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DISCRIMINATORY OCEAN FREIGHT RATES
AND
THE BALANCE OF PAYMENTS

REPORT

OF THE

JOINT ECONOMIC COMMITTEE
CONGRESS OF THE UNITED STATES

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TABLE OF CONTENTS

	Page
Summary of the findings and recommendations of the Joint Economic Committee	3
Introduction	9
Chapter I—Ocean freight rate discrimination	13
1. Export rates are higher than corresponding import rates	13
2. Third-country discrimination	18
3. Bloc voting	20
Chapter II—Regulation of steamship conferences and practices	21
1. The lack of governmental regulation	21
2. Regulation by the new Federal Maritime Commission	25
3. Resistance to regulation	32
Chapter III—Effects of Government policy on freight rates	35
1. Agency for International Development	36
2. The Department of Agriculture	39
3. The Department of Defense	40
4. The Department of Commerce and the Maritime Administration	41

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JANUARY 6, 1965.—Ordered to be printed.

Mr. DOUGLAS, from the Joint Economic Committee, submitted the following

REPORT

SUMMARY OF THE FINDINGS AND RECOMMENDATIONS OF THE JOINT ECONOMIC COMMITTEE

The committee's studies of ocean shipping practices have led to the following findings and recommendations.

1. *Finding.*—The international ocean freight rate structure is weighted against U.S. exports. Our exports bear most of the cost of vessel operation, even in trades where imports approximate exports in value and quantity. Government studies reveal that on trade between the U.S. Pacific coast and the Far East, freight rates on American exports exceeded rates on corresponding imports on 80 percent of the sampled items. The same discrimination prevails on 70 percent of the products shipped by American exporters from U.S. Atlantic and gulf ports to the Far East and on 60 percent of the commodities shipped from the Atlantic coast to Western Europe.

Recommendation.—The Federal Maritime Commission should continue its investigations of ocean freight rate disparities. It should utilize its full statutory powers to remove discriminations against American exporters. To date, the Commission's actions have been moderate. Although we recognize the traditional caution of the quasi-judicial process and the difficulties encountered by the Commission in its request for information and documents from foreign sources, we feel that the Commission should go further, faster. It should use the recently adopted amendment to the Shipping Act, section 18(b) (5), to order every conference whose outbound rates appear too high, or every conference whose inbound rates appear too low to justify those rates. If they fail to justify them, and if the rates are found to be detrimental to U.S. commerce, the Commission should disapprove the rates or issue an order under section 15 of the Shipping Act to show cause why the conferences themselves should not be disapproved. When an inbound rate is lower than an outbound rate on a comparable item, the justification by the conference should include a showing either that the inbound rate includes the full cost or that a higher rate would not be more profitable. Members of the Joint Economic Committee do not believe, at this time, that the Federal Maritime Commission should set ocean freight rates, but we do insist that all necessary steps be taken to eliminate discrimination against our foreign commerce.

2. *Finding.*—Evidence presented to the committee also revealed that it costs more to ship U.S. exports to the growing markets of South America, Africa, and India than it costs to ship comparable products to ports of those countries from our leading competitors in Europe and Japan. A sampling of rates on 40 export commodities shows that the average rate from the United States is \$9.85 per 1,000 miles. This is 138 percent higher than the \$4.14 average rate from Japan, and 86 percent higher than the \$5.30 rate from London to the same ports of

these emerging markets. In part, this condition has been caused by the fact that rates are commonly made in concert by shipping conferences chiefly controlled by foreign lines, many of which also serve competitive sources of supply in their countries of nationality.

Recommendation.—The Federal Maritime Commission should continue to investigate third-market discriminations. It should be vigilant and obtain information concerning rates from European and Japanese ports to third-market countries, and it should constantly compare these rates to those on U.S. exports to these same areas. The Commission has remarked on the difficulties of obtaining foreign rate information, observing moreover that its accuracy is diluted by widespread rebating practices generally acknowledged to exist in foreign-to-foreign trades. Conferences and carriers in U.S. foreign commerce disclaim knowledge or control of rate-setting in foreign-to-foreign trades despite the fact that many carriers service both trades. Under the Shipping Act, if the same carrier is not involved in the fixing of competitive rates from different sources of supply, the Commission's jurisdiction is restricted to determining whether the outbound rate from the United States is so unreasonably high as to be detrimental to our commerce, a matter influenced by comparisons with third-country rates. But if the carrier or conference does serve both trades, section 17 of the Shipping Act empowers the Commission to alter the rates to the extent necessary to correct such prejudice. Members of the Joint Economic Committee recommend continued efforts in this field despite the difficulties to which the Commission alludes.

3. *Finding.*—Most ocean freight rates are set by steamship conferences whose basic purpose is to set freight rates and sailing schedules. But some go beyond price fixing and include pooling agreements whereby each member is guaranteed a share of cargo or revenues. U.S.-flag lines are outnumbered in all but seven of the more than 100 active steamship conferences involved in U.S. foreign trade. In substance, foreign lines, some of which are government-owned, determine freight rates, sailing schedules, and other conditions vital to the expansion of American commerce.

Recommendation.—The Federal Maritime Commission should not approve an anticompetitive agreement, conference, or pool, without explicit knowledge of the voting procedure adopted by the members in that case. The Commission should determine the extent of bloc-voting by members to existing anticompetitive agreements. The Commission should determine whether or not American lines which are parties to these agreements do in any way influence the rate and revenue share decisions. Voting practices by carriers participating in more than one anticompetitive agreement should be compared to determine the interrelationships between these anticompetitive agreements. Members of the Joint Economic Committee believe that any conference whose members as a matter of practice bloc-vote against the interest of American exporters or importers should lose its antitrust immunity, or at least not continue to have U.S. carriers participate in it.

4. *Finding.*—Steamship conferences receive antitrust immunity if approved by the Federal Maritime Commission. In the few instances where Congress permits monopolistic practices, it has imposed controls designed to approximate the conditions of free competition. Shipping

is the exception. Although the Shipping Act, which provides for conference regulation, was adopted almost 50 years ago, the regulation of steamship conferences has never been carried out in the manner intended by Congress. Extensive investigations by House committees over the last 5 years have established that the abuses intended to be remedied by the act, including even the deferred rebate, still permeate American trade routes. The statutory powers are ample and have been strengthened as recently as 1961, but their enforcement has been grossly inadequate. Representatives of the Federal Maritime Commission not only failed to explain freight rate discrimination, but they admitted that the Commission, like its predecessory agencies, had never investigated the problem, even though the Congress had ordered such an investigation in 1936. This was as recently as 1962 reaffirmed in the very congressional investigations that had led to the Commission's creation. It was admitted to the Joint Economic Committee in June of 1963 that the Commission had not investigated the level of freight rates, the conference system of ratemaking, the relationship between rates and trade movement, and the effects on the balance of payments of present ocean transportation practices. It was further admitted that the Federal Maritime Commission had rarely disapproved a conference agreement and had never subjected a freight rate to the statutory test of reasonableness.

Recommendation.—Members of the Joint Economic Committee believe that the Federal Maritime Commission should use all of its statutory powers to protect American commerce from discrimination. Most steamship operators serving American commerce are not personal or corporate citizens of the United States. Yet, the U.S. Government has granted many of these operators immunity from our antitrust laws and from our traditional disciplines of free competition. If this immunity is to continue, strict surveillance must be maintained by the Federal Maritime Commission to protect the public interest. If the conference system cannot withstand public scrutiny, it is not entitled to antitrust immunity and should be discontinued.

5. *Finding.*—There is reason to hope for improvement in the administration of the Shipping Act by the Federal Maritime Commission, although resistance is being offered by the conferences and by foreign governments. Since the naming of Rear Adm. John Harllee, U.S. Navy (retired), as Chairman of the Federal Maritime Commission on August 26, 1963, important regulatory steps have been taken. The Commission first proceeded to formulate a new program of priorities and objectives which placed investigations of ocean freight rates and the conference system of ratemaking high on the list. In addition, the Commission has refused to approve pooling agreements unless the proponents can prove that such an agreement is in the public interest of the United States. Prior to the chairmanship of Admiral Harllee, the Commission's policy was to routinely approve pools and other conference agreements without hearing unless demanded, and without determining their effects on U.S. foreign commerce. Today, 18 of the 30 active pools in the foreign commerce of the United States are being investigated. Finally, the Commission has promptly responded to discriminatory practices against American exporters. It has alleviated discriminations against exporters of books, whisky,

lumber, and it currently has several informal investigations in progress. It has investigated discriminatory surcharges resulting in their reduction. It has imposed a countervailing duty on imports into this country from Uruguay to compensate for rebates granted by the Government of Uruguay.

Recommendation.—Members of the Joint Economic Committee congratulate the Federal Maritime Commission for its new regulatory actions, including its investigations of freight rates, conference ratemaking, neutral bodies, pooling agreements, surcharges and other discriminatory charges, its attempt to establish guidelines for complainants, and its establishment of a positive attitude toward regulation. These are necessary and important first steps. Its actions have received the support of many Members of Congress and have been upheld in every instance by the appellate courts of the United States. However, because of the importance of ocean transportation to our export promotion programs, and to our AID exports, members of the Joint Economic Committee believe that they should continue in the 89th Congress to exercise active scrutiny of ocean transportation practices and regulation.

6. *Finding.*—There is evidence which suggests that the major steamship lines of the world may have divided up trade markets. A conference, a pool, a rate agreement are not necessarily separate and unrelated, but might well be parts of a complicated structure affecting the entire ocean freight market. However, the extent of possible market division is not known. Whether a conscious plan has been adopted by some lines calling for worldwide cargo distribution also is not known. The only way to discover the network of market controls is to examine each anticompetitive device fully and to seek extensive information concerning these devices.

Recommendation.—Members of the Joint Economic Committee believe that more adequate public information is needed regarding (*a*) pools and other anticompetitive agreements, and (*b*) the cost and profitability of shipping companies. Undoubtedly part of the suspicion that attaches to shipping conferences stems from the secrecy surrounding them. One of the traditional concerns about any conference is that it will use its monopolistic powers to force prices to unreasonably high levels with resulting exorbitant profits. It may be hoped that the very process of publicly disclosing economic information would tend to discourage abuses by rendering carriers sensitive to public reaction. We believe that in addition to full disclosure on how conferences have acted, the Commission should determine what principles they are following in the pursuit of what goals. We wish to make clear that it is proper and within the law that conferences should seek to maximize the profits of their members. This is subject to regulation by public authority. However, we wish to make certain that ocean freight rates are determined by economic factors and not by political or national interest. In this connection, consideration should be given to holding an international conference on shipping problems, to be attended by the major maritime nations, at which needed information could be developed and out of which multilateral agreements could be reached, looking to a cooperative solution

to these problems. Such a conference should emphasize discriminatory ocean freight rates and anticompetitive practices. However, effective regulation should not be delayed, pending such a conference.

7. *Finding.*—Preliminary investigations reveal that the heavy aid programs of exports by or under the control of the U.S. Government are a further factor in a prejudicial imbalance of rates. Cargo preferences naturally tend to increase freight rates because they reduce the eligible supply of ship space to the size of the American fleet, which is far below the size of the world fleet. The combination of heavy shipments restricted to a small body of the highest cost tonnage in the world is irresistibly inflationary. Undoubtedly cargo preference laws are important to the American merchant fleet and a contingent benefit to our balance of payments. Nevertheless, without careful administration harmful effects can quickly outweigh benefits. To avoid paying exorbitant freight rates to U.S.-flag ships the Government must exercise close surveillance. However, it appears that the Government agencies responsible for the movement of Government-impelled cargo are not now paying requisite attention to freight rates. We believe that each agency involved should develop an analysis showing the costs of shipping such cargo over a year's time under present restrictions compared to the costs with no restrictions; and the costs to the AID program arising from discriminatory ocean freight rates should also be determined.

Recommendation.—Members of the Joint Economic Committee believe that executive and congressional investigations are needed to determine whether or not cargo preference laws should be amended or changed and to determine whether or not Government agencies responsible for the movement of Government-generated cargo are applying the statutory requirements as to the reasonableness of freight rates.

8. *Finding.*—While the Joint Economic Committee's investigation has not focused upon the maritime subsidy program, we cannot avoid reflecting that U.S. taxpayers are paying more than $350 million a year in direct subsidies to 15 American steamship lines, excluding the excess cost of preferential cargo routing. It appears that the American merchant marine is not adequate in size or quality to offset the tendency toward a prejudicial rate structure. Moreover, it appears that it is not used to best advantage, being frozen to trade routes in a manner that precludes deployment in growing trades where demand is highest and until recently being encouraged to join in rate agreements instead of competing freely. If, in spite of $350 million of public support, American carriers cannot compete in respect of prices and services, the system must be deemed a failure.

Recommendation.—Members of the Joint Economic Committee believe that the Department of Commerce and the Maritime Administration should evaluate current subsidy and shipbuilding programs. Preliminary evidence indicates subsidized operators are in many cases tied to inflexible policies by current subsidy practices and cannot maximize profits or fully use ship space. It also reveals that more ships are needed. We further believe an evaluation of the current policy limiting construction and operating subsidies to liner-type vessels should be made. Finally, we recommend that the Maritime Administration

should consider discontinuing subsidy payments to American operators belonging to conferences that refuse to cooperate with the regulatory policies of this country.[1] [2]

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[1] Congressman Boggs shares the belief of the Joint Economic Committee that considerations of national policy and a healthy balance of payments point up the need for a modern, expanding and profitable U.S. merchant marine, efficient enough to compete and win an increased share of our foreign trade cargoes. These considerations also emphasize the importance of nondiscriminatory ocean freight rates to the competitiveness of U.S. producers in world markets. It is clear that in the past Federal agencies have neither carried out existing shipping statutes drafted by Congress to achieve these ends, nor been active in developing suggestions for improved legislation. In response to the investigations of the Joint Economic Committee, new attitudes and new initiative are evident.

The shipping industry needs and deserves more than mere regulation under existing statutes. There is ample reason to believe that more imaginative and positive programs are necessary. He strongly urges the industry to take the initiative in developing forward-looking proposals and that the Joint Economic Committee and other committees of Congress give them sympathetic consideration.

Congressman Boggs believes that the Federal Martime Commission should take all necessary actions on an individual case-by-case basis to eliminate any discrimination against the foreign commerce of the United States. However, he does not recommend that the sweeping regulatory reforms contained in the committee's recommendations be taken without additional consultation with the American steamship industry and foreign governments. First of all, the American lines alone bear the brunt of additional regulation. They must abide by the Commission's orders and they must produce their records and documents. At the same time, the foreign lines, in many cases backed by their governments, refuse to accept U.S. regulation and to produce relevant documents. Second, sweeping unilateral regulation by the United States will only encourage the creation of a hundred other maritime commissions around the world. Congressman Boggs hopes that through further negotiations with our foreign allies, with the support of the steamship industry and shippers concerned, a treaty or convention providing for uniform multinational regulation could be adopted applicable to shipping of all nations. For this reason he applauds the report's suggestion for an international conference on shipping matters at the highest levels of government. It is vital that such an agreement be negotiated and ratified to remove the ambiguities and uncertainties that now bedevil U.S. shipping companies.

[2] Senator Javits wishes to associate himself with Congressman Boggs in stressing the importance of achieving a modern, expanding, and profitable U.S. merchant marine together with his concern that the shipping industry itself take the initiative in developing forward-looking proposals to that end. He is confident that the Joint Economic Committee and other Government agencies will welcome such an initiative on the part of the shipping industry. He believes that the committee, as well as Congressman Boggs in his separate note, is correct in stressing the international character of the regulatory problem and he, therefore, joins in applauding the report's suggestion for an international conference on shipping matters at the highest levels of Government.

(NOTE.—Due to pressure of other responsibilities, Senator Fulbright was unable to participate in the hearings and other committee deliberations pertaining to this report and reserves judgment on the specific recommendations made therein.)

INTRODUCTION

On May 2, 1963, the Joint Economic Committee began an investigation of the effects of ocean freight rates on the international payments of the United States.

During the course of a committee hearing on the competitive position of American steel products, Government witnesses had suggested that one reason for the decline in sales abroad, and for increased sales of foreign steel in this country, was a transportation advantage enjoyed by foreign steel producers in ocean freight rates. Statistics indicated that rates were much higher from the United States to Western Europe or Japan than rates on comparable products shipped inbound from the same foreign ports to the United States. Thus, it costs U.S. exporters substantially more to ship steel products to Europe and Japan than it costs European or Japanese exporters to ship comparable products to this country. For example, it costs $38.25 to ship one long ton of iron and steel pipe from New York to Germany, whereas it costs but $20.75 to ship the slightly smaller metric ton of German pipe to New York.

Government witnesses also indicated that it costs considerably more to ship U.S. exports to the emerging markets of South America, Africa, and India than to ship comparable products to these markets from leading competitors in Europe and Japan. For example, an American pays $39, weight or measure, to ship an automobile to Rio de Janeiro, Brazil, whereas it costs but $15.05, weight or measure, to ship an English car from Liverpool. Not only is Rio de Janeiro 500 miles closer to New York than it is to Liverpool, but at times the same ship will sail from Liverpool, call at New York, and proceed to Brazil.

Moreover, ocean freight rates are a significant factor in the cost of international trade. In 1962 they represented 12 percent of the value of U.S. exports, and 10 percent of the value of U.S. imports, weightier in many cases than tariffs; for example, tariffs averaged 7 percent of the value of imports in 1962 as compared with 10 percent for freights.

The carriers establishing these rates are generally classified into three types: liners, tramps, and tankers. Liners are by far the most important in terms of the value of U.S. trade, of shipping space employed, and of freight costs. U.S.-flag liners are also the vessels receiving an annual direct subsidy from the Government that currently approximates $330 million for operations and construction. In 1963 oceanborne exports amounted to $15.1 billion, and imports to $12.4 billion. Liners carried 78 percent of our exports by value and 71 percent of our imports. Tramps and tankers each carried approximately 11 percent by value of our foreign commerce, consisting mainly of bulk commodities such as grain, oil, ore, and scrap metals.

Liner rates for the most part are set by steamship conferences composed of both foreign and domestic lines operating over a particular trade route. There are usually different conferences for inbound and

outbound rates but with essentially the same membership. Thus, most trade with Western Europe is accomplished by two conferences: the North Atlantic/Continental Eastbound Freight Conference and the Continental/North Atlantic Westbound Freight Conference.

Shipping conferences are associations organized by formal agreement to control trade routes. Their basic purpose is to set freight rates and sailing schedules. Conferences are fully developed price-fixing agreements. Some go beyond price fixing, and include pooling agreements whereby each member is guaranteed a share of cargoes or revenues. In a price-fixing conference an element of service competition remains: the cargoes go to the better equipped and faster ships. In a pool conference, however, no competitive elements exist. Earnings are apportioned according to formula. It is only a step short of merger. The trend toward pool conferences is at present receiving a powerful impulse in all our trade.

More than 100 active steamship conferences, including 30 pool conferences, control U.S. foreign-trade routes. In all but seven conferences, U.S.-flag lines are greatly outnumbered by foreign-flag lines. The predominance of foreign-flag lines and deficiencies of regulation by our Government have enabled foreign lines, some of which are government-owned, to determine freight rates, sailing schedules, and other conditions vital to the expansion of American commerce.

Conferences operate legally in American trade, if they receive approval from the Federal Maritime Commission. Without such approval these conferences are in violation of domestic antitrust laws. Under current law, all rates set by conferences as well as by individual common carriers must be filed with the Commission. Rate increases becomes effective 30 days after filing, and rate reductions directly upon filing. The Commission has authority under the Shipping Act of 1916, as amended, to disapprove, cancel, or modify any conference agreement that it finds to be unjustly discriminatory or unfair as between shippers, carriers or ports, to operate to the detriment of the commerce of the United States, to be contrary to the public interest, or to be in violation of the act. It can also disapprove a single freight rate or an entire tariff of a carrier or conference if it finds that the rate or tariff is so high or so low as to be detrimental to the foreign commerce of the United States.

It was obvious to members of the Joint Economic Committee that on a cost basis ocean freight rates should presumptively be the same for comparable products shipped on the same ship between the same ports whether the product is moving from or to the United States. The question presented before the committee was: Whether or not there are conditions other than cost which justify discrimination based only on direction. That competition might not be the predictable answer was suggested by the fact that freight rates on similar products are not the same to third-market areas from the United States as they are from Europe and Japan (after appropriate adjustments for differences in distance, stevedoring charges, and other cost factors). That carriers from this country to such third markets are not matching the rates of competitive sources of production seemed to suggest the ancient practice of "what the traffic will bear", with the added feature that except for our fleet the same carriers dominate the cross-trades.

The Shipping Act of 1916, as amended, provides that common carriers must offer nondiscriminatory rates to similarly situated shippers. The rate on automobiles of like shipping characteristics must be the same for all shippers from New York to Germany. General Motors pays the same basic freight rate as Ford, even if General Motors ships 20,000 automobiles a year and Ford only ships one. Why should not Mercedes-Benz or Fiat pay the same basic rate as General Motors and Ford? Barring genuine differences in shipping characteristics, is there any reason why the American exporter should pay a rate so high that it measurably affects his power to penetrate the foreign market, and at the same time, by throwing on him part of his foreign competitor's transportation cost, opens his domestic market to the counterpenetration of that same competitor? With all due reserve against commercial xenophobia, it seems logical to members of the Joint Economic Committee that at first impression the prohibition against rate discrimination protects both exporters and importers, and does not operate exclusively in one direction.

However, the point is not self-evident, though highly suggestive, and it was natural to turn to the agency constituted by Congress to pass on issues of this character in order to ascertain the facts and to receive professional and judicial assessment of their significance. But when the Federal Maritime Commission admitted before the Joint Economic Committee on June 20, 1963, that such freight-rate disparities existed on many commodities, not just steel, and had existed for a long time; when it admitted that it had ample authority to eliminate discriminatory rates but had never once during its almost 50 years of existence exercised this authority; when it admitted that the Congress had almost 30 years ago in section 212(e) of the Merchant Marine Act recommended an investigation of ocean-rate discrimination, that two House committees had reaffirmed this as recently as 1962 and that no such investigation had ever been made; the Joint Economic Committee became aware that it would be obliged to undertake an extensive investigation of its own to determine the economic effects of discriminatory ocean-freight rates on American exporters, American manufacturers, and American consumers, and hence on the international payments position of the United States.

Every member of the Joint Economic Committee is concerned about the seriousness of the international payments deficit, which last year amounted to $3.3 billion. We have a deficit primarily because it is national policy to give economic assistance to the less developed nations of the world and to give military assistance to countries whose strength is vital to our defense. The larger the deficit, even when it arises from our object of sustaining the free world, the more confidence in our economic strength attenuates, and the less to some extent our strength really becomes. While there has been nothing like an international run on the dollar, there have been portents in market reactions that have made us from time to time decidedly uneasy about the outflow of gold, which marks a negative balance of payments. Quiet steps have been taken to check the process, such as shifting preference cargoes preponderantly to American ships, lowering the quantity of duty-free tourist purchases, and making certain adjustments in foreign expenditures of military personnel. Fundamentally, however, the surest way to continue foreign assistance programs is to maintain

a trade surplus sufficient to balance out our aid deficits. Unfortunately, our commercial trade surpluses exclusive of Government-financed exports have not been increasing. In 1960 we had a commercial balance of trade of $2.8 billion. In 1961 it was $3.2 billion. In 1962 it was $2.1 billion, and in 1963, $2.3 billion. In other words, our commercial trade balance, instead of expanding, has been static.

It is true that the free world has an interest in preserving the power of the United States, but we can no more expect, than we should be disposed to seek, an international trade subsidy which might in any case prove circular. What is wanted is our fair share of the world market naturally commanded by our vast and fertile industry in fair competition.

Yet on the threshold of the trading process we find the immensely important transportation mechanism dominated by powerful shipping conferences that are visibly endeavoring to tighten their grip. A vital constituent of our prices is therefore determined not by free and fair competition but by private agreements among carriers of which only a few are American. Nor have we escaped the predictable consequences of this condition: the Joint Economic Committee, which was established by statute to investigate such matters, found evidence in its steel hearings in 1963 and at later hearings with representatives of the Federal Maritime Commission that severe economic consequences result from discriminatory ocean freight rates. The committee has been investigating these rates ever since.

CHAPTER I

OCEAN FREIGHT RATE DISCRIMINATION

Hearings of the Joint Economic Committee on discriminatory ocean freight rates have established the following:

(1) The international rate structure is heavily weighted against our exports, which absorb a substantial part of inbound shipping costs even when quantity and value of imports are roughly equal to exports, and when, in consequence, it cannot be said that exports must underwrite the return movement if they are to have adequate space. In other words, in U.S. foreign commerce most exports could be shipped back to this country on the same ship cheaper than it carried them out.

(2) It costs more per ton-mile to ship U.S. exports to the emerging markets of the world, such as South Africa, South America, and India, than it costs to ship comparable competitive products from the ports of our leading competitors in Japan and Europe to these same markets.

(3) Ocean freight rates are set by steamship conferences dominated by foreign lines.

(4) Regulation by Government agencies charged with maritime jurisdiction historically has been grossly inadequate. However, since August 1963, when a new Chairman, Rear Adm. John Harllee, U.S. Navy (retired), was named pursuant to a reorganization of the agency ordered by the late President John F. Kennedy, the Federal Maritime Commission has taken a new approach to regulation and, for the first time, is endeavoring to carry out the mandates of the Shipping Act of 1916, as amended, the Merchant Marine Act of 1936, and the Trade Expansion Act of 1962. But the long history of inaction has permitted development and entrenchment of evil practices repeatedly exposed and reprobated by Congress. The Commission is meeting heavy resistance, and will need the full support of Congress, the administration, and the courts to effectuate the statutes and to rectify the prejudice to our commerce of the freight system.

(5) The added pressure of high-priced Government exports and the inadequacy of American-flag tonnage have accentuated the problem.

These points are discussed below.

1. EXPORT RATES ARE HIGHER THAN CORRESPONDING IMPORT RATES

Our first problem was to ascertain the facts concerning the relation between outbound and inbound rates. This problem was complicated by the curiously diffuse testimony of steamship industry witnesses. Appearing as a group, their positions varied from denying that export rates are higher at all to explaining why they must be higher; from minimizing any effects they might have on commerce to asserting their

beneficial effect. This bewildering assortment of positions was accompanied by elaborate data which were subsequently publicly repudiated and attacked in material respects by the same witnesses who presented them to this committee. Accordingly, this committee has drawn on the competent departments of Government and its own professional staff for data and analysis.

Extensive studies were conducted by the economic staff of the Federal Maritime Commission augmented by the Department of Commerce with its economic and statistical resources.

It is evident that the first systematic impression of the relation between outbound and inbound rates will be afforded by a comparison of export and import rate tariffs. The broad scale of the relation will be thus exposed. A second test, more refined, will compare the known chief commodities in both directions (although a proper scientific sample of the tariffs will, of course, have included a valid section of them). A final insight will be afforded by comparing the actual operating results of leading carriers from their outward and inward movements.

Studies in these areas establish and verify the fact that on our chief trade routes to Europe and the Far East freight rates are structurally higher on exports than on imports, and that this condition extends to substantially comparable commodities.

A. The tariff study showed that on trade between the Pacific coast of the United States and the Far East, outbound rates exceeded corresponding inbound rates on 80 percent of the sampled items. The following table is illustrative:

U.S. Pacific coast-Far East trade route

[Freight rate per weight ton or 40 cubic feet]

Commodity	Outbound	Inbound
Canned goods	$47.50	$22.75
Cameras	54.50	32.25
Radios	57.25	33.25
Sporting equipment: Ski, tennis rackets, and fishing equipment	66.25	17.50
Motors, electric	52.50	33.25
Toys	52.75	17.50
Frozen fish	97.50	78.75

In trade between the U.S. Atlantic and gulf coasts and the Far East, outbound rates exceed corresponding inbound rates on 70 percent of the commodities sampled. For example, it costs $61.25, weight or measure, to ship radios from New York to Japan, whereas it costs but $40.00, weight or measure, to ship Japanese radios to New York. It costs $49.25, weight or measure, to ship automobiles from New Orleans to Japan, whereas it costs but $24 to ship Japanese automobiles to New Orleans. It costs $67.25, weight or measure, to ship stainless steel bars from Baltimore to Japan, whereas it costs but $36.25 to ship Japanese steel bars to Baltimore.

On 60 percent of the sampled commodities in trade between the U.S. North Atlantic ports and Western Europe (Germany and Belgium ports) outbound rates exceeded corresponding inbound rates. Standing alone, this figure would not necessarily have been statistically significant of discrimination. In fact, we are advised that outbound freight rates to Europe were reduced more than 30 percent between

1961–63. These reductions resulted from the strong nonconference competition of the Meyer Line. Since that time, this independent line and the conference have called off the war and reached an agreement whereby they will pool all their earnings. As a consequence, since the sample was made, outbound freight rates have already been increased by at least 10 percent, and they will probably be increased still more, especially if the pool should be approved. Thus, the fundamental expectation is vindicated that where the conference dominates or coalesces with its competition the rate structure tends to move upward and into the same pattern of imbalance between export and import rates.

B. The study of freight rates on the major moving commodities showed that (1) of the 22 such commodities moving between the Pacific coast of the United States and the Far East (11 exports and 11 imports) outbound rates exceeded corresponding inbound rates on 19, and (2) of the 49 major commodities moving between the east coast of the United States and the Far East (25 outbound and 24 inbound) outbound rates exceeded corresponding inbound rates on 33, or 67 percent.

As a spot check, random manifests from ships currently operating between the U.S. east coast and Japan were examined. Of the 153 shipments listed on the manifests covering trade from Japan (inbound trade), 148, or 97 percent, moved at rates lower than those at which the same commodities would have moved had they originated in the United States. In the reverse direction, of 153 shipments destined for Japan, 93, or 61 percent, were found to have moved at higher rates than would be charged if they originated in Japan. Combining the manifests, of 300 actual shipments that originated half in the United States and half in Japan, the outbound rates from the United States were higher in 241, or 82 percent, of the cases.

C. The best comparison of general rate structures is afforded by the actual financial and voyage reports of the carriers operating on the trade routes. Among other advantages of these data are that they offset the unknown extent to which official tariffs may fail to represent the rates actually charged. For the lesson of the Celler and Bonner investigations must not be forgotten, and there is no reason to suppose that secret rebating on the broad scale they discovered has necessarily disappeared since 1962. Unfortunately, only the reports of American subsidized lines have been made available for examination. The Federal Maritime Commission has been attempting to procure the same information from foreign-flag lines, but has met with strong resistance to disclosures. On the other hand, assuming that the subsidy system, based on foreign-differential costs, is being carried out in the manner Congress has laid down, certain inferences can be drawn concerning the position of the foreign lines, at least in respect of their average operating and capital costs.

On trade route 12 (U.S. North Atlantic-Far East), the voyage reports of the leading American operator for the year 1963 showed the following:

(1) Although payable tons for the respective legs were roughly equal in the 50 percent sample (204,000 payable tons of exports and 189,000 tons of imports), the line earned more than $9 million outbound and somewhat less than $6 million inbound. The average rev-

enue per payable ton was $44.31 outbound, and $31.71 inbound, the former being 40 percent higher.

(2) The outbound freight rate represents 18.1 percent of the export value, whereas the inbound rate is 14.7 percent of the inbound value.

(3) After subsidy, the operator made a profit on the outbound leg of the sample voyages equal to $10.08 per payable ton, and on the inbound leg of $2.12 per payable ton. Before subsidy, the outbound leg generated a profit of $2.81 and the inbound leg a loss of $3.54 per payable ton. Furthermore, after subsidy the outbound revenue of $44.31 per payable ton was $10.09 per ton higher than the entire direct round trip expenses of the voyages (excluding, of course, handling charges attributable to inbound cargo), and 92 percent of total cost, including overhead, interest, and depreciation. Therefore, the rates paid by the U.S. exporter on this route are almost high enough to enable the operator to return in ballast and not lose money.

(4) The inference is clear that inbound freight rates on this trade are being made on a theory of added cost only, and not on the basis of cost reasonably distributed in accordance with traffic.

A smaller sample from voyages of a subsidized operator in the Pacific coast-Far East trade showed outbound profits of $5.55 per payable ton after subsidy, and inbound loss of $4.95 per payable ton, although again the cargo was virtually equal in quantity. A similar sample from voyages of a subsidized operator sailing between the North Atlantic and Western Europe indicated outbound profit of $9.09 per payable ton after subsidy, and inbound loss of $6.86 per payable ton.

Assuming that subsidy payments measure cost differentials with reasonable accuracy, it is fair to infer that the results of foreign carriers are approximately the same on average.

Thus, all tests verify that in our chief trades outbound freight rates are higher than inbound freight rates, high enough to pay almost all round trip costs. In short, the general freight rate structure tends to subsidize imports by throwing disproportionate costs on exports.

Although, curiously, some industry witnesses continue to deny these facts in the face of this evidence (in many cases supplied by themselves), the European shipowners do not. They not only conceded that the outbound rate structure is higher than the inbound rate structure, but advanced explanations to justify the discrimination. Essentially, they say that U.S. liner exports are 1½ times greater in weight tons than imports; hence more ships are required to carry cargoes from than to our ports. Consequently, rates on outward cargoes from this country must be high enough to cover costs and profits of the round trip. Rather than send the vessels to the United States in ballast, the owners will accept cargoes to the United States if rates are just high enough to cover the added costs of loading and discharging, as well as the extra time involved in taking cargo as compared to proceeding in ballast. Freight rates to the United States, therefore, tend to be depressed in relation to freight rates the other way. The corollary of this argument is that the lower rates are even a small contribution to keeping outbound rates lower than they might otherwise have had to be.

This argument may well describe the ratemaking process accurately. If so, it signifies that our vast imports are being carried on a strictly

added-cost basis; their profitability must then be gigantic. Thus, on trade route 12 in the case of the American operator the revenue from its inbound cargo (almost the same as outbound) would have charged against it only out-of-pocket handling charges, leaving a profit per ton of $17 before subsidy. Although this is purely a case of bookkeeping, since the total results for the round trip cannot be affected by arbitrary allocations between outbound and inbound legs, it may account for the heavy disparity between the respective rates. But this approach cannot be justified economically.

First, though more space is needed outbound than inbound, the imbalance is less acute than suggested, and does not exist on some individual services. On five voyages in the second quarter of 1963, a U.S. operator from the west coast to Japan carried 56,000 payable tons outbound and 55,000 payable tons inbound; yet the outbound rate averaged $27.31 per payable ton—60 percent higher than the $17.31 inbound rate. The subsidized operator from the North Atlantic to the Far East carried on its 1963 sample voyages respectively 204,000 and 189,000 tons out and in, but the outbound rates exceeded the inbound rates by 40 percent. Statistics for the entire trade route indicate that inbound cargoes occupy nearly as much ship space on conference vessels as do outbound cargoes. On the trade routes between U.S. North Atlantic and Europe, U.S. inbound cargoes actually exceeded exports in 1962, the last year for which statistics are available. In short, while it is generally true that the United States needs more ship space for its exports than its imports it is not true on some of the largest liner trade routes.

But even if the claimed imbalance exists, it does not seem to follow in practice that in every such case the rates are equally unbalanced. West Germany exports twice as much to Japan as Japan exports to West Germany. Yet on such items as steel angles, bars, and beams, the rate in 1963 from Japan to Hamburg was $17.15 per ton, whereas the rate from Hamburg to Japan was $18.62 per ton. The same rates applied for structural steels, steel plates, and steel sheets. On industrial machinery, the rate from Japan to Hamburg was $33.60 per measurement ton. The rates from Hamburg ranged from $34.44 to $37.24 per measurement ton. Thus, while the trade moving from Germany to Japan far exceeds trade in the reverse direction, the freight rates sampled were virtually equal, whereas rates from the United States to Japan or Germany on many of these same items were far higher than the corresponding rates to this country. The volume argument is therefore of obviously limited validity, chiefly in American commerce, it would seem.

The reason for the variance is quite evident. Ocean rates are not set by the free interplay of supply and demand, but by the combined power of the shipping conferences, only incidentally corrected by peripheral independent competition or powerful shipper interests. They have it in their power to equalize rates between Germany and Japan regardless of volume, and they have it in their power to fix rates outbound from the United States high enough to pay for the round voyage, also regardless of volume. That, at any rate, is the pattern they have set.

We are of the opinion that this pattern cannot be justified. Perhaps immediately after World War II, when inbound cargoes were

limited, outbound rates covering the entire round trip had a better basis for being. For example, from 1945 to 1947 imports from Europe and Japan averaged less than $1 billion per year. Today this is not the case. In 1963 imports from Europe exceeded $4.8 billion, and from Japan nearly $1.5 billion. At the present time there is no significant trade volume imbalance between the United States and Europe and Japan. But though our liner imports have risen rapidly since World War II, it appears that the structure of freight rates from the United States is still high enough to cover costs and profits for the entire voyage.

The committee heard testimony from the distinguished transportation economist, Prof. William Grossman of New York University, that backhaul rates fixed on added cost are unreasonable. Principally, our exports are burdened by rates unreasonably high.

What is painful is that our foreign aid programs and our subsidy system for American ships appear to be exacerbating the problem instead of alleviating it. For the high rates commanded by the aid cargoes, especially when augmented by the subsidy, seem to be inducing American lines to avoid the lower paying import trades and to hurry their ships back even in ballast to carry yet more Government exports. The undertonnaged fleet thus abdicates inbound service and indeed the commercial export service as well. Ratemaking is thus left to the foreign lines.

2. THIRD-COUNTRY DISCRIMINATION

The third-market rate practices just mentioned have an additional significance. They represent an area in which U.S. exporters are penalized even more severely than in respect of outbound-inbound discrimination. A sample of rates on 40 export commodities reveals that the average rate from the United States to ports of South America, South Africa, and India is $9.85 per 1,000 miles. This is 138 percent higher than the $4.14 average rate from Japan, and 86 percent higher than the $5.30 rate from London to these same ports.

Secretary Luther Hodges recently said of this freight disadvantage:

> During my recent trip to Central America, Colombia, and Venezuela, a persistent theme by businessmen and by Government officials was the existence of markedly higher freight rates on shipments of U.S. goods to the area than on comparable shipments from Western Europe. In Nicaragua, for example, we were told that it cost $586 to ship a tractor from New Orleans to Corinto (excluding inland freight charges); and $314 to ship a tractor from the United Kingdom to Corinto (excluding inland freight charges). The Minister of Finance of Honduras lodged a similar complaint.

It is sometimes suggested that the rate differentials are deceptive because the ocean rate usually includes stevedoring, very high in this country. Loading charges in New York are reported to average $12.88 per payable ton; in New Orleans, $8.57; Rotterdam, $5.67; Liverpool, $4.47; and Tokyo-Yokohama, $2.50. But on the 40 commodities studied it was found that on a per-ton-mile basis, U.S. rates were 85 percent higher than European rates, and 138 percent

higher than Japanese rates, excluding the expense of cargo handling. The following table is illustrative:

Ocean freight rates per ton per 1,000 nautical miles (excluding loading charges)

Commodity	From	To		
		La Guaira, Venezuela	Rio de Janeiro, Brazil	Capetown, South Africa
Autos, buses, and trucks	New York	$8.71	$6.64	$3.42
	Rotterdam	4.23	2.24	.94
	London	7.87	2.22	1.88
	Tokyo or Yokohama	3.20	3.43	3.97
Radios and TV sets	New York	9.32	10.34	5.65
	Rotterdam	7,18	4.20	4.53
	London	7.67	6.43	4.67
	Tokyo or Yokohama	5.56	4.52	4.59
Whisky	New York	35.84	12.44	------
	Rotterdam	11.42	12.49	5.06
	London	11.46	12.61	5.22
	Tokyo or Yokohama	6.19	6.47	4.59

It bears repeating that the rates charged from U.S. ports as well as from European or Japanese ports are for the most part set by steamship conferences. In numerous cases, the conferences controlling the rates from the United States are made up of many of the same foreign-flag lines as the conferences which control rates from European ports to the same ports in South America. It is possible, in fact, for cargoes loaded in a European port to pay less than comparable cargo picked up in North American ports, both destined to the same South American port on the same voyage. Perhaps it may be argued that the American exporter receives the direct service, but on the other hand the European exporter occupies the space longer and, of course, over a greater distance, and would certainly be expected to pay the higher rate.

Besides the evidence of the tariffs that U.S. exporters are at a freight disadvantage to third-market areas, many of them have specific complaints. To cite one significant example, the Boiler Manufacturers' Association estimates that in 1964 markets in South America and the Far East could have exceeded $57 million in sales if freight-rate adjustments had been made. It was reported to this committee that one of its members recently lost a $1.5 million sale in India to a European competitor because the ocean freight rate on boiler parts is $60 per measurement ton from New York to Calcutta, but the European rate is only $31.16. Similar disparities on boiler parts and other components exist with respect to many markets in the Far East and South America.

The committee also heard evidence from exporters of bulk chemical fertilizers to whom a $3 differential in freight rates represented the loss of South American markets for products actually produced cheaper here than in Europe. Other similar evidence was received.

It should be noted that section 17 of the Shipping Act has long explicitly conferred power on the regulatory agency to correct prejudicial rates of this character if the same ships or conference members are involved. No case has been cited to us in which this power has been invoked, however.

3. BLOC VOTING

Considerable evidence was introduced before the Joint Economic Committee which indicates that foreign-flag lines, which dominate all the major steamship conferences, tend to vote as a bloc regardless of the interests of American shippers. The hearings on June 21, 1963, contain the following colloquy:

Chairman DOUGLAS. Is it not true that in many of these conferences the foreign lines of a given country will vote as a bloc?

Mr. STAKEM (former Chairman of the Federal Maritime Commission). I think that is true, Senator.

Chairman DOUGLAS. Is this not particularly true of the Pacific coast, that Japanese lines nearly always vote as a bloc?

Mr. STAKEM. I would say that is definitely true.

Chairman DOUGLAS. What about the German lines? Do they vote as a bloc?

Mr. STAKEM. Yes, I would say so.

A recent experience confirms that foreign lines, regardless of flag, vote as a bloc against U.S. lines and U.S. shippers. The Gulf/French Atlantic, Hamburg Range Freight Conference voted 10 foreign lines against 3 U.S. lines for a rate decrease sought by the latter (obviously responding to this committee's interest in rates). As a consequence, Lykes Bros. and Bloomfield Steamship Lines resigned.

Another recent example of the effects of foreign domination can be seen in the actions of the three conferences that cover Far Eastern trades. Two United States-Manila conferences imposed a $10 per ton surcharge on all U.S. shipments to Manila, Philippines. The Japanese-Philippines Freight Conference imposed on Japanese exporters to Manila only a $2 surcharge. Of the 34 member lines of the Japanese-Philippines Freight Conference, 19 are Japanese lines and 3 are American; 10 of these same Japanese lines are in the United States-Manila conferences. In other words, the same foreign lines that voted a $2 surcharge on Japanese exports voted a $10 surcharge on U.S. exports.

The committee heard shipper evidence that similar conditions prevail in South American trade. The same European lines that may raise or decline to moderate U.S. rates may simultaneously lower European rates, it was said. In few of these conferences do American carriers constitute a decisive voting bloc. The future for our lines might better lie outside these conferences.

CHAPTER II

REGULATION OF STEAMSHIP CONFERENCES AND PRACTICES

The American economy is based on the conception that the marketplace can best allocate resources, both human and natural, and can best divide a nation's wealth. Laws have been adopted and enforced to protect free competition in the marketplace. Rarely has Congress deviated from its antimonopoly principles. In the few instances where Congress permits monopolistic practices, it has imposed controls designed to approximate the conditions of free competition. In theory, antitrust immunity is accompanied by Government regulation, without exception.

The American economy has achieved living standards surpassed by no other society in history on the theory that competition fosters optimum production at the best relation of prices and costs, encouraging technological and managerial innovation, and providing the consumer with a wide choice of products at economical prices. In the absence of competition, prices are set at levels high enough to be profitable to the monopolist or to the highest-cost participant in a monopolistic agreement; costs are administered rather than controlled by price competition; technological and managerial innovations are less urgently needed because of the protection given high-cost participants; consumers pay high prices for less varied commodities and services. It is only by public regulation of a cartelized industry that the public is protected, and even this does not entirely substitute for competition.

1. THE LACK OF GOVERNMENTAL REGULATION

Shipping lines carrying U.S. commerce have been cartelized for virtually a century.

In 1916 Congress passed the Shipping Act following a classical investigation that turned up evidence of typical monopoly abuses in many areas, including domination of shippers through systems of exclusive patronage enforced by deferred rebates, the use of fighting ships against independent carriers, discriminatory rates, and the like. There was no doubt that all these devices were illegal under the antitrust laws, and the Supreme Court was in the very act of striking them down when the outbreak of war rendered the issue moot. In legislating, the Congress heard persuasive voices arguing that absolute freedom of competition was impracticable in ocean shipping. Whatever the current merits of this argument, Congress at that time accorded antitrust immunity to shipping combinations. But it was willing to do so only by bringing them under controls that would provide some of the benefits of free competition. Unregulated steamship monopolies were not regarded as compatible with the public interest.

Although the Shipping Act was adopted almost 50 years ago, the actual regulation of steamship conferences has never been carried out. Extensive investigations by House committees over the last 5 years have established that all the abuses intended to be remedied by the act, including even the deferred rebate, are flourishing actively. The statutory powers are ample and have been strengthened as recently as 1961, but their enforcement has been grossly inadequate. The Antitrust Subcommittee of the House Judiciary Committee, under the distinguished chairmanship of the Honorable Emanuel Celler (Democrat, of New York), has reported:

> The administration of the Shipping Act and the enforcement of laws regarding ocean shipping have been woefully deficient * * * our applicable laws could have held the conduct of the shipping industry to an ethical plane that would be beneficial to the U.S. foreign commerce * * *. Exactly the contrary has occurred.

Broadly speaking, the succession of regulatory agencies that have been charged with administration of the statute, each in its brief turn, have been poorly informed and ill equipped. They have simply not known what was occurring in the industry, and have generally had no grasp of legal or technical principles. They proceeded on particular instances, and established no positive rules of conduct. In the absence of general standards based on national policy, the tendency became irresistible to permit what was on the one hand adroitly advocated by special interest, and on the other hand was not condemned under articulated guidelines. As a result, a quite unintended negative principle emerged. Steamship operators came to believe that they had prescriptive rights to engage in monopolistic practices, which were to be deemed lawful unless individually disapproved. This is a far cry from the philosophy of the Shipping Act that only in particular circumstances, and only when strictly supervised by Government, should steamship lines be granted antitrust immunity.

When foreign commerce was less important to the United States, abuses in shipping unchecked by regulation or independent competition, bore less heavily on it. Perhaps there was also a notion that as the American merchant fleet was chiefly important to defense, strictly commercial abuses were tolerable. Today, the fleet is still important to defense, but it is even more important as an instrument of U.S. commercial policy. Today, open trade is part of the lifeblood of the economy, essential to buoy up prosperity at home and to sustain the military and economic force of many nations. Export expansion is vitally needed if we are to meet our overseas commitments. Many programs, both private and public, have been started to promote trade, but until recently maritime reform and regulation have scarcely been perceived as urgent for export promotion.

American exporters are now paying the costly penalty of nonregulation of ocean shipping. High freight rates, discriminatory rebates and practices, secret anticompetitive agreements, fictitious classifications of cargoes, and other abuses fathered by unregulated monopoly permeate American trade routes. Examples of such abuses abound in the hearings of the Subcommittee on Antitrust and Monopoly, the Committee on Merchant Marine and Fisheries, and the Joint Economic Committee.

Failure to enforce the law for 50 years has established that which Congress sought to outlaw. Neither the protection of free competition in the marketplace nor the protection of Government regulation has been provided the public. Conferences have pyramided upon other conferences to form superconferences controlling trade from all our coasts. Agreements exist distributing exclusive rights to certain ports. The Antitrust Subcommittee discovered evidence of many such agreements, of which a letter from Cunard Lines' Liverpool office to its New York office may pass as a characteristic example:

> On this side at least we have always had a proper working agreement between the United Kingdom and the Continental Lines that each would respect the other's territory and this has been carefully observed. It has been our understanding that a similar working agreement prevails on your side.

The largest inbound trade route of the United States encompasses trade from Western Europe to the North Atlantic and gulf. As of September 1, 1964, there were on file with the Maritime Commission 10 pooling agreements, 12 conference agreements, and 1 superconference agreement affecting this trade area. The superconference operates under Agreement 8020. Four conferences, the Continental North Atlantic Westbound Freight Conference (CNAWFC), the French North Atlantic Westbound Conference (FNAWC), the Marseilles North Atlantic Conference (MNAC), and the West Coast of Italy, Sicilian and Adriatic Ports North Atlantic Range Conference (WINAC), have filed an agreement that allows establishment of ocean rates and transportation conditions on cargoes common to the European territory served by two or more of the conferences. On the northern range to the United States, these proliferated and combined conferences have for some years suffered the competition of the powerful independent Meyer Line. At last they have seized the opportunity to enter into a pool with Meyer, by which for a revenue share the latter will cease to compete, promising indeed not only to desist from serving the United Kingdom and France but also from attracting their cargo to the ports it will continue to serve. The following excerpts of minutes from WINAC Conference meetings produced by the Justice Department are instructive:

RESOLUTION NO. 1452—DIVISION OF CARGO OF ITALIAN ORIGIN VIA NORTHERN PORTS

> Agreed to send to Secretary General of Agreement 8020 the following telegram:
>
> "Understand agreement reached with Meyer Line November 7, 1963, giving assurance to avoid deviation traffic from United Kingdom and France. Our knowledge no assurance given avoid deviation Italian traffic. Under circumstances unless proper assurances are immediately given by the Continental North Atlantic Westbound Freight Conference regret cannot see advisability continue be party Agreement 8020. Immediate reply is kindly requested."

And the minutes of a WINAC meeting held on November 27, 1963, contained the following telegram:

> At today's WINAC principals meeting consideration was given to Italian traffic diverted to north continental ports. CNAWFC explanation as per your letter dated November 16 unacceptable to this membership who therefore insist on CNAWFC bringing pressure to bear on Meyer Line to cancel forthwith their special rates on traffic of Italian origin and Italian automobiles. In other words Meyer Lines should adopt the same attitude as vis-a-vis United Kingdom and France. Failing Meyers agreement WINAC membership regrets must defi-

nitely consider withdrawal Agreement 8020 as in actual practice would be worthless. Would appreciate immediate attention and reply.

The minutes of the November 27 session also contained the following:

Furthermore the request advanced by Mr. Olivette seeking a reduction on existing freight rates for their products is examined. As these applicants threaten diversion of their cargo to North European ports, the Conference's rules and regulations supervisor is requested to contact said firm at their Ivrea offices to ascertain the exact status of the matter and report at the earliest possible date.

The Justice Department's brief rightly says:

First, WINAC's concern over Meyer's ability to deflect Italian traffic to North Continental ports and its concern over Olivette's threat to ship via North Continental ports demonstrates the competitive interrelationships among trades * * *. Third, the statement that Meyer's attitude should be the same in relation to Italian traffic as it is in relation to United Kingdom and French traffic would tend to indicate that the various lines may have tacit agreements dividing up territories and protecting the traffic of each line for the competition of other lines. Indeed, the very fact that WINAC tried to have the North Atlantic Conference use its power to protect WINAC's Italian traffic indicates this * * *.

There is thus evidence that the major lines divide the trade routes of the world. A conference, a pool, may not be separate, unrelated agreements, but parts of a complicated structure affecting the entire ocean freight market. The extent of market division is not known. Whether a conscious plan has been adopted calling for worldwide cargo allocations is not known.

The only way to discover the network of market controls is to examine each anticompetitive device fully. This calls not only for diligent effort to discover the agreements that are never filed but the most scrupulous investigation of those that are filed. Above all, the policy of regulation by default must be abandoned. The Commission must consciously cease to approve agreements merely because nothing appears against them: it must determine to give its approval only when affirmative good cause appears in their form. Application of a doctrine of presumptive illegality, conformably with the underlying policy of the United States, might do much to retard the spread of conference power.

More adequate public information is greatly needed regarding (*a*) pools and other anticompetitive agreements, and (*b*) the costs and profitability of the shipping companies. Undoubtedly part of the suspicion that attaches to shipping conferences stems from the relative secrecy surrounding them. It is not unreasonable to expect them to make more complete public disclosure in exchange for exemption from the antitrust laws. As a recent article in the London Economist said:

For the past 90 years, conferences have expected the world to accept without question the answers that they have given; there is no reason why the world should. Questions can, and should be asked about all aspects of rate fixing * * *.

Eliminating secrecy would aid regulation. One of the traditional concerns about any cartel is that it will use its monopolistic powers to force prices to unreasonably high levels with resulting exorbitant profits. There is the hope that the very process of publicly disclosing economic information would tend to discourage abuses by rendering carriers sensitive to public reaction. Public opinion is a powerful

force supporting the more formal processes of regulation by the Federal Maritime Commission.

The Federal Maritime Commission, in conjunction with the Department of Commerce (in particular, the Maritime Administration and the Bureau of the Census), the Treasury Department (in particular, the Bureau of Customs), the Department of State, and other Government agencies, can without increasing the burden on the shipping companies obtain much of the information needed if a coordinated plan is adopted and executed. However, questions involving costs, profits, and anticompetitive agreements are solely in the possession of the carriers, and the Federal Maritime Commission must obtain this information directly from them. Their resistance to disclosure is discussed below.

2. REGULATION BY THE NEW FEDERAL MARITIME COMMISSION

Soon after members of the Joint Economic Committee addressed themselves to the problem of freight rates, they were startled to learn that the new Federal Maritime Commission seemingly had already fallen into the pattern of its predecessor agencies. The Shipping Act of 1916 called for strong and vigorous regulation of shipping conferences. The Bonner Act of 1961 amended the Shipping Act and called for even stronger regulation, as evidenced by the report of the Merchant Marine and Fisheries Committee:

> Congress then, as now, was unwilling to tolerate methods involving ties between conferences and shippers without appropriate safeguards and supervision * * * the conference, fixing as it does rates and practices, is permitted to exist only as an exception to the antitrust laws of the United States, * * * to secure the benefits of such immunity from the antitrust acts, the conferences are required by section 15 of the Shipping Act of 1916 to file all their agreements with the appropriate regulatory body and obtain approval of that body. The Board has considerable jurisdiction under the terms of that act to regulate the conferences and see that they observe the restrictions upon which their immunity from the operation of the antitrust acts is predicated.

Although the Shipping Act was amended as recently as 1961, and although stronger regulation was asked for by the Congress, such regulation was not forthcoming. After a very brief investigation of the Federal Maritime Commission, the Joint Economic Committee found that the charges in 1962 of the Subcommittee on Antitrust and Monopoly under the distinguished chairmanship of Congressman Emanuel Celler (Democrat, of New York), were still valid. At the conclusion of its investigation the Celler subcommittee stated in March 1962:

> After a careful study this subcommittee has concluded that our national shipping policy is basically sound. However, the administration of the Shipping Act and the enforcement of laws regulating ocean shipping have been woefully deficient. Alert and diligent administration and enforcement of applicable laws could have held the conduct of the shipping industry to an ethical plane and would be beneficial to U.S. foreign commerce. This could have been achieved through imposition of exacting competitive standards and close supervision; exactly the contrary has occurred. American trade routes are permeated by abuses of all sorts—unfiled anticompetitive agreements, discriminatory rebating, fighting committees in lieu of fighting ships, predatory practices, discrimination against ports and against shippers, fictitious classifications of cargo and excessive rates, to expound but a few. Some indications of the degree of saturation of our international sealanes with malpractices may be gained from the

fact that with no more than three investigators, the Antitrust Subcommittee has, in the relatively short period of its investigation, unearthed some 240 cases involving possible violations of Federal statutes or conference agreements on the part of vessels engaged in the transportation of the foreign commerce of the United States.

At the time of the Celler investigation, the House Merchant Marine and Fisheries Committee and the Senate Commerce Committee were drafting amendments to the Shipping Act of 1916. At approximately the same time, Reorganization Plan No. 7 was adopted by the Congress, creating the Federal Maritime Commission as an independent regulatory agency, apart from the Maritime Administration which administers the subsidy program, and with which its predecessor had previously been paired in the Commerce Department.

The 1961 amendments to the Shipping Act gave the Federal Maritime Commission broad authority over ocean freight rates. In the first place, all common carriers in the foreign trade of the United States, and all conferences in that trade, must now file and abide by their published rates. Until this amendment to the Shipping Act, the law did not clearly prevent charging rates different from the published tariff, which was not required by statute to be filed. The shipper might be obliged to prove unjust discrimination or actual loss of business to a competitor. Now the filed rates must be adhered to; nor may increases be made without 30 days' notice unless special permission is given for good cause. Reductions are permitted upon filing, and this possible deficiency is a question for the new agency's continuing study since the slowing down or ratecutting would tend to preserve the stability that has generally been regarded as a desirable end in the international transportation of commodities.

A second provision of the Shipping Act, as amended in 1961, lays down explicitly that conference agreements must, as a condition of approval, be in the public interest. The previous tests, whether the agreements are discriminatory, detrimental to commerce, or in violation of the law, remain in force, but the law is strengthened by the special inclusion of the public-interest standard.

A third new provision of the Shipping Act added in 1961 directs the Federal Maritime Commission to disapprove rates so high or so low as to be detrimental to U.S. commerce. This is the only provision dealing with the level of rates as such, and is perhaps the strongest provision of the Shipping Act.

The final new provision of the Shipping Act grants statutory confirmation to the dual-rate system, provided certain conditions intended to make such contracts equitable to shippers are approved by the Federal Maritime Commission. The Maritime Commission was given 6 months from the enactment of the amendments on October 3, 1961, to review existing dual-rate contracts and to approve them if they meet the new statutory requirements. The Commission asked and was twice granted 1-year extensions. It was not until April 3, 1964, that the Commission issued the precise conditions under which it would approve such contracts.

Foreign-flag steamship lines, conferences and foreign governments vehemently opposed the amendments enacted in 1961. Britain, Canada, Denmark, France, Germany, Italy, the Netherlands, Sweden, and Norway formally protested to the Department of State that the Bonner Act violates international law and interferes with the business

operations of foreign-owned steamship companies and foreign-based steamship conferences.

On the other hand, the American steamship lines themselves readily admitted before the Antitrust Subcommittee, the House Merchant Marine and Fisheries Committee, and the Senate Commerce Committee that regulation of steamship conferences and ocean transportation was in the best interest of the United States and the American merchant marine. A spokesman for the American steamship companies reaffirmed this position in a statement before the House Merchant Marine and Fisheries Committee as recently as July 23, 1964.

While the Celler investigation and the Bonner bill caused great concern to the steamship industry, by 1963 it looked as though the tidal wave of concern had receded. First, the grand jury that had been called to investigate the violations discovered by the Celler subcommittee was abruptly dismissed. Second, the reorganized Federal Maritime Commission quietly subsided into the tradition of nonregulation, manifested not only by its request for extensions of the Bonner bill deadline for dual-rate approval, but also by its inadequate response to the inquiry of the Joint Economic Committee during its investigation of the steel price increases of 1963. The committee asked why it costs American exporters considerably more to ship steel products to Europe and Japan than it costs European and Japanese exporters to ship their steel products to this country.

Representatives of the Commission not only failed to explain the rate disparities, but they admitted that the Commission, like its predecessors, had never investigated the problem even though the Merchant Marine Act of 1936 had ordered such an investigation and this was, as recently as 1961, reaffirmed in the very investigations that had led to the Commission's creation.

The then Chairman, Thomas E. Stakem, Jr., admitted to the committee in June 1963 that the Commission had not investigated the level of freight rates, the conference system of ratemaking, the relationship between rates and trade movement, and the effects on the balance of payments of present ocean transportation practices. He further admitted that the Federal Maritime Commission had rarely disapproved a major conference agreement under section 15, and had never subjected a freight rate to the test of the new section 18.

He excused the particular failure to investigate export-import rate disparities on the ground that shippers' complaints in this area were scarce. Of course, the Shipping Act recognized that shippers would not always complain, and provided ample authority for the Commission to investigate on its own motion and, of course, the Merchant Marine Act specifically had ordered such an investigation. Nevertheless, it seemed curious to members of the Joint Economic Committee that shippers had not complained.

The committee at first was inclined to accept at face value the argument that shippers must have been satisfied or else they would have complained, but shortly after the first series of hearings a heavy stream of complaints began to pour forth. We are led to believe that silence in the past merely meant that shippers were discouraged with the regulatory body. The expense and delay of a legal quarrel against both the steamship conference and an indifferent or hostile regulatory agency were simply too much for shippers to assume. Since the Joint

Economic Committee began its investigation, companies and individuals in the paper, chemical, steel, plywood, boilermaker, book, fertilizer, cement, toy, and sporting goods industries have complained to the Joint Economic Committee and to the Federal Maritime Commission. While the steel industry was reluctant at first to complain, recently some of the big companies have asked for rate equalization. The United States Steel Corp. has stated before the Federal Maritime Commission that ocean-rate disparities could be a significant deterrent to exports and should be eliminated if the carriers failed to provide valid justification. A summary of the views of 25 leading world trade companies, including Du Pont, IBM, Ford, Jersey Standard, Detroit Edison, plus 64 U.S. Department of Commerce World Trade Conferences—where more than 500 U.S. companies were represented—contained this statement: "The messages of American business for the U.S. (trade) negotiators emphasize these points: Standardize the rules of international competition. Recognizing that some aspects are outside the current negotiations (Kennedy Round), adopt international standards for antidumping rules, antitrust and ocean freight rates, so that American businessmen are not at a disadvantage in competition." (The General Electric Forum, April-June 1964.)

Thus the excuse of shipper quiescence fell to the ground, and the record of regulatory nonfeasance remained.

Apart from pursuing its own investigation, the committee felt obliged to inform the late President Kennedy of the ineptitude and neglect of the Federal Maritime Commission. The President responded by ordering the Bureau of the Budget to investigate. The Bureau recommended that the agency be restaffed and that a regulatory program setting forth priorities and objectives be formulated. It also recommended that a new chairman be designated. The President named Rear Adm. John Harllee, U.S. Navy (retired), as the new chairman on August 26, 1963, and the latter immediately appointed Mr. Timothy May as the new managing director. The Commission next proceeded to formulate a program of priorities and objectives. This became an official program on March 9, 1964.

In addition to reporting to the President, the Joint Economic Committee also made four preliminary recommendations to the Federal Maritime Commission concerning the current question of import-export rate discrimination:

1. The Commission should establish guidelines for complainants on what the law requires as proof of discrimination.

2. The Commission should initiate steps under its existing authority to eliminate unjust discrimination in rates, and should promptly inform Congress if additional authority is needed to deal with any aspects of these discriminatory practices.

3. The Federal Maritime Commission should undertake a study of the extent and economic effects of disparities between inbound and outbound ocean freight rates.

4. The Federal Maritime Commission should (*a*) request information from the shipping conferences on rates between Europe and Japan and third-market countries, and (*b*) compare these rates to those on U.S. exports to these third-market countries.

To the first preliminary recommendation of the Joint Economic Committee, Admiral Harllee, speaking for the Commission, has re-

sponded that from several investigations now in progress it is hoped to formulate general rules of construction and proof:

> The committee has been greatly disturbed, and reasonably so, by disparities between inbound freight rates and higher outbound rates on the same commodities between the same ports, and by disparities between outbound freight rates and lower rates on the same commodities from other countries to the same foreign destinations * * *. I agree with this committee that guidelines are necessary in order to give full protection to the shipping public. Furthermore, I think guidelines will facilitate full compliance with the law by the steamship companies and conferences.

The Joint Economic Committee continues to believe that general principles of conduct and interpretation can serve to illuminate and regularize the whole field, and we congratulate the Federal Maritime Commission for working along this line. We shall watch the development of intelligible guidelines with great interest.

To the secondary preliminary recommendation of the Joint Economic Committee that the Commission should initiate steps under its existing authority to eliminate unjust discrimination in rates, and should promptly inform the Congress if additional authority is needed, Admiral Harllee responded:

> The Commission is presently exhausting every power provided it under law and every resource appropriated to it by Congress to eliminate unjust discrimination in rates * * *. However, the Commission has only limited powers to correct discrimination caused by rate disparity existing in the inbound-outbound trade. Present statutes do not make such disparities unlawful * * *. While the Commission is powerless to order the correction of such a situation, it is precisely the phenomenon which Congress ordered the Commission to investigate in section 212(e) of the 1936 act * * *. The Commission is pursuing this investigation with every resource at its command. It intends to complete this investigation whether with or without the cooperation of the conferences or carriers and, depending upon the magnitude and nature of the problem, that is, the discrimination and its effect on our commerce, intends to recommend to the Congress what measures are necessary to correct that discrimination * * *."

The Commission reports that it has been investigating iron and steel rates since August 1963; that after careful study it has ordered formal hearings on rates for distilled spirits and boilers. On the broad problem of inbound-outbound disparities the Commission has requested the conferences and independent carriers voluntarily to eliminate disparities on selected items or explain why these disparities exist, and ordered them to furnish documents and information needed to study the disparity problem as directed by section 212(e) of the 1936 act, in order to study the reasonableness of freight rate levels under sections 15 and 18(b)(5) of the 1916 act. We discuss the reaction to this demand below.

The Federal Maritime Commission for the first time has sought to determine the effects on American exports of current ratemaking practices. Its actions have been moderate, and we recognize the traditional caution of the quasi-judicial process. But ratemaking is in reality a legislative process, as the courts have long said. Members of the Joint Economic Committee feel that the Commission should go further, faster. It should use section 18(b)(5) of the Shipping Act to order every conference whose outbound rates appear too high, and every conference whose inbound rates appear too low, to justify those rates, and if they fail to justify them, the Commission should disapprove the rates or issue an order under section 15 to show cause why the conferences themselves should not be disapproved.

The third preliminary recommendation of the Joint Economic Committee was that the Federal Maritime Commission should undertake a study of the extent and economic effects of disparities between inbound and outbound ocean freight rates, selecting for this study (*a*) products which U.S. exporters have indicated are discriminated against in their complaints, (*b*) products which are presently substantially exported, or for which there is export potential, (*c*) products which the Commission presently knows are discriminated against, and (*d*) products for which freight rates are a high percentage of the landed cost. The Commission responded to this recommendation by instituting a program of pilot studies of such commodities in our foreign commerce. Thus far, these studies have led to three formal investigations of freight levels and one broad factfinding investigation.

In response to the Joint Economic Committee's fourth preliminary recommendation that it compare conference rates from Europe and Japan to third-market countries with rates on U.S. exports to the same third-market countries, the Commission reports the view of many shippers that the export freight structure from the United States is detrimental to them because rates from competitive foreign sources of supply are lower even when the distance to the market from the foreign competitive source of supply is greater. The Commission remarks on the difficulties of obtaining foreign rate information, observing moreover that its accuracy is diluted by widespread rebating practices generally acknowledged to exist in foreign-to-foreign trades. Conferences and carriers in U.S. commerce disclaim knowledge or control of ratesetting in foreign-to-foreign trades despite the fact that many carriers are in both trades. Under the statute, if the same carrier is not involved in the fixing of competitive rates, the Commission's jurisdiction is restricted to determining whether the outbound rate from the United States is so unreasonably high as to be detrimental to commerce, a matter influenced by comparison with third-country rates. If the carrier or conference does serve both trades, section 17 of the Shipping Act of 1916, which provides that "No common carrier by water in the foreign commerce shall demand any rate which is unjustly prejudicial to exporters of the United States as compared with their foreign competitors," empowers the Commission to alter the rates to the extent necessary to correct such prejudice and to order the carrier to discontinue the collection of such prejudicial rates. Efforts in this field are therefore well worth making, despite the difficulties to which the Commission alludes, which it may be able to overcome.

Besides actions taken in response to the specific recommendations of the Joint Economic Committee, the Commission has taken other positive regulatory steps for the first time.

A. The Commission has refused to approve pooling agreements unless the proponents can prove that such an agreement is in the public interest of the United States. Prior to the chairmanship of Admiral Harllee, the Commission's policy was to approve pools routinely, without hearing unless demanded, and without determining their effects on U.S. foreign commerce whenever the carriers felt that it was in *their* best interest to have such an agreement. The Commission now demands that the effects of the pooling agreement on the public interest of the United States be known before it grants approval. For only

the second time in nearly 50 years the Commission has recently disapproved an important pool, and it currently has 18 major pools under investigation—more than half the pools connected with U.S. foreign commerce.

B. In two areas, quick action by the Commission greatly alleviated discrimination against American exporters. Last year, the two conferences governing trade from the east and west coast of the United States to the Far East imposed a surcharge of $10 a ton on all shipments to Manila because of alleged port difficulties. No other conferences serving Manila imposed a surcharge of such magnitude. The ships serving Canada and Mexico imposed no surcharge on shipments to Manila. As a result of the surcharge American exporters of cotton and paper products lost markets to Mexican and Canadian exporters of these products. A large exporter of paper products from Maine wrote the Joint Economic Committee the following:

> * * * In the first 10 months of this year, we sold and shipped to Manila a quantity in excess of 6,000 tons of newsprint paper. This amounts to approximately $800,000 in sales volume. We had, therefore, an average monthly movement of 600 tons, which is more or less in line with the volume of our sales to Manila for several years.
>
> We have not shipped a ton of paper to the Philippines since the 1st of November of this year, and this has been due solely to the application of the $10 surcharge assessed by all lines operating out of the U.S. ports. Because of the competitive nature of newsprint business, there simply is no room for the absorption of the surcharge by our company.

Because of the high level of the surcharge and its effects on U.S. commerce, the Commission ordered an immediate investigation. The conferences quickly reduced the surcharge to $5 per ton.

In a similar situation involving the port of Chittagong, East Pakistan, a 40-percent surcharge was imposed by the conference from the United States. No other conferences from any country in the world imposed a surcharge. The Commission at once ordered an investigation and the surcharge was temporarily dropped. It was reimposed in April of this year, but again it was substantially reduced as a result of the Federal Maritime Commission's investigations. This reduction is of substantial importance to taxpayers of the United States for the Government is shipping $53 million worth of products to Chittagong under an AID loan. If the surcharge had remained at 40 percent, and if it applied to AID exports, approximately $4 million in additional freight charges would have been financed by the Government of the United States.

C. The Commission has begun investigations of (*a*) the conference system of ratemaking, (*b*) the conferences' methods of handling shipper complaints, and (*c*) the effectiveness of the neutral bodies of self-policing forces of conferences.

D. The Commission, in December of 1964, eliminated discrimination against United States and foreign shipping lines, when it imposed countervailing duties on imports from Uruguay. Uruguay gives rebates to shippers using ships of her registry. This action will offset this discrimination.

Every American exporter and every American taxpayer should congratulate the Federal Maritime Commission for the actions it has taken in the past year, and also for its sturdy resistance to the counterattacks launched by the industry. For the first time the Commission

has begun to carry out the mandates of the Congress. We believe that this committee has shared in stimulating not only the vivification of an important agency of Government but a fresh appraisal of the regulatory function in our foreign trade. We hope, indeed, that these beginnings will develop the knowledge and skills without which important results cannot be obtained and sustained, and that the dignity and fortitude under fire the Commission has evidenced in these early stages will deepen into the confidence and surehandedness that command universal respect.

3. RESISTANCE TO REGULATION

Against these hopes for improved regulation must be weighed the reactions of foreign governments and of steamship lines to efforts of the Commission to explore the problem of discrimination against American manufacturers and exporters. The lines have raised a recurrent cry that regulation by the United States of its own foreign commerce will break up the conference system. This cry is heard whenever Congress or the agency turns attention to manifest abuses. It does not seem well founded, even if one assumes the same premise, that this system is really the absolute desideratum in the government of ocean commerce. Thus, in 1961 Congress was induced to overrule the Supreme Court and to reestablish exclusive patronage on this same plea that otherwise the conference system would break up. But, curiously enough, many major conferences have elected not to use the dual rate contract. We reserve a certain skepticism at the cry of the conferences this time.

The new policies of the Federal Maritime Commission, even though moderate and not extreme, have met with almost unbelievable opposition from foreign maritime powers. Even the preliminary exploration of the facts has been resisted and obstructed.

Eleven nations formally protested the Commission's request for information squarely within the statutory reach. In July 1964, the British Government took unprecedented action and adopted legislation to forbid British steamship lines to obey American laws. No doubt the impelling force, as was pointed out in Parliament, was a powerful shipping lobby, but in formal effect the public authority of Great Britain has commanded its lines to ignore applicable American law.

This reaction by the British and other governments is extraordinary. In the first place the obstruction comes at the threshold, when only information has been sought and before substantive rulings of any character, in the making of which under our law the respondents are entitled to participate fully, and which they may contest through our judicial system.

Secondly, the resistance contravenes, at least as respects Great Britain, all the precedents of its own international conduct. British courts have consistently ruled that their orders for the production of foreign documents must be obeyed even though national laws of foreign parties to the action prohibit production. If the parties refused to produce, even on the ground that compliance would put them in violation of their national laws, the cases were either dismissed against them, or they were held in contempt. *The Consul Corfitzon* [1917]

App. Cas. 550; *Steamship "Antilla" and Other Vessels*, 7 Lloyd's Prize Cases, 401; *The Baron Stjernblad* [1918] App. Cas. 173, 178; *The Kronprinzessin Victoria* [1919] App. Cas. 261; *In re Von Kantzow's Patent* [1944] ch. 318, 321. The present attitude of the British Government is certainly in contradiction of its traditional policy when it has deemed foreign documents were necessary for fair adjudication in its own courts.

Finally, the whole logic of the present resistance also contravenes traditional British concepts of jurisdiction. A fair summary of the precedents is contained in the speech of Charles Fletcher-Cooke during the debate in the House of Commons:

> In this country we have always held the view that under public international law, the law of the port is given very full power * * *. It seems to me that anyone prosecuted under this bill would have an easy defense if he is able to say that for many centuries and in the face of a good deal of contrary opinion the British Government have always held the view that a foreign port can impose what conditions it likes, howsoever vexatious they may be * * *. It is not a view which I like, but it is a view which the British Government has maintained throughout the 19th century against the strong opposition of the French, and it is a view which we have succeeded, on the whole, in persuading other nations to accept. It is a little ironic that we should at this time say that foreign ports have no such jurisdiction and they cannot impose these vexatious requirements, that it is legal imperialism, and so on. It is idle to say that these are documents made abroad, made here, that is to say, between British shippers and shipowners, foreigners to America. Of course, they are, but if they go to America or copies of them go to America, or if secondary evidence must be given by oral examination of witnesses or however it may be, the Americans take the attitude: "If you want to come to our ports you must observe our rules. We are entitled to compel you to disclose your evidence, oral or documentary, to make sure you are observing our rules." * * * It is very arguable that these documents also belong to the Americans and that we have always hitherto held that view of international law. It makes no difference in those circumstances whether the contracts are made outside the United States * * *.

This statement is certainly sound, and from it flows the conclusion that not the United States but the British and other governments are departing from established principles of international comity and jurisdiction in commanding their nationals to withhold information.

Of course, there is a natural inference from this course of proceeding that fuller knowledge might reveal profound and systematic violations of American law. One presumes these powerful nations are not engaging in a mere exercise of sovereignty. It must be rather the substantive action that might follow against which these preliminary obstructions are thrown up. But the law has been on the statute books for half a century. No doubt its nonenforcement, of which we thus find a curious confirmation, has tended to obscure its practical force, but it is very late to challenge our authority to regulate our commerce, or to put it exactly, our authority to state the conditions of exemption from the antitrust laws. If foreign governments and lines resist the legitimate jurisdiction of the Federal Maritime Commission as an arm of the U.S. Government, they will bring about what they say they most fear—the abolition of the conference system.

At two Paris conferences, the United States offered concessions, even to the extent of waiving mandatory powers and agreeing to accept the information from foreign lines on a voluntary basis rather than under section 21 of the Shipping Act. Even these concessions, which may perhaps seem to derogate somewhat from the dignity of a sovereign

power, but which reflect respect for the views of friendly nations had not seemed sufficient until December 15, 1964. We note with extreme interest the agreement reached on December 15, 1964, concerning production of statistical data and other information by the foreign lines and the conferences. In effect, Japan and 14 European nations have agreed to supply the Commission with most of the information it requested a year ago. If these governments live up to this agreement, it would appear that they are changing their attitude of resistance. We sincerely hope this is the case, and we will watch closely further developments.

We should view with regret any further retreat by our representatives if this agreement fails, and should prefer to see the statute fully tested in litigation in the manner our system has always made available to foreign interests. In three cases in 1963, the U.S. courts of appeal have upheld the Commission's demands for information and documents.

CHAPTER III

EFFECTS OF GOVERNMENT POLICY ON FREIGHT RATES

We have discussed in previous chapters the fundamental structure of liner freight rates administered by international cartels of carriers, mostly of foreign flag. We have indicated the distortions in the structure resulting from nonregulation by the Government. We now examine the further impact of heavy movements of Government-sponsored cargoes. There is strong indication that this massive lift, accompanied by a characteristic lack of rate control, has further distorted the structure.

As a result of cargo preference laws, at least 50 percent of all Government-sponsored shipments to foreign countries must be transported by U.S.-flag merchant vessels. These laws are as important to the American merchant marine as the Merchant Marine Act itself, which provides almost $350 million a year of direct subsidies to steamship lines. At a time when the unfavorable balance of payments has impelled maximum utilization of flag tonnage on these programs, approximately 80 percent of the revenue of the nonsubsidized American fleet derives from the carriage of Government-sponsored cargo, and almost 50 percent of the revenue of the subsidized lines.

The Federal interest in the merchant marine has been thought to justify reservation of a part of the cargoes generated by national defense and foreign economic aid to vessels of the United States. The Congress has believed that it makes sound economic sense to encourage a fleet of American-built ships, employing American seamen, which can be taken over by the Government in times of national peril. These conceptions are relative, however. Changing defense requirements may introduce factors of varying emphasis in transportation, and consequently reduce the price that the Nation should pay for a fleet. At any rate, the commercial utility of such a fleet becomes a more dominant consideration than has usually been thought.

Cargo preference laws are important to the American merchant fleet and of contingent benefit to our balance of payments. Nevertheless, without careful administration, harmful effects can quickly outweigh benefits. The Government will pay exorbitant freight rates to U.S.-flag ships if it does not exercise close surveillance.

Cargo preference naturally tends to increase freight rates because it reduces the eligible supply of ship space to a dimension far below the size of the world fleet. In fact, the combination of heavy shipments restricted to a small body of the highest cost tonnage in the world, already fully utilized, is almost irresistibly inflationary. We shall deal with the root of this problem in a later section, but first we will examine the current attitude of the Federal agencies to the issue of pricing.

1. AGENCY FOR INTERNATIONAL DEVELOPMENT

To hold prices within reason, strict surveillance and knowledgeable bargaining must be undertaken by Government agencies, with a willingness to waive preference if U.S.-flag ships charge unreasonably high prices.

In regard to liner-type shipments, we find the Government agencies, particularly AID, have abdicated control of freight rates. In fiscal 1963, out of a total of $87 million, AID spent more than $70 million on liner-type shipments. Thus, on 80 percent of shipments no surveillance is maintained over rates. The Agency refuses to make the statutory determination whether liner rates are fair and reasonable.

It is obvious the taxpayers are mistreated if the Government is wasting money. It is less obvious that exporters and our balance of payments are being injured by these policies. Under an AID loan, a certain amount is granted an undeveloped country, represented by a fixed sum of money, most of which has to be used for the purchase of U.S. goods. Proceeds from the loan can be used to pay freight charges if U.S.-flag ships are used, but the limit of the loan is fixed. For example, if $100 million is lent to country A, it can use all of it to buy an American-made product and pay the freight charges itself, or it can use part of it to buy American goods and the other part to pay freight on U.S. ships. As the freight portion goes up, U.S. exports automatically go down. Thus, high freight charges will be injurious to exporters and, of course, cut down the efficiency of the specific aid to the extent of the diversion from goods to accessorial service.

As its reason for not inspecting liner freight rates, AID states that these rates are within the competency of the Federal Maritime Commission. It also argues that the rates are for the most part established by steamship conferences or associations, made up of both foreign- and U.S.-flag line, and that there is no differential between the rates charged by a conference ship, whether it is U.S.- or foreign-flag. Both arguments seem invalid, especially when one reflects on the historic failure of the Commission to attack rate problems, and foreign resistance to its current efforts.

AID argues that rates are established by conferences and are intended for U.S.- and foreign-flag ships. Theoretically this is accurate; however, most experts believe that conferences set rates according to what the traffic will bear. Rate levels, to some extent, are influenced by competition from foreign sources of supply. There is no such competition with AID commodities in ships. The traffic will bear almost any rate on AID exports. For example, if India, with an AID loan agreement, needs tractors it must buy American tractors and the purchase will be made regardless of the level of ocean shipping charges. Moreover, U.S.-flag lines carry 80 percent of AID cargo. They, therefore, get carte blanche from the conferences to set the rates. That these rates apply to foreign lines as well as U.S. lines does not establish their reasonableness.

Moreover, this argument misses a profound truth. Large individual shippers or industry groups of shippers are commonly able to negotiate more acceptable rates with conferences. The United States is quite possibly the largest shipper in the world—but its representative abdi-

cates negotiation, and allows the conferences to fix rates unilaterally in the face of all that is known of their methods.

What is worse, although one of the reasons for this abdication is the ostensible authority of the Federal Maritime Commission, the AID neither invokes the help of that agency nor cooperates with it even when asked. The Federal Maritime Commission has power to disapprove freight rates so unreasonably high as to be detrimental to commerce, but it usually has no way of knowing whether a rate is unusually high unless a shipper complains. If AID would adopt the policy of complaining about rates when it is suspected they are high, it would be possible for Government surveillance to be effective. To date, AID refuses even to intervene in a Federal Maritime Commission proceeding dealing with AID shipments.

Two cases involving freight rates on AID commodities are pending before the Commission. Both cases demonstrate the high level of rates paid by AID, but in both cases AID refused to intervene as a party to the proceedings.

The first cases involves a surcharge imposed on shipments to the port of Chittagong, East Pakistan. The steamship conference which controls rates from the United States to Pakistan imposed a surcharge on all shipments to Chittagong of 40 percent. If this 40-percent surcharge remained effective, any U.S. export shipped to Chittagong would be assessed at its regular freight rate plus a 40-percent increase. The Government of Pakistan instituted a proceeding before the Federal Maritime Commission to reduce the surcharge. The Commission discovered that the only real American exporter to Chittagong is the U.S. Government, specifically AID, which in 1963 shipped more than 200,000 tons there, with 271,500 tons more scheduled for 1964. Assuming that the normal freight rate is approximately 15 percent of the value of the commodities to be shipped, AID will finance $7.9 million in freight charges. However, if a 40-percent surcharge is applicable, the $7.9 million will be increased by $3.2 million, bringing the total freight bill to more than $11 million.

AID made no attempt to intervene in the proceedings of the Federal Maritime Commission which were called to determine whether a 40-percent surcharge was warranted. If the Federal Maritime Commission had not initiated an investigation, no investigation would have been sought by AID, the Agency responsible for the administration of cargo preference laws in this area, the Agency with the duty to ship on American ships only if the rates charged are fair and reasonable. Not only did AID not initiate action, it refused to participate in the hearings of the Commission, despite the request of every party to the proceedings—the Government of Pakistan, the steamship lines themselves, and the Federal Maritime Commission. As a result of the investigation, the surcharge has been reduced—but AID had no hand in the process.

In another trade area, AID again refused the Commission's request to intervene in a case before it. In 1960, foreign-flag lines serving the Persian Gulf broke away from the Persian Gulf Outward Freight Conference. The remaining members of the conference are American. The foreign lines left the conference after a dispute over the level of freight rates, which they contended were too high to move commercial

cargo. The American lines, on the other hand, refused to lower rates primarily because they were not carrying commercial cargo but AID and Defense Department cargoes. Since conference agreements provide that all shippers are entitled to the same rate, conferences cannot charge different rates to different shippers. The American-flag lines, under the preference laws, could charge high rates and still procure cargo to the Persian Gulf since the Government paid the freight charges. The foreign lines, on the other hand, could not ship these same commodities to the Persian Gulf on a commercial basis at such high rates.

The now independent foreign carriers pointed out that the rate charged by American-flag lines on cars is $44 per measurement ton, making the average rate per automobile approximately $660, whereas the nonconference rate is $30, or approximately $450 per automobile. Since the average price of an American car in New York is around $2,750, the independent lines could effectively compete in the Persian Gulf with cars from Europe, as long as a $450-per-car freight rate applied. They could not compete at a $660 freight rate.

Automobiles represent 20 percent of the commercial movement from the United States to the Persian Gulf. Other moving commodities are trucks, refrigerators, air conditioners, auto parts, wheat flour, steel sheet, canned foods, machinery, and oil well equipment. On all of these commodities nonconference rates are at least 20 percent lower than the rates charged by the American-flag conference lines.

Last year the nonconference foreign-flag lines formed their own conference and filed an agreement with the Federal Maritime Commission for approval. The case is now pending. The Commission's hearing counsel stated:

> The record shows that there is no competition between the conference lines and the nonconference lines for the carriage of commercial cargo.

The American lines have abandoned the commercial field.

Hearing counsel further stated that—

> * * * shipments of commercial cargo carried to the Persian Gulf compete with exporters from foreign ports. One wonders how an American shipper of commercial cargo can compete with his foreign competitors if he ships on conference carriers and is charged conference rates * * *. Commercial cargo is moving in the trade primarily as the result of the low rates prevailing in the tariffs of the nonconference lines. The conference lines stopped being competitive for commercial cargo and yet they have increased their yearly sailings.

In 1960 little Government-sponsored cargo moved to the Persian Gulf. As a result of the Iranian crisis, Government cargo began to move. In 1960 the conference rate on automobiles was $30 per measurement ton. In 1964 it was $44 per measurement ton. All other rates have gone up similarly. There are three American-flag conference lines serving the Persian Gulf. More than 60 percent of the Stevenson Lines' cargo to the Persian Gulf is Government sponsored, and more than 80 percent of Isthmian Lines and Central Gulf Steamship Corp. cargoes are Government sponsored. This is conclusive proof that cargo preference laws tend to raise freight rates. It also proves that regular commercial rates are increased as the result of cargo preference laws, and if they are not checked by a conference breakup, may destroy commercial exports of the United States to a particular trade area.

AID again failed to intervene in the case involving trade to the Persian Gulf. Again, the Federal Maritime Commission requested AID to intervene as the principal shipper and AID refused. The evidence presented conclusively proved that rates charged on AID commodities are substantially higher than rates charged on similar commercial commodities. This alone tends to prove that AID is paying unreasonable rates, yet AID failed even to participate in the proceedings.

2. THE DEPARTMENT OF AGRICULTURE

The Department of Agriculture spends in excess of $200 million a year to transport surplus agricultural commodities to the developing countries of the world. Most of this money is spent as a result of cost differentials between U.S.-flag ships and foreign-flag ships. At least 50 percent of our agricultural commodities are transported on U.S.-flag vessels. For the most part, these are nonsubsidized bulk carriers. The rates charged by nonsubsidized bulk carriers are determined by prescribed ceilings designated by the Maritime Administration. These rates range from 30 to 100 percent more than the prevailing foreign-flag rates for the same type of service. But so long as they are not higher than the prescribed ceilings they are judged to be reasonable rates and the waivers provided in the Cargo Preference Act cannot be granted if U.S.-flag ships are available at reasonable rates.

The cost to the Department of Agriculture usually is the difference between the U.S.-flag rate and the prevailing foreign-flag rate. For example, if the United States ships 100,000 tons of wheat to East Pakistan under Public Law 480 loan provisions, the Pakistanian Government pays the freight rate up to the level of the prevailing foreign-flag rate. If the wheat is transported on a U.S.-flag ship, the Department of Agriculture pays the difference between the prevailing foreign-flag rate and the rate on the U.S.-flag ship.

The rate differentials between U.S.-flag tramp type vessels and foreign-flag tramp vessels were highlighted in the recent wheat purchases of the Soviet Union. President Kennedy had directed that at least 50 percent be transported on U.S.-flag ships. The rate on these vessels averaged about $26 per ton, and on foreign vessels less than $15 per ton. This rate differential, coupled with the Presidential proclamation, almost prevented the sale of U.S. wheat to Russia.

The bulk shipments of the Department of Agriculture point to a fundamental problem of the merchant marine. Up to the present day, more than half our tramp fleet still consists of Liberty ships. Slow, and small by current standards, they are overmanned at high American labor levels, and add to these impediments the cost of excessive maintenance and repair and of excessive fuel requirement that derive from age. To pay the rates that will render such tonnage profitable is uneconomic and it has, besides, no military value. It is a corruption of terms to call such rates fair and reasonable within the statutory meaning. The problems of human displacement that are probably the stumbling block to discarding this class of tonnage can be solved by other means than underwriting the obsolete. We come back to this question below.

The Department of Agriculture also ships some commodities on conference liners, paying applicable conference rates. Apparently the

Department follows the same policy as the Agency for International Development, namely, it deems a rate reasonably simple because it is a conference rate filed with the Federal Maritime Commission. As pointed out above, this is not a reasonable practice and it should be changed. The Department of Agriculture should seriously question the level of all freight rates charged on the shipment of American agricultural commodities abroad, and should make, or actively press, its own determinations as to their reasonableness.

3. THE DEPARTMENT OF DEFENSE

The Department of Defense is the biggest spender of Government funds for ocean transportation services, virtually all for freight charges on liners (most of which are subsidized), and handling charges at military and commercial freight terminals. In fiscal 1963, the Department of Defense, specifically the Army, Navy, and the Military Sea Transportation Service of the Department of the Navy, spent approximately $375 million to cover freight charges and handling charges.

The Military Sea Transportation Service (MSTS) is a branch of the Navy responsible for the transportation of all Department of Defense cargoes, including household goods of military personnel. The Department employs only ships flying the U.S. flag.

In 1963, MSTS shipped approximately 7 million measurement tons of cargo on commercial vessels at negotiated rates. MSTS at present negotiates two types of rates: (1) open-end shipping contracts for less-than-shipload lots, and (2) special movements either excluded from the contracts or in a trade not covered by them. Contracts are awarded to carriers maintaining scheduled berth service at least monthly over the trade route involved (such as the U.S. Atlantic coast/Far East).

These contracts provide rates for broad classes of cargo rather than specific commodity items, as in the normal commercial tariff. There are four basic categories—general cargo not otherwise specified, unboxed vehicles, unboxed guns, and refrigerated cargo. Thus, the shipping contract has one rate for general cargo, and this rate applies to any item in that category from buttons to bathtubs. Although there is much to be said in theory for such a system, we notice that in practice other minor categories have been added; but no MSTS contract contains more than 20 items. As for the second type of MSTS lift, special shipments on trade routes where there is no existing overall shipping contract, or where a special lift is required, these rates are negotiated individually. MSTS cargo, for the most part, is loaded and discharged at Army and Navy berths and terminals with the stevedoring being performed by civil service labor or stevedores under contract to the Army or Navy. Therefore, the cost of stevedoring and related handling charges has not been included in the shipping contract rates. This results in FIO rates—that is, the vessel is free of expense for loading and discharging.

Taking account of the large and continuing volume of cargo it ships, MSTS claims to command rates lower than those available to the general public under commercial tariffs. Comparing the rates that would be applicable to its cargo under the commercial tariffs, MSTS

considers that it demonstrates a substantial discount in the order of 20 percent, allowing for its absorption of loading and discharging charges.

We are not fully persuaded that the saving is real. For a large part of its cargo, it is comparing its rates with paper rates for cargo that does not move commercially. We have found convincing evidence that paper rates are always artificially high. Perhaps they are even placed in the commercial tariff to compare MSTS rates against. The staff of the MSTS has admitted that this flaw does exist.

It is pertinent to point out that when MSTS compared average commercial rates on cargo moving on the same ships over the same routes, it discovered that its own rates in this instance were considerably higher.

Finally, one notes the tendency described in chapter 1 for subsidized American carriers to slight inbound cargo, and even commercial cargo outbound, in order to carry defense goods. More suggestive still, unsubsidized American carriers appear to operate profitably by carrying only military cargo outbound and returning in ballast. This can scarcely mean anything but an extraordinarily high level of rates. There is no point in proceeding in these matters under a delusion of saving. We shall be returning to the subject at a later time, but the Secretary of Defense should probably examine the facts independently.

4. THE DEPARTMENT OF COMMERCE AND THE MARITIME ADMINISTRATION

We have been dealing with Government programs that heavily affect the total demand for shipping. The preponderant demand of these programs is for American tonnage, moreover, under the mandate of the preference laws, and we have seen how little the agencies in charge appear concerned to mitigate the upward pressure on rates. We come now to the one agency that is concerned with the other side of the price equation, the supply of such tonnage.

The Maritime Administration is charged under the Secretary of Commerce to carry out the policy declared in the Merchant Marine Act of 1936. If that policy is deemed still operative, it can be stated with confidence that the Nation is far short of a fleet capable of lifting all of our military and domestic commercial cargo, and 50 percent of our foreign trade. Giving allowance both to liners and tramps, the active fleet has a measurement capacity for approximately 12 percent of our total foreign commerce. This means, of course, that in relation to measurable demand our merchant marine is undertonnaged. The distortions in trading patterns mentioned earlier in this report, the heavy disparity in outbound rates, the displacement of commercial by Government cargo, all flow to some extent from the inadequacy of American shipping.

To best illustrate this deficiency, approximately 60 percent of French foreign commerce is carried in French ships. Of the United Kingdom's trade 50 percent goes on British ships; 46 percent of Japan's trade goes on ships of Japanese registry; 9 percent by weight of this country's foreign commerce goes on our ships. The future shows little hope for improvement. The Japanese Government, for example, has just issued a "white paper" citing the shortage of Japanese freighter space as one of the primary reasons for an unfavorable

balance of payments and has stepped up its program of ship construction—Japanese ships carry 46 percent of Japan's commerce but the Government believes more ships are needed.

The deficiency is profound in the bulk trades, in which our ships can scarcely be said to figure except as an added burden on national cost. Here, where there are no conferences, and where a true international competition reigns, the best opportunity for expansion is present. The conditions for such an expansion are discussed below.

The deficiency is also significant in the liner trades, for though American ships carry about a quarter of our total liner exports, most of their carryings are Government cargo. This amounts to a virtual abandonment of commercial exports to foreign lines, and must greatly attenuate the influence of American lines in the conferences to which they belong.

A. One of the obvious uses of a subsidized fleet is to preserve a competitive weapon against foreign-flag monopoly. Such a fleet, sustained by direct subsidy and by a preferred position in respect of a large nucleus of Government-controlled cargo, should be a potent force resisting the upward pressure of the cartels on the rate structure.

Surprisingly, we found that not only is most of its capacity preempted by the aid programs but the lines for many years had been compelled by the Maritime Administration to belong to the conferences or to respect their rates. Indeed, we learned from the Deputy Maritime Administrator, who appeared before the Joint Economic Committee during its hearings on discriminatory ocean freight rates, that it was the published policy of the Maritime Administration to make membership virtually a condition to receiving an operating subsidy.

Considering the record before it, the committee instructed its chairman to ask the Secretary of Commerce, the Honorable Luther H. Hodges, to review and update this policy. On June 26, 1963, such a request was made to the Secretary of Commerce, and he replied on July 12, 1963, that he had instructed the Administration to review the subject. By August 5, 1963, announcement was made that the policy stood rescinded. Shortly after this action, four subsidized lines announced their resignation from various conferences and their intention to take independent rate action.

This was consonant with a recommendation from the Maritime Evaluation Committee, which during 1961–62 conducted an intensive assessment of U.S. maritime policies and programs for the Secretary. In a report released on July 1, 1963 (shortly after the Joint Economic Committee received testimony from the Maritime Administration), it recommended, among other things, that—

> U.S.-flag subsidized carriers should be given more flexibility in ratemaking as a deterrent to hit-and-run rate competition. The Maritime Subsidy Board policy requiring general conformance to conference rates by subsidized operators should be withdrawn as an unnecessary and potentially harmful restriction.
>
> In practice, conference rates are not adhered to consistently by foreign carriers according to extensive evidence developed before the Antitrust Subcommittee of the House of Representatives. The Maritime Subsidy Board policy thus ties the hands of U.S.-flag operators; at the very least it inhibits their freedom to respond quickly to trade developments. Those foreign-flag carriers who do not practice the same adherence to conference rates are at liberty to engage in irregular hit-and-run practices with little risk of reprisal from U.S. carriers. At the same time the conferences which are dominated by foreign carriers can establish and

maintain rates that are adverse to U.S. trade, competing with another power's trade in the same commodity. The U.S.-flag members have little negotiating powers to resist such actions, since they are prevented by the Subsidy Board policy from any effective threat of independent reaction. A threat which must be contingent on third-party approval (the U.S. Government) leaves the U.S. carrier vulnerable to countermeasures without notice. There is reason for concern that the development of our foreign commerce may be impeded by the policy of rigid adherence to the will of the conference * * *.

Withdrawal of the Subsidy Board policy in this respect is recommended as a protection to the U.S. subsidized carrier members of the conferences.

The Secretary of Commerce is to be congratulated for reversing the previous policy of the Maritime Administration and for freeing the American lines to offset in some part the influence of the conferences. We have received evidence that it would be advisable to go further, and to withdraw the lines altogether from the conferences. It is the hope of the members of the Joint Economic Committee that the Maritime Administration will at least forbid U.S. subsidized lines to participate in agreements found contrary to the public interest of the United States. This policy should come into play if a conference refuses to provide the Federal Maritime Commission with adequate information; if a conference bloc votes in a manner detrimental to the interests of the U.S. commerce; if there is evidence that the rates set by conferences discriminate against American exports.

While the Joint Economic Committee's investigation has not focused upon the Maritime subsidy program other than as indicated above, we could not avoid the reflection which bears on the issue of rate discrimination that U.S. taxpayers are paying more than $330 million a year in direct subsidies to 15 American steamship lines, without measuring the excess cost of preferential cargo routing. If with such support American carriers cannot compete in respect of price and service, the system must be deemed a failure.

B. Another aspect of the problem of supply involves the flexible use of our inadequate tonnage. The fairly rigid terms of the statute, and its rigid administration, have precluded concentration on the growing routes and reduced the competitive efficiency of the fleet as a whole. To cite an example, in 1957 the Maritime Administration entered into a 20-year contract with a steamship line to subsidize approximately 150 sailings a year between U.S. North Atlantic ports and the Caribbean, primarily Venezuela. At the time of contract negotiations, the volume of U.S. Atlantic trade to Venezuela was 845,000 tons per year, of which the subsidized operator carried 362,000 tons, or 41 percent. To meet this trade volume the Maritime Administration required three sailings a week. However, since 1957 the total volume of trade has declined by more than 58 percent and subsidized carryings by 69 percent—from 362,000 tons to less than 120,000 tons. American ships were only one-third full by weight.

One would have expected the excess capacity to be shifted to growing trades, but no reductions took place until after this matter was called to the attention of the Maritime Administration by a member of the Joint Economic Committee, although section 606 of the Merchant Marine Act of 1936 gives authority to reduce subsidy payments when such far-reaching trade changes occur.

On the other hand, the Maritime Administration has failed to respond quickly to increases in trade by shifting unutilized capacity

or creating new services. In 1952, exports from the U.S. gulf to Japan were 905,000 tons—one U.S.-subsidized operator carried 518,000 tons, or 57 percent of this trade. In 1962 this total trade figure had virtually tripled to 2,618,000 tons—but the one operator (though it increased its carryings to 670,000 tons) fell off relatively to 26 percent. Trade on the Pacific coast-European route increased from 567,000 tons in 1952 to 1,300,000 tons in 1962. Yet U.S.-flag participation has declined from 14 percent to 1 percent because of the lack of subsidized carriers. Figures for the Atlantic coast-Far East trade route reflect a similar relative decline of American carriage because of static capacity in relation to continually growing trade.

To some extent this inflexibility flows from the formal trade-route conception of the statute, under which adversary proceedings must precede extended service. These proceedings take years under present practice. The consequence is what we see. In one area two-thirds of the subsidized space is empty, but in other trade areas where our foreign commerce has substantially increased, subsidized sailings have not kept pace. This inflexibility prevents the most rational use of our generally insufficient fleet, and may be a primary reason for the decline in percentage of commerce carried by U.S.-flag ships, from 39 percent in 1950 to 9 percent in 1963.

The Maritime Administration should review contractual and statutory requirements of the subsidy program and ascertain within what limits it might be beneficial to allow the lines more freedom to go where the cargo is moving in the greatest volume. Maintenance of reasonable minimum service on each important route, while gathering excess tonnage into a flexible pool for use as opportunity serves, preserves the essential character of liner service but creates the necessary mass of maneuver to meet changing conditions.

C. Freeing the fleet from conference discipline and trade-route rigidity would enhance its efficiency, and do something to alleviate its obvious insufficiency of capacity. The real solution, however, would normally be in an adequate program of new construction.

Unfortunately, the problem does not admit of so simple a solution. Private capital is demonstrably unwilling to make the investment alone, and it is by no means certain that the Government would find it worth while to do so at constantly rising costs.

There seems to be some basis for anticipating improvement in this pattern. Modern technical advances are probably applicable to shipping. Centralized engine controls, reduced manning, and simplified and standardized designs seem to offer immediate savings while producing larger capacity; computer controls are foreseeable. On the construction side, then, more units at lower individual cost seem possible. The outlook is particularly good for the neglected bulk trades.

Moreover, since operating subsidy and cargo preference duplicate each other, a choice can be made between them, thereby eliminating at least one important item of Federal cost. Savings on manning can revolutionize operations. Loading and discharging techniques are yielding to mechanization.

No doubt the Secretary of Commerce and the legislative committees of Congress are studying these matters deeply to determine whether the new factors justify a further national effort to procure an adequate fleet. From the point of view of this committee, the existence of such

a fleet would greatly ease the task, which otherwise falls on regulation alone, of assuring reasonable rates and stimulating foreign trade: its competitive thrust would tend to enhance the play of market forces, which ought to be the main determinants of price in a free economy.

NOTE.—This report was approved by a majority of the Joint Economic Committee in December 1964.