice formation, as well as icebreakers.

There will be an increase in the construction of high-speed passenger vessels, as well as relatively slow ships designed for long cruises.

We can assume that the new cargo vessels will have some of the following characteristics:

There will be a marked increase in the speed of vessels in a number of categories. First of all, and probably in the near future, the speed of large container ships and roll-on, roll-off vessels, LASH ships, and other types will exceed 30 knots, resulting in a decrease in the time required for loading and unloading operations. The most important method of increasing the speed of these vessels will consist in increasing the power of their engines.

The use of hydrofoils operating at speeds of 40–50 knots is limited to passenger vessels with a displacement of no more than 1,000 tons, since a further increase

in the displacement of such vessels is economically unprofitable and difficult from the technical standpoint.

The principle of the air-cushion vehicle appears to be more promising for the construction of large high-speed cargo vessels; their efficiency increases with the size of the vessel. The displacement of air-cushion vehicles will be determined by the capability of constructing very powerful power plants.

The dimensions of vessels for transporting heavy cargoes will increase; the capacity of ships for transporting bulk cargo will exceed 250,000 registered tons.

Together with the increase in speed and size of ships, and consequently the power, there will be a more extensive application of gas-turbine and steam-turbine power plants, as well as economical atomic power plants. Aboard low-power vessels, the main engines will consist primarily of light diesels and diesel-reduction gear power plants.

Complex automation of the equipment aboard ships is becoming more and more extensive, and will make it possible to reduce sharply the size of the crew while increasing the economy of operation.

In conjunction with the steady increase in the volume of oil and oil products being shipped (in 1976 it may exceed 2400 million tons), the world tanker fleet is bound to increase. One of the most important trends in the development of the liquid-cargo fleet is the increase in the size of tankers. The gross tonnage of the largest tankers is already 500,000 registered tons (construction of tankers of one million tons deadweight is being investigated).

According to predictions from the Japanese company "Japan Steel and Tubes," in 1981 the average tonnage of the tankers on order will be 190,000 tons and a third of the tankers in operation will have a capacity of more than 100,000 tons.

Further increase in tanker tonnage will be limited by the depth and navigating conditions in canals and channels. In addition, the number of ports which can handle high-tonnage tankers is increasing each year.

An important part of the cargo fleet will always be the ports, which constitute the terminals of the sea lanes. At the present time, there are about 420 large maritime ports in the capitalist countries whose cargo-handling capacity is in excess of one million tons. It is natural that their development is subject to the influence of such major events as the development of giant ships for various purposes, including vessels that can transport large quantities of cargo in containers using the "door-to-door system". The requirements for the operation of the latest vessel, whose basic characteristics are shown below in table 9, are determined by the dimensions of the channel approaches to the ports and the approaches to straits, the size of the docks, and the depths, and other characteristics of ports and harbors.

TABLE 9.—PRINCIPAL CHARACTERISTICS OF SHIPS OF THE LATEST TYPES

Type of ship	Total tonnage (thousands)	Length (meters)	Beam (meters)	Draf (meters)
Tankers	500	380	67	26.5
Do	200	340	50	17.5
Ore carriers	150	305	48	16.5
Do	80	260	35	14.5
Dry-cargo vessels	30	210	26	11.5
Do	20	175	23	10.5

To handle high-tonnage tankers, mooring berths of various types are currently under construction; petroleum transshipment bases are being built, and dredging operations are under way at existing piers. One of the first oil transshipment bases was the Bantry base, built in the south of Ireland on Bantry Bay. It can handle supertankers with a draft of up to 25 meters. The Bantry transshipment base consists of a mooring berth where the depth is 30 meters. This berth is connected to the shore by a pier, along which two pipes run to handle the crude oil. The coastal facilities consist of 12 storage tanks with a capacity of 95.4,000 cubic meters of crude petroleum, two ballast tanks, bunkers, and auxiliary facilities.

Supertankers bring oil here from Persian Gulf ports, and then the petroleum goes to ports on the European continent aboard tankers with capacities of up to 100,000 tons.

The oil refineries located on the European continent receive their crude petroleum through pipelines from six main ports: Rotterdam (Netherlands), Fos-sur-Mer and Le Harve (France), Trieste and Genoa (Italy), and Wilhelmshaven (West Germany).

The ports of Rotterdam, Fos-sur-Mer and Le Harve can handle high-tonnage tankers of up to 250,000 tons, Genoa—up to 220,000 tons, Wilhelmshaven—up to 250,000 tons (with incomplete loading), and Trieste—up to 200,000 tons. Ports that can handle high-tonnage tankers with capacities of 200-300 thousand tons are located in Japan (Yokohama, Tiba, and a number of others).

However, the number of ports throughout the world which can handle vessels with a draft of 15 meters or more does not exceed 20. The United States does not have any; by 1985, the United States will have to import up to half its requirements of oil and natural gas. Each day, the United States imports 2 million tons of petroleum and petroleum products, and 2600 tankers with a capacity of 47,000 tons or 500 tankers with a capacity of 250,000 tons are required to transport this amount of material. It is proposed that three deep-water ports be built to receive and distribute the cargoes of the supertankers: one on the East Coast, one on the West Coast, and a third on the Gulf of Mexico.

In conjunction with the development of container ships, the traditional functions of a port as a storage and distribution center and a terminal for various types of transportation facilities is taking on a secondary role. At the same time, the role of the port as a transshipment point in a unified transportation system is becoming more and more significant. Much more attention is being paid than previously to reducing the number of lay days of container ships, which operate under strict schedules, not only by reducing the time required to load and unload them, but also by reducing the number of auxiliary operations involved. The cargoes must also spend a minimum amount of time in port. Therefore, considerable emphasis is being placed on improving the water approaches, pilot services, and harbor fleet, railways and automobile access roads, berths, and so forth.

In all of the large ports of the highly developed capitalist countries, special container areas and docks have been or are being built. In recent years, the largest center for container transshipment among the European ports has come to be Rotterdam. In 1971, approximately 320,000 containers were transhipped at this port. Rotterdam is also the largest cargo-handling port in the world: in 1971, it handled 231.7 million tons, importing 169.8 million tons and exporting 61.9 million tons.

In the near future, the nature of port facilities will reflect the appearance of vessels operating on air cushions and hydrofoils, whose importance for the shipment of cargo and passengers over short distances is bound to increase.

Therefore, the development of the main ports throughout the world will see considerable dredging operations, the building of new deep-water docking facilities, provision of special container-handling areas and docks, and the ability to handle container transshipments rapidly, and a general tendency toward specialization of ports.

The Soviet merchant marine, like that of any country, is a component of the seapower of the U.S.S.R. The growth of our nation during the years of Soviet power into a highly developed industrial nation, the stable growth of the economic power of the U.S.S.R., and the continuous expansion of its foreign trade links have resulted in a rapid development of the maritime shipping activity of the U.S.S.R.

The maritime shipping of the U.S.S.R. has become a dominant, technically well-equipped and highly profitable branch of the national economy, which fully meets the economic needs of the nation.

The U.S.S.R. merchant marine is in second place at the present time as far as cargo handling is concerned relative to the other types of transportation in the country. The role of shipments by sea is particularly important to the life of the Far East and the north, where the merchant marine is practically the only form of transport which can handle the most diverse cargoes and bring them to many points along the coast.

Merchant shipping is particularly important to the Soviet Union because it is needed for foreign trade. The operations of the fleet in this area amount to about 90 percent of its cargo-handling activities. The cooperation of the Soviet navy is deevloping successfully within the framework of socialist economic integration, embracing many spheres of its activity. Its importance has become even more tangible in conjunction with the transportation requirements of nations which

are struggling for their freedom and independence, as well as developing nations which are trying to achieve economic independence but as a rule do not have their own cargo fleets.

The Soviet Union has a foreign trade structure which is not part of the capitalist competition for cargoes. It can maintain and develop its trade relations with any maritime nation using its own cargo fleet.

The successful fulfillment of plans for postwar development of the cargo fleet has made it possible to meet the needs of the national economy in full and to guarantee stability of the foreign economic links of our nation, making them independent of any unforseen circumstances such as the blockade of Cuba or the closure of the Suez Canal.

The Soviet merchant navy is playing an increasingly important role in world shipping by increasing the amount of cargo which it carries for foreign shippers. By doing this, it helps solve one of the Government's important problems, namely, providing transportation for exports, thus making an important contribution each year to the balance of payments of the nation.

A very important stage in the development of the cargo fleet of the Soviet Union, and for the national economy as a whole, was World War II. During the war, the merchant fleet together with the Soviet navy performed work of enormous importance, meeting the needs at the front as well as the domestic economy with shipments of both a national economic and military nature. In many cases, the sea routes were the basic, even the only, ways of carrying military cargoes. Soviet cargo vessels, playing nearly all the seas and oceans, formed part of the transportation network of the Allies, and were also subject to attack from the air and by enemy submarines.

During the heroic fighting of World War II, the Soviet cargo fleet, which numbered 800 vessels with a total gross tonnage of more than 2 million tons in 1941, lost 363 ships with a total gross tonnage of about 700,000 tons.

The magnificent and strenuous efforts of the Soviet people to rebuild the national economy created a situation in which by 1950 the merchant fleet was already carrying cargo at 1940 levels and by 1965 the total amount of cargo handled by the Soviet merchant fleet exceeded 8.5 million tons.

In recent years, the cargo fleet of the U.S.S.R. has continued to develop at a high speed. It took 12 years (from 1946 to 1958) for the cargo handled by the Soviet merchant navy to increase from 15.9 to 57.4 billion ton-miles, i.e., by a factor of 3.6; recently, only seven years were required to achieve this same growth rate.

In 1973 the gross tonnage of our fleet (including the vessels in the cargo fleet, fishing vessels, and scientific research ships) reached 17.4 million registered tons. The Soviet Union has moved up to sixth place in the world from twelfth place, which it occupied (in terms of flag fleet tonnage) until 1960. This made it possible to meet completely the foreign trade requirements of the U.S.S.R. whose level increased from 2.9 billion rubles in 1950 to 31.3 billion rubles in 1973. In 1973, the Soviet cargo fleet numbered 1602 ships with a total capacity of about 14 million tons. Each year, the fleet is supplemented by a great many new vessels of a wide variety of types and categories. In 1973 the fleet received more than 80 ships with a total gross tonnage in excess of 700,000 tons and in 1974 nearly 90 ships with a cargo capacity of about 900,000 tons were added.

As a result, the Soviet merchant fleet is younger in terms of age than the world fleet as a whole. Thus, ships that have been in operation for less than ten years make up 64.4 percent of the total gross tonnage of the Soviet merchant fleet, while the figure is 62.7 percent for the world fleet.

The USSR's merchant fleet includes vessels for a wide variety of purposes, beginning with coastal navigation and ending with enormous ships like the tanker "Krym", with a gross tonnage of 150,000 tons, making it possible to handle shipping in any part of the world ocean. It includes dry-cargo vessels and tankers, ships for transporting lumber, coal, and ore, icebreakers and icebreaker-cargo vessels, container ships, and ships for combined navigation on oceans and rivers, as well as ships of other kinds. The capacity of the Soviet tanker fleet reached nearly 5 million tons in 1973.

The Soviet Union also operates a large fleet of passenger vessels which ply 17 international and many coastal routes.

The merchant navy of our nation consists of more than just ships. There are more than 70 ports in the Soviet Union with an annual cargo turnover of at

least one million tons each. The majority have deep-water mechanized piers, good storage facilities, and well planned areas with good access roads.

Large new ports are being built along the Far Eastern coast and on the Black Sea; they are far larger in terms of their equipment and transshipment capacity than the largest ports in our nation. The level of complex mechanization of loading and unloading operations is growing every year. All of this has made it possible to increase sharply the transshipment capacity of the "ocean gateways" of the U.S.S.R. The Soviet merchant fleet is serviced by more than 30 ship-repair facilities which, together with the crews of the vessels, keep the fleet in good condition.

All of the activities of the Soviet cargo fleet are handled by 17 shipping companies, organized into three branches: Sevzapflot, Yuzhflot and Dal'flot. They are responsible for the registered vessels, ports, ship-repair facilities, emergency rescue, and other organizations directly related to the operation of the fleet, its supplying and servicing. A great deal of work is being done in the fleet to improve administration at all levels, beginning aboard ship and ending with the entire organization, with automated planning and control systems being developed and introduced all up and down the line.

The Party and the Government are providing for further development of the merchant fleet of the U.S.S.R. They are planning to increase cargo handling, to update the fleet with new, highly efficient multipurpose and specialized vessels, to increase transshipment capacity at the ocean ports, and to extend the capacities of the ship-repair facilities.

Hence, there will be a continued development of all the components which make up the whole is this branch of the national economy, and its maritime power—the merchant navy.

The fishing fleet forms part of the flag fleet and is an important component of the maritime power of the nation. The role of this fleet has increased sharply as a result of progress in the mastery of the world ocean by man, increasing the degree of utilization of various marine products of animal and vegetable origin for food and industrial purposes. Its most important task consists in solving the serious food problem which mankind faces.

According to official data from the FAO,[2] the population of the earth is in a disadvantageous position as far as food is concerned due to a shortage of animal proteins in its diet; approximately 2 billion people suffer from this, i.e., half of the entire population of the earth. This abnormal situation, as the population of the planet continues to increase, is made more acute by the capitalist relationships that exist in the majority of countries. Therefore, mankind is increasingly turning its sights toward potential biological resources that may lie in the world ocean.

Fishing and catching marine animals have occupied man for centuries; however, the development of the fishing fleet on an industrial basis began only in the second half of the 19th century, in conjunction with the rapid increase in the need for protein and the improved technology of navigation.

At first this process was slow. Thus, during the period from 1850 to 1900, the average annual increase in the world catch was very modest by today's standards—approximately 40,000 tons. During the period between the two world wars, the increase reached a respectable level—1.3 million tons; after the war, it increased to 2.3 million tons on the average.

At the present time, the most important items in marine and ocean fishing are fish (89 percent) followed by molluscs (5 percent), crustaceans (2.3 percent), marine animals (1.8 percent), water plants (1 percent) [3].

During the period from 1948 to 1967, the world fish catch and the amount of other marine products taken increased nearly three-fold—from 22 to 62 million tons. However, after 1967, despite the considerable improvement in technology in the fishing fleet, the rate of increase in the catches fell off sharply. One reason for this was the exhaustion of the fish supply, which occurred as a result of the uncontrolled intensification of fishing in the important, well-developed fishing areas which had been traditional for a long time. Therefore, it became increasingly important to regulate the standards for catching certain species of fish and hunting marine animals and developing a scientifically based system for conducting ocean fishing.

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[2] Food and Agricultural Organization of the United Nations.

At the present time, the take of marine biological resources amounts to about three-fourths of all of the income which man obtained from the world ocean. More than 7 million people throughout the world are engaged in fishing. The world catch of fish and other marine products has reached a level of 70 million tons annually. This figure is comparatively close to the optimum figure determined taking into account the actual annual natural production of the biological mass of products in the sea and the conditions under which they propagate in the ocean.

Many hundreds of thousands of rowboats, sailboats and motor boats are engaged in fishing and catching marine animals throughout the world. However, the basis of the modern fishing fleet consists of self-propelled large vessels intended for catching fish and capturing marine animals in remote regions of the seas and oceans, handling the products, storing them, and conveying them to shore bases.

Lloyds Register of Shipping classifies the modern fishing fleet on the basis of type into two basic groups: trawlers and other fishing (sealing) vessels with a gross tonnage from 100 to 4,000 registered tons and up; fish transporters and fish factories (in our terminology, cargo refrigerators and floating fish factories) with a gross tonnage from 100 to 10,000 registered tons and up.

Modern fishing vessels are very seaworthy, are endowed with considerable endurance, and independence. As a rule, they are fitted with the latest navigation equipment, sonar and radar, as well as industrial and technical equipment.

The critical role in the development of the world fishing fleet during the postwar period has been played by the scientific research conducted in many countries, especially the Soviet Union, in the field of fish biology, predicting the areas and routes in which they move, and developing new methods of exploiting the fish resources on this basis, together with the necessary technical means for detecting them and new, more modern fishing methods, as well as means of processing, storage, and bringing the products to the consumer.

The increase in exploitation of marine products by the fishing fleet is playing an important role in the production of food products and raw materials for the operation of many branches of industry. Therefore at the present time nearly 80 countries throughout the world are engaged in fishing. The Soviet Union is in third place (after Peru and Japan) in the size of its catch.

In 1974 the world high-tonnage fishing fleet numbered 17,955 ships (100 registered tons or more), with a total gross tonnage of about 10.7 million registered tons [4]. This includes 17,262 fishing vessels (trawlers, seiners, sealing schooners and so on) with a total capacity of 7.33 million registered tons and 693 processing and transport vessels with a total capacity of about 3.45 million registered tons.

In terms of the number and gross tonnage of ships in its fishing fleet, Japan is in first place among the capitalist countries; however, its catch is smaller than that of Peru.

The Japanese fishing fleet numbered 3198 vessels in 1974 with a total capacity of about 1.26 million registered tons. About 3 million people are engaged in fishing in Japan and their annual catch amounts to more than 8.6 million tons of fish and other marine products. Fish is one of the principal food products and is an important export item.

The Republic of Peru, whose fishing fleet is only 11th in the world in terms of number of ships and total capacity (604 ships with about 125,000 registered tons), thanks to its immediate proximity (30 to 50 miles) to the richest fishing grounds in the Pacific Ocean, has the largest catch of fish in the world—more than 9 million tons annually.

The largest fishing nations are the United States (1577 high-tonnage vessels with a total capacity of about 358,000 registered tons), Norway (606 vessels with a total capacity of 204,000 registered tons) and the Republic of South Africa (143 ships with a total capacity of 75,000 registered tons). Each of these nations catches from 2 million to 3 million tons of fish and other sea products every year. Other capitalist countries which play an important role in fishing are Great Britain, Canada, Spain, Denmark, Chile and others with an annual catch of more than one million tons.

Characteristically, Peru and Japan make up about one-third of the world fish catch and about four-fifths [5] of the share of the leading 15 fishing countries (these countries include Peru, Japan, the U.S.S.R. the Peoples Republic of China, Norway, the United States, the Republic of South Africa, India, Spain, Canada, Denmark, Chile, Indonesia, Thailand, and Great Britain).

Most of the world fish catch prior to 1957 came from the Atlantic Ocean, especially the northern part. Then the emphasis shifted to the Pacific Ocean, where about 55 percent of the world catch was obtained prior to 1970, with more than half of it in the northern part of the ocean. At the same time, 41 percent of the world catch came from the Atlantic, more than two-thirds of it from the northern part.

About 5 percent of the world catch of marine products came from the Indian Ocean.

The experience of two world wars has demonstrated that fishing vessels can be used extensively as a military fleet to handle auxiliary and military chores, especially in the area of defense and protection of ports and regions where military ships are based.

Our country has a large fishing fleet which constitutes the basis of its fishing industry. The Soviet fishing fleet was founded on December 9, 1918, when a resolution of the All-Russian Council of the National Economy formed the Main Administration for Fishing and the Fishing Industry in Russia ("Glavryba").

In recent years, the Government has spent a great deal on expansion of the technical basis of fishing and especially in the acquisition and construction of ships.

The war slowed down the development of Soviet fishing and its fleet considerably. The largest losses were sustained in the Sea of Azov and the Black Sea, Baltic Sea, and the North Sea. Coastal enterprises engaged in the fishing industry, ports, ship repair facilities, etc., were put out of action and about 5,000 ships were lost. The fish catches dropped sharply in our country.

After the war was over, the construction and development of the Soviet fishing industry was resumed with new energy. Now, fishing vessels flying the flag of our Motherland can be seen in the most remote regions of the world ocean.

During the 9th Five-Year Plan, our fishing fleet engaged in an extensive program of providing the vessels with new equipment which will enable them to considerably expand their range of operations.

At the present time, 87 percent of the total fish catch in the USSR consists of fish caught in the ocean. The intensity of fishing has increased three-fold, despite the fact that many capitalist countries have extended their territorial waters and have established special fishing zones up to 200 miles out, so that up to 40 percent of the area of the continental shelf, where as many as 10 million tons of fish could be caught annually, has been closed to the fleets of other nations.

The cutback in fishing bases, in addition to increasing the operating radius of the fleet in the world ocean, has also stimulated the development of fishing at great depths. While trawlers operated at depths of up to 200 to 400 meters until World War II, now they trawl at depths as great as 1,000 meters. By exploring deep-water areas, the Soviet Union has taken the lead over other countries in this type of fishing. Similar research on deep-water trawling is also being conducted in West Germany, Spain, France, and Great Britain. Vessels of various types from these countries are able to trawl at depths of 600 to 1,000 meters.

At the present time, the Soviet fishing fleet is in first place (in terms of the number of vessels of different types) among the large fleets of the world. It has fishing vessels, processing ships, and transport vessels, as well as the necessary means to supply them.

The ships in the Soviet fishing fleet are characterized by their multiple-purpose design, in other words they are equipped with different kinds of fishing gear. This means that they are independent of the seasonal nature of fishing completely. They are characterized by high economic parameters.

Further development of the fishing fleet can be attributed to the fact that fishing areas will now be located further away from coastal bases. The nature of the operation of fishing vessels will change, and the structure of the fishing fleet will change as a result. Supertrawlers will be seen among the fishing vessels, designed for independent operation in remote regions with severe weather. The number of medium-sized fishing vessels will also increase; they are designed to operate not only as part of a group but also independently in fishing areas located close to the shore, where it is inefficient to use large fishing vessels. The number of specialized fishing vessels will increase as will the vessels supplying them.

If we consider the development of shipbuilding technology, we can see that new fishing in the future will undergo a considerable increase in the power of their engines; enabling them not only to increase productivity by handling trawls of large sizes and fishing at higher trawling speeds and at greater depths, but also increasing the mobility of the fleet as a whole.

In addition, new energy sources will play a role in future improvement of techniques for processing the catch, making it possible to improve considerably the working and living conditions of the crew and increase navigational safety.

The further development of the fishing fleet will make an important contribution to providing the Soviet Union with food. At the same time, the expansion of the regions in which the fishing fleet can operate will increase our knowledge of the world ocean as a result of the extensive oceanographic, meteorological and other studies of the sea which are being carried on simultaneously with fishing operations.

Thousands of sailors in the merchant fleet and the fishing fleet, by their voyages lasting many months, are demonstrating to the whole world the devotion of our nation to navigation and a love for this difficult but glorious profession, which our ancestors practiced many centuries ago, helping to dispel the myth of the Russian nation and the entire Soviet people as a nation of "landlubbers".

The seapower of the Soviet government is based in particular upon the remarkable teams of professional sailors who devote their lives to this fascinating and very difficult seagoing profession.

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[Translation]

The Law concerning Special measures Against Unfavorable Treatment of Japanese Enterprises Engaged in Oceangoing Shipping Operations by Foreign Countries and Others is hereby promulgated.

The Imperial name and seal:

TAKEO FUKUDA, *Prime Minister.*

JUNE 1, 1978.

LAW NO. 60—LAW CONCERNING MEASURES AGAINST UNFAVORABLE TREATMENT OF JAPANESE ENTERPRISES ENGAGED IN OCEANGOING SHIPPING OPERATIONS BY FOREIGN COUNTRIES AND OTHERS

ARTICLE 1—OBJECT

The object of this Law is to enable Japanese enterprises engaged in oceangoing shipping operations to carry out their business activities on conditions of competitive equality with their foreign counterparts, by taking special measures to cope with situations, if any, wherein the interest of a Japanese enterprise engaged in oceangoing shipping operations is noticeably injured due to unfavorable treatment of such enterprise by a foreign country, etc., and thereby to contribute to the sound development of Japanese enterprises engaged in oceangoing shipping operations.

ARTICLE 2—DEFINITION

As used in this Law, the term stated in each of the following items shall have the meaning ascribed in each such item:

(1) The term "enterprise engaged in shipping operations" means an enterprise engaged in shipping operations as defined in Article 2, paragraph 2, of the Marine Transportation Law (Law No. 187 of 1949).

(2) The term "enterprise engaged in oceangoing shipping operations" means an enterprise engaged in shipping operations wherein a ship is operated between a Japanese port and a port located in a territory outside Japan, or between ports located in a territory or territories outside Japan.

(3) The term "Japanese enterprise engaged in oceangoing shipping operations" means a corporation or other association established under the laws of Japan or a person of Japanese nationality, which or who is an enterprise engaged in oceangoing shipping operations.

(4) The term "foreign enterprise engaged in oceangoing shipping operations" means a foreign country, or a public body or other similar organiza-

tion of a foreign country, a corporation or other association established under the laws of a foreign country, or a person of foreign nationality, which or who is an enterprise engaged in oceangoing shipping operations.

(5) The term "shipping agency" means a shipping agency as defined in Article 2, paragraph 10, of the Marine Transportation Law.

ARTICLE 3—NOTICE OF COUNTERMEASURES, ETC.

1. When the interest of a Japanese enterprise engaged in oceangoing shipping operations is noticeably injured as a result of a foreign country, or a public body or other similar organization of a foreign country, having taken measures specified below whereby the Japanese enterprise engaged in oceangoing shipping operations has been afforded less favorable treatment than a foreign enterprise affiliated with that foreign country and engaged in oceangoing shipping operations (hereinafter referred to as a foreign enterprise engaged in oceangoing shipping operations), the Minister of Transport may, if he deems it necessary to cope with the situation, give the foreign enterprise engaged in oceangoing shipping operations notice to the effect that the Minister may order restrictions or prohibitions as authorized in paragraph 1 of the following Article 4 if the discriminatory treatment is not stopped within a period of time specified by him of not less than six (6) months:

(1) Obligating the shipper of goods carried between the foreign country and Japan to utilize the services of the foreign enterprise engaged in oceangoing shipping operations for the carriage of such goods;

(2) Obligating the Japanese enterprise engaged in oceangoing shipping operations to enter into an agreement which provides for more favorable treatment of the foreign enterprise engaged in oceangoing shipping operations, with regard to the carriage of goods mentioned in the preceding item (1);

(3) In addition to the types of treatment identified in the preceding two items, those practices prescribed by Cabinet Order as being ones which may weaken the competitiveness of the oceangoing shipping operations conducted by the Japanese enterprises.

2. The Minister of Transport shall, when he has given notice under the provisions of the preceding paragraph 1, announce an outline of the situation mentioned in the same paragraph, the name or trade name of the foreign enterprise engaged in oceangoing shipping operations to whom the notice has been given, and the contents of the notice. In this case, the Minister of Transport shall, as prescribed by Ministry of Transport ordinance, take the measures necessary to make the information so announced fully known to those who are engaged in shipping agencies, shippers who utilize the services of enterprises engaged in oceangoing shipping operations, and other related parties as designated by Ministry of Transport ordinance.

3. The Minister of Transport shall, when he deems that the discriminatory treatment described in paragraph 1 has ceased to exist, make an announcement to that effect and notify the foreign enterprise engaged in oceangoing shipping operations to whom notice was given under the provisions of paragraph 1 of this Article that the conditions for ordering the restriction or prohibition authorized in paragraph 1 of the following Article 4 no longer exist.

4. The provisions of the second half of paragraph 2 of this Article shall apply with necessary modifications when an announcement is made under the provisions of the preceding paragraph 3.

ARTICLE 4—COUNTERMEASURES

1. The Minister of Transport may, when he deems that the discriminatory treatment described in paragraph 1 of the preceding Article 3 still exists after the lapse of the time period specified in the notice given under the provisions of the same paragraph, order restrictions or prohibitions as set forth below applicable to the foreign enterprise engaged in oceangoing shipping operations to whom the notice was given:

(1) Restriction or prohibition of entry into Japanese ports for a specified period of time with regard to ships used in oceangoing shipping operations conducted by the concerned foreign enterprise engaged in oceangoing shipping operations;

(2) Restriction or prohibition of loading or unloading of goods in Japan for a specified period of time with regard to the ships described in the preceding item (1).

2. The restriction or prohibition to be ordered under the provisions of the preceding paragraph 1 shall be the minimum ones required to cope with the situation covered in paragraph 1 of the preceding Article 3, and the order shall be issued with due attention to minimizing its impact on the nation's economy.

3. When the Minister of Transport intends to issue an order as authorized in paragraph 1 of this Article, he may, if he deems it necessary, grant hearings on the relevant circumstances to the related parties designated by the Ministry of Transport ordinance as provided for in the second half of paragraph 2 of the preceding Article 3.

4. The provisions of paragraph 2 of the preceding Article 3 shall apply with necessary modifications when an order is issued as authorized in paragraph 1 of this Article.

5. The Minister of Transport shall, when he deems that discriminatory treatment described mentioned in paragraph 1 of the preceding Article 3 has stopped, make an announcement to that effect and annul the order issued under the authority of paragraph 1 of this Article.

6. The provisions of the second half of paragraph 2 of the preceding Article 3 shall apply with necessary modifications when an announcement is made under the provisions of the preceding paragraph 5.

ARTICLE 5—CONSULTATION

The Minister of Transport shall, when he intends to give notice under the provisions of Article 3, paragraph 1, or issue an order as authorized in paragraph 1 of the preceding Article 4, consult in advance with the heads of the relevant administrative agencies.

ARTICLE 6—COLLECTION OF REPORT AND SPOT INSPECTION

1. The Minister of Transport may, to the extent necessary to enforce this Law, cause those enterprises engaged in oceangoing shipping operation, or those engaged as a shipping agency for enterprises engaged in oceangoing shipping operations, to report on their business operations; or cause an official of the Ministry of Transport to enter the place of business, office, other place where business is conducted, or the ships themselves of the foreign enterprise engaged in oceangoing shipping operations (to whom notice was given under the provisions of Article 3, paragraph 1) or of those engaged as the shipping agency for the said enterprises engaged in oceangoing shipping operations and to inspect books of account, documents or other property.

2. The officials who conducts spot inspection under the provisions of the preceding paragraph shall carry an identification card showing his status and show it to concerned persons.

3. The authority to make spot inspections under the provisions of paragraph 1 shall not be construed to be an authorization to make criminal investigations.

ARTICLE 7—DELEGATION TO THE MINISTRY OF TRANSPORT ORDINANCE

Procedures and other matters required to enforce this Law, other than those provided in this Law, shall be prescribed by Ministry of Transport ordinance.

ARTICLE 8—PENAL PROVISIONS

Any person who has disobeyed an order issued as authorized in Article 4, paragraph 1, shall be punished with penal servitude of not longer than one year or a fine of not greater than five million yen.

ARTICLE 9

Any person who has failed to make a report or who has made a false report under the provisions of Article 6, paragraph 1, or any person who has refused, interrupted or averted inspection under the provisions of the same paragraph shall be liable to a fine of not greater than one hundred thousand yen.

ARTICLE 10

1. If a representative of a corporation (including an association which is not a corporation but which has, by rule, a representative or a manager; hereinafter the same in this paragraph) or any agent, servant or employee of a corporation or any other person has violated any part of the preceding two Articles in connection with the business of such corporation or person, not only the representative, agent, servant or employee shall be penalized but also the corporation or person shall be subject to the penalties provided in each of the said Articles.

2. When an association which is not a corporation is penalized under the provisions of the preceding paragraph, its representative or manager shall represent the association in litigation, and provisions of law concerning criminal actions applicable where a corporation is a defendant shall apply, with necessary modifications.

SUPPLEMENTARY PROVISIONS

ENFORCEMENT DATE

1. This Law shall come into force on the day fixed by Cabinet Order, which shall be not later than three months after the day of its promulgation.

AMENDMENT TO THE LAW FOR ESTABLISHMENT OF THE MINISTRY OF TRANSPORT

2. The Law for Establishment of the Ministry of Transport (Law No. 157 of 1949) shall be amended as follows:

Of Article 4, paragraph 1, item (15)-2-3 shall be amended to read as item (15)-2-4; item (15)-2-2 shall be amended to read as item (15)-2-3; item (15)-2 shall be amended to read as item (15)-2-2; and the following item shall be added to item (15):

(15)-2 Issuance of necessary measures to cope with unfavorable treatment of Japanese enterprises engaged in oceangoing shipping operations by a foreign country and others.

GEN TAMURA,
Minister of Transport.
TAKEO FUKUDA,
Prime Minister.

[Translation]

SOVIET STATE-RUN NON-CONFERENCE VESSELS AND JAPANESE SHIPPING

ENACTMENT OF LEGISLATION FOR RESTRICTING ACTIVITIES OF STATE-RUN NONCONFERENCE VESSELS

(From Japan Shipowners' Association, November 1977)

Preface

A major part of Japan's exports, which exceed 70 million tons a year, are shipped via regular freight lines, with our country as the strategic point. If export trade is blood for our country, the regular freight lines can be compared to the main arteries which send out this blood.

Japanese shipping has regarded the maintenance and the development of the regular lines centering on our country as its big mission throughout the prewar and postwar years and shared the vicissitudes and the fortunes thereof. In that sense, these regular lines can be called the lifeline of Japanese shipping.

These regular lines, however, are now being exposed to an unprecedentedly serious crisis in history. The Societ state-run shipping company's organizational big advance, with extremely low freight charges as a weapon, is a case of this. We have constantly appealed on the menace and the crisis thereof in the past, and various private organizations also urged the Soviet authorities several times to change their policy. Not even a slight change, however, is seen in the Soviet policy.

If such a situation is left as is, Japanese shipping, which has shouldered and maintained our country's main arteries, and the strength of various free-world nations shipping will come to decline in the near future, and these various lines will come to be dominated in a large way by the strength of Soviet shipping, with its national policy as the background. We are seriously worried about the arising of such a situation. At the same time, we cannot sit idly and watch that situation come to pass.

Since such activities of Soviet shipping intentionally disturbed the international freight-charge level based on that country's national policy and jeopardized the existence of Japanese shipping, we on our part, believe that it is an urgent necessity for our country ; Government, on its part, to impose restrictions on these activities and maintain its legal power which should be able to restrict its activities in our country.

We will outline, as below, the actual situation and the essential nature of Soviet shipping activities on the regular lines, and the effects thereof. Then, we want to obtain understanding from the people in general as to our proposal.

1. *Advance of Soviet Shipping into Third-Nation Regular Lines.*—Soviet shipping activities were limited, for a tolerably long period of time after the end of World War II, to coastal transportation in Soviet territory, including rivers, or bilateral transportation between its own country and other socialist countries. It is from around the time of the establishment of the BREZHNEV setup that the user has come to advance into a large-scale, third-nation transportation as is seen today, that is to say, multilateral transportation which has no connections with its own country's export-import trade. In other words, the Soviet advance into the oceans after the establishment of the BREZHNEV setup is really astonishing. The USSR has not only expanded its merchant fleets, but also has shown a rapid expansion in all the fields, such as the Navy, fishery, ocean research, and the development of sea-bottom resources.

The advance of Soviet shipping into third-nation regular lines started from the opening of the Europe-Australia line and the Europe-Brazil line in 1968. Today when ten years have passed, Soviet vessels have come to make their appearance in almost all major lines in the world. The operation of these lines is being conducted by the state-run shipping company, and it is clear that the operation is being conducted as a part of Soviet national policy.

The first reason why the USSR has opened and expanded a large number of third-nation lines in such a short period of time is because the USSR intended to make up for its own country's ever-lasting foreign currency shortage with the income of foreign currencies to be obtained from these lines. It is said that the second reason is that the USSR aimed at using these lines as an aid to exercise its political influence mainly over the developing countries by assigning its own country's ships to these lines, and that the activities of these merchant fleets will play a supplementary role to the Soviet Navy. We on our part, have no intention to call into question at this point the latter part of these activities, that is to say, the Soviet political and military intentions. The economic effectiveness of Soviet shipping activities, which are carried out while based on the Soviet national intention, is our problem.

Such activies where a country intends to expand its own country's shipping power as its economic policy and contributes to its own country's income of foreign currencies should not be criticized itself. The problem is the attitude of its activities and the effects to be produced on other countries' economies.

What should be made an issue of as to Soviet shipping in regular liners' activities is the point that "Soviet shipping is inducing cargoes intentionally at rates which are extremely lower than the international agreement freight charges, which are maintained on various lines, based on the Soviet political intention specially on the third-nation lines." Soviet regular liners have not joined the existing freight agreements, which have been fixed as an international practice, with the exception of a small number of exceptional cases, and has cut freight charges sharply as non-conference vessels. For instance, various Soviet lines with Japan as the starting point are operated by the Far Eastern Shipping Company (FESCO) which places its Headquarters in Vladivostok. However, FESCO has not joined at all various freight agreements directed at various ports from Japan to the North American Pacific coast, Australia, Hong Kong, Singapore, Bangkok, Manila, and India, and is collecting cargoes by cutting freight charges. This intentional and systematic low-freight-charge policy is also the cause for the Soviet third-nation lines having expanded rapidly.

Losses, which the Japanese shipping companies and other countries' ship allocation companies are suffering from the Soviet shipping company's rapid advance by means of these low freight charges, are already great. For instance, it is believed that the amount of cargoes transported by FESCO alone on the Japan-North American coastal lines has reached more than 10% of the total amount of cargoes transported by 18 companies which are members of the shipping conference. That is to say, the amount of cargoes transported by FESCO alone has reached double the average amount of cargoes transported by one conference shipping company.

Furthermore, the Soviet shipping company transported cargoes by cutting freight charges as to not only cargoes exported from Japan, but also as to cargoes imported to Japan on these lines, and is conducting activities to disturb the market.

2. *Soviet Planning to Expand Its Merchant Fleets.*—One menace of Soviet regular liners' activities is not limited to the above. The USSR is showing a posture expanding of still more and strengthening hereafter its activities in the field of regular liners.

That is to say, the USSR is at present carrying out a plan for expanding its merchant fleets under its 10th Five-Year Plan from 1976 to 1980. An extremely large number of container ships and roll-on and roll-off ships are included in this Plan. As to the confirmed figure alone, it is planned that Soviet container ships and roll-on and roll-off fleets, which were set at about 150,000 dead-weight tons at the beginning of 1981. It is true that sundries, which are exported from and imported into various Soviet ports, are increasing year by year.

However, viewed from a global scale, this amount is small. There is not the slightest doubt that a major part of these newly-built modern sundries shipping fleets will be thrown into third-nation lines centering on Japan, Europe, and the U.S. which have no connection with its own country. As a matter of fact, even taking the case of lines on our country, vessels, which are used by the USSR on the Japan-U.S. lines, are being replaced by large-size newly-built vessels gradually. We must view that following the completion of the construction of newly-built vessels, the expansion and the strengthening of Soviet vessels' activities on various lines and their advance into new lines will make further progress. We should view that Soviet shipping's full-scale offensive will come to be developed in the near future.

3. *Significance of Shipping Activities by State-Run Shipping Companies.*—In case low-freight-charge non-conference vessels make their appearance on these lines, shipping companies, which are members of the existing freight agreements, will have no other choice but to lower the agreed-upon freight charges on a final basis and counteract them. However, the Soviet shipping company is a state-run shipping company which is placed under a different setup from a free economy, and is not a rival with which various enterprise organizations under a free economy can operate on equal terms. Private enterprises cannot compete with state-run enterprises which are based by their national strength. If they venture to compete with this, various shipping companies will come to compete with the Soviet national strength in the course of competing with them for lowering freight charges. Then, there will be no other choice but to suffer defeat or ask for financial aid from the coutnries to which various shipping companies belong. Consequently, with the exception of some exceptional cases, freight-charge competition between Soviet vessels and freight agreements has not been conducted on a global basis, and the situation is that there are no measures which should be taken for non-conference activities by the Soviet shipping company's low-freight-charge policy. In other words, the Soviet shipping company has taken a low-freight-charge policy unilateraly in a position which does not permit competition from shipping under a free economy and obtained foreign currency earnings from the free market, the obtaining of which is its national policy.

Low costs of Soviet vessels have been discussed frequently. In the case of Soviet shipping, however, the low freight charges are not necessarily the outcome of the low costs. The Soviet authorities stated repeatedly that the fact that the Soviet shipping company is an organization which pursues its own interests, is the same as the enterprises under the capitalist economy. However, this is not our problem either. The problem is their low-freight-charge policy which has been formulated, based on their national policy. As a result, other free-world countries' shipping companies will come to be deprived of their cargoes and suffer from the disturbance of freight charges. Thus, they are constantly exposed to a menace of the crisis as to their business operation.

Free-world countries' shipping has faced the advance of the developing countries' state-run shipping companies from the 1960's and has come to be annoyed by measures to cope with this situation. However, even in the case of the same state-run shipping activities, there is an important difference in the attitude of activities between the Soviet state-run shipping company and the developing countries' state run shipping companies.

The first point is that developing countries' shipping mainly aims at advancing into their own countries' export-import lines, whereas in the case of the USSR, it aims at advancing into third-nation lines which have no connection with its own country's trade.

The second point is that the developing counties' shipping companies have become members of the existing shipping conferences almost without exception and take a policy of seeking to advance within the framework of the said conference, whereas in the case of the USSR, it takes a non-conference and low-freight-charge policy intentionally.

The third point is that developing countries' shipping takes a policy for expanding its share in its own country's export-import cargoes with its own countries' national policies, including the Cargo Retention Law, behind it. On the contrary, in the case of the USSR, it is has expanded its activities with the intentionally low-freight-charge policy by utilizing to the maximum extent the principle of the "freedom of shipping" among the advanced shipping countries and by opening the lines as it pleases.

Among these points, the third point has been grasped in general as "destruction of the freedom of shipping" by the developing countries and the "abuse of the freedom of shipping" by the USSR, and has been criticized. However, in case a country disturbs the price market intentionally, like the USSR, by means of its different economic setup from a free economy and with its national strength, while enjoying the freedom of activities on the free-economy-market, we should rather call this free-economy-market destruction activities by means of its national strength rather than calling it the "abuse of freedom."

4. *Measures Taken by Japanese Government and Various Free-World Countries' Governments.*—Toward such an offensive by Soviet shipping, free-world countries' shipping industry circles, on their part, conducted negotiations as much as possible with the USSR in the past under the joint awareness of a crisis and sought the Soviet side's self-reflection. The first start thereof was the delegates of the various countries' shipping industry circles, centering on the Council of European and Japanese National Shipowners' Associations (CENSA), which is composed of the shipowners' associations in Japan and in various European countries, visited the USSR several times and sought of the USSR a change in its policy and international co-operation. As soon as he viewed that the negotiations by these private sectors had not borne fruit at all, U.S. Federal Maritime Commission former Chairman Backe visited the USSR personally and secured a promise to the effect that Soviet vessels should join the said conferences gradually as to various lines concerned with the U.S. However, this U.S.-Soviet Agreement was not realized due to the U.S. internal procedures as to the Atlantic lines. Also, in regard to the Pacific lines, the Soviet side did not implement this agreement, on some pretext or other. So, the efforts for the negotiations with the USSR by U.S. authorities have not borne fruit, after all.

Because of this, moves for enacting such domestic legislation as to be able to restrict activities in their own countries by other countries' shipping, which will conduct such destructive activities, have been actualized in various free-world nations.

Britain enacted the 1974 Merchant Shipping Act a long time ago. It is stipulated in this Act that Britain shall impose restrictions on activities, including the prohibition of entry into British ports, on such foregn Governments' shipping activities as to injure the interests of British shipping and trade. The Netherlands this year also enacted a domestic law, to the effect that it shall prohibit transportation of cargoes within Dutch water areas as to such activities of other countries' vessels which injure the interests of Dutch shipping. Furthermore, a law bill designed to regulate low freight charges of a third country's state-run non-conference vessels has been presented to the Congress also in the U.S. It is said that West Germany is now also checking into the possibility of revising and strengthening the said country's existing law.

5. *Shippers Are Facing Various Problems.*—In what relations will the above-mentioned Soviet shipping activities and Japanese shippers be?

Shippers take the stand, to the effect that it is not proper to restrict non-conference vessels' activities, on the grounds that insofar as non-conference vessels offer service, low freight charges should be welcomed, and that the activities of non-conference vessels as to the shipping conference, which is the international cartel, should be protected also from the field of the shippers' interests.

However, in a case where other countries' shipping comes to advance into our country, with their freight-charge policies stipulated under their national policy, like Soviet shipping, will it really come to coincide with the shippers' interests on a long-range and final basis to leave such an advance untouched? The Soviet

authorities have stated repeatedly that the Soviet shipping policy is not aiming at assuming hegemony over various lines. However, what is carried out in actuality is the constant reinforcement of the assignment of vessels to various lines and advance into new lines. Insofar as this policy continues, free-world countries' shipping companies, which are not able to follow the Soviet freight-charge policy, will come to suffer defeat in due course of time and will be forced to withdraw from their lines. If things come to this pass, Japanese shipping will come to yield to the Soviet shipping company, which is a third country's vessels, on the lines centering on our country, and our country's external regular lines will come to be placed under the big influence of the Soviet freight-charge policy. Under such circumstances, there is the fear that a big part of our country's import-export freight charges and service will come to be influenced by the Soviet national policy. Once they have secured this position, there is the fear that they will enforce their own independent freight-charge policy unilaterally by casting away their hitherto-taken low-freight-charge policy and change it to a policy of seeking the plundering of foreign currencies to the maximum amount. We, on our part, believe that such a situation will endanger the shippers' interests. At the same time, we cannot permit that situation to come to such a pass.

The temporary withdrawal from the operation of regular liners means a semipermanent defeat. Should things come to such a pass, it will be extremely difficult for Japan's shipping to recover its right of navigation. Insofar as such a situation is feared, we believe that it is urgently necessary for our country, on its part, to map out national measures to cope with Soviet vessels.

6. *Measures Requested by the Japanese Shipowners' Association.*—From the above-mentioned viewpoint, the Japanese Shipowners' Association already has requested the Transportation Ministry authorities to enact a domestic law. That is to say, it is to be such a domestic law as, "In case shipping companies' activities by foreign Government's organizations come to inflict great losses on the Japanese shipping companies on the regular lines centering on our country, the Japanese Government shall take measures to restrict their activities, including the prohibition of entry into our country's various ports, as to the said shipping companies.

Our country's shipping legislation, that is to say, the "Maritime Transportation Law" was enacted in conformity with the "freedom of shipping." Under the existing law, any country's shipping companies are free to open their external regular lines, centering on our country, and especially in regard to foreign shipping companies, restrictions are imposed on their activities which have connection with the Anti-Monopoly Law, including the shipping conference and agreement. However, restrictions and regulations in the field of operation other than such restrictions are nil. However, the "National Flag Discrimination Countermeasures Law," which took effect in July of 1977, has imposed restrictions for the first time on this unrestricted freedom of foreign shipping companies. This Law stipulates that in case Japan's trading-partner country treats the Japanese shipping companies more disadvantageously than its own country's shipping companies, it shall restrict the activities of the said country's shipping companies in our country.

Generally speaking, in conducting external transactions other than shipping, for instance, in conducting trade, the method of those transactions is controlled by supply-demand relations widely and the domestic industries may be protected by tariff barriers, import restrictions, or the bearing of freight charges for imported goods. In comparison with this, in the case of the shipping industry, insofar as the partner country does not discriminate against Japanese vessels, foreign shipping company's activities in our country are not restricted at all, irrespective of being conducted on a government or private basis, as mentioned above. Under such circumstances, the Japanese shipping industry is in a position of being exposed constantly to the advance of foreign shipping companies or foreign countries policies through this advance in Japan without any barrier or protection.

As to such legislation which will be enacted based on the "freedom of shipping," the situation of "free competition by various enterprises under a free economy set-up" is surmised as a premise thereof. However, we, on our part, believe that in such an age when the policies of the developing countries and various socialist countries have penetrated into the shipping industry, like recently, and the shipping industry is made a tool for these policies, it is necessary to enact legislation from a new point of view. The above-mentioned "National

Flag Discrimination Countermeasures Law" is a law which has responded to this request. Soviet shipping company's low-freight-charge activities, which are being conducted, based on the Soviet national policy, are not different from the case of the developing countries on the point that this is the advance of a shipping industry, with its national policy as the background, although the mode thereof is different. In case this advance inflicts big losses on the Japanese shipping companies, our country, on its part, should devise restrictive measures against this advance. Also, not only the Soviet shipping company, but also other East European socialist countries' shipping is watching for a chance to advance into our country. It will be necessary to bear in mind the fact that there is no guarantee that the developing countries' state-run shipping, which is now playing an active role within the framework of the shipping conferences, will not become "state-run non-conference vessels" in the future.

We earnestly request that the Government enact such a domestic law at as early a date as possible. However, we are contemplating to operate lines, while cooperating with them if possible, even after the enactment of this law. The reason why we have conducted negotiations with the U.S.S.R. several times is because we had desired settlement through co-operation. However, since the U.S.S.R. does not respond to this proposal and does not change its policy, we, on our part, believe that we cannot help but use our country's legal self-defense power as the backing in conducting negotiations with the U.S.S.R. in the future.

As mentioned above, Britain and the Netherlands already have taken legislative measures and clarified their national policies for protecting the interests of their own countries' shipping. The U.S. and West Germany are also at the stage of studying similar measures.

The Japan Shipowners' Association strongly hopes that before the blow dealt by the Soviet shipping company to the Japanese shipping companies comes to reach their worst situation, our country, on its part, will take such self-defense measures at as early an opportunity as possible by obtaining understanding from the domestic persons concerned. This is because we believe that without such legislative measures, it will not be possible to expect the establishment of a setup designed to defend against the serious crisis arising on the regular lines centering on our country.

Maritime Shipping Retortion Act

Act to regulate the taking of retortion measures with respect to maritime shipping (Maritime Shipping Retortion Act)

We, Juliana, by the Grace of God, Queen of the Netherlands, Princess of Orange Nassau, etc., etc., etc.

To all and singular to whom these presents shall come: Greeting!

Whereas We have considered it necessary to draw up regulations for the purpose of defending the economic interests of Dutch merchant shipping and with a view to implementing an international agreement or a decision of an international organisation relating to transport at sea;

Now therefore We, having heard the Council of State and in consultation with the States General, have approved and decreed and approve and decree hereby:

ARTICLE 1

For the purposes of the present Act: "Our Minister" means Our Minister of Transport and Public Works; "Tribunal" means the Appeals Tribunal for Industry and Commerce (College van Beroep voor het Bedrijfsleven); "sea-going vessel", or "Dutch sea-going vessel", means a vessel within the meaning of Articles 310 and 311 of the Commercial Code.

ARTICLE 2

1. If in Our opinion the defence of the economic interests of Dutch merchant shipping, or an international agreement or a decision of an international organisation relating to transport at sea, so require, We may, by a General Administrative Order, hereinafter referred to as a Retortion Decree:

(a) Prohibit:

(1) the captain of a sea-going vessel sailing under a flag designated by that Decree from transporting goods in that vessel over Dutch waters;

(2) the owner of an enterprise from wilfully causing goods to be transported in a sea-going vessel sailing under a flag designated by that Decree;

(3) the letting or chartering of a Dutch sea-going vessel to a natural or legal person established in a country designated by that Decree; unless a licence has been issued by Our Minister;

(b) Fix a charge, to be imposed by or on behalf of Our Minister according to a rate to be determined by that Decree on sea-going vessels which sail in Dutch waters under a flag designated by that Decree.

2. A Retortion Decree may provide that the Decree shall also apply to sea-going vessels sailing under a flag, other than that designated by the Decree, which have been let or chartered to a natural or legal person established in the country whose flag is designated by the Decree, if that country grants the same privileges to those vessels as it does to ships sailing under her own flag.

3. A prohibition as referred to in paragraph 1 (a) (1) or a charge as referred to in paragraph 1 (b) hereof shall not apply to a vessel that is in Dutch waters for no other reason than either that

(a) it is in transit, or

(b) that the safety of the vessel and its crew and/or passengers is at risk, or

(c) that the lives or health of the crew and/or passengers are at risk, or

(d) for maintenance or repair work, to bunker or to take on provisions.

4. A proposal to introduce, amend or rescind a Retortion Decree shall be made to Us by Our Minister with the approval of Our Minister for Foreign Affairs, Our Minister for Economic Affairs, Our Minister of Agriculture and Fisheries and Our Minister for Development Cooperation.

5. Before making a proposal to introduce, amend or rescind a Retortion Decree Our Minister shall hear the Socio-Economic Council or a committee as referred to in Article 43 of the Industrial Organisation Act (Bulletin of Acts, Orders and Decrees 1950, K 22).

6. As soon as he has received the recommendations required by virtue of paragraph 5 hereof Our Minister shall make known the receipt in the Government Gazette, stating the date of receipt.

ARTICLE 3

1. A Retortion Decree, or a decree amending or rescinding it, shall not enter into force until at least two months have elapsed since the date of the issue of the Bulletin of Acts, Orders and Decrees in which it appears.

2. Barring earlier withdrawal, a Retortion Decree shall cease to apply three years after it has entered into force, unless further legislation provides otherwise.

ARTICLE 4

Our Minister may grant exemption or, if requested, dispensation from a prohibition imposed or a charge fixed by a Retortion Decree.

2. An exemption order, or an order amending or rescinding such an order, shall be established by Our Minister with the approval of Our Minister for Economic Affairs and Our Minister of Agriculture and Fisheries.

3. An exemption order, or an order amending or rescinding it, shall be published in the Government Gazette.

ARTICLE 5

The licences, exemptions and dispensations may be made subject to restrictions. Licences, exemptions and dispensations may have conditions attached to them.

ARTICLE 6

1. A Retortion Decree may lay down what particulars should be supplied when applying for a licence or a dispensation. Documentary evidence may be included among the particulars required.

ARTICLE 7

2. The applicant shall be notified in writing of a refusal to grant a licence or dispensation, and the reasons for such refusal shall accompany the notification.

1. Our Minister may revoke a licence or a dispensation if the particulars that have been supplied to obtain it are found to be incorrect or incomplete in such a fashion that a different decision on the application would have been made if all the facts had been known at the time of assessment.

2. An order made by virtue of paragraph 1 hereof shall be communicated to the applicant in writing, and it shall be accompanied by a statement of reasons.

ARTICLE 8

Our Minister may collectively revoke the licences or dispensations belonging to a group designated by him if he considers such action necessary.

2. An order made by virtue of paragraph 1 hereof shall be published in the Government Gazette.

3. Article 4, paragraph 2, shall apply in like manner to an order under paragraph 1 hereof.

ARTICLE 9

1. The captain of a sea-going vessel shall be given written notification by or on behalf of Our Minister of a charge imposed under Article 2, paragraph 2(b). The notification shall set out the way in which the amount of the charge has been calculated.

2. The provisions of Chapters IX and X of the Customs and Excise Act (Bulletin of Acts, Orders and Decrees 1961, 31) shall apply to this charge in like manner. For the purposes of these provisions the charge shall be regarded as a tax.

3. The captain of a sea-going vessel may not leave the Netherlands before the charge has been paid or before an adequate security has been deposited to ensure that the charge is paid.

ARTICLE 10

1. When our Minister is considering making a proposal to introduce, amend or rescind a Retortion Decree, he may, with the approval of Our Minister for Foreign Affairs, Our Minister for Economic Affairs, Our Minister of Agriculture and Fisheries and Our Minister for Development Cooperation, if in this opinion there are very good grounds for immediate action, make rules that are in line with the measure contemplated or rescind the rules embodied in the existing Decree, doing so by an Order hereinafter referred to as a Retortion Order.

2. A Retortion Order shall not be issued before recommendations have been sought in accordance with Article 2, paragraph 5.

3. Article 2, paragraph 3, and Articles 4 to 9 inclusive shall apply in like manner.

ARTICLE 11

1. Unless already rescinded, a Retortion Order shall remain effective either until a Retortion Decree relating to the same matter enters into force, or for not longer than eight months after the day on which the recommendations referred to in Article 2, paragraph 5 have been received.

2. A Retortion Order, or an order to amend or rescind it, shall be published in the Government Gazette.

ARTICLE 12

1. Any person whose interests have been directly affected by an Order of Our Minister to:

(a) grant or refuse a license or a dispensation, or

(b) revoke a license or a dispensation under Article 7, paragraph 1, or

(c) Impose a charge,

may lodge an appeal against the order with the Tribunal.

2. Except in the cases in which the present Act provides otherwise, Articles 3 and 5 of Title IV of the Trade and Industrial Bodies (Administrative Jurisdiction) Act (Bulletin of Acts, Orders and Decrees 1954, 416) shall apply in like manner.

ARTICLE 13

If the nominations referred to in Article 15 of the Trade and Industrial Bodies (Admiistrative Jurisdiction) Act are inadequate for appointing special members of the Tribunal for the purpose of effecting Article 12 of the present Act, We may appoint such members on the recommendation of Our Minister of Justice and Our Minister, and not on the basis of the aforementioned nominations, for a period of four years. Article 14, paragraph 3 of the Trade and Industrial Bodies (Administrative Jurisdiction) Act shall apply to such persons in like manner.

ARTICLE 14

1. Article 41 of the Trade and Industrial Bodies (Administrative Jurisdiction) Act shall not be applicable.
2. Our Minister, when forwarding documents to the Tribunal, may, in the public interest, announce that the other party shall not take cognizance of these documents. The Tribunal shall not take cognizance of these documents unless the other party has stated that it does not object thereto.
3. The Tribunal may request Our Minister to furnish in writing information specified by it and to forward documents specified by it within a period set by it.

ARTICLE 15

1. Articles 58 to 60 inclusive of the Trade and Industrial Bodies (Administrative Jurisdiction) Act shall not be applicable.
2. The Tribunal may annul an order. An annulment shall be effective from the time it is pronounced.
3. If an appeal against an order as referred to in Article 12, paragraph 1 (a) or against failure to issue such an order is sustained, the Tribunal may set a time within which Our Minister shall issue another order, or a first order, as the case may be.

ARTICLE 16

If matters dealt with in the present Act require further regulation to facilitate implementation of the Act, this can be done by General Administrative Order.

ARTICLE 17

It shall be prohibited to supply incorrect or incomplete information concerning an application for a licence or a dispensation.

ARTICLE 18

The Economic Offences Act shall be amended as follows: "the Maritime Shipping Retortion Act, Article 2, paragraph 1, Article 5, Article 9, paragraph 3, Article 10, paragraph 1, and Article 17;" shall be added to Article 1 (4).

ARTICLE 19

The present Act may be cited as: Maritime Shipping Retortion Act.

We direct and ordain that these presents be published in the Bulletin of Acts, Orders and Decrees and that all Ministerial Departments, Authorities, Bodies and Officials whom they may concern diligently implement them.

Given under Our Hand,

———— ————,
State Secretary for Transport and Public Works.

———— ————,
Minister for Foreign Affairs.

———— ————,
Minister for Economic Aairs.

———— ————,
Minister of Agriculture and Fisheries,
Minister for Development Cooperation.

[Rates eff. May 11, 1978]

Commodity	Conference rate	Soviet rate	Percent variance
NORTH ATLANTIC CONTINENTAL FREIGHT CONFERENCE VERSUS BALTATLANTIC LINE			
Air-conditioning machinery	$71w/m	$61w/m	14
Photo apparatus	$61.75w/m	$49.25w/m	20
Paper sulphate release	$72w	$63.25w	12
Common glassware	$69w/m	$49w/m	29
Compound fertilizer	$86.25w	$59.75w	31
Household goods	$525.75w	$351w	33
Boats	$78.25w/m	$56m	29
CONTINENTAL NORTH ATLANTIC WESTBOUND FREIGHT CONFERENCE VERSUS BALTATLANTIC LINE			
Dinnerware	$179.50w	$120w	33
Biscuits and wafers	$48.25w/m	$33w/m	32
Shoes, NOS	$67w/m	$37.50w/m	44
SOUTH ATLANTIC NORTH EUROPE RATE AGREEMENT/ CONTINENT VERSUS BALTATLANTIC LINE			
Resin plasticizers, packed	$116.50w	$100.50w	14
Rubber tires, used	$148.50w	$125w	16
Garden tractors, packed	$68w/m	$60.75w/m	11
Textile machinery, NES	$104.25w/m	$60.50w/m	42
Vacuum cleaners, etc	$83.25w/m	$56.75w/m	32
Boats, aluminum, fibreglass, or plastic	$78.25w/m	$50w/m	36
Gloves, industrial, work, packed	$141.50w/m	$110.75w/m	22
Personal or household effects	$525.75w	$351w	33
Mica, viz: ground or pulverized, etc	$86.75w	$76w	12
Synthetic thread and cotton waste in bales	$86w	$70w	19
SOUTH ATLANTIC NORTH EUROPE RATE AGREEMENT/ UNITED KINGDOM VERSUS BALTATLANTIC LINE			
Waste, viz: synthetic fiber in bales	$100w	$81.25w	19
Sheets and pillow cases	$129w/m	$110w/m	15
Towels other than paper	$150w/m	$128w/m	15
GULF EUROPE FREIGHT ASSOCIATION VERSUS BALT-GULF LINES			
Resin, synthetic	$92.35W	$72.80W	21
Rubber, synthetic	$78.75W	$63.21W	20
Scrap, aluminum	$90.75W	$67.50W	27
Cotton goods	$73.50M	$49.00M	33
NORTH ATLANTIC MEDITERRANEAN FREIGHT CONFERENCE VERSUS BLASCO			
Rags	$82.50W	$115.75W	(40)
Wastepaper	$60W	$107.5W	(79)
Tinplate	$70W	$53W	24
Cottonseed hull	$111.75W	$118.50W	(16)
Kyanite ore	$65.75W	$105.25W	(60)
Foodstufl, NES	$208.75W	$257W	(23)
Lumber, heavy	$132.25W	$159.25W	(20)
Skins ,calf	$123.25W	$62.50W	(50)

Addendum to Atlantic rate study (Soviet rate actions, August 1978)

1. Coin operated machines:
   - Conference rate (NACFC) — $74.75 w/m.
   - Baltic steamship rate — $30 m.
   - Percent variance — 60.
2. Bowling equipment, used and refurbished:
   - Conference rate (NACFC) — $91.25 w/m.
   - Baltic steamship rate (July 1, 1978 to August 30, 1978) — $50 w/m.
   - Percent variance — 45.
3. Safety book matches:
   - Conference rate (NACFC) — $82.25 w/m.
   - Baltic steamship rate — $49 w/m.
   - Percent variance — 40.
4. Batteries, NES:
   - Conference rate (NACFC) — $161 w/m.
   - Baltic steamship rate — $85.25 w/m.
   - Percent variance — 47.

PACIFIC TRADES—COMPARISON BETWEEN CONFERENCE AND FESCO RATES

[Rates effective Aug. 30, 1978]

Trade route and commodity	Conference rate	Fesco rate	Percent variance
EASTBOUND			
Thailand—U.S. west coast:			
Bamboo poles	$66m	$51.25m	22
Woolen carpets	$95m	$74m	22
Chinaware	$95m	$69.50m	27
Foodstuffs	$70m	$59.75m	15
Radios	$109w	$94.50w	13
Japan—U.S. west coast:			
Porcelainware	$75w/m	$65w/m	13
Monosodium glutamate	$105w/m	$91.50w/m	13
Television sets	$62w/m	$53w/m	15
Light bulbs	$72w/m	$62w/m	14
Fishing tackle	$96w/m	$83.50w/m	13
Computers	$106w/m	$90.50w/m	15
Philippines—U.S. west coast (May 31, 1978):			
Rattan furniture	$55.50m	$38.75m	31
Desiccated coconut	$121w	$81.75w	32
Rope	$145w	$100w	31
Textiles	$84.25m	$59.25m	30
Tobacco	$64.75m	$45m	31
Wood products	$81.50m	$56.75m	30
Woven articles	$66.75m	$46.75m	30
WESTBOUND			
Japan—U.S. west coast:			
Finished cedar	$109w/m	$72w/m	34
Ores and concentrates	$131w	$76w	42
Household detergents	$53w/m	$39w/m	26
Regenerated cellulose	$103w	$71w	31
Thailand—U.S. west coast:			
Detergents	$114w/m	$92w/m	19
Insecticides	$145w/m	$123w/m	15
Paper, newsprint	$102w	$74w	27
Synthetic resin	$103w/m	$81w/m	38
Singapore—U.S. west coast:			
Scouring cleaners	$115w/m	$90w/m	22
Raw cotton	$133w	$100w	25
Barium sulfate	$115w	$75w	35
Foodstuffs	$173w	$82w	53
Glass tableware	$84w/m	$67w/m	20
Oil well drilling machinery	$94w/m	$72w/m	23
Printing paper	$180w	$126w	26
Polystyreme resin	$102w	$77w	25

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

RAGAN & MASON,
Washington, D.C., September 14, 1978.

JOHN HARDY, Esq.
Merchant Marine and Tourism Counsel, Senate Commerce Committee, Washington, D.C.

DEAR JOHN: I have been requested by Sea-Land Service, Inc., to transmit the replies to the questions which were given to Mr. Charles I. Hiltzheimer at the conclusion of his testimony on S. 2873, before the subcommittee on September 6, 1978. We have treated questions 1–7, 12 and 13, as a single group and have provided a single reply. All remaining questions were replied to individually. If additional clarification is required we are available to assist the staff of the subcommittee.

During the course of the September 6th hearing, questions were posed to some witnesses by Senator Inouye concerning the validity of certain conclusions contained in a Booz, Allen, Hamilton Study prepared under contract with the De-

partment of Transportation. I have taken the liberty of preparing a concise paper which I submit highlights certain critical deficiencies of that study which in turn vitiates any conclusion made by that study. I am also enclosing that paper. The purposes of this paper is to identify the initial critical errors in logic and sampling which render the study virtually meaningless. I did not have either the time or resources to check out the many and various sources relied upon in the Study. However, the level of sources (exhibits in various Martime Subsidy Board cases, magazine articles, and other untested sources) when identified, casts doubt on the validity of some basic data. It is primarily in the data area where time did not permit the detailed analysis of source data.

Sincerely,

DONALD J. BRUNNER.

Enclosures.

RESPONSES TO QUESTIONS POSED TO SEA-LAND SERVICE, INC., BY SUBCOMMITTEE ON MERCHANT MARINE AND TOURISM

Question 1. By virtue of the definition of "controlled carrier" in S. 2873, the FMC would be able to look behind the flag of a vessel, and have the bill apply where a government controls a vessel, but operates it under a foreign flag.

H.R. 9998, on the other hand, would not permit the FMC to look behind the flag of a vessel.

Do you believe the provisions of H.R. 9998 are adequate to safeguard against governments evading the legislation?

Question 2. Under S. 2873, during the suspension period the FMC could prescribe minimum rates to be charged by the controlled carrier.

H.R. 9998, on the other hand, does not give the Commission authority to prescribe minimum rates, and carriers may file new rates which would take effect immediately during the suspension. Even then, however, the Commission may reject it as unjust and unreasonable.

Do you believe the provision in H.R. 9998 gives the FMC adequate authority for the purposes of this legislation?

Question 3. Under S. 2873, for purposes of determining constructive costs, the FMC would be given access to all data relating to the cost of performing ocean transportation available in the files of any other agency of the United States except where the possessing agency certifies in writing that release of such data would endanger national security.

H.R. 9998, on the other hand, does not give this access to the FMC.

In terms of protecting the confidential nature of proprietary information, H.R. 9998 is, of course, preferable. Is it, however, too restrictive on the FMC?

Question 4. H.R. 9998 would not apply to any rate served exclusively by controlled carriers. This provision is intended to assure that the bill would not restrict service in the Great Lakes where Eastern bloc carriers provide a significant percentage of the sailings.

S. 2873, on the other hand, has no such provision.

In your view, does this provision in H.R. 9998 raise any problem in terms of what the legislation is trying to achieve?

Question 5. Under H.R. 9998, in determining if rates are just and reasonable the FMC may consider whether suspension of disapproval of the rate would unduly affect the quality of service provided in any trade route. This consideration, of course, would have its greatest impact in areas such as the Great Lakes where Soviet carriers provided such a significant portion of the liner service.

S. 2873, of course, has no such provision.

Do you find this provision in H.R. 9998 acceptable from your standpoint?

Question 6. S. 2873 provides that the President may stay any order of suspension or final order of disapproval of rates, etc., for a period not to exceed 120 days if he finds that such stay is required for reasons of national defense or foreign policy.

H.R. 9998, on the other hand, gives the President authority to stay permanently such suspension or final order.

Does the House passed provision raise any substantial problem that you see?

Question 7. S. 2873 provides that the FMC may review the rates of a controlled carrier "upon any request."

H.R. 9998, on the other hand, makes this review discretionary with the FMC because it was feared that the broader provision could possibly lead to an immense case load for the FMC and possible harassing tactics.

Do you believe the narrow authority in H.R. 9998 is sufficient to achieve the objectives of the controlled carrier legislation?

Answer to questions 1–7, 12, and 13. Questions 1 through 7, as well as 12 and 13, seek to compare the detailed differences between S. 2973 and H.R. 9998. Clearly, the provisions of S. 2873 reflect the strongest possible regulatory authority being granted to the Commission to maintain constant surveillance of rate structures of controlled carriers. On the other hand H.R. 9998 represents the accommodation of various views (both governmental, as well as industry-shipper and carrier) to arrive at the minimum regulatory scheme which could effectively deal with predatory rates of controlled carriers. It is Sea-Land's view that H.R. 9998 meets these minimum standards and for that reason, and for the reason that the need for legislation is now so critical that Sea-Land recommends to this committee that it adopt H.R. 9998 in lieu of S. 2873. Furthermore, based upon statements of the Federal Maritime Commission before the House subcommittee as well as this subcommittee, Sea-Land is confident that with the authority granted the Commission in H.R. 9998 it is quite capable of coping with predatory practices of controlled carriers.

Question 8. On page 2 you state that the Soviet fleet is "huge, modern and highly sophisticated," and that 34 of the 57 ships employ modern container or Ro/Ro technology, and 36 are less than five years old.

Does most of the cargo which moves in the Soviet bilateral trades require so many highly sophisticated vessels?

Answer. No. Only 5 percent of cargo carried by these Soviet vessels is cargo in the U.S./U.S.S.R. bilateral trade. The U.S./U.S.S.R. bilateral trade at the present time is primarily the wheat movement—none of which move in highly sophisticated vessels such as containerships or RO/Ro's.

Question 9. On page 5, of your statement you give examples of specific cargo shipments lost by Sea-Land to Soviet carriers as a consequence of their lower rates.

Could you tell the Committee if any of these losses occurred on trade routes 7, 17, 22, or 29, where Soviet penetration is the most severe?

Answer. Of the 4 examples given on page 5, following are the trades involved: Imported shoes—Continental North Atlantic Westbound (TR #7); commercial household goods—North Atlantic Freight Conference (TR #7); textile machinery—South Atlantic North Europe Rate Agreement (TR #11), and rattan furniture—Phillipines to U.S. (HR #29).

Question 10. On pages 3–4, you cite several examples of other countries already reacting in varying ways to the disruptions thrust upon international liner shipping by the tactics of the Soviet merchant fleet.

I take it therefore you would not agree with the contention of the National Industrial Traffic League that the "international trading capability of U.S. industry will be severely handicapped if, uniquely in the world, commercially-negotiated ocean rate levels become subject to regulatory suspension"?

Answer. Sea-Land does not agree with the National Industrial Traffic League that the "international trading capability of U.S. industry will be severely handicapped if, uniquely in the world, commercially-negotiated ocean rate levels become subject to regulatory suspension." The purpose and intent of S. 2873 is to permit the Federal Maritime Commission under severe restrictions to suspend predatory rates of certain government-owned carriers. This is far more restrictive than the League's characterization of "establishing regulatory rate suspension authority in the U.S. liner trades." Moreover, the League in its statement assumes that which the Commission must ultimately decide. Thus, if a controlled carrier's rate is "commercially negotiated" which "reflects the rate level necessary to assure movement of cargo," the rate would, of course, not be "unjust or unreasonable" and would not provide the basis for a suspension. To reiterate, it is Sea-Land's position that S. 2873 is designed to combat the non-commercial practices of controlled carriers, not their legitimate competitive practices.

Question 11. With respect to its proposed amendment to S. 2873 which would establish a "15 percent zone of reasonableness" the Department of Justice has said, "it is proper legislatively to assume that rate as much as 15 percent below the comparable conference rate is a rate which is cost justified. We take this view because it is well established that privately-owned, non-conference carriers have traditionally been able to offer such rates and still make a profit. We note further that it is, in fact, frequently necessary that non-conference carriers offer this level of discount. If they did not, shippers would be inclined to patronize

only the conference carriers, which offer service which is more frequent and sometimes superior to that offered by the independents."

Would you comment on the Department's statement?

Answer. The Department of Justice's statement attempts to establish a "15 percent zone of reasonableness," i.e., rates which are within 15 percent below conference rates would be prima facie reasonable. In support of this position, it states that it is "well established that privately-owned, non-conference carriers have traditionally been able to offer such rates and still make a profit." They, however, cite no examples to support this statement. Recent history in the United States/North Atlantic trades demonstrate that carriers who sought to quote rates in the area of 15 percent below conference ultimately withdrew from the trade (New England Express Lines and Finn Lines, are but two examples). U.S.-flag carriers who traditionally were independent and quote rates below prevailing conference level were unable to replace their fleets which were originally acquired in the post-World War II Ship Sales acquisitions (Isbrandtsen and States Marine are two examples. Neither carrier exists today as a common carrier in U.S. commerce).

It is generalities and over-simplifications such as the Department of Justice's statement which do more harm than good to an evolving maritime policy or to attempts to construct one. Moreover, as Sea-Land has repeatedly pointed out, controlled carriers undercut rates which are in the conference's higher range of the rate structure. In effect, such selective rating strategy "skims" the cargo and carriers engaging in such practices do not in fact offer a full common carrier service to the trade. The "15 percent zone of reasonableness" would be a license to continue the same to the detriment of the commerce of the United States.

Question 12. S. 2873 provides that pending a determination of the lawfulness of a controlled carrier's rates, the FMC may suspend the rates in question indefinitely.

H.R. 9998, on the other hand, limits these suspensions to a maximum of 180 days.

Do you believe it more desirable in the interest of efficient administrative practice and fairness to the parties to have a time limitation such as H.R. 9998 does? As if so, is 180 days sufficient?

Answer. See answer 1–7.

Question 13. As to rates already in effect, S. 2873 provides that the FMC may suspend them on 30 days notice. H.R. 9998, on the other hand, requires 60 days notice.

Do you feel that a 60 day notice period would, in any way, hinder the effectiveness of the suspension period?

Answer. See answer 1–7.

Question 14. Under S. 2873 the term "constructive costs" is defined to mean the costs of another carrier, other than a controlled carrier, operating similar vessels and equipment in the same or similar trade.

The Department of Justice, however, has urged an amendment to insure that in constructing the costs of a controlled carrier for the purpose of determining whether its rates were just and reasonable, the Commission could only consider the costs of other carriers that operated between the same points or ports in the same trade and which had similar services, conditions of carriage and tariff descriptions. In order to determine constructive costs the amendment would therefore require comparison with a vessel and method of operation that was almost identical to that of the controlled carrier in question.

Answer. It would be mere accident to have two carriers in one trade offering identical services. Port call, transshipments to other port ranges, type of ships (container, ro-rro, and break-bulk) ship sizes and capacities, and frequency of service, are but a few of the operating differences which distinguish carriers. However, in constructing costs for a carrier, the Maritime Commission is quite capable of considering these variances and properly weighting them to arrive at a constructive cost for any carrier. To insist upon an identical carrier in an identical trade as the basis of providing constructive costs is to write constructive costs tests out of the proposed legislation.

Question. The Department of Justice has urged removal of the requirement in S. 2873 that controlled carriers give 30 days notice prior to any reduction in rates. Its concern was that since other carriers need not give any notice before their rate reductions are effective, a controlled carrier could be denied the ability to compete effectively.

On the other hand, it is urged that a controlled carrier desiring to engage in predatory practices or use its greater financial resources in unfair competition could significantly disrupt the market by lowering its rates immediately without notice. While a controlled carrier which desired to lower its rates only to meet rates lowered immediately by its competitors could do so since the bill allows immediately rate reductions by the controlled carrier on "special permission of the Commission."

In view of the "special permission" authority given the Commission do you believe the objection raised by the Department of Justice is valid?

Answer. The Department of Justice objection is not valid since the proposed legislation permits controlled carriers to reduce rates upon application to the Federal Maritime Commission. Generally in the domestic non-contiguous trades where there presently exists a 30-day notice requirement for rate reductions, the Commission will *not* grant special permission which is based upon a requirement to meet the lower rates of a competitor. However, it is clear from the numerous hearings before both this Committee and in the House of Representatives that special permission may be granted to a controlled carrier to meet newly reduced rates of its competitors which have taken effect upon less than 30 days' notice.

Question 16. In response to a question from the Committee the Department of Justice noted that although it would be possible for a controlled carrier to file rates which are not comparable to other carriers, in the event it did, it would be an incentive for conferences to formulate their own version of such rates in response. Thus, the Department concluded there would be comparability of rates and even under the amendment it proposed the FMC would be able to suspend improper rates without holding a full evidentiary hearing.

In your judgment, is this a realistic possibility, or would such a possibility create further instability in our trades?

Answer. The basic fallacy with the entire Department of Justice approach is demonstrated by Department of Justice's rationale in support of this amendment. In competing with a controlled carrier, Sea-Land and other commercial carriers are competing with a carrier which is not profit motivated and which demonstrably "skims" cargo. It is not a difficult task to create a rate—not comparable to existing rates—which would be attractive only to otherwise high-rated cargo and be singularly unattractive to low rated cargo. Indeed commercial carriers could construct such a rate (or a similar one) to participate in that cargo move—but it is this very tactic which constitutes predatory rate-making on the part of controlled carriers. Commercial carriers cannot long engage in such rate-making and continue to remain active in a trade and replace their fleets; controlled carriers can.

Question 17. According to an FMC staff analysis, Soviet vessel itineraries over the past three years indicate that one of the primary reasons for the Soviet presence in our Gulf Coast trades to Europe and the Far East is their active trade with Cuba.

According to that analysis, it is normal for a Soviet vessel to carry cargo from Eastern Europe to Cuba and then load cargo at U.S. Gulf and East Coast ports for the return trip to Europe. Likewise, in the trade between the Far East and U.S. Atlantic and Gulf ports, the Soviet vessels carry inbound cargo to Cuba.

Because our trades are the most lucrative and attractive in the world, is it possible that somehow we are responsible for facilitating or subsidizing trade between Cuba and the U.S.S.R.?

Answer. Certainly if the Soviet carriers had to return to Russia from Cuba in ballast the one-way trade to Cuba would be extremely expensive. To the extent Soviet carriers attract U.S. foreign commerce on their return leg from Cuba, that U.S. cargo is facilitating the trade between Cuba and the U.S.S.R. Moreover, it can be assumed that the U.S.S.R/Cuba trade is a ruble trade or a barter trade which in part is made pssible by the UoS. hard currency trade.

Question 18. Although strictly speaking, the issue of maritime insurance in the U.S.-Soviet trades is not involved in S. 2873, it may be relevant as an example of where state-controlled monopolies dealing with the west have a tremendous advantage.

The contention, as I understand it, is the Soviets have frozen U.S. underwriters out of insuring cargoes to and from the Soviet Union by purchasing all U.S. goods on a free-on-board (FOB) basis, and selling goods to the U.S. on a

cost insurance, and freight (CIF) basis. This practice has reportedly deprived U.S. underwriters of about $14 million in fees over the few years.

Do you believe this example sheds some light on the motives of the Soviets in entering our liner trades as cross traders?

Answer. This example clearly illustrates what occurs when the Soviets are in a position of exercising complete control in a particular activity. In the example given, all commercial transactions are negotiated on a basis so that Soviet controlled monopolies can and do place marine insurance with Soviet underwriters. Given a similar opportunity to control or to exercise dominant influence over rates in U.S. foreign commerce worldwide, Sea-Land has no doubts that such control or dominant influence will be exercised not to benefit the U.S. foreign commerce, but rather in the words of Admiral Gorshkov "to effectively utilize the world ocean in the interest of building communism. . ."

Question 19. In 1976, the then Chairman of the FMC and his Soviet counterparts signed a memorandum agreement known as the Leningrad Agreement, concerning principles that are to govern participation of Soviet water common carriers in the U.S. oceanborne trades. The Agreement contains two key features:

(1) That all ocean cargo rates contained in tariffs of Soviet carriers now engaged as independents in the liner trades of the United States will, as promptly as feasible, be adjusted to a level no less than that of the lowest rate in use for the same commodity of any other independent carriers in those trades.

(2) That negotiations be conducted promptly with a view toward bringing the Soviet carriers into the Atlantic and Pacific conference systems.

(*a*) In your opinion, have the Soviets lived up to their part of the agreement?

(*b*) In your opinion, has the U.S. lived up to its part, keeping in mind that since the Agreement the Department of Justice has successfully opposed attempts by the Russians to join conferences on a "two-tier" basis?

Answer. As a result of the Leningrad Agreement, some progress was made in the North Atlantic trades in adjusting the levels of the Soviet carriers to a commercially competitive level. The carriers entered into a series of proposed section 15 agreements popularly known as the "A/AA Agreements" whereby the controlled carriers would in the near term enjoy a slight percentage rate advantage and would in two years quote conference level rates (Continental Trade). Upon approval of these A/AA Agreements the controlled carriers indicated they would join the other North Atlantic conferences as regular members (e.g. U.K. conferences). Upon protest of the Department of Justice these agreements were ultimately withdrawn.

In the Pacific Trades, although there were some rate adjustments, no progress was made in establishing agreements in implementation of the Leningrad Agreement.

In summary, while some progress was made by the carriers themselves, the commitment of the good offices of the Soviets and the Maritime Commission did not materialize. This is so because apparently the Soviets required the A/AA arrangements as a condition precedent to other commitments and the protests of the Department of Justice (together with its motion to disqualify the Chairman of the Maritime Commission in any hearing on this subject because of his participation in the Leningrad Agreement) prevented any realistic, timely action on the part of the Maritime Commission.

Question 20. (*a*) With reference to rates, in your judgment, do the Soviet rates compare with other independent, non-controlled carriers in our trades?

(*b*) If not, how do they differ?

Answer. Rather than comparing individual rates of Soviet carriers with the individual rates of numerous independents that may at any one time exist in a trade, the proper comparison should be based on total rate structures. It is Sea-Land's position that the Soviet carriers' rates structures are predatory or tend to be predatory in that they are designed to skim the cargo. It is an exercise in futility to compare a Soviet carrier rate structure with that of an independent which historically is an opportunistic competitor and which has no dedication to the trade, i.e., has no present intention of long range service and replacing its assets.

Question 21. Section 18(b)(5) of the Shipping Act provides that: "The Commission shall approve any rate or charge filed by a common carrier by water in the foreign commerce of the United States or conference of carriers which, after hearing, it finds to be so unreasonably high or low as to be detrimental to the commerce of the United States."

(*a*) Is this provision an effective tool to deal with the problems at which S. 2873 is directed?

Answer. No. While Section 18(b)(5) of the Shipping Act may be an effective tool in dealing with detrimental rates in a truly commercial situation, it was not designed for nor does it provide the means to deal with predatory rates of controlled carriers. A few shortcomings of Section 18(b)(5) is its lack of a clear standard is evaluating costs of a controlled carrier (S. 2873 provides constructive costs); its lack of suspension power (S. 2873 provides suspension); its lack of putting the burden of proof on the proponent of the rate which has the data to discharge that burden (S. 2873 puts the burden of proof on the controlled carrier). Indeed, the Maritime Commission's support of S. 2873, itself, is evidence that the administrator of section 18(b)(5) recognizes that section's deficiencies in coping with predatory rates of a controlled carrier.

Question 22. Under one of the Department of Justice's amendments, the FMC would have no discretion to suspend or disapprove of a controlled carrier's rates if those rates are not below those of an independent, non-controlled carrier offering similar transportation services. Thus, the FMC might have to compare the Soviet rates with the rates on an infrequent or irregular carrier, if that carrier has a rate on file.

Do you think that would limit severely the objectives of S. 2873?

Answer. Yes, as indicated previously, the American philosophy literally invites non-dedicated independent carriers to participate opportunistically in the U.S. foreign commerce. The only revenue requirement being that revenue exceeds lay-up costs of the ship. To compare controlled-carrier rates with rates of opportunistic independents would be to destroy the objectives of S. 2873.

Question 23. Do you agree there is no evidence that Soviet rates are below Soviet costs?

Answer. Sea-Land has seen no evidence of Soviet costs. The volumes of testimony on Soviet costs demonstrate, however, that such costs are in irrelevant consideration in Soviet rate-making.

Question 24. In its testimony, the Department of Justice said that it has not been demonstrated that any state-controlled carrier presently serving in the U.S. trade routes is now or ever has engaged in predatory rate practices on a systematic basis.

(*a*) Do you agree with the Department of Justice?

(*b*) In any event, is this really the issue we are concerned about? Isn't the Soviet ability to be predatory considered along side of the obvious motives for Soviet cross-trading, the matters with which we are concerned?

Answer. Sea-Land disagrees with the Department of Justice's statement that there is no evidence that controlled carriers have ever engaged in predatory rate practices on a systematic basis. In Sea-Land testimony (pg. 5), four examples were given where Soviet carriers' rates ranged from 31 percent to 44 percent below the conference level—far exceeding even Department of Justice's standard of 15 percent. What is clear is that Soviet carriers will quote rates to obtain cargo to maximize utilization of the vessels without regard to cost or other market considerations. Sea-Land considers this predatory rate-making on a systematic basis. Given this history coupled with their success in capturing an ever expanding share of the U.S. foreign commerce it is just a matter of time before they become the dominant factor in rate-setting with few, if any, U.S.-flag lines remaining in competition with them. At that point Sea-Land can only speculate as to what levels rates will escalate since, as indicated above and clearly established both before this committee and in the commercial world, cost and other market considerations are not elements of Soviet rate-making.

Question 25. In its testimony on S. 2873, the FMC said that for individual commodity rates, the test of "just and reasonable" would have to focus more upon the disruptive effect that the rate is creating or is likely to have upon the trade as a whole. Here, the relationship of the rate to those charged by other carriers and the necessity of those rates to assure the movement of particular cargo would play a larger role than in testing the reasonableness of an entire rate structure.

Do you agree with the FMC's statement?

Answer Yes. Obviously the FMC statement is based upon its long experience in rate regulation in the domestic non-contiguous trades. There, in evaluating the reasonableness of a rate, the FMC must also consider the impact of that rate on the entire rate structure. These are included in market considerations mentioned

in the previous reply. Thus, some low valued commodities will cease to move if rates are increased, yet the rate yields revenues which exceed variable costs and therefore contributes to total expense of providing the service. If these low rated commodities are priced out of the market, the contribution which they make to fixed expenses will be forced onto other commodities, thereby causing further rate increases. It is because controlled carriers, through predatory practices at the lower level of the rate scheme (i.e., higher rates by controlled carriers for low valued commodities), ignore these important market considerations that they are able to undercut rates at the higher levels of the rate scheme.

Question 26. The FMC testified that the Soviet carriers pay about double the normal commission rate for cargo. Is that accurate?

Answer. Yes. Normally freight forwarder compensation will vary between 1¼ percent to 3 percent. However, at the present time forwarders are being paid on certain cargo 7½ percent compensation which is in response to the high compensation the Soviets are paying. Specific examples include the following: North Atlantic Continental Freight Conference—2½ percent as compared to Baltic's 3¾ percent for Service 1; Continental Westbound Freight Assoc.— 2½ percent as compard to Baltic's 4 percent for Service 1 (these trades are MARAD Trade Route No. 7; Pacific Westbound Conference—1¼ percent as compared to FESCO's 2½ percent (MARAD Trade Route No. 29).

Question 27. U.S. shipping law, of course, does not permit closed conferences, and only permits rationalization and coordination of services if the agreement to do so is approved by the FMC.

Most other major trading nations have no such restrictions.

Does this difference make it easier or more attractive for the Soviets to penetrate the U.S. trades as cross-traders?

Answer. The U.S. shipping laws committed as they are to open conferences and maximization of competition make it attractive for any carrier to readily enter the U.S. foreign trades when the trade it was operating upon becomes nonprofitable (overtonnaged, being sut out by government decree, etc.). As indicated in a previous reply the only revenue requirement is that revenue meets variable expenses and otherwise exceeds lay-up costs of the ships. It is this very umbrella which the Soviets use to justify their predatory rate by comparing them with opportunistic independents.

Question 28. To your knowledge, has FRESCO or Baltic ever been invited to join any of the major conferences in the U.S.-Atlantic or Pacific trades?

Answer. Yes. The Balt-Atlantic line was going to join five North Atlantic Conferences upon being admitted as "AA" members to the continental conferences. FRESCO was for a short time a member of Far Eastern Conference (Atl/Gulf to Far East). U.S. law (§ 15 Shipping Act) requires open membership, thus no carrier has to be invited, they merely have to apply and must be admitted if they are providing a service in the conference trade.

Question 29. It has been said that S. 2873 could turn out to be ineffective. Any "controlled carrier" could without difficulty just join a so-called "48 hour agreement" and would not be affected by the Act at all. He could simply continue his rate cutting practice by giving 48 hours notice to the other members of the agreement. Also, the bill is hinged on the flag of registry which means chartered ships might not be covered.

Do you agree?

Answer. No. Both S. 2873, as well as H.R. 9998 have language which exempts rates of a controlled carrier from their provisions if such rates, charges, classifications, etc., of any controlled carrier are covered by an approved section 15 agreement. The rates in a "48-hour rate agreement" are not covered by that agreement—they are set independently by the carrier who is a party to the agreement, with the only requirement being that it gives 48 hours' notice to other parties of filing the rates. Clearly, these are not rates set in concert one carrier with others; discussion of rate matters is permitted but each carrier then independently establishes its own rate. In most 48-hour agreements, each carrier party thereto publishes its own independent tariff. Moreover, the exemption would also not apply to independent rates established by controlled carriers which are members of conferences which have the right of independent action (there are a limited number of such conferences at the present time). As in the case of the "48-hour rate agreements" these independent action rates of a carrier are not rates covered by an agreement but rather the independent rate of the carrier.

COMMENTS ON "A STUDY OF OCEAN RATE DISPARITIES" PREPARED BY BOOZ, ALLEN, AND HAMILTON, INC., FOR DEPARTMENT OF TRANSPORTATION, JUNE, 1978

The Study of Ocean Rate Disparities prepared for the Department of Transportation ("Department") by Booz, Allen, and Hamilton, Inc. ("Booz Allen") is solely the findings and conclusions of Booz Allen and does not represent the position of the Department.

The authors of the study readily recognize and identify the various shortcomings. Thus,

1. Initial identification of commodities were based upon the 4-digit standard international trade classification (SITC) number. Tariffs utilizing commodity classification numbers generally are identified to a 7-digit level. Thus, an arbitrary aggregating of tariff classifications with the Booz Allen sample has to be made to arrive at a tariff rate for a 4-digit commodity. This probably explains the frequent averaging of individual rates (see footnotes to App. A).

2. The study acknowledges that the period of analysis (1976) was "an unusually trying time in the history of liner shipping and its regulation" (presumably referring solely to U.S. foreign commerce and its regulation). Because of this perceived problem the sources relied upon by the study are acknowledged to be "not always as complete or as reliable as they might otherwise have been." (Study I–9 and 10).

While the use of defective or deficient data may be defended by the statement that it is (or was) the best data available, it remains that the defective or deficient data detracts from the conclusions. The extent of this detraction can only be determined by a study as thorough as the Booz Allen study was intended to be.

A. RECIPROCAL DISPARITIES

The trades analyzed are limited to U.S. foreign trade (gnerally all coasts) to Europe (North Atlantic and Mediterranean) and the Far East. The North/South bound trades of the United States (Central/Latin America; Africa; Australia) are omitted as well as trades to other developing nations (notably Persian Gulf and Indian subcontinent). Thus, conclusions must perforce be limited to the trades initially selected.

Having once selected the trade, Booz Allen then proceeds to limit the total trade to 51 commodities for analysis purposes. In its selection process it completely distorts the value of the commodities analyzed as illustrated below:

ANALYSIS OF COMMODITY SELECTION PROCESS[1]

	Total	Trade	Quantities, 1,000 tons in each direction		71 commodities		51 commodities analyzed	
	IB	OB	IB	OB	IB	OB	IB	OB
Value per ton	$1,696	$1,122	$1,656	$1,617	$1,598	$2,040	$1,525	$1,991
Percent of trade volume	100	100	40	34	4.7	4.0	4.3	2.4

[1] Source: Tables III–2 and III–6 Booz Allen stuby. Value was arrived at by dividing value by tonnage, for example,

$$\frac{13{,}965{,}000 \text{ tons}}{\$23{,}691{,}000{,}000} = \$1{,}696 \text{ per ton total trade.}$$

As can be seen, in total the average value of the total commodities inbound is 151 percent greater than the average value of the total commodities outbound (1696÷$1122=151 percent); however, after the sampling elimination is complete, the average value of inbound commodities is but 71 percent of the average value of the outbound commodities ($1525÷$1991=71 percent). This drastic reversal from the experience of the total trade to the sample trade indicates that the sample is not representative of the total trade. It therefore appears that the sampling technique is defective (see Study, pgs. III–5 and III–6).[2]

[2] Strangely enough the example given "Vegetables, Leguminous," appearing on table III–3 does not appear as one of the 51 sample commodities (compare table III–7, Trade Route 12).

Moreover, the 51 commodities IB have an average value ($1525 per ton) which is less than the average value of the total IB trade ($1696 per ton), while OB the 51 commodities compared have an average value ($1991 per ton) which greatly exceeds the average value of the total OB trade ($1122 per ton).

The study does recognize that commodity value is a demand factor which most influences the level of rates (Study p. II–2). Thus, the Study possibly indicates that of the 51 commodities selected as the sample, the OB commodities are of very high value as compared to the total trade and support a rate structure that includes many low rated commodities; furthermore, the sample of 51 IB commodities are of lower value than the average of the total IB trade and are therefore not the commodities which generally support the low rates in a overall rate structure.

The above suggests that the study is not complete insofar as it fails to adequately analyze the total rate structure of a trade and properly place the samples within that structure.

B. THIRD COUNTRY DISPARITIES

The Third Country Disparity section suffers from the same flaws as the Reciprocal Disparity Section, namely, the use of 4-digit SITC subgroup level which is not compatible with most tariffs that extend to a 7-digit commodity code level. Compounding this flaw is the abortive attempt to compare rates from U.S. source and competing source through an adjustment factor (see table IV–3). This adjustment factor is primarily influenced by voyage days (see App. B) which is a function of distance. The study reviews the Five Demand and Cost Factors which most influence the level of ocean rates. (Study, pp. II, 1–7). Distance is not considered a major factor.[3] Thus, contrary to the various authorities reviewed and apparently relied upon in the Study, the Study escalates distance to the primary factor in attempting what Booz Allen considers "virtually impossible," i.e., establish comparability of freight rates for voyages to consumer countries where the voyages differ in distance, ship types employed, and regulatory considerations.

Moreover, in the Third Country Disparity Section, in addition to use of the aggregated 4-digit SITC subgroup level, there is no attempt made to assure a "Value" comparability, i.e., value per ton. Thus, there is nothing apparent in the text of Third Country Disparities that the Study attempted to compare similarly valued subgrouping items.

The Study acknowledges these shortcomings. Thus:

"The degree to which commodities are truly comparable is unknown."

The model utilized in computing the adjustment factor "does not adjust for real-world differences in ship types, service frequencies and itineraries . . ."

"No verification [on actual rates paid] appears possible" (Study p. IV–9)

With these severe study limitations, together with the others noted above, the Study cannot support the conclusion that U.S. exporters are assessed rates which are 125 percent greater than their foreign competitors.

The remaining sections of the Study are rendered meaningless once the premises—that U.S. exporters pay higher rates than their competitors in both the reciprocal trades, as well as third country trades—are determined unsound. To quote the Federal Maritime Commission economist who deals on a continuous basis with potential disparities in reference to the Booz Allen study "when you really look at these specific rates and specific commodities, most of these disparities vanish before your eyes.[4]

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[3] "A relatively small part of total liner cost is a function of sea distance." (study p. II–5) and "Distance was not a major factor explaining freight rates" (study p. II–6). The latter observation was from a Booz Allen study conducted for the Corps of Engineers in November, 1977.

[4] Oversight Hearings on the Federal Maritime Commission before the House of Representatives, Committee on Merchant Marine and Fisheries, Subcommittee on Merchant Marine, Aug. 15, 1978 (Tr. 40).

RUSSIAN-FLAG LIFTINGS CONTINENT—EASTBOUND; TOTAL YEAR 1976

[Weight in long tons]

		Netherlands		Belgium and Luxembourg		France		Germany		Austria		Switzerland			Russian
		Tons	Percent	Tons	Percent	Tons	Percent	Tons	Percent	Tons	Percent	Tons	Percent	Total	All flags (percent)
	NORTH ATLANTIC														
2423	Longs—Hardwood ex pulpwd	209	10					4,146	12			3,007	17	7,362	
2433	Lmbr.—Hardwd. rgh.-sawed	1,419	40	593	9			504	18					2,516	
2670	Txtle. fab. waste incl. rag	945	35	1,495	47									2,440	
2820	Iron and steel scrap	763	30											763	
2839	Nonfer mtl. ore. and con., NES	726	16											726	
2840	Nonfer mtl. scrap, ex. zinc	505	38	1,733	22			2,430	14			958	82	5,626	←
5812	Polymerz and copolymerz prod	431	3			445	8	417	44					1,293	
6516	Yarn thread, noncellulosic	455	60	312	3									767	
6652	Glass householdware etc	429	11					3,295	62					3,724	
7184	Constr. minng. mcy. nec. pts	863	45	579	9									1,442	
7320	Road motor vech. non-SC	724	9											724	
8124	Lght fix., lmps., etc., and pt	332	29											332	
1222	Cigarettes			1,061	6									1,061	
5120	Organic chemicals			309	1			354	11					663	
5131	Oxygen and othr rare gas			399	11									399	
5333	Prep. paint enml., lacq. etc			419	18									419	
5811	Condnsa, polyc, plyad. prod			947	6			302	7					1,249	
6623	Brks. oth. rfrcty. const			357	21			1,737	35					2,094	
7115	Int. cmb. eng., X arcrf., and pts			2,197	20									2,197	
7193	Mech. hndlg. mchy. and equip			731	6			308	3					1,039	
7328	Mrt. veh. and trctr. pts. and ac			1,290	6			370	3					1,660	
8942	Childrns tys, indg cam etc					563	20	1,394	48					1,957	
1124	Beverages, dstld., alcoholic							535	12					525	
2511	Paper—Waste and old							957	40					957	
3214	Coal							425	100					425	
3329	Pitch, asphlt etc. ex. chem							407	14					407	
5136	Ammon, mtl. oxd. inorg. base							343	11					343	
5619	Fertilizers nec							4,042	97					4,042	
6412	Printg and writing ppr., nec							1,747	33					1,747	
6415	Ppr. and pprbrd. mach. MA							1,855	57					1,855	
6429	Artcls.—Ppr. plp., pprbrd							304	5					304	
6574	Linolcum and sml. flr. covrng							728	11					728	
6618	Art of asphalt and asbest cm							10,673	59					10,673	
6644	Plate glass							1,942	28					1,942	
6821	Copper and alloys—Unwrought							638	32					628	
6822	Copper and alloys—Wrought							560	33					560	
7184	Constr. minng. mch. nec. and pts							1,037	18					1,037	
7320	Road motor vehcls. non-SL							557	4					557	
5997	Oth organic chem prod nec									435	89			435	
	Total above	7,801		12,422		1,008		41,987		435		3,965		67,618	
	Russian-flg total, North Atlantic	11,932	4	16,963	4	3,511	1	53,748	12	1,444	6	6,599	6	94,197	1,539,695 6

RUSSIAN-FLAG LIFTINGS CONTINENT—EASTBOUND; TOTAL YEAR 1976—Continued

[Weight in long tons]

		Netherlands		Belgium and Luxembourg		France		Germany		Austria		Switzerland		Total	Russian	
		Tons	Percent	Tons	Percent	Tons	Percent	Tons	Percent	Tons	Percent	Tons	Percent		All flags	(percent)
	SOUTH ATLANTIC															
2211	Peanuts (ground nut) green	1,529	72											1,529		
2664	Manmade fbr wste nt cd, db	320	26					605	40					925		
2762	Clay and oth rfctry mnrl nec	1,720	3	543	10			494	1					2,757		
2925	Seeds, fruits, spores—Pltng	352	68											352		
5120	Organic chemicals	323	19											323		
2511	Paper—Wste and oil			986	87									986		
6515	Yarn thrd, non cellulosic			2,592	38									2,592		
0551	Vegs dehyd ex legum vegs					343	88	352	34					695		
0554	Flrs and flks—Frts, vegs, etc					2,710	58	3,036	69					5,746		
2762	Clay and oth rfctry mnrl, nec					420	2							420		
2925	Seeds, fruit, spores, pltng					312	83					79	81	391		
6522	Ctn fab, wov bleached, etc					941	14					4	1	945		
0555	Vegs—Prep or presvd, nec							2,355	89					2,355		
1124	Beverages—Dstld, alcoholic							864	100					864		
2517	Woodpulp—Sulphate							490	1					490		
8912	Phnogrp rcord, rcording med							338	53					338		
	Total above	4,244		4,121		4,726		8,534				83		21,708		
	Russian-flag total, South Atlantic	6,281	4	5,961	5	5,401	3	11,386	3	275	2	325	1	29,629	854,858	3
	GULF															
0542	Vegs—Leguminous, dried	963	21	251	24	534	7	1,524	16					3,272		
1210	Tobacco—unmanufactured	753	19									174	57	927		
2762	Clay and oth rfctry mnrl, nec	316	4											316		
5812	Polymerz and copolymerz prep	1,626	8			264	3							1,890		
6312	Plywd, inc wd veneer pnls	1,353	23	436	20			353	19					2,142		
6413	Kraft paper and pprbrd mach MA	6,668	25	2,995	29			6,691	17			582	15	16,936		
6989	Artcls of BS metals nec	1,422	88	454	22									1,876		
2517	Woodpulp—Sulphate			350	3			1,676	3			463	10	2,489		
5120	Organicchemicals			985	3			360	7					1,345		
5992	Insctcd fungc and sml pr etc			612	15									612		
7184	Constr minng mch nec			326	27			322	9					648		
0539	Fruits and nuts nec							3,773	69			133	83	3,906		
0554	Flrs and flks—frts, vegs							325	21					325		
0555	Vegs—Prep or prsvd, nec							488	84					488		
1124	Beverages, dstld, alcoholic							311	5					311		
2111	Ctle, equine hides, undrsd							318	22					318		
2422	Logs—Softwood ex pulpwd							389	46					389		
2432	Lmbr—Softwood rgh-sawed							5,052	16					5,052		
2511	Paper—waste and old							303	100					303		
2752	Nat abrasv inc diam							641	38					641		

2840	Nonfer mtl scrp, ex zinc						413	13					413		
5996	Wood and resin-bsd chem prod						420	15					420		
5999	Chem prods and preps, nec						337	27					733		
6311	Veneers—Wood						494	34					494		
6429	Artcls—Ppr plp, ppr, pprbrd						1,075	22					1,075		
2631	Raw cotton oth thn lntrs									808	11		808		
	Total above	13,101		6,409		798	25,265			2,160			47,733		
	Russian-flag total, gulf	15,567	4	7,992	3	1,241	0 28,028	5	1,170	6 2,562	3		56,560	1,665,090	3
	GREAT LAKES														
2423	Logs—Hardwood ex pulpwood	215	8			282	42 1,851	12					2,348		
0819	Fd wast and prep anml fd					1,969	49						1,969		
7193	Mech hndlg mchy and equip					391	36						391		
0555	Vegs—Prep or presvd, nec						2,020	61					2,020		
	Total above	215				2,642	3,871						6,728		
	Russian-flag total, Great Lakes	372	1			2,884	11 4,041	6		110	1		7,407	161,598	5

UNITED KINGDOM/IRELAND—EASTBOUND; TOTAL YEAR 1976

		United Kingdom		Ireland		Total	All flags	Russian (percent)
		Tons	Percent	Tons	Percent			
	NORTH ATLANTIC							
2511	Ppr—Waste and old	851	27			851		
5135	Oxide—Mtllc, pigmnt grd	554	26			554		
	Total above	1,405				1,405		
	Russian-flag total North Atlantic	4,322	1	283	1	4,605	542,420	1
	SOUTH ATLANTIC							
0554	Flrs and flics—Frts, vegs, etc	1,077	63	190	72	1,267		
2516	Chm—Wdpulp sisslving grds	485	40			485		
2752	Nat abrasv inc diam	762	31			762		
2762	Clay and oth rfctry mnrl	458	5			458		
5996	Wood and resin-bsd chem	1,231	16			1,231		
6413	Kraft ppr and pprbd, uncut	875	4			875		
	Total above	4,888		190		5,078		
	Russian-flag total, South Atlantic	6,536	4	380	4	6,916	159,000	4
	GULF							
	Russian-flag total, gulf	411	0	8	0	419	478,491	0
	GREAT LAKES							
	Russian-flag total, Great Lakes							

SCANDINAVIA/BALTIC—EASTBOUND; TOTAL YEAR 1976

		Sweden		Finland		Denmark		Norway		Total	All flags	Russian (percent)
		Tons	Percent	Tons	Percent	Tons	Percent	Tons	Percent			
	NORTH ATLANTIC											
0440	Corn or maize—Unmilled	855	65	104	56	90	47			1,049		
2840	Nonfer mtl scrp, ex zinc	548	17	182	41	425	47			1,155		
0470	Meal and flour of cereal/nec	126	11							126		
0991	Other food preps, nec	116	10							1,116		
2433	Lmbr—Hardwood, rgh, sawed	111	16			270	15			381		
2511	Paper—Waste and old	274	100							274		
5147	Inorg chem, X med, etc, nec	147	9							147		
6311	Veneers—Wood	104	10							104		
7192	Pumps, centrifges, etc, pts	347	20							347		
7221	Elec pwr machy and pts	177	21							177		
8912	Phnogrp rcord, rcrdng	116	30							116		
6644	Plate glass			2,835	+ 70					2,835		
2423	Logs—Hardwood ex pulpwd					682	24			682		
6652	Glass householdware etc					284	81			284		
9310	Specl transaction n/clsd					357	50			357		
	Total above	2,921	36	3,121	38	2,108	26			8,150		
	Russian total range, North Atlantic	4,202	2	3,410	11	2,803	6	795	1	11,210	306,467	4
	SOUTH ATLANTIC											
0520	Fruits dried	269	10							2,269		
2762	Clay and oth refctry mnrl	834	24							8,834		
5146	Sodium and potassm cmpnd, nec	144	100							144		
6573	Carpets and rugs	199	35							199		
0539	Fruits and nuts nec	149	14							1,149		
	Total above	1,595	100							1,595		
	Russian total range, South Atlantic	2,025	8	315	3	179	1	970	16	3,489	63,049	6
	GULF											
7191	Heating and cooling equip	17	5							17		
2432	Lmbr—Softwd, rgh, sawed					399	39			399		
6312	Plywd Inc Wd Veneer					74	3			74		
	Total above	17	3			473	97			490		
	Russian total range, gulf	26	0	17	0	582	3	3	0	628	146,563	.42
	GREAT LAKES											
	Russian total range, Great Lakes										3,843	

		Netherlands		Belgium and Luxembourg		France		Germany		Switzerland		Austria				Russian (percent)
		Tons	Percent	Tons	Percent	Tons	Percent	Tons	Percent	Tons	Percent	Tons	Percent	Total	All flags	
	NORTH ATLANTIC															
5140	Inorganic chemical	564	31	647	8	254	8	5,579	15			132	13	7,176		
5814								5,500	21					5,500		
7151	Mach. tools, metalworking							3,147	21	292	8	606	8	4,045		
7329	Mtrcycles, mtrbks, etc. and pts							2,496	82			114	32	2,610		
7328	Mtr. veh. and tractor. pts and acces			194	13			2,435	10					2,629		
6643								2,423	33					2,423		
7182	Printing and bookbinding mach. and pts							2,363	33	1,158	56			3,521		
6664	Porceln. or china HHLD WR							2,261	57					2,261		
1123	Ale, beer and stout	247						2,062	4	14	19			2,323		
6942	NLS, bolts, etc. ir., St. Copper							1,644	55					1,644		
6770	I/S wire, exc. insltd. elec							1,648	27					1,648		
6861	Zinc and alloys wrought			253	95			1,765	14					2,018		
5120	Organic chemicals							1,575	4					1,575		
3326	Petroleum jelly and waxes							1,545	27					1,545		
7350	Ships, boats and flt. struct	28	28			1,502	39							1,530		
5814		229	8	437	7	435	9			1,423	34	53	10	2,577		
6822	Copper and alloys/wrought									1,403	37			1,403		
7171	Textile mach., incl. laundry	12	1	295	66			1,332	21	50	1			1,689		
8210	Furniture							1,024	29	94	7			1,118		
7198	Machy. and mech. appl. parts, nec							931	15	47	11	21	15	999		
6653								919	15			131	33	1,050		
7317	Pts. of railway vech., nec			84	12	801	40	551	36					1,436		
6540	Trimmings and oth small wares							902	17					902		
0484	Bakery products							691	42	110	33			801		
6952	Tls for hand or mach, nec							874	21	34	4	50	8	958		
6665	HouseHdwr, ceramic, nec							602	26					602		
6988	Chns nec, clos and wld rd, etc							601	44			2	1	603		
5120	Inorganic chem	341	5	595	9					51	1	26	2	1,013		
7152	Mtl working mch ex tls and pts							532	20					532		
6291	Rbr tires and tbs, veh -airc							519	4					519		
	Total above	1,421		2,505		2,992		45,921		4,676		1,135		58,650		
	Russian total range, North Atlantic	7,799	2	4,510	2	5,491	1	74,235	9	6,928	10	3,982	9	102,945	1,709,652	6

		Netherlands		Belgium and Luxembourg		France		Germany		Switzerland		Austria		Total	All flags	Russian (percent)
		Tons	Percent	Tons	Percent	Tons	Percent	Tons	Percent	Tons	Percent	Tons	Percent			
	SOUTH ATLANTIC															
7171	Textile mch incl laundry tpts			781	53							87	38	868		
6770	I, S wire exc insltd elec			536	16									536		
5135	Oxide—Mtllg, pigmnt grade							257	10					257		
2664	Mnmade fbr wste nt cd, cb							221	45					221		
6989	Articls of BS mtls nec							208	42	9	13			217		
	Total above			1,317				686		9		87		2,099		
	Russian Total range, South Atlantic	591	1	1,395	2	132	0	3,901	3	550	5	209	1	6,778	424,546	2
	GULF															
2764	Asbestos, unmanufactured							1,698	100					1,698		
5140	Inorganic chemicals							1,414	33					1,414		
7151	Mach tools, met working							659	20					659		
6643								564	37	50	100			614		
6623	Brkst oth rfcty const mtl											484	67	484		
6822	Copper and alloys/wrought							455	30	400	85			855		
5814		373	73									233	88	606		
2315								342	25					342		
5135	Oxide—Mtl lc, pigmnt grade							315	29					315		
7173	Sewing machs and parts									299	96			299		
2763	Salt							257	70					257		
6942	Nts, bolts etc IR, stl CPR							235	26					235		
7131	Cycles and pts not motor							218	66					218		
6983	Chain and pts of iron and steel									2		208	45	208		
	Total above	373						6,157		749		925		8,204		
	Russian total range, gulf	1,554	3	595	0	745	1	13,508	7	1,084	8	1,881	22	19,367	19,367	1
	GREAT LAKES															
6744	I or S sheet plates nec					1,527	10							1,527		
6952	Tls for han or mach nec							1,326	42					1,326		
	Total above					1,527		1,326						2,853		
	Russian Total range, Great Lakes		0		0	1,631	6	1,390	1	282	17	0		3,303	126,797	3

SCANDINAVIA/BALTIC—WESTBOUND; TOTAL YEAR 1976

		Sweden		Denmark		Norway		Finland		Total	All flags	Russian (percent)
		Tons	Percent	Tons	Percent	Tons	Percent	Tons	Percent			
	NORTH ATLANTIC											
5136	Ammon, mtl oxides, inorganic	452	43							452		
6637	Refract arts excl const mtrl	223	32							223		
7221	Elec power machy and pts	188	19							188		
7192	Pumps, centrifuges etc and pts	130	10							130		
8210	Furniture	58	4							58		
8942	Toys and games	33	11							33		
8951	Filing cabinets, mtl off equip	29	5							29		
0139	Meat and peat pdts			633	2					633		
0240	Cheese and curd			792	6					792		
0484	Bakery prod			717	24					717		
0320	Fish cnnd			100	21					100		
2765	Mica, feldspar quartz			217	13					217		
2910	Animal material crude			281	31					281		
5542	Surfact active agent, detry, etc	420	12	126	55					126		
7151	Mach tools, metal working									420		
6429	Art of ppr, pprbrd			162	16					162		
7121	Mach cult and pts			292	25					292		
7122	Harvstrm etc. mach and pts			765	40					765		
7249	Telecom app and pts			137	33					137		
8210	Furniture			1,349	18					1,349		
	Total above	1,533		5,571						7,104		
	Russian total range, North Atlantic	2,389	1	7,118	5	104		373	1	9,984	503,655	2
	Russian total range, South Atlantic			221	4	13		1		235	33,380	1
	Russian total range, gulf	173	1	550	5	33		4		760	51,176	1
	Russian total range, Great Lakes	25								25	10,292	

U.K./IRELAND—WESTBOUND; TOTAL YEAR 1976

		United Kingdom		Ireland				
		Tons	Percent	Tons	Percent	Total	All flags	Russian (percent)
	NORTH ATLANTIC							
1124	Beverages, distilled alcohol	669				669		
0730	Choc or cocoa prep			661	33	661		
5995	Starch, gluten, casgin, etc			575	5	575		
6842	Al and alum alloys, wrght, nec	386	15			386		
8921	Maps, books, periodicals	375	4			375		
6576				371	44	371		
6512	Yarn, wool	337	44			337		
0533	Frt jams, jellies	250	16			250		
2664	Manmade fibre waste	201	13			201		
0484	Bakery product	191	4			191		
5992	Insecticide, fungicide and sim products	156	5			156		
0990	Soups, sauce, yeast, vinegar	143	13			143		
6715		133	46			133		
9311	Misc comm. not desc	118	1			118		
7193	Mech handling eqpt			109	10	109		
2218		106	63			106		
6510	Textile yarn and thread			101	6	101		
	Total above	3,065		1,817		4,882		
	Russian total range, North Atlantic	4,638	1	2,144	6	4,782	708,037	0.9
	Russian total range, South Atlantic	313		15	1	328	88,792	.3
	Russian total range, gulf	797		221	10	1,018	167,196	.6
	Russian total range, Great Lakes	14				14	67,584	0

Source: U.S. Department of Commerce.

Senator INOUYE. Our next witness is Mr. Robert Hunter of Hunter & Gill, who is appearing in behalf of Captain J. W. Clark, president of Delta Steamship Lines.

STATEMENT OF ROBERT HUNTER, HUNTER & GILL, ON BEHALF OF CAPTAIN J. W. CLARK, PRESIDENT, DELTA STEAMSHIP LINES, INC., NEW ORLEANS, LA.

Mr. HUNTER. Good afternoon, Mr. Chairman. It's good to be here. Captain Clark had planned to be here himself; unfortunately, he is in South American and will be there all week and it was impossible to change his schedule.

However, he is extremely interested in this bill and asked that I come and present his words to you, in the hope that they will be some assistance in enacting this most important legislation.

My name is Robert Hunter and I represent Delta here in Washington. Reading Mr. Clark's statement.

My name is J. W. Clark. I am president of Delta Steamship Lines, Inc., of New Orleans. I wish to express our appreciation and full support for S. 2873 as introduced by Chairman Inouye and other distinguished members of this committee.

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 American, 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 and as you know, we have just concluded the acquisition of the Latin American Services of Prudential Lines, Inc., formerly Grace Lines.

As a result of this acquisition, Delta Steamship Lines now serves additional areas in Latin America from both the U.S. Atlantic and U.S. Pacific and Canadian coasts in addition to the U.S. Gulf.

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 over-tonnaging 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 even-handedly 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, as the chairman pointed out in his opening remarks.

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 economics. It can only be solved by legislative and/or political means through restricting their ability to pursue their sinister goals in our trades.

The bill now under consideration by this committee, the Ocean Shipping Act of 1978, S. 2873, deals with controlled carriers, for example, the state-controlled cross-trading Communist flag lines.

A companion bill, H.R. 9848, was passed by the House and I testified on it. The bills would require such controlled carriers to justify their predatory rate-cutting practices, unrelated to normal commercial shipping.

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.

Other malpractices, more particularly the payment of rebates, are a product of overtonnaging. The difficulty of subpena 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 now no 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 shelters 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 the 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. 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 testified on these and am optimistic that we can pass an effect bill this year.

The legislation we are supporting this year promotes rationalization between carrier where we are dealing with those of our own Nation and of our trading partners, and represents important steps toward correcting some of the problems which we have created in our foreign commerce.

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 complemented, in part, by the present bill and I commend it to your very serious and favorable consideration.

Pooling, equal access and rationalization agreements have largely been developed and refined in the United States/Latin America 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:

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

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

3. Such agreements do not tend to increase freight rates but, on the contrary, as pointed out in a Justice Department study, 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.

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.

Senator INOUYE. Mr. Hunter, there is a vote at the present time, so if I may be excused, the committee will stand in recess for about 5 minutes.

[Recess.]

Senator INOUYE. Proceed, Mr. Hunter.

Mr. HUNTER. Thank you, Mr. Chairman.

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—is the reciprocal trades with this country.

There would be no discrimination against vessels flying the flag of any nation. Thus, a polling 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, hearing before the Commission prior to the implementation of the agreement.

Again, I say 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 this legislation would provide great protection 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 over-regulated yet underprotected. We need greater freedom to implement commercial solutions, but only governmental regulation can protect our shipping from predatory, politically motivated communist fleets.

The other proposals which I have discussed deserve serious consideration. These, as you know, include the adoption of closed conferences coupled with the legislation of shippers councils in order to provide a system of checks and balances.

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, Mr. Chairman.

Senator INOUYE. Thank you very much, Mr. Hunter. Will you thank Captain Clark for his testimony, sir.

And if I may, I would like to submit to Captain Clark, through you, several questions we have prepared for his consideration. And if it is possible, we would like to have the response within 1 week, sir.

Mr. HUNTER. Yes, sir. We will return them promptly.

Thank you very much.

Senator INOUYE. Once again, thank you very much, Mr. Hunter.

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

QUESTIONS OF THE COMMITTEE AND ANSWERS THERETO

The following are the responses of Delta to the questions posed by the Committee. We have numbered a set of the Committee's questions to correspond to the responses below.

It will be noted that Delta does prefer the provisions of S. 2873 in a number of respects to the comparable terms of H.R. 9998. At the same time, it is the view of Delta that if adherence to the S. 2873 language would create a delay in obtaining the legislation, Delta would prefer seeing the passage of H.R. 9998 rather than allowing the matter to proceed unchecked during such a period of delay.

Question 1. The Department of Justice has urged removal of the requirement in S. 2873 that controlled carriers give 30 days notice prior to any reduction in rates. Its concern was that since other carriers need not give any notice before their rate reductions are effective, a controlled carrier could be denied the ability to compete effectively.

On the other hand, it is urged that a controlled carrier desiring to engage in predatory practices or use its greater financial resources in unfair competition could significantly disrupt the market by lowering its rates immediately without notice. While a controlled carrier which desired to lower its rates only to meet rates lowered immediately by its competitors could do so since the bill allows immediate rate reductions by the controlled carrier on "special permission of the Commission."

In view of the "special permission" authority given the Commission do you believe the objection raised by the Department of Justice is valid?

Answer 1. The requirement that controlled carriers give 30-days notice prior to rate reductions subject to their ability to obtain special permission to lower rates on shorter notice is an essential ingredient of any effective bill. If such a carrier were allowed to lower rates immediately on giving notice, we feel that it could make a mockery of the legislation by lowering rates, then debating their merit with the FMC, returning them to a proper level in the event that their suspension became imminent and, once this proceeding became moot, could then proceed to lower the same rate again. In each instance the carrier would be operating on the lower rates for a substantial time.

Question 2. Under S. 2873 the Commission may suspend the rates of a controlled carrier which it believes to be unjust and unreasonable. And in its determination of justness and reasonableness, the FMC may consider various factors, some of which are enumerated in the bill. Because of the anticipated difficulties of converting, applying and verifying the actual costs of state-controlled carriers, the bill permits the use of constructive costs which may be obtained from the costs of commercially motivated carriers operating similar vessels in the same or a similar trade.

The Department of Justice, on the other hand, urges an amendment which would prohibit the FMC from suspending rates without a full evidentiary hearing whenever the rates in question are special rates not quoted by other carriers in the trade.

If the Department of Justice amendment were adopted, wouldn't it allow a controlled carrier to avoid the suspension provisions of the bill simply by tailoring its rates differently from those of other carriers?

Answer 2. There is no question that the use of "special rates not quoted by other carriers", if such "special rates" were excepted from the full suspension ability of the FMC would allow the carrier to avoid any regulatory efforts by maintaining its tariffs on a basis different from those of the other carriers in the trade. In view of the multitude of commodities and the variety of manners in which rates can be stated in our foreign commerce, such a practice could be devised without a great deal of ingenuity.

Question 3. As to rates already in effect, S. 2873 provides that the FMC may suspend them on 30 days notice. H.R. 9998, on the other hand, requires 60 days notice.

Do you feel that a 60 day notice period would, in any way, hinder the effectiveness of the suspension period?

Answer. 3. Suspension on 30-days notice is substantially preferable to the 60-day notice period of H.R. 9998. It is particularly important that the suspension notice period should be considered in the light of the notice required prior to the effective date of a rate reduction, the 30 days provided by S. 2873. Ideally,

the Commission should have power to suspend the rate before it actually becomes effective. While the 30-day notice of reduction and the 30-day notice of suspension provisions would provide such an ability, theoretically, it is obvious that the Commission could not act sufficiently promptly to prevent the unlawful rate from going into effect for a period. To minimize this, we would urge that suspension on 30-days notice be the standard adopted.

Question 4. S. 2873 provides that pending a determination of the lawfulness of a controlled carrier's rates, the FMC may suspend the rates in question indefinitely.

H.R. 9998, on the other hand, limits these suspensions to a maximum of 180 days.

Do you believe it more desirable in the interest of efficient administrative practice and fairness to the parties to have a time limitation such as H.R. 9998 does? And if so, is 180 days sufficient?

Answer 4. The limitation of the suspension period to a maximum of 180 days will impose a burden on the FMC. While we would hope that the agency would be able to act within this time, the difficulty in obtaining materials from abroad, the prospect of appeal and the delays which may be encountered as a result all lead to the conclusion that the imposition of such a time limitation is not appropriate.

Question 5. Under S. 2873, during the suspension period the FMC could prescribe minimum rates to be charged by the controlled carrier.

H.R. 9998, on the other hand, does not give the Commission authority to prescribe minimum rates, and carriers may file new rates which would take effect immediately during the suspension. Even then, however, the Commission may reject it as unjust and unreasonable.

Do you believe the provision in H.R. 9998 gives the FMC adequate authority for the purposes of this legislation?

Answer 5. The authority of the Commission to prescribe minimum rates during the suspension period is, we believe, essential to the bill. A failure to include such authority could result in a chaotic condition under which the carrier and the Commission became engaged in volleying back and forth new rates and suspensions.

Question 6. By virtue of the definition of "controlled carrier" in S. 2873, the FMC would be able to look behind the flag of a vessel, and have the bill apply where a government controls a vessel, but operates it under a foreign flag.

H.R. 9998, on the other hand, would not permit the FMC to look behind the flag of a vessel.

Do you believe the provisions of H.R. 9998 are adequate to safeguard against governments evading the legislation?

Answer 6. S. 2873, by giving the Commission the ability to look behind the flag of the vessel, anticipates a very real prospect for evasion through "other flag" registry of a vessel genuinely belonging to and operated by a "controlled carrier".

Question 7. Under S. 2873, for purposes of determining constructive costs the FMC would be given access to all data relating to the cost of performing ocean transportation available in the files of any other agency of the United States, except where the possessing agency certifies in writing that release of such data would endanger national security.

H.R. 9998, on the other hand, does not give this access to the FMC.

In terms of protecting the confidential nature of proprietary information, H.R. 9998 is, of course, preferable. Is it, however, too restrictive on the FMC?

Answer 7. The furnishing to the FMC of cost data available in the files of any other agency of the United States would be a useful tool for it. The FMC, in turn, has adopted, in various proceedings, steps intended to maintain, to the maximum extent possible, the confidentiality of such proprietary information. This is the course which would be preferable, i.e., by specifically providing that any such data which constituted confidential, proprietary information would be held in confidence to the greatest extent possible, by the FMC.

Question 8. H.R. 9998 would not apply to any rate served exclusively by controlled carriers. This provision is intended to assure that the bill would not restrict service in the Great Lakes where Eastern bloc carriers provide a significant percentage of the sailings.

S. 2873, on the other hand, has no such provision.

In your view, does this provision in H.R. 9998 raise any problem in terms of what the legislation is trying to achieve?

Answer 8. The nonapplication, under H.R. 9998 of the provisions of the bill to any trade served exclusively by controlled carriers presents, we believe, the real prospect that a trade, for example, certain of the Great Lakes trades, could create on a permanent basis a "*Mare Nostrum*" for the Eastern Bloc carriers. In the absence of service by other carriers, we believe that the FMC may be depended upon to have sufficient discretion to avoid attacking, unnecessarily, a rate under the provisions of the bill. In this connection, it should be noted that such an exclusion would permit the controlled carrier to use an area, such as the Great Lakes, to siphon off cargo normally moving through gateways. Further, and more importantly, the controlled carriers are not going to reduce their rates below the level required to get the business and, absent competition, will charge whatever the traffic will bear. As such, we do not believe that this exclusion is needed to protect the Great Lakes or any other trade served exclusively by controlled carriers.

Question 9. Under H.R. 9998, in determining if rates are just and reasonable the FMC may consider whether suspension or disapproval of the rate would unduly affect the quality of service provided in any trade route. This consideration, of course, would have its greatest impact in areas such as the Great Lakes where Soviet carriers provide such a significant portion of the liner service.

S. 2873, of course, has no such provision.

Do you find this provision in H.R. 9998 acceptable from your standpoint?

Answer 9. Suspension or disapproval of a rate by the FMC would not unduly affect the quality of service provided on any trade route since the controlled carriers, as indicated above, will charge what the traffic will bear in any instance where they do not have substantial commercial competition. As such, the provision dealing with this subject in H.R. 9998 is neither desirable nor necessary.

Question 10. S. 2873 provides that the FMC may review the rates of a controlled carrier "upon any request."

H.R. 9998, on the other hand, makes this review discretionary with the FMC because it was feared that the broader provision could possibly lead to an immense case load for the FMC and possible harassing tactics.

Do you believe the narrow authority in H.R. 9998 is sufficient to achieve the objectives of the controlled carrier legislation?

Answer 10. Requests for FMC review will come only from carriers in competition with the controlled carrier. There is no reason to conclude that this will produce either an immense case load or possible harassing tactics since all carriers in our foreign commerce frankly find themselves sufficiently involved with the regulatory authorities to have no desire to engage in unnecessary proceedings.

Question 11. S. 2873 provides that the President may stay any order of suspension or final order of disapproval of rates, etc. for a period not to exceed 120 days if he finds that such stay is required for reasons of national defense or foreign policy.

H.R. 9998, on the other hand, gives the President authority to stay permanently such suspension or final order.

Does the House passed provision raise any substantial problem that you see?

Answer 11. While presidential stay may be a necessary part of any such bill, we would prefer to see a limited stay, even if renewable on the specific act of the executive, to a permanent stay which would preclude any necessity for further consideration as to whether the stay was required.

Question 12. With respect to its proposed amendment to S. 2873 which would establish a "15% zone of reasonableness" the Department of Justice has said, "it is proper legislatively to assume that a rate as much as 15 percent below the comparable conference rate is a rate which is cost justified. We take this view because it is well established that privately-owned, non-conference carriers have traditionally been able to offer such rates and still make a profit. We note further that it is, in fact, frequently necessary that non-conference carriers offer this level of discount. If they did not, shippers would be inclined to patronize only the conference carriers, which offer service which is more frequent and sometimes superior to that offered by the independents."

Would you comment on the Department's statement?

Answer 12. The assumption by the Department of Justice that a rate 15% below the comparable conference rate is cost justified is based on a misapprehension by the Department of the facts of economic life as applied to the ocean shipping industry. The statement by the Department would seem to assume that in every rate quoted by a conference tariff there is a 15% profit margin over the proper cost justification figure. This is simply not correct. Where nonconfer-

ence commercial carriers undercut a conference rate, there are two factors which very frequently exist to support the practice, without necessarily giving rise to a rate which is, in fact, cost justified.

First, the nonconference carrier often will have, through a long-term arrangement with a major shipper or shippers, a commitment for the carriage of a substantial nucleus of cargo on its voyage. With this basic cargo, for which it is effectively acting as a contract carrier, it is in a position to undercut the normal conference common carriers in the trade by adopting the principle that any return on the remainder of its cargo which will fill out its space at a rate in excess of the cost of handling will make a contribution to the voyage profit.

Secondly, care must be taken to distinguish between the quoting of a rate below the noncontract rate in a dual-rate conference and the same action taken with respect to a conference not employing a dual-rate contract. Similarly, where the Department refers to independents which may offer less frequent and inferior service, this need not relate to cost justification on the part of a controlled carrier capable of offering frequent service with modern vessels having good transit times and cargo handling characteristics.

Question 13. In response to a question from this Committee the Department of Justice noted that although it would be possible for a controlled carrier to file rates which are not comparable to other carriers, in the event it did it would be an incentive for conferences to formulate their own version of such rates in response. Thus the Department concluded there would be comparability of rates and even under the amendment it proposed the FMC would be able to suspend improper rates without holding a full evidentiary hearing.

In your judgment, is this a realistic possibility, or would such a possibility create further instability in our trades?

Answer 13. The suggestion by the Department of Justice that the FMC be required to hold a full evidentiary hearing before suspending a rate which was either special or not comparable to the rates stated by the other carriers in the trade would, as we have previously indicated, permit the controlled carriers to play games with the other carriers in the trade and with the FMC. Ocean transportation is not provided by the exercise of ingenuity in creating ways in which rates can be stated or revised and, it is submitted, the adoption of such a provision in the statute would be a step toward creating chaos in our trades without serving any useful purpose.

Question 14. (*a*) As a general rule, what percent of the "landed cost" of goods or commodities is attributable to ocean transportation freight rates?

(*b*) It has been said that a 10 percent savings in freight costs translates into 0.6 percent of landed cost for the buyer, whereas the same 10 percent to the ocean carriers may be the difference between survival as a viable transportation system and nonsurvival.

Would you care to comment on that statement?

(*c*) If a 10 percent savings in freight costs translates into a 0.6 percent of landed costs for the buyer of goods, does the buyer in turn usually pass that 0.6 percent savings on to the consumer?

(*d*) In either event, does the American consumer receive any great cost saving when he purchases a commodity which was carried on a ship whose rates were 10 percent below the conference rate for that commodity?

Answer. 14. The .6 percent is, in our view, a realistic reflection of the relationship of a 10 percent savings in freight costs to the landed cost for the buyer and very plainly a 10 percent differential, as to the carrier, will determine whether or not the transportation system is capable of surviving. An increment of .6 percent is of such a small magnitude as to be completely lost by the time a product passes through the chain of distribution to the actual consumer. Similarly, we do not believe that a cost increment of this size would in any manner determine whether or not an export sale can be made or increase the volume of such sales.

Question 15. According to an FMC staff analysis, Soviet vessel itineraries over the past three years indicate that one of the primary reasons for the Soviet presence in our Gulf Coast trades to Europe and the Far East is their active trade with Cuba.

According to that analysis, it is normal for a Soviet vessel to carry cargo from Eastern Europe to Cuba and then load cargo at U.S. Gulf and East Coast ports for the return trip to Europe. Likewise, in the trade between the Far East and U.S. Atlantic and Gulf ports, the Soviet vessels carry inbound cargo to Cuba.

Because our trades are the most lucrative and attractive in the world, is it

possible that somehow we are responsible for facilitating or subsidizing trade between Cuba and the U.S.S.R.?

Answer 15. Since Soviet vessels have not, to this date, directly penetrated the trades served by Delta, we have not conducted an independent study to trace their itineraries. At the same time, where Cuba is being supplied by Russian vessels from eastern European sources, this affords the Soviet vessels an opportunity to be placed in position for operation in our export trade which, as described, is the most lucrative and attractive in the world for all cross-traders. There is no question but that in such a situation we would be fostering and subsidizing both the Soviet merchant fleet and its trade with Cuba.

Question 16. It has been said that the Soviets have a considerable number of FAK rates (Freight All Kinds), and that this rate will always attract high-rated cargoes.

(*a*) Is this an accurate statement, and why will FAK rates attract high-rated cargo?

(*b*) What factors determine whether a cargo is high-rated or low-rated?

Answer 16. The use by the Soviets of FAK rates, of course, allows them to ignore cargo value which is one of the factors necessarily used by a commercial carrier in fixing its rates. High-valued commodities are both better able to bear a larger proportion of the transportation cost and, because of the risk entailed in their loss or damage, genuinely require that they be given a higher rating for purposes of ocean freight than lower cost commodities. The practice of specializing in the carriage of such high-valued commodities is referred to as "skimming the cream" and leaves the other carriers in the trade in the position of attempting to make a profit while loading only lower-valued and rated goods.

The factors determinative of freight rates were broken down into some 27 different categories by the Report of the Delegates of the United States, Inter-American Maritime Conference of 1940, pp. 25–28. We have not seen a better listing of those factors although in any particular instance one or more may receive greater weight in the determination of the rate applicable to the cargo. The sixth factor there cited was the "value of goods" with the following comment:

"Goods of higher value cause the carrier to assume additional responsibility. Freight rates on commodities of high value are usually higher than goods of low value. It is customary to give consideration to the relationship between freight charges and the value of the goods— although it may cost the ship as much to handle a low-value commodity as a high-value commodity, a freight rate which was the same for both might kill the movement of the low-value goods."

Question 17. Besides the Soviets, what other nations have or soon will have state-owned fleets which pose the kinds of problems S. 2873 is trying to protect against?

Answer. 17. As to the nations which may have state-owned fleets posing the kind of problems S. 2873 is trying to protect against, we would first refer to the Communist Bloc nations because of the economic and political goals which they seek to pursue through the development of their merchant marine. At the same time, it may be visualized that other state-controlled economies, not necessarily within the Communist Bloc, may have economic and/or poilitical goals of a similar nature which would lead to efforts to develop the trade of their fleet on a noncommercial basis. We are not aware of the existence of such competition at this point.

Question 18. (*a*) Given the reasons why the Soviets are cross-trading, and given the capability of Soviets to cut rates as much as is necessary to achieve their purposes, would you agree that it is fair to say that Soviet economic and political decision makers can, if they so choose, place significant burdens and disadvantages on competitor U.S. shipping companies and the U.S. national defense interests?

(*b*) Are they presently doing so, in your judgment?

Answer 18. There is no question that the Soviets, by pursuing their economic and political ends can offer their shipping services on a basis which would preclude U.S. or other commercial interests from remaining in competition with them. The destructive effect of such activities on U.S. shipping companies and U.S. national defense interests is obvious. The extent of the Soviet activities in this area, of course, is a matter which will be determined solely by the Soviet Government, in the absence of legislation by our country.

Question 19. (*a*) Do the Soviets make greater use of FAK (freight all kinds) rates in their tariffs, than most of the conference members in U.S. trades?

(*b*) If so, will it be more difficult to use comparative rate standards in determining whether a Soviet rate is just and reasonable?

Answer 19. Since Delta does not have Soviet cross-traders operating in its services at this time, it has no independent analysis of the extent to which the Soviets make greater use of FAK rates in their tariffs, but understands that this is the case. We believe that by the legislation and by recognition of the facts by the FMC, this problem can be minimized. This is based on the fact that the FAK rate is comparable to the higher rates on the principal moving commodities in the conference or other carrier tariffs, i.e., the FAK rate is designed particularly to undercut rates on the higher-rated commodities moving in the trade.

Question 20. Although strictly speaking, the issue of marine insurance in the U.S.-Soviet trades is not involved in S. 2873, it may be relevant as an example of where state-controlled monopolies dealing with the west have a tremendous advantage.

The contention, as I understand it, is the Soviets have frozen U.S. underwriters out of insuring cargoes to and from the Soviet Union by purchasing all U.S. goods on a free-on-board (FOB) basis, and selling goods to the U.S. on a cost insurance, and freight (CIF) basis. This practice has reportedly deprived U.S. underwriters of about $14 million in fees over the few years.

Do you believe this example sheds some light on the motives of the Soviets in entering our liner trades as cross traders?

Answer 20. The Soviet practice on cargo insurance is, of course, an excellent example of the means whereby a state trading agency, constituting a monopoly, can control, exclusively, the channels through which its commerce passes. The entry of Soviet vessels into our liner trades, as cross-traders, is an even more dangerous example since it threatens to pervade our entire foreign commerce.

Question 21. The report of the Maritime Administration concludes that Soviet penetration into our liner trades is largely successful because of rate-cutting.

The Soviets counter-charge that conference members are rebating shippers with amounts greater than the alleged rate-cutting by the Soviets.

In view of the widespread rebating in many of our liner trades, it would appear that there may be some validity to what the Soviets say.

Would you please comment?

Answer 21. With respect to the Soviet charge of rebating, we do not believe that this is a practice which is as pervasive in our trades as some carrier representatives have stated. Unfortunately, representatives of those carriers guilty of the practice have afforded the Soviets a defense to their own practices. In any event, with the recent disclosures of rebating practices, we understand that there has been a remission in such rebating as was conducted in our trades and that the Soviet excuse does not have validity.

Question 22. The report of the Maritime Administration concludes that Soviet penetration into our liner trades is largely successful because of rate-cutting.

Is the service the Soviet offer comparable in quality? In other words, are shippers more concerned with lower rates, than dependability of service, etc.?

In previous hearings the Committee heard testimony from a U.S. importer as follows:

"In the past, during certain emergency periods, we have been forced to use secondary shipping lines and invariably have experienced problems such as shortages, pilferage, wet or damaged cargo, lack of follow-through on paper work, and insufficient or late arrival of documentation."

Answer 22. With respect to rates versus dependability and quality of service, we believe that shippers generally will accept a higher rate level in exchange for improved service. At the same time, the services offered by the Soviets have not been so lacking in quality as to preclude their competitive position with their rate-cutting practices.

Question 23. In 1976, the then Chairman of the FMC and his Soviet counterparts signed a "memorandum agreement" known as the Leningrad Agreement, concerning principles that are to govern participation of Soviet water common carriers in the U.S. oceanborne trades. The Agreement contains two key features:

(1) That all ocean cargo rates contained in tariffs of Soviet carriers now engaged as independents in the liner trades of the United States will, as promptly as feasible, be adjusted to a level no less than that of the lowest rate in use for the same commodity of any other independent carriers in those trades.

(2) That negotiations be conducted promptly with a view toward bringing the Soviet carriers into the Atlantic and Pacific conference systems.

(*a*) In your opinion, have the Soviets lived up to their part of the agreement?

(*b*) In your opinion, has the U.S. lived up to its part, keeping in mind that since the Agreement the Department of Justice has successfull opposed attempts by the Russians to join conferences on a "two-tier" basis?

Answer 23. As to the Leningrad agreement, it is our understanding that the actions by the Soviets here, as is in other areas, have not matched their words. In connection with the "two-tier" conference proposals, it is our view that this was a mistake on the part of the conferences, i.e., we do not believe that they should have sought to admit the Soviets on the preferred status that the "two-tier" rate basis would have represented.

Question 24. It has been said that the Conference system has given rise to "value pricing."

That is, Conference members join together and decide on a rate for moving specific commodities, which they may legally do under the Shipping Act.

The rate decided upon for a specific commodity is determined by "what the traffic will bear" rather than the actual cost to the carrier of moving the commodity.

Shippers will pay a higher rate to ship a container of diamonds than they will to move a container of rags, even though the actual cost of moving both commodities may be about the same.

Thus, the contention goes, the Soviets will go into a trade and seek the high priced cargo such as diamonds. Because the rate for moving that commodity is related to "what the traffic will bear" rather than the cost of moving it, the Soviets will be able to offer a rate drastically below the Conference rate, and still meet costs and make a profit.

(*a*) Would you comment on this?

(*b*) If so, isn't this also what other independents in our trades do?

Answer 24. The reference to "value pricing" and "what the traffic will bear" in conjunction with the practices of the Soviets represents precisely the "skimming the cream" to which we had referred earlier. If the carrier (operating on an FAK basis) charges the container of diamonds and the container of rags the same freight rate, the latter simply will not be able to move. On this basis, the carriers must engage, to some extent at least, in "value pricing". The shipper of the container of diamonds, in turn, is directly benefited by the fact that the combined movement of rags and diamonds will insure that degree of regularity of service which the shipper of diamonds would find necessary or, at the very least, convenient for its purposes. This "skimming the cream" of course is what has been engaged in by independents in various trades and is one of the purposes of entering into dual-rate contract systems under which the diamond shipper would be offered a lower contract rate in exchange for his commitment to the service of the conference carriers or, if he chose to operate as a noncontract signatory, he would pay the higher rate, as a non-contract signatory, when the conference service proved convenient for his shipments.

Question 25. The report of the Maritime Administration on expansion of the Soviet fleet into our liner trades states that the Soviet fleet is carrying sizeable amounts of "high-valued" liner cargoes such as sound recorders, machinery, and telecommunications apparatus.

(*a*) What precisely is meant by "high-valued" cargoes?

(*b*) Why is it more desirable to carry "high-valued" cargoes?

(*c*) Is the fact that the Soviet fleet is carrying sizeable amounts of "high-valued" cargoes, the result of a deliberate effort on the Soviets part to go after that kind of cargo; and if so, why?

(*d*) Doesn't every carrier in a given trade go after "high-valued" cargo?

Answer 25. High-valued cargoes are goods which have a high sales price in comparison to their weight and volume for transportation purposes. As previously indicated such cargoes do and should take a higher freight rate and, of course, represent a vulnerable point of attack for a carrier seeking to undercut the established carriers in the trade without furnishing service to the overall trade. While all carriers will seek to obtain such high-valued cargo, the established carriers recognize that they must handle a mix of high and low-valued cargo to serve the overall trade and foster its development.

Question 26. S. 2873 provides the Commission shall have the authority to prescribe minimum rates during a suspension period.

Do you agree with this provision?

Answer 26. We feel that either minimum rates or a freezing of the rate at its level prior to the introduction of the rate under suspension should be a part of the legislation.

Question 27. (a) With reference to rates, in your judgment, do the Soviet rates compare with other independent, non-controlled carriers in our trades?

(*b*) If not, how do they differ?

Answer 27. The comparison of the Soviet rates and rate-making policies with those of independent commercial carriers is effectively precluded by the fact that the Soviets, rather than pursuing purely commercial goals, may at any particular time give precedence to political, economic or military objectives. This, together with the nature of the controlled carriers removes them, their rates and their rate-making policies from the normal flow of commercial transactions.

Question 28. Section 18(b)(5) of the Shipping Act provides that:

"The Commission shall disapprove any rate or charge filed by a common carrier by water in the foreign commerce of the United States or conference of carriers which, after hearing, it finds to be so unreasonably high or low as to be detrimental to the commerce of the United States."

(*a*) Is this provision an effective tool to deal with the problems at which S. 2873 is directed?

Answer 28. The disapproval provision of Section 18(b)5 does not present the needed prompt implementation which, it is hoped, will be obtained from the legislation. As has been pointed out, Commission proceedings are often, extremely lengthy and if the controlled carriers can maintain their rates in effect through such a proceeding and then, assuming disapproval of those rates, implement new rates differing only slightly in effective level and anticipate a further lengthly proceeding, it is obvious that nothing would be accomplished.

Question 29. In 1976 this Committee held hearings on a third-flag bill which, of course, differed substantially from the legislation we are considering today. Nevertheless many of the issues and concers are identical.

At those hearings a U.S. shipper testified as follows:

"While we expect fair and reasonable rates, we also expect and demand quality service, frequency of service and service response to our needs as importers. This is the type of service that we have come to know and expect from the national flag lines serving the market to and from which we are involved. In the past, during certain emergency periods we have been forced to use secondary shipping lines and invariably have experienced problems such as shortages, pilferage, wet or damaged cargo, lack of followthrough on paperwork, and insufficient or late arrival of documentation."

(*a*) Would you please comment on that testimony?

Answer 29. The testimony underscores the need of shippers for reliable, quality service such as is performed by the normal commercial carriers in our trades. Unless these services are protected from the predatory activities of the controlled carriers, we obviously will not be able to retain just those services which are required by shippers.

Question 30. S. 2873 would, of course, give the FMC limited rate suspension authority in the US liner trades.

It has been said (National Industrial Traffic League) that the "international trading capability of U.S. industry will be severely handicapped if, uniquely in the world, commercially-negotiated ocean rate levels become subject to regulatory suspension."

(*a*) Would you please comment on that statement?

Answer 30. The rate-suspension provisions of S. 2873 do not genuinely apply to "commercially negotiated ocean rate levels" where the controlled carriers do not operate in a normal commercial manner. Our trading capabilty, on the contrary, is supported by the excellent service and stable, fair rates provided by the commercial carriers operating in our trades.

Question 31. The Maritime Administration projects by 1986 Soviet-flag ships will be hauling some 6.6 percent of this country's liner cargoes.

Do you agree with this projection?

Answer 31. The 6.6% participation estimate for 1986 is, we believe, realistic but may be conservative.

Question 32. In your opinion, does the present and projected penetration of the Soviet fleet into our liner trades, pose strategic or security problems for the United States?

Answer 32. It has been pointed out that the Soviet fleet serves, in itself, a strategic role both politically and militarily. As it extends further into our trade, it would seem apparent that problems are being and will continue to be created for this country.

Question 33. Do you believe that the rates charged by a controlled carrier should not be tied to some percentage of the conference rate, as the Department of Justice has recommended, i.e., the proposal that in certain circumstances the FMC may not reject controlled carrier rates that do not fall below 85% of the conference rate in a given trade?

Answer 33. As previously pointed out, we do not believe that the 85% level necessarily will represent a proper commercial level for any carrier operating in the trade. This is something which must be develop on a case-by-case basis and, of course, if applied in a dual-rate trade, should be applicable to the higher, noncontract rate.

Question 34. In your judgment is the incentive to rebate greater among conference members in trades where Soviet liners are cutting rates by 20% and more?

Answer 34. As competition increases, the incentive to engage in rebating practices increases. This would be accentuated by the presence of Soviet carriers substantially undercutting the prevailing rates. It must also be remembered that rebates often take the form of commercial bribes paid to personnel of shippers rather than to the corporate entity itself. As such, the rebate need not represent a substantial percentage of the freight rate to be effective.

Quesion 35. Do you agree there is no evidence that Soviet rates are below Soviet costs?

Answer 35. The nature of the Soviet state and system make it impractical, if not impossible, for us to make any determination as to what "Soviet costs" actually entail.

Question 36. Under one of the Department of Justice's amendments, the FMC would have no discretion to suspend or disapprove of a controlled carrier's rates if those rates are not below those of an independent, non-controlled carrier offering similar transportation services. Thus, the FMC might have to compare the Soviet rates with the rates of an infrequent or irregular carrier, if that carrier has a rate on file.

Do you think that would limit severely the objectives of S. 2873?

Answer 36. We believe that it is obvious that the rates of an infrequent or irregular carrier do not afford an appropriate standard for detemining whether or not the controlled carriers' rates should be suspended or disapproved. If such a rule were adopted, the objectives of S. 2873 would be defeated.

Question 37. One of the Department of Justice's recommendations is against giving the FMC authority to prescribe minimum rates during the period when the carriers' rates are in suspension. Rather, the Department would permit the carrier to file a new rate. If the carrier has one rate under suspension which is presumptively not just and reasonable, is it reasonable to expect the one he files as an interim to be just and reasonable?

Answer 37. The authority of the FMC to take positive action in setting a minimum rate is essential in our view. The alternative would be something approaching chaos, i.e., if the carrier institutes a $10-rate and this is suspended, it would then be in a position to offer a new rate of $10.01. This can be continued indefinitely and would not constitute a meaningful manner in which to regulate these entities which so plainly require regulation.

Question 38. It has been said that the Soviets frequently quote FAK rates (freight-all-kinds).

(*a*) Is this accurate?

(*b*) If so, do they quote FAK rates more frequently than U.S. carriers; and if so, why?

Answer 38. As indicated above, FAK rates are designed to "skim the cream" and not to serve the overall needs of the trade. On this basis, the Soviets, seeking to pursue ends other than total service to the trade are in a position to go after the high-valued cargo under an FAK rate in a manner in which a commercial carrier, genuinely dedicated to the trade, would find totally self-defeating.

Question 39. The Department of Justice urges that the Committee delete the requirement in S. 2873 that controlled carriers file rate reductions 30 days prior to the effective date. According to the Department, this requirement would place an unnecessary restriction on competition between controlled and non-controlled carriers, because controlled carriers would be unable to react promptly to changing market conditions and would even be unable to make timely responses tc rate decreases implemented by competing non-controlled carriers.

Do you agree with Justice's recommendation and its rationale therefor?

(*a*) Presumably low-value cargo such as rags would not be shipped under an FAK rate. If the Soviets frequently quote FAK rates, does this mean they are ignoring low-value cargo, i.e., "skimming?"

(*b*) If so, low-value cargo is left to other carriers. What would happen to low-value cargo if the Soviets were to penetrate a trade to the extent they dominated it?

Answer 39. The theory that the freight market for common carrier services fluctuates in the manner suggested by the recommendation of the Department

of Justice is not realistic. A special permission procedure on the part of the FMC would avoid even the theoretical problem.

As previously indicated, the use of FAK rates is one designed to engage in "skimming" the high-valued cargoes. If the Soviet penetration is sufficient to remove the bulk of the high-value cargoes, the other carriers will be placed in a position where they will have to obtain increased revenue from the low-valued cargoes which, in turn, will impede the ability of shippers of the low-valued commodities to compete in the world markets.

Question 40. In its testimony the State Department said that perhaps its most serious concern was with the provision in S. 2873 that authorizes the President to stay FMC actions for a maximum period of 120 days for reasons of defense or foreign policy.

The Department urges that the President's authority not be limited to 120 days but be made absolute.

Would you please comment?

Answer 40. We do not believe that any legislation dealing with this subject should include an indefinite stay of the FMC's suspension orders. Once the rates are found unreasonable (and thereby unlawful) we do not believe that there should be any consideration which would permit the continued effectiveness of those rates.

Question 41. In its testimony the State Department said that it believed any rate suspension imposed by the FMC should, unlike the provisions of S. 2873, be of a limited duration. Accordingly, the Department recommended that the phrase "but not for a longer time period than 180 days beyond the time when they would otherwise go into effect," should be added to subsection 18(c)(4) after "controlled carrier" in line 9 on page 5.

Would you please comment?

Answer 41. As indicated above, we do not believe that an otherwise unlawful rate should be allowed to go into effect, simply by reason of the fact that it has been on file for any specified period of time.

Question 42. The Department of Justice in its testimony suggested an amendment to the definition of "constructive costs" as that term is defined in S. 2873. The Department feels that the definition in S. 2873 may cause the term "constructive costs" to be interpreted in a way which does not take into account all of the many variables involved in ocean freight rates.

Accordingly, it proposes the following amendment:

"The term 'constructive costs' means the cost of another carrier, other than a controlled carrier, operating similar vessels and equipment and offering similar transportation services under similar transportation conditions of carriage and under similar tariff description between the same points or ports over the same route;"

(*a*) Are the realities of our liner trades such that for the purposes of defining constructive costs there are always "similar vessels and equipment," offering "similar transportation services under similar transportation conditions of carriage and under similar tariff descriptions between the same points or ports over the same route?" In other words, is the Justice amendment a realistic, workable one?

Answer 42. We certainly do not agree with the Department of Justice proposal that "construction costs" be limited to "similar vessels and equipment", etc. As suggested, there are often instances where the various "similar" factors will not exist and it will be incumbent upon the Federal Maritime Commission, in the exercise of its administrative expertise, to determine such constructive costs.

Question 43. In its testimony on S. 2873, the FMC said that for individual commodity rates, the test of "just and reasonable" would have to focus more upon the disruptive effect that the rate is creating or is likely to have upon the trade as a whole. Here, the relationship of the rate to those charged by other carriers and the necessity of those rates to assure the movement of particular cargo would play a larger role than in testing the reasonableness of an entire rate structure.

Do you agree with the FMC's statement?

Answer 43. Where a carrier is engaging in practices designed to "skim" a trade, whether by use of an FAK rate structure or underpricing rates on higher-valued commodities, consideration must be given not only to the rate level on a per-ton basis but to the effect on the trade itself, the other carriers in the trade and the shippers of the low-value cargo which need to obtain the service provided by the carriers.

Question 44. The U.S.-flag share of the cargo in our liner trades is about 32%. How much of that 32% is required by law to be carried on U.S. flags?

Answer 44. We do not have any statistics to determine the extent to which the U.S. flag share of cargo in our liner trades is required by law to be carried on U.S. flag vessels.

Question 45. The FMC testified that the Soviet carriers pay about double the normal commission rate for cargo. Is that accurate?

Answer 45. While we do not have direct Soviet involvement in our trades, it is our understanding that the Soviets have used commission rates approximately double the normal commissions to induce cargo to move by their lines.

Question 46. With regard to the penetration of our trades, it has been said that a significant difference between Soviet carriers and other independents is the ability of the Soviets to charge whatever rates are necessary over a "much broader range of commodities."

(*a*) Do you agree, and if so, would you please explain why their ability extends over a 'much broader range of commodities'?

Answer 46. While we are not certain as to the context in which the "much broader range of commodities" was used, it is a common practice among non-conference carriers to assemble a nucleus of cargo comprised of one or a few commodities, often of neo-bulk types, while attempting to fill out the available free space with common carrier commodities at the rates necessary to impel their movement. As we appreciate the Soviet practices, they are based on substantially different considerations and generally have developed in the direction of moving toward capturing the predominant share of higher-valued commodities.

Question 47. S. 2873 gives the FMC authority to prescribe a minimum rate level upon a finding that a controlled carrier's rate was unreasonable. This provision has been criticized as an "unnecessary" extension of regulatory power over a foreign carrier.

On the other hand, if the Commission finds such a rate to be unreasonable, and cannot prescribe a minimum rate level, what is to prevent a controlled carrier from successively filing unreasonable rates each time the Commission suspends one.

Isn't there a danger of potential backlog and administrative snarls?

Answer 47. We certainly agree that the Commission must be given authority to prescribe minimum rate levels to avoid the problems outlined here.

Question 48. S. 2873 gives the FMC specific authority to secure access to the data of other government agencies for the purpose of determining "constructive costs".

This provision has been criticized on several grounds, including one that it would discourage people from volunteering proprietary information to other agencies—particularly the Maritime Administration.

Would you please comment on whether you believe this provision is necessary for the FMC to achieve the objectives of S. 2873?

Answer 48. We feel that the FMC will need all available sources of information for the determination of constructive costs. Under procedures adopted by the FMC in other contexts, we believe that it can afford the degree of confidentiality necessary to protect such information.

Question 49. U.S. shipping law, of course, does not permit closed conferences, and only permits rationalization and coordination of services if the agreement to do so is approved by the FMC.

Most other major trading nations have no such restrictions.

Does this difference make it easier or more attractive for the Soviets to penetrate the U.S. trades as cross-traders?

Answer 49. The absence of a strong conference system in our trades, including the prohibition against closed conferences, has made them long subject to predatory tactics by a variety of cross-traders. It is the recognition of this weakness in our system which has caused the Soviets to enter these trades, taking advantage of our open policies and the fact that the trades themselves are relatively lucrative.

Question 50. To our knowledge, has FESCO or Baltic ever been invited to join any of the major conferences in the U.S.-Atlantic or Pacific trades?

Answer 50. We are not certain as to the extent of "invitations" to FESCO or Baltic, but would point out that all of our conferences are open to all applicants who desire to join them.

Question 51. It has been suggested that S. 2873 be amended so that in determining whether controlled carriers rates are just and reasonable, the FMC must

consider whether a suspension or disapproval of those rates would unduly affect the quality of service provided in any trade route.

(*a*) Do you agree that such an amendment is necessary?

(*b*) If so, why?

Answer 51. We do not believe that consideration by the FMC as to whether suspension or disapproval of rates would unduly affect the quality of service provided in any trade route is a necessary part of the legislation. This stems from the fact that Soviets are not going to substantially undercut existing carriers in trades where there is not substantial competition which, in turn, would be able to provide the desired quality of service even in the absence of the Soviet participation.

Question 52. It has been suggested that S. 2873 should not apply to controlled carriers unless they are indirect competition with U.S. vessels; and that the bill should be amended so that it would not apply to any trade served exclusively by controlled carriers.

(*a*) Do you agree that there should be such an amendment?

(*b*) Are there U.S. trade routes served exclusively by controlled carriers, and if so, why?

Answer 52. We do not know of any trade served exclusively by controlled carriers and would again emphasize that where the controlled carriers are either the exclusive or predominant service, they will not engage in rate cutting below reasonable levels. It must be borne in mind that such rate cutting, even as to controlled carriers, is a measure adopted to obtain the business which otherwise would move by the ordinary commercial carriers in the trade.

Question 53. It has been said that S. 2873 could turn out to be ineffective. Any 'controlled carrier' could without difficulty just join a so-called '48-hour agreement' and would not be affected by the Act at all. He could simply continue his rate cutting practice by giving 48 hours notice to the other members of the agreement. Also, the bill is hinged on the flag of registry which means chartered ships might not be covered.

Do you agree?

Answer 53. The use of such 48-hour agreements by controlled carriers as a means of evading the purpose of the act is a very real danger in those areas where such agreements exist. We would point out that this, in our view, also indicates the ineffectiveness of such 48-hour agreements and, equally, conference agreements providing for independent action.

Senator INOUYE. Our next witness is Mr. George Avery, chairman of the Export-Import Maritime Commission, appearing on behalf of the National Industrial Traffic League.

Mr. Avery, welcome, sir.

STATEMENT OF GEORGE AVERY, CHAIRMAN, EXPORT-IMPORT MARITIME COMMISSION, APPEARING ON BEHALF OF THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE

Mr. AVERY. Thank you, Mr. Chairman. It is a pleasure to be here.

My name is George F. Avery, Jr., and I am director, International Central Services for Stauffer Chemical Co. in Westport, Conn. I am appearing today on behalf of the National Industrial Traffic League to present the league's views on S. 2873, a bill to provide for the regulation of rates or charges by certain state-owned carriers in the foreign commerce of the United States.

The league is a voluntary organization of 1,800 shippers, shippers' association, 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 of a trade

group, nor a spokesman for a particular commodity or transportation point of view, and it does not permit carrier membership.

Mr. Chairman, we understand that the objectives of S. 2873 are to provide a solution to the growing Soviet flag participation as a cross-trader in the U.S. liner trades. The league does not discredit the concern regarding the proper role of the Soviet merchant fleet as a cross-trader in the U.S. trades. However, the league opposes the provisions of S. 2873 as a solution for the following reasons:

It is the policy of the league to support an absolute minimum of regulation in connection with ocean transportation in foreign commerce; S. 2873 would establish Government regulatory rate suspension authority in the U.S. liner trades. We urge that this subcommittee recognize that the international trading capability of U.S. industry will be severely handicapped if, uniquely in the world, commercially negotiated ocean rate levels become subject to regulatory suspension.

The league opposes the concept that additional regulatory authority is required to administer the commercial validity of liner business practices of state-controlled carriers in the U.S. trades. We believe that the Federal Marine Commission has sufficient existent authority to ascertain whether rates are too high to too low as to adversely affect American commerce. The league considers the U.S. flag line fleet an integral part of American commerce and believes this interpretation is fully shared by the Federal Maritime Commission. Recent initiation of investigations by the FMC into Soviet liner fleet activity would appear to support our position.

The league opposes the concept that the rates freely negotiated between U.S. shippers and so-called state-controlled carriers are any more or less commercial than rates freely negotiated with any other carrier. We urge that you recognize that freely-negotiated rates reflect the rate level necessary to assure movement of cargo. Without affordable freight rates, there would be no commercial international transactions.

It is the experience of our committee membership that the Soviets do not operate in a noncommercial manner. We find that they price their services as an independent carrier across the spectrum of product value. They are neither the lowest price setter in the U.S. trades, nor do they, in our experience, offer prices that are predatory, namely buying freight away through unrequired low rates.

We do not approve as a test for rate justness and reasonableness the rates of other carriers in the trade. The recently issued Department of Transportation study identifies the significant disparity in conference rate levels between the rates assessed from the United States to foreign markets and the rates assessed from foreign competitive sources to the same foreign markets.

At this most critical period in international trade, where rapid proliferation of industrialization throughout the world is dynamically creating vibrant competition in every foreign market, every competitive shipping alternative must remain available to U.S. shippers if we are to successfully compete in foreign markets.

We believe that commercial malpractice by the state-controlled carriers in the U.S. liner trades is unproven, and, as we have testified, unfounded. Therefore, we oppose S. 2873 which would amend the commercial liner trade regulatory legislation by adding Government regu-

latory rate suspension in the U.S. liner trades and by attempting to legislate legitimate rate levels.

If the role of the Soviet liner fleet in the U.S. cross-trades is considered to be a threat to national security, we recommend direct negotiations be conducted with the Soviet Union, to renegotiate the original agreement granting access to our trades.

Thank you, Mr. Chairman.

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

As you may be aware, about 2-years ago, the former Chairman of the FMC, Mr. Bakke, went to Leningrad to negotiate with the Soviets to deal with this problem of predatory rate practices.

And the Soviets, at that time, assured Mr. Bakke that they would do something about this.

And he met with the Soviets again in April of 1977. However, after that meeting, he sent me a letter dated May 2, 1977, which said, in part, that he was "compelled to recommend at that time that active consideration of a legislative solution be resumed."

Chairman Bakke went on to Leningrad and he initiated these discussions because he felt that the rate practices were not in our national interest.

Do you still feel that government-to-government type negotiations with the Soviets would bear fruit?

Mr. AVERY. My recommendation regarding government-to-government negotiations would be to renegotiate the 1972 agreement with the Soviet Union which granted their liner operators access to our trades.

Senator INOUYE. If I recall the 1972 negotiations, they were a good deal for the Soviet Union.

Mr. AVERY. Apparently so.

Senator INOUYE. It is your view that under the present system, the American flag carrier can compete with the Soviet fleet?

Mr. AVERY. Mr. Inouye, I think my answer is in two parts. The theory of a state-controlled carrier's longer staying power at any rate level is irrefutable. We are here to testify before you that our committee held a special meeting and members came in from around the country. We spent an entire day discussing this issue in April. And in honest reporting to you today, as we have testified, we do not see what would be defined as predatory pricing by the Soviets.

Their potential for this is irrefutable, logically, in our judgment. We are here to say we don't see it. The league is a strong supporter of the American merchant marine. Without the American merchant marine, no long-term access to our foreign trades will remain for American shippers, and we support them to the extent that their services and their price levels are affordable.

One of the most edifying things that has happened in my lifetime is the formation of the National Maritime Council about 8-years ago, within which operations is a group of shippers advisory councils interfacing with management of the American merchant marine liner carriers.

Over the last 6 or 7 years, as an outgrowth, I believe, directly of those ongoing quarterly efforts, the American merchant marine has increased its carrying of the manufacture of liner trade of the United States 45 percent, from 22 percent of our trade to 31 percent of our trade.

We are strong supporters of the U.S. Merchant Marine. And we are saying that the current operation to date of the Soviet fleet does not show predatory pricing.

Senator INOUYE. Then you disagree with the statements by Sea-Land?

Mr. AVERY. Mr. Hiltzheimer identified several movements and gave percentage relationships which is one of our concerns for this type of legislation, Senator. Foreign trade is under severe price competition. Transportation costs are a sizable percent of landed cost, not uncommonly, 10 to 20 percent of landed cost of product.

Over the last several years with this growing foreign competition for foreign markets across a wide spectrum of product lines, those of us in positions such as mine have experienced a daily growing recognition of rate disparities where we are not freight cost competitive in a third market with our competitors located in Japan or in Europe.

The DOT study that I referred to earlier identified a rate disparity of significant substance, as much as 100 percent, vis-a-vis foreign competitors. Therefore, sir, rate comparisons that identify a rate 30 percent lower than x does not necessarily mean that that's x predatory pricing. It might very well indicate what those of us in jobs such as mine are involved with everyday, a significant effort involved in restructuring the U.S. outward freight pricing system.

I think we have to recognize that we are in that period of restructuring and that it is going to continue for some time.

Conferences and conferences of carriers have historically been responsive to shippers' requirements in quite direct relationship to the amount of competition that they have. While this attitude is changing, certainly the National Maritime Council activities is a vehicle that has shown it can be used to change, we do need some competition.

Our concern for Senate bill 2873 is that it would significantly change our regulatory procedures without replacing what we have lost.

Speaking personally, I think we have a serious problem in the presence of the Soviet merchant fleet as a cross-trader in our trades.

I would like to see the solution be one based on a theory that they have a capability for predatory pricing. They can. But we haven't seen it. It would seem to us that direct negotiations with the Soviet Government to limit their participation is the route to go.

Senator INOUYE. Then it is your view that the Soviet fleet, at the present time, is not involved in predatory practices?

Mr. AVERY. That is correct, sir.

Senator INOUYE. It is also your view that in an open competitive system, our flags should be able to compete profitably in our foreign commerce with the Soviets?

Mr. AVERY. Under their current pricing practices, yes.

Senator INOUYE. In other words, you are suggesting that members of our maritime industry are making excessive profits?

Mr. AVERY. That data is not available to us, sir. I wouldn't know.

Senator INOUYE. We have prepared several questions here, Mr. Avery. Many of them will require statistics. We would like to submit them to you, and may we request that your responses be submitted within a week?

Mr. AVERY. We will do our best, sir.

Senator INOUYE. Thank you very much.
Mr. AVERY. Thank you very much.
[The statement follows:]

STATEMENT OF THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE

My name is George F. Avery, Jr., and I am Director, International Central Services for Stauffer Chemical Company in Westport, Connecticut. I am appearing today on behalf of The National Industrial Traffic League to present the League's views on S. 2873, a bill to provide for the regulation of rates or charges by certain state-owned carriers in the foreign commerce of the United States.

The National Industrial Traffic League is a voluntary organization of 1,800 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 of 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 is 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.

The League has participated for many years in maritime matters before Congress and particularly this Subcommittee.

We understand that the objectives of S. 2873 are to provide a solution to the growing Soviet Flag participation as a cross trader in the U.S. liner trades. The League does not discredit the concern regarding the proper role of the Soviet merchant fleet as a cross trader in the U.S. trades. However, the League opposes the provisions of S. 2873 as a solution for the following reasons:

1. It is the policy of the League to support an absolute minimum of regulation in connection with ocean transportation in foreign commerce. S. 2873 would establish government regulatory rate suspension authority in the U.S. liner trades. We urge that this Subcommittee recognize that the international trading capability of U.S. industry will be severely handicapped if, uniquely in the world, commercially-negotiated ocean rate levels become subject to regulatory suspension.

2. The League opposes the concept that additional regulatory authority is required to administer the commercial validity of liner business practices of state-controlled carriers in the U.S. trades. We believe that the Federal Maritime Commission has sufficient existent authority to ascertain whether rates are too high to too low as to adversely affect American commerce. The League considers the U.S. Flag liner fleet an integral part of American commerce and believes this interpretation is fully shared by the Federal Maritime Commission. Recent initiation of investigations by the FMC into Soviet liner fleet activity would appear to support our position.

3. The League opposes the concept that the rates freely negotiated between U.S. shippers and so-called state-controlled carriers are any more or less commercial than rates freely negotiated with any other carrier. We urge that you recognize that freely-negotiated rates reflect the rate level necessary to assure movement

of cargo. Without affordable freight rates, there would be no commercial international transactions.

4. It is the experience of our committee membership that the Soviets do not operate in a non-commercial manner. We find that they price their services as an independent carrier across the spectrum of product value. They are neither the lowest price setter in the U.S. trades, nor do they in our experience, offer prices that are predatory, namely buying freight away through unrequired low rates.

5. We do not approve as a test for rate justness and reasonableness the rates of other carriers in the trade. The recently-issued Department of Transportation study identifies the significant disparity in conference rate levels between the rates assessed from the U.S. to foreign markets and the rates assessed from foreign competitive sources to the same foreign markets.

6. At this most critical period in international trade, where rapid proliferation of industrialization throughout the world is dynamically creating vibrant competition in every foreign market, every competitive shipping alternative must remain available to U.S. shippers if we are to successfully compete in foreign markets.

We believe that commercial malpractice by the state-controlled carriers in the U.S. liner trades is unproven, and, as we have testified, unfounded. Therefore we oppose S. 2873 which would amend the commercial liner trade regulatory legislation by adding government regulatory rate suspension in the U.S. liner trades and by attempting to legislate what is a legitimate rate level.

If the role of the Soviet liner fleet in the U.S. cross trades is considered to be a threat to national security, we recommend direct negotiations be conducted with the Soviet Union, to re-negotiate the original agreement granting access to our trades.

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

THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE,
Stamford, Conn., September 18, 1978.

Hon. DANIEL K. INOUYE,
Chairman, Senate Commerce, Science, and Transportation Committee's Subcommittee on Merchant Marine and Tourism, Carroll Arms Building, Washington, D.C.

DEAR CHAIRMAN INOUYE: Pursuant to your request at the recent hearing on S. 2873 for answers to numerous questions on the bill, enclosed are the League's responses.

QUESTIONS POSED TO THE NIT LEAGUE

Question 1. You have said that the problems posed by Soviet penetration in our trades should be handled by negotiations between the two governments rather than legislation such as S. 2873.

The State Department is, of course, the negotiator for our government.

Are you aware that the State Department supports controlled carrier legislation?

Answer. Yes, nevertheless we should resolve this problem by renegotiating the 1972 Agreement which originally granted the Soviets access to our trades.

Question 2. It has been said that a FAK (freight all kinds) rate structure is discriminatory and will automatically attract high rated cargo. Low rated cargo such as waste paper, wood products, and the agricultural trades, simply cannot bear the FAK rate because it will be, in most cases, higher than it would be under a normal trade. The Soviets, I believe, use the FAK rate structure extensively.

As a consequence they are "skimming", and the low rated cargo moves on the other carriers in the trade.

What would you say the future holds for low rated cargo in say, trade route 7, where Soviet penetration is projected to be 20% by 1985?

Answer. To our knowledge the Soviets do not use the FAK rate structure extensively. Additionally, our experience has not shown Soviet disinterest in low valued (low rated) cargo.

Question 3. You have said that the League does not discredit the concern regarding the proper role of the Soviet merchant fleet as a cross trader in the U.S. trade.

What is the proper role of the Soviet merchant fleet in our cross trades?

Answer. We believe the proper role is to participate in handling the trade between the U.S./USSR to limited participation in the cross trades to a specific percent that best meet U.S. National Defense and U.S. Maritime Fleet objectives.

Question 4. S. 2873 provides that pending a determination of the lawfulness of a controlled carrier's rates, the FMC may suspend the rates in question indefinitely.

H.R. 9998, on the other hand, limits these suspensions to a maximum of 180 days.

Do you believe it more desirable in the interest of efficient administrative practice and fairness to the parties to have a time limitation such as H.R. 9998 does? And if so, is 180 days sufficient?

Answer. Yes. However, we would prefer a much shorter time period such as 60 days.

Question 5. You have said that the FMC has sufficient existing authority to ascertain whether rates are too high or too low, as to adversely affect American commerce. You are, of course, referring to the Commission's authority under section 18(b)(5) of the Shipping Act.

In response to the Subcommittee's inquiry, the FMC said "there have been few, if any, actual adjudications under section 18(b)(5) . . . we need more effective procedures to regulate rates of controlled carriers, such as imposing upon them the burden of proof."

Do you still maintain the FMC has sufficient authority to deal with the problem?

Answer. Yes, the Soviet Fleet ships could be defined as "fighting ships" under Section 14a. If this is proven it could result in the closing of U.S. ports to the Soviets. Section 19 restricts profitability notices resulting from driving competitors out of business. Section 17 is precise in FMC authority to protect the U.S. exporters from prejudicial rate treatment vis-a-vis their foregoing competitors.

Question 6. H.R. 9998 would not apply to any trade served exclusively by controlled carriers. This provision is intended to assure that the bill would not restrict service in the Great Lakes where Eastern bloc carriers provide a significant percentage of the sailings.

S. 2873, on the other hand, has no such provision.

In your view does this provision in H.R. 9998 raise any problems in terms of what the legislation is trying to achieve?

Answer. No.

Question 7. Under S. 2873, for purposes of determining constructive costs the FMC would be given access to all data relating to the cost of performing ocean transportation available in the files of any other agency of the United States, except where the possessing agency certifies in writing that release of such data would endanger national security.

H.R. 9998, on the other hand, does not give this access to the FMC.

In terms of protecting the confidential nature of proprietary information, H.R. 9998, is, of course, preferable. Is it, however, too restrictive on the FMC?

Answer. Yes.

Question 8. By virtue of the definition of "controlled carrier" in S. 2873, the FMC would be able to look behind the flag of a vessel, and have the bill apply where a government controls a vessel, but operates it under a foreign flag.

H.R. 9998, on the other hand, would not permit the FMC to look behind the flag of a vessel.

Do you believe the provisions of H.R. 9998 are adequate to safeguard against governments evading the legislation?

Answer. No.

Question 9. Under S. 2873, during the suspension period the FMC could prescribe minimum rates to be charged by the controlled carrier.

H.R. 9998, on the other hand, does not give the Commission authority to prescribe minimum rates, and carriers may file new rates which would take effect immediately during the suspension. Even then, however, the Commission may reject it as unjust and unreasonable.

Do you believe the provision in H.R. 9998 gives the FMC adequate authority for the purposes of this legislation?

Answer. No, we prefer S. 2873.

Question 10. You have said that S. 2873, would establish government regulatory rate suspension authority in the U.S. liner trades, and that the international

trading capability of U.S. industry will be severely handicapped if commercially-negotiated ocean rate levels become subject to regulatory suspension.

The suspension power in S. 2873 is, of course, very narrow because it only applies to state-controlled carriers when they are cross-trading in our trades. And even then they are exempt if their state is entitled to receive most-favored nation treatment; or their state subscribes to the OECD code of liner conduct; or their rates in a particular trade are covered by a section 15 agreement; or the cross-trade is served exclusively by state controlled carriers.

Moreover, CENSA which represents the liner companies of 12 European countries and Japan have expressed support for the legislation and a number of those countries have informally done so also.

My question therefore is how will the international trading capability of U.S. industry be severely handicapped?

Answer. International trade requires prompt, frequently immediate rate concurrences between shippers and carriers. The threat of suspension will severely affect the certainty of any rate negotiated with the state controlled carrier. Indeed, such rate will be overturned by the Federal Maritime Commission. Removing this potential rate negotiation tool from the negotiation weapon of the U.S. shipper at this point in history when the inherent rate disparities of the outbound U.S. trades are being resolved through commercial rate negotiations is a serious concern. Once initiated we are concerned there will be an expansion of the definition of state controlled carriers until we have de-facto cargo preferance. This is fine for the U.S. carriers but not for the exporting efforts of the U.S. We are also concerned that this legislation would give inherent validity to the price levels of other carriers. Given the imprecision and lack of science inherent in steamship lines pricing and given the disparities afflicting the outbound U.S. rate levels vis a vis both the inbound U.S. trades and the rates available to foreign competitors, we oppose any legislative effort to define a "legitimate rate level."

Question 11. As to rates already in effect, S. 2873 provides that the FMC may suspend them on 30 days notice. H.R. 9998, on the other hand, requires 60 days notice.

Do you feel that a 60 day notice period would, in any way, hinder the effectiveness of the suspension power?

Answer. Rate suspension action should be taken quickly to minimize its destructive impact.

Question 12. Under H.R. 9998, in determining if rates are just and reasonable the FMC may consider whether suspension or disapproval of the rate would unduly affect the quality of service provided in any trade route. This consideration, of course, would have its greatest impact in areas such as the Great Lakes where Soviet carriers provide such a significant portion of the liner service.

S. 2873, of course, has no such provision.

Do you find this provision in H.R. 9998 acceptable from your standpoint?

Answer. Yes.

Question 13. S. 2873 provides that the President may stay any order of suspension or final order of disapproval of rates, etc. for a period not to exceed 120 days if he finds that such stay is required for reasons of national defense or foreign policy.

H.R. 9998, on the other hand, gives the President authority to stay permanently such suspension or final order.

Does the House pass provision raise any substantial problem that you see?

Answer. No.

The League hopes these answers will be of assistance to the Senate Commerce Committee during any further consideration of S. 2873. The League continues to strongly oppose S. 2873 which attempts to legislative what exactly is a legitimate rate level. Again, the League believes that if the role of the Soviet liner fleet in the U.S. cross trades is considered to be a threat to national security, we recommend direct negotiations be conducted with the Soviet Union, to re-negotiate the original agreement granting the Soviets access to our trades.

Sincerely,

J. ROBERT MORTON, *President.*

Senator INOUYE. Our next witness is the president of the Transportation Institute, Mr. Herbert Brand.

Welcome to the subcommittee, Mr. Brand.

STATEMENT OF HERBERT BRAND, PRESIDENT, TRANSPORTATION INSTITUTE

Mr. BRAND. Thank you, Mr. Chairman.

Mr. Chairman, I have a statement here which I would like to submit for the record, and I would appreciate, as you have extended me the opportunity before, a few moments to make some comments.

Senator INOUYE. Without objection, your full statement will be made part of the record.

Mr. BRAND. For the record, my name is Herbert Brand, I am president of the Transportation Institute.

Mr. Chairman, I think there is very little left to be said with respect to this legislation which obviously is long overdue, and, which I think, points to the fact that the United States is incapable of demonstrating leadership in an area in which that leadership is looked for by our allied nations, by the traditional maritime nations of the world.

And I think that we are, in a sense, becoming a ploy to the tactics of the Soviet Union. I am aggrieved that the arch exponents of the capitalist system would be here testifying before this committee suggesting that the Soviet Union is not predatory when it is inherent in its political doctrine and its objectives to destroy the capitalist system as we know it.

I think it is pretty clear. I think all the facts are in, sir. I think if we need be reminded, the Soviet Union is now operating 85 to 90 percent of its liner tonnage in foreign cross-trades. And a substantial portion of that seems to be concentrating in the U.S. trades.

I don't think that is any accident. I think we are the No. 1 enemy and opponent. I think we fail to recognize here, sir, is that we are not talking about an allied nation which looks down the long road of history as a working partner with us.

We are talking about somebody who is working every day on a variety of fronts to destroy the effectiveness of our Nation. And to take away from us the position of leadership, both politically and economically and socially. And I think that anything we do to encourage that is a step in the direction of suicide or self-destruction.

I have not heard anybody here with the exception of the foremost exponents, of the capitalistic system—the big shippers in this country, as represented by our good friend Mr. Avery with whom the National Maritime Council works effectively—none but they say that the Soviets are not predatory.

The rest of the world is waiting for the United States to take some leadership in this situation, and we have failed so far.

We heard that a number of nations are contemplating remedial activities of one sort or another. I think the consensus, sir, is that every nation, every civilized nation, every traditional maritime nation is looking for the United States to take the leadership because they are feeling the same pains that we are.

I know the Germans are, the British, the French, the Italians, and the Scandanavians. And still we sit by and we listen to people from the Treasury Department who certainly ought to be able to give a history lesson or political science lesson or an economic lesson to the people of the United States as to the essential differences between the economic characteristics of our capitalist democracy and of the socialist state.

I am really shocked to hear that these people see no difference in the two, and that what they see the Soviets doing is pure free trade competition.

The fact of the matter is that the Soviet Union can do whatever it pleases to get that traffic. And that is exactly what they are doing. If we assume that there is anything else to it but that, we are denying the facts of life, and we are self-destructing.

I think, Mr. Chairman, that the national interest would best be served by enacting this legislation just as quickly as possible, as a demonstration to the world that the United States is going to act firmly and decisively when there are issues affecting its future course in history. And if anybody has any doubts about our determination to hang in there against anything that the Soviet is going to fling at us, they would know exactly where we stand.

Mr. Chairman, I would urge that the committee enact a bill with all haste, irrespective of what kind of legislation, whether it be the House version or the Senate version. I think the time has passed for the differences to be a major source of contention.

I think the important thing is to establish the principles of decisive action in dealing with this menace to our security and our welfare.

Thank you.

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

Are you convinced, in light of the facts and statistics available to you, that the rate practices of the Soviet fleet are predatory?

Mr. BRAND. Unequivocally. Absolutely, sir. In the course of examination of the rates charged by the Russians for transporting the buses that were brought into this country by AM General from Germany aboard—thanks to the Department of Transportation the Soviets confess that the $3,500 per bus they charged was an abnormally low price. They confessed that this rate was a mistake and the result of a clerical error. The $3,500 was the result of a clerical error and no attempt was made to describe what was a fair rate, what was a rate that they needed.

They now concede that they got those buses aboard their ships in bidding against Lykes Bros., as a result of "mistake" and a clerical error, a downward move in the rate in the course of somebody's miscalculation. I will submit the story as printed in the Journal of Commerce of August 9 in which the Russians acknowledge this.[1]

Senator INOUYE. The Deputy Assistant Secretary for International Trade and Investment Policy of the Department of the Treasury suggested that in an open competitive system, the American fleet should be able to profitably compete with the Soviet fleet.

Would you agree with that suggestion?

Mr. BRAND. Absolutely not, no, sir. I don't see how as an economist he could take two different systems with two different standards and expect they would compete. On whose ground rules? Would they be the Soviets' or would they be ours?

I am not an economist and maybe that is my advantage. But I think he's absolutely wrong, sir. I think, too, his facts are wrong. He pointed out in response to a question in which you asked him how the Americans might compete more effectively with the Russians, the U.S. shipowners would have to look to their manning scales.

[1] The article is in the committee files.

I would submit that he is at least 10 years behind the times, and the facts. Americans manning scales compare favorably with any of those in the world. I think U.S. crew sizes are, even in management's point of view, no longer a factor, a cost factor. They are competitive in crew sizes and in manning scales, and the gentleman from Treasury apparently didn't know that.

Senator INOUYE. Do you believe that our industry is amassing excessive profits?

Mr. BRAND. Excessive—no, sir. I think anybody can determine that pretty quickly. The industry is in rather difficult straits right now, with many companies just hanging by their fingernails, you might say.

Senator INOUYE. What would you predict would be the situation in 1985 if the Government of the United States refused to respond to your plea?

Mr. BRAND. The Soviet Union has doubled its fleet size between 1965 and 1976. The liner cargoes carried by them increased eightfold between 1971 and 1976. They have penetrated the U.S. liner trade from a point less than a half of 1 percent in 1971, to now where they are at a level of perhaps better than 3⅓ percent. And this is moving and moving and moving.

The Department of Commerce predicts that Soviet carriage of U.S. liner cargoes will increase to 6.6 percent. In other words, almost double by 1985.

Obviously that will be largely at the expense of the American fleet.

Senator INOUYE. Do you wish to comment on the findings of the Department of Transportation's study which has been cited by Mr. Avery on the study of ocean rate disparities? Have you seen this report?

Mr. BRAND. No, sir. We have just gotten it. But I am not too familiar with the results or conclusions.

Senator INOUYE. We would like to have your views. If you could have someone look over the report and give us your thoughts on this report.

Mr. BRAND. OK.

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

A REVIEW OF A STUDY OF OCEAN RATE DISPARITIES

"The findings and conclusions (of the study)—are not always as complete and as reliable as they might have been."

The above is a quotation from the introductory chapter of the June 1978 Department of Transportation report, A Study Of Ocean Rate Disparities. Although the authors of the report, Booz, Allen and Hamilton, Inc., repeatedly assert that the data utilized in the analysis was the "best available", the data sample is inaccurate and non-representative at best:

Commodities were chosen for rate analysis based on their 4-digit standard international trade classification (SITC). However, tariffs that utilize SITC determinations are computed on a 7-digit identification. The abstract aggregating of similar commodities and the subsequent averaging of rates (see Appendix A) account for the lack of "reliable" conclusions;

The report documents the results of analyses conducted in 1976, a period which the authors concede "was an unusually trying time for the history of liner shipping and its regulation." Soviet penetration into the liner trades, extensive investigations of liner companies by the Federal Maritime Commission and Department of Justice, and the growth of intermodalism created "unusual rate

instability" in the developed liner trades during the period of review, thereby discounting the impact of the study's conclusions.

The review of Directional Disparities concludes that ocean freight rates are 32 percent higher for outbound commodities than for similar inbound commodities. Notwithstanding the criticisms cited above, specifically the lack of commonality between commodities chosen on a 4-digit SITC evaluation, this analysis ignores crucial segments of the U.S. liner trades. The North-South trade and trade with developing nations which played an increasingly important role in the overall movements of cargo in this period, is summarily discounted because of "complications" such as port congestion, overcharges and heavily unbalanced trades. Rather than "distorting" the rate analysis, inclusion of all vital trades in the study would have allowed a more accurate representation of rate structures.

Sample size was severely limited in the review of Directional Disparities. The sample used to develop the disparity estimate represented only an average of 3.3 percent of the tonnage and 4 percent of the value of liner commodities moved on the eight trade routes studied. Further, an analysis of average value per ton of the commodities studied reveals a significant disparity between outbound commodity values and inbound commodity values. The average value per ton of commodities moving out of the United States exceeds, by over 15 percent, the average value per ton of commodities being moved on inbound voyages. Although the second chapter of the report states that commodity value is one of the dominant factors in the determination of rate levels (see p. II–2) this point is not mentioned when rate disparities are calculated in the following chapter.

The calculations of Third Country Disparities which concluded that ocean freight rates paid by U.S. exporters are 125 percent higher than those paid by foreign competitors, were also based on 4-digit SITC commodity comparisons and rate data gathered in 1976. The non-specific nature of a 4-digit SITC commodity determination negates the claim that "similar" commodities were examined. Again, indiscriminant aggregating of commodities and averaging of rates procluded accurate conclusions. Further, the model used to compare service and itineraries did "not adjust for real-world differences . . . which may have existed for the commodity movements which actually took place" (p. IV–9).

The authors state that "it is virtually impossible to develop a methodology that would completely overcome . . . (the) significant differences in the ship types, flags of registry and itineraries involved in the service between a foreign importing area and two export shipment origins, one in the United States and the other abroad" (pp. IV–6, IV–1). An attempt is made, nonetheless, to develop a a U.S.-to-foreign cost index. This index fails to adjust for disparities in distance traveled, thereby heavily weighting distance as a significant factor in liner cost. A 1977 study conducted by Booz, Allen and Hamilton, Inc. for the Army Corp of Engineers and a 1968 OECD study however, concluded that "a relatively small part of total liner cost is a function of the sea distance" (p. II–5). In addition, the study concedes that the validity of foreign cost and rate data is questionable, further discrediting the accuracy of the study's conclusions.

The Transportation Institute concurs with the Federal Maritime Commission's criticism of the report and is inclined, after our analysis, to ascribe to a Maritime Administration statistician's findings of a 60 percent error in the study's conclusions. Additional study is needed, however, to resolve the longstanding question of whether or not disparities actually exist, and if so, to what degree. The definitive study must include a review of the economic realities and pressures that dictate rate differences, rather than assume a constant economic environment in which all differences were termed "disparities." Further, the final study on this issue must address specific rates for specific commodities, for as a Federal Maritime Commission Economist concludes, when specific data is analyzed, disparities disappear.

Senator INOUYE. This report suggests that our rates may be excessively high in certain areas.

Mr. BRAND. Well, I don't know how they answer that in terms of conference systems. Do they mean everybody's rates are too high? Again with the possible exception of the Soviet Union? Those state-controlled fleets. I think we are confronted with a real contradiction here in which we find that the apologists for Soviet tactics are within our own bureaucracy.

Senator INOUYE. Do you agree with this conclusion? This is one of several conclusions. Ocean freight rates paid by U.S. exporters are over 100 percent greater than those paid by exporters from an alternative source country to a third market?

Mr. BRAND. No, sir. I would want to see how they arrived at that.

Senator INOUYE. Fine.

Mr. BRAND. We will, as you suggest——

Senator INOUYE. I would like if we may, as we have with other witnesses, submit several questions to you for your response.

Mr. BRAND. OK, sir.

Senator INOUYE. May we have your response within a week, sir?

Mr. BRAND. Surely.

Senator INOUYE. Thank you very much.

Mr. BRAND. Once again, thank you very much.

Senator INOUYE. At this stage, without objection, the statement submitted by the Labor Management Maritime Committee will be made a part of the record.

[The statements and questions and answers follow:]

STATEMENT OF HERBERT BRAND, PRESIDENT, TRANSPORTATION INSTITUTE

Mr. Chairman, the Transportation Institute appreciates the opportunity to appear before you today to discuss S. 2873. The bill is designed to control predatory rate practices by certain state owned or controlled carriers. Unquestionably, these carriers are dramatically increasing their penetration of our international liner trades with a resultant threat to the stability of those trades. We endorse S. 2873 as long overdue.

There are three points which I wish to bring to your attention today that underscore the need for this legislation:

(1) the increased size of the Soviet merchant marine;

(2) the substantial penetration of U.S. liner trades by the Soviet fleet; and

(3) the ability and motivations of Soviet carriers to quote predatory rates.

Additionally, I wish to address some of the concerns that have been expressed about this bill.

Expansion of Soviet fleet

The expansion of the Soviet merchant marine has been rapid and significant. Your Committee is well aware of this development and we will not belabor it. Only two decades ago the Soviet merchant fleet had a total carrying capacity which ranked 20th in the world. Today, however, in terms of dead weight tonnage it is No. 9 and in total number of vessels only three countries surpass it.

Ship construction in the Soviet Union has been vigorous and impressive. In the last decade, the Soviet Union spent 50% more on ship construction than the United States. Between 1965 and 1976, the Soviet merchant fleet more than doubled its tonnage (from 8 million dwt to 16.5) and increased in size from 990 to 1,700 vessels. This rapid buildup is far from over. It is projected that by 1980 the Soviet merchant marine will increase to 1,717 vessels of 18.4 million dwt with increases to 1,812 vessels of 23 million dwt by 1985.

U.S. trade penetration

Penetration of U.S. foreign trades since 1972 by Soviet liner fleets has been dramatic. Since that time, bilateral liner cargoes carried by the Soviet fleet have averaged only 10 to 15% of their linear carriage with the remaining 85 to 90% being "cross trades" cargoes. Between 1971 and 1976 Soviet participation in U.S. liner ocean borne foreign trade jumped from 160,000 tons valued at some $38 million to 1,434,000 tons valued at $1.7 billion.

This represents, by tonnage, a substantial increase in market penetration—from .4% to 2.9% of total U.S. liner trade. Current estimates of the market penetration level are 3.4%. While to some this may appear to be a relatively small figure, it is deceptive since the Soviets have concentrated their tonnage on selected trade routes. For example, a staff report by the Federal Maritime Commission indicates that in 1976, the Soviet captured 13.1% of the market in

the North Sea trade route (U.S. North Atlantic/West Germany). Other routes also showed percentage significantly higher than the overall penetration figure. The U.S. Pacific, Hawaii and Alaska/Far East route (trade route 29) showed a 5.6% penetration. The U.S. Atlantic, Gulf and Pacific/Indonesia, Malaysia and Singapore trade route (trade route 17) showed a penetration figure of 5.4%. Data for the first half of 1977 underscores the increasing penetration by the Soviets of these routes. The most significant increase occurred in the Far East where the Soviet penetration level of 6.4% constitutes an increase of .8% over 1976. When the size of the trade is considered, growth of this magnitude is significant.

There can be no doubt that the growth of the Soviet fleet in United States trades has been impressive, in the relatively short period since the October, 1972 U.S./U.S.S.R. Maritime Agreement which opened U.S. ports to Soviets ships. Moreover, Soviet penetration can be expected to increase. The Soviets have a merchant fleet that far exceeds their own national trading needs. It is utilized for full time cross trading. As I noted earlier, continued increases in Soviet shipbuilding are anticipated; for example, the tonnage of the Soviet intermodal fleet is expected to triple by 1981. The Department of Commerce predicts that Soviet carriage of U.S. liner cargoes will increase to 6.6% by 1985.

Soviet capability and motivations

No one denies that the Soviet fleet has the right to play a role in world liner shipping. However, to ignore the capability of the Soviets to engage in predatory rate cutting would be foolish. We believe this Committee received testimony earlier that to establish themselves in various trades, Soviet carriers initially quoted rates 40 to 50% below conference levels. In the Pacific trade, at present, Soviet carriers offer rates 10 to 15% below other carriers. A recent FMC staff study indicated in the U.S. Atlantic and Gulf/Australia trade FESCO minibridge rates averaged some 22–25% below the conference's all water rates and some 10–13% below the rates of the ACE Lines, which also offers independent minibridge service in this trade.

But to debate over whether existing Soviet rates are or are not predatory is, we believe, to miss the point. There is evidence the Soviets have quoted predatory rates in the past. They could again in the future. S. 2873 is not punitive legislation, but would simply provide the U.S. a means for assuring that future Soviet rates are just and reasonable. No one can argue with that objective or with the reality of the Soviet capability to cut rates and undermine our liner trades.

The Soviets can afford to offer cut rates for a number of reasons. Many of these reasons are alien to Western "free-economy" principles.

The heart of the problem is the basic difference between market and nonmarket economies. The cost structure in Eastern Bloc countries is different from our own. Decisive terms such as "profit" and "earning power" have completely different meanings from those in the West. The Soviets are not bound to uphold any criterion of profitability that is similar to that required of market-economy type companies. The Soviet "pricing system" (i.e. allocations based on government decree) is incompatible with the Western market system; in government controlled economies, pricing policies are only a means to an end, economic, political or otherwise. Thus, the operating costs of the Soviet fleet can be and are basically free from items which represent major expenses for a commercial operating shipowner in the West, items such as depreciation, interest and insurance.

So the Soviets obviously have the capability to undercut Western fleets in any manner they choose. They also have the motivation to do so.

First is the need to earn foreign currency. Your Committee has received expert testimony on this factor. In 1975, for example, the Soviet Union had a $6.4 billion hard currency deficit. It has been reported that as much as 25% of the Soviet hard currency earnings are required simply to meet interest payments on outstanding debt obligations.

At the root of this need for hard currency is the same type of difference between the Eastern and Western economic systems that S. 2873 attempts to address. Instead of the adjustments by market forces that take place under the flexible, convertible-exchange-rate system typical of the Western world, the Soviets have a system of exchange control and an inconvertible currency. Under such a system the government exercises complete authority over the foreign exchange market. Because trade is determined by the availability of the means of payment and not by comparative costs, certain export industries are encouraged because they have the potential to earn hard currency. The "efficiency" of

these operations is judged partially in terms of the net amount of hard currency they earn. Clearly Soviet maritime activity in the cross trades of the United States is one of these industries.

Apart from the objective of earning hard currency the buildup of the Soviet merchant marine serves strategic and political ends. The Soviet Union's maritime fleet is prepared to operate with the Soviet Navy in time of war because it operates with the Navy in times of peace. The integration of the Soviet merchant marine with the Navy is well recognized. Many of its cargo ships can be adapted to carry any type of shipment. Many of its commercial vessels are suitable for transporting troops and military equipment. Many of its modern liner ships are roll on/roll off vessels especially suitable for handling military supplies. The strategic importance to the Soviet Union of the integration of its maritime fleet with its Navy is illustrated by Soviet involvement in Cuba, Vietnam, the Middle East, and Africa.

Soviet maritime activity can also serve as an influence-building instrument of policy through the simple presence of Soviet ships and companies in distant parts of the world. It has also been suggested that Soviet involvement in the cross trades provides a source of detailed intelligence concerning trade and the movement of goods in Western economies.

Scope of S. 2873

There are some who have expressed concern that the legislation affects countries other than those Eastern Bloc countries which constitute the major threat to the United States liner trades.

The bill's definition of a "controlled carrier" is narrowly limited to those whose operating assets are directly or indirectly owned or controlled by the government under which the vessels are registered. This definition is further narrowed by specific exemptions contained in the bill including, among others, vessels of states which receive most favored nation treatment with the United States, controlled carriers operating under approved rate or service agreements pursuant to Section 15 of the Shipping Act, and those operating in trade between the controlling country and the United States.

Although technically as many as 40 nations may fit within the bill's definition, this figure is unquestionably misleading.

First, most of these countries have relatively small coastal fleets. In fact, half of them have fleets of less than 20 vessels and when Communist and Eastern Bloc countries are separated out the remaining thirty-some nations have a median fleet size of only 18 vessels. In terms of absolute numbers, the total merchant fleet of these countries comprise only about 10% of the merchant fleets of the world and only a slightly larger percentage (11.3%) in terms of deadweight tonnage.

Secondly, it is significant that virtually none of these countries except the East Bloc is involved in significant cross-trading. Therefore, they are not affected by the bill.

Thus, although the bill by its own terms appears to apply to some 40 countries, it is in fact only the Eastern Bloc countries which will be subject to regulation.

Tests of justness and reasonableness

The factors set out in S. 2873 that the Commission is to take into account in reviewing the justness and reasonableness of controlled carrier rates have also been questioned on the basis that they are too closely tied to conference rates as a standard of comparison and do not adequately reflect the rates of independent carriers. There is simply no support for this assertion in the language of S. 2873.

The Commission's review of rates as set forth in this legislation is to be based on a number of factors including, among others, whether the controlled carrier's rates are fully compensatory based upon that carrier's actual costs or constructive costs; the relationship of the rates of the controlled carrier to those of other carriers in the trade; and whether the rates are required to assure movement of a particular cargo in the trade.

Nowhere in the language of this bill is the comparative standard for the review of the rates of controlled carriers tied to the rates of conference carriers alone. The bill speaks in terms of "other carriers" in the trade and would clearly include independent carriers as well as conference members.

Conclusion

The immense growth of the Soviet merchant fleet, its penetration into U.S. trades and its history of rate cutting are ample reasons to enact S. 2873. The clear capability of the Soviet fleet to undercut Western fleets, and the nonmarket motivations for doing so, make enactment imperative. The measure is narrowly directed to Eastern Bloc countries, it is not punitive and, to the extent that these controlled carriers charge rates that are just and reasonable, the legislation should be unobjectionable. The measure provides a needed means of coping with the increasing penetration and market share of the Soviets and preserving legitimate competition among common carriers engaged in the United States liner trades.

STATEMENT OF THE LABOR-MANAGEMENT MARITIME COMMITTEE

The Labor-Management Maritime Committee composed of major steamship lines and maritime unions appreciates the opportunity to present this statement in support of S. 2873—a bill to provide for the regulation of rates or charges by certain state-owned carriers in the foreign commerce of the United States and for other purposes.

This bill forbids rates or charges filed with the Federal Maritime Commission by controlled carriers which are below a level considered just and reasonable. It likewise forbids any such carriers from establishing or maintaining unjust or unreasonable classifications, rules or regulations in tariffs so filed. This reaches the very heart of the problem giving rise to the proposed legislation.

The discretion as to what is just and reasonable is strictly lodged, as it should be, with the Commission. Authority to disapprove any rates, charges, classifications, rules and regulations is clearly specified. When the controlled carriers fail to demonstrate these factors to be just and reasonable, the burden of proof rests upon such carriers. Those which the Commission rejects, suspends or disapproves are declared clearly illegal and their use forbidden. In such cases, the Commission may order enforced, a just and reasonable minimum rate or charge.

Factors for determining just and reasonable rates and charges are described and furnish the basis for the Commission's actions. Time frames for filing and applicable effective dates of new rates and charges are provided in the legislation as well as provision for review of those in effect prior to enactment of the legislation.

Properly described exemptions from application of the Act are set forth as well as a stay of the Commission's actions by the President in matters of defense and foreign policy. This legislation is overdue and desperately needed.

Right at a time when the United States seeks to strengthen its merchant marine, our U.S. trade channels and routes are becoming grossly overtonnaged by the dumping of foreign government-owned ships into our foreign commerce. Against such government-owned shipping of the Soviet Bloc, U.S. flag ships find it hard to compete. Private ship operation cannot compete on a price basis with foreign countries, particularly those of the Communist Bloc nations where profit is no motive; where basic strategy involves control of seapower and the spread of ideology; and where political objectives predominate. Against such competition, our existing Federal programs are not, and were never, intended to provide remedies.

Unbelievable rate-cutting practices of state-owned and state-controlled competition is so prevalent worldwide that many nations of the world are today seeking countermeasures. S. 2873 is such a countermeasure and is the logical outgrowth of the unfair commercial rate practices now impairing the transport of our foreign commerce.

The Russian maritime build-up is deliberately planned to capture a large portion of the entire free world liner trade to earn hard currency and other economic, political and military benefits. The goals it has set have already produced a liner carrier fleet between five and six times greater than required to transport its own liner trade. Today, the U.S.S.R. has the world's greatest liner fleet with the United States now in seventh place. The liner fleets of East Germany and Poland are devoted to similar objectives as those of Russia.

The European Commission in Brussels has proposed to the E.E.C., the imposition of quotas on the traffic left to the fleets of East European countries. It should be pointed out that the development of state-owned merchant fleets is not confined to the Soviet Bloc alone. Even Singapore, Malaysia and Taiwan have joined in similar manner in the development of such type fleets.

While the United States has no control over what types of shipping other countries possess whether state-owned and state-controlled or whatever, our country can, with reference to its own foreign commerce, put controls on the predatory rate practices that have entered into our own foreign trade and have by devious methods, unjustly encroached upon the rightful share of U.S. flag shipping in our own cargo. By so doing we shall avoid great losses to American shipping including the jobs of many American seamen. Foreign shipping should not continue to be excused in effect from compliance with the same U.S. laws that apply to our own shipping.

We note that the House of Representatives has passed a bill, H.R. 9998, which in most respects is similar in substance to S. 2873 and is identical in purposes. This measure passed the House by the overwhelming vote of 329 to 6. We would strongly suggest that legislation on the subject to which both bills address themselves is urgently needed this Congressional session. In the interest of achieving this objective and avoiding the delays attendant upon a conference session, we further suggest that your Committee adopt the House bill. H.R. 9998, particularly since the two bills are appreciably similar and in very many respects identical.

We respectfully request that this statement be made a part of the record of the hearings on S. 2873 and thank the Committee for the privilege of presenting our views.

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

QUESTIONS OF THE COMMITTEE AND ANSWERS THERETO

Question. Under S. 2873 the term "constructive costs" is defined to mean the costs of another carrier, other than a controlled carrier, operating *similar* vessels and equipment in the same or *similar* trade.

The Department of Justice, however, has urged an amendment to insure that in constructing the costs of a controlled carrier for the purpose of determining whether its rates were just and reasonable, the Commission could only consider the costs of other carriers that operated between the same points or ports in the same trade and which had similar services, conditions of carriage and tariff descriptions. In order to determine constructive costs, the amendment would therefore require comparison with a vessel and method of operation that was almost identical to that of the controlled carrier in question.

In actual practice, however, isn't it true that in most instances such identical operations would not exist, and therefore the constructive cost standard could never be used?

Answer. The definition of "constructive costs" set forth in S. 2873 is adequate and allows for flexibility. S. 2873 defines constructive costs as the costs of another carrier, other than a controlled carrier, operating *similar* vessels and equipment in the same or *similar* trade. The Justice Department's proposed amendment to restrict establishment of constructive costs to carriers in the same trade, offering nearly identical services as the controlled carrier in question, is not satisfactory. First, identical operations seldom exist. This fact would frequently render impossible the comparison which the Justice Department envisions. Therefore, this Justice Department proposal would place an undue and unrealistic burden upon Federal Maritime Commission enforcement and decision making with respect to S. 2873. Institution of the Justice Department proposal would obstruct enforcement of S. 2873 to the extent that it would negate the purpose of the legislation.

Moreover, the Justice Department proposal ignores the reason why S. 2873 is necessary: to protect U.S.-flag carriers against predatory competition by controlled carriers. On several trade routes, services such as the Justice Department wishes to use for establishing constructive costs do not exist precisely because rate slashing by controlled carriers has forced competitors off the trade route.

Question. U.S. shipping law, of course, does not permit closed conferences, and only permits rationalization and coordination of services if the agreement to do so is approved by the FMC.

Most other major trading nations have no such restrictions.

Does this difference make it easier or more attractive for the Soviets to penetrate the U.S. trades as cross traders?

Answer. The fact that U.S. law prohibits American ship operators from participating in closed shipping conferences facilitates Soviet and other third-

flag penetration of U.S. trades. Most major trading nations permit their ship operators to organize and coordinate their services without restriction. They establish closed conferences which, to some extent, shelter their shipping from third-flag carriers and predatory competitors.

U.S.-flag operators do not have this protection. Rather, they are vulnerable to competition from all flags. When cross traders such as the Soviets cannot enter certain trades as a result of closed conferences or other restrictive measures, they seek the lucrative and easy-to-enter U.S. market. When the Soviets' massive shipbuilding program creates excess capacity, they dump their surplus shipping on the unprotected U.S. market, causing overtonnaging. To obtain cargo for their vessels, the Soviets slash rates far below fair market value. Thus, U.S.-flag operators suffer not only from the Soviets' unrestricted ability to enter our trades as third-flag carriers, but additionally from the fact that most markets are protected from such indiscriminate entry.

Question. Do you agree there is no evidence that Soviet rates are below Soviet costs?

Answer. There is no question that Soviet rates are below Soviet costs of operation. The European Economic Community, the Council for Economic Cooperation and Development (OECD), and officials of the American and British governments have complained that the Soviets have penetrated many trade routes by utilizing unfair practices: offering cut-rate tariffs that bear little relation to market conditions or operating expenses. These charges have been made by several shipowners associations as well: the Council of European Freight Conference (FEFC), the Association of West German Shipowners, the General Council of British Shipping, and the Royal Dutch Shipowners' Association.

Because the Soviet Union is a state-controlled economy operating an entirely subsidized state fleet, direct cost comparisons with market economy merchant fleets are difficult. Nevertheless, it is clear that the Soviets charge tariffs which are below real operating costs. The EEC publication *European Community* (July–Agust, 1978) states:

"What is the reason for the success of Comecon shipping? Basically it is due to systematic and large-scale price undercutting . . . This has been possible because of the fundamental difference between the communist and capitalist economic systems. Comecon shipping companies are state monopolies, and their rates are fixed according to political rather than economic criteria. The state pays the shipping insurance premiums and covers all losses. Sailors' salaries are also only about one-fifth of their Western counterparts . . . The state also covers most of the social security charges . . . Other advantages enjoyed by Comecon companies are reduced port duties and both direct and indirect subsidies * * *"

The prestigious British publication, *The Economist* (June 18, 1977) further documents Soviet rate-cutting practices:

"* * * Russian shipping lines are not required to pay depreciation on their vessels (while western firms have depreciation which works out to an amount equivalent to about 35 percent of the operating costs of general cargo vessels, 50 percent for container ships). Likewise, the Russian lines do not have to pay insurance themselves; it is covered by the state. And Russian seamen are reported to earn only $30 a week, while a western seaman gets $150."

However the Soviets choose to portray their calculation of tariffs, it is apparent that they bear no relation to actual operating costs. This was proved when the Soviets failed to justify to the U.S. Federal Maritime Commission the tariffs which they had quoted for the carriage of German-made UMTA buses to the U.S. aboard Baltic Lines. Confronted with the fact that the tariffs were absurdly low, the Soviets claimed that they had been mistakenly calculated on the basis of smaller-size buses.

Question. According to an FMC staff analysis, Soviet vessel itineraries over the past three years indicate that one of the primary reasons for the Soviet presence in our Gulf Coast trades to Europe and the Far East is their active trade with Cuba.

According to that analysis, it is normal for a Soviet vessel to carry cargo from Eastern Europe to Cuba and then load cargo at U.S. Gulf and East Coast ports for the return trip to Europe. Likewise, in the trade between the Far East and U.S. Atlantic and Gulf ports, the Soviet vessels carry inbound cargo to Cuba.

Because our trades are the most lucrative and attractive in the world, is it possible that somehow we are responsible for facilitating or subsidizing trade between Cuba and the U.S.S.R?

Answer. Soviet trade with Cuba is enhanced economically by the Soviets' ability to participate freely in the U.S. cross trades. This represents only one example of how present U.S. shipping policy makes our trade economically attractive to state-controlled carriers which can slash rates, penetrate our trades, and avail themselves of the opportunity to earn large quantities of hard currency in our market—a benefit that the Soviet cannot derive from the Cuban trade.

The Soviets need hard currency to purchase Western technology. For both economic and defense reasons, they should not be allowed to accrue this currency at the expense of our merchant fleet. S. 2873 would remedy this situation by forcing the Soviets to charge fair rates when they participate in U.S. cross trades.

Question. The FMC testified that the Soviet carriers pay about double the normal commission rate for cargo. Is that accurate?

Answer. The Transportation Institute is not directly engaged in the booking of cargo. However, a number of our companies which are engaged in this business have confirmed what the FMC stated before the Committee.

Question. The report of the Maritime Administration on expansion of the Soviet fleet into our liner trades states that the Soviet fleet is carrying sizable amounts of "high-valued" liner cargoes such as sound recorders, machinery, and telecommunications apparatus.

(a) What precisely is meant by "high-valued" cargoes?

(b) Why is it more desirable to carry "high-valued" cargoes?

(c) Is the fact that the Soviet fleet is carrying sizeable amounts of "high-valued" cargoes, the result of a deliberate effort on the Soviets' part to go after that kind of cargo; and if so, why?

(d) Doesn't every carrier in a given trade go after "high-valued" cargo?

Answer. A "high-valued" cargo is precisely what the term implies: cargo which is expensive, such as electronics equipment, machinery, or televisions, as opposed to bulk or general cargo. It is more desirable to carry high-valued cargo because tariffs are greater on such cargo and more revenue is realized per voyage than when low-value or bulk commodities are carried.

The Soviets are trying to capture the high-valued cargo market in order to earn more revenue—and more hard currency—per voyage. This is an understandable endeavor for any carrier. However, it can be expected that the Soviets will slash rates to enter new high-valued cargo markets in the same manner that they have entered all other trades. Since the high-valued cargo trade is virtually the only sector where the U.S.-flag fleet carries a substantial share of U.S. commerce, it is a likely and lucrative target for predatory rate cutters. High-valued cargoes especially must be protected from such destructive competition. Furthermore, in order to capture high-valued cargoes, the U.S.S.R. quotes FAK tariffs for this cargo rather than the commodity-by-commodity tariffs quoted by the U.S. and other conference carriers. This allows the Soviet fleet to "skim" high-valued cargoes rather than compete directly for them.

Question: I believe there was an attempt by two North Atlantic conferences to obtain conference membership for the Russian-flag line, the Baltic Shipping Co., under a novel "two-tier" rate structure, which had its genesis in the so-called "Leningrad Agreement" worked out by former Chairman Bakke in July of 1976. That effort collapsed a year later when at the insistent urging of the Department of Justice, the Commission reversed its earlier-announced decision to approve the new agreements and instead set them down for lengthy formal investigation (FMC Docket 77–6). Recognizing that the economic conditions prompting the two-tier concept would have become moot long prior to the conclusion of any such formal proceedings, on July 20, 1977, the conferences announced their withdrawal of the agreements.

(a) Is the "two-tier" rate structure concept a realistic solution to the problem which S. 2873 is intended to solve?

Answer. The two-tier rate structure would permit the Soviets to maintain the facade of belonging to a conference while, with the sanction of the conference members, charging lower rates for their services. Although the two-tier concept would provide some relief from unfair Soviet trade practices, it would not address the issue as effectively as S. 2873. The two-tier system might also tend to disrupt the conferences where it was instituted. It could create animosity among the conferences which permitted it, those which did not, and nonconference carriers.

Question: To your knowledge, has FESCO or Baltic ever been invited to join any of the major conferences in the U.S.-Atlantic or Pacific trades?

Answer. The two conferences covering the eastbound and westbound trades on the North Atlantic tried to persuade the Soviet Baltic Shipping Company to

become a conference member. A two-tiered rate system was proposed, which would have allowed the Soviets to charge lower tariffs than other members. Objections to the two-tier system by the U.S. Justice Department eventually resulted in the conference members withdrawing the proposal.

The Soviets have, in the past, participated in conferences on the Pacific trades. They also created chaos among the Pacific conferences in which they did not participate by slashing rates up to 40 percent below conference rates. They no longer participate in any of the Pacific conferences.

Question: The Department of Justice has urged removal of the requirement in S. 2873 that controlled carriers give 30 days notice prior to any reduction in rates. Its concern was that since other carriers need not give any notice before their rate reductions are effective, a controlled carrier could be denied the ability to compete effectively.

On the other hand, it is urged that a controlled carrier desiring to engage in predatory practices or use its greater financial resources in unfair competition could significantly disrupt the market by lowering its rates immediately without notice. While a controlled carrier which desired to lower its rates only to meet rates lowered immediately by its competitors could do so since the bill allows immediate rate reductions by the controlled carrier on "special permission of the Commission."

In view of the "special permission" authority given the Commission do you believe the objection raised by the Department of Justice is valid?

Answer. In order to effectively regulate predatory practices, controlled carriers must be required to give 30 days notice prior to any rate reduction. The Justice Department proposal to eliminate this requirement from S. 2873 would negate the purpose of the legislation. Without the 30-day requirement, a controlled carrier could continue to disrupt our shipping markets by cutting tariffs, effective immediately, without notice. It is sufficient that S. 2873 provides that a controlled carrier can, with the Commission's permission, lower its rates to meet rates lowered immediately by its competitors.

Question. Under S. 2873, for purposes of determining constructive costs the FMC would be given access to all data relating to the cost of performing ocean transportation available in the files of any other agency of the United States except where the possessing agency certifies in writing that release of such data would endanger national security.

H.R. 9998, on the other hand, does not give this access to the FMC.

In terms of protecting the confidential nature of proprietary information, H.R. 9998 is, of course, preferable, Is it, however, too restrictive on the FMC?

Answer. The Transportation Institute believes that the FMC can obtain sufficient information from federal agencies under the terms of H.R. 9998. There has been no instance when the FMC has been denied a legitimate request for relevant documents from other government agencies. Moreover, the provision in S. 2873 might discourage people from volunteering confidential proprietary information to the agencies. The Maritime Administration in particular relies upon voluntary information supplied by foreign operators. The Institute believes that this provision in S. 2873 would hamper rather than assist interagency and operator cooperation.

Question. With respect to its proposed amendment to S. 2873 which would establish a "15% zone of reasonableness" the Department of Justice has said, "it is proper legislatively to assume that a rate as much as 15 percent below the comparable conference rate is a rate which is cost justified. We take this view because it is well established that privately-owned, non-conference carriers have traditionally been able to offer such rates and still make a profit. We note further that it is, in fact, frequently necessary that non-conference carriers offer this level of discount. If they did not, shippers would be inclined to patronize only the conference carriers, which offer service which is more frequent and sometimes superior to that offered by the independents."

Would you comment on the Department's statement?

Answer. The Transportation Institute strongly disagrees with the Justice Department assumption that a "15% zone of reasonableness" is justified. This so-called "zone of reasonableness" would permit controlled carriers to charge 15 percent less than established conference rates without being covered by the proposed legislation. The Justice Department proposal is based upon the erroneous statement that privately owned, nonconference carries "traditionally" charge such low rates and still earn a profit. Viable nonconference carriers do not, in fact, charge as much as 15 percent below established conference rates on a consistent basis.

Moreover, a controlled carrier, under the Justice Department proposal, could and would simply maintain rates which were 15 percent below the conference rate. Over a long period of time, such low-priced competition would prove most detrimental to privately owned carriers who operate to earn a profit. The proposed legislation cannot succeed in its intent if controlled carriers are permitted to automatically cut rates by 15 percent. Even if conference carriers attempted to meet the competition of noncontrolled carriers by cutting their own rates, the noncontrolled carriers, under the Justice Department's proposal, would be free to continue to maintain rates 15 percent below whatever the conference members could charge. This would destroy the conference system, destabilize the rate structure on our trade routes, and eventually force even the nonconference independents out of operation.

Furthermore, it is curious that the Justice Department makes such a proposal in view of its relatively recent, successful opposition to the two-tier rate structure proposed for the North Atlantic conference. To induce the Soviets to participate in the conferences, the two-tier system would have permitted them to join the conferences and to charge, initially, 10 percent less than other conference carriers. Justice opposed this two-tier proposal as discriminatory; it succeeded in obstructing the system. The "zone of reasonableness' that Justice now puts forth would merely sanction the old two-tier approach, except at a higher level of price cutting. Therefore, we find the Justice Department's position unrealistic, inconsistent, and not in the interest of stabilizing rates and affecting fair competition.

Question. (a) Presumably low-value cargo such as rags would not be shipped under an FAK rate. If the Soviets frequently quote FAK rates, does this mean they are ignoring low-value cargo i,e., "skimming"?

(b) If so, low-value cargo is left to other carriers. What would happen to low-value cargo if the Soviets were to penetrate a trade to the extent they dominated it?

It has been said that the Soviets frequently quote FAK rates (freight-all-kinds).

(a) Is this accurate?

(b) If so, do they quote FAK rates more frequently than U.S. carriers; and if so, why?

Answer. Used properly, FAK (freight-of-all kinds) rates afford a reasonable means to ship mixed cargo in one container under one price. The Soviets, however, use FAK rates to "skim" cargo: take high-value cargo and ignore low-value cargo. They do this frequently, quoting FAK rates for high-value cargo, which is priced on a commodity basis by conference carriers. The U.S.S.R. carriers can do this with impunity because they do not belong to conferences, which would induce them to quote the higher-commodity tariffs. U.S. operators and other conference operators cannot quote FAK rates as frequently because they operate to earn a profit and must cover the costs of handling special high-value cargo. Soviet use of FAK rates has a detrimental impact upon competing carriers and ultimately, upon shippers.

When the Soviets quote an FAK rate for high-value cargo, they capture that cargo from competing operators who are quoting a specific-commodity rate for the cargo. The specific-commodity rates for high-value cargoes will always be greater than the FAK rate. Shippers will choose those carriers quoting the FAK rates. This will cause competing operators to lose high-value cargoes to those quoting FAK rates. The operators will be forced to raise tariffs on low-value cargo in order to compensate for their losses. The increased transportation cost will force the cost of the commodity up. This will eventually force the selling price of low-value cargo, and anything that is manufactured from it, up beyond the level where it is competitive. Eventually, it could result in tariffs too high to make it worthwhile to move the cargo, resulting in dislocations for shippers, manufacturers, wholesalers, and consumers along the chain of production.

If the Soviets were to dominate any trade after having driven out competition by predatory pricing and skimming, they would be free to quote very high rates for all commodities, destroying the shippers who once benefitted from their low rates. If they dominated high-value cargo carriage, they would deprive competing operators of the sector which provides the highest rate of return, weakening their ability to stay in business and to reinvest in shipping and shipbuilding. In any event, the merchant fleets which compete with the Soviets, the shippers who rely upon them, and the economies of the major free market nations would suffer irreparable damage.

Question. In response to a question from this Committee the Department of Justice noted that although it would be possible for a controlled carrier to file rates which are not comparable to other carriers, in the event it did it would be an incentive for conferences to formulate their own version of such rates in response. Thus the Department concluded there would be comparability of rates and even under the amendment it proposed the FMC would be able to suspend improper rates without holding a full evidentiary hearing.

In your judgment, is this a realistic possibility, or would such a possibility create further instability in our trades?

Answer. Conference rates should not be dictated by controlled carriers as the Department of Justice proposal would allow. If controlled carriers were permitted to file rates which are not comparable to other carriers, as the Justice Department suggests, U.S.-flag operators would find that their situation vis-a-vis the state fleets remained the same as it is presently. The proposed legislation would be diluted to the point of uselessness.

By virtue of allowing controlled carriers to file noncomparable rates, the Justice Department proposal would legitimatize the state fleets' attempts to undercut the privately operated merchant marine. Simply permitting the FMC to suspend those rates without holding a full evidentiary hearing would not avoid the chaos that could ensue from this practice. The filing of noncomparable rates would introduce uncertainty among the private operators and would serve to destabilize our trades further. It would allow the Soviets to partially accomplish by threat and ploy what they have so long sought to achieve in practice: the disorganization of the conference structure.

Question. S. 2873 provides that the President may stay any order of suspension or final order of disapproval of rates, etc., for a period not to exceed 120 days if he finds that such stay is required for reasons of national defense or foreign policy.

H.R. 9998, on the other hand, gives the President authority to stay permanently such suspension or final order.

Does the House-passed provision raise any substantial problem that you see?

Answer. The Transportation Institute recognizes that the operations of controlled carriers in the U.S. trade are commercial rather than related to national defense. In giving the President the power to stay permanently FMC suspension or disapproval of rates, H.R. 9998 does not give the President authority to interfere with the Commission's economic decisions. Rather, it restricts him to national security considerations. The Institute believes that it is the economic issues which constitute the core of the proposed legislation.

In instances where Commission decisions might interfere with foreign policy or national defense considerations, H.R. 9998 allows the President to overrule the FMC only if he acts within a limited time period. We think that the suspension provisions in H.R. 9998 are reasonable and realistic. It is our opinion that they would not vitiate the purpose of the legislation.

Question. As to rates already in effect, S. 2873 provides that the FMC may suspend them on 30 days notice. H.R. 9998, on the other hand, requires 60 days notice.

Do you feel that a 60-day notice period would, in any way, hinder the effectiveness of the suspension period?

Answer. A 60-day notice of suspension would most likely not hinder the effectiveness of the proposed legislation. Nevertheless, this provision should be monitored closely during the first months that the legislation is in effect and amended accordingly if it is found to prove insufficient.

Question. Under S. 2873, during the suspension period the FMC could prescribe minimum rates to be charged by the controlled carrier.

H.R. 9998, on the other hand, does not give the Commission authority to prescribe minimum rates, and carriers may file new rates which would take effect immediately during the suspension. Even then, however, the Commission may reject it as unjust and unreasonable.

Do you believe the provision in H.R. 9998 gives the FMC adequate authority for the purposes of this legislation?

Answer. The provision in S. 2873 allowing the FMC to prescribe the minimum rates which a controlled carrier could charge during the suspension period would unnecessarily extend the regulatory authority of the Commission. In extending the FMC's rate-making power to foreign-flag operators, S. 2873 might unintentionally create a climate for regulating the rates of all water carriers in U.S. foreign commerce. By unilaterally extending the Commission's regulatory power, this provision may engender ill feelings and possible retaliation by our trading partners who are engaged in legitimate, fair cross-trades activity.

The purpose of the proposed legislation is to regulate only those controlled carriers which practice predatory rate cutting. Expanding the rate-making authority of the FMC would not necessarily accomplish this. Rather, it would needlessly enlarge the volume of FMC decision making; it could ultimately hamper fair, responsive competition between U.S.-flag and other noncontrolled carriers. The provisions in H.R. 9998 which permit the FMC to reject interim rates filed by controlled carriers during suspension is sufficient to accomplish the basic purposes of the legislation.

Question: In its testimony on S. 2873, the FMC said that for individual commodity rates, the test of "just and reasonable" would have to focus more upon the disruptive effect that the rate is creating or is likely to have upon the trade as a whole. Here, the relationship of the rate to those charged by other carriers and the necessity of those rates to assure the movement of particular cargo play a larger role than in testing the reasonableness of an entire rate structure.

Do you agree with the FMC's statement?

Answer: Determination of "just and reasonable" rates must be predicated upon many factors, not merely a fixed rate. The Commission must consider the market conditions on each particular route at each point in time; how the rates of controlled carriers are effecting the trade; and whether or not noncontrolled carriers can compete with such rates over the long run and earn a reasonable profit. A precise definition of "just and reasonable" defies realistic enforcement of the legislatoin; flexibility is essential to successful execution. Therefore, the Commission must focus upon whether a controlled carrier's rate structure is disruptive to the trade as a whole, taking into account constructive costs, rate relationships, and quality of service.

Question: It has been said that S. 2873 could turn out to be ineffective. Any "controlled carrier" could without difficulty just join a so-called "48-hour agreement" and would not be affected by the Act at all. He could simply continue his rate-cutting practice by giving 48-hours notice to the other members of the agreement.

Do you agree?

Answer: The 48-hour agreements represent a loophole in the proposed legislation which could negate its purpose. A controlled carrier could continue predatory pricing practices simply by joining a 48-hour agreement. This would vitiate the purpose of the proposed legislation. Where 48-hour agreements now exist, state-controlled carriers are charging tariffs 40 percent below normal conference rates.

H.R. 9998 provides that legislation regulating the predatory practices of certain controlled carriers will not apply, inter alia, to "controlled carriers covered by rate-of-service agreements which are approved under section 15 of the Shipping Act, 1916, and have noncontrolled carriers as members . . ." (House Report). It is important to note that agreements which allow conference members to set rates separately and independently are not approved by the Commission under section 15. Forty-eight hour agreements are tantamount to conference agreements which allow members to set rates independently. Both permit conference operators to act separately, without the approval of the conference and not in concert with it. Therefore, 48-hour agreements should not be considered as rate-of-service agreements such as are exempted from the coverage of the proposed legislation. Whenever a predatory rate is proposed—whether by independent action within a conference or by a 48-hour agreement—that rate should be within the purview of the proposed legislation.

To correct the problem presented by 48-hour agreements, the Transportation Institute urges that language be included in the Senate Report which specifies that 48-hour agreements are not considered to be part of those rate agreements which the legislation exempts from coverage. Furthermore, the Report should state clearly that when a 48-hour agreement results in predatory rate practices by a controlled carrier, it will be subject to rejection by the Commission.

Question. By virtue of the definition of "controlled carrier" in S. 2873, the FMC would be able to look behind the flag of a vessel, and have the bill apply where a government controls a vessel, but operates it under a foreign flag.

H.R. 9998, on the other hand, would not permit the FMC to look behind the flag of a vessel.

Do you believe the provisions of H.R. 9998 are adequate to safeguard against governments evading the legislation?

Answer. International law dictates that the state of a vessel's registry, and not the nationality of the actual owner, determines the legal status of that vessel. In this respect, the Transportation Institute always has firmly maintained that a vessel belongs to its flag state and is not related or obligated to the state

of its owner. Therefore, we agree with the provisions of H.R. 9998: that the FMC not be permitted to look behind the flag of the vessel.

The provision in S. 2873 which allows the FMC to look behind the flag would violate traditional international maritime agreements—Treaties of Friendship, Commerce and Navigation. It would complicate maritime law and international relations. Moreover, as the House Report on H.R. 9998 points out, "Should a state-owned carrier register its vessels under the flag of a country with which we have such a (FCN) treaty, any effort to enforce this legislation with respect to those vessels would, of course, be a violation of that treaty."

It is unlikely that the U.S.S.R., which uses its fleet to project its political and military presence, would register its ships under foreign flags. Most third-world nations oppose as "imperialistic" flag-of-convenience registry which fails to provide substantial economic compensation for the state of registry. Thus, foreign registry would present serious policy problems for the Soviets.

Therefore, the Transportation Institute believes that the provisions of H.R. 9998 are sufficient to accomplish the purpose of the proposed legislation.

Question. In its testimony, the Department of Justice said that it has not been demonstrated that any state-controlled carrier presently serving in the U.S. trade routes is now or ever has engaged in predatory rate practices on a systematic basis.

(a) Do you agree with the Department of Justice?

(b) In any event, is this really the issue we are concerned about? Isn't the Soviet ability to be predatory considered alongside of the obvious motives for Soviet cross trading, the matters with which we are concerned?

Answer. Since the Soviets determine their costs of operation and their rates on a vastly different basis than do noncontrolled carriers, it is difficult to "prove," as one might be expected to prove in a court of law, that they are engaged in predatory rate practices. Nevertheless, there is substantial evidence that the Soviets are cutting rates below what is known to cover the cost of operations for noncontrolled carriers. In the North Atlantic-European trade, Soviet rates have been 59 percent below conference rates; in the Pacific Coast-Far East trade, Soviet rates have been as much as 48 percent lower than conference rates. Their rates are substantially below independent carriers on those routes as well. Ship operators in West Germany, Japan, and Great Britain have complained about predatory Soviet rate cutting; the OECD and the EEC have registered accusations, too.

The Soviets operate their merchant fleet to earn hard currency, to show their flag in foreign ports, and to project their seapower. As a socialist economy, they are free from the constraints of conventional operation: they need not earn profits. Subsidized entirely by the state, the Soviet fleet can lose money as long as it continues to earn hard currency. If the Soviets are determined to drive noncontrolled carriers from many of the world's trade routes, they can accomplish that goal without concern for profit and loss—an insurmountable advantage over carriers in capitalist economies.

It is this possibility that S. 2873 to preclude. The damage which Soviet shipping has already wrought upon noncontrolled carriers is reason enough to acknowledge the fact that the Soviets are engaged in predatory practices with the intent of monopolizing certain trades. The threat which the Soviet fleet presents for the future, not the legality of establishing predatory pricing, is the reason to enact remedial legislation.

Question. Under one of the Department of Justice's amendment, the FMC would have no discretion to suspend or disapprove of a controlled carrier's rates if those rates are not below those of an independent, noncontrolled carrier offering similar transportation services. Thus, the FMC might have to compare the Soviet rates with the rates of an infrequent or irregular carrier, if that carrier has a rate on file.

Do you think that would limit severely the objectives of S. 2873?

Answer. The rates of independent, noncontrolled carriers cannot be compared with Soviet rates. To do so would negate the entire purpose of the proposed legislation. Many noncontrolled carriers enter a trade temporarily, at a low tariff, to avoid laying up a vessel. Because the U.S. trade is particularly easy to enter, many such independents can be found plying our trade at any given time. The motivation of the private carriers, however, remains that of profit making, recapitalization, and service. Although their rates may be temporarily lower than a particular Soviet vessel, they are not predatory, and they do not threaten the rate structure of the trade route, as do Soviet practices.

It is equally apparent that comparing Soviet rates to those of noncontrolled carriers who provide infrequent or irregular service is economically unjustifiable. Such carriers must charge lower rates because they are providing a lesser service than a conference carrier or even a Soviet vessel serving a particular trade route. They are not competing equally and directly with conference members or non-conference, independent shipping as are Soviet ships. They are not intent upon monopolizing trade routes, as are the Soviets. Therefore, they are not in any way comparable—not in terms of service or interms of tariffs. Only the whole trade route rate structure can be used as guidelines to determine just and reasonable rates.

Question. Although strictly speaking, the issue of marine insurance in the U.S.-Soviet trades is not involved in S. 2873, it may be relevant as an example of where state-controlled monopolies dealing with the West have a tremendous advantage.

The contention, as I understand it, is the Soviets have frozen U.S. underwriters out of insuring cargoes to and from the Soviet Union by purchasing all U.S. goods on a free-on-board (FOB) basis, and selling goods to the U.S. on a cost insurance, and freight (CIF) basis. This practice has reportedly deprived U.S. underwriters of about $14 millionin fees over the few years.

Do you believe this example sheds some light on the motives of the Soviets in entering our liner trades as cross traders?

Answer. The Soviets ongoing effort to monopolize marine insurance in the U.S.-U.S.S.R. trade—and other trades as well—substantiates our contention that their motives for establishing themselves as third-flag carriers on U.S. liner routes are predominated by political and currency considerations. The U.S.S.R. uses its merchant fleet to earn the foreign currency which it needs to purchase Western technology. Forcing shippers to purchase Soviet insurance is simply an extension of this policy. In essence, when U.S. shippers purchase Soviet marine insurance, they are subsidizing the Soviets' purchase of American-made goods. They are providing the Soviet Union with a source of hard currency, which is directly related to the volume of American cargo that Soviet-flag ships, rather than U.S.-flag ships, carry each year.

By importing FOB and exporting CIF, the U.S.S.R. accomplishes a dual purpose. It controls the transportation and the insurance. As generators of hard currency, these two policies complement each other. Coupled with rate slashing and state monopoly of all business, these practices present a formidable, if not insurmountable, barrier to competition from free market merchant fleets and marine underwriters.

Since the Soviet merchant fleet far exceeds what would be required to carry Soviet foreign commerce, the U.S.S.R. must force its excess tonnage into the world shipping market by predatory rate cutting, setting tariffs which are 10 to 60 percent below conference rates. Because the U.S. trades are relatively easy to enter, much of the Soviets' over capacity is dumped in our market. The Soviets now carry nearly as much American cargo as U.S.-flag ships do: close to 5 percent. Control of marine insurance substantially enhances the Soviets' earnings in the lucrative U.S. shipping market, especially considering that there is no price competition among Soviet underwriters.

Deprived of the ability to penetrate U.S. trades so easily through predatory practices, the Soviets would not present so great a threat to our marine insurance industry. The issue of marine insurance is inseparable from the basic issue of predatory rate cutting. Although S. 2873 does not deal directly with marine insurance, it is clear that the U.S. marine underwriters' problem will not be resolved without passage of legislation to protect U.S.-flag carriers from predatory rate slashing.

Question. In 1976, the then Chairman of the FMC and his Soviet counterparts signed a "memorandum agreement" known as the Leningrad Agreement, concerning principles that are to govern participation of Soviet water common carriers in the U.S. oceanborne trades. The Agreement contains two key features:

(1) That all ocean cargo contained in tariffs of Soviet carriers now engaged as independents in the liner trades of the United States will, as promptly as feasible, be adjusted to a level no less than that of the lowest rate in us for the same commodity of any other independent carriers in those trades.

(2) That negotiations be conducted promptly with a view toward brining the Soviet carriers into the Atlantic and Pacific conference systems.

(a) In your opinion, have the Soviets lived up to their part of the agreement?

(b) In your opinion, has the U.S. lived up to its part, keeping in mind that since the Agreement the Department of Justice has successfully opposed attempts by the Russians to join conferences on a "two-tier" basis?

Answer. The Soviets have not made a serious effort to refrain from rate cutting since the 1976 Leningrad Agreement was negotiated. Their disregard for accepted international standards of fair trade has necessitated this legislation. The Department of Justice also obstructed those early efforts to mitigate the harmful effects of Soviet predatory practices. By opposing the Agreement, and the two-tier rate structure which constituted the core of that Agreement, the Justice Department forced the U.S.-flag merchant fleet to sustain two more years of predatory competition and ultimately, to seek legislative remedies such as H.R. 9998 and S. 2873 offer.

Question. (a) With reference to rates, in your judgment, do the Soviet rates compare with other independent, noncontrolled carriers in our trades?

(b) If not, how do they differ?

Answer. It is not appropriate to compare Soviet rates with the numerous, independent, noncontrolled carriers in the U.S. trades. Instead, rate comparisons must be based upon the total rate structure in each trade. The U.S.S.R. is motivated by entirely different factors than are independent, noncontrolled carriers. The Soviets skim cargo by quoting FAK rates for high-value cargo and, in the absence of any concern about profits, quote predatory tariffs to capture cargo and drive competition off the trade routes. They can keep prices below the cost of operation for an indefinite period of time.

The independents participating in a trade vary from time to time, and so do their rates. Profit-motivated, noncontrolled operators might enter a trade temporarily, and quote a temporary low tariff simply to keep a ship out of lay up. Since the U.S. trades are particularly easy to enter, there are many independents operating at low tariffs in our trades to avoid the economic burden of lay up. Even when the independents are forced by market conditions to quote low rates, they, unlike the Soviets, must remain concerned about the cost of operation, the cost of vessel replacement, and the quality of the service they provide. Therefore, it is not economically justifiable to compare consistently predatory Soviet rates with the fluctuating rates of independent, noncontrolled carriers who operate to earn a profit. It is only reasonable to compare Soviet rates with the totality of the rate structure on each particular trade route.

Question. S. 2873 provides that pending a determination of the lawfulness of a controlled carrier's rates, the FMC may suspend the rates in question indefinitely.

H.R. 9998, on the other hand, limits these suspensions to a maximum of 180 days.

Do you believe it more desirable in the interest of efficient administrative practice and fairness to the parties to have a time limitation such as H.R. 9998 does? And if so, is 180 days sufficient.

Answer. The 180-day rate suspension provision contained in H.R. 9998 is more equitable and administratively efficient than the indefinite suspension proposed in S. 2873. It is adequate to require a 180-day period.

Question. The U.S.-flag share of the cargo in our liner trades is about 32 percent. How much of that 32 percent is required by law to be carried on U.S.-flags?

Answer. We regret that it is not possible to obtain the statistic requested. The Maritime Administration has informed us that it does not maintain statistics in a manner which would enable determination of the requested figure or percentage. While MarAd collects data relative to liner movements and some preference liner cargo, the data is not "homogenous" and therefore cannot be compared statistically. Some preference liner movements are tabulated by revenue, other by the value of the loan; data regarding total liner movements are kept by tonnage. Moreover, MarAd states, some data pertaining to preference cargo is kept only by the Departments of State and Defense and the Export-Import Bank; it is not assimilated into MarAd calculations. This lack of commonality of data and fragmentary recordkeeping precludes determination of the requested number.

The Transportation Institute recommends that data pertaining to all U.S.-flag vessel movements be collected and stored in such a manner as to facilitate retrieval of relevant information.

Question. Section 18(b) (5) of the Shipping Act provides that:

"The Commission shall disapprove any rate or charge filed by a common carrier by water in the foreign commerce of the United States or conference of carriers

which, after hearing, it finds to be so unreasonably high or low as to be detrimental to the commerce of the United States."

(a) Is this provision an effective tool to deal with the problem at which S. 2873 is directed?

Answer. Section 18(b)(5) is not sufficient to deal with the predatory rate practices of controlled carriers.

Section 18(b)(5) is not comprehensive enough to effectively deal with the problems that are now faced. Because controlled carrier rate-cutting was not envisioned when the legislation was enacted, the section was not structured in a way which would prove helpful. The ability of Section 18(b)(5) to adequately deal with the problem could not have been contemplatedd.

Section 18(b)(5) places the burden of establishing that a rate is unreasonably low upon the FMC or complainant. For purposes of speedy and efficient handling of complaints, the challenged carrier should have to show that its rates are reasonable.

Existing law fails to set forth specific procedures and standards to be used in evaluating rates. Criteria, though not exclusive, should be enumerated in order to establish guidelines and to help define the scope of the MFC's authority. Also, at the present time, unreasonable rates continue for the duration of the dispute. There is no penalty imposed for charging unreasonable rates unless the rates are continued after a determination has been made by the FMC. The FMC must be vested with the power to suspend rates pending resolution of the complaint.

If Section 18(b)(5) was an effective tool to deal with the problem, then the problem would not require the attention that it does. Specific and comprehensive legislation is needed.

Question. Under H.R. 9998, in determining if rates are just and reasonable the FMC may consider whether suspension or disapproval of the rate would unduly affect the quality of service provided in any trade route. This consideration, of course, would have its greatest impact in areas such as the Great Lakes where Soviet carriers provide such a significant portion of the liner service.

S. 2873, of course, has no such provision.

Do you find this provision in H.R. 9998 acceptable from your standpoint?

Answer. The Transportation Institute finds acceptable the provision of H.R. 9998 which allows the FMC to consider whether the challenged rates "are required to maintain acceptable continuity, level or quality of service."

The controlled carrier legislation is aimed at preserving competition and protecting our trade. If, in reality, little or no competition exists in a particular trade, the suspension or disapproval of the rate of a controlled carrier may result in a diminution of service, with no competitors available to take up the slack. It is not the intention of this legislation to disrupt or diminish the economic viability of any part or region.

In addition, it has been pointed out that rate structures of controlled carriers often promote the movement of particular cargo through U.S. ports rather than through Canadian or Mexican ports. In these instances, the FMC would consider whether suspending or disapproving a rate would adversely effect this movement.

Once again, it is not the object of this legislation to disrupt or reduce service under the guise of maintaining competition.

This provision will ensure that the interests and concerns of regions, such as the Great Lakes, will be considered in the administration of the law. This legislation should promote trade, not deter it.

Question. H.R. 9998 would not apply to any trade exclusively by controlled carriers. This provision is intended to assure that the bill would not restrict service in the Great Lakes where Eastern bloc carriers provide a significant percentage of the sailings.

S. 2873, on the other hand, has no such provision.

In your view, does this provision in H.R. 9998 raise any problem in terms of what the legislation is trying to achieve?

Answer. It has been noted that Eastern bloc carriers provide a significant portion of sailings out of the Great Lakes. It is feared that without a provision excluding any trade served only by controlled carriers, service in the Great Lakes will be restricted.

This provision means that if U.S. private carriers did not serve the Great Lakes and left it only to controlled carriers, the rate structures of these controlled carriers could not be challenged. In order for the exception to apply, the trade must be served "exclusively" by controlled carriers. The key word here is "exclusively." We read this to mean that as long as any U.S. ship or one of our trading partners is participating in the trade, any predatory rate practice by a controlled

carrier would be subject to review and suspension. The controlled carriers must be the only common carriers servicing the trade.

The logic of such a provision is clear and we do not believe it presents any problems in terms of what the legislation is trying to achieve. The purpose of the legislation is to maintain legitimate competition among common carriers in U.S. foreign trades. However, if a particular trade is served "exclusively" by controlled carriers, then there is no competition to maintain. Application of the law in these situations can only have the detrimental effect of restricting service by discouraging the continued participation of the controlled carriers. If a trade was served "exclusively," there would appear to be no need to practice the rate-cutting at which this legislation is aimed.

This exclusion from coverage, in conjunction with the provision allowing the FMC when evaluating rates to take into consideration effects upon the quality of service, should adequately allay the concerns of the Great Lakes interests without negating the spirit of the legislation.

Question. S. 2873 provides that the FMC may review the rates of a controlled carrier "upon any request."

H.R. 9998, on the other hand, makes this review discretionary with the FMC because it was feared that the broader provision could possibly lead to an immense case load for the FMC and possible harassing tactics.

Do you believe the narrow authority in H.R. 9998 is sufficient to achieve the objectives of the controlled carrier legislation?

Answer. The Transportation Institute feels that the language in H.R. 9998, limiting the institution of review to the discretion of the FMC, is sufficient to achieve the objectives of this legislation.

The controlled carrier legislation is aimed at preserving competition among all common carriers, to maintain and promote our foreign trade and to provide a means to monitor the penetration of controlled carriers into our trade. It is not this legislation's intent to unjustifiably disrupt the operations and service of any carrier. If the FMC were to review a controlled carrier's rates "upon any request" it could lead to frivolous complaints intended to harass and disrupt competition. Such requests could also hinder the speedy processing of legitimate complaints.

Allowing review "upon any request" would lead to a substantial case load resulting in undue delay, consumption of time and confusion. In order to effectuate the purposes of this legislation, the FMC must not be burdened with unnecessary requests.

At this point in time, we have no reason to believe that the narrow authority in H.R. 9998 will not be adequate to achieve the objectives of this legislation. By exercising its own discretion, the FMC can administer the law efficiently and protect against abuses.

Senator INOUYE. Our final witness this afternoon will be W. J. Amoss, president of Lykes Bros. Steamship Co. of America.

Welcome, sir.

STATEMENT OF W. J. AMOSS, JR., PRESIDENT, LYKES BROS. STEAMSHIP CO., INC., APPEARING ON BEHALF OF THE COUNCIL OF AMERICAN FLAG-SHIP OPERATORS, WASHINGTON, D.C.

Mr. AMOSS. Good afternoon, Mr. Chairman. Shall I proceed, sir?

Senator INOUYE. Please do.

Mr. AMOSS. Mr. Chairman, I am W. J. Amoss, Jr., president of Lykes Bros. Steamship Co. of New Orleans. I am speaking on behalf of my own company, and as chairman of the board of the Council of American-Flag Ship Operations (CASO), an association of seven U.S.-flag liner companies.

The companies which comprise the U.S.-flag liner fleet are noted for the diversity of their views on almost all subjects and I am, therefore, happy to emphasize the fact that they are unanimous in support of realistic restraints on competition from nonmarket economy countries.

The CASO member companies believe that S. 2873 is an effective means of achieving this objective. In addition, Sea-Land, not a member

of CASO, has publicly stated its support and from public declarations we believe all other U.S. liner operations support this bill.

We are not asking for protection from fair competition, for that we can handle. The U.S.-flag liner fleet is the most modern, diversified, and productive in the world. It was the U.S. operations who developed the highly efficient new container, LASH, SEABEE, and RO/RO systems whose vessels often have five or six times the annual ton-mile capacity of conventional ships built as late as the 1960's. Last year this fleet transported 30.9 percent of all line cargo moving in U.S. foreign trades.

However, the U.S. trades are becoming grossly overtonnaged and that is a byproduct of the openness of these trades and attractiveness of them, which results in reduced utilization of capacity and seriously depressed earnings.

This overtonnaging is caused in part by the dumping of Government-owned ships in our trades. No private carrier can compete on a price basis with state-owned carriers whose economic systems place them on a different and more advantageous cost basis than our own. We cannot state, as does a Soviet carrier, not an ocean carrier but nevertheless a Soviet carrier equal in every respect in structure and backing to the Soviet ocean carriers, in an advertisement that I have appended to this statement, that "we don't have to make profits." And that as an apology or basis for offering cheaper air fares. That is an exhibit to my statement. (Exhibit I.)

We have to earn our way balancing revenues and expenses and your subcommittee knows well that the kind of supports we get from Federal programs do not and were never intended to make us competitive against carriers whose economic policies are being manipulated to achieve other political and economic objectives of their governments.

The hearing record on S. 2873 and similar bills in previous years dramatically details the systematic pattern of rate cutting used by the Soviets in penetrating trades between the United States and other countries. We will not burden the record further in this regard but do wish to emphasize two points.

The Russian maritime buildup is a deliberately calculated attempt to secure a large portion of the entire free world liner commerce. The rewards for success will be large in terms of hard currency earnings and other economic and military benefits.

A study by the Council of European and Japanese National Shipowners Association (CENSA) discloses that the Soviets already have a liner fleet that is five to six times as large as that required to transport all of the U.S.S.R.'s own liner trade. Obviously this fleet and the new vessels on order are intended to carry other countries' trade.

The European governments have recognized the gravity of this challenge and agree that it can be resolved only by government action. Attached to my statement is an announcement by the European Commission in Brussels "On Methods To Be Used To Deal With Abnormal Competition From the U.S.S.R. and Other COMECON Countries in Cargo Liner Shipping." (Exhibit II.)

This documents states:

> Following lengthy studies, the European Commission has reached the conclusion that the EEC must adopt a tough attitude towards abnormal competition

from the U.S.S.R., and to a lesser extent East Germany and Poland, in the cargo liner shipping field; unless measures are taken quickly, the community shipping fleet would find itself in an untenable situation.

The Commission has proposed to the Council that the EEC provide itself immediately with the legal instruments which will enable it, from the beginning of 1979, to implement measures which go as far as imposing a quota on the traffic left to the fleets of East European countries.

By way of justification for strong measures, the Commission says:

In its bilateral trades with the (EEC) Member States, the Soviet Union carriers up to 95 percent of the trade. In its cross-trades between third countries, its competitive methods are more and more successful.

For instance, state-trading country liners, operating outside the liner conferences, are reported to have captured traffic equivalent to 18 percent of the eastbound and 22 percent of the westbound traffic carried by the conference on the North Atlantic. Between Northern Europe and the West Coast of South America the equivalent figure is about 25 percent, between Gulf of Mexico ports and the Mediterranean 20 percent, in the Europe-East Africa traffic 20 percent and between Japan and the West Coast of the United States 12 percent.

Although these traffic shares are much less than in the bilateral trades, the actual volumes carried are higher; indeed, in terms of value and dislocative effect, these traffic shares are very significant and will continue to rise unless corrective action is taken.

I would like to add here that in discussions on your bill there have been comments about the total share of U.S. liner trade by the Soviet fleet, and the figure that have emerged in those discussions generally are on the order of 4 or 5 percent. However, that obscures the fact that the Soviets have concentrated in a limited number of the U.S. trades, and in those trades, such as the U.S. Gulf to Mediterranean, such as the U.S. Gulf and U.S. Atlantic ports to Northern Europe and such as the U.S. Pacific to Australia, New Zealand, the Far Eastern area, Japan, Hong Kong, the shares carried by Soviet vessels are significantly and considerably higher than the average 3.5 to 4.5 percent of the total U.S. trade.

I would like to make that point very clearly.

The European Commission recognizes that private companies cannot compete with the state-owned entities stating:

Whereas in particular the state-trading countries apply in liner shipping trade practices such as prices not reflecting costs as established in accordance with market economy practices; control of terms of shipment; and imposition of administrative and other trade barriers incompatible with the market economy systems of member states;

Whereas the disadvantages flowing from these practices cannot be countered by methods appropriate to the economic and commercial relations between market economy countries; * * *

Shippers properly and understandably desire low transport costs. However, the shippers in Europe who have had more direct experience with Soviet competition are increasingly aware that utilization of Soviet services will, in the long term, lead to monopoly and destruction of market economy competitors.

As the Commission states:

In September 1977 the General Assembly of the European Shippers' Councils have expressed concern about the increasing penetration of liner trades by some state-controlled carriers. The Assembly had in mind that in the longer term such penertation might create a harmful monopoly. Generally, the Community trading interests could be harmed if the continued existence of a range of commercially based shipping services were endangered.

We believe that the views of European shippers on this matter are so important that we are also attaching a warning on the use of Societ cutrate services which the Swiss Shippers' Council sent to its members. And this warning is attached to my statement. (Exhibit III.)

We must emphasize that the Soviet threat to our liner shipping is immediate, not prospective. Arguments have been made that today the Russians are carrying only a relatively small percentage of our liner trade. As the record shows, their substantial penetration of the trade has come very rapidly and they have on order the world's largest number of liner ships, which bodes ill for our future.

If we delay, as Western democracies are so wont to do, the financial ability to replace our liner fleet will be undermined. Liner transportation systems are increasingly capital intensive, as you know. A single large container ship with its ancillary equipment today costs over $90 million—and thus carriers once driven from the trade will not easily, if ever, return.

Thus, if we come to rely more on the Soviets and other controlled carriers, we may not be able to replace the services that they offer.

In addition, state-owned fleets from Singapore, Malaysia, and Taiwan are expanding rapidly and it is rumored that at least two of these, Nepture Orient Line of Singapore and Malaysian International Shipping Line of Malaysia are currently negotiating to form a consortium in the Pacific with the Korean Shipping Corp. and Orient Overseas Container Line.

What has happened is very simple—15 years ago the U.S.S.R. had a relatively insignificant liner fleet consisting primarily of small ships operating in the Russian coastal basins and immediately adjacent areas. Today, the U.S.S.R. has the world's largest liner fleet—the U.S. ranks seventh.[1]

Their fleet includes more than one-fourth of all refrigerated ships engaged in international trade.

The Russians have not achieved this success because they are good fellows or hard workers. It has been achieved by selective ratecutting which permits them to skim off the best traffic while leaving the less desirable to other carriers.

Apologists for the U.S.S.R. regularly report instances where a privately owned carried has rates on file lower than those of a Soviet carrier in the trade. These specific instances prove nothing—it is the overall pattern that matters. There is always some nonconference carrier willing to cut a rate rather than return empty; to secure a cargo suited for his vessel or to offer service below fully distributed cost since that is cheaper than laying up a ship.

We should not forget that following World War II, a large number of U.S. companies began operation with war-built vessels. Many of these were substantial companies; at least one owned about 60 vessels in the late 1950's. These operators specialized in certain cargo attractive to them and regularly undercut the conference rates. They made a profit through these operations because they did not intend to replace their fleets. By and large they have completely disappeared from the

[1] Largest Fleets of the World, U.S. Department of Commerce, December 1977.

scene and contribute absolutely nothing to the U.S. merchant marine today.

I think that is an important statement because it emphasizes the need in a market economy country for private companies in their rates to be able to achieve enough reserve funds to rebuild fleets, and at prices of ships today, that is a significant sum.

If we look at what the Soviets are doing, there is absolutely no financial decision within the shipping companies as to the capital requirements. That is a decision that comes out of the Government plan and ripples down to implementation through other than the companies, and the ships are then assigned. So that is something very important to remember as we look at the pattern of Soviet ratemaking.

It is a simple and fundamental economic fact that a private company must make a rate rate of return if it is to replace its equipment. The CASO lines have completely replaced their fleets since World War II with vessels built in the United States and manned by citizen seamen. If we are to replace the now current fleet, we must have protection from state-owned carriers such as that offered by S. 2873, and we say that is absolutely essential.

The House of Representatives has recently passed a bill, H.R. 9998, that is identical in purpose and similar in substance to S. 2873. As you know, action by the United States to control dumping of state-owned shipping services into our trades has been under consideration for a number of years. Our failure to adopt even limited controls has encouraged these carriers to increase their predatory practices in the confidence that they can act with impunity. Accordingly, we are deeply gratified by the overwhelming margin of 329 to 6 by which the House of Representatives passed its bill.

We have carefully reviewed the House bill and believe that it would be effective in placing some restraints on controlled carriers. While we might like stronger controls, we believe that the important thing is to secure legislation this year so as to underscore once and for all that we will not permit continued dumping of government-owned vessels into U.S. trade.

Accordingly, the CASO Lines unanimously endorse H.R. 9998. In view of the brief period until the end of this Congress, we respectfully suggest that your committee adopt this version which has already passed the House, thereby eliminating the necessity of a conference session.

Mr. Chairman, we would be happy to answer any questions which you or members of the committee may have or to supply any additional information you might request.

Thank you.

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

As you know, the so-called bus transport matter has evoked much controversy. Noting that Lykes Bros. has been directly involved in that, could you give us a brief summary of what happened and what the final resolution is?

Mr. AMOSS. Well, I would be glad to, sir, although the final resolution, I believe, is still pending.

As you, I know, are aware, the Government agency, a department of—acting under the Department of Transportation, has financed the

acquisition of mass transit units that are produced in Germany, and these buses are imported into the United States where they are finished in Texas by the American General Corp., and are then delivered to the ultimate destination, that destination being a number of U.S. cities.

Financing, as I understand it, is 80 percent U.S. Government funds and 20 percent local funds for these buses, local meaning the cities in question. These buses are transported from Germany to the United States initially in vessels of the Soviet line Baltic Steamship Co. that operates from Russia and North Europe to Cuba and the United States.

Among those bidding for this traffic was my own company, Lykes Bros. Steamship Co., who operate barge carrying vessels in this trade from Germany to the U.S. Gulf, and we offered a rate that we believe is fair and equitable and in fact is in the lower scale of rates, recognizing these buses are unusually large.

Three of them, in fact, will fit into one of our barges that the ship carries. We offered a rate that was roughly $6,600 per bus. The Soviets offered a rate that was approximately 55 percent of that rate, about $3,500 per bus. And the buses were booked with the Baltic Shipping Line and began to arrive in Houston back roughly about 9, 10 months ago, in large quantities, on Soviet vessels.

This drew a lot of attention and there has been a great deal of consideration as to, No. 1, why the U.S. laws were not observed by the Government agency in at least reserving 50 percent for American-flag shipping.

Second, some attention to the rate disparity which was engendered and it was determined that the Soviets in fact did not have the proper rate on file and had merely adopted for their own purposes a rate of Lykes Bros. that pertained to a smaller bus, and simply took it out of our tariff and adopted it and it did not in fact fit legally the buses in question. And yet they used it.

That matter is still, to my knowledge, being resolved between the Federal Maritime Commission and the Baltic Steamship Line who, incidentally, have refused to turn over documents and to give access to new documents as any U.S. carrier would have had to do.

Finally, the question of who carries the buses is still somewhat up in the air, but I believe the attention that has been generated to this question has created a resolution at least to the extent that such future acquisition of foreign-made equipment by the Department of Transportation would carry 50 percent requirement for American flag.

I might only add to you, sir, that it is incomprehensible to me, knowing the market and the situation in the world, to think that if the Soviets were importing buses from, say, Brazil, that anybody but a Soviet vessel would carry any one of those buses. Yet in—the typical circumstance that in U.S. trade we are so free and open that even our Government cargoes can be lifted out from under us by Soviet vessels by simply quoting whatever rate they want to get the business.

Senator INOUYE. Is it true that a Soviet official suggested that the rate determined was a typographical error?

Mr. AMOSS. I believe that an explanation of the rate charged, that an official of the Soviet company, Moram, did suggest that the rate was a typographical error. That is an explanation as to why the rate

legally, or why they adopted a rate that was not legally effective in their tariff.

Senator INOUYE. Do they expect us to believe that?

Mr. AMOSS. I think they would hope that we would.

Senator INOUYE. Is it your view that the Soviets are presently engaged in predatory rate practices?

Mr. AMOSS. I think that the Soviets are engaged in a practice of getting cargo at whatever rate it takes to get that cargo and without regard to any of the normal array of costs that a shipping operator in a commercial sense has to deal with, and that I definitely believe is predatory.

Senator INOUYE. And their rates are not commercially compensatory or cost compensable?

Mr. AMOSS. Well, in their system, of course, it is impossible to know what is compensatory and what is not. If you just consider that the actual wage cost in rubles at the unrealistic exchange rate that exists between rubles and other currencies out in the free world still only translates into a salary of about $350 for a captain and progressively lower the balance of the ship, that the capital accumulation comes out of budgets that are not charged to the companies, it is absolutely—no way to make a comparison.

Senator INOUYE. Have you seen this report number DOT–P–78–002 prepared for the U.S. Department of Transportation, a study of ocean rate disparities?

Mr. AMOSS. Yes; I have seen that report, sir.

Senator INOUYE. This report makes several findings, and one which appears on page I–3 states as follows:

> Ocean freight rates paid by U.S. exporters are over 100-percent greater than those paid by exporters from an alternative source country to a third market.

Mr. AMOSS. Well, that report, I just have to comment generally about that statement, because that statement is a very general statement in itself, but I believe that is a statement taken out of thin air. And, in fact, I believe that the Department of Transportation has somewhat downgraded the veracity of that report in suggesting that it is not to be taken as a complete report or that the conclusions should not be totally acceptable.

Senator INOUYE. The Deputy Assistant Secretary for International Trade and Investment Policy of the Treasury Department suggested in his testimony that in an open competitive system, our Nation should be able to compete profitably with the Soviet fleet. Would you agree with that?

Mr. AMOSS. No; I certainly would not. Costs are costs. And I think that to make a statement of that type, one has to suspend belief in the rules of modern—of simple arithmetic. The Soviet operation not only is based on controlled and extraordinarily low costs which are a result of the kind of economy they have, the salaries, the people, and so forth. I think you could even trace that further. The state provides, and it isn't charged to the company's operations, provides such things as medical attention, housing, transportation at a subsidized basis.

I am talking about internal transportation, schooling, and an array of things that go to make up invisible salary benefits to its own work-

ers. And yet the only salary that appears in a company operation is that which the company gives the men, which is more or less, I would say, about 80 percent, the discretionary income of an individual because the essential income is already provided by the state.

So, in the first place, you take an array of salaries of any Soviet enterprise and you are dealing with salaries that are really for a discretionary purchasing purpose rather than for essentials.

Now, despite—in spite of that, they are extraordinarily low. The capital cost of the equipment is not involved in the array of costs. The fuel which is a state-controlled—unless they have to take fuel in a foreign country, a state-controlled supply of fuel at state prices which are well below that in the international market is in their equation and there is just no way to compete with that.

And even if there were, there is no way to compete with the fact that a government can swing its weight with an enterprise like a state shipping company to survive the most destructive of operating results and go on and on, whereas I think we have seen and will continue to see, if we don't have a little better market here, the destruction of some of our great companies in this country, in Japan, in Germany, through simply not being able to go on and in fact becoming bankrupt companies.

So there is no truth to that and that is a statement that whoever made it is certainly a textbook theorist who has never engaged in meeting a payroll in his life.

Senator INOUYE. I thank you very much, Mr. Amoss. You have been extremely helpful.

We have prepared several questions we would like to submit to you for your consideration, and if we may, we would like to see your response within a week.

Mr. AMOSS. Thank you, sir.

[The attachments referred to follow:]

EXHIBIT I

TEXT OF AEROFLOT AD FROM MAY 1975 SIAM TRAVEL NEWS

Worrying about tight travel budgets? Just remember who invented the planned economy.

Seriously, if you're worrying about whether you can afford to travel this year or not, you should talk to us. Or to your travel agents about us.

Because even in these fiercely competitive days of deals, specials, excursions, group fares, student prices, youth packages and even . . . ssshhh! rate cutting . . . you'll find that we can design you a travel plan that will seat you just that much more comfortably.

Without sacrificing any of our famous Russian-style vodka-and-caviar hospitality that everyone tells their friends about long, long after. . . .

How do we do this? One reason is we don't have to make profits. And the other is that there's one country that's really expert in planning economical operations.

Guess whose that is.

AEROFLOT

EXHIBIT II

EUROPEAN COMMISSION PROPOSALS ON METHODS TO BE USED TO DEAL WITH ABNORMAL COMPETITION FROM THE U.S.S.R. AND OTHER COMECON COUNTRIES IN CARGO LINER SHIPPING

Following lengthy studies, the European Commission has reached the conclusion that the EEC must adopt a tough attitude towards abnormal competition from the USSR, and to a lesser extent East Germany and Poland, in the cargo

liner shipping field; unless measures are taken quickly, the Community shipping fleet would find itself in an untenable situation.

The Commission has proposed to the Council that the EEC provide itself immediately with the legal instruments which will enable it, from the beginning of 1979, to implement measures which go as far as imposing a quota on the traffic left to the fleets of East European countries. We reproduce the text of the draft with an outline of the motives.

Draft for a Council Decision Concerning the Activities of Certain State-Trading Countries in Cargo Liner Shipping

(Submitted to the Council by the Commission)

EXPLANATORY MEMORANDUM

The problems caused by the activities in cargo liner shipping of certain state-trading countries of Eastern Europe (mainly the Soviet Union, but to some extent also Poland and the German Democratic Republic) have been under examination for some time in the Community. These problems were mentioned in the Commission's Communication to the Council of 30 June 1976 on the Community's relations with non-member countries in shipping matters. In 1977 the United Kingdom Government put forward a note on the subject, and in the course of discussion of this the Commission's services were invited to prepare a working paper analyzing the problems and reviewing possibilities for action at Community level. This working paper was presented to the Council, which in October 1977 asked the Permanent Representatives Committee to examine it in detail and prepare priority guidelines for use by the Commission when making practical proposals to the Council for dealing with the situation arising from the increasing non-commercial activity of certain state-trading countries' liner fleets.

2. The present draft reflects subsequent discussion between the Commission's services and Member State experts of the potential actions explored in the Commission's services' working paper.

The shipping problem

3. The activities in cargo liner shipping of certain state-trading countries, particularly the Soviet Union, and the impact of these activities on Community shipping and trade, were discussed in some detail in the Commission's services' working paper; this detail is not repeated in the present memorandum. The basic features of the situation are that the cargo liner fleet especially of the Soviet Union has been expanding swiftly since the early 1970s and is planned to expand further. The ships concerned are employed in trades of interest to the Community, not only trades between Member States and the Soviet Union, but also, and much more importantly, in trades between Member States and third countries, for example on the North Atlantic. They are also active in trades between many commercially important third countries (for example between Japan and the United States) in which Community shipowners are also engaged.

4. This might cause no particular problem if the ships concerned were operated on commercial terms as applied in market economy countries. But in fact the liner shipping operators of state-trading countries compete with Community and other Western shipowners using methods to which Member State shipping companies, however efficient they may be, have no effective commercial answer. These methods, available—at a price—under a state-trading economy, include controlling the terms of shipment in the bilateral trades; restricting the freedom of Member State shipping interests to establish agencies in the state-trading countries while remaining free to establish agencies in the Member States; and substantial undercutting of freight rates, in trades between Member States and third countries and between third countries, allowing the state trading countries' operators to cream off the most profitable traffic and put Member States' shipowners under constant financial pressure.

5. In its bilateral trades with the Member States, the Soviet Union carries up to 95 percent of the trade. In its cross-trades between third countries, its competitive methods are more and more successful. For instance, state-trading country liners, operating outside the liner conferences, are reported to have captured already traffic equivalent to 18 percent of the eastbound and 22 percent of the westbound traffic carried by the conferences on the North Atlantic. Between

Northern Europe and the West Coast of South America the equivalent figure is about 25 percent, between Gulf of Mexico ports and the Mediterranean 20 percent, in the Europe-East Africa traffic 20 percent and between Japan and the West Coast of the United States 12 percent. Although these traffic shares are much less than in the bilateral trades, the actual volumes carried are higher; indeed, in terms of value and dislocative effect, these traffic shares are very significant and will continue to rise unless corrective action is taken.

6. Such action needs to be taken at the level of the public authorities, since Member States' liner companies have no effective way of competing successfully with the state-trading countries fleets at commercial level, given the aggressive and uncommercial methods employed by these fleets. In the Commission's view there is a clear case in shipping policy terms for preparing for action now. Other considerations, discussed below, do not conflict with this conclusion.

Other policy considerations

7. In the short run shippers benefit from the low freight rates offered by state trading country shipping companies. But in the longer term shippers could themselves become vulnerable if these companies achieved a dominant position in particular trades, allowing them to impose freight rates and determine the quality of services. In September 1977 the General Assembly of the European Shippers' Councils expressed concern about the increasing penetration of liner trades by some state-controlled carriers. The Assembly had in mind that in the longer term such penetration might create a harmful monopoly. Generally, the Community trading interests could be harmed if the continued existence of a range of commercially based shipping services were endangered.

8. It may be claimed that the state-trading countries must retain the opportunity to earn hard currencies in the West through the sale of shipping services, in order to be able to pay for imports of Western commodities and technology. But only a relatively insignificant proportion of the state-trading countries' foreign trade can be covered by the income resulting from shipping. And it seems unlikely that the placing of limits on these countries' participation in the Community's cargo liner traffic would have a negative impact on the Community's trade with them. Short of reducing the volume of their trade with Western countries as a whole, the state-trading countries would have little scope for shifting their demand pattern geographically. The most important trading partners of the state-trading countries are themselves obtaining countrevailing powers in the field of shipping. A Bill on state-controlled carrriers, introduced into the US Congress on 3 November 1977 with the backing of the State Department, would prevent the charging of uneconomic rates. Japan is also preparing countervailing legislation which would enable it to control the participation of state-trading countries' carriers in its trades. In any case, the state-trading countries are not normally able to shift their demand patterns quickly, given the long-term nature of their economic planning and the nature of their demand, i.e. for high technology goods and complementary technical know-how, as well as their requirements for long-term finance or compensatory deals. It seems unlikely, therefore, that these countries would retaliate by reducing or shifting their trade with Member States.

9. The state-trading countries might seek to present any move by the Community to regulate access to its liner traffic as discriminatory and violating the spirit of Helsinki, existing bilateral agreements on commerce and navigation and international conventions.

10. However, the Helsinki agreement itself sets out as a transport objective reasonable participation in traffic on a mutually advantageous basis. In the bilateral trades Community liner operators are virtually excluded and in the cross trades they are losing ground. The present proposal merely seeks to obtain or maintain fair competitive conditions for all shipping operators, taking into account the differences in the economic systems. It is a direct response to aggressive behaviour in shipping by state-trading countries' fleets and cannnot, in the Commission's view, be regarded as in conflict with the spirit of Helsinki.

11. There are numerous bilateral agreements on commerce and navigation between Member States and state-trading countries, particularly the Soviet Union. These usually grant each of the contracting parties most favoured station status in their bilateral maritime relations. To the extent that such agreements also grant access to each other's cargo on the basis of most favoured nation status, the introduction of quantitative restrictions as envisaged in the present proposal could indeed imply the need to re-negotiate or denounce certain bilateral

agreements. Member States would, however, be able to claim that these had not been meaningfully observed by their state-trading country partners. The proposed measures might also be claimed to be flag discrimination as defined in the GATT Annex of 28 April 1969. But of the state-trading countries only Czechoslovakia, Hungary, Poland and Romania adhere to GATT, and there exist GATT rules which in any case allow the application of defensive measures in certain circumstances. Finally, the 1923 Convention on the International Regime of Maritime Ports, should not in practice impede the application of the proposed decision.

The present draft

12. The present draft is for the Community to equip itself with a mechanism for the concerted application of Member States' countervailing powers where the objectives regarded by the Community as appropriate for the relations between its liner shipping and that of certain state-trading countries are not being met. In relation to these countries, regrettably, only action at the level of the public authorities seems likely to be effective; action at commmercial level does not work because the state-trading countries' shipping companies need not respond to commercial pressures.

13. Concerted action within the Community is desirable in order to avoid the diversion of trade from a Member State applying countervailing measures to another not doing so.

14. The draft provides essentially for the Council to adopt objectives for its relations with state-trading countries in the field of cargo liner shipping; for reviewing as Community level—using an existing consultation procedure—the output of monitoring systems operated by Member States with a view to following the activities of state-trading countries' cargo liner operators; and for the Council to be able to decide on the joint application of Member States' countervailing powers, notably in the field of quantitative limitations on the activities of state-trading countries' liner companies in Member State ports, it would be possible for the Council to decide that only the Member States specially affected in a particular case should use their countervailing powers; and adoption of the present decision would not affect the freedom of an individual Member State to act alone if it thought this wise, and, of course, to negotiate bilaterally with a state-trading country in shipping matters. In short, the draft is for a mechanism capable of flexible response to developing situation.

15. Further measures—for example in the field of the establishment and operations in the Community of shipping undertakings controlled by state-trading countries—may be needed at a subsequent stage.

Comments on Individual Articles

ARTICLE 1

This article, together with the Annex, sets out the objectives to be pursued by the Member States and the Community in their relations with state-trading countries in the field of cargo liner shipping. These objectives aim at:

Acceptance of state-trading countries' carriers as third country carriers in EEC trades, provided that the commercial viability of efficient EEC carriers is not threatened;

Reasonable participation of EEC carriers as third country carriers in state-trading countries' trades; and

Adequate participation of EEC carriers in bilateral liner trades and reasonable third country participation.

ARTICLE 2

This article provides for the establishment by Member States of appropriate monitoring systems designed to follow the activties of state-trading countries' carriers in EEC trades. The information concerned is to be forwarded to the Commission, which will summarise it for discussion in an existing consultative mechanism.

ARTICLE 3

This article provides for the regular examination by Member States and the Commission within the consultative mechanism of the activities of state-trading countries in liner shipping. The output of the monitoring systems should serve as part of the basis for such examination.

ARTICLE 4

Under this article the Council may decide, on a proposal of the Commission, that all Member States, or Member States affected in a particular case, should jointly apply, in relation to state-trading countries' liner shipping, appropriate measures provided for in their national legislation. These measures will include in particular the imposition, generally or in a specific trade, or quantitative restrictions on the activities of state-trading countries' liner operators.

ARTICLES 5 AND 6

No comment.

DRAFT OF A COUNCIL DECISION CONCERNING THE ACTIVITIES OF CERTAIN STATE-TRADING COUNTRIES IN CARGO-LINER SHIPPING

The Council of the European Communities.

Having regard to the Treaty establishing the European Economic Community and in particular article 84.2 thereof;

Having regard to the draft from the Commission;

Whereas the Community's economic and trading interests require reliable shipping services to be available within the framework of an economically sound system in which efficient Community carriers can compete under normal commercial conditions with merchant marines under other flags;

Whereas, in the interests of shippers' ability to choose and the freedom of international trade, state-trading countries' liner fleets may participate in this system, like other fleets, in the transport of the overseas trade of the Community, provided that the commercial viability of shipping in particular trades or generally is not thereby threatened;

Whereas however the differences between the economic behaviour of market economy and state-trading countries have created distortions of competitive conditions between liner operators based in the Community and those of state-trading countries, to the disadvantage of operators based in the Community and potentially of the Community's trading interests;

Whereas in particular the state-trading countries apply in liner shipping trade practices such as prices not reflecting costs as established in accordance with market economy practices; control of terms of shipment; and imposition of administrative and other trade barriers incompatible with the market economy systems of Member States;

Whereas the disadvantages flowing from these practices cannot be countered by methods appropriate to the economic and commercial relationships between market economy countries;

Whereas the Member States and the Community should pursue defined objectives in their relationships with state-trading countries in the field of liner shipping;

Whereas it is appropriate to establish monitoring systems enabling the institutions of the Community to be informed of developments relating to state-trading countries' participation in the Community's liner trades; and to facilitate consultation at Community level;

Whereas it is necessary for arrangements to be made at Community level for the joint application of Member States' countervailing powers in relation to the liner shipping activities of state-trading countries;

Has adopted this decision.

ARTICLE 1

The Member States and the Community shall pursue the objectives set out in the Annex to this Decision in their relations with state-trading countries in the field of liner shipping.

ARTICLE 2

1. Each Member State shall institute a monitoring system designed to obtain and record information on the development of the liner shipping activities of state-trading countries, with special reference to:

The establishment, expansion or modification of liner services, including the number of calls of the vessels concerned in Community ports;

The nature, volume, origin and destination of the commodities carried by those vessels.

2. Each Member State shall forward to the Commission every six months the information produced by its monitoring system.

3. The Commission shall summarize the information for the Community as a whole. Article 4 of the Council Decision 77/587/EEC shall be deemed to apply to this information.

ARTICLE 3

1. The Member States and the Commission shall examine regularly, within the framework of the consultation procedure established by the aforementioned Decision, and inter alia on the basis of the output of the monitoring systems referred to in Article 2, the activities of state-trading countries in liner shipping.

2. In paragraph 1 of Article 1 of the aforementioned Decision the following sub-paragraph shall be added after sub-paragraph (b) :

"(c) on the liner shipping activities of state-trading countries".

ARTICLE 4

1. If in its view the objectives set out in the Annex to this Decision are not being met in relation to the liner shipping activities of a state-trading country, the Council may decide, acting by qualified majority on a proposal of the Commission, on the joint application by the Member States of appropriate countervailing measures. Such measures may be required to be applied generally, by certain Member States only or in a specific area or trading range and may in particular cover the licensing of liner services and the imposition of limits on the volume, nature, proportion or value of cargo which may be loaded on to or discharged from the ships concerned in the ports of Member States implementing those measures.

2. Nothing in this Article shall prevent a Member State from applying its national countervailing measures unilaterally.

ARTICLE 5

As sooon as possible and not later than 1 January 1979, Member States shall, after consulting the Commission, adopt such laws, regulations or administrative provisions as may be necessary for the implementation of this Decision.

ARTICLE 6

This Decision is addressed to the Member States.

Done at Brussels. For the Council.

* * * * * * *

OBJECTIVES TO BE PURSUED BY THE MEMBER STATES AND THE COMMUNITY IN THEIR RELATIONSHIPS WITH STATE-TRADING COUNTRIES IN THE FIELD OF LINER SHIPPING

In trades between EEC ports and other ports outside state-trading countries, carriers of state-trading countries may participate as third-country carriers, either as conference members or outside conferences, provided the viability and reliable avaliability of services provided under normal conditions of the trade by efficient commercial carriers are not thereby threatened.

Where state-trading country carriers operate outside liner conferences they should not apply tariffs lower than those of other non-conference carriers sustained offering regular services on a particular route; where state-trading country carriers are the only outsiders in a particular trade they should be encouraged to set their tariffs in consultation with shippers' representatives and the liner conferences concerned.

EEC carriers should have reasonable access to trades between state-trading countries' ports as well as between state-trading countries' ports and other non-EEC ports.

In bilateral trades between the Community and state-trading countries, there should be adequate participation for EEC carriers in both direction at freight rates compensatory for those carriers. Third-country carriers should have reasonable access to these trades.

* * * * * * *

EXHIBIT III

Swiss Shipper's Council

RESOLUTION

The General Assembly of the Swiss Shippers' Council

Considering that a well developed network of liner services is indispensible for the smooth handling of Swiss exports and imports to and from overseas countries,

Viewing with concern the progressive penetration of cross trades by East European, and particularly Soviet, lines,

Convinced that this development will finally undermine liner services, create a one-sided monopoly, and is not in the true interest of shippers, invites its members

1. To examine in detail, before giving any cargo to an East bloc line, whether the shipper really needs the short-term tariff advantages involved.

2. To take contact with the Conference secretariat in order to find out what alternative proposals are available from the Conference lines.

3. To submit the matter to the Swiss Shippers' Council who is also prepared to establish the necessary contact with the Conference,

4. To refrain, as a matter of principle, from concluding longer-term shipping arrangements with East bloc lines.

The General Assembly asks the competent organs of the Council to make their influence felt, both on the national and the international level, in order to ensure that East bloc lines can participate in liner shipping to a reasonable degree and in conformity with market-oriented shipping regulations, without eliminating Western European lines from those trades. On the other hand, conferences are expected to strictly observe the consultation system agreed upon in Europe and to make every effort to provide shippers with good liner services at commercial rates and conditions.

Association Suisse des Usagers des Transports Schweizerische Vereinigung der Transportbenutzer Swiss Shipper's Council

TO OUR MEMBERS

COMECON COMPETITION IN LINER SHIPPING

For some time already, the State Shipping Lines of the COMECON countries have been trying by sometimes quite substantial rate reductions to penetrate the so-called cross trades, i.e., the trades between third countries. The liner tonnage of the COMECON and in particular of the USSR has been greately increased during the last 10 years and exceeds now by far the capacity which is necessary for the foreign trade of the Eastern Bloc countries themselves, with the result that these vessels obviously must be employed in the cross trades. The expansion of the Soviet fleet must however, be seen primarily against the background of political and strategic objectives. It has been facilitated to some extent by the fact that Conference tariffs are highly differentiated and that they have been considerably increased since 1970. It is therefore not difficult for a potent outsider to attract sufficient traffic by selective undercutting of the tariff rates. On the other hand, COMECON Lines have a certain cost advantage compared to their western competitors (lower wages, minimal costs for interest payment and depreciation, no insurance costs etc.), and they also have a practical monopoly for the direct trade between their own and foreign countries because the Eastern State Trading Organisations systematically impose fob/c&f conditions in all their import/export transactions. Incidentally, if the COMECON lines should succeed in eliminating Western lines and establishing a monopoly in some cross trades, they would certainly dictate freight rates to the shippers, all the more so as the COMECON lines are under heavy pressure to increase their foreign exchange earnings.

Other circumstances equally indicate that COMECON competition is a phenomenon which cannot be simply equated with ordinary outsider activity. In order to obtain regular cargo, Eastern lines and in particular Soviet lines, offer long-

term freight rates which are in no way based on cost considerations. The expansion of their fleet has developed a momentum of its own which is entirely independent of economic and commercial considerations. Whereas earlier expansion plans were confined to the mass-production of conventional vessels, the stress is now placed, after apparently bridging a gap in technical know-how, on container and roro vessels. At the same time, a network of agencies and representations is being created in the West. Once the new container tonnage appears on the market, competition is certain to increase, possibly to an extent which will cut Western shipping to the quick.

By these developments the shipper is forced to take decisions which go definitely beyond the commercial sphere. It is an old truth that the cheapest carrier is not necessarily the best and that a country like Switzerland with a highly developed foreign trade needs a network of liner services which can hardly be maintained outside the conference system. The choice of the carrier has always been to some extent a matter of discretion, and this is even more so in respect to COMECON competition because this involves longterm political and economic factors which must induce every shipper to carefully weigh all the implications. The following questions arise, among others, in this connection:

Is your sales and/or purchasing department really dependent on dumping rates of this kind, if it wants to maintain and to develop relations with the respective markets?

Are there other commercial reasons (customers' preferences, delivery dates) for using a COMECON line, or does the contrary apply?

Are the immediate cost advantages so important that they easily outweigh any considerations of a more general and longterm character?

Can the choice of an existing, perhaps somewhat more expensive line be defended in view of the specific needs of the shipper? Would the disappearance of these services create difficulties for the movement of your goods?

Are the Western lines prepared to make counter-proposals which take account of the needs of the customer and will allow the lines to keep a trade that may be essential for maintaining regular services?

Our Managing Committee has repeatedly discussed the subject and at its meeting of March 18th, 1977 has come to the conclusion that shippers cannot simply rely on possible steps and measures to be taken by governments, but that it is in the first instance the responsibility of the shippers themselves to safeguard their own longterm interests. Considering the good experiences which have been made abroad, and in the expectation that conference shipping in its turn is willing to help find adequate solutions, we have decided to recommend to our members the following procedure:

1. If you receive from COMECON line an offer which is below the conference freight rate, you should take the matter up with the respective Conference Secretariat.

2. Even if the Conference Lines will hardly be in a position to match the COMECON offer, they should be able to come forward with proposals which take account of the needs of the shipper.

3. If your contacts with the Conference fail to lead a satisfactory conclusion, the Secretariat of our Association is prepared to take the matter up (with due regard to business secrecy) with the shipowners.

4. We must definitely advice against the conclusion with COMECON lines of shipping contracts, especially of a longterm character.

Whenever in the present context the term COMECON competition is used, it refers in the first place to the maritime expansion of the Soviet Union. On the other hand, our recommendations apply exclusively to the cross trades, i.e. traffic in which the respective Eastern Bloc countries act not as trading partners, but as carriers only. This circular also deals with shipping only in the sense of maritime transport. Similar problems exist in road haulage, and they may arise, in the not too distant future, in inland navigation, e.g. if Eastern European carriers taken advantage of the Mannheim Convention to extend their activities to the Rhine.

We would appreciate receiving from our members any further indications and comments which this circular may suggest to them. We are aware of the fact that in view of the general aspects involved this is a subject in which guidance from the upper management level will be required.

WITASS

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THE ASSOCIATION OF WEST INDIA

TRANS-ATLANTIC STEAM SHIP LINES

SSW/PM 77/03255

21st June, 1977

K. Sulzer Esq.,
Swiss Shippers' Council,
Rue de Bellefontaine 18,
LAUSANNE,
Switzerland.

Dear Mr. Sulzer,

COMECON COMPETITION IN LINER SHIPPING

Thank you for your letter Ref. D7614 of 15th June, 1977 on the above subject.

On behalf of the Member Lines of this Association I wish to express appreciation for the understanding shown by the members of the Swiss Shippers' Council concerning non-commercial competition with which this Conference has to contend.

I hasten to assure you that - as already indicated during a number of meetings with the Liner Committee of the European Shippers' Councils - WITASS has an open-minded and flexible attitude in dealing with genuine cases of hardship faced by European Exporters in maintaining or expanding their overseas markets in those spheres of trade served by the Member Lines of this Association.

Yours sincerely,

S. S. Wertheimer

WITASS Circular No. 77/03256 SSW/PM 21st June, 1977

ALL SECTIONS - ALL LINES .

Eingegangen
24 JUN 1977

COMECON COMPETITION - CORRESPONDENCE WITH SWISS SHIPPERS' COUNCIL

Attached are photocopies of an exchange of correspondence I have had with the Secretary of the Swiss Shippers' Council on the topic of co-operation from Conferences in return for the support of Shippers' Councils against COMECON outsiders - particularly Russian Lines.

I invite any comments which Lines may wish to make in this respect.

S. S. Wertheimer
Director

Encs.

34-031—78——14

ASSOCIATION SUISSE DES USAGERS DES TRANSPORTS
SCHWEIZERISCHE VEREINIGUNG DER TRANSPORTBENÜTZER
SWISS SHIPPERS' COUNCIL
Sekretariat: Schweizerische Zentrale für Handelsförderung - Secrétariat: Office suisse d'expansion commerciale

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CH 1001 LAUSANNE, Rue de Bellefontaine 18 June 15th, 1977

COMECON Competition in Liner Shipping

Dear Sirs,

In March, 1977, we have drawn our members' attention to this problem by means of a circular letter in which a number of practical points were made for the guidance of our members in cases where a choice has to be made between a COMECON outsider and a conference line. An English translation of this circular is enclosed.

The subject was further discussed at our annual meeting of June 10, 1977 where Mr. L. Schmidt of Hapag-Lloyd Ltd. was a guest speaker. The meeting unanimously adopted a resolution which invites our members to contact respective conference secretariat. We also have offered our help in establishing such contacts and have no doubt that we shall be able to count on your co-operation and support in order to find viable solutions for the cases that may be submitted to us.

Sincerely Yours,
SWISS SHIPPERS' COUNCIL
The secretary:

K. Sulzer

ASSOCIATION SUISSE DES USAGERS DES TRANSPORTS
SCHWEIZERISCHE VEREINIGUNG DER TRANSPORTBENUTZER
SWISS SHIPPERS' COUNCIL
Sekretariat: Schweizerische Zentrale für Handelsförderung - Secrétariat: Office suisse d'expansion commerciale
Tel. (021) 20 32 31 LAUSANNE Rue de Bellefontaine 18

Circ. 54/77/Sz/ck 14 juin 1977

COMMUNIQUE DE PRESSE

Assemblée générale 1977

L'association suisse des usagers des transports a tenu ses assises annuelles sous la présidence de J. Muheim, La Tour-de-Peilz, le 10 juin 1977 au Gurten près Berne. La séance de l'après-midi était consacrée à un exposé fortement applaudi de M. L. Schmidt, chef du département "Problèmes maritimes internationaux" de Hapag-Lloyd S.A., Hambourg, qui évoquait 3 problèmes principaux auxquels la navigation maritime de ligne doit faire face: la concurrence des lignes de l'Europe orientale, les aspirations maritimes des pays de développement et la situation embrouillée dans la politique maritime des Etats-Unis.

A la suite de cet exposé, l'assemblée adoptait à l'unanimité une résolution qui attire l'attention aux conséquences que l'avance progressive des pays de l'Est dans le commerce maritime des pays tiers pourraient avoir et qui invite les membres de l'association d'observer une grande retenue en ce qui concerne l'utilisation des lignes de l'Europe Orientale.

Annexe

Senator INOUYE. The committee will stand in recess, and the record will be kept open for one week to receive additional testimony.

[Whereupon, at 4:15 p.m., the hearing was adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

Statement of Henry S. Marcus

At the request of the staff of the Subcommittee on Merchant Marine and Tourism, Committee on Commerce, Science and Transportation, United States Senate, I am providing my personal opinion in summarizing and analyzing the key issues presented in the first day of hearings (Wednesday, May 17, 1978) on S. 2873. I am presently Associate Professor of Marine Systems, Massachusetts Institute of Technology and teach courses related to International Shipping and Shipping Management.

I feel discussions during the first day of hearings centered around the following key issues:

To what extent—if any—should the U.S. Government allow anti-competitive practices in our international marine trade?

What is a reasonable freight rate? (or what is a reasonable method by which to develop rates?)

How can one prove predatory intent by a carrier offering rates lower than others?

If it can be shown that a carrier controlled by a foreign government is guilty of predatory pricing, what is the best way of reacting to this problem?

While these four factors are interrelated in the proposed legislation, they are to some extent, independent issues. A brief discussion will show how they are related to each other.

The United States has generally sought to promote rather than discourage competition. A partial exception is the present system of conferences operating in U.S. foreign trade, open to all applicants. The conference is a ratemaking cartel which often operates with such techniques as a dual rate structure, charging lower rates to shippers who use only conference vessels.

The conference seeks to maximize its profits by pricing on value of service rather than cost alone. By this method the rate on high value goods may be several times higher than on low value goods.

When it comes to determining what is a reasonable rate, one must remember that the U.S. Government presently approved the conference system where two items, costing exactly the same for the carrier to move, may have widely different rates. The limit on how high the rate can be is set by what the market will bear. While the carrier does not wish to price any lower than necessary to obtain the cargo, the minimum rate depends on many factors. In the instance where a carrier has the option of making or avoiding the next sailing, he would want the revenues to exceed at least all the variable or out-of-pocket costs related to making the voyage. However, consider the case where a carrier is committed to make the return voyage, such as in an imbalanced trade with a highly profitable forehaul but a money-losing backhaul. Here almost all the expenses, including crew and fuel, are fixed, that is, the carrier is committed to paying these costs whether he carries cargo or not. Consequently, he is better off carrying any cargo as long as the revenue involved exceeds the incremental costs (and time) incurred.

Given the difficulty in determining a reasonable rate, one should expect difficulty in proving predatory intent. Since a high value commodity may be priced at a rate 4 or 6 times higher than a low value commodity, even with a 50 percent rate reduction a high value commodity may more than cover its all fixed and variable costs (i.e., fully allocated costs). In this instance, the strategy on "skimming the cream" may be a shrewd business maneuver (allowed in part by the U.S. acceptance of conference systems and their implicitly "fair and reasonable pricing structures"). Even an across the board rate reduction may increase profits for a carrier if the loss from the rate reductions are outweighed by the larger load factor (i.e. amount of cargo) obtained. Therefore predatory intent in pricing is difficult, if not impossible, to prove (particularly if one does not wish to observe the situation for many years). While discussion with the carrier concerning his pricing

strategy, cost structure, and rates used would help to determine predatory intent, still it could not be guaranteed to be a flawless system.

Finally, even if one is convinced that a foreign government-controlled carrier is pricing with predatory intent, this legislation presents only one particular way of protecting the interests of U.S.-flag carriers. Other methods include cargo preference legislation and bilateral agreements. (Closed versus open conferences are another factor which affects the future of U.S.-Flag carriers).

In conclusion, the proposed legislation touches upon a number of key policy issues. If enough time and resources were available, the ideal solution would be to arrive at a consensus on each of these issues independent of the proposed legislation. In this way it would be assured that the action was consistent with the policies. If it is necessary to take legislation action at this time, I would only caution to fully understand the implicit policy determinations which would be derived from any particular legislation.

THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE,
Stamford, Conn., June 21, 1978.

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

DEAR CHAIRMAN INOUYE: The National Industrial Traffic League submits these comments for the record of hearings on S. 2873, a bill to provide for the regulation of rates or charges by certain State-owned carriers in the foreign commerce of the United States entitled the "Ocean Shipping Act of 1978."

The League is a voluntary organization of 1800 shippers, shippers' associations, board 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 of a trade group, nor a spokesman for a particular commodity or transportation point of view, and 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 operated.

To arrive at positions reflective of the broad range of shipper interests within the League, the League membership at its annual and special meetings considers, debates and votes on actions to be taken. During its more than seventy years of existence, the League has frequently been the 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 shippers 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 has participated in maritime matters before Congress for many years, including testifying and submitting statements before this subcommittee on numerous occasions. During the 94th Congress, in 1975, the League appeared before this subcommittee in opposition to a similar bill, S. 868, the so-called

"Third-Flag" bill. According to Senator Inouye's *Congressional Record* statement of April 11 regarding S. 2873, the objectives of the bill are to "enable the FMC to control the ability of State-controlled carriers in our liner trades to establish and maintain rates that cannot be matched by commercially motivated carriers, and thereby assure free and open competition in our liner trades."

The League opposes S. 2873 for the following reasons. First, it is the policy of the League to support an absolute minimum of regulation in connection with ocean transportation in foreign commerce. S. 2873 would establish government regulatory rate suspension authority in the U.S. liner trades. We urge the Merchant Marine Subcommittee to recognize that the international trading capability of U.S. industry will be severely handicapped if, uniquely in the world, commercially-negotiated ocean rate levels become subject to regulatory suspension.

Second, the League opposes the concept that additional regulatory authority is required to administer the commercial validity of liner business practices of state-controlled carriers in the U.S. trades. We believe that the Federal Maritime Commission has sufficient existent authority to ascertain whether rates are too high or too low as to adversely affect American commerce. The League considers the U.S. Flag liner fleet an integral part of American commerce and believes this interpretation is fully shared by the Federal Maritime Commission. Recent initiation of investigations by the FMC into Soviet liner fleet activity would appear to support our position.

Third, the League opposes the concept that the rates freely negotiated between US shippers and so-called state-controlled carriers are any more or less commercial than rates freely negotiated with any other carrier. We urge the Merchant Marine Subcommittee to recognize that freely-negotiated rates reflect the rate level necessary to assure movement of cargo. Without affordable freight rates, there would be no commercial international transactions.

Fourth, ocean liner rates are basically commodity rates, i.e. rates established for specifically-named commodities. Other carriers in the same trade may not have published a rate for the product listed. Therefore, the comparative rate of another carrier in the trade may not be identifiable under the same name. Or, the rates of other carriers in the trade for similar commodities as the named commodity may be significantly lower than the named commodity rate; therefore, the use of other carrier rates could be considered only in the context of comparing the lowest rate offered of an entire commodity group.

The League does not discredit the concern regarding the proper role of the Soviet merchant fleet as a cross trader in the US trades. However, the League opposes the provisions of S. 2873 as a solution.

As stated earlier, the League believes that the Federal Maritime Commission has sufficient existent authority to ascertain whether rates are too high or too low as to adversely affect American commerce. Additionally, the League strongly favors legislation to expedite the Federal Maritime Commission's regulatory agency decisions. All the League's 1976 Annual Meeting, League members adopted a new policy B–25, Reducing Time Lag-Regulatory Agency Decisions. It reads: "The League favors reducing time lag by transportation regulatory agencies on all matters under consideration and establishment of reasonable time limits for final decisions depending upon the complexity and type of proceeding."

At the April 26, 1978 hearing before Chairman Murphy's House Subcommittee on Merchant Marine, the League was asked to supply language which it prefers to that of H.R. 9998, a bill similar to S. 2873. The League also prefers this language to S. 2873. It reads:

Since commercial malpractice by state-controlled carriers in the US liner trades is unproven and, as we have testified, we believe to be unfounded, the League opposes S. 2873 which would amend the commercial liner trade regulatory legislation by adding government regulatory rate suspension authority in the US liner trades and by attempting to legislate what is a legitimate freight level. If the role of the Soviet liner fleet in the US cross trades is considered to be a threat to national security, we recommend that direct government negotiations be conducted with the Soviet Union to limit their participation to a scope not in conflict with the US national security.

We are proposing that negotiations be carried out by a high level negotiator and the comparable official(s) of the Soviet Union. This would bring negotiations between the two countries on rates which may be in question to the top level of government.

At this most critical period in international trade, where the rapid proliferation of industrialization throughout the world is dynamically creating vibrant competition in every foreign market, every competitive shipping alternative must remain available to US shippers if we are to successfully compete in foreign markets.

Chairman Inouye, the League appreciates this opportunity to present its views on S. 2873 and thanks you for entering its statement in the record of hearings.

Sincerely,

J. ROBERT MORTON,
President.

LYKES BROS. STEAMSHIP CO., INC.,
New Orleans, La., June 30, 1978.

HON. DANIEL K. INOUYE,
Chairman, Subcommittee on Merchant Marine and Tourism, U.S. Senate, Russell Senate Office Building, Washington, D.C.

DEAR SENATOR INOUYE: Your initiative in creating legislation to prevent disruption of our commercial maritime trades and the destruction of the privately owned American merchant marine by the unbridled expansion of Communist merchant shipping in United States foreign commerce is one of the most important missions ever undertaken by a committee chairman. The public, even the knowledgeable public, such as executives of large corporations and organizations of shippers like the National Industrial Traffic League as well as highly intelligent government servants fail to comprehend the real meaning of extensive Communist expansion into our economy.

I am writing to urge that you continue with vigor your legislative initiative to place effective restraints on the expansion of Socialist shipping into our maritime economy. I have had some experience negotiating with the Soviets, and I recognize the danger of simplistic conclusions which one frequently hears about dealing with Communist officials, and I believe there is a deeper explanation of their mentality than that illustrated by the frequently offered conclusion that the only thing they understand is force. It is true that the Soviets and other Communist countries seem to push just as far as they can until stopped by strong means, but I believe it is the nature of Soviet planning and policy execution by their executive organizations that brings this result into being. Policies and plans are organized and approved at the highest level in the Soviet Union and then passed to line type organization for execution. These organizations have little discretion to significantly modify such officially adopted plans. One sees this very clearly, thus it is useless for us to expect that our voices of concern and our pre-legislative maneuvering will cause a modification of policy out of sensitivity to their uncertain result. A central fact to recognize in dealing as Westerners and business oriented people with Communist organizations is that their policies can only be countered by our policies (in our case read *law* for policy).

I am attaching an article from the London Times of Thursday, June 15, which will demonstrate the alarm in Great Britain over Soviet maritime activity. This is instructive and also demonstrates the major policy goal behind Soviet maritime expansion into Western commerce.

Whether the Soviets will succeed in dominating our maritime trades and destroying the private institutions that are integral to our democratic system before we wake up to reality remains an issue which I know you will seek to resolve. Whatever support I can lend will be gladly provided.

Yours sincerely,

W. J. AMOSS, Jr., *President.*

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
New York, N.Y., July 14, 1978.

DEAR SENATOR: I am writing to you in my various capacities as President of the International Longshoremen's Association, AFL–CIO and particularly as a Vice-President of the AFL–CIO and a member of its Executive Council. I wish to draw your attention to a matter of vital concern not only to the AFL–CIO and the ILA and the maritime interests that they represent, but equally to a subject which has taken on increasing dimensions for all Americans in all walks of life; Soviet dominance of the seas at the expense of the commercial health and military posture of the free nations.

The enclosed press release was addressed to the President, Cabinet members, Members of the House of Representatives the Senate and other leaders of government agencies, including all maritime interests.

Under the distinguished leadership of AFL–CIO President George Meany, all of us in the American Labor Movement and particularly the maritime trades has repeatedly expressed concern about the Soviet dominance of the seas at the expense of the commercial health and military posture of the free nations.

The need for action by the administration is *timely* and again I feel the subject of competition and order or chaos in East-West shipping relations in most important for discussion at this moment.

I trust that you will find the enclosed of interest.

With all good wishes.

Sincerely,

THOMAS W. GLEASON,
International President.

Enclosure.

NEW YORK, N.Y.—AFL–CIO International Longshoremen's Association President, Thomas W. Gleason today urged strong considerations and recommendations by the administration in dealing with the Soviet Union.

Gleason, a Vice-President and member of the AFL–CIO Executive Council, long active on the international scene, has been in the forefront of the American Labor movement in support for the struggle of human rights, and has helped to seek freedom for the peoples where suppression of liberty has been violated.

The I.L.A. chief also a vice-president of the International Transport Workers' Federation has repeatedly expressed concern to international bodies in the transportation industry on the quiet, sinister growth of the Soviet merchant marine and "the enormous expansion of Soviet sea power as a deliberate act of strategic policy by the Kremlin". The challenge to the West is unmistakable—the Soviet leaders mean to challenge the traditional Western command of the seas, and freedom of the seas is very much at stake, said Gleason. (The ITF membership is comprised of some 7 million transport workers in 67 countries of the free world with headquarters in London).

Mr. Gleason in recent letters to administration officials and to the members of Congress has predicted and projected the U.S.S.R. impact on U.S. Trade and East-West shipping relations. Gleason said "the Soviet fleet, though it operates primarily for political motives and not necessarily for dollar-and-cents profit, has a right to play a part in world shipping; but not to the extent that it can overtake the trade of another country—such as that of the United States—so as to create instability and impotence".

"The Soviet maritime policy of assigning their modern fleet a dominating position in cross trading is aimed not only at the foreign commerce of the United States, but it has also penetrated the trade of other key maritime nations in the guise of a third-flag carrier", said Gleason. He also urged that our government should consider the position of Soviet freighters entering some of our most important harbors, and should reappraise the policy of why forty-two U.S. ports are open to the ships of the U.S.S.R.

Mr. Gleason warned that we should not close our eyes to the more serious implication of this international activity that is the need and ability to defend ourselves with a policy to control the seas in support of potential military operations if required.

With the present arms-control conference now being held in Geneva; the trials of the Soviet dissidents in Moscow; the continued Soviet intervention in Africa and the mounting harassment of American citizens in Moscow, the need for action is *timely* according to the I.L.A. leader.

Gleason expressed interest concerning a report that President Carter and the administration was reviewing all trade, technological and scientific exchanges with the Soviet Union, with a view toward ending those most beneficial to Moscow, and said that the Russians will only understand strong *"action"*.

Mr. Gleason indicated that discussion of boycotting the Soviets would be on the agenda of the ILA Executive Council meeting to be held next week, and said he will also be talking with the AFL–CIO high command and the labor chiefs of the Maritime Unions about the need for *"action"* against the Soviet Union, in order to insure the survival of the American Merchant Marine and East Coast ports from the dangers brought about by the use of discriminatory and unauthorized rates, minibridge and landbridge.

ADDITIONAL FACTS

October, 1965 through 1967 Mr. Gleason went to Viet Nam on four occasions to help survey, observe and recommend a program for the movement of cargo to relieve congestion at Ports of Saigon and DeNang at request of U.S. State Department.

He did the same at the Port of Mombassa, Kenya and in July 1970 made special study of the Apapa Port facilities in Nigeria on request of U.S. State Department.

In December 1969 represented AFL-CIO at General Federation of Labor in Tel Aviv, Israel, and in January, 1974 represented AFL–CIO on tour of inspection of the State of Israel during Middle East crisis.

On June 1978 headed delegations to Chile and meeting with Chile's President Augusto Pinochet appearing to Chile's military government to remove its restrictions from that country's labor movement.

Mr. Gleason has made many trips to other countries of the world to aid workers to improve social and economic conditions of their country.

[The following information was referred to on p. 73:]

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C.

Hon. DANIEL K. INOUYE,
Chairman, Subcommittee on Merchant Marine and Tourism,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in regard to the hearing you will be chairing on September 6, 1978, on S. 2873, a bill

"To provide for the regulation of rates or charges by certain State-owned carriers in the foreign commerce of the United States, and for other purposes."

Due to a longstanding commitment which will take me out of the country, I regret that I will be unable to testify at the September 6 hearing. However, your staff has graciously indicated that we can submit our statement for the record. Consequently, I enclose a copy of the Department's statement, prepared for delivery on the date previously scheduled for the hearing, and ask that it be made part of the record of these proceedings.

If I can be of any further assistance, please let me know.

Sincerely,

STEPHEN A. SHEFLER,
Deputy Assistant Secretary for
Policy and International Affairs.

Enclosure.

STATEMENT OF STEPHEN A. SHEFLER, DEPUTY ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, U.S. DEPARTMENT OF TRANSPORTATION

Mr. Chairman and Members of the Subcommittee: I appreciate the invitation to express the views of the Department of Transportation on S. 2873, a bill cited as the "Ocean Shipping Act of 1978." The bill provides for the regulation of rates or charges by certain stateowned carriers operating in, or offering or proposing to offer service in the foreign commerce of the United States.

The Department is sympathetic to the concerns which prompted the introduction of this legislation. We recognize the need to maintain a strong and effective merchant marine and we are aware that certain practices of state-controlled carriers, such as rate-cutting, are creating problems for our merchant marine. For these reasons, the Department would support the enactment of S. 2873, if it contained certain amendments.

"Just and Reasonable" rate criteria

We would delete the last sentence of proposed Section 18(c)(1) of the Shipping Act, as added by lines 9 through 14 on page 3 of the bill. We would also delete similar language in proposed Section 18(c)(4), at lines 9 through 13 on page 5 of the bill. This provision empowers the Federal Maritime Commission (FMC) to set certain minimum rates if it finds that any rate of a controlled carrier is unjust or unreasonable. We do not feel this provision is required because there is ample legislative history surrounding the Shipping Act showing that it is not

necessary for the FMC to set rates in U.S. foreign commerce. If this sentence were deleted, we feel that a controlled carrier's rates would have to meet one of the conditions contained in the new proviso we will suggest be added to proposed Section 18(c)(2).

In determining just and reasonable rates, proposed Section 18(c)(2) of the Shipping Act authorizes the FMC to take into account appropriate factors, including whether the rates are the same or similar to those filed or assessed by other carriers in the same trade. We suggest deleting the words "in the same trade" at page 4, line 3 of the bill and substituting the following phrase:

"Offering similar transportation services under similar conditions of carriage and under similar tariff description between the same points or ports over the same route."

We would also suggest that this same phrase be added to the definition of constructive costs which is defined in proposed Section 18(c)(6) of the Shipping Act. This change clarifies the conditions under which rate comparisons will be made with other carriers.

We also recommend that a new proviso be added to proposed Section 18(c)(2) of the Shipping Act as follows:

"Provided, however, that the Commission may not disapprove, reject, or suspend a controlled carrier's rates, fares, charges, or classifications under Section 18(c), or find them to be either unjust or unreasonable if either of the following conditions is met: (1) The controlled carrier's rates are not below those charged by an independent non-controlled carrier operating similar vessels and equipment, offering similar transportation services, under similar transportation conditions of carriage, and under similar tariff description between the same points or ports over the same route, or (2) the controlled carrier's rates are not below 85 percent of the rates charged by any conference operating in the same trade."

This change provides an additional test which would be valuable where there might be no other independent operator outside the conference. A responsible independent operator usually quotes an initial rate approximately 15 percent below the conference tariff until he determines specific market requirements.

Rate comparisions

One further proviso should be incorporated into proposed Section 18(c)(2) of the Shipping Act to deal with the practical difficulty of comparing rates and charges as they appear in ocean carrier tariffs. The new language we suggest is:

"Provided further that, if a controlled carrier offers special rates, fares, charges, or classifications under section 18(c) which are not comparable in form to the rates, fares, charges, and classifications offered by other carriers in the same trade, the Commission may not find such practices unlawful unless, following a full evidentiary hearing, it has been determined that such practices are predatory."

This language would make it clear that the legislation will not stifle innovative transportation pricing and services. Carriers would be permitted to experiment with such pricing and services, and this would be particularly beneficial in instances in which conferences are reluctant to pursue innovation.

Advance notice

We feel the present statutory language concerning notice of proposed rate changes is adequate. Thus, we do not believe that advance notice of rate actions is required. We, therefore, recommend deletion of the first sentence of the proposed new Section 18(c)(3) of the Shipping Act which appears on page 4, lines 7 through 12 of the bill

Suspension of rates

Regarding rate suspension authority for the FMC, we feel that this authority should be limited to no longer than 180 days. We would amend the proposed new section 18(c)(4) of the Shipping Act by adding on page 5 at line 4 of the bill, after the words "effective date," the words "but not for a longer time period than 180 days beyond the time when they would otherwise go into effect." We feel this change would tend to reduce friction in foreign relations.

FMC access to data

We also note that, for the purpose of determining constructive costs, the proposed new Section 18(c)(3) of the Shipping Act which appears on page 4, lines access, under certain conditions, to all data relating to the cost of performing

ocean transportation available in the files of any other agency of the United States. Since this authority is of immediate concern to other agencies we defer to them as to the need for this provision in the bill.

Presidential pre-emption

The proposed Section 18(c)(8) of the Shipping Act empowers the President to request the FMC to stay the effect of the Commission's order for not longer than 120 days after the effective date of the order if he finds that such stay is required for reasons of national defense or foreign policy. During any such stay, the President, whenever practicable, would be required under the bill to attempt to resolve the matter in controversy by negotiations with representatives of the applicable foreign governments. The Department recognizes the absolute necessity for Presidential pre-emption in rates cases involving controlled carriers. As to whether the language proposed in the bill is sufficient to meet foreign policy considerations, we defer to the Department of State.

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

FEDERAL MARITIME COMMISSION,
Washington, D.C., September 8, 1978.

Hon. DANIEL K. INOUYE,
Committee on Commerce, Science, and Transportation,
U.S. Senate,
Russell Senate Office Building,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to the inquiry of your staff on September 7, 1978 requesting our comments on the conclusions arrived at in the Booz, Allen and Hamilton study on rate disparities.

The Commission's staff has subjected the Booz, Allen report to careful analysis and concluded that the data base used in the report lacked sufficient detail to verify the conclusion that ocean liner freight rates for similar commodities are significantly higher outbound than inbound.

The Booz, Allen study analyzed commodities at a 4-digit Standard International Trade Classification (SITC) level and then attempted to match a specific tariff rate to these commodities. This procedure necessarily forced the analysts who prepared this report to make the assumption that the average tariff rate (obtained by summing all of the rates shown under each tariff and then dividing by the number of rates) was an adequate proxy for the actual rate under which the cargo was transported. Since 4-digit SITC descriptions are very general, while tariff descriptions found in ocean freight tariffs are very specific (often there will be three or more individual commodity descriptions at the 7-digit level for each 4-digit designation) this procedure is susceptible to error. For instance, the averaging of three entries under one tariff description might include rates of $300, $400, and $500 for an average rate of $400 when, in fact, most of the U.S. exports of the commodity might move under the $300 rate.

Utilizing the FMC computerized data base which is maintained at the 7-digit SITC level the staff was able to make a more specific match between SITC commodity codes and specific tariff nomenclatures. The staff concluded that when this more precise analysis is made, most of the alleged disparities disappear.

In addition to the problem of working at the 4-digit level, the staff's computer analysis also demonstrated that in many instances, the commodities moving that appeared to be similar at the 4-digit level were moving in significantly different quantities inbound and outbound. Furthermore, in some instances the values of the commodities were very dissimilar. We recognize that the Booz, Allen group narrowed their list of commodities to those that moved in volumes of at least 1,000 tons in each direction and that values inbound and outbound were supposed to be within 15 percent of each other. This discrepency could be the result of the fact that Booz, Allen used 1974 data where as the staff used 1976 data.

The analysis described above relates to inbound and outbound rate disparities. The Booz, Allen study also addressed the issue of third country disparities where the U.S. export rate for a certain commodity to a third country market differed from the export rate of a major U.S. competitor (after adjustments for distance and other cost factors) in that market. The Commission does not receive foreign-

to-foreign tariff filings so this alleged disparate treatment of U.S. exporters was not subjected to specific analysis. The same infirmities with the data base mentioned above, however, would apply to these third country cases since Booz, Allen used 4-digit OECD commodity codes for their analysis of third country disparities.

For the above mentioned reasons, the staff conclusion is that although the study is an honest effort to treat the issue of rate disparities, limitations of the data base that Booz, Allen had to work with seriously impair the validity of their conclusions.

Sincerely,

RICHARD J. DASCHBACH,
Chairman.

FEDERAL MARITIME COMMISSION,
Washington, D.C., September 19, 1978.

Hon. DANIEL K. INOUYE,
Committee on Commerce, Science, and Transportation,
U.S. Senate,
Washington, D.C.

DEAR SENATOR INOUYE: This is in response to the following question propounded to the Federal Maritime Commission by your staff on September 15, 1978 in connection with S. 2873 and H.R. 9998, bills which would authorize this Commission to regulate more effectively the rates of state-controlled carriers in our foreign commerce.

Question. Both S. 2873 and H.R. 9998 would exempt from the bills' provisions the rates of a controlled carrier which are covered by certain section 15 agreements. The pertinent language is:

S. 2873 "(7) The provisions of this subsection shall not apply—

"(C) in any particular trade to any controlled carrier which offers service in that trade under rates, charges, classification, rules, or regulations which are covered by a rate agreement or service agreement approved under section 15 of this Act, other than a rate or service agreement in which all of the members are controlled carriers not otherwise excluded from the provisions of this subsection."

H.R. 9998 "(6) The provisions of this subsection shall not apply: . . . (iii) rates, charges, classifications, rules, or regulations of any controlled carrier in any particular trade which are covered by an agreement approved under section 15 of this Act, other than an agreement in which all of the members are controlled carriers not otherwise excluded from the provisions of this subsection; . . ."

In your opinion, would either or both of these provisions exempt from the regulatory controls of the bills the rates of a controlled carrier which were set forth in that carrier's own tariff discussion in a so-called "48 hour agreement" or established independently pursuant to a right of independent action in a conference agreement?

Answer. In our opinion, the language of both provisions is unclear on this point because of the words "covered by". Obviously, the intent of the language is to encourage state-controlled carriers to become members of conferences or other agreements in which all members agree to charge the same rates. To exempt such carriers in trades in which the may charge whatever the please under the umbrella of a 48-hour agreement or independent action conference invites abuse and may render the bill meaningless. Therefore, whichever statutory language may ultimately be chosen by your Committee we would urge that the report indicate clearly that the intent is to exempt the rates, charges, classifications, rules or regulations of a controlled carrier which as *established* pursuant to an *agreement* among carriers such as a conference agreement. Rates set independently by a controlled carrier, whether in connection with a section 15 agreement, or otherwise, should remain subject to the regulatory provisions of these bills.

Please let me know if we can be of further assistance.

Sincerely yours,

RICHARD J. DASCHBACH,
Chairman.

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