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June 25, 1997

MEMORANDUM TO FRANKLIN RAINES
BRUCE REED
GENE SPERLING
JOHN HILLEY

FROM:

Craig T. Smith 

RE:

S. 414 "OCEAN SHIPPING REFORM ACT OF 1997"

I recently met with Brian Williams, the President of the International Longshoremen's and Warehousemen's Union. They are headquartered in California and represent dockworkers on the West Coast.

They have concerns about S. 414, the Ocean Shipping Reform Act. Specifically, provisions dealing with "essential terms of contracts", which is a term of art within the industry. They have asked that the President consider a veto of this bill without changes in those provisions.

Attached is documentation of their position.

If you have additional questions on this topic, you can contact:

Brian Williams
President
415/775-0533

Lindsay McLaughlin
Washington Rep
202/463-6265

Could you please let me know what, if any, position we will be taking on this legislation?

TALKING POINTS – S.414, "OCEAN SHIPPING REFORM ACT OF 1997"

The Shipping Act of 1984 is regarded by many as an act of rational lawmaking. The law preserved a viable conference system; but, included provisions to stimulate competitive forces such as independent action and service contracts. The Act is consistent with maritime policy worldwide, which is crucial for healthy trading relationships with our trading partners. Today, service for shippers has improved tremendously since enactment of the Act, and contract rates are very low – too low. To some extent, rationalization of ports and consolidation in the industry has occurred under this partial deregulatory regime.

Instead of "incremental reforms" which Chairman Kay Bailey Hutchinson said she wanted at the March 20th hearing, Congress has embarked on radical deregulatory measures embodied in S.414 which could permanently damage the industry. And the bill gets worse every day.

There are a number of changes which must be made to return to the delicate compromise which was envisioned by Chairman Hutchinson:

1. FOREIGN PORT RANGES must be transparent. Ports, small shippers, and labor must be able to track cargo to and from the United States in order to compete and adapt to trends in the industry. The Committee made "foreign port ranges" confidential days before the mark-up without deliberating on this issue.
2. NVOCCs do not deserve and should not receive special status in this bill. Allowing NVOCCs to enter into service contracts will destabilize the industry and reduce wages for longshore and port-related workers. These "outfits" hire temporary workers to stuff and unstuff containers and steal jobs traditionally performed by longshore workers on the docks. NVOCCs drive shipping rates down to a level which makes it virtually impossible to survive as a carrier. Congress should not encourage the NVOCC parasitic industry to suck the life out of ports, carriers, and United States Labor.
3. VOLUME of commodities should not be a confidential term. This radical change was made after the mark-up and basically leaves useless transparent items left for public inspection.
4. ESSENTIAL TERMS OF CONTRACTS should be made available to longshore unions by request. The Unions need the information to adequately enforce the contract. Jurisdictional disputes arise daily and historically it has been the production of documents such as FMC tariffs which have resolved these disputes. These secretive contracts will lead to labor strife unless the longshore unions have access to the contracts. The current bill will not allow for timely (daily) inspection of contract terms which would be essential for contract enforcement.

*non-negotiable -
if not changed, wants a veto*

TESTIMONY OF
JAMES SANTANA, BENEFITS SPECIALIST
INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION



MARCH 20, 1997
HEARING ON S.414
THE OCEAN SHIPPING REFORM ACT OF 1997

BEFORE THE SUBCOMMITTEE ON
SURFACE TRANSPORTATION AND MERCHANT MARINE
OF THE
SENATE COMMERCE, SCIENCE AND TRANSPORTATION
COMMITTEE

3. Require that the trampers operating in the Alaskan waters be required to file tariffs and the essential terms of their contracts. In 1993, the ILWU worked with Senator Stevens and the entire Alaska delegation on a law commonly referred to as the "Alaskan Exception." This law requires that the vessels in the fishing trade utilize American longshore workers for vessel to vessel transfer of fish products, or vessel to dock transfers provided that a qualified American workforce is available. Most of the vessels operating in this trade are Japanese or Korean-owned, and had previously used a combination of existing crewmembers (mostly of Filipino origin), and U.S. workers. The language barrier resulted in unsafe working conditions and denied job opportunities to capable Alaskan longshoremen. The "Alaska Exception" has for the most part worked beautifully. Longshore work hours in the state of Alaska have tripled and work is currently being provided for Alaskans living in remote communities along the Aleutian chain. However, a few parties are using subterfuge to deny work to Americans by claiming particular shippers are in control of cargo when in fact that is probably not the case. The essential terms of contracts filed at the FMC would be helpful in our efforts to enforce both the law and provide more work opportunities to Alaskan workers.

4. Again, we concur with the TTD statement in urging you to retain a strong, independent Federal Maritime Commission. In addition to the reasons already outlined, we would be concerned that maritime labor assessment agreements would not receive favorable treatment by an entity which is not familiar with these agreements that provide fringe benefits to the longshore workforce.

Finally, I would caution you that the enactment of S.414 could in fact lead to an anti-competitive shipping regime. Consider the comments carefully of President and CEO of Sealand Service John Clancey at a meeting of security analysts in New York as reported by the September 1995 edition of World Wide Shipping. Citing deregulation as a controlling factor, Clancey painted a picture of a maritime environment where a few super consortia would control 85 - 90% of the world's containerships. According to the article, Clancey predicted the demise of the niche carrier, the feeder line and the north-south lines with no other links in the shipping chain. Madame Chair, that scenario would be a disaster for jobs, ports, and small shippers and other important interests in international commerce.

It has been an honor for me to appear before this Committee. I would be pleased to answer any questions you may have at this point.



S. 414

STATEMENT OF
EDWARD WYTKIND, EXECUTIVE DIRECTOR
TRANSPORTATION TRADES DEPARTMENT, AFL-CIO

BEFORE THE
SUBCOMMITTEE ON SURFACE TRANSPORTATION AND MERCHANT MARINE
OF THE
SENATE COMMERCE, SCIENCE AND TRANSPORTATION COMMITTEE

S. 414, THE OCEAN SHIPPING REFORM ACT of 1997

March 20, 1997

Madame Chair, Members of the Committee, my name is Edward Wytkind. I am executive director of the Transportation Trades Department, AFL-CIO (TTD), whose 29 affiliated unions represent millions of workers in the transportation industry¹. In addition to representing the views of TTD affiliates affected by ocean shipping reform, including the International Longshoremen's and Warehouseman's Union (ILWU) and the International Brotherhood of Teamsters (IBT), I am pleased to appear on behalf of the International Longshoremen's Association (ILA) who are working with our organization to analyze and respond to S. 414, the Ocean Shipping Reform Act of 1997. I am accompanied today by James Santana, Benefits Specialist with the ILWU, and Herzl Eisenstadt, an attorney representing the ILA who will be able to assist me in answering any questions you may have at the conclusion of my testimony.

Let me first commend you, Madame Chair, and the Members of the Committee for conducting this debate in an open manner where all interested parties have an opportunity to be heard and consulted. In particular, I want to mention the fair and open process being managed by the majority and minority staff as they advance a bipartisan effort to reform ocean shipping law without ignoring the concerns of all affected parties. Transportation labor welcomes and appreciates this atmosphere of fairness and consultation.

With that said, I must state at the outset that after careful review, we believe that the Committee bill will have a dramatic and negative effect on the workers we represent and therefore stand in opposition to S. 414 as currently drafted.

¹A list of TTD affiliates is attached.

When the Shipping Act was amended in 1984, no single interest got everything it wanted. The final bill was a compromise that partially deregulated the ocean shipping industry, stimulated competition but preserved a level of stability. This produced a system that we believe has provided years of stability for workers and their communities affected by and dependent on an industry that is vitally important to our nation's economic security. Carriers, ports, shippers and workers operate in an open environment that has produced competitive rates and high levels of service. This in turn has promoted significant, long-term public and private investments in facilities, including ports, that promote greater international trade. A system that has served this country so well should not be simply discarded in the name of complete deregulation.

The Negative Consequences of Deregulation

I know many in this room believe that wholesale deregulation can only yield positive results and should be expanded to the ocean shipping industry. But those of us who represent transportation workers have witnessed first-hand the long-term effects of deregulation in other modes of transportation and know that the realities have not lived up to the promises. Across the board, deregulation of transportation has claimed more than 600,000 jobs since this policy experiment was launched in 1978 in the aviation sector.

Since 1980, trucking deregulation has caused a record number of bankruptcies and the destruction of some 200,000 jobs. A recent study concluded that truck drivers' real wages plummeted 27 percent during this period. The so-called "driver shortage" we hear about from trucking industry executives exists because trucking deregulation has replaced quality jobs with jobs paying lower wages and offering few or no benefits. The only shortage that exists is a shortage of decent trucking jobs.

When the airlines were deregulated in 1978 several major air carriers, including pioneers Pan Am and Eastern, went broke, reorganized, or were sold off in pieces. The result -- tens of thousands of workers saw their jobs disappear as many air carriers were incapable of surviving in the unstable, often insane, operating environment inspired by deregulation. To this day, workers, travelers, and many Members of Congress regret this almost 20-year old decision to deregulate the airlines.

The same story goes for the rail industry as deregulation, also in 1980, led to record numbers of line sales, mergers, acquisitions and abandonments. For employees this restructuring claimed some 300,000 good jobs and the hemorrhage continues as we see the latest wave of mega-rail mergers in the East. The trend toward bigger and fewer railroads promises to leave the country with four or fewer major railroads and, of course, a few more thousand lost jobs during the shake-out.

Deregulation changes the relationship between employers, employees and customers as companies become single-minded about cutting costs and increasing profits. Employee wages become easy targets, inasmuch as other costs, such as fuel and equipment purchases, are difficult for them to control. Only those communities and populations in the most concentrated areas, where the carriers' hubs are located or which are tied into them, can rely on receiving transportation services that are the cement that binds businesses and consumers as well as travelers all across our country.

Senator Bryon Dorgan, a Member of this Subcommittee, understands this problems well as air service in his home state of North Dakota has suffered as a direct result of deregulation. The facts are indisputable: deregulation has resulted in destroying competition, unfair and discriminatory pricing, deterioration of safety standards, reduced investments, job loss, and, as we are acutely aware, erosion of labor-management relations. I urge this Committee and the entire Congress to truly understand the impact of deregulation before a decision is made to expand this ill-advised concept to yet another mode of transportation — ocean shipping and our ports.

Confidential Contracts

While S. 414 makes strides to address some of the problems associated with total ocean shipping deregulation, as some have advocated, the main concerns surrounding confidential contracts remain and cannot be ignored. Section 8(c)(3) specifically permits a shipper or a group of shippers to enter into completely confidential contracts with a common carrier. This means that a collection of interests, which can include any number of multinational shippers and a common carrier of any size, will be able to operate in a totally secretive environment.

Contracts would not have to be submitted to the Federal Maritime Commission (FMC) and there would be no requirement that the essential terms of an agreement be released to other shippers, carriers, unions or the general public. While the essential terms of agreement contracts (those involving carrier conferences) would have to be disclosed under Section 8(c)(2) in tariff format carriers can simply use individual contracts to keep terms confidential. This preferential treatment for individual contracts will be especially helpful for the larger carriers who have less need to engage in conferences and will empower Fortune 100 shippers to exact favorable rates largely unattainable to smaller shippers.

Effects on Ports and their Workers

The effect this bill will have on the ocean transport industry is predictably more far reaching than may appear at first glance. Ports will be denied critical information on routing decisions and terminal selections as contracts signed between a single carrier and mega-shippers will remain confidential. In addition, the downward spiral in ocean shipping rates that this bill would produce will force carriers to cut port calls to an unprecedented degree. Workers will suffer as this downward pressure on costs will transfer to the ports and the wages and benefits paid to its employees.

Small- and medium-sized ports are the ones most at risk under this legislation, as are the communities that depend on the economic activity and jobs they support. Indeed, the ocean shipping industry is rapidly changing and in many respects in a period of consolidation. During such a turbulent period, Congress should tread ever more carefully before it radically amends the Shipping Act in a way that will actually speed-up port closures and compound the job loss and the economic harm that communities will face. While this bill does not specifically allow exclusive port deals, it does create an economic framework that will allow larger ports to use their market power to lure carriers for more frequents visits. This will inevitably squeeze out smaller ports and many of them

will not be able to survive in this new environment. Our nation has invested billions of dollars in public ports from the Eastern Shore, to Louisiana and up and down the West Coast. It simply does not make any sense to pass legislation that will jeopardize this investment and threaten strong ocean shipping commerce and the thousands of jobs it supports.

Protecting Against “Double-Breasting”

Not only will confidentiality result in the direct loss of jobs, it will also make it more difficult for longshoremen to enforce collectively bargained contracts with their employers. In contracts governing the movement of cargo the longshoremen and ocean carriers routinely agree to jurisdictional and scope provisions that establish the type of work that is to be performed. It is critical, for example, for workers to know who controls the cargo to determine if certain unloading and disbursement activities is work that is covered by the collectively bargained agreement. Another problem that arises is that carriers routinely attempt to repair and maintain cargo containers with non-union workers — sometimes in violation of the labor contract. If the essential terms of service contracts are kept confidential, workers will find it difficult if not impossible to know if their work is being improperly out-sourced and thus jeopardizing effective enforcement of the contract. Employers will essentially be able to use this new secretive environment to get around their obligations under the contract and transfer work to low-cost, non-union workers.

In construction and elsewhere in the transportation industry, this phenomenon, which is known as “double-breasting”, is designed to set up a system whereby employers are able to divert business to lower wage, typically non-union operations. In the trucking sector, this approach has been utilized by carriers to transfer business and the jobs they support to non-union operations handling the same movements but under a separate corporate veil. In the rail industry, double-breasting took a different form but yielded the same results. They’re called short-lines, which exist because rail carriers “sell-off” portions of their system to new, “non-railroad” companies who in turn service the same route, haul the same freight, but utilize fewer workers earning low wages and few benefits, and ignore their union contract obligations.

In all these instances, the motivation is the same: to seek the lowest common denominator in wages and benefits, to slash jobs and, in most instances, to walk away from collective bargaining commitments. Unfortunately, the result for workers is predictable: stable, decent paying jobs are replaced by low wage employees who have no real security or stability.

None of us can absolutely predict the future. But, as we also know, experience is often a very good guide. I can therefore say from the almost 20 years of experience in the deregulated sectors of the transportation industry, employers are under ever-increasing pressure to cut costs. We are extremely fearful that some employers in the ocean shipping industry will use a system of confidentiality to circumvent labor contracts in order to cut wages and eliminate jobs. While we are confident that this was not the intent of you, Madame Chair, or this Committee, it is incumbent upon the Committee to carefully evaluate these concerns before you move ahead with ocean shipping reform legislation.

An Independent Federal Maritime Commission

Contributing to, if not actually compounding, the problems created by confidential contracts is the prospect that the FMC may be merged with the Surface Transportation Board (STB) to create the Intermodal Transportation Board (ITB). Transportation labor, as well as the entire ocean shipping industry, has been served well by an independent, free-standing agency to regulate ocean commerce. The FMC has protected U.S. carriers and ocean freight customers from any unfair or anti-competitive conduct by carriers or shippers and has properly exercised its jurisdiction over labor-management assessment agreements covering pension and welfare benefits.

While the agency merger proposal embodied in S. 414 creates fewer problems than turning over the functions of the FMC to the Department of Transportation, as was the case under last year's House bill, there are still significant problems with the concept of having one agency that will oversee both the ocean shipping and rail industries.

The newly created ITB will consist of five members, only two of whom will be required to have "professional standing in the fields of maritime transportation..." or "professional or business experience in the maritime transportation private sector..." We are concerned that the expertise and experience of an agency solely dedicated to ocean shipping will be lost. In addition, maritime interests can be jeopardized when conflicts between rail and components of ocean commerce come before the ITB. We are also concerned that a combined agency may create strategic alliances that could be detrimental to other transportation modes, such as motor carrier operations. For these reasons the FMC, as an independent, free-standing agency, should be maintained to allow the ocean shipping industry to benefit from an agency that understands ocean shipping commerce and is dedicated to serving employees, shippers, carriers and the public interest.

Cargo Diversion

One area that was not addressed in S.414 was the problem of carriers and shippers using ports in Canada and Mexico to deliver cargo that is destined for or originates in the United States. While there are a number of factors that contribute to cargo diversion that are outside the jurisdiction and control of this Committee, transportation labor is disappointed that this problem in some limited way was not addressed.

Under current law, shippers have an incentive to ship goods through Canadian or Mexican ports for cargo that originates in or is bound for the U.S. In Austasia Container Express v. FMC, 580 F.2d 642 (D.C. Cir. 1978), the District of Columbia Court of Appeals held that the FMC does not have jurisdiction over shipments that only go through foreign ports even though the U.S. is the final destination or the origin of the cargo. This interpretation of the law means that: (1) Shipments that go through Canada or Mexico are not subject to the same regulations, such as tariff filings, as shipments that utilize U.S. ports; and (2) Carriers are not allowed to enter into agreements on transportation rates and to charge those rates for shipments that go through Canada or Mexico even though the U.S. is the place of origin or final destination.

The effect of this Court-made loophole, which was not corrected in the 1984 Shipping Act amendments, is that shippers have a legal incentive to bypass U.S. ports. This incentive is in addition to the other economic factors such as the availability of low-wage workers in Mexico that will encourage shippers to use non-U.S. ports. Mexico is attempting to expand its port operations and with the motor carrier provisions of NAFTA scheduled to be fully implemented by 2000, the opportunities for cargo diversion will become enhanced.

Allowing U.S. law to essentially encourage shippers to use foreign ports is fundamentally bad transportation policy which can be addressed, at least in part, by expanding the jurisdiction of the FMC to cover cargo that is shipped to or from the United States even if it goes through a Canadian or Mexican port. Shippers would still be able to use whatever port they desire and no penalty would be imposed on their decision; however, we should at least level the playing field between U.S. ports and their Canadian and Mexican competitors, insofar as U.S. shipping law is concerned.

Non Vessel Operating Common Carriers (NVOCCs) Exemption

Transportation labor is pleased that S.414 does not exempt NVOCCs from tariff filing and other requirements imposed on carriers. Many of these entities are controlled by or closely aligned with carriers and are becoming a major part of the movement of cargo. It makes little sense to exempt them from filing requirements that other carriers must adhere to or the negative effects of deregulation will only be accelerated and exacerbated.

Final Thoughts

Let me conclude by saying that if ocean shipping reform results in ports cutting operations or constantly squeezing costs to maintain business, the effect on working men and women will be devastating. Thousands of longshore, warehouse and transportation employees will see their jobs threatened, their wages slashed and their futures made uncertain -- all in the name of deregulation. Simply put, deregulation across the entire transportation industry has proved destructive for working people. Almost universally, deregulation measures have destroyed jobs and slashed employee benefits, wiped out hundreds of transportation companies, and eliminated service to hundreds of communities.

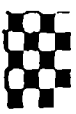
Madame Chair, I want to thank you again for holding this hearing and for soliciting the views of transportation labor. The consultation process you have insisted on is open and has permitted us to voice our concerns about this important legislation. As I have discussed, workers are very concerned about this legislation and the impact it will have on their ability to continue to make a decent living. Knowing what we know about this legislation, and learning from the painful experience of transportation deregulation over the past two decades, it is difficult to conclude that it will be different this time.

We look forward to working with you and the Committee Members as you continue to review options for reforming our ocean shipping law. Thank you.

TTD AFFILIATES

The following labor organizations are members of and represented by the TTD:

*Air Line Pilots Association
Amalgamated Transit Union
American Federation of State, County and Municipal Employees
American Federation of Teachers
Association of Flight Attendants
American Train Dispatchers Department
Brotherhood of Locomotive Engineers
Brotherhood of Maintenance of Way Employes
Brotherhood of Railroad Signalmen
Communications Workers of America
Hotel Employees and Restaurant Employees Union
International Association of Fire Fighters
International Association of Machinists and Aerospace Workers
International Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers
International Brotherhood of Electrical Workers
International Brotherhood of Teamsters
International Longshoremen's and Warehousemen's Union
International Union of Operating Engineers
Marine Engineers Beneficial Association
Professional Airways Systems Specialists
Retail, Wholesale and Department Store Union
Service Employees International Union
Sheet Metal Workers International Association
Transportation • Communications International Union
Transport Workers Union of America
United Brotherhood of Carpenters and Joiners of America
United Mine Workers of America
United Steelworkers of America
United Transportation Union*



ADDS UP TO PROFITS

By SUZANNE CAUTHEN
Sr. West Coast Editor
WWS/World Wide Shipping

A few giant shipping consortia with global reach and the freedom to function like contract carriers will dominate the world's seaways before the end of the century.

That's the scenario outlined by John Clancey, president and chief executive of Sea-Land Service at a meeting of security analysts in New York recently.

The controlling factors, he said, are moves to deregulate the U.S. shipping industry, carrier operating alliances, and sophisticated computer-driven processes that sort it all out.

He painted a picture of a maritime environment where a few super-consortia will control 85-90% of the world's containerships, offering shippers "pendulum services" buttressed by fail-safe cargo management systems, inland transportation, and state-of-the-art information resources.

The byproduct, he says, is the demise of the niche carrier, the feeder line and the north-south lines with no other links in the shipping chain.

Shippers want pendulum services that combine two shorter services, for example, into one long string, permitting carriers to share terminals and maintenance facilities.

The new global partnership between Sea-Land and Maersk—operational next spring—is a case in point. It creates a shipping powerhouse with 175 vessels and 500,000 containers and chassis, and are each into a dozen or so seaways.

Another resource is the A.P. Moller shipyard at Odense, Denmark, home of trend-setting containership design. This could come in handy as Sea-Land continues to replace its aging fleet.

This operating fusion raises the perennial question of outright merger between Sea-Land and Maersk.

"That option is always available to us," said Mr. Clancey. But the alliance allows most of the same benefits and permits independent marketing. "We'll know more in a couple of years."

Meanwhile, "we're going to share everything we have," offering traders 12 sailings a week, including five between North America and Europe and another five between Europe and Asia.

Combining global networks, Mr. Clancey said, enables the team to create a hub system, much like that of the airlines. For example, Sea-Land and Maersk control 75% of the container ca-

capacity between Singapore and Algeciras, Spain.

Our goal, he said, is "the best service at the lowest cost in the shortest time."

Unlike previous interline alliances new liberalized environment will permit economies of scale and optimization of global networking.

Sharing of expenses is the center of Sea-Land's grand design for the century. John Snow, chairman of Land parent CSX Corp. talked about billion cost-sharing scenario, permit the opportunity to lower capital and operating costs, improve terminal operation and increase use of ships and equipment.

The Sea-Land/Maersk partnership will be the world's largest, posing formidable competition for three other globe-girding alliances:

- American President Lines, Mitsui & Nedlloyd, Orient Overseas Container Line
- HAPAG, Neptune Orient Lines, Nippon Yusen Kaisha, P&O Lines
- Cho Yang, DSR-Senator and Hanjin

Consider the impact of these "super-conferences" on pricing in a deregulated atmosphere. Under a compromise between Sea-Land and the National Industrial Transportation League brokered with the U.S. government, carriers will be free to set rates independently and confidentially. Federal Maritime Commission will appear and antitrust immunity will remain.

Though Washington insiders say Sea-Land made an end run around the rest of the carriers in tying the knot with NIT League, APL and Crowley, it climbed onto the bandwagon, albeit reluctantly.

Clancey credits the "Republican revolution" with putting deregulation in "fast forward" mode.

A more permissive operating environment will allow Sea-Land to tailor shipper contracts and work more closely with other intermodal units and with consolidation subsidiary, Mr. Clancey said. "We'll have more cards to deal at the table."

"This is an opportunity to use DYM (Sea-Land's yield management system) to bring everything together in one contract."

The carrier has set up a tactical planning center at its new Charlotte, N.C. headquarters. The plan is to integrate all global systems by 1996.

Ocean Shipping Reform

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In deciding, after considerable thought and discussion, to oppose H.R. 2149, the Ocean Shipping Reform Act, the American Association of Port Authorities has taken the position that the House bill goes too far in deregulating the ocean shipping industry. That does not mean that ports are unwilling to accept any changes in the law but change for change sake is not good government or good business. Ports recognize that there are forces in support of change, and that the pressures from certain interests to "deregulate" the industry will continue. However, given the reliance of the United States on international trade (where export growth has come largely from smaller companies) and the need to protect the local public investment in port facilities, ports cannot support the drastic changes envisioned by the House bill. While touted as an "industry" compromise, it is still a "back room" deal agreed to by certain large U.S. shippers and the largest U.S. flag carrier which does not reflect the views of all interested parties. Few legislative actions have been reviewed and criticized as much as the Shipping Act of 1984 and yet the proponents of change are hard pressed to give specific examples of what compromises reached in 1984 have not worked.

Ports believe that the Shipping Act of 1984 was a hard fought compromise that has generally worked, and that meets the needs of the U.S. public port community as well as U.S. trade. Ocean shipping is an extremely competitive industry--rates are low (in some cases, to the point that ocean carriers are barely surviving) and service options have never been better. Unlike carriers and shippers, ports cannot move their assets which are the product of the investment of billions of dollars of public funds. Ports are more often whipsawed by the other players in the transportation market--a fact exacerbated by ports' need to protect the billions of dollars in public investment and their public nature itself, which makes all their actions open to public scrutiny.

Ocean shipping is an international industry which includes private carriers as well as carriers owned and/or controlled by foreign governments. Normal commercial economic principles, such as the need to cover costs, do not always apply. Other interests, such as a country wanting to support its own merchant fleet for defense needs or pricing to ensure access to foreign currency or foreign markets, are just as influential and belie a comparison between deregulation of domestic U.S. transportation modes and deregulation in ocean shipping. One initiative worthy of consideration in the future is to deal with the ocean shipping industry as the international business it is and approach the oversight and control of the industry as the subject of international convention rather than national law. In the meantime it could prove counter-productive to alter the delicate regulatory balance that was established in 1984.

Ports believe that in the international shipping industry, which is characterized by overcapacity, high fixed costs, and a desire to fill empty container slots at any price, there is the potential for destructive competition, with rate wars fueled by below cost competition. Rate wars would drive carriers out of business, to the detriment of ports and shippers alike with the resulting consolidation of market control among a few carriers. The conference system, which is not unique to the U.S., helps prevent this destructive behavior. In

monitoring conference activity, U.S. antitrust laws are replaced by the rules of the Shipping Act, enforced by the Federal Maritime Commission. This activity by experts within a regulatory agency has worked.

Carrier conferences exist throughout the world, and the failure to recognize their existence by prohibiting them from operating in the United States would be foolhardy. The imposition of U.S. antitrust laws would only reach to U.S. flag carriers, and their application beyond our borders is speculative at best. We are working and trading in a smaller world and now more than ever before we see more of a focus on the need to regulate international commerce rather than interstate commerce.

In order to justify continued antitrust immunity, regulation must be effective to ensure that market power cannot be abused and anticompetitive behavior is not permitted. It is difficult to explain or justify a system that permits secret agreements between large shippers with market leverage and ocean conferences enjoying antitrust immunity free from oversight, regulations or even public scrutiny.

Port concerns:

An important priority is the retention of antitrust immunity for ports as well as carriers. In order to justify immunity, there must be a regulatory regime in place to replace the enforcement of the antitrust laws. The House bill goes too far in removing the tools of the regulatory body, and may jeopardize the ability of ports and carriers to keep immunity in the long term. Can anyone with experience in this area give assurances that within a few years of the current proposal becoming law that there will not be a proposal to eliminate all antitrust immunity?

Ports have an interest in the continued financial stability of ocean carriers (which the conference system helps provide). We disagree that the conference system has allowed carriers to gouge shippers--on the contrary, in our experience, ocean transportation is a highly competitive industry and many carriers are just barely surviving.

Destructive competition among carriers, which could occur under deregulation, would have a backlash effect on ports as carriers seek to compensate for lost revenues by lowering terminal costs. Ports will be whipsawed against each other, and a lack of transparency would make it worse because carriers will be able to conceal their rates in some cases while public ports are subject to FOIA requirements and everything we do is public information.

Weakening the conference system will particularly hurt smaller carriers, which may not survive--a prospect which might be viewed with favor by the proponents of the House bill. A regional carrier will find it difficult to compete with a larger carrier that has locked in a shipper with a loyalty contract. The House bill specifically deletes the section of the 1984 Shipping Act that prohibits loyalty contracts.

Shippers glimpse Pacific's future

*Rate slide offers sneak
preview of deregulation*

BY PETER TIRSCHWELL
JOURNAL OF COMMERCE STAFF

SAN FRANCISCO -- For exporters using ocean transportation on the Pacific, 1996 has provided a glimpse of what life could be like if Congress deregulates shipping. Many, particularly smaller firms, didn't like what they saw.

On paper, nothing has changed. Congress is still pondering proposals supported by many large shippers to end tariff filing and the required disclosure of contract terms through filings with the Federal Maritime Commission.

But in reality, many exporters' greatest fear about deregulation — that it will deny them the ability to know what their competitors are paying for ocean transportation — began to materialize this fall when rates tumbled rapidly in response to lower volumes and growing vessel capacity.

Freight costs make up a significant portion of the delivered value of many commodities moving in large volume to Asia, including hay, chemicals, scrap paper, and some food products.

Since price competition for those products can be fierce, shippers look for any possible rate advantage they can get. Most make it a business to watch rates like hawks, as

protect themselves from being outmaneuvered by their competitors.

However, with the arrival of several large new container-ships at a time when export growth is slowing, rates began sliding so fast that it was difficult for many firms to keep tabs on rates.

"What is a good rate this morning will not necessarily be a good rate this afternoon. That is how quickly some of the rates are changing," said Alan Sheps, vice president of Robtins Fleisig Forwarding in Santa Monica, Calif.

Although the absolute cost of exporting declined, the rate at which rates changed made it much more difficult for firms to know the real rate at any given time — and therefore what rates competitors were being charged.

Volatile rate changes

"You want to keep your customer competitive, and to keep them competitive you have to have the best ocean freight rates out there. But with all the deal-making going on it is hard to keep up," said Thad Faree, export sales representative for Paramount Export Co. in Oakland, a large shipper of fruits and vegetables.

Some companies that never used traffic managers before are now considering hiring one, specifically to keep an eye on ocean rates.

Others that left transportation in the hands of individual product managers are considering setting up distinct traffic departments.

Shipper's Act

Pacific

It is very a time consuming game we play, and I assume it is going to get worse," said Jeffrey Streblov, who manages the hay export department for Wilbur-Ellis Co., a large trading company in San Francisco.

Indeed, many who deal with ocean carriers for export believe that is exactly what will happen if deregulation eliminates exporters' ability to tap into the public record for details on rates.

"If shippers think this is difficult, they haven't seen anything yet," said Mr. Sheps, who has given several speeches this year arguing against deregulation. "You'll never know what your competitor's rate is, and if you find out, it will be too late. You will have lost the business."

Shippers said that in such an environment, having a good relationship with a carrier becomes more important than ever.

"The shipper has to have the kind of relationship where he knows the carrier is telling the truth and he knows he's getting a competitive rate," said Ed Martin, a veteran traffic manager for Connell Bros. Co. in San Francisco, a large trading firm specializing in chemicals.

"It is going to involve a lot of PR work, building relationships, and not just going by the book," he said.

Carriers seem flexible

In forging closer ties with carriers, many shippers said this has been a landmark year in which competition forced traditionally unyielding ocean carriers to be unusually flexible and accommodating.

Carriers that would adhere to the conference tariff as if it were the Bible will now do al-

with shippers.

"It has gone from a 'you are going to pay' attitude toward shippers to the point that carriers are walking in the door with their hat in their hands," said Howard Wallace, Jr. president of Rocky Mountain Traders, in Wilmington, Calif., which specializes in hay exports.

"People walk through my door who I haven't seen in years, and people who I've never shipped a container with are calling," he said.

He said that at a time when it is becoming harder to pinpoint rate levels, obtaining a competitive rate will involve negotiating to the point that the shipper feels comfortable with the final rate level.

Part of the reason real rates are becoming harder to discern is that carriers are increasingly including inland point moves in their rate offers, effectively reducing the rate for the shipper.

"The carrier absorbs the trucking charge, so the net rate to the shipper is less than the tariff. I see that happening more and more now, whereas six months ago they (carriers) wouldn't even talk about that," Mr. Wallace said.

Mr. Streblov of Wilbur-Ellis said that in a deregulated environment, exporters will have to muster all the volume they possibly can in pursuit of favorable rates, even if that means bringing multiple commodities to the table.

He said Wilbur-Ellis would benefit from the fact that it ships several commodities to Asia, including low-value hay and high-value chemicals. Wilbur-Ellis is the parent company of Connell Bros.

"We would probably have to go out and do a lot more contract negotiations for the bulk of our business, combining low revenue and high revenue cargo," he said. "If you are a shipper of just low revenue cargo, you could find yourself very

Shipping Act

PROPOSED BILL TO AMEND THE SHIPPING ACT WILL HARM PORTS

The United States Congress is again about to consider changes to the Shipping Act of 1984. The bill expected to be introduced in the Senate will include provisions that would significantly undermine the stabilizing influence of ocean carrier agreements on transportation rates and services. Enactment of this bill would be detrimental to the interests of U.S. ports.

The carrier conference system reflected in the 1984 Act is accepted worldwide. This system has long been recognized as necessary for the provision of regular service and stable freight rates in an industry that, because of cyclical, seasonal and directional imbalances in cargo volumes, would otherwise be subject to destructive fluctuations in service and price.

Among other provisions, amendments to the Shipping Act have been proposed that would prevent carrier agreements from sharing information relating to service contracts executed by their members. Other proposed changes would create a two-tiered regulatory system -- one system for agreement activities, and a different system for agreement carriers acting individually.

These excessively deregulatory provisions would substantially reduce the ability of carrier agreements and conferences to maintain rate and service stability. By severely inhibiting the ability of carriers collectively to consider and act on rate and service matters, these provisions would encourage more violent short-term rate changes in reaction to fluctuating market conditions.

In an effort to remain solvent in a period of low rates, carriers would of necessity require that the ports that they call provide services at lower rates. The revenues of all ports would decrease, and those ports unable to meet cost reduction requirements while maintaining service levels demanded by shippers and carriers would find it difficult to remain competitive.

The liner shipping industry is already experiencing a sizeable number of consolidations. Several factors have triggered these events, but it is clear that rate instability driven by excessive deregulation would substantially magnify and accelerate this trend. If this is allowed to happen, ports as well as carriers will face an increasingly uncertain future.

Agreements consisting of large numbers of carriers that both cooperate and compete on a non-destructive basis serve customers in different regions that demand calls at many ports. Increased consolidation caused by the combination of difficult market forces and precipitous changes in the law would substantially reduce the economic incentive of remaining carriers to serve the market through such a broad range of port calls. Service would instead be provided through increased reliance on inland transportation and decreased reliance on a broad network of ocean ports. If the port community wishes to avoid such an upheaval, it should oppose efforts underway in the Congress to unnecessarily deregulate ocean carrier arrangements.