I would not say this is a perfect bill. Certainly nothing we ever pass is just the way we would pass it if we alone wrote it. But we are not alone. We have 100 Members. We have a Commerce Committee that debated this bill, that worked on it for a long time. In fact, we have been working on it for 2 years, and it has been a compromise bill. But I think everyone will be better off as a result of this effort.

I appreciate the support of the Commerce Committee. It has been a major achievement for the Commerce Committee. I appreciate the work of Senator LOTT, our majority leader, who is very interested in this matter. I appreciate the work of Senator GORTON and Senator BREAUX, both of whom have worked very diligently to try to hone the balance in this bill.

Senator GORTON has an amendment. There was one part of the bill that he felt needed changing. So he is going to debate that amendment. I think the bill should pass as it is because I think the balancing has been done.

So with that, I will yield the floor. I know we have a unanimous consent agreement that at 9:40 we will begin the debate on the Gorton amendment. And Senator BREAUX will be arguing on the other side for the committee.

Thank you, Mr. President.

OCEAN SHIPPING REFORM ACT OF 1997

The PRESIDING OFFICER. Under the previous order, the hour of 9:40 a.m. having arrived, the Senate will now resume consideration of S. 414, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 414) to amend the Shipping Act of 1984 to encourage competition in international shipping and growth of United States imports and exports, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Hutchison amendment No. 1689, in the nature of a substitute.

Gorton amendment No. 2287 (to amendment No. 1689) to provide rules for the application of the act to intermediaries.

AMENDMENT NO. 2287

The PRESIDING OFFICER. There will now be 20 minutes of debate prior to the vote on or in relation to the Gorton amendment No. 2287.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

PRIVILEGE OF THE FLOOR

Mr. GORTON. Mr. President, I ask unanimous consent to allow a Commerce Committee staffer, Jim Sartucci, the privilege of the floor during the remainder of the debate on this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GORTON. I also ask unanimous consent that my own assistant, Jeanne Bumpus, be granted the privilege of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GORTON. Mr. President, the 1984 Shipping Act significantly brought openness and competition into the field of ocean shipping, a field dominated for decades by cartels, by fixed prices, by underhanded competition, and by, very frequently, the victimization of those who ship their goods by sea.

This 1998 set of amendments to the Shipping Act further opens up the process to competition and allows the business of ocean shipping to operate far more like most of the rest of the free market in the United States, with one exception. If you are a large shipper of goods by sea, sophisticated, a major customer, you deal directly with the ocean carrier, and those relationships with the ocean carrier are made much more flexible, much more subject to competition, by this bill.

If, on the other hand, you are a modest shipper, a small or medium-sized shipper, perhaps someone new to the business of exporting your goods from the United States of America, you don't, as a general practice, deal directly with the ocean carrier, you deal with a middleman, a consolidator, a freight forwarder. That small businessman in the various ports of the United States gathers together shipments to the same place from a number of different shippers and makes the arrangements with the ocean carrier.

As this bill was debated and reported from the Committee on Commerce, it treated both of these groups in an identical fashion. Each got the benefits of the bill; each got the benefits of competition.

Somewhere, however, between the Commerce Committee and the floor, the big boys got together behind closed doors, and a combination of the ocean carriers and the longshoremen's unions, working with a handful of Senators, determined that the small business people would not get these advantages, that they would continue to have to operate, under most circumstances, under the requirements of the 1984 act.

Under the 1984 act, they were treated identically. If this bill passes without my amendment, they will no longer be treated identically. The small shipper will be discriminated against. The small businessman who is a freight forwarder will be discriminated against. The big guys will get away with something.

It is curious, Mr. President, that neither the small shippers nor the freight forwarders were included in the negotiations that led to the revised bill, the substantive bill that is before us, as against the bill that came out of the Commerce Committee. The big boys got together, shafted the small business people on both sides, and now present this bill to you with the statement, ''Take it or leave it; it's tough, but we've made a deal with the longshoremen's unions because they think that they may not get some of the business from these small businessmen, and you're just simply going to have to take it that way.''

I don't think that is the way the laws ought to be made. I don't think that is the way we ought to deal as Senators. We make wonderful speeches at home, all of us, about the sanctity of small business, but here we are asked to discriminate against small business and in favor of big business.

If we adopt my amendment, we will simply put this bill back into the same condition in which it found itself when it was reported by the Commerce Committee—everyone treated equally, everyone the beneficiary of a freer market than we have at the present time—and we will have done our duty to all of our constituents and not just to those who are able to afford expensive lobbyists in Washington, DC.

The bill, in its present form, is unfair to small businesses. It discriminates against small businesses. The bill as reported from the Commerce Committee did not do so. We should restore provisions that the Commerce Committee saw fit to include in the bill.

Mr. BREAUX addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. BREAUX. Thank you, Mr. President.

I would imagine that all Members of the Senate who are vitally interested in this legislation must be here this morning to follow these very complicated, very detailed arguments. This, indeed, is incredibly complicated. It just always continues to amaze me how complicated some of these international shipping agreements can become. It is part of the reason why it took 4 years to put together this legislation. This is not something that just came to the floor overnight but is the result of 4 years of painful negotiating and compromise among people who ship packages and cargo, people who carry packages and cargo internationally.

Mr. President, 96 percent of our cargoes carried internationally are on shipping vessels. It also has involved, to a large extent, the people who put together packages for people to ship in order to make it more efficient than it has been in the past.

Like all other compromises that normally are reached, everybody doesn't get everything they want. I think this legislation is an example of what a true compromise is. This legislation clearly is incredibly important because it further deregulates the shipping industry and makes it more competitive than it has been in the past.

But in reaching that compromise among all of the Senators who are involved, including Senator GORTON and Senator KAY BAILEY HUTCHISON, who has done such a terrific job as the chairman of our subcommittee, Senator LOTT's involvement, Senator INOUYE's involvement—everybody on the committee has been deeply involved on this very complicated issue, like I said, for 4 years.

Unfortunately, the amendment of the Senator from Washington is a killer amendment in the sense that if this amendment were to be adopted, the 4 years of hard work would go for naught. This bill would not be able to pass because the carefully crafted compromise would fall apart. As in most compromises, if you lose one part, you will lose the whole deal.

So it is very, very important for all of us who want to see a shipping act adopted and signed into law to recognize that it is necessary this morning to defeat the amendment of the Senator from Washington. I know it is well intended. I do not in any way question his motives in offering it, but I think that on the facts, there is a strong difference of opinion.

The non-vessel-operating common carriers, the so-called NVOCCs, are not actually in the business of carrying cargo at all. These organizations were formed in 1984 and recognized in 1984 in order to help very small shippers who would not ordinarily have enough cargo to fill an entire container, who would hire these NVOCCs to consolidate the cargo and put them in the container. But it is very, very clear that they are not a carrier, they don't own ships, they don't have the expense of having an entire shipping company at their disposal in building ships and operating ships and everything else.

Yet under the Gorton amendment, they would want to be treated just like a shipper would be treated and yet not have any of the expenses of a common carrier. That is wrong. That is why it was not done. It is wrong to say they are going to get special treatment and be treated just like an international shipping company with all of their expenses because in fact they are not so. Yet the Gorton amendment would basically accord these intermediary companies, who actually do not perform any transportation function itself, the same contractual rights that an ocean carrier enjoys, without any of the expense, without any of the liability, without any of the responsibility. That is simply not right, and it is not correct.

I submit that this is a hindrance to small business because the small NVOCCs could not do this. They do not have enough cargo to be able to provide these types of special deals. So the small NVOCCs would not be helped at all. What it would help basically is a large number of foreign NVOCCs, particularly from the European theater, who would be able to assimilate large enough amounts of cargo in order to participate under the Gorton amendment.

This would not help small intermediaries at all. They simply do not have the capacity to benefit from it. Small NVOCCs, by virtue of the modest cargoes that they handle, as I have said, would not be able to take advantage of the Gorton amendment. Only the big, huge megacompanies out of Europe and foreign companies who are our competition would be able to participate. America's small businesses, I think, do not deserve this type of treatment.

So I just conclude by saying, No. 1, it not fair to the small companies in America. It helps the larger ones basically in Europe; and that is not our responsibility. In addition to that, it is a killer amendment. The 4 years of hard work led by so many on this committee—including Senator GORTON, who has been, I think, very helpful in putting this package together; we differ on this one amendment—but the whole thing would go down the drain, and we would not have the moderate reform of the Shipping Act that I think is so important. I hope at the appropriate time those who are managing the legislation, Senator HUTCHISON and others, will make a motion to table the Gorton amendment. I intend to support that motion to table and hope that in fact it is tabled and we can go along and proceed to final passage in an expedited fashion.

Mr. President, we have been laboring long and hard over the past four years to reformulate, and further deregulate the ocean shipping industry. S. 414, the Ocean Shipping Reform Act, reflects an effort to compromise the sometimes dissimilar interests of the international ocean shipping industry, from the ocean carriers and shippers and shipping intermediaries to the interests of U.S. ports and port-related labor interests such as longshoremen and truckers. The effort to provide further deregulation has been difficult due to some of the unique characteristics of international liner shipping. Currently, every nation affords ocean liner shipping companies an exemption from the relevant antitrust or competition policies that regulate competition for domestic companies. Given the need to provide some regulatory oversight to protect against abuse of the grant of antitrust immunity, it has been difficult to balance the desire for further deregulation. However, I feel that we have reached a workable agreement which almost all parties can support.

It is safe to say that our ocean shipping industry affects all of us in the United States as currently 96% of our international trade is carried on board ships, but very few of us fully understand the ocean shipping industry. International ocean shipping is an over half a trillion dollar annual industry that is inextricably linked to our fortunes in international trade. It is a unique industry, in that international maritime trade is regulated by more than just the policies of the United States, in fact, it is regulated by every nation capable of accepting vessels that are navigated on the seven seas. It is a complex industry to understand because of the multinational nature of the trade, and its regulation is different from any of our domestic transportation industries such as trucking, rail, or aviation.

The ocean shipping industry provides the most open and pure form of trade in international transportation. For instance, trucks and railroads are only allowed to operate on a domestic basis, and foreign trucks and railroads are required to stop at border locations, with cargo for points further inland transported by U.S. firms. International aviation is subject to restrictions imposed as a result of bilateral trade agreements, that is, foreign airlines can only come into the United States if bilateral trade agreements provide access into the United States. However, international maritime trade is not restricted at all, and treaties of friendship, commerce, and navigation guarantee the right of vessels from anywhere in the world to deliver cargo to any point in the United States that is capable of accommodating the navigation of foreign vessels.

The Federal Maritime Commission (''FMC'') is charged with regulating the international ocean shipping liner industry. The ocean shipping liner industry consists of those vessels that provide regularly scheduled services to U.S. ports from points abroad, in large part, the trade consists of containerized cargo that is capable of being moved on an international basis. The Federal Maritime Commission does not regulate the practices of ocean shipping vessels that are not on regularly scheduled services, such as vessels chartered to carry oil or chemicals, or bulk grain or coal carriers. One might ask why regulate the ocean liner industry, and not bulk shipping industry? The answer is that the ocean liner industry enjoys a worldwide exemption from the application of U.S. antitrust laws and foreign competition policies. Also, the ocean liner industry is required to provide a system of ''common carriage,'' that is, our law requires carriers to provide service to any importer or exporter on a fair, and non-discriminatory basis.

The international ocean shipping liner industry is not a healthy industry, in general, it is riddled with trade distorting practices, chronic over-capacity, and fiercely competitive carriers. In fact, rates have plunged in the trans-pacific trade to the degree that importers and exporters are expressing concerns about the overall health of the shipping industry. The primary cause of liner shipping overcapacity is the presence of international policies designed to promote national-flag carriers and also to ensure strong shipbuilding capacity in the interest of national security. These policies include subsidies to purchase ships and to operate ships, tax advantages to lower costs, cargo reservation schemes, and national control of shipyards and shipping companies. This results in an industry which is not completely driven by economic objectives. For instance, one of the largest shipping companies in the world, China Overseas Shipping Company (''COSCO'') is operated by the government of China, much in the way the U.S. government controls the Navy, however, the government of

China is not constrained by considerations that plague private sector companies.

Historically, ocean shipping liner companies attempted to combat ''rate wars'' that had developed because of the situation of over-capacity by establishing shipping conferences to coordinate the practices and pricing policies of liner shipping companies. The first shipping conference was established in 1875, but it was not until 1916 that the U.S. government reviewed the conference system. The Alexander Committee (named after the then-Chairman of the House Committee on Merchant Marine and Fisheries) recommended continuing the conference system in order to avoid ruinous ''rate wars'' and trade instability, but also determined that conference practices should be regulated to ensure that their practices did not adversely impact shippers. All other maritime nations allow shipping conferences to exist immune from the application of antitrust or competition laws, and presently no nation is considering changes to their shipping regulatory policies.

In the past, U.S. efforts to apply antitrust principles to the ocean shipping liner industry were met with great difficulty, since foreign governments objected to the application of U.S. antitrust laws to the business interests of their shipping companies, and to the exclusion of their own laws on competition policy. Many nations have enacted blocking statutes to expressly prevent the application of U.S. antitrust laws to the practices of their shipping companies. As a result of these blocking statutes, U.S. antitrust laws would only be able to reach U.S. companies and would destroy their ability to compete with foreign companies. With the difficulties in applying our antitrust laws, U.S. ocean shipping policy has endeavored to regulate ocean shipping practices to ensure both that the grant of antitrust immunity is not abused and that our regulatory structure does not contradict the regulatory practices of foreign nations.

The current regulatory statute that governs the practices of the ocean liner shipping industry, is the Shipping Act of 1984. The Shipping Act of 1984 was enacted in response to changing trends in the ocean shipping industry. The advent of intermodalism and containerization of cargo drastically changed the face of ocean shipping, and nearly all liner operations are now containerized. Prior to the Shipping Act of 1984, uncertainty existed as to whether intermodal agreements were within the scope of antitrust immunity granted to carriers. In addition, carrier agreements were subject to lengthy regulatory scrutiny under a public interest-type of standard. Dissatisfaction with the regulatory structure led to hearings and legislative review in the late 1970s and early 1980s. In the wake of passage of legislation deregulating the trucking and railroad industry, deregulation of the ocean shipping industry was accomplished with the enactment of the Shipping Act of 1984.

The Shipping Act of 1984 continues antitrust immunity for agreements unless the FMC seeks an injunction against any agreement it finds ''is likely, by a reduction of competition, to produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost.'' The Act also clarifies that agreements can be filed covering intermodal movements, thus allowing ocean carriers to more fully coordinate ocean shipping services with shore-side services and surface transportation. One can easily measure the success of this provision, in examining the number of railroad double stack services, a rail service that was actually pioneered by U.S.-flag shipping companies, that have promulgated since the enactment of the Shipping Act of 1984.

The Shipping Act of 1984 attempts to harmonize the twin objectives of facilitating an efficient ocean transportation system while controlling the potential abuses and disadvantages inherent in the conference system. The Act maintains the requirement that all carriers publish tariffs and provide rates and services to all shippers without unjust discrimination, thus continuing the obligations of common carriage. In order to provide shippers with a means of limiting conference power, the Shipping Act of 1984 made three major changes: (1) it allowed shippers to utilize service contracts, but required the essential terms of the contract to be filed and allowed similarly situated shippers the right to enter similar contracts; (2) it allowed shippers the right to set up shippers associations, in order to allow collective cargo interests to negotiate service contracts; and (3) it mandated that all conference carriers had the right to act independently of the conference in pricing or service options upon ten days' notice to the conference.

Amendments to the Merchant Marine Act, 1920, and the passage of the Foreign Shipping Practices Act of 1988, strengthened the FMC's oversight of foreign shipping practices and the practices of foreign governments that adversely impact conditions facing U.S. carriers and shippers in foreign trade. The FMC effectively utilized its trade authorities last year to challenge restrictive port practices in Japan, and after a tense showdown, convinced the Japanese to alter their practices that restrict the opportunity of carriers to operate their own marine terminals. The changes that will be required to be implemented under this agreement will save consumers of imports and exporters trading to Japan, millions of dollars, and the FMC deserves praise for hanging tough in what was undeniably a tense situation.

Ten years later, after the enactment of the Shipping Act of 1984, we started anew on the process of providing a deregulated shipping environment to allow our shippers to become more competitive in international trade, and to provide more contractual flexibility to our ocean shipping companies. After four years of stops and starts, I think that we have reached a point where nearly all sectors of the maritime transportation community can get behind a common proposal for change. It has not been easy to balance the different interest involved in this legislation because of the competing differences of each of their needs, but I think that we have had each of the different sectors willing to give up a little of what they hoped to get in order to move the bill forward, and I would congratulate the private sector representatives for their willingness to compromise to move the process forward.

The Ocean Shipping Reform Act moves forward to provide further deregulation to the ocean shipping industry, while at the same time, balancing the need for a degree of oversight given the continued provision of immunity from antitrust laws. The bill will not alter the structure of the FMC. The FMC is a small independent agency with an annual appropriation of $15 million which oversees over one half a trillion dollars of trade. It is important to note, that the agency's status of independence allows it to effectively fulfill its trade opening related functions without interference from other sorts of considerations. We had considered the possibility of merging the functions of the Federal Maritime Commission and the Surface Transportation Board, but ultimately concluded that the combination of the two agencies did not save the taxpayer anything because the agencies would have no real overlap of responsibility.

One of the major problems in moving forward with legislative change in this area was the need to provide additional service contract flexibility and confidentiality, while balancing the need to continue oversight of contract practices to ensure against anti-competitive practices immunized from our antitrust laws. I think the contracting proposal embodied in S. 414 adequately balances these competing considerations. The bill transfers the requirements of providing service and price information to the private sector, and will allow the private sector to perform functions that had heretofore been provided by the government. The bill broadens the authority of the FMC to provide statutory exemptions, and reforms the licensing and bonding requirements for ocean shipping intermediaries.

I have been contacted by Senators LAUTENBERG and MOYNIHAN about their concerns for the freight forwarding community, and their desire to set mandatory or reasonable compensation for forwarding services provided under a shipping contract. While we were unable to provide a legal requirement for forwarder compensation, I would urge the FMC to continue to be vigilent to ensure that forwarders and forwarding

expertise is not jeopardized in this new and more deregulated environment. The forwarding community provides valuable expertise to the shipping community and I will continue to monitor the impacts of this legislation to ensure that it does not adversely impact forwarders. Additionally, we were able to provide less stringent report guidance about what sort of activity should be monitored by the FMC to ensure against unjust discrimination against shipping intermediaries at the request of Senator HARKIN, and I would like to thank him for his imput on this legislation.

Importantly, the bill does not change the structure of the Federal Maritime Commission. The FMC is a small agency with a annual budget of about 14 million dollars. When you subtract penalties and fines collected over the past seven years, the annual cost of agency operations is less than $7 million. All told, the agency is a bargain to the U.S. taxpayer as it oversees the shipping practices of over $500 billion in maritime trade. Added benefit to the U.S. public accrues when the FMC is able to break down trade barriers that cost importers and exporters millions in additional costs, such as what recently occurred when the FMC challenged restrictive Japanese port practices.

The FMC is an independent regulatory agency that is not accountable to the direction of the administration. Independency allows the FMC to maintain a more aggressive and objective posture when it comes to the consideration of eliminating foreign trade barriers. When we first assessed the issue of agency structure we considered appending the functions of the FMC to a new enlarged Surface Transportation Board (''STB''). However, the functions performed by the STB are quite different than the FMC functions that would remain after implementation of the deregulatory changes provided in S. 414 and the Congressional Budget Office did not estimate any savings through a merger approach. Additionally, the initial proposal to merge the functions of the FMC and the STB would have run afoul of the Appointments Clause of the Constitution. Ultimately, we decided to pursue solely the needed regulatory changes, and not needlessly alter the structure of the agency for no real purpose.

S. 414 also provides some additional protection to longshoremen who work at U.S. ports. The concerns expressed by U.S. ports and port-related labor interests revolved around reductions in the transparency afforded to shipping contracts, and the potential abuse that could occur as a result of carrier antitrust immune contract actions. In order to address the concerns of longshoremen who have contracts for longshore and stevedoring services, S. 414 sets up a mechanism to allow the longshoremen to request information relevant to the enforcement of collective bargaining agreements.

I would also like to thank Senators HUTCHISON, LOTT and GORTON for their efforts on this bill. Additionally, the following staffers spent many hours meeting with the affected members of the shipping public and listening to their concerns about our proposal and I would like to personally thank Jim Sartucci, Carl Bentzel, Clyde Hart, and Jim Drewry of the Commerce Committee staff, Carl Biersack of Senator LOTT's staff, Jeanne Bumpus of Senator GORTON's staff, Amy Henderson of Senator HUTCHISON's staff as well as my own staffers, Mark Ashby and Paul Deveau. It is my hope that our progress on ocean shipping will spill over to our efforts to implement the OECD Shipbuilding Trade Agreement, so we can move forward with another positive piece of legislation for the maritime industries.

I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, my friend from Louisiana makes a curious set of arguments. The single word he used most in his remarks was ''compromise,'' that this provision is now the result of a compromise of 4 years' work. No; this provision is not the result of 4 years of work. This provision is the result of a discussion that took place after this bill was reported from the Commerce Committee, after all of the open public hearings and all the open discussion. And what kind of compromise was it? Well, it was a compromise between the big unions, the big carriers and maybe some of the big shippers. It isn't a compromise that involved its victims.

No representative of small shippers was in the room where this ''compromise'' was made. None of the small businessmen who were middlemen were in the room when this ''compromise'' was made. A curious compromise, I must say, when the victims were excluded from it, after having been a part of everything that went on for the 4 years of work on this bill up through and including its report from the Commerce Committee. No, this was not a compromise; this was a backroom deal, the worst kind of backroom deal.

The Senator from Louisiana says, ''Carefully, carefully crafted.'' ''Killer amendment.'' Strange. I don't see any dissent on the Commerce Committee, Republicans or Democrats, with the bill in its original form. How can it be a killer amendment?

Does the Senator from Louisiana mean that, if we pass this amendment, every Member of his party will then filibuster the bill? Simply because we have not done the will of the longshoremen's unions, they will give up competition and open shipping, lock, stock and barrel across the board? Well, if that is what he means—if that is what they mean, let them say so. It isn't going to kill the bill over here; and I do not think it will kill the bill over there.

What do outsiders say about it? Today's Journal of Commerce, the newspaper that deals with business, endorses this bill. It says:

> Today, the Senate is expected to approve a bill that boosts competition and makes it easier for shipping lines and their customers to operate.
>
> In one respect, however, this bill actually limits competition by denying freight consolidators—middlemen—full opportunity under the new law.
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> * * * * *
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> Lately, however, middlemen have become an important export conduit and even a threat to the status quo. Not surprisingly, it was the major shipping lines and labor unions that teamed up to deny to consolidators private contracting privileges.

In other words, they have given themselves the ability to do business in a way they now want to deny to others in the same business. The only difference is the people who made this ''compromise'' are big and the ones who are victimized are small.

This amendment is consistent with the philosophy of the bill. It was included in the bill in every stage to this point. It is backed by everyone who deals with this issue objectively. It will not kill the bill, unless there are 41 Members here who will simply vote to kill the bill on behalf of one small set of labor unions who want a monopoly. And I do not think that will happen.

We should do the right thing and pass the amendment.

Mr. President, I ask unanimous consent to have the article in the Journal of Commerce, which is dated April 21, 1998; a statement in support by the Transportation Intermediaries Association, dated April 20, 1998; and a letter from the New York/New Jersey Foreign Freight Forwarders and Brokers Association, Inc., dated April 20, 1998, printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Journal of Commerce, April 21, 1998]

SHIP DEREGULATION PROMISE

After three years of tortured debate, a congressional bid to curb regulation of the ocean shipping business is at a critical stage. Today, the Senate is expected to approve a bill that boosts competition and makes it easier for shipping lines and their customers to operate.

In one respect, however, this bill actually limits competition by denying freight consolidators—middlemen—full opportunity under the new law. Even with this blight, the bill deserves support. But senators should be aware of its tainted nature and the culprits who shaped it, and revisit it later to fix its shortcomings.

The shipping bill scheduled for debate today lets ocean carriers and their customers, for the first time, negotiate direct, confidential contracts—without influence from the cartels that define this business. Thus, parties in the maritime industry would enjoy the same contracting privileges as other buyers and sellers of transportation.

With one important exception.

The bill does not let ocean freight consolidators—companies that pool small export shipments, then buy space aboard

ships—sign private contracts with their customers. Confidential contracting is important to carriers and shippers because it allows them to negotiate deals free from competitors' prying eyes. If consolidators—or non-vessel-operating common carriers—do not have the same right, they could have trouble keeping customers and striking good deals.

At the time of the 1984 Shipping Act, freight consolidators were not a major industry force. Lately, however, middlemen have become an important export conduit and even a threat to the status quo. Not surprisingly, it was the major shipping lines and labor unions that teamed up to deny to consolidators private contracting privileges.

The unions are predictably doing whatever they can to hurt non-union companies. Ocean carriers take a more subtle tack, arguing that companies that don't have ships shouldn't have the same privileges as those that do.

Ultimately the carriers' arguments are just as self-serving as the unions'. Low-overhead middlemen are an important part of many industries, brokering deals, arbitraging markets and holding down prices. This sometimes exerts price pressure on higher cost operators; in this case, shipping lines. The carriers hope to deny consolidators private contracting rights to curb a competitive threat. That is wrong.

To correct this problem, Sen. Slade Gorton, R-Wash., will offer an amendment today that extends private contracting to freight consolidators. It doesn't stand much of a chance, however. Why? Because supporters say the shipping bill is a delicate compromise that could blow apart if the careful balance between carriers, shippers, ports and labor is disturbed. Part of that balance is to hammer consolidators.

Distasteful as that is, the bill is still worth passing. The basic contracting freedoms it offers are simply too important to be delayed yet again. Fortunately, some consolidators may have a way around the bill's restrictions. Shippers' associations—groups of shippers who pool their business to get better rates—have full contracting rights under the bill, so consolidators working with them may be able to sidestep the bill's restrictions.

Even so, the House should shine as much light as possible on this issue when it considers the bill, perhaps later this year. The ''delicate compromise'' argument likely will prevail there as well, but the issue still needs debating.

If the bill becomes law, lawmakers should look for a chance next year to fix the consolidator provision, a strategy the bill's chief sponsor, Sen. Kay Baley Hutchison, R-Texas, hinted at earlier this month. If deregulation is to yield real benefits, everyone must have the same right to compete, not just those who wield the biggest sticks.

SUPPORT GORTON AMENDMENT TO S. 414, THE OCEAN SHIPPING REFORM ACT OF 1998

The Transportation Intermediaries Association (TIA) urges you to support Senator Slade Gorton's amendment to the Ocean Shipping Reform Act of 1998. *Passage of the Gorton amendment April 21 is essential to permit the benefits of deregulation to flow to small business as well as large business.*

The Ocean Shipping Reform Act of 1998 requires NVOCCs (transportation intermediaries) to publish tariffs and does not permit them to deviate from those tariffs in confidential contracts. The bill does, however, permit the ocean carriers to deviate from tariffs by entering into confidential contracts. The Gorton amendment will permit both carriers and transportation intermediaries to offer confidential contracts to shippers.

This issue is important, because while large shippers can enter into direct negotiations with ocean carriers, small shippers usually deal with transportation intermediaries to arrange for their transportation. S. 414 as it is currently written will permit large shippers to know what their small competitors pay for ocean freight, while the small competitor will not know what the large shipper is paying. *The benefits of deregulation in S. 414, therefore, will flow only to big business!* Senator Gorton's amendment will permit all shippers to benefit from ocean carrier deregulation through the right to confidential contracting for ocean freight transportation.

Transportation intermediaries have the ability to enter into confidential contracts with their shipper customers and with motor carriers, railroads, and airlines. Forwarders based in other countries can enter into confidential contracts for ocean carriage anywhere in the world except to or from the U.S. *It is baffling why the Senate would treat U.S. ocean carriage differently than other modes of transportation and ocean carriage everywhere else in the world. It will be American small businesses that suffer because of this distinction.*

TIA is the leading organization of North American transportation intermediaries. TIA is the only organization representing transportation intermediaries of all disciplines. The members of TIA include: international forwarders, NVOCCs, property brokers, domestic freight forwarders, air forwarders, intermodal marketing companies, perishable commodity brokers, and logistics management companies. TIA also provides management services for the American International Freight Association (AIFA), a leading organization of NVOCCs. AIFA is the U.S. representative of FIATA, an international organization of more than 30,000 freight forwarders.

For further information, contact TIA's Government Affairs Manager Ed Mortimer at (703) 329–1895. *Show your support for small business. Vote ''YES'' for the Gorton amendment.*

NEW YORK/NEW JERSEY FOREIGN FREIGHT FORWARDERS AND BROKERS, ASSOCIATION, INC.,

April 20, 1998.

Hon. BOB GRAHAM,
U.S. Senator, Senate Office Building, Washington, DC.

Re: S. 414: The ''Gorton Amendment''—Votes YES for Small Business and US Exports

DEAR SENATOR GRAHAM: On Tuesday morning S. 414 will come before the Senate and Senator Slade Gorton will offer an amendment on behalf of small exporters and shippers. Members of the New York/New Jersey Foreign Freight Forwarders & Brokers Association, Inc. encourage you to vote YES on the Gorton Amendment and help make the Ocean Shipping Reform Act true ''reform'' for small business and US exports.

S. 414 is about international trade. The Gorton Amendment is about whether the small guy is going to benefit from this legislation or suffer as a result of special interests. Voting YES on the Gorton Amendment will help to protect in the global commerce of the 21st Century the 70% of U.S. exports that small shippers produce. The Gorton Amendment helps ensure that the small shipper and business will be able to compete by enabling the freight consolidator (NVOCC), who works on behalf of smaller shippers, to sign confidential contracts with the shipper-client. Without the Gorton Amendment, large multi-national companies, that don't use NVOCCs, would be able to sign confidential contracts with the steamship companies—but since the NVOCCs would not be able to sign contracts with their shipper-clients, small business' transportation costs will NOT be confidential—unlike their larger competitors. This is not reform.

The ironic twist to this debate is that the Senate Commerce Committee initially recommended that NVOCCs be able to sign contacts with shippers—but longshore labor and some carriers used the legislative process to advance their dislike for consolidators—and small shippers. As it stands now, S. 414 would please labor, large shippers and carriers, and place the small shipper at a severe disadvantage and impede the entry of small business in the global marketplace. The question is simple: Do you support small business? The Gorton Amendment helps to right the wrong done to small shippers. We urge you to support small business and vote YES of on the Gorton Amendment.

Very truly yours,

LOUIS POLICASTRO,
Vice President, Export Committee.

Mr. BREAUX. Mr. President, I would just, as we move toward a vote on this measure, make one other comment, and that is that it is very clear that there is a great deal of support for the current bill that is on the floor. And there is pretty much across-the-board opposition to the amendment that Senator GORTON is offering. And it is across the board in the sense that it is opposed by all segments of the industry.

I want to have printed in the RECORD, and ask unanimous consent to do so, a letter addressed to myself in opposition to the Gorton amendment.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

SUPPORTERS OF S. 414.

Arlington, VA, March 11, 1998.

Re Opposition to Senator Gorton Amendment.

Hon. JOHN B. BREAUX,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR BREAUX: We wish to convey to you our full support for the managers' floor amendment for S. 414, The Ocean Shipping Reform Act of 1998, without additional amendments. It represents a carefully crafted compromise serving a broad cross section of the maritime industry including importers/exporters, ports, carriers, and labor.

We understand that Senator Slade Gorton plans to offer an amendment to S. 414 managers floor amendment that would alter current law and allow non-vessel operating common carriers (NVOCCs) to offer confidential service contracts directly to the proprietary owners of the cargo. Some interests have argued that the retention of current law would disadvantage smaller volume shippers who might utilize NVOCC's in order to obtain competitive rates with larger volume shippers.

However, the perceived benefits that smaller shippers might receive from the ability of NVOCCs to enter into service contracts with their customers is largely misunderstood. Under current law, NVOCCs are allowed to enter into service contracts with carriers and this can generate a significant cost savings that is passed onto shippers. This would not change under the latest version of S. 414. NVOCC's would however benefit from the provisions allowing confidentiality of certain terms in their contracts with carriers. Smaller volume shippers would also

have the option to consolidate their cargoes by joining shippers associations who may then negotiate lower rates as larger volume shippers.

Therefore, we urge you to oppose the Gorton amendment. This amendment is unnecessary and would kill legislation which has been carefully constructed by the bill's sponsors to make U.S. ocean shipping law compatible with the rest of the transportation industry and which will benefit the U.S. economy.

Sincerely,

American Association of Port Authorities; APL, Limited; Council of European and Japanese Shipowners' Associations; Crowley Maritime Corporation; Internal Longshoremen's Association; International Longshoremen's & Warehousemen's Union; The Chamber of Shipping of America; The National Industrial Transportation League; Sea-Land Service, Inc.; Transportation Trades Department, AFL–CIO.

Mr. BREAUX. The letter basically says that:

We understand that Senator Slade Gorton plans to offer an amendment . . . that would alter current law and allow non-vessel operating common carriers (NVOCCs) to offer confidential service contracts directly to the proprietary owners of the cargo. Some interests have argued that the retention of current law would disadvantage smaller volume shippers who might utilize [the non-vessel operating common carriers] in order to obtain competitive rates with larger volume shippers.

They point out:

However, the perceived benefits that smaller shippers might receive from the ability of NVOCCs to enter into service contracts with their customers is largely misunderstood. Under current law, NVOCCs are allowed to enter into service contracts with carriers and this can generate a significant cost savings that is passed onto shippers. This would not change under the latest version of S. 414. NVOCCs would however benefit from the provisions allowing confidentiality of certain terms in their contracts with carriers. Smaller volume shippers would also have the option to consolidate their cargoes by joining shippers associations who may then negotiate lower rates as larger volume shippers.

The point is pretty clear that this group opposes the amendment of the Senator from Washington. I would like to list for the RECORD the ones who have signed this letter because it indeed is significant, and that is across-the-board opposition.

It is signed by the American Association of Port Authorities; by American President Lines, Limited; by the Council of European and Japanese Shipowners' Associations; by the Crowley Maritime Corporation, a major shipping company; the International Longshoremen's Association; by The Chamber of Shipping of America; by The National Industrial Transportation League; by Sea-Land Service, one of the largest carriers in the world; by the Transportation Trades Department of the AFL-CIO.

So whether you are talking about the workers who handle the cargo, or by the port authorities who have the cargo shipped through their ports, or by the ship carriers who are actually carrying the cargo, it is pretty unanimous agreement that this is not the right thing to do.

Let us support the compromise. Everything in that compromise is a positive step forward. It may not be as much as some would want, but it is far better than the current law. It allows some more decontrol, allows some more deregulation, more competition. And that is good. But it is simply unfair to say to people who have no responsibility for owning ships or the expense of running ships that they are going to allow them to have the same advantages as a shipping company does. It simply would break the balance in this industry, which I think is very important to preserve.

I think the bill is a good bill. It took 4 years to get us to this point. These compromises were not entered into behind the scenes, but were debated on a regular basis among all the active participants. This is a good bill. It should be passed. The Gorton amendment should be tabled.

The PRESIDING OFFICER. All time has expired. Under the previous order, the question is on the Gorton amendment.

Mrs. HUTCHISON addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. I move to table the amendment and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the amendment of the Senator from Washington.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Utah (Mr. BENNETT) is necessarily absent.

Mr. FORD. I announce that the Senator from Hawaii (Mr. INOUYE) and the Senator from New York (Mr. MOYNIHAN) are necessarily absent.

I further announce that, if present and voting, the Senator from New York (Mr. MOYNIHAN) would vote ''aye.''

The result was announced—yeas 72, nays 25, as follows:

[Rollcall Vote No. 85 Leg.]

YEAS—72

Abraham	D'Amato	Inhofe
Akaka	Daschle	Johnson
Ashcroft	DeWine	Kempthorne
Baucus	Dodd	Kennedy
Biden	Dorgan	Kerrey
Bingaman	Durbin	Kerry
Bond	Faircloth	Kohl
Boxer	Feingold	Landrieu
Breaux	Feinstein	Lautenberg
Bryan	Ford	Leahy
Bumpers	Frist	Levin
Campbell	Glenn	Lieberman
Chafee	Graham	Lott
Cleland	Gregg	Lugar
Cochran	Hagel	Mack
Collins	Harkin	Mikulski
Conrad	Hatch	Moseley-Braun
Coverdell	Hollings	Murray
Craig	Hutchison	Reed
Reid	Sarbanes	Thurmond
Robb	Shelby	Torricelli
Rockefeller	Snowe	Warner
Roth	Specter	Wellstone
Santorum	Thompson	Wyden

NAYS—25

Allard	Grams	Nickles
Brownback	Grassley	Roberts
Burns	Helms	Sessions
Byrd	Hutchinson	Smith (NH)
Coats	Jeffords	Smith (OR)
Domenici	Kyl	Stevens
Enzi	McCain	Thomas
Gorton	McConnell	
Gramm	Murkowski	

NOT VOTING—3

Bennett	Inouye	Moynihan

The motion to lay on the table the amendment (No. 2287) was agreed to.

Mrs. HUTCHISON. Mr. President, I move to reconsider the vote.

Mr. COVERDELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CHANGE OF VOTE

Mr. ASHCROFT. On rollcall vote 85, I voted no. It was my intention to vote yea. Therefore, I ask unanimous consent I be permitted to have a change of my vote reflected in the RECORD. It in no way changes the outcome of the vote. I did not note it was a motion to table rather than the substance of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The foregoing tally has been changed to reflect the above order.)

Mr. HOLLINGS. Mr. President, I rise in support of the Hutchison, Lott, and Breaux amendment to S. 414. This amendment reflects a fair and reasoned compromise among the various interests affected by the bill. While I am no great fan of deregulation, I do believe that it is necessary to balance the interests affected by the bill in order not to adversely impact or destroy any particular sector. I am particularly pleased that the amendment preserves the Federal Maritime Commission (FMC) as an independent agency to oversee our waterborne foreign commerce.

As introduced and reported out of Committee, S. 414 would have merged the FMC and Surface Transportation Board (STB) into a new entity to be known as the Intermodal Transportation Board (ITB), placed within the Department of Transportation (DOT). The Hutchison, Lott, and Breaux amendment alleviates several problems with this approach.

In the first place, there are no overlaps in jurisdiction or functions between the FMC and the STB that in any way hamper effective regulation. There are simply no significant synergies between the FMC's mandate to protect U.S. international ocean commerce and the STB's responsibilities with respect to domestic railroad mergers, rate regulation, and the like. Moreover, given the two vastly different constituencies and the two entirely different systems of regulation, there would have been a continuing

struggle to determine priorities and to allocate scarce resources within a merged agency. Lastly, even though there might be some marginal savings in administrative expenses from such a merger, these would be offset by the more substantial costs of combining and relocating the two agencies. I understand that when the FMC was required by the General Services Administration to relocate in 1992, the moving costs to the government were $1 million.

The Congressional Budget Office (CBO) has determined that if the two agencies were merged, the ''ongoing costs to carry out the new board's responsibilities would be about the same as those incurred by the FMC and the STB under current law.'' Clearly then, the combining of these two agencies could not be justified by any cost savings that would accrue to the government.

I would also note that during the ocean shipping reform process, the vast majority of the commenters have supported an independent, free-standing agency to oversee our waterborne foreign commerce. Those sentiments were initially expressed by the South Carolina State Ports Authority and have subsequently been endorsed by many others. This includes the three U.S. shipping companies who otherwise supported the bill but stated that ''the Federal Maritime Commission has done a superb job,'' and ''[o]ur strong preference would be to preserve the agency's structure as an independent agency.'' Others who joined in support of an independent FMC include: the International Longshoremen's and Warehousemen's Union; the Transportation Trades Department, AFL–CIO; the National Customs Brokers & Forwarders Association of America, Inc.; the NY/NJ Foreign Freight Forwarders and Brokers Association; the Council of European and Japanese National Shipowners' Association; and the American Association of Port Authorities, as well as many individual port authorities. Further, it is my understanding that the coalition supporting this amendment supports, in toto, the retention of the FMC in its present form. A change in the agency's structure could serve to fracture that fragile coalition of support for the amendment.

Another reason I support the amendment is that merging the FMC into the STB would have sent the wrong message to our trading partners—i.e., that the new agency would be constrained from taking direct and immediate action against unfair foreign shipping practices. The FMC has been able to effectively combat unfair trading practices of foreign governments largely because of its status as an independent agency. The agency has an international reputation for aggressively and swiftly addressing restrictive shipping practices without the threat of diplomatic interference or retaliation in other sectors. In fact, I would hope that some of our other trade agencies could learn a thing or two from the FMC. Both the Department of State and DOT regularly cite the FMC's independence to persuade foreign governments that maritime issues must be addressed directly and expeditiously. In fact, Admiral Herberger, former Administrator of the Maritime Administration (MarAd), testified before the House Appropriations Subcommittee that the FMC's independent status has been critical to MarAd's success in negotiations with foreign governments. Also, in his August 5, 1997, letter to the Japanese Ministry of Transport, Secretary of Transportation Rodney Slater cited the FMC's authority to impose sanctions while urging Japan to reform its port practices.

The agency's recent actions against Japanese port restrictions are a perfect example of its successful accomplishments. The agency took decisive action to address Japanese intransigence on easing restrictions which impede the operations of U.S. carriers. As an independent agency, the FMC did not have to overcome the hurdles or various pressures imposed by other Executive branch departments within the Administration that have competing interests. And this body, by a 100 to zero vote, in S. Res. 140, endorsed the action taken by the FMC to respond to the unfair practices of Japan.

Supporting this amendment and the FMC ensures that the agency's effectiveness will not be impeded, and sends the right message to our trading partners: that the U.S. Congress endorses an aggressive stance against foreign-imposed restrictions on open competition in shipping.

I would further note that by retaining the FMC as an independent agency, the amendment alleviates the concern of some that merging the FMC and STB into a new entity could violate the Appointments Clause of the Constitution, U.S. Const. Art. II, § 2, cl. 2, to the extent that STB members would be accruing new responsibilities unrelated to those for which they were appointed and confirmed, and could accordingly subject the new agency to challenges that it is not legally constituted.

The amendment offered by Senators HUTCHISON, LOTT, and BREAUX corrects a major and potentially disastrous flaw in S. 414. I support this amendment enthusiastically.

(At the request of Mr. DASCHLE the following statement was ordered to be printed in the RECORD.)

● Mr. INOUYE. Mr. President, I would like to join my colleagues in support of the Hutchison amendment to S. 414, the Ocean Shipping Reform Act of 1998. I believe that this amendment further improves upon the bill as reported out of the Commerce Committee and takes into account and alleviates many of the concerns raised by interested parties who may be affected by the bill. As is true with all compromises, you cannot please everybody. Nonetheless, I believe this amendment represents a workable solution to the regulation of our waterborne foreign commerce and should serve us well for many years to come. I would like to commend my Chairwoman, Senator HUTCHISON, for her effort in moving this bill forward, and also thank Senators BREAUX, LOTT, and GORTON for their invaluable imput into the process.

I am pleased to note that the bill preserves antitrust immunity for the conference system which has been an integral part of our ocean transportation regime since 1916. While it may be best for everyone if the antitrust laws were applicable on a global basis, it is unrealistic to believe that we could achieve a global recognition of the value and utility of the Sherman Act. However, the Shipping Acts of 1916 and 1984 balanced the inability to apply our antitirust laws to foreign corporations, with a realistic approach allowing us to operate in comity with international shipping regulatory practices, and the need to protect our citizens from potential abuses brought on by a lack of antitrust law enforcement.

This bill, however, makes several changes to the conference system to make it more ''user-friendly'' for its shipper customers. For example, the bill requires shipping conferences to allow their members to offer rates that are different than those of the conference—so-called ''independent action.'' As a result, individual conference carriers can offer their own service contracts unimpeded by conference action. I am further pleased that the notice requirement for all independent action has been reduced from 10 business days to five calendar days. This will ensure that independently negotiated rates or service contracts will quickly become effective. I also support the prohibition against conferences requiring their members to disclose service contract negotiations.

The bill as reported out of committee treated all service contracts equally. Subsequently, there were several attempts to develop a bifurcated treatment for service contracts, with one set of rules governing carrier agreement service contracts and another dealing with individual carrier contracts. I am pleased that the current amendment returns to a version more closely resembling that which was reported out of committee and, more importantly, treating all service contracts the same. While there was some merit to the bifurcated treatment approach, it may have been very difficult to have implemented in practice.

The amendment will require that all service contracts be filed confidentially with the Commission, that they contain certain essential terms, and that a limited number of those terms be published and made available to the general public. I believe that this compromise represents the best approach to service contracting. It allows carriers and shippers a certain degree of confidentiality with respect to the bargains they have struck, while at the same time informing the general public of the types of arrangements being

made for certain commodities, for certain minimum volumes, in specific trade lanes. I also believe that the continued filing of the actual contracts with the Federal Maritime Commission (″FMC″) will enable it to monitor them and take appropriate action if necessary. It will also help the U.S. port community in monitoring trade developments and reacting accordingly.

Like many of you, I am particularly pleased to see that the amendment maintains the FMC as an independent agency overseeing the ocean transportation industry. The Commission has time and again proven its worth in administering Congress' system of regulation and combating unfair foreign shipping practices, most recently in Japan. And the Senate unanimously backed the FMC in its action to address the unfair practices of Japan in passing S. Res. 140. The Commission has developed considerable expertise in implementing the Shipping Act of 1984. It will now be able to bring this expertise to bear on the new era of ocean shipping reform engendered by this bill.

Another aspect of this bill that is particularly commendable is the new provision dealing with the disclosure of certain terms of service contracts to labor organizations. A labor organization which is party to a collective bargaining agreement that includes an ocean common carrier now has a mechanism for obtaining information concerning movements of cargo within port areas and the assignment of certain work within those areas. It is my understanding that this type of information is especially relevant to labor organizations and this bill should ensure that they will have easy access to it. This information will enable them to make sure that the terms of their collective bargaining agreement are complied with.

This amendment, in my opinion, achieves a balance in S. 414 which provides the best possible compromise among the broad array of interests in shipping. It has not been easy to balance the many disseparate interests involved, but I think that we have reached an approach which accomodates many of these interests. It fosters one of the bill's primary goals of stimulating U.S. exports through a more efficient and market-reliant ocean transportation system. It provides for a more effective system of industry oversight, regulating where we need to and not regulating where we do not. And it keeps the FMC as an independent agency, unfettered by political or other influences as it performs its critical international trade functions. I support this amendment, and urge my colleagues to do the same.●

The PRESIDING OFFICER (Mr. ROBERTS). The clerk will read S. 414 for the third time.

The legislative clerk read as follows:

A bill (S. 414) to amend the Shipping Act of 1984 to encourage competition and international shipping and growth of United States imports and exports.

The PRESIDING OFFICER. Under the previous order, the bill is passed.

The bill (S. 414), as amended, was passed, as follows:

S. 414

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Ocean Shipping Reform Act of 1998''.

SEC. 2. EFFECTIVE DATE.

Except as otherwise expressly provided in this Act, this Act and the amendments made by this Act take effect May 1, 1999.

TITLE I—AMENDMENTS TO THE SHIPPING ACT OF 1984

SEC. 101. PURPOSE.

Section 2 of the Shipping Act of 1984 (46 U.S.C. App. 1701) is amended by—

(1) striking ''and'' after the semicolon in paragraph (2);

(2) striking ''needs.'' in paragraph (3) and inserting ''needs; and'';

(3) adding at the end thereof the following:

''(4) to promote the growth and development of United States exports through competitive and efficient ocean transportation and by placing a greater reliance on the marketplace.''.

SEC. 102. DEFINITIONS.

Section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702) is amended by—

(1) striking ''the government under whose registry the vessels of the carrier operate;'' in paragraph (8) and inserting ''a government;'';

(2) striking paragraph (9) and inserting the following:

''(9) 'deferred rebate' means a return by a common carrier of any portion of freight money to a shipper as a consideration for that shipper giving all, or any portion, of its shipments to that or any other common carrier over a fixed period of time, the payment of which is deferred beyond the completion of service for which it is paid, and is made only if the shipper has agreed to make a further shipment or shipments with that or any other common carrier.'';

(3) striking paragraph (10) and redesignating paragraphs (11) through (27) as paragraphs (10) through (26);

(4) striking ''in an unfinished or semi-finished state that require special handling moving in lot sizes too large for a container,'' in paragraph (10), as redesignated;

(5) striking ''paper board in rolls, and paper in rolls.'' in paragraph (10) as redesignated and inserting ''paper and paper board in rolls or in pallet or skid-sized sheets.'';

(6) striking ''conference, other than a service contract or contract based upon time-volume rates,'' in paragraph (13) as redesignated and inserting ''agreement'';

(7) striking ''conference.'' in paragraph (13) as redesignated and inserting ''agreement and the contract provides for a deferred rebate arrangement.'';

(8) by striking ''carrier.'' in paragraph (14) as redesignated and inserting ''carrier, or in connection with a common carrier and a water carrier subject to subchapter II of chapter 135 of title 49, United States Code.'';

(9) striking paragraph (16) as redesignated and redesignating paragraphs (17) through (26) as redesignated as paragraphs (16) through (25), respectively;

(10) striking paragraph (17), as redesignated, and inserting the following:

''(17) 'ocean transportation intermediary' means an ocean freight forwarder or a non-vessel-operating common carrier. For purposes of this paragraph, the term—

''(A) 'ocean freight forwarder' means a person that—

''(i) in the United States, dispatches shipments from the United States via a common carrier and books or otherwise arranges space for those shipments on behalf of shippers; and

''(ii) processes the documentation or performs related activities incident to those shipments; and

''(B) 'non-vessel-operating common carrier' means a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier.'';

(11) striking paragraph (19), as redesignated and inserting the following:

''(19) 'service contract' means a written contract, other than a bill of lading or a receipt, between one or more shippers and an individual ocean common carrier or an agreement between or among ocean common carriers in which the shipper or shippers makes a commitment to provide a certain volume or portion of cargo over a fixed time period, and the ocean common carrier or the agreement commits to a certain rate or rate schedule and a defined service level, such as assured space, transit time, port rotation, or similar service features. The contract may also specify provisions in the event of nonperformance on the part of any party.''; and

(12) striking paragraph (21), as redesignated, and inserting the following:

''(21) 'shipper' means—

''(A) a cargo owner;

''(B) the person for whose account the ocean transportation is provided;

''(C) the person to whom delivery is to be made;

''(D) a shippers' association; or

''(E) an ocean transportation intermediary, as defined in paragraph (17)(B) of this section, that accepts responsibility for payment of all charges applicable under the tariff or service contract.''.

SEC. 103. AGREEMENTS WITHIN THE SCOPE OF THE ACT.

(a) OCEAN COMMON CARRIERS.—Section 4(a) of the Shipping Act of 1984 (46 U.S.C. App. 1703(a)) is amended by—

(1) striking ''operators or non-vessel-operating common carriers;'' in paragraph (5) and inserting ''operators;'';

(2) striking ''and'' in paragraph (6) and inserting ''or''; and

(3) striking paragraph (7) and inserting the following:

''(7) discuss and agree on any matter related to service contracts.''.

(b) MARINE TERMINAL OPERATORS.—Section 4(b) of that Act (46 U.S.C. App. 1703(b)) is amended by—

(1) striking ''(to the extent the agreements involve ocean transportation in the foreign commerce of the United States)'';

(2) striking ''and'' in paragraph (1) and inserting ''or''; and

(3) striking ''arrangements.'' in paragraph (2) and inserting ''arrangements, to the extent that such agreements involve ocean transportation in the foreign commerce of the United States.''.

SEC. 104. AGREEMENTS.

(a) IN GENERAL.—Section 5 of the Shipping Act of 1984 (46 U.S.C. App. 1704) is amended by—

(1) striking subsection (b)(8) and inserting the following:

''(8) provide that any member of the conference may take independent action on any rate or service item upon not more than 5 calendar days' notice to the conference and that, except for exempt commodities not published in the conference tariff, the conference will include the new rate or service

item in its tariff for use by that member, effective no later than 5 calendar days after receipt of the notice, and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date, in lieu of the existing conference tariff provision for that rate or service item;

(2) redesignating subsections (c) through (e) as subsections (d) through (f); and

(3) inserting after subsection (b) the following:

''(c) OCEAN COMMON CARRIER AGREEMENTS.—An ocean common carrier agreement may not—

''(1) prohibit or restrict a member or members of the agreement from engaging in negotiations for service contracts with 1 or more shippers;

''(2) require a member or members of the agreement to disclose a negotiation on a service contract, or the terms and conditions of a service contract, other than those terms or conditions required to be published under section 8(c)(3) of this Act; or

''(3) adopt mandatory rules or requirements affecting the right of an agreement member or agreement members to negotiate and enter into service contracts.

An agreement may provide authority to adopt voluntary guidelines relating to the terms and procedures of an agreement member's or agreement members' service contracts if the guidelines explicitly state the right of members of the agreement not to follow the guidelines. These guidelines shall be confidentially submitted to the Commission.''.

(b) APPLICATION.—

(1) Subsection (e) of section 5 of that Act, as redesignated, is amended by striking ''this Act, the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, do'' and inserting ''this Act does''; and

(2) Subsection (f) of section 5 of that Act, as redesignated, is amended by—

(A) striking ''and the Shipping Act, 1916, do'' and inserting ''does'';

(B) striking ''or the Shipping Act, 1916,''; and

(C) inserting ''or are essential terms of a service contract'' after ''tariff''.

SEC. 105. EXEMPTION FROM ANTITRUST LAWS.

Section 7 of the Shipping Act of 1984 (46 U.S.C. App. 1706) is amended by—

(1) inserting ''or publication'' in paragraph (2) of subsection (a) after ''filing'';

(2) striking ''or'' at the end of subsection (b)(2);

(3) striking ''States.'' at the end of subsection (b)(3) and inserting ''States; or''; and

(4) adding at the end of subsection (b) the following:

''(4) to any loyalty contract.''.

SEC. 106. TARIFFS.

(a) IN GENERAL.—Section 8(a) of the Shipping Act of 1984 (46 U.S.C. App. 1707(a)) is amended by—

(1) inserting ''new assembled motor vehicles,'' after ''scrap,'' in paragraph (1);

(2) striking ''file with the Commission, and'' in paragraph (1);

(3) striking ''inspection,'' in paragraph (1) and inserting ''inspection in an automated tariff system,'';

(4) striking ''tariff filings'' in paragraph (1) and inserting ''tariffs'';

(5) striking ''freight forwarder'' in paragraph (1)(C) and inserting ''transportation intermediary, as defined in section 3(17)(A),'';

(6) striking ''and'' at the end of paragraph (1)(D);

(7) striking ''loyalty contract,'' in paragraph (1)(E);

(8) striking ''agreement.'' in paragraph (1)(E) and inserting ''agreement; and'';

(9) adding at the end of paragraph (1) the following:

''(F) include copies of any loyalty contract, omitting the shipper's name.''; and

(10) striking paragraph (2) and inserting the following:

''(2) Tariffs shall be made available electronically to any person, without time, quantity, or other limitation, through appropriate access from remote locations, and a reasonable charge may be assessed for such access. No charge may be assessed a Federal agency for such access.''.

(b) SERVICE CONTRACTS.—Subsection (c) of that section is amended to read as follows:

''(c) SERVICE CONTRACTS.—

''(1) IN GENERAL.—An individual ocean common carrier or an agreement between or among ocean common carriers may enter into a service contract with one or more shippers subject to the requirements of this Act. The exclusive remedy for a breach of a contract entered into under this subsection shall be an action in an appropriate court, unless the parties otherwise agree. In no case may the contract dispute resolution forum be controlled by or in any way affiliated with a controlled carrier as defined in section 3(8) of this Act, or by the government which owns or controls the carrier.

''(2) FILING REQUIREMENTS.—Except for service contracts dealing with bulk cargo, forest products, recycled metal scrap, new assembled motor vehicles, waste paper, or paper waste, each contract entered into under this subsection by an individual ocean common carrier or an agreement shall be filed confidentially with the Commission. Each service contract shall include the following essential terms—

''(A) the origin and destination port ranges;

''(B) the origin and destination geographic areas in the case of through intermodal movements;

''(C) the commodity or commodities involved;

''(D) the minimum volume or portion;

''(E) the line-haul rate;

''(F) the duration;

''(G) service commitments; and

''(H) the liquidated damages for nonperformance, if any.

''(3) PUBLICATION OF CERTAIN TERMS.—When a service contract is filed confidentially with the Commission, a concise statement of the essential terms described in paragraphs 2 (A), (C), (D), and (F) shall be published and made available to the general public in tariff format.

''(4) DISCLOSURE OF CERTAIN TERMS.—

''(A) An ocean common carrier, which is a party to or is subject to the provisions of a collective bargaining agreement with a labor organization, shall, in response to a written request by such labor organization, state whether it is responsible for the following work at dock areas and within port areas in the United States with respect to cargo transportation under a service contract described in paragraph (1) of this subsection—

''(i) the movement of the shipper's cargo on a dock area or within the port area or to or from railroad cars on a dock area or within the port area;

''(ii) the assignment of intraport carriage of the shipper's cargo between areas on a dock or within the port area;

''(iii) the assignment of the carriage of the shipper's cargo between a container yard on a dock area or within the port area and a rail yard adjacent to such container yard; and

''(iv) the assignment of container freight station work and container maintenance and repair work performed at a dock area or within the port area.

''(B) The common carrier shall provide the information described in subparagraph (A) of this paragraph to the requesting labor organization within a reasonable period of time.

''(C) This paragraph requires the disclosure of information by an ocean common carrier only if there exists an applicable and otherwise lawful collective bargaining agreement which pertains to that carrier. No disclosure made by an ocean common carrier shall be deemed to be an admission or agreement that any work is covered by a collective bargaining agreement. Any dispute regarding whether any work is covered by a collective bargaining agreement and the responsibility of the ocean common carrier under such agreement shall be resolved solely in accordance with the dispute resolution procedures contained in the collective bargaining agreement and the National Labor Relations Act, and without reference to this paragraph.

''(D) Nothing in this paragraph shall have any effect on the lawfulness or unlawfulness under this Act, the National Labor Relations Act, the Taft-Hartley Act, the Federal Trade Commission Act, the antitrust laws, or any other Federal or State law, or any revisions or amendments thereto, of any collective bargaining agreement or element thereof, including any element that constitutes an essential term of a service contract under this subsection.

''(E) For purposes of this paragraph the terms 'dock area' and 'within the port area' shall have the same meaning and scope as in the applicable collective bargaining agreement between the requesting labor organization and the carrier.''.

(c) RATES.—Subsection (d) of that section is amended by—

(1) striking the subsection caption and inserting ''(d) TARIFF RATES.—'';

(2) striking ''30 days after filing with the Commission.'' in the first sentence and inserting ''30 calendar days after publication.'';

(3) inserting ''calendar'' after ''30'' in the next sentence; and

(4) striking ''publication and filing with the Commission.'' in the last sentence and inserting ''publication.''.

(d) REFUNDS.—Subsection (e) of that section is amended by—

(1) striking ''tariff of a clerical or administrative nature or an error due to inadvertence'' in paragraph (1) and inserting a comma; and

(2) striking ''file a new tariff,'' in paragraph (1) and inserting ''publish a new tariff, or an error in quoting a tariff,'';

(3) striking ''refund, filed a new tariff with the Commission'' in paragraph (2) and inserting ''refund for an error in a tariff or a failure to publish a tariff, published a new tariff'';

(4) inserting ''and'' at the end of paragraph (2); and

(5) striking paragraph (3) and redesignating paragraph (4) as paragraph (3).

(e) MARINE TERMINAL OPERATOR SCHEDULES.—Subsection (f) of that section is amended to read as follows:

''(f) MARINE TERMINAL OPERATOR SCHEDULES.—A marine terminal operator may make available to the public, subject to section 10(d) of this Act, a schedule of rates, regulations, and practices pertaining to receiving, delivering, handling, or storing property at its marine terminal. Any such schedule made available to the public shall be enforceable by an appropriate court as an implied contract without proof of actual knowledge of its provisions.''.

(f) AUTOMATED TARIFF SYSTEM REQUIREMENTS; FORM.—Section 8 of that Act is amended by adding at the end the following:

''(g) REGULATIONS.—The Commission shall by regulation prescribe the requirements for the accessibility and accuracy of automated tariff systems established under this section. The Commission may, after periodic review,

prohibit the use of any automated tariff system that fails to meet the requirements established under this section. The Commission may not require a common carrier to provide a remote terminal for access under subsection (a)(2). The Commission shall by regulation prescribe the form and manner in which marine terminal operator schedules authorized by this section shall be published.''.

SEC. 107. AUTOMATED TARIFF FILING AND INFORMATION SYSTEM.

Section 502 of the High Seas Driftnet Fisheries Enforcement Act (46 U.S.C. App. 1707a) is repealed.

SEC. 108. CONTROLLED CARRIERS.

Section 9 of the Shipping Act of 1984 (46 U.S.C. App. 1708) is amended by—

(1) striking ''service contracts filed with the Commission'' in the first sentence of subsection (a) and inserting ''service contracts, or charge or assess rates,'';

(2) striking ''or maintain'' in the first sentence of subsection (a) and inserting ''maintain, or enforce'';

(3) striking ''disapprove'' in the third sentence of subsection (a) and inserting ''prohibit the publication or use of''; and

(4) striking ''filed by a controlled carrier that have been rejected, suspended, or disapproved by the Commission'' in the last sentence of subsection (a) and inserting ''that have been suspended or prohibited by the Commission'';

(5) striking ''may take into account appropriate factors including, but not limited to, whether—'' in subsection (b) and inserting ''shall take into account whether the rates or charges which have been published or assessed 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. For purposes of the preceding sentence, 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. The Commission may also take into account other appropriate factors, including but not limited to, whether—'';

(6) striking paragraph (1) of subsection (b) and redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively;

(7) striking ''filed'' in paragraph (1) as redesignated and inserting ''published or assessed'';

(8) striking ''filing with the Commission.'' in subsection (c) and inserting ''publication.'';

(9) striking ''DISAPPROVAL OF RATES.—'' in subsection (d) and inserting ''PROHIBITION OF RATES.—Within 120 days after the receipt of information requested by the Commission under this section, the Commission shall determine whether the rates, charges, classifications, rules, or regulations of a controlled carrier may be unjust and unreasonable.'';

(10) striking ''filed'' in subsection (d) and inserting ''published or assessed'';

(11) striking ''may issue'' in subsection (d) and inserting ''shall issue'';

(12) striking ''disapproved.'' in subsection (d) and inserting ''prohibited.'';

(13) striking ''60'' in subsection (d) and inserting ''30'';

(14) inserting ''controlled'' after ''affected'' in subsection (d);

(15) striking ''file'' in subsection (d) and inserting ''publish'';

(16) striking ''disapproval'' in subsection (e) and inserting ''prohibition'';

(17) inserting ''or'' after the semicolon in subsection (f)(1);

(18) striking paragraphs (2), (3), and (4) of subsection (f); and

(19) redesignating paragraph (5) of subsection (f) as paragraph (2).

SEC. 109. PROHIBITED ACTS.

(a) Section 10(b) of the Shipping Act of 1984 (46 U.S.C. App. 1709(b)) is amended by—

(1) striking paragraphs (1) through (3);

(2) redesignating paragraph (4) as paragraph (1);

(3) inserting after paragraph (1), as redesignated, the following:

''(2) provide service in the liner trade that—

''(A) is not in accordance with the rates, charges, classifications, rules, and practices contained in a tariff published or a service contract entered into under section 8 of this Act unless excepted or exempted under section 8(a)(1) or 16 of this Act; or

''(B) is under a tariff or service contract which has been suspended or prohibited by the Commission under section 9 of this Act or the Foreign Shipping Practices Act of 1988 (46 U.S.C. App. 1710a);'';

(4) redesignating paragraphs (5) and (6) as paragraphs (3) and (4), respectively;

(5) striking ''except for service contracts,'' in paragraph (4), as redesignated, and inserting ''for service pursuant to a tariff,'';

(6) striking ''rates;'' in paragraph (4)(A), as redesignated, and inserting ''rates or charges;'';

(7) inserting after paragraph (4), as redesignated, the following:

''(5) for service pursuant to a service contract, engage in any unfair or unjustly discriminatory practice in the matter of rates or charges with respect to any port;'';

(8) redesignating paragraphs (7) and (8) as paragraphs (6) and (7), respectively;

(9) striking paragraph (6) as redesignated and inserting the following:

''(6) use a vessel or vessels in a particular trade for the purpose of excluding, preventing, or reducing competition by driving another ocean common carrier out of that trade;'';

(10) striking paragraphs (9) through (13) and inserting the following:

''(8) for service pursuant to a tariff, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage;

''(9) for service pursuant to a service contract, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any port;

''(10) unreasonably refuse to deal or negotiate;'';

(11) redesignating paragraphs (14), (15), and (16) as paragraphs (11), (12), and (13), respectively;

(12) striking ''a non-vessel-operating common carrier'' in paragraphs (11) and (12) as redesignated and inserting ''an ocean transportation intermediary'';

(13) striking ''sections 8 and 23'' in paragraphs (11) and (12) as redesignated and inserting ''sections 8 and 19'';

(14) striking ''or in which an ocean transportation intermediary is listed as an affiliate'' in paragraph (12), as redesignated;

(15) striking ''Act;'' in paragraph (12), as redesignated, and inserting ''Act, or with an affiliate of such ocean transportation intermediary;''

(16) striking ''paragraph (16)'' in the matter appearing after paragraph (13), as redesignated, and inserting ''paragraph (13)''; and

(17) inserting ''the Commission,'' after ''United States,'' in such matter.

(b) Section 10(c) of the Shipping Act of 1984 (46 U.S.C. App. 1709(c)) is amended by—

(1) striking ''non-ocean carriers'' in paragraph (4) and inserting ''non-ocean carriers, unless such negotiations and any resulting agreements are not in violation of the antitrust laws and are consistent with the purposes of this Act'';

(2) striking ''freight forwarder'' in paragraph (5) and inserting ''transportation intermediary, as defined by section 3(17)(A) of this Act,'';

(3) striking ''or'' at the end of paragraph (5);

(4) striking ''contract.'' in paragraph (6) and inserting ''contract;''; and

(5) adding at the end the following:

''(7) for service pursuant to a service contract, engage in any unjustly discriminatory practice in the matter of rates or charges with respect to any locality, port, or persons due to those persons' status as shippers' associations or ocean transportation intermediaries; or

''(8) for service pursuant to a service contract, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any locality, port, or persons due to those persons' status as shippers' associations or ocean transportation intermediaries;''.

(c) Section 10(d) of the Shipping Act of 1984 (46 U.S.C. App. 1709(d)) is amended by—

(1) striking ''freight forwarders,'' and inserting ''transportation intermediaries,'';

(2) striking ''freight forwarder,'' in paragraph (1) and inserting ''transportation intermediary,'';

(3) striking ''subsection (b)(11), (12), and (16)'' and inserting ''subsections (b)(10) and (13)''; and

(4) adding at the end thereof the following:

''(4) No marine terminal operator may give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any person.

''(5) The prohibition in subsection (b)(13) of this section applies to ocean transportation intermediaries, as defined by section 3(17)(A) of this Act.''.

SEC. 110. COMPLAINTS, INVESTIGATIONS, REPORTS, AND REPARATIONS.

Section 11(g) of the Shipping Act of 1984 (46 U.S.C. App. 1710(g)) is amended by—

(1) striking ''section 10(b)(5) or (7)'' and inserting ''section 10(b)(3) or (6)''; and

(2) striking ''section 10(b)(6)(A) or (B)'' and inserting ''section 10(b)(4)(A) or (B).''.

SEC. 111. FOREIGN SHIPPING PRACTICES ACT OF 1988.

Section 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. App. 1710a) is amended by—

(1) striking '' 'non-vessel-operating common carrier','' in subsection (a)(1) and inserting '' 'ocean transportation intermediary','';

(2) striking ''forwarding and'' in subsection (a)(4);

(3) striking ''non-vessel-operating common carrier'' in subsection (a)(4) and inserting ''ocean transportation intermediary services and'';

(4) striking ''freight forwarder,'' in subsections (c)(1) and (d)(1) and inserting ''transportation intermediary,'';

(5) striking ''filed with the Commission,'' in subsection (e)(1)(B) and inserting ''and service contracts,'';

(6) inserting ''and service contracts'' after ''tariffs'' the second place it appears in subsection (e)(1)(B); and

(7) striking ''(b)(5)'' each place it appears in subsection (h) and inserting ''(b)(6)''.

SEC. 112. PENALTIES.

(a) Section 13(a) of the Shipping Act of 1984 (46 U.S.C. App. 1712(a)) is amended by adding at the end thereof the following: ''The amount of any penalty imposed upon a common carrier under this subsection shall constitute a lien upon the vessels operated by that common carrier and any such vessel

may be libeled therefore in the district court of the United States for the district in which it may be found.''.

(b) Section 13(b) of the Shipping Act of 1984 (46 U.S.C. App. 1712(b)) is amended by—

(1) striking ''section 10(b)(1), (2), (3), (4), or (8)'' in paragraph (1) and inserting ''section 10(b)(1), (2), or (7)'';

(2) by redesignating paragraphs (4), (5), and (6) as paragraphs (5), (6), and (7), respectively;

(3) inserting before paragraph (5), as redesignated, the following:

''(4) If the Commission finds, after notice and an opportunity for a hearing, that a common carrier has failed to supply information ordered to be produced or compelled by subpoena under section 12 of this Act, the Commission may request that the Secretary of the Treasury refuse or revoke any clearance required for a vessel operated by that common carrier. Upon request by the Commission, the Secretary of the Treasury shall, with respect to the vessel concerned, refuse or revoke any clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91).''; and

(4) striking ''paragraphs (1), (2), and (3)'' in paragraph (6), as redesignated, and inserting ''paragraphs (1), (2), (3), and (4)''.

(c) Section 13(f)(1) of the Shipping Act of 1984 (46 U.S.C. App. 1712(f)(1)) is amended by—

(1) striking ''or (b)(4)'' and inserting ''or (b)(2)'';

(2) striking ''(b)(1), (4)'' and inserting ''(b)(1), (2)''; and

(3) adding at the end thereof the following ''Neither the Commission nor any court shall order any person to pay the difference between the amount billed and agreed upon in writing with a common carrier or its agent and the amount set fourth in any tariff or service contract by that common carrier for the transportation service provided.''.

SEC. 113. REPORTS AND CERTIFICATES.

Section 15 of the Shipping Act of 1984 (46 U.S.C. App. 1714) is amended by—

(1) striking ''and certificates'' in the section heading;

(2) striking ''(a) REPORTS.—'' in the subsection heading for subsection (a); and

(3) striking subsection (b).

SEC. 114. EXEMPTIONS.

Section 16 of the Shipping Act of 1984 (46 U.S.C. App. 1715) is amended by striking ''substantially impair effective regulation by the Commission, be unjustly discriminatory, result in a substantial reduction in competition, or be detrimental to commerce.'' and inserting ''result in substantial reduction in competition or be detrimental to commerce.''.

SEC. 115. AGENCY REPORTS AND ADVISORY COMMISSION.

Section 18 of the Shipping Act of 1984 (46 U.S.C. App. 1717) is repealed.

SEC. 116. OCEAN FREIGHT FORWARDERS.

Section 19 of the Shipping Act of 1984 (46 U.S.C. App. 1718) is amended by—

(1) striking ''freight forwarders'' in the section caption and inserting ''transportation intermediaries'';

(2) striking subsection (a) and inserting the following:

''(a) LICENSE.—No person in the United States may act as an ocean transportation intermediary unless that person holds a license issued by the Commission. The Commission shall issue an intermediary's license to any person that the Commission determines to be qualified by experience and character to act as an ocean transportation intermediary.'';

(3) redesignating subsections (b), (c), and (d) as subsections (c), (d), and (e), respectively;

(4) inserting after subsection (a) the following:

''(b) FINANCIAL RESPONSIBILITY.—

''(1) No person may act as an ocean transportation intermediary unless that person furnishes a bond, proof of insurance, or other surety in a form and amount determined by the Commission to insure financial responsibility that is issued by a surety company found acceptable by the Secretary of the Treasury.

''(2) A bond, insurance, or other surety obtained pursuant to this section—

''(A) shall be available to pay any order for reparation issued pursuant to section 11 or 14 of this Act, or any penalty assessed pursuant to section 13 of this Act;

''(B) may be available to pay any claim against an ocean transportation intermediary arising from its transportation-related activities described in section 3(17) of this Act with the consent of the insured ocean transportation intermediary and subject to review by the surety company, or when the claim is deemed valid by the surety company after the ocean transportation intermediary has failed to respond to adequate notice to address the validity of the claim; and

''(C) shall be available to pay any judgment for damages against an ocean transportation intermediary arising from its transportation-related activities under section 3(17) of this Act, provided the claimant has first attempted to resolve the claim pursuant to subparagraph (B) of this paragraph and the claim has not been resolved within a reasonable period of time.

''(3) The Commission shall prescribe regulations for the purpose of protecting the interests of claimants, ocean transportation intermediaries, and surety companies with respect to the process of pursuing claims against ocean transportation intermediary bonds, insurance, or sureties through court judgments. The regulations shall provide that a judgment for monetary damages may not be enforced except to the extent that the damages claimed arise from the transportation-related activities of the insured ocean transportation intermediary, as defined by the Commission.

''(4) An ocean transportation intermediary not domiciled in the United States shall designate a resident agent in the United States for receipt of service of judicial and administrative process, including subpoenas.'';

(5) striking, each place such term appears—

(A) ''freight forwarder'' and inserting ''transportation intermediary'';

(B) ''a forwarder's'' and inserting ''an intermediary's'';

(C) ''forwarder'' and inserting ''intermediary''; and

(D) ''forwarding'' and inserting ''intermediary'';

(6) striking ''a bond in accordance with subsection (a)(2).'' in subsection (c), as redesignated, and inserting ''a bond, proof of insurance, or other surety in accordance with subsection (b)(1).'';

(7) striking ''FORWARDERS.—'' in the caption of subsection (e), as redesignated, and inserting ''INTERMEDIARIES.—'';

(8) striking ''intermediary'' the first place it appears in subsection (e)(1), as redesignated and as amended by paragraph (5)(A), and inserting ''intermediary, as defined in section 3(17)(A) of this Act,'';

(9) striking ''license'' in paragraph (1) of subsection (e), as redesignated, and inserting ''license, if required by subsection (a),'';

(10) striking paragraph (3) of subsection (e), as redesignated, and redesignating paragraph (4) as paragraph (3); and

(11) adding at the end of subsection (e), as redesignated, the following:

''(4) No conference or group of 2 or more ocean common carriers in the foreign commerce of the United States that is authorized to agree upon the level of compensation paid to an ocean transportation intermediary, as defined in section 3(17)(A) of this Act, may—

''(A) deny to any member of the conference or group the right, upon notice of not more than 5 calendar days, to take independent action on any level of compensation paid to an ocean transportation intermediary, as so defined; or

''(B) agree to limit the payment of compensation to an ocean transportation intermediary, as so defined, to less than 1.25 percent of the aggregate of all rates and charges which are applicable under a tariff and which are assessed against the cargo on which the intermediary services are provided.''.

SEC. 117. CONTRACTS, AGREEMENTS, AND LICENSES UNDER PRIOR SHIPPING LEGISLATION.

Section 20 of the Shipping Act of 1984 (46 U.S.C. App. 1719) is amended by—

(1) striking subsection (d) and inserting the following:

''(d) EFFECTS ON CERTAIN AGREEMENTS AND CONTRACTS.—All agreements, contracts, modifications, licenses, and exemptions previously issued, approved, or effective under the Shipping Act, 1916, or the Shipping Act of 1984, shall continue in force and effect as if issued or effective under this Act, as amended by the Ocean Shipping Reform Act of 1998, and all new agreements, contracts, and modifications to existing, pending, or new contracts or agreements shall be considered under this Act, as amended by the Ocean Shipping Reform Act of 1998.'';

(2) inserting the following at the end of subsection (e):

''(3) The Ocean Shipping Reform Act of 1998 shall not affect any suit—

''(A) filed before the effective date of that Act; or

''(B) with respect to claims arising out of conduct engaged in before the effective date of that Act filed within 1 year after the effective date of that Act.

''(4) Regulations issued by the Federal Maritime Commission shall remain in force and effect where not inconsistent with this Act, as amended by the Ocean Shipping Reform Act of 1998.''.

SEC. 118. SURETY FOR NON-VESSEL-OPERATING COMMON CARRIERS.

Section 23 of the Shipping Act of 1984 (46 U.S.C. App. 1721) is repealed.

TITLE II—AUTHORIZATION OF APPROPRIATIONS FOR THE FEDERAL MARITIME COMMISSION

SEC. 201. AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 1998.

There are authorized to be appropriated to the Federal Maritime Commission, $15,000,000 for fiscal year 1998.

SEC. 202. FEDERAL MARITIME COMMISSION ORGANIZATION.

Section 102(d) of Reorganization Plan No. 7 of 1961 (75 Stat. 840) is amended to read as follows:

''(d) A vacancy or vacancies in the membership of Commission shall not impair the power of the Commission to execute its functions. The affirmative vote of a majority of the members serving on the Commission is required to dispose of any matter before the Commission.''.

SEC. 203. REGULATIONS.

Not later than March 1, 1999, the Federal Maritime Commission shall prescribe final regulations to implement the changes made by this Act.

TITLE III—AMENDMENTS TO OTHER SHIPPING AND MARITIME LAWS

SEC. 301. AMENDMENTS TO SECTION 19 OF THE MERCHANT MARINE ACT, 1920.

(a) IN GENERAL.—Section 19 of the Merchant Marine Act, 1920 (46 U.S.C. App. 876) is amended by—

(1) striking ''forwarding and'' in subsection (1)(b);

(2) striking ''non-vessel-operating common carrier operations,'' in subsection (1)(b) and inserting ''ocean transportation intermediary services and operations,'';

(3) striking ''methods or practices'' and inserting ''methods, pricing practices, or other practices'' in subsection (1)(b);

(4) striking ''tariffs of a common carrier'' in subsection 7(d) and inserting ''tariffs and service contracts of a common carrier'';

(5) striking ''use the tariffs of conferences'' in subsections (7)(d) and (9)(b) and inserting ''use tariffs of conferences and service contracts of agreements'';

(6) striking ''tariffs filed with the Commission'' in subsection (9)(b) and inserting ''tariffs and service contracts'';

(7) striking ''freight forwarder,'' each place it appears and inserting ''transportation intermediary,''; and

(8) striking ''tariff'' each place it appears in subsection (11) and inserting ''tariff or service contract''.

(b) STYLISTIC CONFORMITY.—Section 19 of the Merchant Marine Act, 1920 (46 U.S.C. App. 876), as amended by subsection (a), is further amended by—

(1) redesignating subdivisions (1) through (12) as subsections (a) through (l), respectively;

(2) redesignating subdivisions (a), (b), and (c) of subsection (a), as redesignated, as paragraphs (1), (2), and (3);

(3) redesignating subdivisions (a) through (d) of subsection (f), as redesignated, as paragraphs (1) through (4), respectively;

(4) redesignating subdivisions (a) through (e) of subsection (g), as redesignated, as paragraphs (1) through (5), respectively;

(5) redesignating clauses (i) and (ii) of subsection (g)(4), as redesignated, as subparagraphs (A) and (B), respectively;

(6) redesignating subdivisions (a) through (e) of subsection (i), as redesignated, as paragraphs (1) through (5), respectively;

(7) redesignating subdivisions (a) and (b) of subsection (j), as redesignated, as paragraphs (1) and (2), respectively;

(8) striking ''subdivision (c) of paragraph (1)'' in subsection (c), as redesignated, and inserting ''subsection (a)(3)'';

(9) striking ''paragraph (2)'' in subsection (c), as redesignated, and inserting ''subsection (b)'';

(10) striking ''paragraph (1)(b)'' each place it appears and inserting ''subsection (a)(2)'';

(11) striking ''subdivision (b),'' in subsection (g)(4), as redesignated, and inserting ''paragraph (2),'';

(12) striking ''paragraph (9)(d)'' in subsection (j)(1), as redesignated, and inserting ''subsection (i)(4)''; and

(13) striking ''paragraph (7)(d) or (9)(b)'' in subsection (k), as redesignated, and inserting ''subsection (g)(4) or (i)(2)''.

SEC. 302. TECHNICAL CORRECTIONS.

(a) PUBLIC LAW 89–777.—Sections 2 and 3 of the Act of November 6, 1966 (46 U.S.C. App. 817d and 817e) are amended by striking ''they in their discretion'' each place it appears and inserting ''it in its discretion''.

(b) TARIFF ACT OF 1930.—Section 641(i) of the Tariff Act of 1930 (19 U.S.C. 1641) is repealed.

TITLE IV—MERCHANT MARINER BENEFITS.

SEC. 401. MERCHANT MARINER BENEFITS.

(a) BENEFITS.—Part G of subtitle II, title 46, United States Code, is amended by adding at the end the following new chapter:

''CHAPTER 112—MERCHANT MARINER BENEFITS

''§ 11201. Qualified service

''For purposes of this chapter, a person engaged in qualified service if, between August 16, 1945, and December 31, 1946, the person—

''(1) was a member of the United States merchant marine (including the Army Transport Service and the Naval Transportation Service) serving as a crewmember of a vessel that was—

''(A) operated by the War Shipping Administration or the Office of Defense Transportation (or an agent of the Administration or Office);

''(B) operated in waters other than inland waters, the Great Lakes, other lakes, bays, and harbors of the United States;

''(C) under contract or charter to, or property of, the Government of the United States; and

''(D) serving the Armed Forces; and

''(2) while so serving, was licensed or otherwise documented for service as a crewmember of such a vessel by an officer or employee of the United States authorized to license or document the person for such service.

''§ 11202. Documentation of qualified service

''(a) RECORD OF SERVICE.—The Secretary, or in the case of personnel of the Army Transport Service or the Naval Transport Service, the Secretary of Defense, shall, upon application—

''(1) issue a certificate of honorable discharge to a person who, as determined by the respective Secretary, engaged in qualified service of a nature and duration that warrants issuance of the certificate; and

''(2) correct, or request the appropriate official of the Federal Government to correct, the service records of the person to the extent necessary to reflect the qualified service and the issuance of the certificate of honorable discharge.

''(b) TIMING OF DOCUMENTATION.—The respective Secretary shall take action on an application under subsection (a) not later than one year after the respective Secretary receives the application.

''(c) STANDARDS RELATING TO SERVICE.—In making a determination under subsection (a)(1), the respective Secretary shall apply the same standards relating to the nature and duration of service that apply to the issuance of honorable discharges under section 401(a)(1)(B) of the GI Bill Improvement Act of 1977 (38 U.S.C. 106 note).

''(d) CORRECTION OF RECORDS.—An official of the Federal Government who is requested to correct service records under subsection (a)(2) shall do so.

''§ 11203. Eligibility for certain veterans' benefits

''(a) ELIGIBILITY.—

''(1) IN GENERAL.—The qualified service of an individual referred to in paragraph (2) is deemed to be active duty in the Armed Forces during a period of war for purposes of eligibility for benefits under chapters 23 and 24 of title 38.

''(2) COVERED INDIVIDUALS.—Paragraph (1) applies to an individual who—

''(A) receives an honorable discharge certificate under section 11202 of this title; and

''(B) is not eligible under any other provision of law for benefits under laws administered by the Secretary of Veterans Affairs.

''(b) REIMBURSEMENT FOR BENEFITS PROVIDED.—The Secretary shall reimburse the Secretary of Veterans Affairs for the value of benefits that the Secretary of Veterans Affairs provides for an individual by reason of eligibility under this section.

''(c) PROSPECTIVE APPLICABILITY.—An individual is not entitled to receive, and may not receive, benefits under this chapter for any period before the date of enactment of this chapter.

''§ 11204. Processing fees

''(a) COLLECTION OF FEES.—The Secretary, or in the case of personnel of the Army Transport Service or the Naval Transport Service, the Secretary of Defense, shall collect a fee of $30 from each applicant for processing an application submitted under section 11202(a) of this title.

''(b) TREATMENT OF FEES COLLECTED.—Amounts received by the respective Secretary under this section shall be deposited in the general fund of the Treasury as offsetting receipts of the department in which the Coast Guard is operating and ascribed to Coast Guard activities, or in the case of fees collected for processing discharges from the Army Transport Service or the Naval Transport Service, deposited in the general fund of the Treasury as offsetting receipts of the Department of Defense, and shall be available subject to appropriation for the administrative costs for processing such applications.''.

(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of subtitle II of title 46, United States Code, is amended by inserting after the item relating to chapter 111 the following:

TITLE V—CERTAIN LOAN GUARANTEES AND COMMITMENTS

SEC. 501. CERTAIN LOAN GUARANTEES AND COMMITMENTS.

(a) The Secretary of Transportation may not issue a guarantee or commitment to guarantee a loan for the construction, reconstruction, or reconditioning of a liner vessel under the authority of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.) after the date of enactment of this Act unless the Chairman of the Federal Maritime Commission certifies that the operator of such vessel—

(1) has not been found by the Commission to have violated section 19 of the Merchant Marine Act, 1920 (46 U.S.C. App. 876), or the Foreign Shipping Practices Act of 1988 (46 U.S.C. App. 1701a), within the previous 5 years; and

(2) has not been found by the Commission to have committed a violation of the Shipping Act of 1984 (46 U.S.C. App. 1701 et seq.), which involves unjust or unfair discriminatory treatment or undue or unreasonable prejudice or disadvantage with respect to a United States shipper, ocean transportation intermediary, ocean common carrier, or port within the previous 5 years.

(b) The Secretary of Commerce may not issue a guarantee or a commitment to guarantee a loan for the construction, reconstruction, or reconditioning of a fishing vessel under the authority of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.) if the fishing vessel operator has been—

(1) held liable or liable in rem for a civil penalty pursuant to section 308 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1858) and not paid the penalty;

(2) found guilty of an offense pursuant to section 309 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1859) and not paid the assessed fine or served the assessed sentence;

(3) held liable for a civil or criminal penalty pursuant to section 105 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1375) and not paid the assessed fine or served the assessed sentence; or

(4) held liable for a civil penalty by the Coast Guard pursuant to title 33 or 46, United States Code, and not paid the assessed fine.

Mr. LOTT. Mr. President, today is a great day for America's maritime community; for those who sailed the high seas during the final days of World War II; for those who sail the seas today in the international container industry; and for those who will go to sea in the future.

Mr. President, I hope my colleagues will permit me to take a long view of the maritime issues being addressed by the Senate during the 105th Congress.

I am a product of the maritime industry. I grew up in a maritime community where my father built ships. The maritime world was the source of my first job as a lawyer. I still live in Pascagoula, Mississippi where the proud maritime tradition continues with Navy contracts to build DDG-51 Destroyers.

As I grew up on Mississippi's coast, an important lesson was learned. Our nation was founded as a maritime nation and remains one today. We are a nation that must continue to invest in this vital industry.

As you know, this is the International Year of the Ocean and tomorrow is Earth Day. As we celebrate the 28th Earth Day, we recognize the importance of the world's 4 oceans and 54 seas. Oceans cover more than 75% of our globe. Oceans provide us all with vast sources of food, medicine, and minerals. They provide a means for recreation, transportation, and commerce. Teaming with life and resources, oceans are where America's merchant maritime industry must be present. Oceans are where our government must make a conscious decision to maintain America's presence.

Many of our colleagues understand the importance of a strong, healthy maritime industry. This including ports, vessel owners, vessel operators, shipbuilders and the workers to run the ports, sail the high seas or build the latest ship. In a world of increasing international trade by sea, a strong maritime industry is essential to our national security and our economic strength. This is a simple but true equation.

To provide a context for today's action, I want to reflect on our work in the 104th Congress changed our maritime public policy. In the last Congress, the Maritime Security Act of 1996 was enacted into public law. It received overwhelming and bipartisan support. It was the first maritime policy change in over a decade. It was a profound change and has successfully reformed how our maritime industry supports our nation's defense.

This program now effectively ensures that efficient commercial ocean transportation services are available to the Department of Defense for national security purposes. The use of modern U.S.-flag commercial vessels saves DOD hundreds of millions of dollars that would otherwise be required to procure additional sealift capacity. As we enter the appropriation cycle, I hope my colleagues will support full funding of the Maritime Security Program.

Today, the Senate completed action on S. 414, the Ocean Shipping Reform Act of 1998.

This bill will increase competition in the ocean liner shipping industry and help U.S. exporters compete in the world's market. S. 414 was a bipartisan compromise. It was supported by all segments of the industry. Even U.S. businesses that use ocean liner services supported this legislative approach. The bill is a true compromise where the many diverse and competing interests benefited equally.

My good friend, Senator SLADE GORTON, wanted to get a little bit more for one of these segments, but in so doing jeopardized the Senate's ability to pass this important legislation during this Congress by taking the delicate compromise out of balance. This is why the amendment was defeated.

Just for the record, non-vessel-operating common carriers are not real common carriers. However, they can successfully compete with vessel operators. Also small shippers will continue to have equal access to the transportation systems.

Mr. President, S. 414, the Ocean Shipping Reform Act of 1998 is a major step forward in the 105th Congress' maritime reform agenda.

This year's maritime bill focuses on one part of the commercial segment while last year's bill dealt with the defense segment.

As with the maritime bill in the last Congress, competition is its hallmark. It will permit competition for the ocean liner shipping industry. This means that U.S. exporters will also enhance their competitiveness in the world's market. The majority of international trade is carried on ships and that is why S. 414 is so important. The United States will now have an ocean liner shipping system that enables America to compete with other countries on a level playing field.

S. 414 is that level playing field.

This effort started back in the 104th Congress. It has taken the Senate a long time to develop a workable solution because the shipping industry includes so many different competing segments. Balancing their interests has been difficult and everyone made compromises.

S. 414 is solidly backed by U.S. shippers; U.S. and foreign ocean carriers; U.S. ports; and U.S. labor. Achieving such strong support from such a diverse group demonstrates that the entire maritime industry wants and needs this meaningful reform.

I call upon the House of Representatives to complete the legislative process and promptly adopt S. 414 this year. The nation's consumers, businesses, and maritime industry deserve to reap the benefits of a reformed ocean liner shipping system.

This bill is fair. This bill is needed.

S. 414 also contains a provision concerning World War II merchant mariner burial benefits, which was introduced separately as S. 61.

Mr. President, today the Senate also celebrates the passage of S. 61 another very important piece of maritime legislation which recognizes the sacrifices made by a group of merchant mariners.

This provision clarifies, once and for all, that those American merchant mariners who served our country in World War II between August 16, 1945 and December 31, 1946 are in fact eligible for veteran's funeral and burial benefits. Just like all other World War II merchant mariners.

This legislation, originally introduced last year as the Merchant Marine Fairness Act, has 71 cosponsors. I want to thank each cosponsor for their bipartisan support for mariners who ask to be recognized upon their deaths for service to our nation.

Mr. President, the overwhelming majority of World War II merchant mariners have already been awarded veteran status. However, through this 16-month extension, the Senate recognizes in a limited, yet meaningful, fashion those who stood, in harm's way, through the war's final day when on December 31, 1946 President Truman officially declared an end to hostilities.

Although Japan officially surrendered in August of 1945, the job was not complete for our nation's merchant mariners. In fact, more dangerous work awaited them, and their allies.

Harbors in Japan, Germany, Italy, France, and other parts of the world's maritime trade lanes were still filled with mines. This created many hazards as merchant mariners transported Allied troops home, or transported them to occupational duties. Axis stragglers also needed to be transported. When the men of the U.S. merchant marine were called to serve, they were ready and willing. Their duties were vital to consolidating the battlefield victory that our combat forces had just won.

Let me be clear. The services performed by these merchant mariners were extremely dangerous. Twenty-two U.S.-government-owned vessels—carrying military cargoes—were damaged or sunk by mines after V–J Day. At least four U.S. merchant mariners were killed and 28 injured aboard these vessels. Those American merchant mariners who served during this time did so with pride, professionalism and a dedication to their country. They deserve this simple, proper recognition.

I hope the House of Representatives will act swiftly on this legislation, too.

Bills similar to S. 61 have passed in the House of Representatives three times in recent years. Already, H.R. 1126, the companion bill to S. 61, has more than 150 cosponsors.

Mr. President, our nation values the sacrifices of our veterans and so should Congress. The service's of these merchant mariners to America deserves recognition for a job well done.

The passage of the Merchant Mariner's Fairness Act confers the title of veteran to a small group of elderly, surviving mariners—an acknowledgment they richly deserve.

Mr. President, I remember one of these extraordinary mariners telling me why it was so important to receive this official recognition and why this delay has been so frustrating.

What that merchant mariner said, quite simply, was that he wants to tell his grandchildren that he too is a World War II veteran.

Mr. President, this particular merchant mariner and many other merchant mariners deserve our nation's profound gratitude for their WWII service.

Mr. President, there is yet another important maritime bill that the Senate must enact this year. S. 1216.

This legislation will ratify and implement the OECD Shipbuilding Agreement. It will eliminate foreign shipbuilding subsidies and provide a level playing field for our shipbuilding industry.

S. 1216 was approved by both the Finance Committee and the Commerce, Science, and Transportation Committee. It is ready to move to the Senate floor. The amendments added through separate committee actions address head on and completely the concerns identified by segments of the maritime community.

I am disappointed that a few maritime associations continue to oppose this bill despite its many changes. I am disturbed by their unfortunate misrepresentations.

Let me set the record straight on this bill. S. 1216 and the OECD Agreement do not threaten the Jones Act or the construction of Jones Act vessels. Period.

S. 1216 clearly excludes America's defense requirements and maritime features while ensuring that no country may illegally subsidize its commercial shipbuilding industry.

S. 1216 first equaled, then exceeded, the amendment offered by Representative BATEMAN in the 104th Congress to extend the current Title XI program's terms and conditions. The Senate bill provides an additional year. However, these associations moved the goalposts by demanding even more exemptions.

S. 1216 implements OECD. It does not speak to every individual argument that came up during its negotiations. That is water under the bridge. Rather, the bill recognizes that the United States cannot out-subsidize other countries' shipbuilding industries and should not try. It forces these other countries to give up their subsidies.

On a different legislative tract, but a related issue, the Senate showed that it will take steps to address shipyard subsidies. Through the International Monetary Fund bill, the Senate ensured that South Korean shipyards are not entitled to a bail out from American taxpayers.

S. 1216 is about ratifying this international agreement this year; however, it is clear these associations' aim is to scuttle OECD. I believe they want to shift funds from shipyards where only commercial vessels are built to those yards where naval vessel construction occurs because the level of military construction is decreasing. This is folly because America needs both types of shipyards for a healthy maritime community.

The U.S. must preserve its commercial shipbuilding base and that means ratifying the OECD agreement. That means adopting the implementing language in S. 1216 this year.

One last point—the Jones Act and other related cabotage related legislation. There is no secret that I am an ardent supporter of the Jones Act. I acknowledge that there are some members of Congress who do not see the wisdom of protecting our domestic water-borne maritime trade—just like every other coastal nation. I take it as my challenge to spread the wisdom and value of the Jones Act to my colleagues. I also realize that the current system is not meeting the needs of every domestic shipper and that is why I encourage the Jones Act maritime industry and the Administration to work closely with these shippers to solve their transportation needs. Still, I remain a firm believer that these needs can be served by U.S.-built, U.S.-owned, U.S.-flagged, and U.S.-crewed ships.

In summary, Mr. President, the Senate has made much progress in our maritime public policy agenda this year, and I hope there will be more before the 105th Congress adjourns. Maritime issues are bipartisan and important to our economy and our national security.

Mr. President, thank you. I want to also thank all mariners who go to sea to face the elements and work. I also want to thank all who work on shore, at the dock and in the shipyard, to enable our nation's maritime transportation system to go to sea safely and profitably. It is a fitting tribute to pass the Ocean Shipping Act of 1998 during the International Year of the Ocean.

Mrs. HUTCHISON. Mr. President, I want to congratulate the Senate on its adoption of S. 414, the Ocean Shipping Reform Act of 1998. We have worked long and hard to achieve the consensus necessary to move this bill forward. The revisions that S. 414 would make to the Shipping Act of 1984 will help U.S. shippers, ports, and containership operators succeed in an increasingly competitive world of international trade.

I want to thank all Senators who worked on this bill for their key contributions, especially Senator LOTT, our distinguished Majority Leader; Senator MCCAIN, Chairman of the Commerce Committee; and Senators GORTON and BREAUX who ensured that all affected groups' concerns were thoroughly considered and addressed. I ask the leadership of the House to quickly adopt S. 414 without amendment so that the participants in the ocean liner shipping industry can turn their efforts toward reaping the benefits of these changes.

Mr. President, for the record, I now want to explain some of the key provisions of S. 414.

The most significant benefit of S. 414 is that it will provide shippers and common carriers with greater choice and flexibility in entering into contractual relationships for ocean transportation and intermodal services. It accomplishes this through seven specific changes to the Shipping Act of 1984. It allows multiple shippers to be parties to the same service contract. It allows service contracts to specify either a percentage or quantity of the shipper's cargo subject to the service contract. It prohibits multiple-ocean common carrier cartels from restricting cartel members from contracting with shippers of their choice independent of the cartel. It allows service contract origin and destination geographic areas, rates, service commitments, and liquidated damages to remain confidential. It eliminates the requirement that similarly situated shippers be given the same service contract rates and service conditions. It eliminates the current restrictions on individual common carriers engaging in discriminatory, preferential, or advantageous treatment of shippers and ocean transportation intermediaries in service contracts (while retaining those restrictions for groups of common carriers and strengthening prohibitions against refusals to deal or negotiate by individual common carriers). It allows groups of ocean common carriers to jointly negotiate inland transportation rates, subject to the antitrust laws and consistent with the purposes of the 1984 Act.

The Commerce Committee report on S. 414 dated July 31, 1997, includes in pages 12 through 17 a new legislative history for section 6(g) of the 1984 Act. Although a substitute amendment to the Commerce Committee reported version of S. 414 has been adopted by the Senate, the legislative history for section 6(g) and other sections of the 1984 Act affected by S. 414 contained in the Committee report remains intact, to the extent that the Committee reported provisions of S. 414 are not substantively amended by the substitute amendment, or the Committee report legislative history is not superseded by the below comments.

It is anticipated that members of ocean common carrier agreements will enter into individual service contracts with shippers and that, consistent with section 8(c) of the 1984 Act, as amended

by S. 414, some of the terms and conditions of those service contracts will not, by agreement of the contracting parties, be publicly available.

Section 5(c) of the 1984 Act, as amended by S. 414, states that an agreement of ocean common carriers may not require its members to disclose any service contract negotiations they may have with shippers or the terms and conditions of any service contracts which they may enter into for the transportation of cargo. It is important to note that, while section 5(b) of the 1984 Act applies only to conference agreements, new section 5(c) would apply to all agreements among ocean common carriers, including conference agreements.

Any agreement requirement that members disclose confidential contract information would violate section 5(c) and subject agreement members to penalties under the 1984 Act, as amended by S. 414. In the event a member divulged confidential contract information, that member would likely be in breach of its contract with the shipper and could be held liable by the shipper under the contract. However, in the absence of any agreement requirement that disclosure be made, neither that carrier nor any other agreement member would be subject to penalties under the 1984 Act, as amended by S. 414. Section 8(c)(1) of the 1984 Act, as amended by S. 414, provides that the exclusive remedy for a breach of a service contract shall be an action in an appropriate court, unless the parties otherwise agree.

Section 8(c)(2) of the 1984 Act, as amended by S. 414, would continue to require that all service contracts be filed with the Federal Maritime Commission. The purpose of this requirement is to assist the FMC in the enforcement of applicable provisions of United States shipping laws. However, other Federal agencies have expressed concerns over how they are to ensure ocean carrier compliance with United States cargo preference law requirements concerning shipping rates in an era of service contract rate confidentiality. The FMC is encouraged to work with affected Federal agencies to address this concern.

S. 414 would add a new section 8(c)(4) to the 1984 Act that would allow a labor union with a collective bargaining agreement with an ocean common carrier to request information from the carrier with respect to cargo transported under a service contract entered into by that carrier to assist the union in enforcing its collective bargaining agreement and would require the carrier to provide that information. Section 8(c)(4) envisions the release of information not necessarily contained in the service contract. While the cargo transportation in question has to be made pursuant to a service contract, the carrier's response to an information request authorized by section 8(c)(4) may require the use of documents other than the service contract.

The purpose of section 8(c)(4) is to provide the requesting labor union with information concerning certain land transportation services and other services for which an ocean common carrier subject to a collective bargaining agreement with that labor union may be responsible pursuant to a service contract. The specific language of section 8(c)(4)(A) describing the work covered by that disclosure requirement is intended to ensure that the ocean common carrier is not able to avoid compliance with the disclosure requirement by narrowly interpreting the statutory language of the work covered by the disclosure requirement. Section 8(c)(4), however, has no other purpose but to require disclosure of specified information and is not intended to serve any other purpose.

The Senate understands that disputes have arisen, or may arise, concerning the assignment of certain off-dock and inter-dock transportation services at U.S. ports. We want to make it perfectly clear that nothing in this provision is intended to resolve or influence the outcome of any such dispute in any manner. The descriptions of work contained in section 8(c)(4)(A) should not be misinterpreted by a court or agency to imply a Congressional endorsement of any position in any such dispute. These issues are to be considered and determined by the appropriate agencies and courts taking into consideration existing provisions of the National Labor Relations Act, the Taft-Hartley Act, the Federal Trade Commission Act, other provisions of the Shipping Act of 1984, as amended by S. 414, and other federal and state laws. Nothing in these disclosure provisions should affect or influence the outcome of the decisions of those courts or agencies, one way or the other.

The substitute amendment to S. 414 contains several significant changes with respect to the anti-discrimination provisions contained in sections 10(b) and 10(c) of the Commerce Committee reported version of S. 414 affecting shippers' associations and ocean transportation intermediaries that need to be clarified. These revisions by the substitute amendment remove limitations placed on these sections in the Committee reported bill with respect to shippers' associations and ocean transportation intermediaries and thus supersede the Committee's Report of July 31, 1997 at pages 28 and 29.

S. 414 is intended to promote a more competitive ocean transportation marketplace. In such a marketplace, it is anticipated that small to medium-sized shippers will increasingly rely upon non-profit shippers' associations and other forms of transportation intermediaries in order to obtain access to competitive economies of scale enjoyed by the largest shippers. Recognizing the important role that the small shipper plays in the competitiveness of the United States in the global economy, S. 414 contains several strong provisions to ensure that shippers who seek to combine their cargo with other shippers to obtain volume discounts in a shippers' association are not subjected to unreasonable discrimination due to their status as a shippers' association when entering into such service contracts.

As amended by S. 414, new section 10(b)(10) of the 1984 Act would make it unlawful for a common carrier to ''unreasonably refuse to deal or negotiate.'' Previously, the prohibition against refusals to negotiate was limited to shippers' associations. The new section 10(b)(10) continues to provide a shippers' association or ocean transportation intermediary with protection against an unreasonable refusal to deal by one or more common carriers, and continues to provide the other protections included in section 10(b)(12) of the current law.

New sections 10(c)(7) and 10(c)(8) of the 1984 Act, as amended by S. 414, would protect individual shippers' associations and ocean transportation intermediaries against the type of conduct specified in those paragraphs which is due to such person's status as a shippers' association or ocean transportation intermediary. The FMC should direct its enforcement efforts with respect to unreasonable discrimination due to a person's status as a shippers' association or ocean transportation intermediary for other than objective, relevant economic transportation factors on those groups of ocean common carriers that have the greatest potential to economically harm a shippers' association or an ocean transportation intermediary. S. 414 does not require identical treatment of shippers' associations and affords ocean common carriers greater flexibility than the current 1984 Act to differentiate their service contract terms and conditions.

Section 10(c)(4) of the 1984 Act currently prohibits concerted action by ocean common carriers in negotiation of U.S. inland transportation rates and services with truck, rail, air, or other non-ocean carriers. Since the enactment of the 1984 Act, U.S. ocean common carriers have made very substantial investments in inland intermodal networks in reliance on the protections of section 10(c)(4).

S. 414 would amend section 10(c)(4) to remove the current per se prohibition on joint negotiation of inland transportation agreements. S. 414 would allow joint negotiations and agreements with respect to the inland portion of these ocean common carriers' intermodal movements, but retain protections to ensure that U.S. inland intermodal carriers are not harmed.

First, any such joint negotiations and agreements permitted under this section must be in conformity with the antitrust laws. There is no intention under this provision to permit or authorize any joint activity with respect to the negotiation of purchasing of U.S. inland services provided by non-ocean carriers that would not be permitted under the principles that apply

to joint purchasing activities under the antitrust laws.

Second, the joint negotiations and agreements permitted under this section must be consistent with the purposes of the Act, as amended by S. 414 and as determined by the Federal Maritime Commission. For example, the ability of joint purchasing arrangements to contribute to efficiencies in the U.S. transportation system in the ocean commerce of the United States that are then passed on to shippers is a factor that may be considered in determining whether an arrangement is consistent with the purposes of the 1984 Act. Another purpose of the 1984 Act is the development of an economically sound and efficient U.S.-flag liner fleet capable of meeting national security needs. As stated above, U.S.-flag liner operators have made very substantial investments in affiliated inland intermodal providers, and harm to these providers resulting from the use of market power by conferences or other groups of ocean common carriers would be inconsistent with the 1984 Act's purpose of maintaining a sound U.S.-flag liner fleet.

Mr. MCCAIN. Mr. President, I am pleased that the Senate has adopted S. 414, the Ocean Shipping Reform Act of 1998. S. 414 was approved by the Committee on Commerce, Science, and Transportation on May 1, 1997. Over the past several months, the bill has been adjusted to address the concerns of several members.

S. 414 would instill greater competition within the U.S. international ocean liner shipping market by ensuring that every liner vessel operator has the right to enter into a service contract with any shipper without interference from other vessel operators. This will allow U.S. importers and exporters to contract with vessel operators of their choice, not as directed by ocean shipping cartels.

Also, S. 414 would allow vessel operators and shippers who negotiate service contracts to keep the rates and terms of service of those contracts private. The bill would also remove the requirement that vessel operators provide the same contract rate and terms to other similar shippers. This change, combined with the one I just described, will increase the responsiveness of ocean liner system to market forces.

The bill would also privatize the function of publishing ocean transportation tariffs, which should reduce the expense of this system. The bill would provide the Federal Maritime Commission adequate means to review and enforce tariff and service contract regulations.

The bill also includes a provision I added during the Commerce Committee markup. This provision would require the Secretary of Transportation to obtain certification from the Federal Maritime Commission that a liner vessel operator has not violated certain U.S. shipping laws within the past 5 years prior to the Secretary granting the operator a shipbuilding loan guarantee under title XI of the Merchant Marine Act, 1936.

I realize that S. 414 is not perfect. In my view, a lot more could be done to improve competition in this business. However, in this case the bill makes significant progress, and should not be held up in the hope that greater progress can be made in the future. I hope the other body will take action on S. 414 so that the bill may be enacted this year.

EDUCATION SAVINGS ACT FOR PUBLIC AND PRIVATE SCHOOLS

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 2646, the Education Savings Act for Public and Private Schools.

The clerk will report the bill.

The legislative clerk read as follows:

A bill (H.R. 2646) to amend the Internal Revenue Code of 1986 to allow tax-free expenditures from education individual retirement accounts for elementary and secondary school expenses, to increase the maximum annual amount of contributions to such accounts, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Mack/D'Amato amendment No. 2288, to provide incentives for States to establish and administer periodic teacher testing and merit pay programs for elementary and secondary school teachers.

Glenn amendment No. 2017, to delete education IRA. expenditures for elementary and secondary school expenses.

Kennedy amendment No. 2289, to authorize funds to provide an additional 100,000 elementary and secondary school teachers annually to the national pool of such teachers during the 10-year period beginning with 1999 through a new student loan forgiveness program.

Coverdell (for Hutchison) amendment No. 2291, to establish education reform projects that provide same gender schools and classrooms, as long as comparable educational opportunities are offered for students of both sexes.

AMENDMENT NO. 2289

The PRESIDING OFFICER. The pending question is a motion to table the amendment to H.R. 2646 by the Senator from Massachusetts. There will be 4 minutes of debate equally divided.

Who seeks time?

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, the issue that is before the Senate now is whether we are going to take the $1.6 billion and use it in such a way that is going to effectively help and assist the private schools—because that is where the majority of the money is going to be invested—or whether we are prepared to invest that money to increase the total number of teachers.

Again, Mr. President, the legislation that we have before us this morning will provide $1.6 billion. We have to decide whether we are going to use that money to create an IRA which will be primarily used to support private schools, or whether we will take that $1.6 billion and use to it create more teachers across this country. If we use the $1.6 billion, we will provide 100,000 new schoolteachers for the public schools across this Nation.

It is estimated that we are going to need 2 million new high school teachers. This will at least provide 100,000. It seems to me that if we are interested in academic achievement and accomplishment and we support our public schools, then getting highly qualified teachers to invest in those schools is the way to go. That is what this amendment does. It takes the $1.6 billion and uses it to create 100,000 more schoolteachers rather than to use it to create additional funds to support private schools.

We have a modest program in our higher education bill that will provide $200 million for 5 years, which is $40 million a year. That is bipartisan. I support it. But it is not enough. We have a major opportunity now to do something significantly for the public schools, and that is to increase the number of qualified teachers who will serve in our public schools.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. COVERDELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. COVERDELL. Mr. President, first, I am pleased that we are finally coming to a point where we can vote on these core issues. I have three things to say about the statements that have been made by the Senator from Massachusetts.

Mr. COVERDELL. Mr. President, first, the Labor Committee has already addressed the issue of new teachers and done it in a more expeditious manner focusing new teachers on inner-city schools.

Second, the effect of the amendment of the Senator from Massachusetts is to gut and make moot the entire exercise we have been at here now for 6 months. He would in effect deny 14 million families and 20 million children the benefits of education savings accounts, the majority of which are public, not private. He would deny 1 million employees the opportunity for continuing education and 1 million students the opportunity and benefit of State prepaid tuition plans and 500 new schools through new school construction.

Later in the debate we will have another opportunity, through the Gorton amendment, which will be discussed later this afternoon, to free up from Federal regulation large sums of money, over $10 billion, which local communities and States can use to address teacher shortages, if indeed they have them.