

STATEMENT OF JIM BURNLEY  
GENERAL COUNSEL  
DEPARTMENT OF TRANSPORTATION  
BEFORE THE SUBCOMMITTEE ON MONOPOLIES AND COMMERCIAL LAW  
COMMITTEE ON THE JUDICIARY  
UNITED STATES HOUSE OF REPRESENTATIVES  
REGARDING H.R. 1878  
MAY 18, 1983

Mr. Chairman and Members of the Subcommittee:

It is a pleasure to appear before this Committee to discuss the Administration's position on proposed maritime regulatory reform legislation. I am accompanied today by Admiral Harold E. Shear, Administrator of the Maritime Administration, and Stuart Breidbart, Chief Counsel of the Maritime Administration.

As we have emphasized in the past, the time for regulatory reform of the maritime industry is long overdue. Virtually everyone concerned with the performance of the maritime industry is dissatisfied with the current regulatory framework. Regulatory reform is critical to any effort to revitalize the American merchant marine. It is an integral part of the Administration's maritime policy because it is so essential to reestablishing the economic health of our merchant marine.

In pursuing the implementation of the Administration's maritime policy, and in working with this Committee and other committees over the past two years to bring about regulatory reform, our primary objectives have been:

First, to minimize government intervention in business. It should not be the responsibility of the Federal government to determine what industry practices might best achieve the efficiencies required by the market place. Experience has shown that an approach which relies on government intervention in the market does not serve the long-term interests of this country. It is imperative that we minimize government involvement in this industry and let the free market work.

Second, to maintain a strong U.S. merchant marine. The President has pledged to reestablish the economic health of our merchant marine, to support our commercial interests abroad, and to meet the need for logistical support for national defense in time of emergency. Restructuring the regulatory framework within which the ocean liner industry operates would be beneficial to the industry in that it would reduce unnecessary costs imposed by regulation, and it is an important step in the implementation of the President's commitment; and

Third, to put U.S. carriers on an equal footing with foreign carriers. In regulating our maritime industry, we are out of step with the rest of the world. In the interests of both international comity and fairness, we must recognize the realities of international commerce in which our industry operates and limit its commercial activities only where we can clearly identify other overriding national objectives. It is in the best interest of the country, and the industry, to allow our carriers to be more competitive toward their foreign counterparts. Current regulation is stifling the competitive energies of this country's merchant fleet and a solution must be found.

With these objectives in mind, Mr. Chairman, we would like to work with your Committee and the other elements of the coalition that formed during the last Congress to develop a solution that will work to the benefit of everyone -- shippers, carriers, and the consumers or exporters of goods shipped by ocean transportation. We must 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 increased certainty will lead to greater long-term planning, service innovation and efficiency, to the benefit of carriers and shippers alike. Regulatory oversight should be minimal, aimed at ensuring that conferences not abuse their market power to the detriment of independent carriers. Competition should be encouraged, both between conferences and independents, and among conference members themselves, in order to ensure that lower transportation costs for ocean shipping services will be passed on to the users of those services.

Mr. Chairman, let me briefly summarize the Administration's proposal for creating such an environment. First, it is crucial that legislation define with greater precision the scope of antitrust immunity which has been in force since passage of the Shipping Act of 1916. As you know, the passage of that act demonstrated the Congress' decision that the foreign waterborne commerce of this country should be treated differently from domestic commerce subject to the antitrust laws. Under that Act, carrier agreements had to be filed and approved, but they were specifically exempted from the operation of the Sherman Act and any supplementing antitrust acts which might follow. Over the years, ambiguities have led to highly counterproductive regulatory delays and uncertainties in the administration of the Shipping Act. The resulting combination of regulatory and antitrust

oversight of the maritime industry has resulted in procedures that are uncertain, expensive and lengthy. The vague standards that must be met in the pre-approval process have created confusion and inefficiency. Legislation must correct procedures presently followed in order to reinstate certainty and predictability in the regulation of liner shipping in our foreign commerce, while adequately protecting all parties.

The Administration favors a regulatory environment where prohibited practices are precisely defined, and where the exclusive remedies for 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. The presence of independent carriers in our trades is an important competitive element, and conferences must not be allowed to use their market power to impede the operation of independents. 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.

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 continues to believe that conferences should be free to organize in ways that make commercial sense, subject to the caveats dealing with abuse of conference power. This 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.

In conjunction with these changes, the Administration supports the objective of increased competition and greater price and service flexibility within the conference system. We favor a number of methods of meeting that objective. The Administration continues to strongly support the elimination of tariff filing and enforcement requirements, which would reduce government intrusion into the market place, resulting in greater flexibility. Clarification of the authority of conferences to offer intermodal through rates will increase the availability of worldwide intermodal services to shippers on a vastly simplified basis. Service contracts offer a new opportunity for shippers to obtain the most efficient, individualized services to meet their needs. Shippers see service contracts as a way to lower their transportation costs and make them more competitive, resulting in lower prices to consumers. Finally, independent action in all conferences would also promote competition and pricing flexibility by allowing a conference carrier to vary from the conference tariff simply by filing an independent rate.

This bill comes at an opportune time for another important reason. The United States is facing a world-wide trend toward protectionism in international ocean shipping. International ratification of the UNCTAD Code, which would allocate bilateral cargoes to the carriers of the trading countries, is imminent. The United States has not been able to prevent these developments, even though we have the largest trade in the world. Enacting regulatory reform legislation will enhance our international standing in the development of ocean shipping policy. Further, the increased authority to respond to restrictive foreign practices contained in Section 12 of H.R. 1878 would improve our ability to protect U.S. interests from such practices.

Mr. Chairman, H.R. 1878 goes a long way toward implementing the Administration's proposal, and at the same time satisfies the major needs of every element of the maritime industry, including shippers. This legislation, and its counterpart in the Senate, S. 47, have received a great deal of scrutiny in the Congress, including review by both your Committee and the Senate Judiciary Committee. It represents the most balanced regulatory reform proposal for this industry that has ever been considered by the Congress. I urge you to continue this approach, Mr. Chairman, as you did so successfully during the last Congress. Preservation of the unique and very important consensus that has developed with regard to this bill is crucial if we are to obtain this much needed reform.

That completes my prepared statement, Mr. Chairman. I would be happy to answer any questions you or other Members may have.