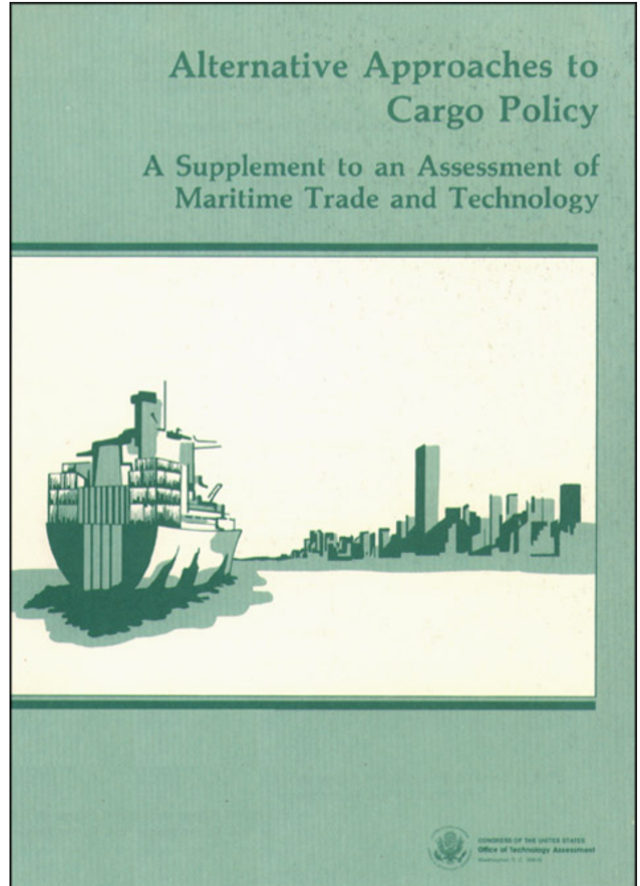
Alternative Approaches to Cargo Policy: A Supplement to an Assessment of Maritime Trade and Technology

August 1985

NTIS order #PB85-239887



Recommended Citation:

Alternative Approaches to Cargo Policy: A Supplement to An Assessment of Maritime Trade and Technology (Washington, DC: U.S. Congress, Office of Technology Assessment, OTA-BP-0-36, August 1985).

Library of Congress Catalog Card Number *85-600569*

For sale by the Superintendent of Documents
U.S. Government Printing Office, Washington, DC 20402

Foreword

The United States increasingly depends upon international trade and shipping to maintain a healthy economy. As trade has grown in importance, so too has the Federal Government's role in assuring fair and equitable U.S. participation in international shipping.

When OTA published *An Assessment of Maritime Trade and Technology* in October 1983, one of its principal findings was that because national interests were not defined and strategies for international negotiation had not been developed, there was at that time no generally accepted U.S. cargo policy. The assessment stressed the profound influence of Federal policy and analyzed several options for congressional consideration, including that of clearly defining U.S. national interests and devising strategies and guidelines for future cargo policy initiatives.

Subsequently, the Senate and House Merchant Marine Subcommittees requested that OTA conduct additional analyses of cargo policy. OTA found that there is still no generally accepted U.S. cargo policy, because U.S. interests and negotiating strategies have not been defined. But foreign governments have adopted such policies, which increases the disadvantage of U.S. shipping interests and therefore increases the intensity of the debate over U.S. cargo policy.

As part of its investigation, OTA held a two-day workshop on December 3 and 4, 1984, with participants from the interested parties—shippers, operators, trading firms, and Government. The workshop focused on three topics: 1) the effects of cargo policies now in force; 2) the status of new policies under consideration by the United States and its various trading partners; and 3) costs and benefits of existing, proposed and alternative policies. The workshop was structured around a series of presentations, followed by general discussion by participants selected on the basis of interest and expertise in four topic areas:

- Panel 1, Current Policy Initiatives;
- Panel 2, Industry Impacts of Liner Cargo Policies;
- Panel 3, Industry Impacts of Bulk Cargo Policies; and
- Panel 4, Alternative Approaches to Cargo Policy.

Summaries of panelists' presentations and discussion for each panel are presented in appendix A.

JOHN H. GIBBONS
Director

OTA Project Staff—Alternative Approaches to Cargo Policy

John Andelin, *Assistant Director, OTA*
Science, Information, and Natural Resources Division

Robert W. Niblock, *Oceans and Environment Program Manager*

Project Staff

Peter A. Johnson, *Project Director*

Nan Harllee   Paul B. Phelps

Administrative Staff

Kathleen A. Beil   Jacquelynne R. Mulder

OTA Workshop Participants, December 3 and 4, 1984

Panelists

Charles Angevine
Department of State

George Berg
American Farm Bureau Federation

Gus Caras
Ogden Corp.

Deborah Christie
Department of Defense

H. Clayton Cook
Cadwalader, Wickersham and Taft

Robert Ellsworth
Federal Maritime Commission

Peter Finnerty
Sea-Land Corp.

Ernst Frankel
Massachusetts Institute of Technology

Brian Garbecki
U.S. International Trade Commission

Jack Goldstein
Overseas Shipholding Group

Bonnie Green
American President Lines

William Johnson
Department of Commerce

Leslie Kanuk
Baruch College

Don Kash, Session Moderator
University of Oklahoma

Kenneth Kastner
Chemical Manufacturers Association

Sandra Kjellberg
MIRAID

John Leeper
Simat, Inc.

Arnold Levine
Department of Transportation

Peter Luciano
Transportation Institute

Joseph Lykes
Lykes Bros. SS. Co.

Kay McLennan
Department of Agriculture

Sam Nemirow
Council of American Flag Ship Operators

Lewis Paine
Department of Transportation

Robert Rickert
E.I. du Pont de Nemours &Co., Inc.

Emery Simon
Office of the U.S. Trade Representative

William Tuthill
Joint Maritime Congress

Harlan Unman
Georgetown University

Roger Wigen
3M Co.

Gene Yourch
Federation of American Controlled Shipping

OTA and Congressional Staff

John Andelin
OTA, Assistant Director

David Dye
Senate Committee on Merchant Marine and Fisheries

Caroline Gabel
House Committee on Public Works and Transportation

Jack Gibbons
OTA, Director

Chris Goebel
House Committee on Public Works and Transportation

John Hardy
Senate Committee on Merchant Marine and Fisheries

Nan Harllee
OTA, Senior Analyst

Peter Johnson
OTA, Project Director

Larry Mallon
House Committee on Merchant Marine and Fisheries

Bob Niblock
OTA, Program Manager

Kip Robinson
House Committee on Merchant Marine and Fisheries

Gerald Seifert
House Committee on Merchant Marine and Fisheries

Lenore Sek
Congressional Research Service

Peter Tarpgaard
Congressional Budget Office

Cyndy Wilkinson
House Committee on Merchant Marine and Fisheries

Alternates and Observers

Jim Caron
Department of Agriculture

Joann DeCarlo
Center for Strategic and International Studies

Judy Demetriades
Department of Agriculture

John Gaughan
Maritime Administration

Jackie Igoe
AIMS

George Miller
Lubrizol Corp.

Steve Moody
FACS

Jack Park
Crowley Maritime Corp.

Paula Petavino
Center for Strategic and International Studies

Janet Rice
Office of Management and Budget

William J. Smith
Federal Maritime Commission

Erik Stromberg
Federal Maritime Commission

Joe Toraselli
Prudential Lines

Brandt Wagner
CASO

Contents

Table

Figures

Section I
Introduction

Section 1

Introduction

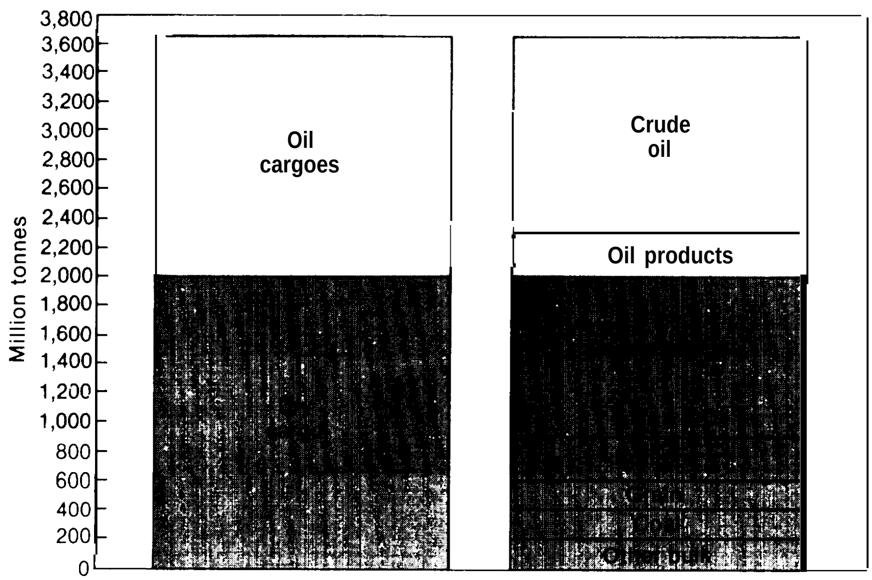
SHIPPING INDUSTRY

Almost all international trade in goods is transported by sea. Thus, ocean shipping plays a central and essential role in the world economy and in world trade. The United States is the world's largest trading nation, and international markets are increasingly important to U.S. industries. Between 1970 and 1980, the value of U.S. international trade more than doubled, and the ratio of U.S. exports to gross national product rose from 4.4 to 8.5 percent.

Maritime trade generally is divided into three broad categories: liquid-bulk, dry-bulk, and general cargo (see fig. 1). Petroleum alone accounts for nearly all of the liquid-bulk trade and for almost half of the total world tonnage shipped. About one-fourth of world tonnage consists of dry-bulk commodities—principally mineral ores, coal, and grain. The remaining one-fourth consists of the variety of manufactured goods and consumer products called general cargo,

The two principal modes of ship operation are the liner mode, which serves the general cargo trade, and the bulk mode, which serves both the dry- and the liquid-bulk trades. The liner industry carries general cargo from port to port at fixed rates and on regular schedules. Modern container ships are typical of the vessels used in liner trade. The liner industry commonly operates within conferences—international groups of private liner companies that collectively agree on routes, schedules, rates, and other aspects of liner service. The bulk industry normally does not form conferences. It employs a variety of ships, usually on a time- or voyage-charter (rental) basis, to carry single, large-volume commodities (e. g., iron ore, grain, coal, crude oil) over fixed and sometimes long periods of time. The liner industry thus tends to manage competition among major companies, while the bulk industry operates under much more open competition. The liner trades involve by far the largest portion of world trade when measured by dollar value, while the bulk trades account for the largest portion by volume or tonnage.

Figure 1.— Principal Commodities in World Seaborne Trade, 1980



SOURCE Fearnleys Review, 1982

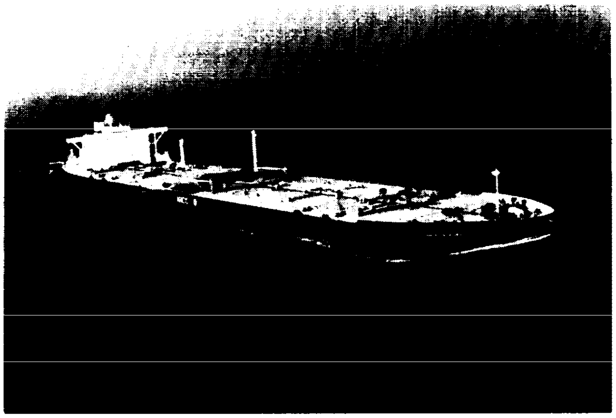


Photo credit: Atlantic Richfield Co.

Liquid bulk—the supertanker *Arco Alaska* at sea.

Photo credit: C&H Sugar Co.

Dry bulk—the *Sugar Islander*, owned by the C&H Sugar Co.

Photo credit: American President Lines, Inc.

General cargo—two containerships being loaded in Seattle.

CARGO POLICIES

All trading nations have a self-interest in expanding their exports and controlling their imports. As nations try to manage trade policy to their best economic advantage, they tend to increase governmental involvement in shipping. Shipping policies tend to mirror trade policies. As might be expected, increasing protectionism in trade has spawned a variety of restrictive and protectionist policies in the maritime area—unilateral, bilateral, and multilateral.

Historically, all maritime nations have protected their national maritime interests through the implementation of some forms of cargo policy, generally by reserving some or all of the carriage of certain commodities for their own national carriers. In the case of established maritime countries, this is sometimes achieved through closed conferences— industry groups that are sanctioned by their respective governments. Such conferences are able to assure national lines of full or "fair" participation in their trade. In the case of less developed countries (LDCs), more overt government intervention is usually involved, such as government ownership of shipping lines and trading firms, Both conferences and more overt government participation have been more common in the liner trades than in the bulk trades up to now.

Many nations, particularly LDCs that are attempting to capture more export trade and bolster their national-flag fleets, are pushing for the establishment of bilateral and multilateral cargo-sharing agreements. The latter objective has recently been achieved for liner trades by the United Nations Conference on Trade and Development (UNCTAD) in the form of a Code of Conduct for Liner Operations (or UNCTAD Liner Code), which went into effect in October 1983. It calls for an even division of liner conference cargoes between trading partners, with a small percentage possibly reserved for vessels of other nations, if agreed by the national-flag lines engaged in the trade. The United States is not a signatory to the code and has opposed it since it was first proposed in 1972.

U.S. ship operators face a significant disadvantage in dealing with countries where industry and government have established closer ties, and where national and corporate goals are better meshed, than in the United States. U.S. shipping companies find it increasingly difficult to compete in markets that are protectionist. Many foreign governments also tend to intervene specifically on behalf of their national interests and their own carriers. The U.S. Government has tended to disavow interference in international trade and cargo allocation.

CARGO PREFERENCE IN THE UNITED STATES

The practice of cargo preference can be direct or indirect. In some cases, a country mandates that a certain percentage of its imports or exports must be carried on its national-flag vessels. Provision may be made for bilateral or multilateral cargo-sharing, with the larger shares reserved for the national-flag lines of the trading partners. Indirect cargo preference can be accomplished by a government mandate requiring imports to be purchased on an f.o.b. basis and exports on a c.i.f. basis.[1] In addition, governments frequently grant

[1] When imports are purchased "free on board (f.o.b.) the cost quoted does *not* include ocean transportation from the exporting country. When exports are sold "cost, insurance and freight (c.i.f.), the cost quoted includes ocean transportation. This policy allows a nation to control transportation costs in all its import and export transactions, and therefore to retain a government's right to select its own flag ships to carry this cargo.

various tax deductions and other fiscal incentives to importers and exporters that utilize their national-flag carriers.

The United States has enacted three cargo-preference laws concerning the movement of Government-impelled (shipped by Government agencies) and Government-financed cargoes. These are the Cargo Preference Act of 1954, Public Resolution 73-17 (P.R. 73-17), and the Military Transport Act of 1904.

The Cargo Preference Act of 1954 mandates that at least 50 percent of all U.S. Government-impelled cargoes must be carried on privately owned U.S.-flag vessels. It applies to Government cargoes shipped for U.S. Government account (e.g., military support cargoes) and to any cargoes shipped under Government grant or subsidized loan, such as cargoes shipped by the U.S. Agency for International Development (AID).

P.R. 73-17, passed in 1934, requires that 100 percent of any cargoes financed by loans made by the U.S. Government to foster exports must be carried on U.S.-flag ships, This primarily concerns commodities backed by loans from the Export-Import Bank. There is provision for waiver of the law by the Maritime Administration (MarAd), so that up to 50 percent of such shipments may be carried on the flag vessels of the recipient nation.

The Maritime Transport Act of 1904 requires that all supplies shipped for use of the U.S. Armed Forces must move on U.S.-flag ships. This law interacts with the Cargo Preference Act, with the result that one-half of all such military shipments must move on privately owned U.S. vessels.

Section 2

Status and Issues in Cargo Policy

Section 2

Status and Issues in Cargo Policy

OVERVIEW

Both national and international approaches to cargo policies have recently undergone changes.[2] These changes stem both from industry developments and from events in the public policy arena. For example:

- The UNCTAD Liner Code has been in effect for over a year, and experience with it is growing.
- Both U.S. and foreign liner companies have begun some round-the-world shipping services; intermodal services are also growing.
- Serious overcapacity persists world-wide, especially in bulk shipping, forcing some companies out of business and others to seek government protection.
- Discussions are proceeding between the United States and its developed country trading partners regarding effects of the UNCTAD Liner Code and the refusal of the United States to participate. Agreements to help assure U.S. carriers competitive access to cargoes are under development, especially for cross-trades.[3]
- Initiatives to extend U.S. cargo preference to commercial cargoes continue to meet strong opposition. Such changes are unlikely in the near term.
- There have been attempts to repeal certain existing preference programs. Record U.S. trade deficits provide a strong argument for those who favor maintaining the lowest possible transport cost for U.S. exports.
- Bilateral cargo-sharing initiatives from some trading partners have met substantial U.S. opposition and few have advanced beyond the discussion stage. In some other trades, discussions of bilateral provisions and agreements took place in 1983 and 1984. Existing South American/U. S. bilateral agreements, for example, are undergoing re-evaluation.
- The Shipping Act of 1984 (Public Law 98-237) is considered to have some effect on cargo policies because of a provision that allows U.S. action against foreign operators whose country unfairly restricts cargo access by U.S. carriers.
- UNCTAD is proceeding, slowly, toward an evaluation of perceived problems with the "open registry" system.4 Some LDCs are expected to continue pressure for the phase-out of open registry, It is not clear whether the U.S. Government has developed an adequate strategy to responds

The volume of world seaborne trade increased in 1984 for the first time since 1979 (see fig. 2), with containerized general cargo accounting for most of the increase during 1983-84. Some continued expansion in world trade appears likely in the near term, most likely in certain selected dry bulk commodities and in the container trades (fig. 3). For most U.S. carriers, the container trade is the most significant,

While this trade in general cargo is expanding, the major liner companies are both shifting and expanding services. New, larger ships are begin-

---

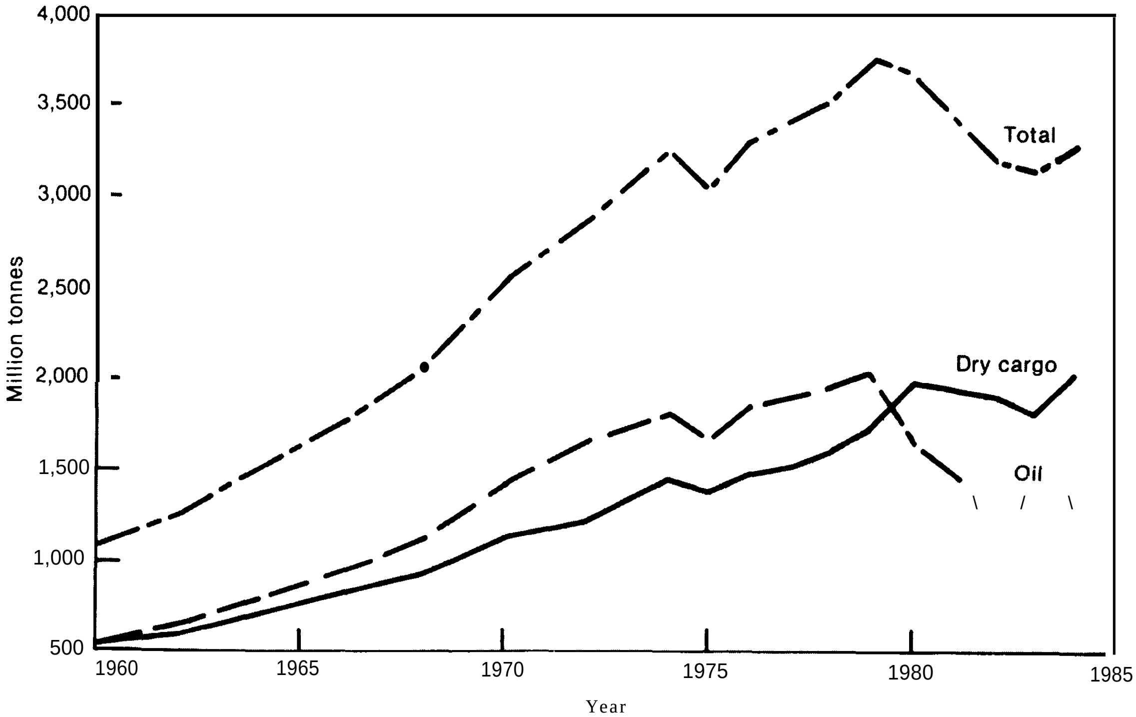
[2]The historical basis for unilateral, bilateral, and multilateral structures affecting cargo allocation are described in the 1983 OTA assessment This supplement provides an update of the key cargo policy topics of current interest.

[3]A "cross-trade" is defined as trade between two nations where the ocean carrier is a ship operator from a third nation.

[4]Open registry sometimes called 'flags of convenience' refers to the practice of registering ships in a country (I. Iberia and Panama are prime examples), while corporate owners reside in one of the major industrialized countries. The United States is the largest owner of open registry fleets.

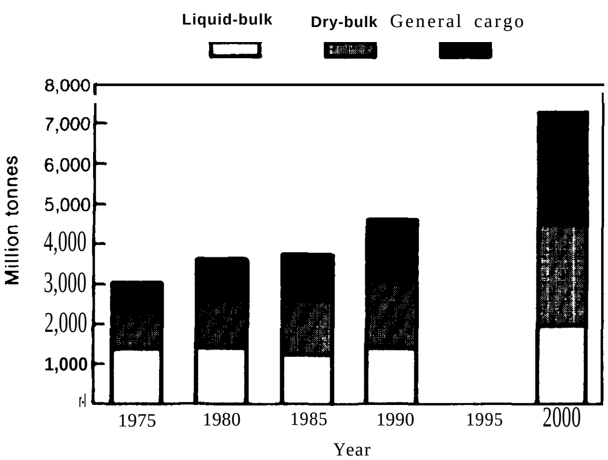
[5]Some industry participants at the OTA workshop disagreed saying that the Administration has consistently opposed this UNCTAD initiative. The State Department also disagrees, claiming that the United States intends to continue to work with developed countries in an effort to insure that any agreement reached would provide rights to owners to register vessels in the countries of their choice (Sam Keller, Office of Maritime and Land Transport, U S Department of State: personal communication, May 21, 1985) Beyond these claims, however, OTA has not been" able to obtain any documentation of an overall strategy or specific guidelines for the UNCTAD negotiations. If it exists, such documentation may be classified and thus not available for use in public policy debate

Figure 2.—World Seaborne Trade, 1960-84



SOURCE OECD & Fearnleys, 1984

Figure 3.—Projected World Seaborne Trade, 1975-2000



SOURCE Wharton Econometric Forecasting Associates.

ning "round-the-world" services calling at only major hub ports, and the same firms are offering more comprehensive intermodal rates and services. Some industry spokesmen have observed that increased rationalization in both large- and small-volume trades is forcing changes in the economics of liner shipping. Some industry analysts believe that "fewer, larger, more efficient enterprises will compete for market shares in future years."[6]

The OTA cargo policy workshop, together with an analysis of the key questions raised by the workshop and other sources, has identified four issues that appear to be important not only to the health and vitality of the U.S. shipping industry, but also to other vital national interests involved in world trade and U.S. participation in that trade. These issues, discussed in the following sections, are:

- U.S. cargo preference;
- multilateral cargo sharing;
- bilateral cargo sharing; and
- defense needs that affect cargo policy.

---

[6] Peter Finnerty in *World Ports*, February 1985.

U.S. CARGO PREFERENCE

Current Authority

Cargo preference laws in the United States have not changed since OTA's *Assessment of Maritime Trade and Technology* was published in 1983. In essence, current law requires U.S.-flag preference on Government cargoes. This ranges from 50 percent of Government-impelled civilian cargoes to 100 percent for military cargoes. The current Administration has opposed any extension of cargo preference to commercial cargoes.

Three major cargo preference statutes are presently in effect. The Military Transport Act of 1904 (33 Stat. 518) mandates that 100 percent of Department of Defense cargoes must be transported on U.S.-flag vessels. The Cargo Preference Act of 1954 (Public Law 83-664) calls for 50 percent of U.S. Government-impelled cargoes (including military) to be carried on privately owned U.S.-flag ships. Public Resolution 73-17, passed in 1934, has evolved in practice to require that 100 percent of cargoes financed by loans made by the U.S. Government to encourage exports must be carried on U.S.-flag ships. Such cargoes are largely financed by Export-Import Bank loans. However, up to 50 percent of these shipments can be carried on the vessels of the borrower's choice if a waiver is granted by the U.S. Maritime Administration (MarAd), upon a finding of non-discrimination to U.S.-flag shipping.

Federal agencies have also made cargo preference a topic of interagency debate: those representing shippers take one side, and those representing operators take the other. During the OTA workshop, however, Federal agency representatives stated that the current Administration favors neither an expansion nor a reduction in existing cargo-preference laws. Most of these officials appeared to agree that present laws are reasonable, but that any proposals to extend preference to commercial cargoes would be strongly opposed.

Impacts of Liner Cargo Preference

Existing cargo-preference laws are important to U.S. liner operators. For the liner industry, such cargoes account for only 4 to 8 percent of total carriage, but these are frequently the "base cargoes" that make operations on some trade routes commercially feasible.

Proponents argue that the added cost of U.S. cargo preference for liner cargoes is usually small, because rates are set by industry conferences and vary little from carrier to carrier. The added cost may be higher in some instances, but such differentials tend to be minor in the aggregate, since preference shipments represent less than 10 percent of total U.S. liner cargoes. Other industry observers, however, claim that if a large portion of cargo in any trade were merely allocated to a conference by law, with no other competitive or regulatory controls, then prices could in fact rise unreasonably.

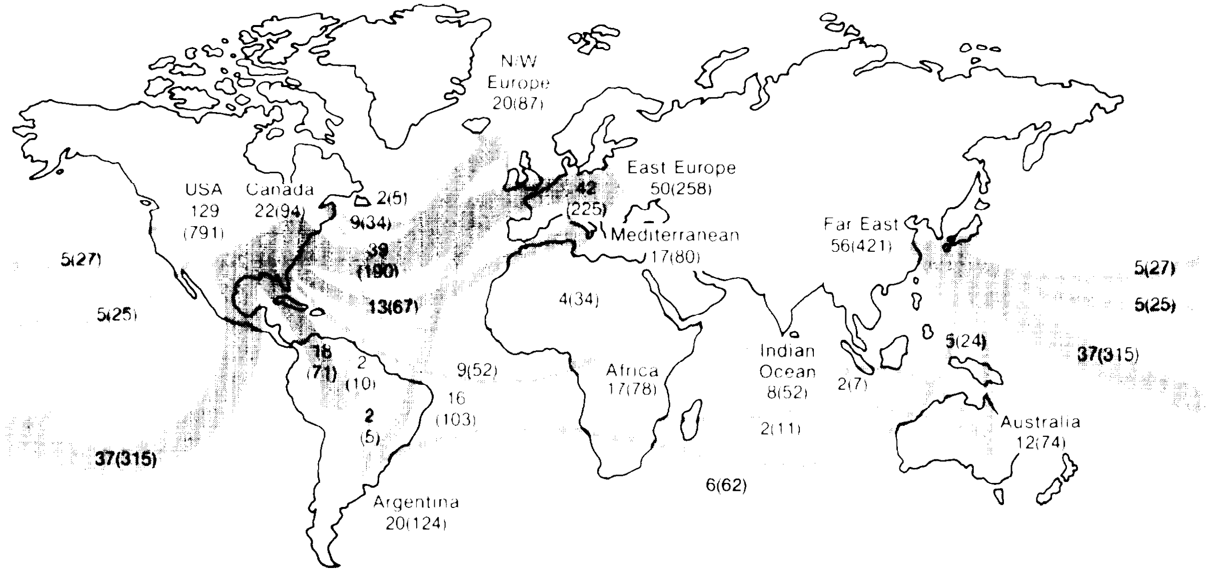
However, liner carriers do differ from each other in terms of the other forms of Government support they receive. One workshop participant suggested evaluating whether the Government should take into account the operating subsidies paid to carriers when evaluating their bids for preference cargoes, in order to compare the total cost to the Government. This is done for bulk shipments already and has been recommended by the Administration for liner shipments. The Department of Transportation has sent to the House and Senate a proposal for legislation to accomplish this by increasing insurance fees and/or reducing subsidy payments to operators carrying subsidized cargoes.

Impacts of Bulk Cargo Preference

For the few U.S.-flag bulk carriers, preference cargoes are sometimes the *only* cargo carried (see fig. 4). For bulk preference cargoes, rates are negotiated between shipper and carrier. However, the rates must be reviewed by the responsible agency, such as the Department of Agriculture (USDA). The agency will approve rates only up to the "fair and reasonable guideline" ceiling calculated by MarAd.

Spokesmen for bulk shippers at the OTA workshop opposed cargo preference and spoke emphatically in opposition to any expansion of preference

Figure 4.—World Grain Shipments, 1983



NOTE Main Inter-area movements in million metric tonnes (billion ton-miles in brackets) Only main routes are shown Area figures and totals including smaller routes are not shown separately Total trade 199 million tonnes (1,135 billion ton.miles)

SOURCE" Fearnleys

laws. They presented statistics on the increased costs that would result for agricultural exports under commercial cargo preference, indicating that if a 20-percent preference had existed in 1982, agricultural export costs would have risen substantially. If U.S. goods are to be competitive and U.S. farmers to make a profit, they claim transportation must be at the lowest possible cost. In shippers' eyes, the current U.S. trade deficit makes it even more imperative that U.S. exporters not be burdened further with higher transportation costs.

The preponderance of bulk preference cargoes are shipments of agricultural commodities under Public Law 83-480, which established major U.S. agricultural commodity aid programs. These requirements received significant attention during the OTA workshop discussions. Under the Cargo Preference Act of 1954 (Public Law 83-664), U.S. food assistance to less developed countries (LDCs) is subject to a 50-percent U.S. carrier reservation. USDA, which manages the preference requirements for these Public Law 83-480 Title I (concessionary sales) shipments, cited a transportation differential cost of $120 million paid for U.S.-flag carriage of food assistance cargoes in 1982. MarAd pointed out that the cost differential had declined to $65 million in 1983 and $76 million in 1984. Comparable detailed statistics are not available for the Title II (gifts of food) shipments, whose preference requirements are monitored by the Agency for International Development (AID). However, a GAO study estimated that U.S.-flag liner carriage under the Public Law 480 Title II program could have cost $0.73/ton more than foreign-flag carriage in 1980. At only $600,000 for 1980, the Title II cost differential was small compared with Title 1.[7]

At present the U.S.-flag bulk fleet has operating costs that average two to three times those of certain foreign competitors. These cost differentials are very significant to shippers, and U.S. bulk

[7]U. S. General Accounting Office, *Economic Effects of Cargo-Preference* Laws, GAO/OCE-84-3 (Washington, DC,: GAO, Jan. 31, 1984).

carriers are utterly dependent on preference shipments for their survival. Panelists also pointed out that the U.S. bulk fleet is modernizing significantly, which could lower future costs. A MarAd study of Public Law 83-480 shipments to Egypt showed that in 1981, 61 percent of Public Law 83-480 shipments were on bulk carriers over 22 years old, while in 1984, 63 percent of shipments were carried on vessels 5 years old or under.[8] This may lead to greater efficiency and reduced differentials in the future, because the new vessels are more automated and use less fuel; but it does not imply that the U.S.-flag bulk fleet is nearing profitability. A severe depression exists worldwide in bulk shipping, and foreign competitors are offering very low rates.

Government participants at the OTA workshop disagreed on the actual burden imposed by preference requirements. It is clear, however, that there are problems with the bookkeeping, both in the timeliness of information collection and, in some instances, of records being kept at all. Further study on the costs and benefits of cargo preference might be useful.

Implementation

Liner industry spokesmen at the OTA workshop alleged that the "50-percent requirement" is not being met in a single U.S. preference program. While they are not pressing for expansion of cargo-preference laws, liner operators are extremely concerned that current laws are not being enforced and that U.S. carriers are not getting the share of cargoes they are due. Participants suggested that part of the problem is that MarAd does not receive information on cargo carriage until well after the movement; it is difficult to enforce compliance after the fact.

Concern was greatest with respect to agricultural cargoes, and operators claimed that when new programs are started they are usually designed to avoid preference requirements. In addition, a number of DOD programs are not covered. Recently promulgated Federal acquisition regulations call for 50-percent preference. For these programs, liner operators note that the 1904 Act requires that 100 percent of DOD cargoes are to be carried by U.S.-flag ships. Some ExIm Bank programs, like the short- and medium-term guarantee programs, do not have U.S.-flag requirements. Finally, conversion of AID's commodity-export program to a cash-transfer program effectively diminished U.S.-flag participation. Industry representatives made a strong plea for enforcement of existing laws and suggested that it would be very helpful for the President to make a clear statement in support of those laws to assure compliance by Federal agencies.

An example of the controversy over implementation of existing laws is the litigation resulting from USDA's failure to apply cargo-preference requirements to the "Blended Credit "[9] export promotion program (Transportation *Institute v. Dole and USDA)*. A recent U.S. District Court decision found that USDA and the Department of Transportation had violated the law by not requiring the use of U.S.-flag ships for this program. The Administration has appealed the decision, but it has also suspended the Blended Credit Program and announced plans for a new export promotion program that will not be subject to cargo preference. Legislation has also been introduced in both the House and the Senate that would exempt some or all agricultural commodities from cargo-preference rules.

OTA reviewed some of the claims of noncompliance in cargo-preference programs during 1984. The most recent data available measuring compliance are for calendar year 1982, as reported by MarAd in their Fiscal Year 1983 Annual Report .[10] That year's data show fairly good compliance, with some instances of U.S.-flag carriage well above the 50-percent requirement. Carriers represented at the OTA workshop, however, claimed that in 1983 and 1984 many programs did *not* comply with these preference quotas. Data for these years have not yet been reported by MarAd.

[8] Lewis Paine, U.S. Maritime Administration, presentation to OTA workshop Panel on Current Policy Initiatives.

[9] This program offers a "blend" or combination of two types of credit to a nation purchasing U, S agricultural exports – one type being direct interest-free loans from the Commodity Credit Corporation and the other being commercial loan guarantees

[10] MarAd is responsible for monitoring the ~dr~(~-preference programs of other agencies, such as DOD, USDA, and AID, and for reporting their findings to Congress

The question of compliance or noncompliance has been the subject of an exchange of letters between MarAd and the other agencies, especially AID and USDA. Many of these letters concern interpretations of how to collect and use cargo-preference data and the circumstances that may or may not be covered by cargo preference. For example, MarAd has exchanged several letters with USDA's Foreign Agricultural Service (FAS) on the subject of whether or not FAS complied with the Public Law 83-480 Title 1/111 program in 1983.[11] MarAd claimed that the cargo statistics showed only 48.2 percent of the program's total cargo was actually shipped by U.S.-flag carriers. FAS claimed that they approved 50.1 percent of the total tonnage for U.S.-flag shipment but cannot control precise loading dates at the end of each year; thus, actuals may be above or below their "approved" number.

Such a debate over 1983 statistics may serve to clarify the nature of the problems and the complexity of the rules, but it shows little promise of resolving the basic issue of cargo-preference compliance, Since a major Federal responsibility is resolving conflicts in the public interest, it would be useful for the agencies to jointly formulate compliance guidelines, methods of reporting data, and practical methods of allocating cargo before shipment. Since an Interagency Shipping Policy Group already exists, Congress could require it to bring the agencies together on this subject and prepare the cargo-preference guidelines and procedures.

[11] Under this program, food is sold to foreign governments on lenient financing terms.

Discussion

U.S. cargo-preference programs appear to be flawed compromises, in which no one is fully satisfied. On the one hand, many U.S. ship operators and builders view cargo preference as a necessity, both for countering similar practices in other countries and for maintaining an industry vital to national defense. Operators stress not only the need for cargo preference policies, but also the need for implementation. Many operators who participate in existing cargo-preference programs claim that current laws are not properly enforced and that cargoes are not always reserved for U.S. operators as required. In addition, those who favor Federal promotion of maritime industries maintain that expanding cargo preference is an equitable method of indirect subsidy that is urgently needed to replace the direct construction subsidies of the past.

On the other hand, some Government shippers as well as many commercial shippers view cargo-preference laws as an unjustified cost burden. Such policies increase program funding needs, especially for agricultural support programs; or they reduce the funding available for what are perceived to be other, more important uses; or they make U.S. shippers noncompetitive in the world market. Shippers—especially those of agricultural products—have been strident in their opposition to cargo preference, claiming that existing laws have hurt the U.S. export position and that any expansion would cause further damage.

MULTILATERAL CARGO SHARING

UNCTAD Liner Code

The UNCTAD Liner Code calls for sharing of liner conference cargoes[12] between the fleets of trading partners, with some portion reserved for third parties (cross-traders) if agreed to by the national-flag lines. The Code was developed by Third World nations in an effort to capture for their own carriers a larger percentage of their trade with the industrialized world. The United States strongly opposed the Code and refused to ratify it, but the Code went into force among its signatories in October 1983. While it is too soon to assess its long-term economic effects, no significant impacts are apparent yet.

[12] That is, those cargoes which are carried by the various companies who are members of a liner conference operating in that country.

A recent European analysis of the potential effects of the UNCTAD Liner Code, based on known reservations (or exclusions) to the cargo-sharing principle (such as the European Economic Community's reservation and the policies of the Centrally Planned Economies), found that only about one-third of all trade will be regulated.[13] The study suggested that while the eventual consequences of the Code are still uncertain, it is likely to have onl y a small effect in practice.

Potential Bulk Code

Workshop participants discussed the possibility of an UNCTAD bulk code, generally concluding that it is unlikely to happen. Many LDCs are less interested in pushing for a bulk code than they were because they no longer perceive that it would be in their interests. Many of these nations simply do not have the wherewithal to build and operate commercial fleets. In addition, there is clear opposition on the part of most OECD countries. Bulk trade, unlike liner trade, does not follow established routes on a regular basis. Rather, bulk trade tends to be "round the world, " with contract carriage of a specific cargo from one place to another. This arrangement does not lend itself to some forms of cargo allocation.

Open Registry

Underdeveloped countries who espoused the Liner Code and proposed bulk code, now seek to phase out open registries as well. While no action has thus far been taken on a bulk code, conferences on open registry were held in 1983 and 1984.

At issue is an attempt to phase out "flags of convenience": every carrier would be required to have a "substantial relationship" with the country under whose flag its ships sail. Many LDCs believe that if Western lines now flying the flags of convenience registries, such as Panama and Liberia, were required to register elsewhere, these other LDCs would capture a substantial share of the new registrations and the resulting economic benefits. Another view expressed by LDCs on this subject is that if Western flag-of-convenience carriers are forced to register their ships under their own national flag and employ Western seamen, they would be unable to operate economically and thus would phase out of many trades, enabling LDCs to increase their share of the carriage.

Phase-out of open registries is opposed by the major shipping nations that make significant use of convenience flags. The "U.S. effective controlled" (USEC) fleet of U, S.-owned but foreign-registered vessels represents the single largest fleet of flags-of-convenience vessels in the world. Two UNCTAD meetings, one in July / August 1984 and another in February 1985, failed to reach any consensus on the open registry issue but produced a negotiating text which was considered at a July 1985 session. (As this background paper was going to press, reports from the open-registry talks in Geneva indicated that a compromise agreement may be reached.) The U.S. Administration believes it is unlikely that open registry will be banned any time soon.[14] However, efforts to do so will probably continue.

One workshop participant compared the U.S. approach to multilateral shipping agreements to the negotiating approach that the United States has taken in other areas of international marine affairs. The issue expressed was whether U.S. tactics in this area will be analogous to the on-again off-again U.S. approach to Law of the Sea, where the United States wound up out of sync with the rest of the world; or whether it will instead be analogous to the cooperative approach used for the 200-mile fishery zone, which resulted in a system that requires other nations that fish in the U.S. zone to adhere to U.S. conditions.[15]

Relations With Europe and Japan

Relations between the United States and its major trading partners—members of the European Economic Community and Japan—continue to be unsettled in the wake of their adoption of the UNCTAD Liner Code. The United States resisted the passage of the UNCTAD Liner Code and has

[13] T. Wergeland, "UNCTAD Liner Code, 40-40-20: Potential Redistributional Effects for Liner Vessels," *Lloyd's Shipping Economist*, February 1985, pp &Q.

[14] It should be noted that U.S. officials did not think that the now-ratified UNCTAD Liner Code had any chance of passage either.

[15] Transcript of OTA Workshop on 'Cargo Policy, p. 406.

Photo credit: Exxon

A typical ship in the "U.S. effective controlled" fleet. This Exxon tanker was built in Japan and is registered under the Liberian flag.

rejected its implementation in U.S. trades. European nations tend to favor the Code and either have already implemented it or are moving to do so, but they would exempt intra-OECD trade from its purview. Japan has stated that it will ratify the code with no reservations.

It appears that each side is suspicious of the other's dedication to free trade. In a March 1984 symposium of leading shipping officials, Europeans accused the United States of protectionism, citing in particular the Jones Act, Operational Differential Subsidy, and cargo preference. The U.S. Maritime Administrator, on the other hand, pledged that the United States would fight any efforts toward protectionism. He cited the UNCTAD Code as "the most pervasive protectionist initiative" and expressed fear that European signatories would try to exclude U.S. cross-traders. He also said that the United States opposes bilateralism" conceptually, but will protect U.S.-flag markets if necessary (see the section on "Bilateral Cargo Sharing" below).

Protectionism was also a major topic of government meetings between the United States and the Consultative Shipping Group (CSG) from Europe and Japan, held in September 1984 and January 1985. A major area of contention was the EEC/Japanese ratification of the Liner Code and their perception that the United States is moving, toward protectionism. The United States has steadily opposed the UNCTAD Liner Code, while at the same time discussing bilateral agreements with several LDCs in response to threats of unilateral cargo reservation. Both the United States

[16]Government-to-government agreements between two trading nations where cargo shares are allocated to the ships of those nations under some fixed ratio.

and the CSG, in short, perceive anticompetitive actions on the part of the other, while at the same time recognizing that coordination and cooperation are in the best interests of all parties.

The Europeans would like the United States to enter into a binding agreement under which each signatory would "resist protectionism ." The specifics of such an agreement are not clear, and at least some United States representatives see no benefit in yet another ambiguous statement on the subject. The January 1985 CSG meeting addressed the problem of assuring U.S. carriers access to cargoes in trades between the Third World and other industrialized countries. No agreement has been reached on this point, although U.S. Government participants reported a narrowing of U.S.-CSG differences. These discussions are currently under review by the Administration. U.S.-flag liner operators have urged the Administration to terminate current negotiations.

Cross-Trades

With increasing acceptance of the UNCTAD Liner Code by foreign governments, some observers are concerned that U.S. liner operators could be squeezed out of traditionally profitable cross-trades. Five U.S.-flag carriers (American President Lines, Delta, Lykes, Sea-Land, and U.S. Lines) carried nearly 3 million long tons[17] of cross-trade cargo in 1982, producing gross revenues of almost $300 million. Loss of such trade could have serious consequences for U.S. carriers.

Participants at the OTA workshop liner panel stressed that cross-trading by U.S. carriers also benefits U.S. shippers and U.S. commerce in general. Revenues from cross-trade cargoes contribute to the overall profitability of U.S. carriers, allowing them to remain competitive in the hotly contested U.S. trade routes. Opportunities for cross-trading will also be increasingly important as carriers develop and pursue round-the-world trade routes.

A study prepared by Manalytics, Inc., for the Maritime Administration concludes that the U.S. Government can effectively protect U.S. liners' interests because a far larger percentage of U.S. trade is carried by third-flag vessels than is carried by U.S. carriers in foreign-to-foreign trades .18 In 1982, for example, Northern European flag ships lifted 12.9 million long tons of cargo as cross-traders in U.S. liner trades, while U.S. cross-traders carried less than 0.6 million long tons in these nations' trades. Thus, the threat of withholding access to significant volumes of cargo in U.S. trades could provide leverage in negotiations over impediments to cargo access by U. S .-flag carriers in foreign-to-foreign cross-trades. The Manalytics study also noted that many of the countries whose carriers are major cross-traders in the U.S. trades generate relatively little trade of their own.

The study listed the following possible U.S. Government responses to artificial impediments raised to bar U.S.-flag carrier access to cross-trades:

- cancellation of cross-trade tariffs of foreign carriers;
- discriminatory reservation of cargo against foreign carriers;
- imposition of operating restrictions; and
- imposition of taxes or currency exchange controls.

Shipping Act of 1984

Section 13(b)(5) of the Shipping Act of 1984 (Public Law 98-237) specifically permits Government actions in response to foreign actions that are discriminatory to U.S.-flag carriers in foreign-to-foreign trades. OTA workshop participants discussed the potential use of this provision in the future. Agency representatives believed that the threat of sanctions, rather than actual imposition, would in most cases be sufficient to achieve U.S. objectives. No cases have yet been brought under section 13(b)(5).

Several workshop participants also stressed the role of the 1984 Shipping Act in enabling U.S. interests to gain market access in international liner trades. The Act allows conferences to establish intermodal rates, giving shippers the advantage

[17]A long ton equals 2,240 pounds.

[18]Manalytics, Inc., *U. S,-Flag Crosstrading*, prepared for the Office of Market Development, U.S. Maritime Administration, July 1984 (contract No. DTMA91-83-C-30045).

of a through bill of lading. It also requires conferences to assure the right of independent action for any individual conference member, requiring a maximum of 10 days notice prior to such action. Shippers' associations are authorized, although antitrust exemption does not extend to them. The rate-approval process required by FMC is considerably accelerated and simplified.

The rights of all carriers in U.S. trades for protection against discrimination is provided. The Act retains section 19 of the Merchant Marine Act of 1920, under which the tariffs of any country's vessels may be suspended, effectively excluding them from U.S. trades. Provisions of the Controlled Carrier Act of 1978 are also retained in the new Act. Under this provision, action may be taken against controlled carriers of any flag that unfairly compete by offering less than compensatory rates. Finally, as noted above, section 13(b)(5) of the new Act gives FMC power to suspend the tariff of any carrier in U.S. trade if the country whose flag it flies, or the commercial practices of the carrier, unduly impairs the access of U.S. carriers as cross-traders in foreign-to-foreign trade. Several participants stressed the importance of this latter provision, which they viewed as vital in protecting U.S. carriers against certain cargo-sharing schemes in effect around the world.

Future Strategy

The Administration's strategy for future international cargo policy negotiations is to continue resisting all forms of cargo-sharing agreements, but if resistance fails, to negotiate bilateral agreements with competitive elements, It may be useful for congressional deliberation if the Administration were to develop an explicit statement of these strategies, which would include: responses to UNCTAD initiatives; positions relative to CSG discussions and agreements; and the intended use of U.S. provisions, such as those in the new Shipping Act, in response to cargo policies of other nations. Congress could call for such a strategy paper, possibly requesting that the Interagency Shipping Policy Group prepare it.

BILATERAL CARGO SHARING

Current Policy

The Administration's policy toward bilateral agreements was summarized in 1984 by the Deputy Secretary of Transportation, speaking before the Maritime Law Association in New York.

> Any bilateral arrangements we might ultimately reach would be designed to place minimum constraints on trade and preserve maximum marketplace competition. They could also include both free access without Governmentally imposed barriers for national-flag carriers and a significant role for cross-traders. Our objective is to limit the amount of trade that is arbitrarily or Governmentally reserved to the flag carriers, while preserving equal access to reserved cargo, Naturally, our resistance to bilateral pressure will be tempered by realism and the need to protect our carriers' interests as well as our broader shipping and general trading interests. "

Thus it appears that, at present, the United States will only reluctantly accept cargo-sharing agreements with market-economy nations. Few such agreements have been concluded over the years, and only two are currently in effect .20 During 1983 and 1984 one bilateral cargo-sharing agreement, involving the United States and Brazil, was renegotiated. Discussions of competitive access have been held with three other countries, including the possibility of bilateral agreements with more competitive provisions.

The negotiation of such "procompetitive" bilateral agreements that recognize the maritime-promotion objectives of U.S. trading partners is an option that the Administration may pursue, as a last resort, in cases where other nations insist on some form of cargo allocation as a condition of trade, Such bilateral agreements may be the only feasible compromise between free trade

19 James Burnley, U.S. Deputy Secretary of Transportation, address to the annual meeting of the Maritime Law Association, New York, May 4, 1984.

20 App. B contains descriptions of some specific bilateral agreements.

and protected trade objectives of various trading partners, especially for the present Administration, which has objected so strenuously to multilateral regimes such as the UNCTAD Liner Code.

Given that bilateral cargo-sharing agreements exist today with two U.S. trading partners, and may be introduced with others from time to time in the future, it is important to address future strategies for these agreements. Strategies are needed that will seek to satisfy the goals of efficiency and good service, as well as supporting each country's national interest. It may not be possible to balance all conflicting interests.

Cargo Sharing and Competition

A major issue raised during the OTA workshop was whether bilateral shipping agreements can be devised that will preserve elements of price and service competition. Historically, the United States has entered into such agreements only when another country has made it a condition for the carriage of its cargo. The agreements with Argentina and Brazil are examples of the U.S. response to those countries' cargo-allocation policies (see app. B). The Federal Maritime Commission (FMC) has been investigating the competitive environment in these trades since late 1984. The current U.S.-Brazil agreement is due to expire at the end of 1985, and the Administration will soon begin discussions with Brazilian authorities. Discussions with Argentine officials are likely to follow.

Most workshop participants agreed that restraint on competition is unhealthy. But they also agreed that restraints do exist in many countries, and that U.S. carriers and shippers must deal with them. A possible role for the U.S. Government, therefore, is to protect shippers and operators from unfair competitive practices on the part of foreign governments and carriers, In the liner trades, for example, where price and service are fixed by conference system, competition is still considered necessary. A conference must be sufficiently powerful to maintain stability, that is, but outside competition should also be strong enough to prevent the conference from earning monopoly profits, Conferences in U.S. trades are open to any carrier desiring to join; trade is open to nonconference carriers; and the right of independent action by conference members is fully protected.

A radically different system was hypothesized during the OTA workshop panel on alternative approaches, in which competition would be assured within a bilateral agreement. Bilateral treaties would be negotiated without allocation of fixed shares of cargo, but with third-flag carriers excluded. Every carrier would be independent; rates would not be fixed; and carriers of either trading nation could compete for as much of the cargo as they could capture. Such an arrangement might allow U, S, carriers to compete more effectively, or enhance overall efficiency for the trade routes in question, [21]

Government Participation

A major concern expressed by workshop participants was whether national governments were involved in both regulating and operating their international shipping industries. A number of industry participants believed that bilateral agreements maintained by commercial conferences would neither impede trade nor work counter to the interests of carriers and shippers. However, they raised several questions about government participation in the shipping industry, which is common in many other countries.

A recent analysis, prepared as part of FMC's investigation of the U.S.-Brazil and U. S.-Argentina trades, identifies some of the problems arising from bilateral agreements that involve substantial government involvement.[22] The staff paper concludes that these trades are protected by government-supported cartels; that a few liner operators carry nearly all of the cargo in these trades; and that these trades are marked by entry restrictions and little or no service and price competition. One of the key problems, according to the report, may be that the Brazilian and Argentine agreements themselves create an entry barrier and that, "by mandating conference and

[21] Leslie Kanuk, Baruch College, presentation to OTA Workshop Panel on Alternative Approaches to Cargo Policy.

[22] Statement of Austin L. Schmitt, Chief Economist, Federal Mari time Commission, "Section 19 Inquiry—U S, Argentina and U.S. Brazil Trades, " Docket #84-33, Washington, D. C., Dec. 31, 1984.

pool memberships, set the stage for the lack of service and price competition."[23]

The question that remains to be answered is what the United States can effectively do to open these and other trades to greater competition. The U.S. State Department has indicated that in future bilateral negotiations the United States will resist agreements that require cargo sharing. Whether this will be possible in the increasingly protectionist international environment remains to be seen. Congress could also call for the development of an Administration policy strategy paper on bilateral, in a manner similar to requesting a strategy paper on multilateral (see above).

Trade Barriers

Shipper representatives at the OTA workshop expressed concern that all trade barriers—whether cargo preference, conference action, or bilateral or multilateral cargo reservation—are inefficient and uneconomic. They gave the example of a container shipped from the Midwest to Argentina or Brazil: via Europe, the cost is $3,400, while direct shipment costs $5,000. Shippers were optimistic that the Act addresses some of these problems and that the new Shipping Act will result in a better balance between carriers and shippers than existed under the 1916 Act. However, they remain concerned that conferences can still set rates, pool revenues, restrict sailings and volume capacity, and prevent competition.

"U.S. Maritime Commission, Docket #84-33, Section 19 Inquiry—U. S, Argentina and U.S. /Brazil Trades, Memorandum of Law, p. 10.

Shippers feel that the success or failure of the Act will ultimately depend on how carriers respond to its independent action provision. Competitive opportunities are available to both shippers and vessel owners, including the ability to provide intermodal services,[24] independent action,[25] and a prohibition against loyalty contracts,[26] except as allowed under antitrust law. Thus far, however, the impact of the Act has varied by trade area. In general, carriers in the OECD trades have been more aggressive in seizing new opportunities than have those in LDC trades. Independent action has become common in the Pacific trades, while carriers on the North Atlantic appear afraid of starting a new rate war.

Individual shippers have taken advantage of new provisions, such as service contracts, to a greater or lesser degree. Shippers' associations are not yet common, and leaders in organizing them have yet to come forward. Many shippers fear antitrust problems and therefore have adopted a "wait and see" posture. However, the recently formed Shippers for Competitive Ocean Transport (SCOT) has provided a means of bringing shippers' interests into focus and representing those interests in national and international negotiations. SCOT supports a competitive regime that will encourage good service, reasonable rates, and innovation.

[24] A contract for shipping services covering several modes of transportation (truck, rail, ship, etc.).

"The right of a carrier in a conference to offer independent service and rates.

[2]* Confidential loyalty agreements between shipper and carrier in exchange for favored rates,

DEFENSE NEEDS AND CARGO POLICY

A number of workshop participants expressed concern about the ability of the U.S. merchant fleet to support wartime needs, today and in the future. The rationale for most forms of Federal subsidy to the maritime industry, including cargo preference, is national security. The U.S. merchant fleet would be tasked in wartime with both direct military support and continued support of the civilian economy. DOD recently completed a study to determine wartime logistics needs and adequacy of the merchant marine to fulfill them .[27]

[27] The study is classified, but Deborah Christie's presentation to the OTA Workshop Panel on Current Policy Initiatives contained the unclassified highlights.

The findings were that sufficient container capacity exists for carriage of containerized military cargoes. However, there is a significant shortfall of capacity—breakbulk [28] and Ro/Ro[29]—to carry large units of equipment (such as tanks). DOD has launched two initiatives to ameliorate this problem: 1) purchasing older breakbulk and Ro/Ro vessels on the open market and putting them in the National Defense Reserve Fleet (NDRF); and 2) purchasing the flat racks and sea sheds needed for converting containerships, which make up most of the U.S.-flag liner fleet, to carry large equipment such as tanks.

When the liner cargo panel was told that DOD is considering acquiring its own in-house fleet to provide sealift capability, participants questioned whether this would be cost effective compared to promoting the development of needed capacity in the private sector. A clear policy decision needs to be made as to whether it is desirable to have a largely nationalized fleet maintained at Government expense, or whether it would be more efficient to build and operate a commercial fleet with some Government support. DOD contends, however, that there are few ideas for stimulating private sector growth, and that DOD considered those that were around when launching its program:

> In fact, our program is cheaper than past policies (ODS, CDS, and cargo preference), which were not providing the needed capability, and we have yet to hear any suggestion that shows promise of stimulating significant growth in the flag fleet for equal cost.'[30]

[28] Ships that carry genera] cargo in a large variety of sizes.

[29] Ships that carry vehicles or trailers that are loaded and discharged by "rolling on and rolling of f."

[30] Letter from Deborah P. Christie, Division Director for Projection Forces and Analytical Support, Office of the Secretary, Apr. 30, 1985.

Photo credit U S *Maritime Administration*

National Defense Reserve Fleet at anchor.

National defense requirements were discussed in some detail during the bulk cargo panel, since product tankers[31] are valuable defense assets, The USEC fleet of U.S.-owned, foreign-flag ships contains sufficient large crude oil carriers to serve defense needs, in the panel's opinion. But some participants expressed concern about the number of usable tankers: most of the USEC tanker fleet is made up of large crude oil carriers, which may not be as useful militarily as smaller oil-product tankers, Because of consolidation in the world petroleum industry, furthermore, the tanker fleets of U.S. oil companies and of our NATO allies are declining in size and significance. A separate point raised by shipping interests was the cost of defense-related features of their fleet and whether these costs should be borne by U.S. taxpayers, rather than by a small number of shippers.

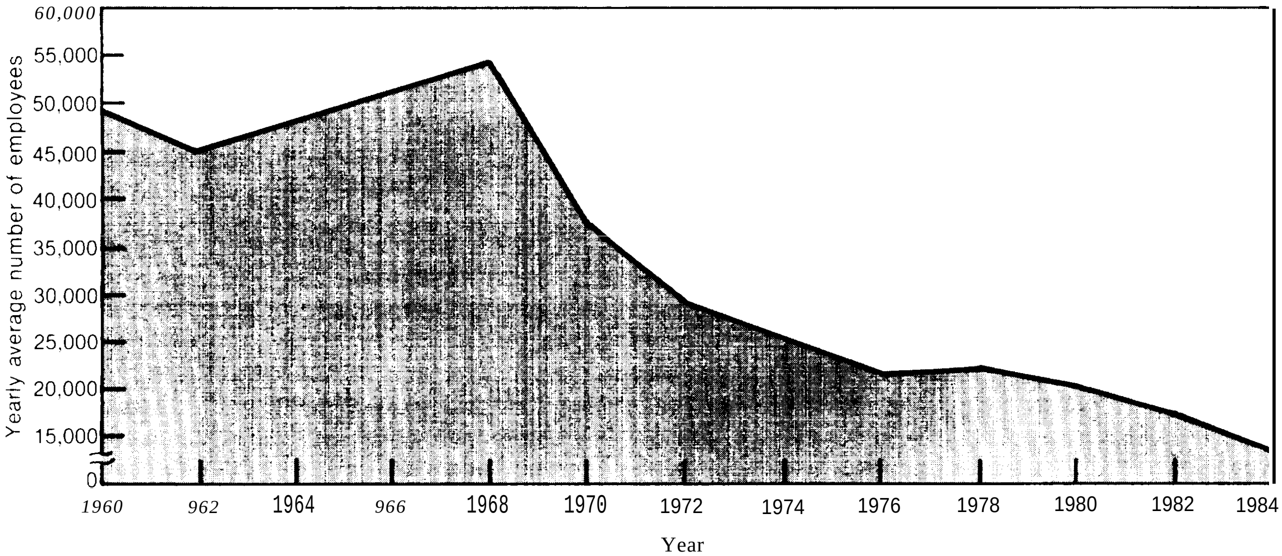
Another issue raised by workshop participants is the adequacy of the pool of merchant seamen to crew reserve fleet ships, should they be required. The recent decline in number of U.S. merchant seamen is expected to continue due to retirements and the declining crew requirements of modern vessels (see fig. 5). As a result, several participants questioned whether an adequate number of crew members could be found for military support operations in wartime.

31 Tankers that carry refined petroleum products, such as gasoline, diesel, fuel oil, etc.

Workshop participants agreed that these and other defense issues merit further study. Among the topics mentioned were a cost-benefit analysis of the merchant fleet as a defense support base, the cost of defense requirements to the merchant fleet, and the crewing issue. Congress may wish to call for more specific, in-depth analyses of these issues, possibly as part of the charter of the newly established Commission on Merchant Marine and Defense. Workshop participants suggested three specific areas in which additional analysis could improve future policies:

1. A cost comparison of alternative approaches to providing needed military sealift capability (for example, comparing the cost of having DOD buy or build the ships they need vs. the cost of encouraging the commercial operation of those ships through subsidy programs, including hidden costs, multiplier effects, etc.).
2. An analysis of actual costs of providing defense features in shipbuilding, and who ultimately pays for them. At present the commercial industry is thought to be funding certain features and practices that support national defense goals, but without direct DOD support.
3. An analysis of the relative military usefulness of the existing commercial fleet. DOD claims that it does not currently have access to the types of vessels needed for mobilization; others claim they do.

Figure 5.—Seafaring Employment— U.S.-Flag Oceangoing Commercial Ships



These data are for oceangoing commercial ships only which Include the coastal (Jones Act) trade but not the Inland waterways The data show a steady decline since 1968 which stems from a number of factors includinq a decline in the active fleet a switch to larger ships, a reduction in crew sizes and the general Sl urn p i n world t rade I n add itıon these f ıgu res are for the privately o-wn ed fleet on I y and do not ıncluae the 3,000 to 4,000 jobs current ly n the government operated fleet (prıncıpally MSC)

SOURCE MarAd data 1985

Section 3
Summary

Section 3
Summary

The current trend worldwide is toward more and more government involvement in trade and cargo policies. These policies have taken various forms, including unilateral declarations as well as both bilateral and multilateral agreements or treaties. The United States is unusual among major maritime and trading nations in its advocacy of a completely free trading environment and its reluctance to accept any form of bilateral or multilateral cargo-allocation regime. Many other nations have much more direct government involvement in their trading and shipping industries.

OTA's *Assessment of Maritime Trade and Technology,* published in 1983, stated that there was at that time no generally accepted U.S. cargo policy, and that the lack of such a policy has been detrimental to U.S. trading and shipping interests.

This 1985 review of cargo policies has found little changed from 1983 except for a decided increase in the intensity of the debate, especially as it concerns U.S. cargo preference.

The OTA cargo policy workshop, together with an analysis of the key questions raised by the workshop and other sources, has identified four issue areas that appear to be important not only to the health and vitality of the U.S. shipping industry, but also to other vital national interests involving U.S. participation in world trade:

- U.S. cargo preference;
- multilateral cargo sharing;
- bilateral cargo sharing; and
- national defense needs that affect cargo policy.

U.S. CARGO PREFERENCE

The debate about cargo preference for agricultural commodities is especially intense as this Background Paper is being published. Many current legislative proposals seek to eliminate cargo-preference requirements for certain export programs. In addition, maritime interests have called for better enforcement of existing cargo-preference laws. OTA's investigation has identified three possible initiatives for consideration:

- A directive requiring more specific evaluation of cargo-preference costs (by program and agency), as well as a clear allocation of those costs (e. g., for defense-related requirements).
- Development of comprehensive interagency guidelines for cargo-preference compliance and reporting.
- A requirement to evaluate all Government subsidies offered each firm, both direct and indirect, in order to gain more equity and balance among promotional programs.

MULTILATERAL CARGO SHARING

The most significant international (multilateral) agreement on cargo sharing, the United Nations Conference on Trade and Development (UNCTAD) Code of Conduct for Liner Conferences (or UNCTAD Liner Code), has been in effeet since October 1983. The United States has refused to accept this treaty, although many of our trading partners have either signed it or announced their intention of signing. It is too early to measure any major impacts of the Liner Code on the shipping industry. However, UNCTAD is new pursuing other initiatives such as a code for bulk cargo and an effort to phase out open registries (flags of convenience).

While the U.S. Government has consistently resisted attempts to institute cargo-sharing agreements, strategies to achieve such a goal have not been clearly defined or widely debated in the United States. OTA investigations suggests that the Interagency Shipping Policy Group, or some other appropriate organization, could be directed to develop a strategy paper to guide future international discussions on cargo policies.

BILATERAL CARGO SHARING

Some observers have advocated a strategy of selective bilateral agreements on cargo policy, in lieu of a more general (or multilateral) approach involving many trading nations. The rationale is, first, that the United States would have a stronger negotiating position and, second, that a minimum number of nations would have to be accommodated.

The United States now operates under bilateral cargo-sharing agreements with Brazil and Argentina, and has had such agreements with the Soviet Union and China in the past. While the present Administration has resisted further attempts at bilateral cargo sharing, it is likely that other nations will continue to seek forms of cargo allocation for the benefit of their own shipping industry. OTA has identified two possible approaches for consideration:

- Develop a bilateral strategy for future guidance in responding to other nations' cargo-sharing initiatives, to be prepared by an interagency group.
- Develop a legislative framework for cargo sharing, including strategies for future bilateral agreements.

NATIONAL DEFENSE AND CARGO POLICY

National defense is the overriding justification used for most forms of Federal support of the U.S. merchant marine, including those of funding cargo-preference costs or taking actions in the international arena that would serve to strengthen the U.S. shipping industry. There is little debate about the need for some defense mobilization base, but there is considerable debate about specific definition of shipping needs, the cost of providing them, and the various approaches toward Government support of the industry. OTA's investigation revealed three initiatives for consideration:

- Analyze the desirability of allocating the direct costs of cargo preference to the defense budget.
- Evaluate the long-term desirability and costs of direct support for a national fleet to meet defense needs vs. indirect support for a commercial fleet, including the question of an adequate pool of merchant seamen for the future.
- Evaluate the long-term viability of the merchant fleets of our allies as they contend with difficult competition from the Soviets and other controlled carriers.

Appendixes

Appendix A

Summary of Panel Presentations and Discussion

OTA Cargo Policy Workshop, Dec. 3 and 4, 1984

PANEL ON CURRENT POLICY INITIATIVES

Panelists

Charles Angevine
Department of State

Deborah Christie
Department of Defense

Robert Ellsworth
Federal Maritime Commission

William Johnson
Department of Commerce

Arnold Levine
Department of Transportation

Kay McLennan
Department of Agriculture

Lewis Paine
Department of Transportation

Topics for Discussion

1. Trends in maritime trade, trading patterns, and shipping services; current policy initiatives involving the interaction of trade and shipping.
2. Present cargo preference regulations and their effects, including trends in U.S. policies to promote U.S. exports.
3. Current initiatives and responses to international cargo policies, such as the UNCTAD Liner Code and bilateral agreements with major trading partners.
4. Current trends in the use of new Shipping Act authority to gain cargo access and the effect of regulatory policy on U.S. cargo shares.
5. Impacts of military readiness requirements on-cargo policies or U, S. position in trade and shipping.

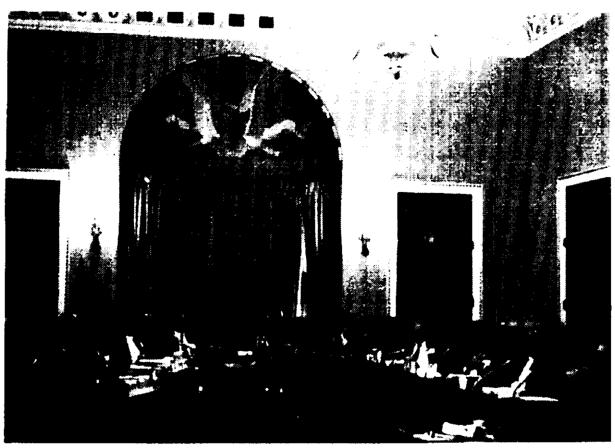


Photo credit H G Miller

OTA Workshop on Cargo Policy, meeting in the hearing room of the House Committee on Merchant Marine and Fisheries, Dec. 3 and 4, 1984

Summary of Discussion

At the first workshop panel, participants from Federal agencies discussed current initiatives in cargo policy. The agencies represented included the Departments of State, Agriculture, Transportation, Commerce, and Defense, and the Federal Maritime Commission. The panelists presented an optimistic outlook for both U.S. shippers and the maritime industry. They stressed that their programs were directed toward goals of maximum flexibility for shippers along with access to cargo for U.S. carriers. A common theme expressed was "open market competition." On the international level, the panelists believed it important to protect U.S. vessels from unfair practices in order to meet the goals of access and competition.

Shipping Act of 1984

Several participants stressed the role of the 1984 Shipping Act in enabling U.S. interests to overcome barriers to market access in international liner trade. The Act allows conferences to establish intermodal rates, giving shippers the advantage of a through bill of lading. It also requires the right of independent action for any individual conference member, requiring a maximum of 10 days notice prior to such action. Shippers' associations are authorized, although antitrust exemption does not extend to them. The rate-approval process required by FMC is considerably accelerated and simplified.

The rights of all carriers in U.S. trades for protection against discrimination is provided. The Act retains section 19 of the Merchant Marine Act of 1920, under which the tariffs of any country's vessels may be suspended, effectively excluding them from U.S. trades. Provisions of the Controlled Carrier Act of 1978 are also retained in the new Act. Under this provision, action may be taken against controlled carriers of any flag which unfairly compete by offering less than compensatory rates. Finally, section 13(b)(5) of the new Act gives FMC power to suspend the tariff of any carrier in U.S. trade if the country whose flag it flies, or the commercial practices of the carrier, unduly impair the access of U.S. carriers as cross-traders in foreign-to-foreign trade. Several participants stressed the importance of this latter provision, which they viewed as vital in protecting U.S. carriers against certain cargo-sharing schemes in effect around the world.

Cargo Preference

There was considerable discussion of U.S. cargo-preference laws and policies. The stated Administration position is that current laws should be enforced, but that no expansion of preference should occur. Cargo-preference requirements on agricultural products received significant attention from the group. Under the Cargo Preference Act of 1954 (Public Law 83-664), U.S. food assistance to less developed countries (LDCs) is subject to a 50-percent U.S. carrier reservation. USDA, which manages the preference requirements for these Public Law 83-480 Title I (concessionary sales) shipments, cited a transportation differential cost of $120 million paid for U.S.-flag carriage of food assistance cargoes in 1982. The cost differential was $65 million in 1983 and $76 million in 1984. Comparable detailed statistics are not available for the Title II (gifts of food) shipments, whose preference requirements are monitored by AID.

The panelists pointed out that while one-third (by tonnage) of all U.S.-flag waterborne shipments are preferential, only 4 to 8 percent of total liner shipments are preference cargoes. In the liner sector, there is generally no differential within conferences, where set rates apply to all carriers, notwithstanding flag. Of course, this is tempered by the situation in U.S. trades where independent action is encouraged and a number of nonconference carriers operate. It should be noted, however, that in some instances an agricultural commodity rate may be "opened" by the conference, which means that a conference-wide rate does not apply.

It is in the bulk area, where U.S. operating costs average two to three times those of certain foreign competitors, that the cost differentials are significant. However, U.S. bulk carriers are utterly dependent on preference shipments for their survival. On the other hand, panelists also pointed out that the U.S. bulk fleet is modernizing significantly. A MarAd study of the large Egyptian program showed that in 1981, 61 percent of Public Law 83-480 shipments were on bulk carriers over 22 years old, while in 1984, 63 percent of shipments were carried on vessels 5 years old or under. This does not imply that the U.S.-flag bulk fleet is nearing profitability. A severe depression exists worldwide in bulk shipping, and even the lowest cost competitors are failing to cover their costs.

Cargo Reservation

The issue of cargo reservation, whether unilateral, bilateral, or multilateral, was raised by several panel members. Flexibility of approach is perceived by several panel members as essential in assuring U.S. interests. FMC has recently instituted or completed investigations into the Venezuelan, Brazilian, Philippine, and Argentine trades based on allegations of discrimination against U.S.

or third-flag carriers and shippers, Panelists stated that the real threat to U.S. interests is foreign government intervention, rather than commercial efforts at cargo sharing.

Most panelists also felt that the UNCTAD Liner Code has not been as detrimental thus far as was widely feared. Some indicated that the potential for real harm from UNCTAD Liner Code provisions exists only where U.S. carriers are cross-traders in a foreign-to-foreign trade. Should that occur, section 13(b)(5) of the Shipping Act of *1984* allows the FMC to intervene in U.S. trades to prevent such discrimination in foreign-to-foreign trades. The overall opinion of the panel was that the UNCTAD Liner Code does not pose much direct threat to U.S. carriers. Were a bulk code to be implemented, the effect on world trade would be much greater, but this is not regarded as an imminent possibility.

Some panelists believed that a significant problem exists in negotiations between the United States and its trading allies in Europe and Japan regarding cargo access. Over the past 3 years, the Consultative Shipping Group (CSG) has met with the United States several times in an attempt to coordinate resistance to cargo sharing. The United States has steadily opposed the UNCTAD Liner Code, while some of its allies have ratified the Code (albeit with the Brussels Package reservation).[32] At the same time, however, the United States has discussed bilateral agreements with several LDCs in response to threats of unilateral cargo reservation. Both sides, in short, perceive anticompetitive actions on the part of the other, while at the same time recognizing that coordination and cooperation are in the best interests of all parties.

Defense-Related Issues

While most of the panel's allotted time was spent on the competitive environment facing both shippers and carriers, the discussion also touched on the importance of the Merchant Marine as an arm of defense. The rationale for most forms of subsidy to the maritime industry, including cargo preference, is national security. The U.S. merchant fleet would be tasked in wartime with both direct military support and continued support of the civilian economy. DOD recently completed a study to determine wartime logistics needs and the adequacy of the merchant marine to fulfill them. The findings were that sufficient container capacity exists for carriage of containerized military cargoes. However, there is a significant shortfall of capacity—breakbulk[33] and Ro/Ro[34]—to carry unit equipment. DOD has launched two initiatives to ameliorate this problem: 1) purchasing older breakbulk and Ro/Ro vessels on the open market and putting them in the National Defense Reserve Fleet (NDRF); and 2) purchasing the flat racks and sea sheds needed for converting containerships to carry large equipment, such as tanks.

Some participants raised the point that, even if sufficient sealift capacity is achieved, there may not be an adequate pool of merchant seamen to crew NDRF ships. The average age of U.S. merchant seamen is in the 50s, and newer commercial vessels are being operated with smaller crew complements. In addition, the commercial sector has little need for large numbers of replacement crews, and this reduces the pool of U.S. seamen even further.

Another issue raised was the cost of defense features on merchant ships. Theoretically, DOD pays the full cost of these features, Several participants questioned whether this is in fact the case.

[32] This states that all intra-OECD trades would be exempt from the provisions of the Code and opens portions of OECD-to-LDC trades to all OECD members.

[33] Ships that carry general cargo in a large variety of sizes.

[34] Ships that carry vehicles or trailers that are loaded and discharged by "rolling on and rolling of f."

PANEL ON INDUSTRY IMPACTS OF LINER CARGO POLICIES

Panelists

Peter Finnerty
Sea-Land Corp.

Bonnie Green
American President Lines

Peter Luciano
Transportation Institute

Sam Nemirow
Council of American Flag Ship Operators

Robert Rickert
E. I. du Pont de Nemours & Co., Inc.

Roger Wigen
3M Co.

Topics for Discussion

1. Impacts of current cargo-preference laws and regulations on the trade, on shippers, and on carriers—including estimates of costs and benefits now and in the future.
2. Impacts of current bilateral agreements; prospects for future bilateral and their effects.
3. Experience to date with implementation of the new Shipping Act; prospects for benefits to shippers and carriers.
4. Experience to date with the UNCTAD Liner Code and prospects for future impacts on the industry.
5. Experience with changing international approaches to cargo policies and impacts of cargo policy initiatives of major trading partners.

Summary of Discussion

Liner operators emphasized the importance of preference cargoes to their sector of the industry. While these cargoes may account for a small percentage of all liner cargoes, they frequently are "base cargoes" that allow operators to carry commercial cargoes on routes that otherwise would not be profitable. This is even more true for exports than imports, because on some routes (LDC trades in particular) AID cargoes may comprise the preponderance of all U.S. exports. At a time when commodities are hard to sell abroad due to the strength of the dollar, Government-impelled shipments are particularly vital to carriers. Liner representatives also pointed out that there is very little disparity in liner rates between U. S.- and foreign-flag conference carriers, since rates generally are set by a conference and adhered to by all conference members. However, a GAO study reported that U, S.-flag liner carriage under the Public Law 83-480 Title 11 program cost $0.73/ton more than foreign-flag carriage in 1980—an annual premium of $600,000.

Implementation Issues

Liner operators are not pressing for expansion of cargo-preference laws. However, they are extremely concerned that current laws are not being adequately enforced and that U.S. carriers are not getting the share of cargoes they are due. Participants suggested that part of the problem is that MarAd does not receive information on cargo carriage until well after the movement; it is difficult to enforce compliance after the fact. Concern was greatest with respect to agricultural cargoes. In 1983, all agricultural programs subject to Public Law 83-480 had U.S.-flag shares below 50 percent. Liner operators claimed that many new programs, such as the "blended credit" program, are not subject to preference requirements at all.

In addition, a number of DOD programs are not covered. The new Federal acquisition regulations should help with this, but they call only for 50-percent preference, while the 1904 Act requires that 100 percent of DOD cargoes are to be carried by U.S.-flag ships. Carrier representatives also were concerned that the Military Sealift Command frequently contacts a carrier asking for berth-term availability, and then later enters into the charter market for the same tonnage. Some ExIm Bank programs, like the short- and medium-term guarantee programs, do not have U.S.-flag requirements. Finally, conversion of AID's commodity-export program to a cash-transfer program effectively diminished U.S.-flag participation. Carriers asked for action to assure implementation and enforcement of preference laws, including a statement from the President ordering agencies to comply fully.

Shipper representatives expressed a different point of view on trade barriers generally, whether cargo-preference, conference action, or bilateral or multilateral cargo reservation. All trade barriers are inefficient and uneconomic. An example was given of shipping a container from the Midwest to Argentina or Brazil: via Europe, the cost is $3,400 while direct shipment costs $5,000. Shippers were optimistic that the new Shipping Act addresses some of these problems. However, they still have some concerns. Conferences can set rates, pool revenues, restrict sailings and volume capacity, and prevent competition. Ultimately the success or failure of the Act will be depend on how carriers respond to the independent action provision incorporated in the law. Shippers are also optimistic that the new Shipping Act will result in a better balance between carriers and shippers than existed under the 1916 Act. Competitive opportunities are available to both shippers and vessel owners, including the ability to provide intermodal services,[35] independent action,[36] and a prohibition against loyalty contracts,[37] except as allowed under antitrust law.

Thus far, the impact of the 1984 Shipping Act has varied by trade area. In general, carriers in the OECD trades have been more aggressive in implementing its provisions than have those in LDC trades. Independent action has become common in the Pacific trades, while carriers on the North Atlantic appear afraid of starting a new rate war. Individual shippers have taken advantage of new provisions such as service contracts to a greater or lesser degree. Shippers' associations are not yet common, and leaders in organizing them have yet to come forward. Many shippers fear antitrust problems and therefore have adopted a "wait and see" posture.

Access to Foreign Trades

The second major topic addressed by the panel was the difficulty faced by U.S. cross-traders in an increasingly protectionist international environment. The liner companies regard their cross-trading activities as very important financially, not only to themselves but to shippers. The ability to pick up cargoes as space is available means that carriers can improve utilization of available capacity, and thereby reduce rates. Again, the Shipping Act was mentioned as an important protection for cross-traders. Under section 13(b)(5), FMC may suspend U.S. tariffs of the flag carriers of any nation in U.S. trades which discriminates against U.S.-flag cross-traders in its trade with a third country.

The final major issue raised by members of the liner panel was the lack of consistency in U.S. policy—that is, an indecisiveness as to whether the merchant fleet is a commercial entity or a Government entity. Most countries regard their merchant marine as an arm of government. The United States, on the other hand, seems to believe that its merchant fleet should compete commercially and yet should be readily available to support U.S. Government interests. At some point, U.S. policymakers must grapple with the problem that some parts of the industry may survive on a commercial basis, but they may not be sufficient to support broader U.S. interests. DOD is embarking upon development of its own merchant support fleet, which may or may not be the most efficient way to serve the national interest. It was suggested that, before the United States is committed to letting the merchant fleet as it currently exists die and be replaced by a defense-oriented merchant fleet, the long-term costs and benefits should be weighed and a conscious policy developed.

[35] A contract for shipping services covering several modes of transportation (truck, rail, ship, etc.).

[36] The right of a carrier in a conference to offer independent service and rates.

[37] Confidential loyalty agreements between shipper and carrier in exchange for favored rates,

PANEL ON INDUSTRY IMPACTS OF BULK CARGO POLICIES

Panelists

George Berg
American Farm Bureau Federation

Gus Caras
Ogden Corp.

Jack Goldstein
Overseas Shipholding Group

Kenneth Kastner
Chemical Manufacturers Association

Topics for Discussion

1. Effects of current U.S. cargo-preference laws and regulations on levels of trade and on U.S. bulk operators and shippers, including estimates and projections of costs and benefits.
2. Impacts of any increased cargo-preference requirements, imposed either by U.S. actions or by our trading partners; trends toward and effects of commercial bulk cargo-preference laws.
3. prospects for and impacts of an UNCTAD bulk-code or other multilateral or bilateral agreements on bulk cargo policies; prospects for UNCTAD efforts to_ phase out open registry.
4. Impacts of existing and future cargo policies on U.S.-controlled, foreign-flag operators.

Summary of Discussion

Industry Conditions and Prospects

Industry representatives on the bulk shipping panel pointed out that the entire bulk shipping industry worldwide is extremely depressed and is expected to continue to be in the foreseeable future. Rates are not expected to justify new building at least through the end of the decade. U.S. carriers are in even worse condition, with operating costs $2 million per vessel per year higher than those of foreign competitors, but even low-cost operators are going out of business. In the past, conglomerates found it profitable to have shipping subsidiaries; but today many are being spun off, both because current rates cannot justify needed investment and because, with low inflation, there is no benefit in holding physical assets in the expectation of appreciation.

Little optimism was expressed. U.S. bulk operators cannot compete and the U.S. Government is not helping to improve the situation. Operators believe that most Americans do not appreciate the extent to which foreign countries subsidize their fleets. Direct cargo-preference is not typical, but aid is available in many forms. Shipyards frequently are nationalized, and below-market financing may be offered for ships purchased from national yards. Governments may also provide tax incentives for shipping on national flag carriers.

Three possible forms of subsidy for the U.S. maritime industry were cited: construction and/or operating aid; a Government build-and-charter program; and cargo preference. The panelists felt that the United States must define its shipping needs, then take steps to assure the needed fleet. They urged that existing cargo-preference laws should be implemented fully. They also suggested that the Government might exclude from U.S. ports foreign ships built at costs that could reasonably be described as “dumping” levels.

Defense-Related Issues

National defense requirements were discussed in some detail. The primary requirement is for small product tankers.[38] Sufficient tonnage now exists in the “U.S. effective control” (USEC) fleet of U.S.-owned foreign-flag ships, in the panel’s opinion. However, some participants expressed concern about the number of usable tankers: most

[38] Tankers which carry refined petroleum products, such as gasoline, diesel, fuel oil, etc.

of the USEC tanker fleet is made up of large crude oil carriers, which may not be as useful militarily as smaller oil-product tankers. Because of consolidation in the world petroleum industry, furthermore, the tanker fleets of U.S. oil companies and of our NATO allies are declining in size and significance. A separate point raised by shipping interests was the cost of defense-related features of their fleet and whether these costs should be borne by U.S. taxpayers, rather than a small number of shippers.

While the panel provided no real answers to the plight of the U.S. bulk fleet, the “Japanese solution” was described as a possibility. In Japan, shipping is just one component of an overall business venture. If a major project to export a commodity is contemplated, everything from the manufacture of the item to the transportation system is planned as a whole. The government is involved from the start and tailors its aid to the specifics required, probably including subsidizing such items as interest rates and crew costs. The consequence is that Japanese-flag ships carry *50* percent of Japanese bulk trade, even though Japan is no longer classified as a low-cost carrier.

Cargo Reservation and Preference

The panel also discussed the possibility of an UNCTAD bulk code, with the general reaction that it is unlikely to happen. Many LDCs are less interested in pushing for a bulk code because they no longer perceive that it would be in their interests. Many of these nations simply do not have the wherewithal to build and operate commercial fleets. In addition, there is clear opposition on the part of most OECD countries. Bulk trade, unlike liner trade, is not over established routes on a regular basis. Rather, bulk trade tends to be “round the world, ” with contract carriage of a specific cargo from one place to another (see table 1). This does not lend itself to bilateralism. Further, some bulk vessels, such as parcel tankers, are dedicated to carriage of specific cargo and must be used wherever that trade is at the moment. U.S. bulk cargo-preference was discussed at length by shippers' spokesmen. They oppose cargo-preference and spoke emphatically in opposition to any expansion of preference laws. Statistics were presented on the increased costs of agricultural exports which would result under commercial cargo-preference. If a 20-percent preference had existed in *1982*, agricultural export costs would have risen over $1 billion. If U.S. goods are to be competitive and U.S. farmers to make a profit, transportation must be at the lowest possible cost. The current U.S. trade deficit makes it even more imperative that U.S. exporters not be burdened further with higher transportation costs.

Table 1.—Cargoes and Routes for a Typical Chemical Parcel Tanker Voyage

Westbound mute A:	
Europe westbound via the United States to the Far East:	
Time of westbound voyage,	70 days
Total cargo carried	40,000 MT
Parcels carried	36
Ports of call (berths 29).	15
Origin/destination countries of cargoes	16
(England, West Germany, Belgium, Spain, France, Netherlands, USA, Canada, Panama [Canal Zone], Japan, Korea, Taiwan, Hong Kong, Philippines, Singapore, and Malaysia)	
Westbound route B (vessels regularly operate on both routes):	
Europe westbound to Australia via the United States:	
Time westbound	75 days
Total cargo carried	28,000 MT
Parcels carried	52
Ports of call (berths 24).	14
Origin/destination countries of cargoes	11
(England, West Germany, Belgium, Spain, France, Netherlands, USA, Colombia, Panama [Canal Zone], New Zealand, Australia)	
Eastbound *route A* (typical return voyage for westbound voyage A or B):	
Time eastbound	70 days
Total cargo carried	43,000 MT
Ports of call (berths 24).	12
Parcels carried	29
Origin/destination countries of cargoes	7
(Indonesia, Philippines, Japan, Canada, USA [West Coast and Gulf], France, Rotterdam [parcels trans-shipped to several European countries on through bill of lading])	
Return route B (occasionally vessels on one of the above westbound routes will continue westbound to India, Saudia Arabia, and [via Suez Canal] to Greece, Italy, Spain, and on to Rotterdam. Cargo details of an actual voyage are not available).	
A typical round voyage combining routes westbound A and eastbound A would involve the following:	
Time of voyage	140 days
Total cargo carried	83,000 tons
Parcels carried	65
Ports of call (berths 53).	27
Origin/destination countries	17

SOURCE Chemical Manufacturers Association

In general, this panel—or at least the maritime industry participants—were far less sanguine about the industry's prospects than were their liner counterparts. New and innovative proposals will be needed if the U.S.-flag bulk fleet is not to disappear altogether.

PANEL ON ALTERNATIVE APPROACHES TO CARGO POLICY

Panelists

H. Clayton Cook
Cadwalader, Wickersham and Taft

Ernst Frankel
Massachusetts Institute of Technology

Leslie Kanuk
Baruch College

Harlan Unman
Georgetown University

John Leeper
Simat, Inc.

Topics for Discussion

1. Outlook for maritime industry and U.S. trade under current regulations, and potential benefits of changes in U.S. cargo-preference laws.
2. Developments in other countries' cargo policies and potential impacts on U.S. interests.
3. Possible response to future multilateral cargo policy initiatives and strategies to benefit U.S. interests.
4. Prospects for developing bilateral agreements, either in response to other nations' initiatives or as a U.S. initiative.
5. Outlook for changes in U.S. maritime industry prospects due to shifts U.S. or international cargo policies.

Summary of Discussion

The panel on alternative approaches to cargo policy, which commenced the second day of the OTA Workshop, was made up of participants with no direct interest in the maritime industry—academicians, consultants, etc. Because of this, they were asked to do a bit of "free thinking" and to develop possible alternative cargo policies.

Competition

A recurring theme was the need to develop a fully competitive atmosphere, in which shippers would have the freedom to choose among carriers in order to get the best combination of rates and service. At the same time, carriers would be protected. One way to achieve this would be the establishment of bilateral (or multilateral) shipping agreements, under which the national-flag carriers would compete for the available business and other carriers would be excluded. There would be no conferences, no rate fixing, and no antitrust immunity. There would be complete freedom of entry into a trade. There would be no operating restrictions, such as now exist under operating differential subsidy regulations. There could be tax incentives for shippers to use U. S.-flag vessels, The Maritime Administration would continue to exist as a promotional agency, but all regulatory functions would be vested in an intergovernmental commission, which would adjudicate allegations of price fixing, discrimination, etc.

Regulation

Overall, the panel agreed that a major problem facing the maritime industry today is overregulation by the Government. There was general agreement that the Government's function should be only to set up a "protective cocoon" to deal with discriminatory practices by other countries, and then to assure free competition among carriers in a trade, It was stressed again and again that market forces must be allowed to govern.

Cargo Reservation

Another, but similar approach—multilateral cargo reservation, perhaps like that under the UNCTAD Liner Code—was put forth as essential to the security of the United States and its NATO allies. It was pointed out that not one West European or Scandinavian liner carrier is currently making enough money to allow replacement of its fleet. The outlook for availability of allied merchant vessels in support of a NATO in a future war is very gloomy. The reason for their depressed condition is that the Soviet Union is setting rates for its ships in these trades at *20* to *40* percent below conference rates. It is difficult for European countries to close their ports unilaterally because the Soviet Union is so near and is such an economic presence. Only through agreement between the United States and its free world allies can the fleets of our allies (and of the United States as well, when Soviet ships return to U.S. trades in great numbers) be assured a fair marketplace. If the United States took the lead, it could fashion a "limited flag" environment where competition could be maintained between certain registries, but controlled carriers could be prevented from destroying free world merchant fleets.

On the actual UNCTAD Liner Code question, the panel called for U.S. leadership in solving restrictions on trade. Many countries that are signatories to the Liner Code (and this may shortly include many of our major allies) are not anxious for restrictive cargo carriage, Some are in fact looking for loopholes to escape the full impact of the Liner Code. The United States must take an active and aggressive role in the international arena, both for national security and for commercial reasons.

Defense-Related Issues

The importance of the merchant fleet to national security was emphasized by panel members. At the same time, the Center for Strategic and International Studies has forecast that the U.S. maritime industry will decline by one-third or more by 1989. The panel called for a comprehensive framework for both national security and commercial objectives. One element may be separating Government programs supporting shipyards from those supporting the operating industry. This point was raised a number of times throughout the sessions. Heavy manufacturing industry, like shipbuilding, is very different from transportation; solutions to their respective will be different as well.

Policy Needs

The need for flexibility in maritime policy was cited many times, The fact that the Merchant Marine Act of 1936 remained in place long after its usefulness had ended was responsible in part for the decline of the Merchant Marine, Through World War II, the Act accomplished its mission of building a U.S. merchant fleet. At that time, the United States had *61* percent of the world's tonnage. But continuing to subsidize a large healthy merchant marine during a time of limited competition resulted in a dependent and noncompetitive industry. The proliferation of Government restrictions and the disincentives to efficiency created by the subsidy system helped to undermine the fleet. Future policies must be structured more flexibility, so they can respond rapidly to the changing maritime environment.

Overall, the sense of this panel, as with several others, was that cargo policy should be an integral element of maritime policy, but in practice it should be used to increase marketplace freedom and competition, Unilateral commercial cargo reservation is detrimental to economic efficiency. Bilateral and multilateral agreements may be beneficial if they are structured so as to protect carriers against unfair trading practices and allow maximum market freedom within their framework.

Future Developments

This market freedom will allow innovative companies to flourish, while others may fail. The potential for growth in intermodalism was mentioned as an example. Some ports, like that of Seattle, are purchasing railroad cars and will offer their own intermodal service. The fact that some old-line maritime firms may be unable to compete with the innovators was seen as inevitable. The industry as a whole will be stronger and more competitive if innovation is more widespread.

PLENARY SESSION

Summary of Discussion

Defense-Related Issues

During the second-day wrap-up session, most of the major maritime issues were discussed. National defense questions absorbed much of the time. Again, it was suggested that the shipbuilding segment of the industry should be funded by DOD, and that operators should not be saddled with the cost of defense features requirements. DOD should pay for the vessels it deems necessary for national security, but budgetary restrictions might make it necessary to fulfill requirements only for direct military support vessels (like Ro/Ros), and to forego construction of ships to support the civilian economy in wartime. Support for the commercial U.S. shipbuilding industry probably cannot be justified on economic grounds alone, since the market for new construction is so depressed and Far East shipyards are able to offer prices that are so much lower.

One suggestion that would aid U.S. shipbuilding without cost would be to set up foreign trade zones for ship construction, in the same manner as they now exist for automobile and other manufacturing. Components and raw materials are imported without duty, and the absence of duty results in lower delivered cost. A few foreign trade zones for ships have already been established, For the practice to become widespread, however, MarAd regulations on domestic content for ships built under Government tax deferral or loan guarantee programs would have to be changed.

The availability of crews for reserve fleet ships was again questioned. With a merchant fleet of perhaps only 100 ships and newer vessels requiring fewer crew members, the pool of shipboard labor may soon be inadequate.

A question raised as a possible topic of further study was whether DOD has adequately considered whether commercial ships are as useful as DOD-designed ships, or more so, for defense support purposes.

Maritime Objectives

A broader national security raised at the workshop issue concerned what part of the merchant fleet should be considered as supporting national security. While only some ships are useful in direct military support, it might be considered that we are in economic warfare with the Soviet bloc. The Soviets have already introduced ships that offer substantially below-market rates in both U.S. and European trades. Their ability to dominate free world trade is clearly enhanced by the diminution of the U.S. fleet. Some would argue that this is sufficient reason for Government support of the entire merchant marine.

There was agreement that the merchant marine should not be viewed as an economic end in itself, but as a support for trade and U.S. exports. Some workshop participants held that U.S.-flag ships are more reliable than foreign ships and, therefore, their use is beneficial to shippers. Other participants, notably the shippers, pointed out that for U.S. goods to be competitive in the marketplace, their price must be reasonable. Any increase in transportation costs, such as results when shippers are required by preference laws to use U.S. vessels that may be higher cost, reduces the competitiveness of U.S. products.

On this issue, there really was no resolution. Carriers continue to believe that cargo preference is important to them and that it benefits shippers as well by making carriage on some routes possible. Shippers generally believe that the lowest transportation cost provides the greatest benefit to them and their customers. Liner operators point out that their rates are fixed by conferences and are identical with the rates of foreign-flag conference members. However, it was also pointed out that conference rates are generally fixed to be compensatory to the highest cost operator, frequently the U.S. operator.

Government Regulation

There was agreement that excessive Government regulation has been detrimental to all sides. Foreign building is considered essential to profitable liner operations. Currently, unsubsidized operators who build abroad are discriminated against in cargo-preference regulations. Those vessels must wait 3 years before having equal eligibility to carry Government cargoes. At the same time, subsidized carriers were allowed (for 1 year only) to build abroad, and those vessels can carry preference cargoes and receive operating subsidies immediately. Some weaker companies seek to sell the Government their older vessels in order to raise capital to build modern ships abroad. Some participants supported legislation permitting foreign building as a high priority.

It was also noted that subsidized operators are forced to adhere to operational differential subsidy (ODS) regulations relating to essential trade routes, min-max sailings, etc.[39] While there has been effort on the part of MarAd to reduce the burden of such regulations, some participants felt they should be removed. Others felt that if they were removed, a reduction in subsidy amount would be appropriate. Some participants believed that U.S. liner operators can compete in operating costs in the international sphere with modern containerships, and that the Government should cease making this more difficult than necessary. Nonsubsidized carriers have advocated removal of ODS for foreign-built ships as a feasible way to phase out the ODS restrictions and Government direct subsidy in general. They believe this would bring all U.S.-flag carriers into an equitable promotional situation.

[39] These regulations require that the operator who receives subsidy payments maintain certain sailings on routes that are defined as essential to U.S. trade.

Bulk Cargo Issues

On the bulk side, the story is different. Commercial shippers appear to be reasonably satisfied with this foreign-flag market. A truly free market exists, and shippers can negotiate terms and choose whatever carriers they wish. There was agreement that any efforts to reduce the freedom of the bulk markets, such as imposition of an UNCTAD bulk code, should be firmly resisted. Shippers are also firmly opposed to any Government-imposed commercial cargo reservation, such as that in several recent legislative proposals.

Other Issues

The bright spot in U.S.-owned bulk carriage is the USEC fleet, and there was sentiment that the U.S. Government should support this foreign-flag fleet through reduced regulation and strong advocacy in international forums. The current attack on open registries in UNCTAD is a situation where the U.S. Government could support American-owned foreign-flag fleets.

Finally, one participant stated that there appears to be one area where U.S. industry could make inroads—neobulk shipping.[40] Neobulk trades (such as automobiles) have been increasing rapidly, while liner and regular bulk trades have been steady. The U.S.-flag fleet has not penetrated this trade at all. Yet the vessels are of a type where the United States has a comparative advantage—sophisticated, highly technological vessels. Most operations are now by European or Japanese fleets. No specific suggestions were given as to how the U.S. Government might support expansion into these trades. Further study may be warranted.

[40] Trades where contract services are provided similar to bulk shipping practice but the commodities shipped are more of a general cargo type. Such commodities transported now in “ship-lots” are automobiles, logs, scrap steel, etc.

Appendix B
Summary of Specific Country Bilateral Negotiations

BRAZIL

The present maritime arrangement between the United States and Brazil can be traced to a *1970* Memorandum of Consultation, which has been extended with modification several times, most recently through December *31, 1985*. The Administration is preparing to begin negotiations with Brazil later this year in which it intends to seek liberalization of the current arrangement, including greater access for independents, more pronounced competition by price and service, and greater incentives for adopting modern containerization techniques in the trade.

In a motion to the Federal Maritime Commission (FMC) filed April 15, 1985, the Administration asked that the FMC investigation of the U. S.-Argentine and U.S.-Brazilian trades (Docket #84-33) be suspended pending further consultations with the concerned governments. The FMC discontinued its investigation of the U.S.-Argentine trades (Docket #84-34) when Ivaran Lines (a Norwegian-flag operator) withdrew its petition, saying that it had received the assurances that it sought from the Government of Argentina that it would continue to operate in the trade.

CHINA

The U.S.-China maritime agreement expired in December 1983, and no successor agreement has yet been concluded. Four rounds of negotiations have been held, most recently in April 1984, but no solution has been found to the outstanding issues, notably the vexing problem of defining a cargo-sharing provision. The United States is prepared to resume negotiations on a new agreement whenever it appears that there is a reasonable prospect of concluding a mutually satisfactory arrangement, Some U.S. carriers consider Chinese ports marginal; others perceive undue protectionist behavior on the part of Chinese trade agencies.

MALAYSIA

At the request of Malaysia, the United States agreed to hold bilateral discussions with the view to negotiating a maritime agreement if possible. Malaysian and U.S. representatives met in Washington on April *24-26, 1984,* with inconclusive results. The major sticking point was that Malaysia wanted a very general agreement, calling for fair and equitable access to cargo, while the United States insisted on a "procompetitive" agreement, which would have provided for third-flag access to bilateral liner cargo and competitive access to one another's trades with third countries. Neither side has requested a second round of talks.

PHILIPPINES

In a reaction to Philippine attempts to impose cargo sharing on bilateral liner trade, the United States agreed to hold bilateral discussions with the view to negotiating a maritime agreement if possible. During discussions held in Washington in February 1983, U.S. negotiators offered a "procompetitive" draft agreement, providing for competitive access to all commercial bilateral liner cargo for the vessels of all flags, equal sharing of a limited amount of government-impelled bilateral cargo, and competitive access to one another's trade with third countries. No agreement was reached during the February 1983 meeting or in subsequent discussions.

In October 1983, FMC instituted a proceeding under section 19 of the Merchant Marine Act of 1920 to determine if "conditions unfavorable to shipping in the foreign trade" existed in the U. S.-Philippine trade. In May 1984, the Philippine Government rescinded the implementing order with which it had attempted to impose cargo sharing on our bilateral liner trade, and in August 1984 FMC discontinued its proceeding. However, the notice of discontinuance stated that the FMC would continue to monitor the situation closely. Philippine laws apparently still remain in effect which would, if enforced, reserve for Philippine-flag vessels all of the Philippine Government-impelled cargo and 40 percent of the commercial cargo in each of the country's liner trades.

Appendix C
Glossary of Terms

bare-boat charter: A charter agreement which stipulates that the charter provides for all operating expenses including crew, fuel, maintenance, etc.

bilateral/-ism: Government-to-government agreements between two trading nations where cargo shares are allocated to the ships of those nations under some fixed ratio.

blended credit: This program offers a “blend” or combination of two types of credit to a nation purchasing U.S. agricultural exports—one type being direct interest-free loans from the Commodity Credit Corporation and the other being commercial loan guarantees.

bulk: Cargoes that are shipped unpackaged either dry, such as grain and ore, or liquid, such as petroleum products. Bulk service generally is not provided on a regularly scheduled basis, but rather as needed, on specialized ships transporting a specific commodity.

Capital Construction Fund (CCF): A tax benefit for operators of U.S.-built, U.S.-flag ships in the U.S. foreign, Great Lakes, or noncontiguous domestic trades, by which taxes may be deferred on income deposited in a fund to be used for the replacement of vessels.

cargo preference: Reserving some portion of a nation’s imports and exports for their own flag vessels.

carriers: Owners or operators of vessels providing transportation to shippers. The term is also used to refer to the vessels.

conference: An international group of ocean carriers serving common trade routes that collectively agree on rates and service.

construction differential subsidy (CDS): A direct subsidy that was, in the past, paid to U.S. shipyards building U.S.-flag ships to offset high construction costs in American shipyards. An amount of subsidy (up to 50 percent) is determined by estimates of construction cost differentials between U.S. and foreign yards.

containership: A vessel designed to carry standard containers enabling efficient loading, unloading, and transport to and from the vessel.

cost, insurance, and freight (c.i.f.): Export term in which the price quoted by the exporter includes the costs of ocean transportation to the port of destination and insurance coverage.

cross-trades: Foreign-to-foreign trade carried by ships from a nation other than the two trading nations.

deadweight tonnage (dwt): The total lifting capacity of a ship, expressed in long tons of 2,240 pounds. It is the difference between the displacement light and the displacement loaded.

essential trade routes: Regulations requiring that the operator who receives subsidy payments maintain certain sailings on routes that are defined as essential to U.S. trade.

Export-Import Bank (ExIm Bank): A Federal agency that aids in financing exports of U.S. goods and services through direct loans, loan guarantees, and insurance.

fighting ships: A term used in the liner trade to describe ships hired by conferences to operate in competition with independent operators outside the conference, with the intention of forcing those independents out of business.

flags of convenience: Sometimes referred to as flags of necessity; denotes registration of vessels in foreign nations that offer favorable tax structures and regulations.

flag of registry: The flag representing the nation under whose jurisdiction a ship is registered. Ships are always registered under the laws of one nation but are not always required to establish their home location in that country.

flat racks: Portable platforms that are designed to be installed on containerships, in order to convert those ships to carry a variety of military cargo other than containers.

free on board (f.o.b): Export term in which the price quoted by the exporter does not include the costs of ocean transportation, but does include loading on board the vessel.

general cargo: Any of a variety of manufactured goods or raw materials in nonuniform packages.

Government-impelled: Cargo owned by or subsidized by the Federal Government.

independent action: The right of a conference member to offer rates and services other than those set by the conference.

intermodalism: The concept of transportation as a door-to-door service rather than port-to-port. Thus, efficiency is enhanced by having a single carrier coordinating the movement and documentation among different modes of transportation.

International Marine Organization (IMO): Formerly known as the Inter-Government Maritime Consultative Organization (IMCO), was established in 1958 thorough the United Nations to coordinate international maritime safety and related practices,

Jones Act: Merchant Marine Act of 1920, section 27, requiring that all U.S. domestic waterborne trade be carried by U.S.-flag, U.S.-built, and U.S.-manned vessels.

liner service: Vessels operating on fixed itineraries or regular schedules and established rates available to all shippers.

minimum/maximum sailing: Regulations requiring that the operator who receives subsidy payments maintain certain sailings on routes that are defined as essential to U.S. trade.

multilateral/-ism: Cargo sharing agreements among a number of nations, with the goal of allocating some or all of the cargo imported and exported from those nations to be carried by the merchant fleets of those nations.

neobulk: Shipments consisting entirely on units of a single commodity, such as cars, lumber, or scrap metal.

open registry: A term used in place of "flag of convenience" or "flag of necessity" to denote registry in a country which offers favorable tax, regulatory, and other incentives to ship owners from other nations.

operating differential subsidy (ODS): A direct subsidy paid to U.S.-flag operators to offset the high operating costs of U.S.-flag ships when compared to foreign-flag counterparts.

roll-on/roll-off (Ro/Ro): Ships designed to allow trucks or other vehicles to drive on with trailers of cargo.

sea sheds: Portable containers designed to fit on standard containerships and to carry special military cargo.

shipper's council: An organization of shippers formed to collectively negotiate rates and services with the conferences of ship operators.

shippers: Individuals or businesses who purchase transportation services for their goods or commodities.

Title I and II: Food assistance programs established by Public Law 83-480 in 1954 and subject to a 50-percent U.S.-flag carrier preference. Title I (concessionary sales) is administered by USDA; Title II (gifts of food) by AID.

Title XI: A ship-financing guarantee program, originally established by the Merchant Marine Act of 1936, under which the Government guarantees up to 75 percent of the construction cost of vessels built with CDS or up to 87.5 percent of the construction cost of nonsubsidized vessels.

unilateral/-ism: Policies by which a single nation reserves certain cargoes to be carried exclusively by its own merchant fleet.

U.S. effective controlled fleet (USEC): That fleet of merchant ships owned by U.S. citizens or corporations and registered under flags of "convenience" or "necessity," such as Liberia or Panama. The term is used to emphasize that, while the fleet is not U.S.-flag, it is effectively under U.S. control by virtue of ownership and can be called to serve U.S. interests in time of emergency.