

STATEMENT OF JOHN M. FOWLER
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BEFORE THE SENATE COMMITTEE ON THE JUDICIARY
ON S. 47, THE "SHIPPING ACT OF 1983"
FEBRUARY 18, 1983

Mr. Chairman and Members of the Committee:

It is a pleasure to appear before this Committee to discuss the Administration's position on proposed maritime regulatory reform legislation.

Regulatory reform of this industry is long overdue. The United States has more foreign commerce than any other country, but maritime regulatory policy is in disarray and often perceived as being at odds with itself. Virtually everyone concerned with the performance of the industry is dissatisfied with the current regulatory framework.

We are in the unique position of being the only major trading country to insist on pervasive government regulation of ocean carrier conduct. Unfortunately, our regulatory policies have helped create the conditions for wasteful excess capacity and other inefficiencies in the United States trades, to the detriment of both consumers and the industry itself. Our attempts to control the conduct of both U.S. and foreign carriers operating in our trades have also produced diplomatic friction with our allies.

This Administration recognizes the need to act to bring order to United States maritime policy. Our major objectives are three fold: to minimize government intervention in business; to put U.S. carriers on an equal footing with foreign carriers; and to maintain a strong U.S. merchant marine.

The Administration and the Congress have considered reforms contained in S. 1593 and H.R. 4374 in the 97th Congress and in S. 47 in the 98th Congress. There have been extensive hearings and public debate over the past year. We were able to obtain passage of reform legislation in the House, but the bill failed to reach the Senate floor in the closing days of the last Congress. That bill had broad-based support from ocean carriers, shippers (e.g. National Industrial Transportation League, small agricultural producers in the Northwest), freight forwarders, port authorities (the American Association of Port Authorities), maritime labor and concerned Congressional committees. This support was unique for this industry and was based on the recognition that replacing the outdated provisions of the Shipping Act would bring certainty, increased efficiency, and lower costs to international ocean shipping, to the benefit of the U.S. economy as a whole, including individual consumers.

Let me briefly summarize the Administration's position on maritime regulatory reform.

Outside of the U.S. trades, closed conferences which may set prices and allocate capacity, routes, and cargo are the rule. In order to give our carriers parity, we believe that conferences in the U.S. trades

should be free to organize along the lines of conferences in the rest of the world, in a way that makes commercial sense, subject to the caveats which I will discuss later dealing with abuse of conference power. These changes will enable conferences to better determine capacity, to offer stable and reliable services, to set rates and rationalize services to obtain a high utilization of their capacity. We believe that these changes will result in greater efficiencies and reduced costs within the conferences, to the benefit of shippers, carriers and the consumers or exporters of goods shipped by ocean transportation.

We believe that the scope of antitrust immunity that currently exists for the industry must be clarified. We favor a regulatory environment where prohibited practices are precisely defined, and where the exclusive remedies for the prohibited conduct are under the Shipping Act. We recognize that the clarification of antitrust immunity in the maritime industry must not permit abuse of conference market power. It is the Administration's position that the measures necessary to prevent conference abuses in U.S. trades can be specified in a manner that will allow the FMC to police conference activities in an effective and timely fashion. We recommend statutory prohibition of clearly predatory practices, such as fighting ships, deferred rebates, and exit penalties. These prohibitions are also designed to prevent conferences from exercising their power in a fashion that would impede independent carriers from operating in U.S. trades.

In this fashion, we expect to create a certain and non-discriminatory competitive environment which will be familiar to both U.S. and foreign

carriers operating in our trades. Carriers should know with certainty what conduct is acceptable. This should facilitate orderly planning and investment. The primary objective of the remaining minimal regulatory oversight is to ensure that conferences not abuse their market power to the detriment of independent carriers. The continuing presence of independent carriers and opportunities for service and time-volume contracts and independent action will preserve alternate price and service options required by shippers, and will ensure that lower transportation costs for ocean shipping services will be passed on to the users of those services.

With regard to the regulatory procedures of the FMC, we recommend continuation of filing and approval of agreements, but only so that specific predatory practices can be effectively prohibited. The approval process should be routine, consisting of a simple examination of the agreement to ensure that it does not contemplate such practices. We favor eliminating regulation of the industry based upon vague and highly discretionary administrative standards, which tend to result in prolonged proceedings and varying interpretations of what conduct is permissible. This approach would contribute to our goal of streamlining and simplifying FMC procedures, minimizing burdens and delays, and ultimately lowering transportation costs.

The Administration is, however, strongly opposed to the provision of S. 47 that would continue to require the filing of tariffs and their enforcement by the Federal government. The government has no business enforcing the prices fixed by a private producer group. Doing so is

not merely unnecessary -- it introduces substantial inefficiencies in conference ratesetting and perpetuates problems of excess capacity. By legalizing free price competition, we would end this harmful government intrusion into the marketplace and allow some flexibility within the conference system as well.

U.S. carriers in particular would benefit from eliminating the tariff filing and enforcement provision, because enforcement of tariffs is more likely to be undertaken effectively against U.S. carriers, who have more documents and officials located in the United States and are more readily accessible to government investigators.

Moreover, ending filing and enforcement of tariffs would bring our practices more in line with those of our allies and major trading partners, who generally accept the conference system but do not enforce rates or require that they be filed with the government.

Our opposition to tariff filing and enforcement is consistent with our general policy favoring removal of Federal rate regulation in competitive markets. Rate deregulation has already proven to be of substantial benefit to consumers in other transportation sectors, and would provide ocean carriers with increased flexibility in establishing prices for their services.

I would also like to mention another concern of the Administration -- that S. 47 make clear that any litigation in the courts of the United States involving the Federal Maritime Commission be conducted by the

Attorney General, as indicated in the attached letter. Present law requires such, and no reason has been put forward to justify any changes. Representation of the agencies of the Federal government by the Department of Justice is in the overall interest of the government and the individual litigant.

We applaud the work of this and other committees of the Congress on this important subject, and look forward to assisting in every way possible to obtain the passage of maritime regulatory reform legislation in this Congress. Mr. Chairman, that concludes my prepared statement.