The original documents are located in Box 17, folder "12/30/74 HR8193 Energy Transportation Security Act of 1974 (vetoed) (1)" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

Exact duplicates within this folder were not digitized.

Pocket Vetoed
(Eff. midnight 12/30/74)
Memo of Disapproval issued
12/30/74

THE WHITE HOUSE

WASHINGTON

ACTION
Last Day - Monday, Dec. 30

December 27, 1974

MEMORANDUM FOR: THE PRESIDENT

FROM: KEN COLE C

SUBJECT: Enrolled Bill: Energy Transportation Security Act of 1974 -- H.R. 8193

BACKGROUND

Attached for your consideration is House bill, H.R. 8193, sponsored by Representative Sullivan of Missouri and 22 others. This legislation requires that specified percentages of oil imported into the United States be carried on U.S. flag commercial vessels. The percentage would be set at 30 percent after June 30, 1977. The bill authorizes temporary Presidential waivers in emergencies, and establishes certain environmental standards respecting tanker construction. Roy Ash provides detailed comments at Tab A.

ARGUMENTS FOR SIGNING

This legislation would result in a substantial increase in the construction of tankers in U.S. shipyards. This would also create additional jobs for U.S. shipbuilders.

This legislation would also result in a substantial increase (approximately 5-30 percent over time) in the number of U.S. flag bottoms carrying oil to the United States. This will result in more jobs for U.S. seamen and somewhat greater security over this essential transportation capability.

The Department of Defense believes that the anticipated adverse effects of the legislation on the Department's mission are not of sufficient significance to support a veto. Among the considerations weighed was the potential cost impact on DOD on the price of petroleum products purchased by it. It is estimated that the cost impact on DOD would be an increase of approximately $10.6 million in 1980 and $15 million during 1985. These figures are to be compared with the estimated DOD expenditures for petroleum products in FY 1975 of approximately $3.2 billion. In addition, while the legislation is designed to encourage tanker construction, it does not require it. Therefore, the degree to which new tanker construction will result, and, in turn, its adverse impact on Navy shipbuilding programs is uncertain. Increased tanker construction resulting from the legislation could result in an expansion of U.S. shipyard capabilities which, in turn, would be available for future national defense needs.

ARGUMENTS FOR VETO

The bill would have a serious adverse impact on the United States economy and our foreign relations without helping to assure the availability of imported oil. It would create serious inflationary pressures by increasing the cost of oil and raising the prices of all products and services which depend on oil. It would also stimulate further inflation in the ship construction industry and jeopardize the ability of that industry to construct ships needed by the Navy for national defense.

The bill would serve as a precedent for other countries to increase protection of their industries, resulting in a serious deterioration in beneficial international competition and trade. This is directly contrary to the objectives of the trade bill which the Congress has just passed. In addition it would violate a large number of our treaties of Friendship, Commerce, and Navigation.

If you sign this bill you will loose a substantial amount of your credibility as you continue to fight inflation.

Pursuant to your request Phil Buchen and Mike DuVal have looked into the question of whether or not any commitment was made on your behalf to sign this bill. They have concluded that no such commitment exists. (See Tab B)

STAFF AND AGENCY POSITIONS

DOD	Does not recommend veto. Defers to the views of other Agencies.
Friedersdorf	Pocket veto
Ash (Tab A provides detailed comments)	Pocket veto
Cole	Pocket veto
Areeda	Pocket veto
NSC	Vehemently oppose. Strongly recommends pocket veto.
Commerce	Pocket veto
State	Pocket veto
Treasury	Pocket veto
FEA	Strongly recommends pocket veto.
Transportation	Pocket veto
Council on Wage and Price Stability	Strongly urges pocket veto
HEW	Pocket veto
CEA	Strongly urges pocket veto
Interior	Pocket veto
Justice	Pocket veto
CIEP	Pocket veto

RECOMMENDATION

That you pocket veto H. R. 8193 and sign the Paul Theis approved memorandum of disapproval at Tab D.

DECISION - H. R. 8193

Sign (Tab C)________________

Veto GRF.
(Sign memorandum of disapproval at Tab D)

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

DEC 24 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 8193 - Energy Transportation Security Act of 1974
Sponsors - Rep. Sullivan (D) Missouri and 22 others

Last Day for Action

December 30, 1974 - Monday

Purpose

Requires that specified percentages of oil imported into the United States be carried on U.S. flag commercial vessels, provides that the Secretary of Commerce take steps to fulfill this requirement, authorizes temporary Presidential waivers in emergencies, and establishes certain environmental standards respecting tanker construction.

Agency Recommendations

Office of Management and Budget	Disapproval (Memorandum of disapproval attached)
Department of Commerce	Disapproval (Informally)
Department of State	Disapproval (Memorandum of disapproval attached)
Department of the Treasury	Disapproval (Memorandum of disapproval attached)
Federal Energy Administration	Disapproval
Department of Transportation	Disapproval (Memorandum of disapproval attached)
Council on Wage and Price Stability	Disapproval
Department of Health, Education, and Welfare	Disapproval
Council of Economic Advisers	Disapproval
Department of the Interior	Disapproval
Department of Justice	Disapproval
Council on International Economic Policy	Disapproval (Informally)
Department of Defense	Does not recommend veto
Council on Environmental Quality	No recommendation
Environmental Protection Agency	No recommendation (Informally)

Discussion

The Merchant Marine Act was enacted in 1936 to foster development and maintenance of a merchant marine capable of carrying a substantial portion of our water borne commerce and serving as a naval auxiliary in time of war or national emergency and provide certain subsidies for that purpose. The Act was amended in 1970 to provide Federal subsidies for the construction of bulk carrier vessels, including oil tankers.

In 1972 the Senate rejected cargo preference legislation (similar to the enrolled bill), which had been opposed by the Administration. However, in the last two years there has been an intensive campaign for cargo preference legislation led by the maritime unions and organized labor in general. During that time, 46 cargo preference bills have been introduced by 226 members in the House and there has been extensive bipartisan support in the Senate.

The House passed H.R. 8193 by a vote of 219-140 on October 10, 1974, and the Senate by a vote of 44-40 on December 16, 1974. It passed despite Administration opposition and veto signals transmitted through testimony and reports of departments and agencies with a direct interest in the bill.

The enrolled bill would amend the Merchant Marine Act to require the Secretary of Commerce to assure that a quantity initially equal to 20 percent of the gross tonnage of all oil transported in bulk on tankers for import into the United States be carried on privately-owned U.S. flag tankers to the extent they are available at fair and reasonable rates. The requirement would be raised after June 30, 1975 to 25 percent, and after June 30, 1977 to 30 percent, if adequate U.S. tonnage is determined to be available.

The bill would further provide:

- -- that the cargo preference requirements "...may be temporarily waived by the President upon determination that an emergency exists justifying such a waiver in the national interest"
- -- that eligibility for participation in the trade be limited to tankers originally built in U.S. shipyards

-- that license fees payable on oil imports carried in U.S. flag tankers be reduced by specified amounts for a period of five years from the date of enactment, if the amounts saved from the non-payment of such license fees would be passed on to the consumers. (However, this provision would provide little cost relief to consumers in the near term since the fee schedule is being phased in and will not be in full effect for several years)

-- that all U.S. flag tankers in excess of 70,000 deadweight tons must be constructed using the best available pollution prevention technology after 1975, and that all U.S. flag tankers in excess of 20,000 deadweight tons using west coast and Alaska ports after 1974 be equipped with a segregated ballast capacity achieved in part by fitting a double bottom.

During the conference on the bill, the Administration continued to object to the bill, with four areas of particular concern. It sought:

-- a broad Presidential waiver authority of cargo preference provisions, not one limited to national security emergencies

-- relaxation of the U.S. construction requirement for ships engaged in the oil trade so that foreign built ships might transfer to the U.S. flag and be eligible for the trade after a three-year waiting period

-- elimination of the double bottom requirement in the bill's antipollution provisions

-- elimination of the oil import license fee rebate provision which could reduce Treasury receipts by as much as $200 million a year and discourage development of domestic oil resources.

The bill as enrolled partially meets only two of these Administration requests:

(1) It includes compromise language authorizing a Presidential waiver in the "national interest." Ambiguity had existed

as to the scope of the waiver authority in committee versions. In response to Administration recommendations the language of the enrolled bill was broadened. During the floor debate on the bill, Senator Long introduced into the Record a letter from the House conference Managers on this subject which stated:

> "We believe that the statutory waiver language is intentionally broad in scope and gives the President great flexibility. Upon determining that an emergency exists, including a defense, economic or foreign policy emergency, the provision would allow him to waive all or a portion of the requirements of paragraph (1). We also believe that he could issue a limited waiver affecting only those portions of paragraph (1) most directly related to the specific emergency. For example, if double digit inflation and extraordinary inflationary impact on U.S. shipyards were to be the emergency, he could waive the requirement that new vessels be constructed in order to fully implement the percentage requirements, while implementing the preference requirements of the bill only for those U.S.-flag commercial vessels in existence or theretofore contracted and on order. In any event, we believe that the intent of the Congress is to provide the President broad authority to deal with emergencies, and that the legislation, as written, provides such authority."

Senator Long also introduced a letter from the Senate conference Managers confirming this interpretion of the waiver provision.

Unfortunately, the pressures against exercising the waiver authority would be very substantial, particularly after investments in capital equipment and increases in labor forces have been made. Furthermore, the waiver is limited to the duration of an emergency. We believe that waiving the cargo preference provisions would inevitably lead to litigation over the length of the emergency. In any event, the waiver would expire at some point and the full impact of the bill would then be felt.

(2) The bill includes compromise language, not entirely acceptable, as to the antipollution requirements with respect to double bottoms on newly constructed tankers. The bill limits the requirement to new tankers contracted for in 1975 and thereafter and operated in west coast and Alaska trades. Earlier versions required double bottoms on all new tankers. FEA points out in its views letter on the enrolled bill that this double

bottom requirement would further aggravate the steel shortage, which will be adversely affected by the bill in general. Furthermore, DOT points out that because the double bottom requirement applies only to newly constructed ships operated on the west coast, it could have the effect of causing shippers to transfer older ships to the west coast and to build new ones for east coast operations.

Additionally, DOT argues that a specific requirement for double bottoms is less desirable as an antipollution measure than standards allowing design flexibility.

Proponents of the bill have argued that it would not be inflationary, that it would improve our national security, and that it would not harm our relations with other nations. The executive branch agencies believe that there are major considerations to the contrary. In fact, the bill would increase the cost of oil imports, thereby weakening the Administration's anti-inflation program. The cost of using older and less efficient U.S. flag tankers for this trade would require freight rates at least 200 percent higher than for foreign flag ships, and this differential could be as much as 300 percent depending on the route. There would be a spill-over effect into our coastal trade, and freight rates in that trade could be expected to increase 150 percent.

As a result, the total short-term cost impact could be as high as $600 million per year depending on the level of oil imports and the prevailing foreign-flag charter rates. The increased costs of oil will lead to increases in costs for all products and services that utilize or depend on oil.

The bill would have an inflationary impact on the U.S. ship construction industry. Most major U.S. yards are now operating at or near their current capacity, and given the demand for new ships which would be created, yard-capacity may have to be expanded by as much as 50 percent in a period of documented material and skilled labor shortages. This will increase the cost of constructing ships, as well as stimulating inflation in costs of steel and other materials required for ships.

While the inflationary impact cannot be fully quantified, all the considerations mentioned above contributed to an almost unanimous expression of opposition to this cargo preference bill by economists attending the Second Pre-Summit Meeting of economic experts in New York.

The bill could also jeopardize Navy ship construction programs by diverting ship building capacity to private construction. Currently, the Navy is having great difficulty contracting for the construction of its ships in private U.S. yards. Consequently, it is pressing for authorization to conduct new ship construction in its own yards, a move which might increase the cost of Navy construction by as much as 30 percent, and perhaps result in the construction of fewer ships.

Proponents of this legislation have argued the "obvious" benefits of a large standing fleet of U.S. flag tankers for insuring the availability of oil imports. However, it is the potential constraints on oil availability, not tankers, which is the key to adequate energy supplies. In fact, during politically or economically motivated oil boycotts against this country, U.S. flag tankers could be a distinct liability at loading ports of boycotting or neutral nations. For example, during the Arab oil embargo last year, U.S. flag ships were unable to obtain oil cargos from Arab ports for any destination.

This bill would not only set a precedent for other imports but would be counter to U.S. policy of encouraging, to the extent possible, international fair trade for shipping. It would violate commitments made in more than 30 of our Friendship, Commerce, and Navigation Treaties and might provoke similar, but more drastic moves on the part of the oil-producing countries and perhaps our other trading partners as well. Many NATO alliance countries have already voiced serious reservations regarding the restrictive nature of the bill; and its enactment could adversely affect future diplomatic relations with these nations. The governments of the United Kingdom, Belgium, Denmark, Finland, Greece, Italy, Japan, the Netherlands, Norway, Sweden, and others have urged that this legislation not be enacted. These countries express their concern that this bill would lead to similar cargo preference actions by other nations, resulting in serious increases in world shipping costs.

In summary, nearly all interested agencies oppose the bill because it would:

-- be highly inflationary and undermine the credibility of other anti-inflation and deregulation efforts of the Administration

-- be contrary to our objectives of improving the environment for international trade

-- aggravate the Navy's problems in obtaining new ship construction

-- not assure the supply of foreign oil, while creating a fleet of empty ships during another oil boycott

-- adversely affect our foreign relations and encourage retaliation by our trading partners

-- provide a precedent to extend cargo preference to other products and to provide similar protections from foreign competition to other U.S. industries.

The option of signing the bill and waiving its implementation would only temporarily delay the adverse consequences of this bill. While the waiver authority is broad, it is clear that a waiver can be only for the duration of an emergency. We do not believe it would be feasible to delay implementation indefinitely by exercising the waiver provision. Waiver would not cure the precedent problem. Also, waiver would be just as likely to result in adverse reaction from the unions and other supporters as would an outright veto of the bill.

Commerce has informally advised us that it recommends disapproval of the enrolled bill on the merits, but recognizes that there may be overriding concerns relating to the trade bill which would necessitate your approval of this bill.

In light of the above considerations, we strongly recommend disapproval of the bill. We have proposed the attached draft of a Memorandum of Disapproval for your consideration.

Paul H O'Neill

Acting Director

Enclosures

THE WHITE HOUSE

WASHINGTON

INFORMATION

December 20, 1974

MEMORANDUM FOR THE PRESIDENT

THROUGH: KEN COLE

FROM: MIKE DUVAL

SUBJECT: COMMITMENTS REGARDING CARGO PREFERENCE

As you requested, I have tried to determine what commitments -- if any -- have been made concerning the Cargo Preference bill.

There does not appear to have been any commitment linking the Trade and Cargo Preference bills.

I have found no commitment from you to sign cargo preference. You did commit to work with the bill's supporters in an effort to develop acceptable legislation. As a part of this effort, you asked for a compromise waiver and pushed for other changes (e.g., double-bottoms and oil import fee rebates). (See Tab A.)

As a result of this decision we asked the Conferees, in early October, to:

(1) adopt the compromise waiver language (expressly including language in the Conference Report that it is intended to be broad in scope); and

(2) accept our amendments on double-bottoms, oil fee rebate, and transfer of foreign to U.S. flags after three years. We also asked them to delete the Mondale Amendment.

(See Tab B.)

The Conferees did accept the compromise waiver in the bill itself and they deleted the Mondale Amendment.

They did not adopt the explanatory language in the Conference report or our amendments on rebate, three-year wait period or double-bottoms.

It is reasonable to conclude that the Conferees may have thought they had complied with your essential desires. The Conference Report was adopted by the House before the recess and Representative Grover, in debate, stated that the waiver was intended to be broad.

However, on November 18 you sent a Message to the Congress. You expressed concern with the Conference Committee bill and specifically referred to:

(1) the lack of specific language in the Conference Committee report that the Congress intends to grant broad waiver authority;

(2) the three-year wait period;

(3) oil fee rebate; and

(4) double-bottoms. (See Tab C.)

Although some might have thought that the adoption of the compromise waiver language by the Conference Committee was sufficient to make the bill acceptable to you, the November 18 Message clearly set forth your position on the bill.

I conclude that as of November 18, your options on Cargo Preference were still very open.

Obviously, Congress has not corrected the objectionable provisions listed in your Message. Therefore, the only question is whether or not the proponents, principally Senator Long, were led to believe that the Senate floor debate and exchange of letters by the House-Senate Conferees on the waiver provision will result in your accepting the bill.

Your advisers say that no such commitment was made in your name.

Bill Eberle says that it is reasonable to conclude that Long and the others believe that they have complied with your request and that you will sign the bill.

In such a serious matter, a commitment cannot be inferred -- it should be clearly given. The November 18 Message and the report by your advisers that no direct commitment was made, leads me to conclude that your options on this bill are still open.

However, if you decide to veto, I suggest that you talk to Senator Long prior to announcing your decision.

MEMORANDUM OF DISAPPROVAL

I am withholding my approval from H.R. 8193, the Energy Transportation Security Act of 1974.

The bill would initially require that 20 percent of the oil imported into the United States be carried on U.S. flag tankers. The percentage would increase to 30 percent after June 30, 1977.

This bill would have the most serious consequences. It would have an adverse impact on the United States economy and on our foreign relations. It would create serious inflationary pressures by increasing the cost of oil and raising the prices of all products and services which depend on oil. It would further stimulate inflation in the ship construction industry and cut into the industry's ability to meet ship construction for the U.S. Navy.

In addition, the bill would serve as a precedent for other countries to increase protection of their industries, resulting in a serious deterioration in beneficial international competition and trade. This is directly contrary to the objectives of the trade bill which the Congress has just passed. In addition, it would violate a large number of our treaties of Friendship, Commerce, and Navigation.

Although this bill would undoubtedly benefit a limited group of our working population, such benefit would entail disproportionate costs and produce undesirable effects which could extend into other areas and industries. The waiver provisions which the Congress included in an effort to meet a few of my concerns fail to overcome the serious objections I have to the legislation.

Accordingly, I am not approving this bill because of the substantial adverse effect on the Nation's economy and international interest.

I wish to take this opportunity to reiterate my commitment to maintaining a strong U.S. Merchant Marine. I believe we can and will do this under our existing statutes and programs such as those administered by the Maritime Administration in the Department of Commerce.

THE WHITE HOUSE,

5/14

Mr. J.

To add to the Bill file, pls. Thanks.

Katie

NOV 16 1974

THE WHITE HOUSE

WASHINGTON

November 16, 1974

MEMORANDUM FOR: DONALD RUMSFELD

FROM: JERRY JONES

Apparently Seidman covered this directly with the President. I don't know the decision.

This is for your information.

Attachment

THE WHITE HOUSE

WASHINGTON

ACTION

November 15, 1974

MEMORANDUM FOR THE PRESIDENT

THROUGH: BILL SEIDMAN

FROM: MIKE DUVAL D

SUBJECT: CARGO PREFERENCE

BACKGROUND

The Senate may take up the cargo preference bill soon after returning. Carl Curtis and others want to know your position.

The Executive Committee of the Economic Policy Board unanimously recommends a veto signal because of the bill's clear inflationary impact. Many believe that you will lose all credibility on your anti-inflation fight if you sign this bill. (See Tab A for a draft letter to Senator Curtis from Roy Ash which lays out the inflationary impact argument and a CEA paper on the same point.)

On the other hand, the maritime unions believe that the compromise waiver adopted by the Conferees is broad enough to satisfy your requirements. When the compromise was reached, we stated that the Congressional intent, as shown by the Conference Committee Report, would have to indicate that the waiver is intended to be broad in scope, i.e., including waiver for economic reasons.

However, the Committee Report says nothing about the scope of the waiver. Commerce Department lawyers interpret the waiver as requiring a showing of a defense emergency. During the House debate, James Grover stated that the President can waive for reasons of economic emergency. Commerce concludes that these comments do not overcome the weight of the legislative history which requires a showing of a defense emergency. (See Tab B.)

Specific language in the Report clearly stating that you have broad waiver authority is desirable for political as well as legal reasons. Paul Hall's lawyers argue that no one could successfully challenge a waiver even if it was based on economic conditions. This may be technically true but you would get criticism from the cargo preference forces for waiving on non-defense grounds and criticism from the other side for signing the bill in the first place.

A clearly broad waiver provision allows you to answer -- to some degree -- the inflation argument when signing and also to justify a waiver as being consistent with legislative intent.

AVAILABLE OPTIONS

Essentially, you still have three courses of action:

1. Accept the bill and committee reports as written and encourage the Senate to use the floor debate to help establish that the waiver is broad enough to include economic reasons. This would be the option preferred by the maritime unions.

2. Advise the pro-cargo preference forces (Long, et al.) that the bill is unacceptable because the legislative history does not clearly show that the waiver is intended to be broad. Tell them that to be acceptable, the bill must be resubmitted to Conference and the report and/or bill itself rewritten, clearly making the waiver a broad one.

3. Advise the Senate that the bill is unacceptable. Adopt a strategy of tying up the bill (perhaps by a threatened filibuster by Curtis) but indicate the likelihood of a veto if it comes down here. This would be preferred by most Administration officials for anti-inflation reasons.

Regardless of the option you select, Bill Timmons will make the Hill contacts and Bill Baroody will keep the maritime unions advised.

ACTION

Option 1 - Indicate you will sign if the Senate floor action supports the House debate by showing that the waiver is broad.

Recommend: Bill Baroody

Yes____________ No____________

Option 2 - Require a written change showing that the waiver is broad in the bill or Conference report.

Recommend: Ken Cole, Bill Timmons

Yes____________ No____________

Option 3 - Veto signal. Try for no bill.

Recommend: Roy Ash, Alan Greenspan, Bill Seidman, Commerce, State, Treasury, CIEP, CEA

Yes____________ No____________

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

Honorable Carl T. Curtis
United States Senate
Washington, D.C. 20510

Dear Senator Curtis:

Thank you for your letter of October 29, requesting our views on the inflationary impact of H.R. 8193 ("Energy Transportation Security Act of 1974").

The Office of Management and Budget remains strongly opposed to enactment of this bill. In addition to the problems it would create for our national security and our relations with other nations, it is clear that it would have a serious inflationary impact.

The bill would result in a serious and immediate increase in the cost of petroleum imports. Estimates of the cost of using older and less efficient U.S. tankers that could be dedicated to foreign trade show that existing U.S. flag ships would require rates at least 200 percent higher than for foreign flag ships, and this differential could be as much as 300 percent depending on the route.

There would also be a serious cost increase for the domestic transportation system. Current U.S. flag tanker capacity is not sufficient to meet both domestic requirements and the 20 percent of oil imports reserved under the oil cargo preference bill. This overall shortage will put strong upward pressure on domestic shipping rates. Freight rate increases of 150 percent for domestic ocean borne transportation of petroleum could be expected.

The total short-term cost impact could vary from $300 to $600 million per year depending on the level of oil imports and the prevailing foreign flag charter rates. Increased oil imports are anticipated, and freight rate projections suggest that a serious over-tonnage situation is developing worldwide which is expected to depress freight rates. Both these factors would tend to increase the cost impact resulting from the use of U.S. flag ships.

The bill would also have an adverse inflationary impact on the U.S. ship construction industry. Most major U.S. yards are now operating at or near their current capacity. The demand for labor at shipyards is now increasing at a rate of 8 to 12 percent per year, resulting in severe skilled labor shortages. Serious material shortages began developing in 1973 and steel shortages have become critical for some yards. A recently completed nationwide survey of yards by the Maritime Administration showed almost half had experienced delays or anticipated future delays in the delivery of steel. The added demand for ships created by this bill will aggravate these shortages and add to the difficulty faced by the Navy in contracting for ships to meet its force requirements.

The material price index for ships has gone up 22.6 percent in the six month period ending July 1974, while the increase for all of FY 1973 was only 6.2 percent. Average hourly earnings have increased nine percent during the last year. Given the demand for new ships which will be created, yard capacity may have to be expanded by as much as 50 percent, according to industry sources. Unfortunately, the bill provides no incentive to the yards to hold down construction costs. Whatever industry wide increases in investment or operating costs occur in the scramble for new ships would be passed along to consumers through higher than prevailing world freight rates, which the bill would allow.

Supporters of the bill have argued that it provides for a rebate on oil import fees to offset part of the cost impact. They fail to point out, however, that no more than 5 to 10 percent of all crude oil imports incur such fees today. Since the bill's provision for rebate is only for a five year period, rebates will cease at about the time that import fees begin to be applicable to the majority of crude oil imports. Consequently, there would not be any meaningful relief from the increased costs associated with the bill through this rebate provision. In any case, whatever reduction in oil import fees that does occur will reduce revenues to the Treasury and will, therefore, be absorbed by the American public.

The serious adverse impact that this bill would have on our economy, our national security and our foreign relations is clear. The passage of this bill by the Congress would be extremely undesirable.

Thank you for the opportunity to express our views. I hope that this information will be useful to you.

With warm regards,

Sincerely,

Roy L. Ash
Director

CEA Reasons for Vetoing H.R. 8193 if Passed

I. Signing the bill would immediately and directly reduce the credibility, hence the effectiveness, of the Administration's anti-inflation program.

-- All executive agencies that have testified on the bill over the past two years have opposed the bill with detailed numerical estimates of cost increases it would impose upon consumers.

-- Major commercial and industrial organizations such as the U.S. Chamber of Commerce and the American Petroleum Institute initiated substantial research efforts to identify the inflationary consequences of the bill and conducted major public relations efforts to publicize their findings.

-- The Wall Street Journal and other major newspapers have repeatedly editorialized against the bill as an inflationary subsidy to special interests at the expense of the taxpayer.

-- The only sources of support for the bill are the Maritime unions, domestic ship builders, and the AFL/CIO. Their enthusiasm for the bill, however, is clearly not of such a magnitude that their attitudes towards Administration anti-inflation policy will be affected.

-- Hence signing the bill will be widely interpreted, particularly within the leadership of the business and financial community, as a political act of hypocrisy inconsistent with the principles of the President's anti-inflation program.

II. Signing the bill would result in an artificial expansion of domestic shipyards in a period of tight labor and capital supplies.

-- domestic shipyards are operating at close to full capacity.

-- ship building costs are rising rapidly. Material price index for ship building increased 22.6 percent in the first two quarters of 1974.

-- to reach the minimum target mandated in bill capacity will have to be expanded sharply and substantially, perhaps by 50 percent.

-- Expansion costs will have to be recovered more quickly than normal business practice would require because of the artificial and controversial nature of the impetus for expansion.

-- As a consequence the already substantial differential between construction costs of U.S. and foreign built ships will widen, thus augmenting the ultimate increase in transportation costs that will be passed on to petroleum product consumers.

III. Signing the bill would be inconsistent with energy policy goals.

-- petroleum transportation costs would increase almost immediately as the increased demand for U.S. flag ships diverted older, smaller and inefficient tankers from U.S. coastal trade to international trade.

-- effective exploitation of off-shore reserves of domestic oil and gas is currently being inhibited by shortages of platforms as well as other drilling equipment. Since shipyards produce platforms this bill will exacerbate this problem directly by increasing the competition for shipyard space and resources as well as indirectly by increasing the demand for steel and other materials used to produce drilling equipment.

-- there is a current surplus of tankers in the international market that are available at bargain rates.

-- Liberia has formally protested the bill and reemphasized its willingness to place U.S. controlled ships operating under the Liberian flag "under the control of the United States Department of Defense in time of emergency."

-- Hence signing the bill would increase in both the short and long term the real resource cost of satisfying our energy requriement at a time when the costs of meeting those requirements is testing the ability of our economy to adjust very major changes in energy markets.

GENERAL COUNSEL OF THE
DEPARTMENT OF COMMERCE
Washington, D.C. 20230

OCT 21 1974

MEMORANDUM FOR MICHAEL DUVAL
Associate Director, Domestic Council

SUBJECT: Oil Cargo Preference Legislation

Apropos our discussion of October 10, 1974, set forth below is the sequence of reasoning which lead to the conclusion that only a national defense emergency would justify a waiver under §901(d)(7) of the conference version of the captioned legislation. (While I still feel that conclusion is compelling, a colloquy that occurred during consideration of the conference report by the House could provide a basis for arguing against such a strict construction. See paragraph 8, infra.)

1. The House version of the Oil Cargo Preference bill would have accomplished the desired objective by amending present § 901(b)(1) of the Merchant Marine Act (46 U.S.C. §1241(b)(1)), which imposes U.S. bottom preference requirements for certain cargoes subject to the following waiver proviso:

> . . . the provisions of this subsection may be waived whenever the Congress by concurrent resolution or otherwise, or the President of the United States or the Secretary of Defense declares that an emergency exists justifying a temporary waiver of the provisions of this paragraph and so notifies the appropriate agency or agencies. . . . [Emphasis added.]

The term "emergency" has uniformly been construed by all concerned to mean that a national defense emergency must exist before waiver of the present cargo preference requirements of §901(b)(1) may be invoked.

2. The Senate bill proposed to accomplish the Oil Cargo Preference requirement by adding a new subsection (d) to § 901 of the Merchant Marine Act, paragraph (7) of which provided that --

> The requirements of paragraph (1) may be waived by the President upon determining that an emergency exists justifying a temporary waiver of such requirements. Any such waiver shall not exceed 180 days unless authorized by law. [Emphasis added.]

There was no legislative history to indicate whether the Senate intended the justification for invoking a §901(d)(7) waiver to be the same as or more liberal than the justification for a §901(b)(1) waiver, but the choice of identical language and the absence of a statement of intent to create a different standard strongly suggested that an identical standard was contemplated.

3. The Conferees adopted the Senate approach of adding a new subsection (d) to §901, but, with respect to paragraph (7), deleted the 180 day time limit and modified the Senate language as follows:

> The requirements of paragraph (1) may be temporarily waived by the President upon determining that an emergency exists justifying such a waiver in the national interest.

4. Addition of the term "in the national interest" by the conferees did not appear to alter the substantive content of paragraph (7), since that term modifies "waiver," not "emergency;" i.e., as a matter of semantics, the conference provision can only be read to require a finding that an emergency justifies a temporary waiver, not that the "national interest" justifies a waiver.

5. Furthermore, had the conferees intended their modification of the Senate waiver provision to effect a substantive broadening of the circumstances under which a waiver might be invoked, it was reasonable to assume that they would have so indicated in the conference report. However, not only was there no such statement, but

the conferees were at pains to stress that their waiver provision was more restrictive than would have been the case under the House bill:

> It should be noted that the waiver provision agreed upon by the conferees is more restrictive than the provision that would apply to the House bill. The conferees gave serious consideration to establishing a specific time limitation, but concluded that such an approach was not feasible. It is the intent of the conferees that the temporary duration of the waiver referred to in the provision is to exactly coincide with the duration of the emergency which triggered the waiver. (Congressional Record, Vol. 120, No. 151, page H 10070; October 7, 1974) [Emphasis added.]

In drawing attention to the "more restrictive" waiver provision in the conference bill, it did not seem that the conferees could have been referring to the circumstances under which a waiver could be invoked, since it is difficult to imagine a more restrictive test than a national defense emergency to trigger the waiver authority. By the same token, having deleted the Senate's 180 day limitation, the conferees could not have meant that a waiver under their provision was more restrictive as to duration than a §901(b)(1) waiver. Accordingly, it was reasonable to conclude that reference by the conferees to the "more restrictive" reach of its provision could only have had to do with who might invoke the waiver -- i.e., a waiver of the preference requirements in § 901 (b)(1) of the present Act may be initiated by the President, by the Congress or by the Secretary of Defense, whereas under new § 901(d)(7) only the President may waive the oil cargo preference requirements of new § 901(d)(1).

6. Since the conference report did not indicate that the nature of the "emergency" warranting exercise of the new waiver provision was intended to be broader than the circumstances warranting a waiver under §901(b)(1), it was reasonable to assume that if they had so intended, that fact would have merited at least "equal billing" with the self-evident and rather unnoteworthy comparison of the respect

in which the new waiver provision was narrower than the House bill. Failure of the conferees even to mention the standard of justification for a §901(d)(7) waiver suggested, therefore, that they did not intend a different standard to be applied than the one that would have been applied to the House proposal--*i.e.*, the existing standard requiring a national defense emergency.

7. Accordingly, as I stated in our conversation, the better reading of the conference waiver provision in context with the present Act and the conference report seemed to be that a national defense emergency was required, and that a waiver on grounds of economic emergency would not be justified.

8. However, subsequent to that conversation, the House took up the conference report on H.R. 8193. In the course of debate Congressman Grover, Minority Floor Manager of the conference report, responded as follows to allegations that the bill would increase the price of gasoline:

> Mr. Speaker, I have heard the arguments on the other side. Heretofore in our hearings, there were contrary arguments and a heavy weight of evidence that indeed this legislation will not increase the cost of gasoline. That claim is a scarecrow; it is a bugbear. In the present conference report, we do not require one single gallon of oil to be carried in an American bottom. It is permissive only and required only where the ships are available. And, by golly, if American bottoms are available and they are lined up, unused, and if there are American sailors available to sail the ships, we should put the oil in those bottoms. Again, it is permissive. It is not required. The President is authorized in this conference report--has absolute discretion--to waive completely every requirement of the legislation in the national interest. If there is going to be an increase in gasoline as a result of this legislation, which I doubt, the President can weigh that impact of the

> bill in the national interest. This is a good bill. It is economically sound. It is ecologically sound. I urge the support of the conference report. (Congressional Record, Vol. 120, No. 155, page H 10433; October 11, 1974) [Emphasis added.]

The foregoing statement standing alone would at least create ambiguities with respect to the breadth of the waiver, in that it does not appear to recognize the requirement that the President make a determination that a temporary emergency exists, be it economic or otherwise. However, Mr. Grover immediately followed this statement with a detailed discussion of the legislative background of the waiver provision and the conferees' action with respect thereto. He stated:

> Mr. Speaker, the legislation as passed by the two bodies did not differ in any fundamental respect, but rather in terms of legislative drafting. The House-passed bill consisted of an amendment to section 901(b) of the Merchant Marine Act of 1936. The Senate-passed bill, on the other hand, established a new subsection (d) to section 901 of the act thereby segregating the provisions of this legislation dealing with the importation of petroleum from the provisions of existing law governing the carriage of Government-sponsored cargoes.
>
> The Senate approach necessitated the adoption of a number of provisions which were not required in the House bill to cover such matters as Presidential waiver and establishment of agency responsibility for administration of the act. The House bill, of course, was able to rely upon existing provisions of section 901 (b) in these regards. The Committiee of Conference adopted the Senate approach with only minor revisions dealing principally with the question of Presidential waiver authority.

> The waiver language of existing section 901(b), which the House bill would have relied upon, provides for a waiver whenever the Congress by concurrent resolution or otherwise, or the President or the Secretary of Defense declares that an emergency exists justifying a temporary waiver and so notifies the appropriate line agencies of the Government. The Senate-passed bill eliminated the references to congressional action and to the Secretary of Defense as redundant and imposed a 180-day limit on the duration of any waiver. The managers on the part of the House considered such a limitation arbitrary and unwise. After consultation with the President, a new waiver provision was drafted which states that this act may be temporarily waived by the President upon determination that an emergency exists justifying such a waiver in the national interest.
>
> While it is clear that the utilization of this waiver authority by the President must be based upon a specific emergency of a temporary nature, <u>the adoption of the phrase "in the national interest" is intended to vest in the President broad discretion with respect to the nature of the emergency which might justify invoking this authority</u>. It is my understanding that the President is entirely satisfied with the waiver authority conferred upon him by this legislation as reported by the committee of conference. (Congressional Record, Vol. 120. No. 155, pp. H 10433-10434; October 11, 1974) [Emphasis added.]

Chairman Sullivan, who was the next member recognized, did not challenge Mr. Grover's statement, nor did Mr. Downing who followed Mrs. Sullivan and was also a Majority House Conferee.

The foregoing legislative history would appear sufficient to support an argument that use of a §901(d)(7) waiver is not limited to national defense emergencies, absent contradictory legislative history during Senate consideration of the conference report. It is difficult to predict whether the Senate conferees will undertake to rebut Congressman Grover's broad interpretation of the conference waiver provision, although the majority conferees (Hollings, Inouye, Long and Magnuson) are probably politically unsympathetic with such a liberal reading. Absent such rebuttal, however, the Grover interpretation can be said to have been acquiesced in by the Senate's silence on the subject.

If there is such rebuttal, however, I think the Senate's position would be the stronger of the two. Accordingly, Bill Timmons may well want to take a sounding of the Senate conferees, particularly of Magnuson and Long.

Karl E. Bakke

Karl E. Bakke
General Counsel

OFFICE OF THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

DEC 18 1974

Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Ash:

Reference is made to your request for the views of the Department of Transportation concerning H.R. 8193, an enrolled bill

> "To regulate commerce and strengthen national security by requiring that a percentage of the oil imported into the United States be transported on United States-flag vessels."

Section 2 of the enrolled bill amends section 901 of the Merchant Marine Act of 1936 (46 U.S.C. 1241) by adding a new subsection to ensure that at least 20 percent of the gross tonnage of all oil imported in bulk into the United States on ocean vessels is transported on privately owned United States-flag commercial vessels. The amount required to be so carried would be increased to 25 percent after June 30, 1975, and to 30 percent after June 30, 1977, if the Secretary of Commerce determines prior to those effective dates that there will be adequate United States tonnage available to carry the required quantities of oil. The Secretary of Commerce is authorized to establish a reasonable system of classification of persons and imports to which the amendment applies and to grant credits toward fulfillment of its requirements under specified conditions. An annual report to the President and Congress by the Secretary of Commerce is required to be made on the implementation of the amendment. The President is given authority to waive the requirements relating to the percentage of oil carried on United States-flag commercial vessels, if he determines that an emergency exists which justifies the waiver in the national interest.

Section 3 of the bill provides that it does not apply to a refiner whose total refinery capacity does not exceed 30,000 barrels per day. This section also provides preferential contract treatment for United States citizens regarding imported oil.

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AND BUDGET

Section 4 of the bill provides for a reduction of the license fees payable on imported oil if the oil is transported by privately owned United States-flag commercial vessels and the resultant savings from non-payment of the fees is passed on to the ultimate consumer.

Section 5 of the bill amends section 809 of the Merchant Marine Act of 1936 (46 U.S.C. 1213) to provide that, to the extent that contracts are approved by the Secretary of Commerce under that Act, at least 10 percent of the fundsavailable for the foreign trade requirements of the United States are allocated to the Atlantic, Gulf, Great Lakes, and Pacific ports of the United States, respectively.

Section 6 of the bill requires the application of the "best available pollution prevention technology" regarding the construction and operation of oil tankers documented in the United States, if they exceed 70,000 deadweight tons and their construction is contracted for after December 31, 1975. It further provides that if an oil tanker documented under the laws of the United States and in excess of 20,000 deadweight tons is transporting oil to west coast ports situated on internal waters or straits, and its construction was contracted for after December 31, 1974, it shall be equipped with a segregated ballast capacity achieved in part by fitting a double bottom.

From this section-by-section description, it is manifest that H.R. 8193, if enacted, would significantly modify the scope and direction of United States maritime policy through the adoption of practices commonly known as flag discrimination. This cargo preference aspect of the legislation would have an adverse impact on the United States economy and on United States foreign relations.

As to the economy, the legislation would contribute to inflationary pressure both in the construction and operation of United States-flag tankers. The current United States shipbuilding program has stretched the limits of United States shipyard capacity in the construction of large tankers. The legislation would create an even greater demand for such ships and for the steel used in their construction which is already in short supply. This would be expected to result in higher prices, thus contributing to inflation. By creating a restricted market with limited competition, United States-flag tanker operators would be able to charge very high rates for the carriage of oil imports. With widespread reports of excess capacity in oil tankers throughout the world, this legislation would not only contribute to the excess tonnage but would preclude United States consumers from taking advantage of foreign tankers at low rates. If there is no system of equalizing fuel costs throughout the nation, much of the added costs of cargo preference would be borne by those United States regions that rely heavily on oil imports, such as New England, the Middle Atlantic States, the West Coast, and Hawaii, and would be passed on to the consumer. Such an increase could be reflected in the cost of aviation and automotive fuels, electricity, and heating, as well as in the cost of manufactured and processed goods.

As to foreign relations, proponents of the legislation claim that cargo preference is used by many other nations, and this is certainly true. However, the enactment of this legislation, which would apply United States cargo preference to commercial cargoes for the first time on a permanent basis, could serve as an example for foreign countries to increase their support for national flag shipping through discrimination. Moreover, such action would be interpreted in many foreign nations, both developed and developing, as a direct American endorsement of the highly protectionist shipping principles articulated in the recent United Nations Conference on Trade and Development (UNCTAD) Code of Conduct for Liner Conferences and the United Nations General Assembly (UNGA) Declaration on the Establishment of a New International Economic Order, two developments which were not supported by the United States Government. In addition, enactment of the legislation might put additional stress on our relations with other maritime nations and violate United States treaties of Friendship, Commerce and Navigation with more than twenty countries. Finally, because higher oil costs raise the cost of United States production, enactment of the legislation would run counter to current United States efforts to increase exports and improve our balance of payments posture. Its enactment would result in the creation of that type of trade barrier which this nation has traditionally opposed while generally advocating the liberalization of international commerce.

In addition to the comments mentioned above on the cargo preference aspects of the legislation, sections 5 and 6 of the enrolled bill are also of concern to the Department of Transportation.

Section 5 of the bill as amended by the Senate would have generally required that 10 percent of construction and operating subsidy funds, as well as research and other funds, be allocated to serve the foreign trade requirements of Great Lakes ports as well as the Atlantic

Pacific, and Gulf ports. This section of the enrolled bill was amended in Conference to make those funds available only to the extent that subsidy contracts are approved by the Secretary of Commerce. We do not feel whatever advantages that could be derived from section 5 of the bill, as amended, offset the serious disadvantages of the other sections of the bill.

Section 6 of the bill, as currently worded, will not significantly protect the maritime environment of west coast ports and may, in fact, have exactly the opposite effect. By requiring only those oil tankers contracted for after December 31, 1974, to have double bottoms, a loophole is presented which could allow new construction (without double bottoms) to be put into operation on the east coast and older oil tankers, not subject to the new construction standards, to be transferred to the west coast for service. Therefore, the net effect of this provision could result in a fleet of older oil tankers operating on the west coast. Additionally, in our opinion, any required standards for oil tankers, whether in excess of 70,000 deadweight tons or 20,000 deadweight tons, would have to be promulgated under our authority contained in Title II of the Ports and Waterways Safety Act of 1972 (46 U.S.C. 391a). Section 201 of that Act requires that any regulation for the protection of the marine environment applicable to United States vessels operating in the foreign trade be made equally applicable to foreign vessels (46 U.S.C. 391(a)(7)(D)). While this is the major defect with section 6, other significant problems of interpretation and application between section 6 and Title II of the Ports and Waterways Safety Act of 1972 will exist.

The concept of double bottoms as a pollution prevention standard was specifically rejected by the Intergovernmental Maritime Consultative Organization Conference on Pollution from Ships, 1973. For the United States to now try to unilaterally impose that standard would, in our view, jeopardize our leadership in the areas of international maritime and environmental safety without adequate justification. Comprehensive casualty data now available makes it evident that design flexibility in locating segregated ballast tanks is preferred over specifying a particular location (double bottoms). The key point is that designers should be required to distribute segregated ballast spaces to provide effective protection against accidental releases, giving due regard to other design parameters which must be satisfied. This Department is of the opinion that we have sufficient authority under Title II of the Ports and Waterways Safety Act of 1972 to deal with these matters.

In this regard, the Coast Guard on June 28, 1974, issued proposed rules under which tankships of 70,000 deadweight tons or more must be designed with an additional volume of up to 40 percent in order to carry ballast in tanks other than oil cargo tanks (segregated ballast).

Finally, the reference in section 6 to "west coast ports situated on internal waters or straits" does not contemplate offshore terminals or deepwater ports through which, in the future, the major portion of oil will be imported. The reference to "straits" is confusing as we are unaware of any port in the United States which is not located in internal waters.

For the reasons mentioned above, the Department recommends that the President veto the legislation. Paragraphs for incorporation in a veto message are enclosed.

Sincerely,

Rodney E. Eyster
General Counsel

Attachment

ATTACHMENT

THE BILL WOULD HAVE AN ADVERSE IMPACT ON THE UNITED STATES ECONOMY AND ON UNITED STATES FOREIGN RELATIONS. IT WOULD CONTRIBUTE TO INFLATIONARY PRESSURE BOTH IN THE CONSTRUCTION AND OPERATION OF UNITED STATES-FLAG TANKERS, AND COULD SERVE AS AN EXAMPLE FOR FOREIGN COUNTRIES TO INCREASE THEIR SUPPORT FOR NATIONAL FLAG SHIPPING THROUGH DISCRIMINATION. FURTHERMORE, ITS ENACTMENT WOULD RUN COUNTER TO CURRENT UNITED STATES EFFORTS TO INCREASE EXPORTS AND IMPROVE OUR BALANCE OF PAYMENTS POSTURE, AND WOULD RESULT IN THE CREATION OF THAT TYPE OF TRADE BARRIER WHICH THIS NATION HAS TRADITIONALLY OPPOSED WHILE GENERALLY ADVOCATING THE LIBERALIZATION OF INTERNATIONAL COMMERCE.

IN ADDITION, THE BILL OFFERS LITTLE PROTECTION TO THE MARINE ENVIRONMENT FROM POLLUTION RESULTING FROM TANKSHIP ACCIDENTS THAT CANNOT ALREADY BE ACCOMPLISHED UNDER EXISTING LAW. BY UNILATERALLY IMPOSING A CONSTRUCTION STANDARD (DOUBLE BOTTOMS) ON CERTAIN NEW TANKSHIPS, WHICH WAS RECENTLY REJECTED BY THE MAJORITY OF MARITIME NATIONS AS AN EFFECTIVE ANTI-POLLUTION MEASURE, THE BILL JEOPARDIZES THE INTERNATIONAL LEADERSHIP POSITION OF THE UNITED STATES IN THE AREAS OF MARINE AND ENVIRONMENTAL SAFETY.

FURTHER, I BELIEVE THAT THE INTENT OF THE BILL TO EVALUATE THE EFFECTIVENESS OF DOUBLE BOTTOMS IS DISCRIMINATORY TO OPERATORS OF WEST COAST TANKSHIPS WITHOUT A RATIONAL BASIS RELATED TO EITHER MARITIME SAFETY OR ENVIRONMENTAL PROTECTION. IN ANY EVENT THIS ATTEMPT CAN BE SUCCESSFULLY EVADED BECAUSE OF THE LOOSENESS WITH WHICH THE BILL IS DRAWN WHICH COULD RESULT IN AN ACTUAL DETERIORATION OF ENVIRONMENTAL PROTECTION FOR WEST COAST PORTS.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
OFFICE OF CONSUMER AFFAIRS
WASHINGTON, D.C. 20201

December 19, 1974

Honorable Roy L. Ash
Director, Office of Management
and Budget
Washington, D. C.

Dear Mr. Ash:

This is in response to Mr. Rommel's request of December 17, 1974, to the Secretary of Health, Education, and Welfare for a report on H.R. 8193, an enrolled bill, the "Energy Transportation Security Act of 1974."

I have joined with others in the Administration in opposing this bill as a piece of special interest legislation which would raise the prices consumers have to pay for petroleum products. Evidence is at hand--including the opinions of a broad spectrum of eminent economists--that the legislation would be inflationary.

In my view, the bill, judged purely on its merits, ought to be vetoed.

However, I recognize that considerations external to the effects of this particular piece of legislation legitimately may have to be taken into account in determining the advisability of veto. While I am not in a position to evaluate these external considerations, I do recommend that full weight be given to the unnecessary price boosts which approval would entail.

Sincerely,

Virginia Knauer
Virginia H. Knauer
Director

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OFFICE OF MANAGEMENT
AND BUDGET

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON WAGE AND PRICE STABILITY
WASHINGTON, D.C. 20503

December 19, 1974

Mr. W. H. Rommel
Assistant Director for
Legislative Reference
Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Rommel:

The Council on Wage and Price Stability strongly urges that the President veto the enrolled bill H.R. 8193, the "Energy Transportation Security Act of 1974." This bill would immediately require that 20 percent of all oil imported into the United States be carried on privately-owned, United States-Flag commercial vessels. This requirement would be increased to 25 percent on July 1, 1975, and to 30 percent on July 1, 1977.

Our veto recommendation is based upon two grounds. First, if implemented, the bill will raise oil costs substantially. In his letter of November 19 to Senator Curtis, Mr. Ash estimated this increase at between $300 and $600 million per year. Mr. Ash also pointed out additional inflationary pressures that would be generated by the bill - principally in the shipbuilding industry. We totally concur in his view and believe that this bill will raise costs without creating compensating social benefits to the public.

We do not believe that the addition of the section granting the President the right to waive implementation of the bill temporarily "upon determination that an emergency exists justifying such a waiver in the national interest" provides adequate protection for the public, even if the President intends to announce an immediate waiver. The bill is a bad bill and should be vetoed outright.

A veto of enrolled H. R. 8193 would serve an additional useful purpose. The inflationary consequences of the bill have been widely reported by the press and are generally understood by the public. Signature of the bill, even if followed by an immediate suspension, would severely damage the credibility of the President's effort to bring inflation under effective control. Since the President has ordered the Council on Wage and Price Stability to be the watchdog over inflationary costs of all governmental actions, the Council's activities would be particularly impaired. However, should the President announce his intention to veto this bill and any similar measures in the future that imposed unnecessary costs on the economy, our efforts would be greatly aided.

Sincerely,

Albert Rees

Albert Rees
Director

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
722 JACKSON PLACE, N. W.
WASHINGTON, D. C. 20006

DEC 19 1974

MEMORANDUM FOR W.H. ROMMEL
OFFICE OF MANAGEMENT AND BUDGET

ATTN: Ms. Mohr

SUBJECT: H.R.8193

The Council on Environmental Quality recognizes that there are serious policy objections from inflationary and budgetary perspectives to the subject bill's major provisions, which establish cargo preferences for United States flag vessels. In deciding whether to approve the bill, the President will have to weigh these objections against its potential benefits.

One of the benefits would be improved environmental protection resulting from Section 6, which establishes certain environmental requirements for U.S. flag oil tankers. Since these requirements are not costly, they would have a negligible inflationary impact -- especially in relation to the inflationary aspects of the cargo preference provisions.

We are not in a position to assess the bill's environmental benefits in light of its unrelated drawbacks, however; and we therefore make no recommendation to

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the President, except to note that the environmental provisions would be beneficial and, in any event, should not be cited in support of any veto.

If other agencies raise questions concerning Section 6, we would be happy to elaborate on our views.

Gary Widman
Gary L. Widman
General Counsel

DEPARTMENT OF STATE

Washington, D.C. 20520

DEC 19 1974

Honorable Roy L. Ash
Director, Office of
Management and Budget
Washington, D.C. 20503

Dear Mr. Ash:

The Energy Transportation Security Act, 1974 (H.R.8193), commonly known as the Oil Cargo Preference Bill, if enacted would require that twenty percent initially, and by June 30, 1977, thirty percent of oil imported into the United States be transported on U.S.-flag commercial vessels. The House of Representatives approved the House/Senate conference committee version of the bill on October 10 by a vote of 219-140. The Senate took similar action on December 16 by a vote of 44-40.

The Department of State has vigorously and consistently opposed H.R.8193 for both its adverse impact on U.S. foreign relations as well as its inflationary aspects.

This legislation would extend cargo preference for the first time to the area of commercial cargoes, which would not only set an undesired precedent but would counter the long-standing U.S. policy of encouraging, to the extent possible, international free trade for shipping. Moreover, cargo preference legislation would violate commitments made in more than thirty of our Friendship, Commerce, and Navigation treaties. Already, many maritime nations, including NATO alliance countries, have voiced serious reservations regarding the restrictive nature of H.R.8193, and thus its passage could vitally affect diplomatic relations with these nations.

The enactment of H.R.8193, we believe, would certainly encourage similar, and perhaps more drastic, moves on the part of oil-producing countries. The oil producers have already discussed the control of petroleum transport through the purchase and operation of their own flag fleets. By reason of retaliation or imitation following enactment of H.R.8193, we could expect producing nations to require, as a condition of purchase, that a percentage of their exports

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AND BUDGET

(perhaps 50% or more) be carried on their own flag tankers. Diplomatic efforts on our behalf claiming that such practices are inconsistent with world trade would then lack a logical basis.

The inflationary impact of H.R.8193 takes many forms. Requiring a certain percentage of imported oil to be carried in US-flag vessels would upset the freedom of carrier selection and would in turn inflate the "fair and reasonable" rate charged in U.S. trade. Experience with cargo preference indicates that in a protected market the rate tends to escalate because of the relative scarcity of available vessels required by law.

Moreover, any increase in petroleum costs to our export industries not applicable to our major international competitors, would create upward pressures on our export prices and would adversely affect U.S. export competitiveness. The export industries would include not only those producing petrochemical products, but all export industries which are becoming increasingly dependent on foreign sources of energy.

In a general context, the increased costs of imported petroleum products under H.R.8193 would eventually be passed on to the American consumer. By creating a restricted market with limited competition, U.S.-flag tanker operations will be able to charge maximum rates for carriage of oil imports. With widespread reports of impending excess capacity in oil tankers throughout the world (projected at fourteen percent for 1974; a nineteen percent increase in 1975; and an additional sixteen percent increase in 1976), this legislation will not only contribute to the excess, but will preclude U.S. consumers from taking advantage of foreign tanker usage at a possible lower rate.

In the field of ship construction, the provisions of the Merchant Marine Act of 1970, which extended direct construction subsidies to tankers and other bulk carriers (coupled with the funding support of record levels ($303.5 million in FY 1974) has created the greatest peacetime shipbuilding boom in US history. This has stretched the capacity of the US shipyards to produce large tankers. This legislation will create greater demand for these facilities, resulting in higher construction costs and thereby contribute to inflation.

Finally, a major ship construction program would create new demands for materials that are currently in short supply. For example, the demand could exacerbate the currently projected shortage of steel plate and send some domestic users into foreign steel plate markets, all the while adding fuel to the fires of domestic inflation.

In conclusion, the cargo preference legislation provisions of H.R.8193 are, in comparison to direct subsidy, an inefficient and cumbersome means of promoting the merchant marine, particularly since its implementation would establish an undesirable foreign policy precedent, while at the same time drastically burdening the American people with added inflation. For both the foreign interests and for the economic reasons stated above, the Department of State recommends that the President veto this legislation.

Cordially,

Linwood Holton

Linwood Holton
Assistant Secretary
for Congressional Relations

To the House of Representatives:

I am returning without my approval H.R. 8193 (Energy Transportation Security Act, 1974) because of two basic reasons:

The requirement that thirty percent of oil imported into the United States would, by 1977, be reserved for U.S.-flag commercial vessels would set an undesirable precedent and counter our long-standing policy of encouraging international free trade in maritime commerce. The impact of such legislation would be detrimental to our overall foreign relations with allies and trading partners and would violate a number of treaties of Friendship, Commerce and Navigation.

The enactment of this legislation, moreover, would drastically fuel the fires of domestic and international inflation now threatening the well-being of the American economy and, in fact, the world's economy. The competitive nature of our free enterprise system should not be governed by legislation which would, per se, restrict competition and thus produce added cost for the American consumer. This is especially true in the area of the transport of energy resources. Each federal agency testifying before the Congress, and a multitude of respected and internationally renowned economists have all voiced their strong opposition to this bill.

Upon becoming President, I pledged that I would be the President for all the people. Any legislation that compromises this pledge by benefiting few at the expense of many should not become law. I am hopeful that the Congress will similarly view the precedent-shattering and inflationary nature of the Energy Transportation Security Act, 1974, and give support to my position. By doing so, the Congress will not only support our nation's position as a responsible member of the world's shipping community, but support our nation's domestic battle against public enemy number one, inflation.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

DEC 20 1974

Dear Mr. Ash:

This responds to your request for the views of this Department concerning H.R. 8193, an enrolled bill, "To regulate commerce and strengthen national security by requiring that a percentage of the oil imported into the United States be transported on United States-flag vessels."

We recommend that the President veto the bill.

Section 901 of the Merchant Marine of 1936 as amended, 49 Stat. 2015, 46 U.S.C. §1241(b)(1), requires that 50 percent of any cargo procured by the United States from a foreign nation or furnished by the United States to a foreign nation without reimbursement, shall be transported in United States-flag commercial vessels. For the purposes of the Act, United States-flag vessels must be documented under United States laws and must have a United States crew. If the ship was built or rebuilt outside of the United States, or if it had been documented under a foreign flag, to qualify as a United States-flag vessel it must be documented under United States laws for three years.

H.R. 8193 would amend the Act to require that 20 percent of all oil transported in bulk on ocean vessels for import into the United States must be transported in privately owned United States-flag commercial vessels to the extent such vessels are available at fair and reasonable rates. The requirement would be increased to 25 percent after June 30, 1975, and 30 percent after June 30, 1977, if the United States tonnage is adequate to carry that quantity. Credit toward fulfillment of these requirements could be given for oil transported in vessels over 100,000 deadweight tons between foreign ports until such time as an oil discharge facility over 200,000 deadweight tonnage capacity is in operation in the United States. The Secretary of Commerce would also be required to assure that there is fair and reasonable participation of such vessels in such transportation from all geographical areas in which such oil is produced or refined. The President is given emergency

waiver authority over the cargo preference provision and that provision would not apply to refiners of less than 30,000 barrels per day. The President would be required to reduce import license fees on oil imported in United States-flag ships if nonpayment of the fee would result in a corresponding reduction in price to the ultimate consumer. The bill also would modify subsidy contract provisions of the Merchant Marine Act, 1936, and require ships over 70,000 deadweight tons to be equipped with the best available pollution prevention technology. Ships of more than 20,000 deadweight tons, construction of which is contracted after December 31, 1974, which are to be used for transporting oil on the west coast would be required to have separate ballast capacity with double bottoms.

We oppose the bill for several reasons. First, while the United States and many other nations now have cabotage laws restricting trade between domestic ports to vessels of their own flag, very few countries impose these flag restrictions on their imports. The United States has traditionally favored international free trade for private shipping. Enactment of these bills is therefore contrary to that tradition and might prompt similar restrictions by other countries on their imports or restrictions by oil producing nations on their exports.

Second, the bill would substantially increase the cost of imported oil to consumers. American crews are two to three times more costly than foreign crews. The increased cost of imported oil would be borne mostly by east coast consumers. The bill could raise the cost of imported oil by many millions of dollars annually by 1985.

While we recognize the importance to the nation's security and economy of a strong domestic shipping industry, we note that there are presently a number of Federal programs designed to revitalize the domestic shipping industry on both the building and operating levels. Moreover, in time of emergency the United States can call upon ships from the "effective control fleet." This fleet is comprised of ships sailing under Panamanian, Honduras and Liberian flags and owned by the United States citizens who agree to transfer control of the ships to the United States in the event of a national emergency. Moreover, many United States owned vessels sailing under foreign flags of convenience never sail into ports controlled by countries of the flag they are flying. The ties these vessels maintain with such countries are often minimal and for appearance only. Any danger of these vessels coming under exclusive control of the foreign country where they are registered is thus remote.

In the light of this, the national security benefits the bill is intended to achieve do not appear significant enough to justify the conflict with free trade policies which would result from the bill, and the unavoidable increase in costs to consumers of imported oil.

Sincerely yours,

Rogers C B Morton
Secretary of the Interior

Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D. C. 20503

THE CHAIRMAN OF THE
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON

December 20, 1974

Dear Mr. Rommel:

This is in response to your request for the view of the Council of Economic Advisers on enrolled bill H.R. 8193 -- The Energy Transportation Act of 1974.

The Council urges strongly that this bill be vetoed. Our reasons for doing this fall in three general categories.

1. Signing the bill would immediately and dramatically reduce the credibility, hence, the effectiveness of the Administration's anti-inflation program.

--All executive agencies that have testified on the bill over the past two years have opposed the bill with detailed numerical estimates of cost increases it would impose upon consumers.

--Major commercial and industrial organizations such as the U.S. Chamber of Commerce and the American Petroleum Institute initated substantial research efforts to identify the inflationary consequences of the bill and conducted major public relations efforts to publicize their findings.

--<u>The Wall Street Journal</u>, <u>New York Times</u>, <u>The Washington Post</u>, and many other major newspapers have repeatedly editorialized against the bill as an inflationary subsidy to special interests at the expense of the taxpayer.

--<u>The Wall Street Journal</u> ran a series of front page feature stories that fully covered the subsidies in the bill, the nature of the lobbying effort behind the bill, and how the money for that effort was, in some instances, coerced from maritime union members. Signing the bill will be interpreted by the readers of this series as an act of complicity by the Administration that allowed an instance of special interest politics to succeed--that is so blatant that some will regard it as corrupt.

AMERICAN REVOLUTION BICENTENNIAL 1776-1976

--The only sources of support for the bill are the Maritime unions, domestic shipbuilders, and the AFL-CIO. However, there is no evidence that labor's skeptical attitude towards Administration's anti-inflation program would be changed in any way by signing the bill.

--Hence, signing the bill will be widely interpreted, particularly within the leadership of the business and financial community, as a political act of hypocrisy inconsistent with the principles of the President's anti-inflation program. Signing the bill and then activating the temporary "emergency" clause to suspend it would dramatize the hypocrisy.

II. Signing the bill would result in an artificial expansion of domestic shipyards in a period of tight labor and capital supplies.

--Domestic shipyards are operating at close to full capacity.

--Shipbuilding costs are rising rapidly. Material price index for shipbuilding increased 22.6 percent in the first two quarters of 1974.

--To reach the minimum target mandated in bill capacity will have to be expanded sharply and substantially, perhaps by 50 percent.

--Expansion costs will have to be recovered more quickly than normal business practice would require because of the artificial and controversial nature of the impetus for expansion.

--As a consequence, the already substantial differential between construction costs of U.S. and foreign built ships will widen, thus augmenting the ultimate increase in transportation costs that will be passed on to petroleum product consumers.

--It would be difficult to justify invoking the "emergency" suspension provisions because of these costs, however, because they are specific to particular industries rather than the economy as a whole.

III. Signing the bill would be inconsistent with energy policy goals.

--Petroleum transportation costs would increase almost immeditely as the increased demand for U.S. flag ships diverted older, smaller and inefficient tankers from U.S. coastal trade to international trade.

--Effective exploitation of off-shore reserves of domestic oil and gas is currently being inhibited by shortages of platforms as well as other drilling equipment. Since shipyards produce platforms this bill will exacerbate this problem directly by increasing the competition for shipyard space and resources as well as indirectly by increasing the demand for steel and other materials used to produce drilling equipment.

--There is a current surplus of tankers in the international market that are available at bargain rates. If it were the case that national security considerations required more tankers to be acquired it would be much more efficient to purchase them than to build them.

--Liberia has formally protested the bill and reemphasized its willingness to place U.S. controlled ships operating under the Liberian flag "under the control of the United States Department of Defense in time of emergency." This has been done routinely in the past. Thus, the security of our imported energy supplies would not be enhanced by the bill.

--Hence, signing the bill would increase in both the short and long term the real resource cost of satisfying our energy requirement at a time when the costs of meeting those requirements is testing the ability of our economy ~~to~~ adjust very major changes in energy markets.

Alan Greenspan

Mr. Wilfred H. Rommel
Assistant Director for Legislative
Reference
Office of Management and Budget
Washington, D. C. 20503

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OFFICE OF MANAGEMENT
AND BUDGET

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

DEC 20 1974

MEMORANDUM FOR: Wilfred H. Rommel
Assistant Director for
Legislative Reference
Office of Management and Budget

ATTENTION: Bruce Johnson

FROM: Robert E. Montgomery, Jr. REM
General Counsel

SUBJECT: Enrolled Bill Report on H.R. 8193 - Energy Transportation Security Act of 1974

This is in response to your request for the views of the Federal Energy Administration on the subject enrolled bill.

H.R. 8193 would require that 30 percent of the gross tonnage of all oil imported into the United States be carried on privately owned United States-flag vessels by June 30, 1977. The subject enrolled bill would also reduce import license fees on imported oil if the oil was carried on U.S.-flag vessels and if the savings are ultimately passed on to the consumer. Additionally, the bill would require that new tankers of more than 20,000 deadweight tons be constructed with double bottoms if those tankers are used in west coast ports which are situated on internal waters or straits.

The FEA strongly recommends that the President veto the subject enrolled bill on the grounds that it would raise the cost of oil to consumers, place inflationary pressures on maritime construction, increase the likelihood and severity of energy shortages, and reduce our capacity to make adjustments in the case of a selective embargo. The bill would also impede implementation of Project Independence by diverting much needed steel from maritime drilling equipment, exacerbate a worldwide tanker surplus, and increase the possibility of retaliatory cargo preference actions by oil-producing countries.

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AND BUDGET

Inflationary Impact on Consumers

A. Enactment of this bill would increase pressure on the price of a commodity which has already increased significantly in the past year. An appraisal of the cost differentials between the construction and operating costs of U.S.-flag and foreign-flag vessels demonstrates that reliance on U.S.-flag vessels will lead to an increase in the cost of oil products to the American consumer. The FEA has calculated the consumer cost to be $3 billion annually by 1980. By creating a restricted market with limited competition, this bill would permit U.S.-flag tanker operators to charge maximum rates for the carriage of oil imports. Moreover, this legislation would preclude U.S. consumers from benefiting from periodic downward cycles in world shipping rates. Since world charter market rates are depressed at the present time, the near-term effect of this legislation will be to encourage the shift of U.S. import costs to our own higher domestic tanker rates.

Worse, this inflationary impact will fall more heavily on some geographic regions than others. While a direct subsidy to stimulate maritime construction would have fallen equally on all Americans through the tax system, the cargo preference bill, an indirect subsidy, will cause price rises to impact principally on residents of areas which depend most heavily on imported oil, New England, for example. Residents of New England, the Middle Atlantic States, Hawaii, and to a lesser extent, the West and Gulf coasts would have to pay a disproportionate share of the billions of dollars in increased costs for petroleum products if this bill becomes law.

B. Although supporters of the bill claim that the license fee rebate provisions would lower consumer costs, in fact, the proposed fee reduction would not compensate for the bill's added cost. First, the fee rebates are effective for only the next five years, a period when very few new U.S.-flag ships will be available due to the extensive lead time required to build new tankers.

Second, oil import fees are not currently charged on the great majority of crude oil imported into the United States. Presidential Proclamation 3279, as amended, provides for phasing in the import fee on crude oil over a seven year period through 1980. Based on past data, we estimate that oil import fees will be payable on only 5 to 10 percent of all crude oil imports in 1974 and 1975. By 1978, import fees will probably be payable on something less than 50 percent of all crude oil imports. It is evident from the above figures that the provision of the bill which provides for a rebate of 15¢ of the oil import fee would not produce any meaningful relief from the increased costs for crude oil which consumers will be required to pay.

Finally, dedication of import fees locks the government into a particular form of protection and would remove the flexibility which Section 232 of the Trade Expansion Act intended to give the President. For example, it would become very difficult to shift to a quota system or adopt a variable fee, either of which are possible options for achieving the goal of a million barrel per day import reduction.

Inflationary Impact on the Maritime Construction Industry

The maritime construction industry is already operating at full capacity and is booked for construction through 1978-79. The tonnage of merchant ships under construction or on order in U.S. shipyards increased in 1974 for the fifth straight year to a near record of almost four million tons. This was accomplished through the use of previously authorized construction and operating subsidies. This bill would place increased pressure on shipyards to turn out 40 oil tankers costing $4 billion in a market already operating at full capacity. The effect of this would be to drive the cost of ship construction still higher by bidding up the price of steel and other scarce materials without increasing the rate of construction over the next few years.

Reduced Flexibility During an Embargo

In the event of supply interruptions caused by producing countries cutting off exports, our security interests would not be served by regulations requiring the use of U.S.-flag tankers. Flexibility would be markedly reduced. When this country has faced interruptions in the past, companies have managed to maintain oil flows by utilizing all of the world tanker fleet, regardless of flag, ownership, or nationality of crews. The ability to move tankers from one route to another would be severely impaired if shippers were faced with provisions requiring that supplies for specific countries could only be transported in specific tankers.

Even without a supply cutoff, the bill creates logistical problems with respect to the country's continued importation of refined products. The availability of these products depends upon spot conditions, such as foreign demand and operational refinery capacity, that are difficult to predict. Hence, importers must act quickly to obtain available supplies. The introduction of requirements adversely affecting the ability of U.S. importers to move such supplies would reduce their ability to respond quickly, and thus tend to reduce the amount of imports into this country.

Impeding Project Independence through Steel Diversion

Cargo preference legislation would divert technical and manpower resources into building tankers for oil imports when we have more urgent needs related to developing domestic energy sources. As the Project Independence Blueprint pointed out, development of resources from the Outer Continental Shelf and the North Slope of Alaska will play a major role in significantly reducing the need for oil imports by the end of the decade. In the near future, these operations will require new equipment and additional shipping capacity suitable to service them. On the Outer Continental Shelf, we will need more drill ships, submersible and semi-submersible drill rigs, fixed platforms, work boats and other maritime facilities. Similarly, specially-equipped U.S.-flag tankers will be needed to haul oil from the Trans-Alaska Pipeline to markets in the United States. Thirty-two tankers will be required just to handle that trade. Construction of tankers for oil imports will mean less steel either for tankers for the Alaskan trade or for floating drilling rigs for developing the Outer Continental Shelf. Requiring double bottoms on certain U.S. tankers used in west coast trade will aggravate the steel shortage.

The Tanker Surplus

Cargo preference legislation would result in our building tankers in the face of a growing world surplus. Not only the United States but other consuming nations have embarked on merchant marine construction programs, and tankers under construction or on order on a world-wide basis are expected to greatly exceed the need for tankers for many years. Nearly 600 new tankers now on order will join the world fleet of 3,300 by 1978. In addition, the opening of the Suez Canal and the construction of a pipeline across Egypt are expected to reduce the need for tankers. With the completion of the tankers currently on order, there will be a surplus of oil tankers, particularly of the "Very Large Crude Carriers" used for the long haul from the Persian Gulf to the consuming nations of the industrialized world. In the face of these developments in the world tanker market, it would be injudicious for the United States to force a substantial construction program for tankers to import oil. Further, it would stimulate investment in the future of oil imports rather than investment in the future of energy self-sufficiency.

Retaliation by the Oil-Producing Nations

Enactment of H.R. 8193 will impel foreign countries, especially producing nations, to retaliate by enacting their own cargo preference laws. Given the fact that tanker companies from Libya, Iraq, Kuwait, and a consortium of eight Arab governments now have tankers on order in European and Japanese shipyards, the possibility is great that the Arab countries will prefer to sell oil complete with transportation to final destination. Should this happen, it is equally likely that the oil-producing countries would set their rates comparable to that charged by U.S.-flag vessels. The cumulative cost impact of this factor alone has been estimated to be as high as $22 billion through 1985.

Conclusion

H.R. 8193 would not increase the transportation security of this country as its supporters suggest, nor would it have any possible price lowering effect on oil imports. This bill would, however, cost the consumer billions of dollars in increased oil prices over the next few years, strain material and equipment requirements for our energy programs, and create a glut of tanker capacity on the market. This cargo preference legislation would also violate a long-standing U.S. position of fostering less restrictive international trade and commercial policies by all nations, and would also set an unfortunate precedent which other nations would react to by introducing unilateral preference legislation of their own. For the foregoing reasons, FEA strongly recommends that the President veto H.R. 8193.

THE GENERAL COUNSEL OF THE TREASURY
WASHINGTON, D.C. 20220

DEC 20 1974

Director, Office of Management and Budget
Executive Office of the President
Washington, D.C. 20503

Attention: Assistant Director for Legislative Reference

Sir:

Reference is made to your request for the views of this Department on the enrolled enactment of H.R. 8193, "To regulate commerce and strengthen the national security by requiring that a percentage of oil imported into the United States be transported on United States flag vessels."

The enrolled enactment would require 20 percent of all petroleum and petroleum products imported into the United States on ocean vessels to be carried on privately owned United States flag vessels. This percentage would increase to 25 percent beginning after June 30, 1975, and to 30 percent beginning after June 30, 1977. The President would be authorized to waive temporarily these requirements upon his determination that "an emergency exists justifying such a waiver in the national interest."

Section 3 of the enrolled enactment would require a 15 cent per barrel reduction in the license fees imposed pursuant to Presidential proclamation on imports of oil (42 cents per barrel for residual fuel oil) for a period of five years, provided that the Secretary of the Treasury determines that such oil is transported on United States flag vessels and that the saving from the remission of the fees is passed on to the ultimate consumers of such oil.

The Department is seriously concerned over the impact the enrolled enactment would have on our economy and on our ability to meet future energy needs.

The Department believes that the enrolled enactment will have an immediate and substantial inflationary impact on our economy. The requirement that United States flag vessels carry a minimum of 20 percent of the gross tonnage of all petroleum and petroleum products imported into the United States will increase the cost of petroleum products for the consumer by over $315 million in 1975 alone.

An additional inflationary force of this magnitude cannot be justified since there already exist numerous Federal incentives to accomplish the stated objective of increasing the construction of United States tankers. There is a wide variety of Federal aid programs designed to strengthen the United States merchant fleet. We should allow these programs to work rather than add another inflationary force to an economy already burdened by an excessive rate of price increases.

Provisions calling for reductions in oil import license fees will necessarily mean substantial lost revenues to the Treasury at a time when it is urgent that we bring Government expenditures and revenues into line. We believe it is unwise to reduce substantially the present revenue base unless there is a compelling reason for doing so.

In view of the foregoing, the Department recommends that the enrolled enactment be vetoed by the President.

A suggested veto message for transmittal to the House of Representatives is enclosed.

Sincerely yours,

Richard R. Albrecht

Richard R. Albrecht
General Counsel

Enclosure

To the House of Representatives:

I return herewith, without my approval, H.R. 8193, a bill requiring that a specified and increasing percentage of oil imported into the United States be transported on United States flag vessels.

I am seriously concerned over the inflationary impact this bill would have on our economy and on our ability to meet future energy needs.

If enacted, this bill will increase the cost of petroleum products for the consumer by over $315 million in 1975 alone. This substantial and immediate inflationary impact would conflict with our vital national interest in achieving control of inflation.

This additional cost to consumers cannot be justified on the ground that we need to increase construction of tankers in the United States. There already exist numerous Federal incentives for domestic ship construction and for strengthening our merchant fleet. These programs already cost the taxpayer over $500 million in operating and construction subsidies each year. This does not include the cost of the subsidization provided by legislation requiring the use of United States flag vessels to transport certain Government financed or military cargoes.

The provisions of the bill calling for reductions in oil import license fees will necessarily mean substantial lost revenues to the Treasury at a time when it is urgent that we bring Government expenditures and revenues into line. We believe it is unwise to reduce substantially the present revenue base unless there is a compelling reason for doing so.

The provisions of the enrolled enactment authorizing the President to suspend its operations during periods of national emergency are, in my view, inadequate to provide sufficient authority to deal effectively with the needs of the country for an adequate supply of energy. The President needs maximum flexibility to deal not only with supply interruptions but also with other unforeseen circumstances which may arise.

For these reasons, I feel that approval of H.R. 8193 would not be desirable.

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

Department of Justice
Washington, D.C. 20530

DEC 23 1974

Honorable Roy L. Ash
Director, Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Ash:

In compliance with your request, I have examined a facsimile of the enrolled bill (H.R. 8193), to regulate commerce and strengthen national security by requiring that a percentage of the oil imported into the United States be transported on United States-flag vessels.

On August 27, 1974, this Department voiced objections to the Senate Commerce Committee as to this bill in the form in which it passed the House of Representatives. That earlier version was almost entirely an amendment of Section 901 of the Merchant Marine Act of 1936, as amended, 46 U.S.C. §1241(b)(1). That provision presently requires that 50 percent of any cargo procured by the United States from a foreign nation or furnished by the United States to a foreign nation without reimbursement shall be transported on privately owned United States-flag commercial vessels. The section defines such vessels to exclude, in effect, virtually all but those constructed within the United States. The present version of the bill adds a wholly new subsection (d), and contains some provisions which are independent of that Act.

Section 2, adding a new subsection (d) to section 901, incorporates much of the substance of the earlier version of the bill plus certain new provisions. Thus, the Secretary of Commerce is required to take steps to assure that not less than 20 percent of the oil imported into the United States on ocean vessels be transported in privately owned United States-flag commercial vessels to the extent that these vessels are available at fair and reasonable rates. The requirement would be increased to 25 percent in 1975 and 30 percent in 1977 if the United States tonnage is adequate to carry that quantity. The requirement would cover both direct shipment to this country and shipments from the original point of production to intermediate points for storage, processing, refining, or transhipment and ultimate delivery into the United States. The Secretary of Commerce in administering the Act may establish

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by rule reasonable classifications of persons and imports subject thereto. Provision is also made for review of agency action under the Administrative Procedure Act and for judicial review in the D.C. Court of Appeals.

The bill now contains certain new provisions. For example, the Secretary of Commerce is authorized to grant credits toward the fulfillment of the percentage requirements imposed in the case of oil transported by United States-flag vessels over 100,000 deadweight tons between foreign ports until such time as an oil discharge facility capable of discharging fully laden vessels of over 200,000 deadweight tons is in operation on any coast of the United States. The provision contains a new definition of privately owned United States-flag commercial vessels which is more restrictive than that already contained in section 901(b)(1). Vessels must have been built in the United States and be subject to a capital construction fund agreement between the owner or lessee and the Secretary of Commerce which would incorporate terms specified in the provision. The bill also requires annual reports by the Secretary of Commerce to the President and Congress.

Section 3 of the bill exempts small refiners of less than 30,000 barrels per day capacity from its provisions so long as the total imports of the refiner do not in any years exceed its rated refining capacity. Section 4 would reduce license fees required on imports of oil by 15 cents per barrel (42 cents per barrel in the case of residual fuel oil) for a period of 5 years if the Secretary of the Treasury determines that such oil is transported on United States-flag vessels and the fee saving is being passed on to the ultimate consumers of the oil. Section 5 would amend section 809 of the Merchant Marine Act, 1936, as amended (46 U.S.C. §1213), to generally require that ten percent of construction and operating subsidy funds, as well as research and other funds, be allocated to serve the foreign trade requirements of ports on each of the four seacoasts. Section 7 in general takes steps to provide that the same safety and pollution prevention requirements and standards would be applicable to all privately owned United States-flag commercial vessels employed in the transportation of oil either in the foreign commerce of the United States or between ports of the United States.

The Department of Justice recommends against executive approval of this bill. Though its language has been tightened and clarified in the Senate and in conference, and new provisions have been added, it is still fundamentally the same bill to which we previously voiced objections.

The Department of Justice is opposed to impediments placed in the way of full and free competition in the marketplace. We are also opposed in principle to schemes for Government regulation and allocation of commodities because they operate to freeze and distort the working of competitive forces. This bill includes both objectionable features.

First, by requiring that certain percentages of oil imports be carried in United States-flag vessels the bill creates a captive, non-competitive market for this class of tankers. It is well known that U.S.-flag vessels cost more to construct and more to operate than others. With their use required to the extent indicated the added costs will naturally be passed on to the consumer, disproportionately so to the consumer on the East Coast where the need for imported oil is by far the greatest. But aside from this, establishment of a sheltered market will have an inevitable upward effect on rates, insulating as it will this portion of the tanker trade from the competitive forces of world tanker rates.

It is presently estimated that imported petroleum requirements may rise in the near future to 40 percent of our total requirements if present trends are not quickly curbed. With such a substantial percentage of petroleum imports subject to these higher prices, it would seem that operation under this bill would have a highly inflationary effect on domestic petroleum markets and, considering oil's pervasive impact, on the entire domestic economy. On this point, however, we would defer to the expertise of such other agencies as the Council of Economic Advisors.

Second, special provision for certain tankers necessarily will require a measure of governmental regulation over all tanker imports in order to allocate the required percentages to U.S.-flag vessels. Aside from necessitating a cumbersome and perhaps unworkable system of control, this regulation could seriously affect competitive relationships in the petroleum industry.

Some recognition of this aspect is seen in the bill's exemption from its provisions of imports by small refiners. The rationale for this is obviously the comparatively greater impact an increase in shipping costs would have on their operations compared to the major integrated companies, with a resultant increased difficulty in competing against the latter. But the bill here deals only with the very smallest operators, taking no account of the shipping cost impact on other small refiners, defined by Congress in Emergency Petroleum Allocation Act of 1973 (87 Stat. 627, 629), as those ranging in size up to 175,000 barrels per day capacity.

Again, the ability of non-integrated importers to compete against the majors would be further jeopardized by the bill's provision including shipments from a foreign port of production to a foreign refinery before the product is shipped to this country. This requirement might be attainable by the larger, fully integrated oil companies using their own foreign refineries or the foreign refineries of others under long-term fixed-quantity contracts. But it would seem highly unlikely that any foreign refiners other than those whose primary market is the United States would employ higher-cost U.S.-flag tankers to supply it with crude against the chance of facilitating short-term contracts or spot sales to smaller non-integrated American importers.

In addition, the problem is compounded by the waiver provision in proposed section 901(d)(7), which states that the requirements for cargo preference to U.S.-flag vessels may be temporarily waived by the President upon determination that an emergency exists justifying such a waiver in the national interest. This provision is rather more restrictive than that already found in section 901(b) of the Act. Moreover, the legislative history leaves some doubt whether this waiver could be invoked in national economic emergencies as opposed to national defense emergencies. The bill in the Senate limited the waiver to a maximum duration of 180 days: though the conferees eliminated such a specific time limit as not feasible, it is clear that the intention of the provision is that the temporary nature of the waiver should be on this order of duration. This would present no problem in a national defense emergency, for example in the case of an interruption of shipments arising from a brief flareup in Middle East fighting or from an Arab embargo similar in duration to the last one. But if it were deemed necessary to waive these provisions because of domestic economic conditions arising from recession and inflation, it would seem logical that the waiver might be required for a far longer period than the bill contemplates.

For the foregoing reasons, accordingly, the Department of Justice continues to recommend against enactment of this legislation.

Sincerely,

W V Rakestraw

W. Vincent Rakestraw
Assistant Attorney General

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

WASHINGTON, D. C. 20301

DEC 23 1974

Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Ash:

Reference is made to your request for the views of the Department of Defense with respect to the enrolled enactment of H. R. 8193, 93rd Congress, a bill "To require that a percentage of United States oil imports be carried on United States flag vessels."

The legislation in major part provides that the Secretary of Commerce shall take such steps as are necessary to assure that a quantity equal to 20 per centum of the gross tonnage of all oil transported in bulk on ocean vessels for import into the United States shall be transported on privately owned United States flag vessels built in the United States, to the extent that such vessels are available at fair and reasonable rates for such vessels. After June 30, 1975 the quantity required to be transported in such fashion increases to 25 per centum and after June 30, 1977 to 30 per centum provided that the Secretary of Commerce determines six months prior to each of these dates that the tonnage of privately owned U.S. flag vessels will be adequate to carry the required percentage of oil.

The Department of Defense has carefully reviewed the proposed legislation. It is believed that its anticipated adverse effects on the Department's mission are not of sufficient significance to support a Presidential veto. The Department defers to the views of other federal departments and agencies.

Among the considerations weighed in the course of arriving at the above position was the potential cost impact on DoD on the price of petroleum products purchased by it. While admittedly speculative, it is estimated that the cost impact on DoD would be an increase of approximately $10.6 million in 1980 and $15 million during 1985. These figures are to be compared with the estimated DoD expenditures for petroleum products in FY 1975 of approximately $3.2 billion.

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Another consideration was the possible effect the legislation might have on Navy shipbuilding programs. Significant increased tanker construction in U. S. yards might interfere with these programs, not only in terms of shipyard capability but also inflationary pressures. However, while the legislation undoubtedly is designed to encourage tanker construction, it does not require it. Even as to the 20 per centum transportation requirement, it need be satisfied only to the extent U.S. built and privately owned vessels are available. Therefore, the degree to which new tanker construction will result, and, in turn, its adverse impact on Navy shipbuilding programs is uncertain. Finally, any such short-term adverse effects must be considered in the light of the fact that increased tanker construction resulting from the legislation could result in an expansion of U. S. shipyard capabilities which, in turn, would be available for future national defense needs.

Sincerely,

Martin R. Hoffman

Martin R. Hoffman

THE UNDER SECRETARY OF COMMERCE
Washington, D.C. 20230

DEC 24 1974

Honorable Roy L. Ash
Director, Office of Management
and Budget
Washington, D. C. 20503

Dear Roy:

With respect to the cargo preference bill, H.R. 8193, we currently estimate that, if the bill is enacted, the Maritime Administration will require an additional $1,000,000 and 30 positions in FY 1976 to properly administer its various provisions.

Sincerely,

John K. Tabor

John K. Tabor

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AND BUDGET

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 27 1974

OFFICE OF THE ADMINISTRATOR

Dear Mr. Ash:

This is in response to your request for the Environmental Protection Agency's views and recommendations on H.R. 8193, an enrolled bill entitled the "Energy Transportation Security Act of 1974."

Section 2 of the enrolled bill amends Section 901 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1241). Section 2 would require that a certain percentage of all oil being imported, either directly or indirectly, into the United States be transported on privately owned United States-flag commercial vessels (to the extent such vessels are available at fair and reasonable rates for such vessels). Upon enactment of the enrolled bill the Secretary of Commerce is required to take such steps as are necessary to assure that at least 20 percentum of all imported oil be carried on U. S. bottoms. This percentage would be increased to 25% after June 30, 1975, and to 30% after June 30, 1977. The Secretary must decide six months in advance of the June 30, 1975 and June 30, 1977 deadlines whether adequate United States tonnage is available to meet the required increases. If the full, relevant percentage tonnage is not available, the basic 20% requirement, together with any available excess tonnage, is applicable. Further, the President may temporarily waive the percentage limitations upon a determination that an emergency exists, justifying a waiver in the national interest.

Under Section 3 of the enrolled bill the Section 2 percentage limitations would not apply to refiners whose total refining capacity is less than 30,000 barrels per day. In order to mitigate any adverse costs impact on the American public, Section 4 of the enrolled bill directs the Secretary of the Treasury to reduce license fees payable pursuant to Presidential proclamation for imports of oil by 15 cents per barrel for other than residual fuel oil. Residual fuel

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is to be reduced by 42 cents per barrel if this reduction is passed on to the ultimate consumer.

Section 5 of the enrolled bill amends Section 809 of the Merchant Marine Act, 1936 (42 U.S.C. 1213) to provide that, to the extent that contracts are approved by the Secretary of Commerce under the Act, at least 10 percent of the funds available for the foreign trade requirements of the United States are allocated to the Atlantic, Gulf, Pacific, and Great Lakes ports of the United States, respectively.

Section 6 of the enrolled bill contains several provisions which are intended to insure that America's marine environment will be protected against both intentional and accidental oil pollution. The enrolled bill requires that all vessels of more than 70,000 deadweight tons, designed for the carriage of oil in bulk, documented under the laws of the United States, the construction of which is contracted for after December 31, 1975, must be constructed and operated using the best available pollution prevention technology. Further, if engaged in the carriage of oil in bulk to the United States west coast ports situated on internal waters or straits, a vessel of more than 20,000 deadweight tons, documented under the laws of the United States, the construction of which is contracted for after December 31, 1974, must be equipped with a segregated ballast capacity determined appropriate by the Secretary of the Department in which the Coast Guard is operating, which shall be achieved by fitting, throughout the cargo length, a double bottom. The Conference Report on the enrolled bill makes clear that the Congress intends that the Coast Guard, in deciding on the best available pollution prevention technology, would follow the procedures and criteria contained in the Ports and Waterways Safety Act of 1972 (P.L. 92-340).

The Environmental Protection Agency defers to the views of other relevant Federal agencies and departments with special expertise in foreign affairs, domestic economic policy and national security on the merits of the enrolled bill. We note, however, that from an environmental protection viewpoint, the enrolled bill would enhance the United States' effort toward protecting the oceans from oil pollution.

During the 1973 negotiations of the International Convention for the Prevention of Pollution from Ships, the United States delegation, under my chairmanship, argued strongly that double bottoms be used to achieve segregated ballast in tankers of over 20,000 deadweight tons. As is well known, the Conference declined to accept that suggestion, in spite of its obvious effectiveness in reducing oil pollution attributable to groundings. The limited double bottom requirement in section 6 of the enrolled bill is, of course, in no way inconsistent with implementation of the 1973 Convention, and we are gratified that the bill would provide for special measures to reduce pollution from groundings in the particularly vulnerable northern environment that will be affected by the Alaskan oil trade.

Although the enrolled bill does not require double bottoms on all vessels, the legislative history indicates that a compromise approach was adopted. Thus, Section 6 of the enrolled bill establishes a pilot project to evaluate, by actual practice, the pros and cons of double bottom tankers. This provision is an acceptable approach.

We would, therefore, have no objection to the signing of this enrolled bill by the President.

Sincerely yours,

John Quarles, Deputy

for Russell E. Train
Administrator

Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D. C. 20503