

STATEMENT OF DR. JOHN J. FEARNSIDES, DEPUTY UNDER SECRETARY, DEPARTMENT OF TRANSPORTATION, BEFORE THE MERCHANT MARINE SUBCOMMITTEE OF THE HOUSE MERCHANT MARINE AND FISHERIES COMMITTEE, CONCERNING H.R. 3055, MAY 16, 1979

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to express the views of the Department of Transportation on H.R. 3055, a bill to strengthen the provisions prohibiting rebating in the maritime transport of goods in the foreign commerce of the United States.

Secret rebating by common carriers is illegal. Last year the 95th Congress passed H.R. 9518 in an attempt to deter rebating in our foreign trades. The President did not sign this bill indicating his desire to achieve its objectives through international negotiations and a comprehensive U.S. maritime policy dealing with the broader organizational and regulatory issues of the U.S. oceanborne trades. The enforcement inequities which characterize our present regulatory system are of great concern to the Congress, the Department of Transportation and to U.S. flag carriers. Due to foreign country blocking statutes, which prevent foreign carriers from giving FMC documents, U.S. carriers are more susceptible to prosecution for rebating than their foreign flag counterparts.

H.R. 3055 is a renewed attempt to deal with these problems and the Department of Transportation fully supports the goals it seeks to achieve. The Department supports a strong U.S. flag fleet which can only survive if the competitive conditions under which it operates are fair and equitable to all participants.

Thus, while we subscribe to the aims of H.R. 3055, we would like to offer some thoughts on certain aspects of the bill. A memo has recently been sent to the President which summarizes the activities of a year long interagency study on the Maritime Liner Industry. That memorandum requests his decision on what the overall policy toward the maritime industry, including rebating should be. Since we do not yet have that decision, we cannot at this time give you a position on this bill.

U.S. carriers face a competitive disadvantage in the conference system. U.S. carriers are effectively required to adhere to their conference tariffs, while certain foreign carriers are effectively able to offer discounts from their conference tariff rates in the form of secret rebates. This is because of the inability of the FMC to enforce our laws equally between U.S. and foreign carriers. The governments of many of these carriers forbid them from producing

their documents for FMC inspection. While these foreign governments strongly support the conference system, their laws have the effect of preventing effective enforcement activities by the FMC to assure the fairness of that system.

Secret rebating is practiced in order to gain a competitive advantage in trades where rates are apparently set higher than the level at which at least some carriers are willing to perform the service. American carriers are hampered in their ability to grant such concessions, however, because they are more vulnerable than their foreign flag counterparts to detection and prosecution by regulatory agencies such as the FMC and the Securities and Exchange Commission.

As a means to promote flexibility in conference rate structures and to reduce the incentive to rebate, DOT would like to suggest that Congress consider whether a right of independent action should be included in all FMC approved rate fixing agreements. Independent action could be a workable way out of rate situations which create frustration to innovative conference carriers. Likewise, shippers seeking to expand their foreign markets could receive expedited decision making in some cases.

The advantages of independent action are: (1) shipper discrimination involved in rebating should be ameliorated by the exercise of independent action by individual carriers and (2) conference ratemaking procedures should be expedited.

Mr. Chairman, this concludes my prepared statement. I will be happy to answer any questions you or other members of the Subcommittee may have.