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NASA

THE WHITE HOUSE  
WASHINGTON

November 3, 1975

MEMORANDUM FOR: PHIL BUCHEN  
FROM: TED MARRS *ted*

As a follow-up to the meeting held last week in Jack Marsh's office with General Crow, it appears to me that it would be appropriate that you or OMB sign the attached letters which should make clear the status of the Cape Canaveral project.

General Crow and I talked with Congressman Mahon and informally obtained his concurrence. General Crow followed that meeting by contacting James Calloway, General Counsel of the Senate Appropriations Committee and Robert Christman of Senator Young's office and found no opposition.

Attachments

*Phil: If you and OMB prefer, I will sign same. Ted*

*Ted: I prefer that you @ OMB sign.*



THE WHITE HOUSE

WASHINGTON

October 30, 1975

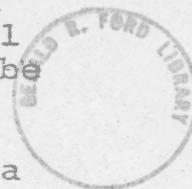
Dear

In a series of informal discussions during the summer pertaining to plans and preparation for the Bicentennial, the President reached the conclusion that attention was largely focused to historical events and that insufficient attention was directed to the future. Accordingly, he approved the initiation of a Science and Technology Exposition to focus on the future, emphasizing the extraordinary creativity of this nation in science and technology with the hope that the Exposition would provide a psychological lift at home and an improved image abroad.

It is planned that the Exposition be held for three months beginning next June at the Kennedy Space Center, Cape Canaveral, Florida. Cape Canaveral is a world-recognized symbol of the remarkable achievements by this nation in science and technology. As a site, it offers many striking advantages including ample space, existing facilities and tourist attractions, and a unique relation between scientific and technological endeavors in a surrounding natural environment of a national wildlife refuge. Plans are being made to upgrade and expand existing ~~tourist attractions~~ *Scientific & Technological Displays - Jim*. The focus of the Exposition will be in and around geodesic dome pavilions to be constructed against the backdrop of the mammoth and impressive Vehicle Assembly Building.

The Exposition will be national in scope with participation by Federal agencies and industry. International participation is not planned. In view of its role in science and technology, and with the location of the Exposition at Cape Canaveral, NASA has been designated as the overall manager and lead agency with management assistance to be provided by other Government agencies.

Funding for the Exposition is planned on as practical a basis as possible to be accomplished within currently approved agency budgets. The Exposition will be located in an area of high unemployment and \$3.0 million has been provided from the Department of Commerce Job Opportunities Program by the Economic Development Administration for construction of facilities. Government agency exhibits will be funded from currently approved appropriations.



In large measure this participation will simply mean that agencies will conduct a portion of their Bicentennial activities at Cape Canaveral as opposed to previously planned locations. There will, however, be some reprogramming of individual agency budgets, which will be handled in accordance with normal procedures by the agencies involved and their respective subcommittees. Industry exhibit costs will be borne by participating companies. For the most part, actual direct operating costs will be met by either tour or admission fees. Additionally, there will be an objective of recovering as much as feasible of the original \$3.0 million initial outlays.

It is anticipated that over two million people will visit the Exposition. They will come from every state in the Union and from most foreign countries. The Exposition should serve as a major stimulus to a fuller appreciation of the benefit of science and technology to the quality of American life.

I'm sure that your Committee will have a special interest in this Exposition. NASA will keep you informed of progress and will welcome any suggestions you, your Committee or Staff Members wish to offer. Your support and endorsement of the Exposition will be greatly appreciated.

Sincerely,



The Honorable Charles A. Mosher  
House of Representatives  
Washington, D.C. 20515

The Honorable Olin E. Teague  
Chairman  
Committee on Science and  
Technology  
House of Representatives  
Washington, D.C. 20515

The Honorable Frank E. Moss  
Chairman  
Aeronautics and Space Science  
Committee  
United States Senate  
Washington, D.C. 20510

The Honorable Barry Goldwater  
United States Senate  
Washington, D.C. 20510



~~SECRET~~  
RM  
THE WHITE HOUSE

WASHINGTON

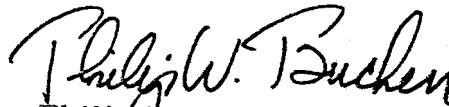
November 4, 1975

Dear Mayor Bankhead:

Thank you for your letter to the President citing delay in a waterworks improvement project for the City of Higbee as an illustration of delay caused by the Interstate Commerce Commission.

We appreciate your bringing this to our attention, as the President is genuinely concerned to correct the problem of regulatory delays. While it is White House policy to refrain from interfering in particular matters before the independent agencies, the President has specifically requested the heads of all these agencies to cooperate in the effort to alleviate delays. In furtherance of this objective, I am forwarding your complaint to the ICC for such action as may be appropriate.

Sincerely,



Philip W. Buchen  
Counsel to the President

The Honorable L. C. Bankhead, Jr.  
Mayor of Higbee  
Higbee, Missouri 65257

cc: The Honorable George M. Stafford



THE WHITE HOUSE  
WASHINGTON

October 3, 1975

MEMORANDUM FOR PHIL BUCHEN  
FROM TOD HULLIN

In the attached letter, Mayor Bankhead of Higbee, Missouri, is requesting the President to intercede in a matter with the Interstate Commerce Commission, an independent regulatory body.

I am forwarding this correspondence for your appropriate handling, since it is dealing with an independent regulatory agency.

cc: Jim Falk

Attachment



Municipal Offices  
Higbee, Missouri 65257

L. C. BANKHEAD, JR., MAYOR  
PHYLLIS HALL, CITY CLERK



September 4, 1975

JK  
The President  
The White House  
Washington, D. C. 20500

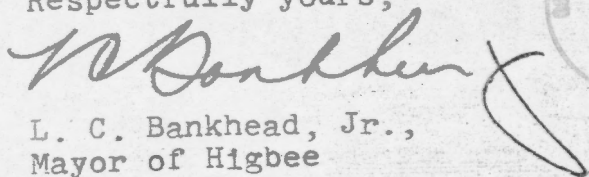
Dear Mr. President:

The City of Higbee is at the threshold of a comprehensive improvement period, brought on both by our successes in securing needed financial assistance from the federal and state governments, and an increased interest and inclination to serve on the part of our private citizens.

A keystone of this period is a \$211,000.00 waterworks improvement project to be funded under the Community Development Act of 1974 by the Department of Housing and Urban Development. According to local HUD officials, we will receive these funds as soon as the contracts pertaining to them are returned, which should be within a few days. This project is already being hampered by slowness at the Interstate Commerce Commission, and finding this in line with your views on reducing government hindrances, I thought I should bring this matter to your attention as an illustration of how a small community could be severely hampered just when it had the inclination and financial ability to move ahead.

Attached is a copy of a letter I sent today to Congressman James Symington setting forth in detail our feelings in this matter. I sincerely hope that you and your staff will have an opportunity to review this matter in our behalf, as its successful conclusion will open many doors for our efforts in making Higbee a self-respecting, and I hope, self-supporting community.

Respectfully yours,

  
L. C. Bankhead, Jr.,  
Mayor of Higbee



encl.



"A BICENTENNIAL CITY"



THE WHITE HOUSE

WASHINGTON

December 20, 1975

MEMORANDUM FOR: DOUG BENNETT  
FROM: PHIL BUCHEN *P.*  
SUBJECT: Chairman of FTC

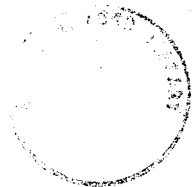
In talking with the Attorney General the other day, he raised a concern that the appointee be a man whose outlook on the regulatory process is consistent with the President's efforts toward regulatory reform. He believes that the following people would meet this criteria:

William Kenneth Jones of Columbia

William Baxter of Stanford

Wesley J. Liebeler, who has been Director of the Office of Planning and Evaluation for the FTC

The Attorney General points out that John Barnum's record on being sympathetic with reducing the degree of regulation over private business has not been good in his judgment.



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# Regulatory Report/Administration mulls plan to limit state insurance regulation

by Richard E. Cohen

Administration officials are assessing the reaction to a proposal that would curtail substantially the state regulation of property and casualty insurance rates. They expect to make a decision within a few weeks on whether to continue their inquiry and eventually submit a specific proposal to President Ford.

A memorandum proposing "to promote competition in the insurance industry," that was circulated within the White House and Justice Department by the department's Antitrust Division, was obtained by some members of the insurance industry, much to the consternation of its drafters. It has placed the division in a swirl of controversy.

Insurance company and trade association representatives and even some Administration officials have said the recommendations lack adequate supporting data and demonstrate a superficial or even naive view of the industry. On the other hand, many of these persons agreed that the division has latched onto a good target in its over-

## Two-part Series

This is the second of two articles on the efforts of the Ford Administration to promote freer competition within the insurance industry. The first article appeared in Vol. 7, No. 50, p. 1701.

all review of anti-competitive practices sanctioned by federal law.

The recommendations, which Antitrust Division officials insist were only in "draft" or "working paper" form when they were leaked, would change federal law to prohibit insurance companies from pooling most of their data and meeting together to reach suggested rates and to remove from state officials the authority to prescribe rates. Under the proposal, the states would retain the power to engage in non-rate-making regulation of insurance companies, such as setting insolvency standards and auditing the companies.

White House and Justice Depart-

ment officials, who prepared several regulatory reform proposals that Ford sent to Congress in 1975, say they are uncertain whether they will advise him to submit a proposal dealing with insurance regulation and, if so, exactly what it would include. However, they make clear their belief that insurance regulation raises many of the same problems they have sought to address in other industries. Nor do they deny that the recommendations in the Justice Department memo would represent the general elements of their legislative package.

**Different twists:** Aside from the fact that property and casualty insurance is a significant sector of the economy, with annual premiums of \$45 billion and 700,000 employees, according to industry figures, the issues facing the White House regulatory reform group are complex and present different problems from other issues they have faced.

In particular, a proposal to reduce regulation of the insurance business would put Ford, who has been stress-

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NATIONAL  
JOURNAL  
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The Domestic Council Review Group on Regulatory Reform plans to review a proposal to reduce insurance regulation



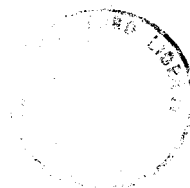
THE WHITE HOUSE  
WASHINGTON

*Federal  
Maintenance  
Comm*

May 31, 1976

MEMORANDUM FOR: KEN LAZARUS  
FROM: PHIL BUCHEN *P.*  
SUBJECT: "Third-Flag" Legislation

Attached is material on the above subject consisting of a memorandum to me from Paul Leach and a letter to me from Karl Bakke. I would appreciate your assuming responsibility for keeping track of the new legislation being developed by OMB.



THE WHITE HOUSE  
WASHINGTON

May 31, 1976

MEMORANDUM FOR: KEN LAZARUS  
FROM: PHIL BUCHEN *P.*  
SUBJECT: "Third-Flag" Legislation

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THE WHITE HOUSE

WASHINGTON

May 31, 1976

Dear Karl:

Thank you for sending on the additional items concerning the "Third-Flag" legislation proposed by the Federal Maritime Commission.

I understand that Paul Leach of the Domestic Council staff and OMB are in the process of suggesting an alternative bill.

Sincerely,



Philip W. Buchen  
Counsel to the President

The Honorable Karl E. Bakke  
Chairman  
Federal Maritime Commission  
Washington, D. C. 20573



Federal Maritime Commission  
Washington, D.C. 20573

Office of the Chairman

May 28, 1976

Philip W. Buchen, Esq.  
Counsel to the President  
The White House  
Washington, D.C. 20500

Dear Phil:

Enclosed are two items that may be of more than passing interest to you:

- Copy of my testimony before the Merchant Marine Subcommittee, House Merchant Marine and Fisheries Committee, on the pending "Third Flag" legislation; and
- Copy of my speech before the Maritime Administrative Bar Association on streamlining agency procedures and expediting the hearing process.

I still think the Administration has passed up a great opportunity to score a lot of points, both here and abroad, on the "third flag" issue, but I realize that there are many conflicting priorities involved.

Cordially,

*Karl*

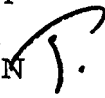
Karl E. Bakke  
Chairman

Enclosures

THE WHITE HOUSE

WASHINGTON

May 31, 1976

MEMORANDUM FOR: PAUL LEACH  
FROM: PHIL BUCHEN   
SUBJECT: "Third-Flag" Legislation

Many thanks for your memorandum of May 27. I have since received a note from Karl Bakke expressing disappointment that the Administration has not decided to support the Federal Maritime Commission's "Third-Flag" bill. He has referred me to his testimony before the Merchant Marine Subcommittee in the House on May 26th and his speech of May 27th to the Maritime Administrative Bar Association. I assume you have copies of both.



THE WHITE HOUSE

WASHINGTON

May 27, 1976

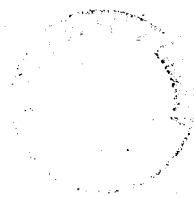
MEMORANDUM FOR: PHIL BUCHEN  
FROM: PAUL LEACH *PL*  
SUBJECT: "Third-Flag" Legislation

On the same day that I received your May 11 memorandum regarding Karl Bakke's proposal (see Tab A), Jim Lynn's memo on the FMC "Third-Flag" Bill also arrived (see Tab B). Subsequently, this Lynn memo went to the President for a decision.

I have tracked this decision process and apparently the President decided on Option 3 "Support a bill of significantly more limited proportions than the FMC draft bill." A bill is now in the drafting process.

I will continue to watch this one, which is now on a "fast track."

Other than the materials which I have returned to you with Tab A, I have kept everything else (primarily news clippings), but will be happy to return these also should you want them.



THE WHITE HOUSE  
WASHINGTON

May 11, 1976

MEMORANDUM FOR: PAUL LEACH

FROM: PHIL BUCHEN 

On Friday, May 7, Karl Bakke, Chairman of the Maritime Commission brought in the attached material and briefly reviewed it with me.

I would appreciate your looking into the possibility of having the President become involved by proposing to Congress a "Controlled Carrier Bill," such as that which the Federal Maritime Commission has drafted. Karl Bakke points out that it would be appropriate for the President to use that occasion for announcing his policy initiatives concerning the Controlled Carrier problem.

Attachments



## 1. Problem

- A. Penetration as non-conference carriers by merchant fleets of non-market economy countries (principally USSR and Poland) into U.S. trades (N. Atlantic Europe/East Coast U.S.A. and Japan-Hong Kong/Pacific Coast U.S.A.). Especially acute since U.S. depends heavily on foreign flag vessels in our liner trades -- in 1975, 70% moved on foreign bottoms.
- B. Other Free World countries also deeply concerned over Soviet penetration into their ocean trades.
- C. We are in danger of losing ground in the fundamental area of economic survival to a system that appears to be using its merchant fleet for political purposes in a predatory, anti-competitive fashion.

## II. Background

- A. In the last 5 years, the Soviet fleet has grown from 0 containerships, 0 RO/RO (Roll-On/Roll-Off) ships, and 0 LASH-type (barge carrying) ships, to 11 containerships, 25 partial containerships, and 16 RO/RO ships. In addition, the USSR has launched a building program for LASH-type ships. Current Soviet construction plans call for bringing on line 35 new containerships over the next 5 years, each with capacity in excess of the equivalent of 300 20-foot containers. Each ship capable of entering U.S. trade.
- B. Until 1966, the USSR did not participate in the U.S. foreign ocean trades. By the end of 1975, the Soviet liner fleet had penetrated our 12 major U.S. trade routes. In Japan/U.S. trade, USSR is now carrying 9% of our inbound cargo and 5% of our outbound cargo.
- C. Rates quoted by the USSR are from 15% to almost 50% below conference rates in our Pacific trades (Japan/U.S. West Coast).

Examples as of 3/4/76 from published tariffs of FESCO (Far East Steamship Co.) --

### a. Westbound Rates

- (1) Aluminum sheets and plates, unwrought  
\$37.50/short ton -- 46.2% below conference



- (2) Aluminum bars and rods  
\$61.25/short ton -- 25.5% below conference
- (3) Poultry feed  
\$54.25/long ton -- 23.4% below conference
- (4) Peas and beans (dried)  
\$39.25/short ton -- 43% below conference
- (5) Carpets and rugs  
\$59.25/short ton -- 46.5% below conference

b. Eastbound rates

- (1) Bicycles/1000 kilos or cubic meter  
\$38.00 -- 22% below conference
- (2) Nails  
\$43.50/1000 kilos -- 37% below conference
- (3) Yarn - Man-made fibers  
\$54.00/1000 kilos or cubic meter --  
16.9% below conference
- (4) Porcelain, Earthenware, and China  
\$35.30/1000 kilos or cubic meter --  
16.8% below conference

D. "Third Flag Bill"

Sen. Inouye introduced S. 868 on October 12, 1973. Senate Commerce Committee reported it out on December 12, 1974. House hearings have been held and more are scheduled for May 26, 1976. FMC has been asked to testify.

Inouye bill cannot be administered effectively, in FMC opinion, because:

- a. "Compensatory Rate" concept is meaningless
- b. Failure to shift burden of proof
- c. No suspension authority

E. "Controlled Carrier Bill"

FMC has drafted counter proposal currently under review by OMB:

- a. "Just and reasonable" concept.

- b. 7+7 suspension authority.
- c. Shift burden of proof.

There is every reason to believe that Senator Inouye will accept the FMC counter proposal, and that the prospect of passage is excellent.

- F. At a press conference prior to a speech before the N.Y. Chapter of the National Defense Transportation Assn. on 4/21/76, Zumwalt was critical of Administration for not meeting Soviet Merchant Marine challenge. Zumwalt called for U.S. to strengthen its rate policing activities to meet Soviet threat as Soviets mean to "sweep us off the seas." Zumwalt stated that U.S. has lots of carrots (grain) to get Soviets into compliance and that he sees long-term objective to be get Soviets into compliance with western capitalistic standards (conference membership). Zumwalt criticized Administration performance under Merchant Marine Act of 1970 which has 300 ship target by 1980. Zumwalt stated performance poor with no chance of meeting goal. Zumwalt theme received big play in Japan.
- G. Major trading partners are looking to us for leadership in controlling inroads of nonmarket economy merchant fleets.

### III. Presidential Involvement with Controlled Carrier Bill.

#### A. Con.

1. Might conflict with other more compelling foreign policy considerations.
2. Truly hard evidence to document full scope of present and future problem is difficult to obtain.
  - a. Size of Soviet fleet and building plans subject to controversy.
  - b. No proof as to intent of deployment of fleet, although to date it has been directed toward the most lucrative trades (U.S., Japan, Western Europe).



3. Against the background of detente, Soviet protestations that intentions are honorable (Masloff and Averin).

B. Pro.

1. Peace through strength. Viable ocean trade is at the very heart of this theme.
2. Leadership in dealing with a major international policy problem that Henry Kissinger hasn't pre-empted.
3. Campaign issue of major significance, with strong appeal to conservative and labor blocs. Should Democrat Congress be allowed to steal initiative from President on an issue of this magnitude?
4. FMC has come up with a bill that will work, thus backstopping the President.
5. The timing now is perfect, with Maritime Day coming up on May 22.

IV. Options.

- A. President do nothing.
- B. FMC proceed with lead without explicit Presidential, but tacit Administration, support.
- C. Limited Presidential Involvement.

President transmit "Controlled Carrier" bill to Congress with appropriate message, then toss ball back to FMC.

- D. Full Presidential Involvement.

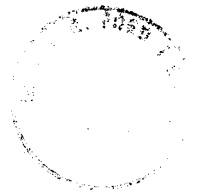
President delivers Maritime Day speech May 19, 1976, at San Francisco, California Propeller Club. Approximate audience 1000-1500. (Chairman Bakke currently slated to make address.) At that time, President announces transmission of Controlled Carrier Bill to Congress and makes it a campaign issue, hitting hard on --

1. Peace through strength.

2. Foreign policy leadership independent of Kissinger.
3. Importance of a strong U.S. Merchant Marine.
4. Protecting U.S. jobs (merchant marine, longshoremen, stevedores, and support industries).
5. Post-Vietnam hard line on predatory actions by the Communist countries.

V. Recommendation.

Option D.





EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

MAY 14 1976

MEMORANDUM FOR:

THE PRESIDENT

FROM:

James T. Lynn *OLynn*

SUBJECT:

Federal Maritime Commission's Successor  
Bill to "Third-Flag" Legislation

ISSUE

What position should the Administration take regarding a Federal Maritime Commission (FMC) draft bill entitled the "Ocean Shipping Act of 1976"?

BACKGROUND

FMC is requesting Administration clearance of a draft bill entitled the "Ocean Shipping Act of 1976," a successor bill to previous so-called "third-flag" bills which were active last session of Congress. These bills are commonly seen as a way to deal with Soviet-flag shipping competition in the U.S. foreign trades. Proponents of these bills--namely U.S. ship operators, maritime labor unions, and the FMC--claim that state-owned or state-controlled carriers, like the Soviet carriers, are not necessarily operated on a profit basis. It is alleged that these carriers unfairly underprice their services to gain larger shares of international shipping markets. European ship operators have made similar complaints against the Soviets.

The proposed FMC bill provides the FMC with new powers in the regulation of state-controlled ocean carriers. The basic provisions of the proposed bill are as follows:

- "Controlled carriers", for purposes of additional FMC regulation, include all carriers whose assets are owned primarily by, or whose operations are directed by, governments whose vessels are not accorded most-favored-nation treatment.
- Increased FMC regulation of controlled carrier rates does not apply to trades between the U.S. and the foreign country which owns or operates the controlled carrier. Rather, it only applies to "third-flag" carriage (e.g., Soviet-flag carriage between the U.S. and Japan).





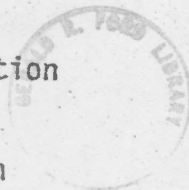
- FMC is empowered to disapprove controlled carrier rates which are below levels which are "just and reasonable." FMC is provided with wide discretionary powers in making determinations of "reasonableness."
- The burden of proof is on controlled carriers to demonstrate that their rates are "just and reasonable."
- FMC is authorized to suspend controlled carrier rates for a total period not exceeding 14 months, pending investigation (currently FMC has no rate suspension powers). Furthermore, controlled carriers are required to file statements of justification for rate decreases.
- Controlled carriers are required to designate and retain a registered agent in the U.S. who shall maintain complete business records.
- FMC is provided with a \$2 million appropriation authorization for additional staffing to handle increased workload brought about by the above provisions.

U.S. exporters and importers opposed the "third-flag" bills last session because they felt that FMC would use its new authorities to restrict competition by third-flag carriers by subjecting them to minimum rate controls, the results of which would be to increase ocean freight rates to the U.S. and to strengthen the cartel-like ocean shipping conference system. The Administration (DOT) also opposed the third-flag bills last session because: (a) such legislation was contrary to the purposes of regulatory reform and tended to discriminate against third-flag carriers; and (b) FMC was believed to have sufficient authority to deal with alleged Soviet-flag rate-cutting.

#### CURRENT STATUS

Third-flag legislation was considered in both the House Merchant Marine and Fisheries Committee and the Senate Commerce Committee last year. However, because of importer/exporter and Administration opposition, it never reached the House or Senate floor.

The House Committee, however, is anxious to reconsider the legislation and has asked Chairman Bakke of the FMC to testify on May 26. The Committee has indicated that it wants the bill at least ten days before the hearing (May 16) to distribute to other parties who wish to testify. We anticipate that the bill will receive a favorable House hearing. The Senate Committee is expected to await House action before considering the bill.



## OPTIONS

1. Oppose the FMC draft bill. Request the FMC to use its current authorities to deal with any unreasonably low rates which may be filed by the Soviets.
2. Support the FMC draft bill with some modifications agreed to by FMC.
3. Support a bill of significantly more limited proportions than the FMC draft bill.

## DISCUSSION OF THE SOVIET-FLAG PROBLEM

Neither the FMC nor the maritime industry have made much of an effort to demonstrate that a Soviet-flag shipping problem exists. Unanswered questions are as follows:

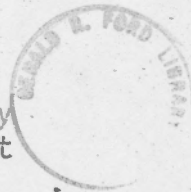
- To what degree are Soviet-flag carriers competing in the U.S. foreign trades?
- Is there evidence that the rates under which they are competing are lower than other non-conference carriers and/or are in any way predatory?
- If the FMC believes that rates filed by Soviet-flag carriers are predatory, why hasn't it taken action under its existing statutory authorities to deal with the problem?

Available information indicates the following:

### Soviet-Flag Competition

The most recent statistics available from the FMC (the first 9 months of 1974) indicate that the Soviets carry a relatively modest 4% of U.S. exports and 3% of imports in trades served by scheduled carriers (liners). About half of Soviet carriage occurs in the U.S. Pacific Coast--Far East market, where the Soviets carry 6% of exports and 7% of imports.

Shipowners claim that they are not so much concerned by the relatively small percentage of trade now carried by the Soviets as they are about the future, which could increase that percentage into the teens and beyond. However, data provided by the FMC indicate that the Soviet liner fleet is anticipated to expand in tonnage capacity by only 2% from 1976 to 1981. Although the competitive capabilities of the Soviet fleet will be upgraded in that period by the replacement of old breakbulk vessels with more efficient containerships, there does



not appear to be reason for alarm that the Soviets will suddenly emerge as a dominant merchant maritime power. This finding has been confirmed by a 1975 CIA report which indicates that: (a) a number of long-standing deficiencies place the Soviet merchant fleet behind Western fleets in maritime technology (e.g., the average size of Soviet merchant ships is less than half the world average); and (b) although the Soviet fleet will be improving in the next five years, it will still lag behind Western maritime powers.

### Soviet-Flag Freight Rates

U.S. and European ship operators deeply mistrust Soviet intentions and allege that the Soviets are charging rates which are commercially non-compensatory. To support the contention, the ship operators normally quote specific rates filed by the Soviets which are substantially below comparable ocean shipping conference rates.

FMC has provided data on freight rates for selected major commodities moving in the U.S.-Europe and U.S.-Far East trades. In comparing the Soviet rates with other rates filed by U.S.-flag and foreign-flag non-conference operators, it appears that the Soviets peg their rates very closely to the rates of other non-conference carriers (which can be as much as 20-50% lower than conference rates.) This finding is confirmed by a 1975 FMC staff report which indicates that although the Soviets have established rate levels substantially below conference rates, they "have endeavored...to avoid the position of being the lowest non-conference carrier."

On the other hand, we agree that a potential problem exists in that the Soviets, unlike other ship operators, could choose to operate their ships for other than profit motives--for example, to earn hard currency or for political/military reasons.

### FMC Authority to Deal with Low Rates

Section 18(b)(5) of the 1916 Shipping Act authorizes FMC to "disapprove any rate or charge filed by a common carrier of the U.S....which, after hearing, it finds to be so unreasonably high or low as to be detrimental to the commerce of the U.S." FMC contends that this authority is insufficient for the following reasons:

- The burden of proof is on the FMC or complainant to show that the rate is unreasonably low;
- Formal proceedings are by necessity lengthy (one to two years), and FMC does not have rate suspension powers pending the outcome of the proceedings;



- Unduly low rates can only be dealt with on a rate-by-rate basis; and
- In the case of foreign flag lines, necessary financial data are usually located overseas where the FMC cannot enforce its subpoena powers to produce the necessary documents.

On the other hand, DOT, in a March 11 study on FMC's Section 18(b)(5) authorities concluded that:

"Section 18(b)(5)...provides enough authority for the FMC to promptly and adequately address the problem of unreasonably low rates charged by non-national or third-flag ocean carriers in the foreign commerce of the U.S. The duration of past Section 18(b)(5) cases was not the result of any shortcomings in the law, but rather the result of the administration of the law which led to unnecessarily long delayed reports of decisions. Revisions of FMC rules of practice may be needed, but amendment of Section 18(b)(5) is not required."

In short, there is a basic difference of opinion as to the sufficiency of Section 18(b)(5) to deal with unreasonably low rates. Despite the fact that FMC believes 18(b)(5) is insufficient, it is difficult to understand why FMC has not tried to take any regulatory action against low Soviet rates if it believes that these rates are so low as to be predatory. If it tried and failed, FMC's case for the need for additional legislation would be a great deal stronger than it currently appears to be.

#### AGENCY POSITIONS AND SHIPPER VIEWS

Nine agencies have provided views on the FMC draft bill. DOT, Justice, Treasury, CEA, and CIEP oppose the bill for similar reasons, as cited below:

- The FMC has not demonstrated that a Soviet-flag problem clearly exists; nor, if it does exist, why it cannot use existing authorities to deal with it.
- Insofar as the bill strengthens FMC authorities over a segment of the ocean liner industry, it runs counter to the trend to reduce transportation regulatory activities.



- The bill would tend to restrict competition by state-controlled carriers by subjecting them to minimum rate controls to which other carriers would not be subject. The likely result of such regulation would be to strengthen ocean shipping conferences and thereby increase ocean freight rates (although to an unknown degree).

State reports that it would not oppose new legislation, if properly drafted, which would prevent predatory rate practices in the U.S. foreign trades; but that the FMC bill presents significant foreign policy and economic problems. Principally, under the FMC bill, the test of state ownership or control of a vessel is not limited to the country under whose flag the vessel is registered. Rather, it encompasses the government which has ultimate control of the vessel (e.g., a Soviet vessel registered under a "flag of convenience," such as Liberia). State indicates that under international law, it is the state of a vessel's registry alone which determines the legal status of a vessel. Allowing the FMC to go "behind the flag" would be in violation of treaty commitments. Additionally, State objects to: (a) the bookkeeping requirement imposed by the bill because it is unnecessary and could engender similar practices in other countries; and (b) the burden of proof and rate suspension provisions proposed by FMC because these provisions may be overly restrictive.

Office of the Special Representative for Trade Negotiations reports that it favors the general intent of the legislation but that it defers on the technical aspects of the bill.

Commerce defers to the views of FMC and Labor defers to other agencies more directly concerned.

Most exporters and importers that opposed last year's bills indicate that they do not intend to oppose the FMC proposal because it limits increased FMC regulation to a much smaller range of third-flag carriers--state controlled carriers. Although they would prefer that no bill be enacted, they would rather accept the FMC bill than have to continue to fight against potentially more harmful legislation. However, exporters and importers in the Great Lakes region will continue to oppose the bill because, in many instances, the Soviets are the only carriers providing shipping services to the region.

#### DISCUSSION OF OPTIONS

- Option #1 -- Oppose the FMC draft bill and request the FMC to use existing authorities to deal with any unreasonably low Soviet rates.



Reasons for this option have been cited above by the various agencies, namely: (a) there is a lack of showing of need for a bill; (b) the bill is contrary to the purposes of regulatory reform; (c) the bill may have an adverse impact on freight rates; and (d) the bill has negative foreign policy impacts.

Option #2 -- Support the FMC draft bill with some modifications agreed to by the FMC. Reasons for supporting the bill include: (a) the Soviets have the capability of charging non-compensatory rates, whether or not they are actually doing so now; and (b) the perception of a threat by U.S. operators tends to discourage investment and create instability. Changes agreed to by the FMC include the following:

- Alternative language to avoid violations of treaty and international law;
- Softening of the provision which would shift the burden of proof regarding low rates onto the controlled carriers; and
- Deletion of the \$2 million appropriation authorization for FMC.

Option #3 --- Support a bill of significantly more limited proportions than the FMC draft bill. In addition to several of the modifications included in option #2, such a bill would further restrain expansion of FMC's authorities in the following way:

- Burden of proof regarding rate reasonableness would be clearly retained with the FMC, rather than shifted onto controlled carriers;
- Variable costs would be established as the sole standard for determining whether rates are reasonable;
- FMC would only be permitted to suspend controlled carrier rates if they were: (a) lower than those charged by any non-controlled carrier in the trade; and (b) more than 15% below shipping conference rates;
- Although controlled carriers would be required to submit data needed by FMC, they would not need to retain a registered business agent in the U.S.; and



- The President would be given authority to postpone, discontinue or suspend any FMC action for foreign policy or national defense reasons.

#### CONCLUSION AND OMB RECOMMENDATION

Most of the agencies primarily concerned with the legislation--notably DOT, Justice, Treasury and CEA--have indicated a preference for option #1 (to oppose the FMC draft bill). However, they feel that some progress has been made in "watering down" the original FMC draft bill, per option #2, and they believe that option #3 (to support a bill of significantly more limited proportions) goes a long way in meeting their objections to the FMC draft bill. State believes that some type of limited legislation is desirable, and supports a bill along the lines of option #3.

On merit alone, OMB recommends option #1. Like the other agencies, we believe that the FMC has made a poor case for the need for this legislation and has failed to make a "good faith effort" to use its existing authorities if it believes the Soviets are charging unreasonably low rates.

On the other hand, option #3 has some value in the following respects:

- Without shipper opposition to the bill, there is a strong chance that both House and Senate Committees will report out a bill; and
- If a bill is enacted by Congress (and unless you should decide to veto it), it would be preferable to try to work in provisions which minimize the potential negative aspects of the bill.

#### DECISION

\_\_\_\_\_ Option #1. Oppose the FMC draft bill and request FMC to use its current authorities to deal with any problem.

\_\_\_\_\_ Option #2. Support the FMC draft bill with some modifications agreed to by FMC.

\_\_\_\_\_ Option #3. Support a bill of significantly more limited proportions than the FMC draft bill.



NATIONAL SECURITY COUNCIL

November 1, 1976

NOTE FOR: PHILIP W. BUCHEN

Phil,

The attached draft represents an effort to reflect your comments in the President's response to Karl Bakke. Could you please let me know if you find it satisfactory, or if you have any suggested changes? Copies of Bakke's incoming letters are attached.

RHM

Robert Hormats  
x3393

*Called the writer  
11/2 to suggest words  
of commendation.*



THE WHITE HOUSE  
WASHINGTON

Dear Mr. Chairman:

Thank you for your informative letters of July 19 and September 17 concerning the "Memorandum Agreement" between the Federal Maritime Commission and the Soviet Ministry of Merchant Marine, which you signed last July. I am hopeful that your "Agreement" will help to stabilize ocean liner trade, result in healthier competition among carriers, and bring better service to shippers and consumers.

Please continue to keep me informed of any further significant developments.

Sincerely,

The Honorable  
Karl E. Bakke  
Chairman  
Federal Maritime Commission  
1100 L Street, N. W.  
Washington, D. C. 20573





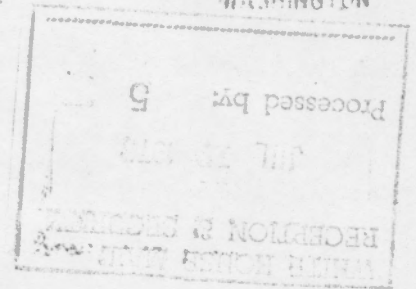
Federal Maritime Commission  
Washington, D.C. 20573

1976 JUL 19 PM 5

REC... SECURITY UNIT  
HOUSE  
WASHINGTON

Office of the Chairman

July 19, 1976



The President  
The White House  
Washington, D.C.

Dear Mr. President:

As you know, H.R. 14564, the most recent version of the "Third Flag Bill," is now pending before the Merchant Marine Subcommittee, House Merchant Marine and Fisheries Committee. This proposed legislation would permit retaliatory action when ocean cargo rates in the U.S. trades of a carrier owned or controlled by certain countries cannot be justified on economic grounds.

The authority proposed for FMC in the pending legislation has been opposed by the Office of Management and Budget on behalf of the Administration, notwithstanding which it appears to be on the verge of a favorable Subcommittee report to the full Committee.

In sum, the problem to which the "third flag" legislation is addressed has two aspects: First, rates quoted by Soviet carriers in "cross-trades" appear, in an alarming number of instances, to have been uneconomic by the standards governing ratemaking by free world carriers in those trades; and second, Soviet carriers have expressed only occasional interest in joining liner conferences in the world's ocean trades. These two considerations have led to widespread apprehension concerning the motives and intentions of the Soviet ocean carriers, particularly in cross-trades.



I have just concluded a week of negotiations with officials of the Ministry of Merchant Marine and of the Soviet ocean carriers engaged in the U.S. ocean trades, and believe an accord has been reached that will go far towards dispelling this uncertainty and the instability in ocean trades that has resulted.

The outcome of those negotiations is described in the attached press release, which contains the text of the agreement reached. I am pleased to report this commercial solution to what is, essentially, a commercial problem, as a result of which a legislated solution now appears to be unnecessary so long as the carriers involved move forward in good faith to implement the objectives of the agreement. We will, of course, monitor developments closely.

Respectfully,

*Karl E. Bakke*

Karl E. Bakke  
Chairman

Attachment



# FEDERAL MARITIME COMMISSION

Washington, D.C. 20573

## NEWS RELEASE

COMMISSION CHAIRMAN BAKKE  
ANNOUNCES U.S.-SOVIET  
MEMORANDUM AGREEMENT

Cardin - 523-5764

N-23

FOR RELEASE 9:30 A.M., MONDAY, JULY 19, 1976

Federal Maritime Commission Chairman Karl E. Bakke today announced signing of a memorandum agreement with the Soviet Ministry of Merchant Marine, concerning principles to govern participation of Soviet common carriers in the U.S. ocean cargo trades.

Chairman Bakke said: "This agreement marks what can be a significant turning point in competitive relationships in the common carrier ocean cargo trades of the United States, particularly where the activity involves service between the United States and countries other than the carriers' own. We are now on the threshold of stability in those liner trades, with cooperation rather than confrontation, reasonable certainty rather than potential chaos, and a structure of ocean cargo rates that will better reflect the legitimate economic interests of carriers, shippers and consumers."

The agreement commits the good offices of the Commission and the Ministry to accomplish two results. First, Soviet carriers will raise, where necessary, and maintain ocean cargo rates at a level not lower than the lowest rate actually used for the same commodity by any non-Soviet carriers in the particular trade involved. Second, Soviet carriers will actively pursue membership, on equitable terms and conditions for all member carriers, in liner conferences covering the U.S. North Atlantic and Pacific ocean cargo trades.

Chairman Bakke said: "Implementation of these commercial solutions to a commercial problem will clearly be of benefit to all concerned. I am confident that necessary actions can be taken by all carriers in mutual good faith."

(more)



The agreement was reached and signed in Leningrad, climaxing a week of intensive discussions with representatives of the Ministry of Merchant Marine and of major Soviet ocean carriers. Chairman Bakke reported that in the course of those meetings, "Certain definite principles emerged as the catalyst for agreement:

"The importance of a viable liner conference system in maintaining stability in the liner trades of the United States in which Soviet carriers participate;

"The legitimate economic interests of carriers, shippers, and consumers that are served by liner conferences in the United States ocean trades;

"The long-term benefits to commercial relationships between the Soviet Union and the United States that can be realized from stability of ocean cargo rates in those trades."

He also commented that: "The Soviet commitment to pursue liner conference membership in the U.S. Pacific trades was clearly influenced by the recent commitment of conference carriers engaged in those trades to end malpractices and henceforth to maintain an effective system of self-policing. Positive action in that direction has been initiated by the carriers involved, and it is significant that the Soviet carriers have not approached these important developments with a "let's see what happens" attitude. Rather, they also have committed to specific principles to govern their course of action in the U.S. liner trades on the basis that expectations of a commitment made in good faith will be observed in good faith. Soviet carriers should now be able to expect the same from other carriers operating in the U.S. liner trades."

Chairman Bakke concluded his remarks by saying: "When I assumed office as FMC Chairman in November 1975, there were two monumental problems facing the Commission: Malpractices in the U.S.-Pacific liner trades, and the rate policies of Soviet carriers in the U.S. liner trades. Action towards resolution of the first was set in motion at an owners' conference in Kyoto last April, and it appears that a basis for resolution of the second has now been established in the accord reached in Leningrad. I trust that both initiatives will proceed with gathering momentum."

The text of the Memorandum Agreement follows:

(more)



MEMORANDUM AGREEMENT

Having discussed fully and freely matters of mutual interest concerning the liner trades of the Soviet Union and the United States, and

Having agreed upon the importance of a viable liner conference system in maintaining stability in those trades, and

With due regard to the legitimate economic interests of carriers, shippers and consumers that are served by liner conferences in the United States ocean trades, and

With due regard to the long-term benefits to commercial relationships between the Soviet Union and the United States that can be realized from stability of ocean cargo rates in those trades,

The parties hereto have mutually agreed to utilize the good offices of their respective agencies to achieve the following:

1. All ocean cargo rates contained in tariffs of Soviet carriers now engaged as independents in the liner trades of the United States shall, as promptly as it is feasible, be adjusted to a level no less than that of the lowest rate in use for the same commodity of any other independent carriers in those trades,
2. Thereafter, prompt action shall be taken, as necessary, to maintain the foregoing relationship between ocean cargo rates of Soviet carriers engaged as independents in the liner trades of the United States and the ocean cargo rates for the same commodity contained in the tariffs of other independent carriers in those trades,
3. Discussions shall promptly be resumed concerning equitable terms and conditions for conference membership of Soviet carriers in the North Atlantic liner trades of the United States, with particular attention to the principle of temporary rate differentials for Soviet carriers in those trades based upon differences in the services offered by Soviet carriers and by other carriers in those trades, such rate differentials to be (a) reasonably related to the degree of differences in such services, and (b) to be promptly eliminated as the services in question reach a reasonable degree of comparability, and
4. Discussions shall promptly be initiated concerning equitable terms and conditions for conference membership of Soviet carriers in the inbound and outbound conferences serving Pacific liner trades of the United States in which the Soviet carriers are not now conference members, with particular attention to the principle of temporary rate differentials for Soviet carriers as set forth in paragraph 3 above.

The parties hereto have also mutually agreed that henceforth there must be closer working relationships between their respective agencies concerning exchange of factual information and policy questions, and that the necessary steps shall be promptly undertaken.

END MEMORANDUM AGREEMENT/END. RELEASE





Federal Maritime Commission  
Washington, D.C. 20573

11/11/99  
5274

Office of the Chairman

September 17, 1976

The President  
The White House  
Washington, D.C. 20500

RH  
encl

Dear Mr. President:

Further in connection with my July 19 letter to you concerning the "Memorandum Agreement" between the Federal Maritime Commission and the Soviet Ministry of Merchant Marine signed in Leningrad last July 16, I am pleased to enclose copies of articles from today's Journal of Commerce and Baltimore Sun, reporting significant action by Soviet ocean carriers operating as independents in the U.S. liner trades pursuant to the terms of that agreement.

These developments are very encouraging, and represent a substantial step in the direction of allaying current concern about predatory rate policies and practices by Soviet carriers in our ocean trades.

I will, of course, keep you advised of further developments.

Respectfully,

Karl E. Bakke

Karl E. Bakke  
Chairman

Enclosures



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## Baltatlantic Acts to Join Conferences

Soviet Line Reaches  
Agreement to Join  
'On Certain Terms'

By CHARLES F. DAVIS  
Journal of Commerce Staff  
A major Russian-flag car-

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## *Soviet Ship Line Moves To Join Rate Conference*

(Continued from Page 1)  
moving between the U. S.  
and Soviet ports.

The discussions and  
agreements which took  
place at the Amsterdam  
meeting appear to be a di-

Bakke, and that MORAM  
would be promulgating a  
number of tariff revisions  
in the next several weeks.

While Mr. Novacek did  
not state the rates would be



# Soviet to aid rate crisis in Pacific

By JOSEPH S. HELEWICZ

The Soviet Union, apparently satisfied that the United States is making a serious effort to curb cut-throat shipping practices in the Far East trades, will make its own move within the next few weeks to help ease the shaky competitive situation in the Pacific.

Arthur C. Novacek, the president of Morflot America Shipping Company, told Baltimore maritime interests yesterday that his principals, the Russian-flag Far Eastern Shipping Company (FESCO), are



THE JOURNAL OF COMMERCE, Monday, September 20, 1976

## Russian Pact Seen Major Step Forward

# FMC Acts to Stabilize, Reform Rate Practices in U.S. Trades

By CHARLES F. DAVIS  
Journal of Commerce Staff

Successful implementation of the agreement between the United States and Soviet Russia, in which the latter will stabilize its minimal general cargo rates at the lowest level of non-Communist third flag carriers engaged in U. S. offshore trades, will be a big step forward in bringing order to

cent under conference levels.

This has been possible for the Soviets because of lower costs — wages, to name one major item — and the fact that Soviet shipping is not conducted on the same commercial and profit

Mr. Bakke had not taken a stand on the question of minimum acceptable rates, indicating, however, that he believed them to be unnecessary interference into the rate making practices of common carriers. He also expressed caution as to the feasibility of automatic sus-