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STATEMENT OF ROBERT HENRI BINDER, ASSISTANT SECRETARY  
FOR POLICY, PLANS AND INTERNATIONAL AFFAIRS, U. S.  
DEPARTMENT OF TRANSPORTATION, BEFORE HOUSE COMMITTEE  
ON MERCHANT MARINE AND FISHERIES ON H.R. 12428 and  
H.R. 12429, THURSDAY, DECEMBER 19, 1974.

Madam Chairman and Members of the Committee:

Thank you for your invitation to present the views of the  
Department of Transportation on H.R. 12428 and H.R. 12429, bills  
which amend the Shipping Act of 1916 to facilitate intermodal  
transportation.

The growth of intermodal transportation -- involving a  
combination of air, water and surface carriers -- reflects our develop-  
ment from a regional to a national and international economy. But  
it presents a challenge to the three transportation regulatory agencies  
which were designed to regulate different components in our transportation  
network.

The Department has increased its attention to eliminating  
institutional barriers to intermodal transportation. The needs  
of the marketplace and requirements of increased efficiency,

energy conservation and lowered costs will lead to an expanding role for intermodal arrangements in the future. This will benefit producers and consumers, simplify confusing and duplicative procedures, lower the cost of moving freight and cargo, and help us achieve the goal of an integrated and efficient national transportation system. These are important ways to fight inflation.

The Department of Transportation has encouraged development of coherent and effective operating arrangements for intermodal service in domestic and international commerce. These arrangements include through bills of lading, clarification of liability, the efficient interchange of intermodal equipment, and joint through rates. We have regarded these features as major elements in an effective origin-to-destination transportation system under modern conditions.

In the last two years, we have endeavored to make progress in this area, without legislation, through the Interagency Committee on Intermodal Cargo (ICIC). ICIC is an experimental forum involving the Department and the three independent transportation regulatory agencies--the Interstate Commerce Commission, Federal Maritime Commission and Civil Aeronautics Board.

As a result of ICIC's work, a standard and short-form set of terms and conditions for bills of lading was cleared for use by rail, truck and ocean carriers. These terms and conditions have now been accepted; they are being applied to shipper-provided bills of lading for cargo transported by these three carrier modes. I believe ICIC can accomplish much more in helping to resolve the problems raised by intermodal transportation in a coordinated and cooperative way. In this connection, certain provisions in one of the bills before your Committee, Madam Chairman--H.R. 12428-- would be welcome support for the work of ICIC by setting deadlines for the agencies to complete their cooperative work.

H.R. 12428 would amend Section 15 of the Shipping Act by expanding antitrust immunity to include agreements filed by common carriers which involve intermodal transportation. The bill also requires that the three transportation regulatory agencies promulgate within six months of enactment rules and regulations governing the content, format and filing of intermodal tariffs. Finally, it requires the regulatory agencies to report to Congress within one year with respect to the need for additional legislation to facilitate through intermodal transportation of property and also with respect to statutory conflicts which inhibit development of intermodal services.

H.R. 12429 goes somewhat further. Briefly, in addition to granting an exemption from antitrust provisions to intermodal agreements (section 4), it resolves the issue of agency jurisdiction over intermodal carrier services by permitting the intermodal carrier to file a single through rate with the FMC where part of the commerce is waterborne. Nonvessel operating common carriers are excluded from the definition of intermodal carriers.

What of the two issues presented squarely by these bills -- antitrust immunity and regulatory jurisdiction over intermodal transportation?

As to the first, the Department believes the regulatory agencies should seek the least anticompetitive solution to the problems addressed. We have stated this view in our filings with the regulatory agencies, in our legislative proposals, and in our overall policy approach to the transportation field. In the intermodal area, as in others, special circumstances may warrant an exception to our basic policy that favors competition. But the burden of proof is on those who argue for such exception. They must show clear and convincing reasons why we should deviate from an approach which encourages more competition and less regulation.

In the case of H.R. 12428 and H.R. 12429, no need has been shown for collective ratemaking between groups of carriers of different modes. Without such a demonstrated need, the antitrust immunity sought in each of these bills must be assumed to deter rather than promote an efficient allocation of resources and the efficient development of intermodal transportation.

Second is the question of agency jurisdiction. H.R. 12429 would confer exclusive jurisdiction over the intermodal carrier, as therein defined, on the FMC. The ICC has contested this jurisdiction in testimony before your Committee on August 14, 1974. In the past, we have refrained from expressing a view on the selection of either the ICC or the FMC to be the agency to exercise exclusive jurisdiction over intermodal services.

In our judgment, at the present time, the approach taken by sections 2 and 3 of the companion bill, H.R. 12428, is more appropriate. Requiring the three transportation regulatory agencies to issue uniform rules and regulations governing the filing of tariffs for intermodal services, and requiring those agencies to propose such legislation as may be needed, places the burden where it belongs--on the regulatory agencies themselves. In the final analysis, the decision as to divided or shared jurisdictional responsibility will

be a matter the Congress must decide if the agencies are unable to resolve the jurisdictional question short of legislation. But for the present, we believe the better approach is to encourage the agencies to resolve the dispute among themselves and DOT is prepared to help. To this end, we suggest that sections 2 and 3 of H.R. 12428 be amended to authorize the Department of Transportation to participate in the joint regulatory agency deliberations there required.

The Interagency Committee on Intermodal Cargo (ICIC) is an appropriate vehicle to help resolve the jurisdictional question and sections 2 and 3 of H.R. 12428 with our proposed amendment will spur the members of ICIC to work together to identify the needed solutions. ICIC has a proposed work program developed by the Department on which action is scheduled at its next meeting. Legislation will help ICIC to expand its program to include resolution of the difficult jurisdictional question.

In conclusion, first, we believe the antitrust immunity granted by each proposal has not been shown to be necessary and we oppose these provisions for that reason; second, we believe the preferable approach to resolution of the jurisdictional

question is that contained in H.R. 12428 which directs the interested agencies to reach an agreed solution. For these reasons, we support enactment of sections 2 and 3 of H.R. 12428, amended to include the Department as a participant in the discussions, and we oppose enactment of both H.R. 12429 and section 1 of H.R. 12428.

This concludes my prepared statement, Madam Chairman. Now, I or my colleague will be happy to answer any questions you or other members of the Committee may have.

