

STATEMENT OF JEFFREY N. SHANE, DEPUTY ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, U.S. DEPARTMENT OF TRANSPORTATION, BEFORE THE SUBCOMMITTEE ON MERCHANT MARINE OF THE HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES, MAY 23, 1984.

Mr. Chairman and members of the Subcommittee, I am pleased to have this opportunity on behalf of the Department of Transportation to comment on H.R. 1511 a bill,

"To provide for jurisdiction over common carriers by water engaging in foreign commerce to and from the United States utilizing ports in nations contiguous to the United States"

As drafted the bill purports to alter the Shipping Act of 1916 definition of "common carrier" to include carriers that transport cargo to or from the United States by way of a port in a contiguous country if the carrier:

- "(a) advertises, solicits, or arranges, directly or through an agent, within the United States, for such transportation;
and
- "(b) engages, directly or through an agent, in the transportation of such property between a point within the United States and a port in a nation contiguous to the United States."

The Administration is opposed to the passage of H.R. 1511. It is similar in its objectives to H.R. 3637 and S. 2414, bills which the Department of Transportation opposed in the 97th Congress.

The bill, like its predecessors, is apparently intended to reverse the 1978 decision of the United States Court of Appeals for the District of Columbia in Austasia Intermodal Lines Ltd. v. FMC. In that case, the Court held that the Shipping Act did not give the FMC jurisdiction over a firm that solicited cargo in the United States for common carrier service from Detroit, Michigan, overland to Vancouver, British Columbia, and then by ship to foreign destinations. The Court reasoned that no U.S. ports were utilized by the ocean carrier on its own route or a through route in which it participated, and that U.S. regulatory jurisdiction did not, therefore, obtain.

The principal effect of this bill would be to establish new regulatory authority over containerized ocean transportation from the U.S. through Canada to overseas points, by requiring the filing and enforcement of tariffs for such shipments by the FMC. Presumably all carriers which transport cargo to or from the United States by way of ports in a contiguous country would meet the qualifying conditions and would be considered common carriers by water and, therefore, subject to the authority of the FMC. The Department of Transportation believes that the proper course of action is to minimize, not expand, regulatory jurisdiction over the transportation industry, and, for that reason, this bill represents a step in the wrong direction.

Mr. Chairman, we are delighted with the significant decrease in the regulatory burdens on carriers in U.S. foreign maritime commerce which will result from the implementation of the Shipping Act of 1984. I compliment you and your Subcommittee on your pivotal role in obtaining passage of the Act. We believe it will have a beneficial effect on the economy of the United States by increasing the efficiency and availability of ocean shipping services using our ports.

One of the reasons prompting the introduction of the predecessors of H.R. 1511 appears to have been the perceived competitive disadvantage of U.S. carriers unable to offer conference intermodal freight rates from U.S. inland points, through U.S. ports, to foreign ports. Moreover, the old regulatory regime was sufficiently onerous that there was significant pressure to avoid it through introduction of intermodal freight arrangements not using U.S. ports and, therefore, not subject to FMC regulation or tariff filing requirements.

We believe that the new Shipping Act, which for the first time clearly permits and expands the availability of conference intermodal rates through U.S. ports, and which gives U.S. carriers new competitive flexibility, will greatly alleviate the pressure to avoid regulation by routing overseas intermodal traffic through Canadian ports. In particular, the new Act permits greater pricing flexibility in the form of service contracts and time volume rates. While these rates must be made public, the Act gives shippers and carriers the opportunity to negotiate rate

and service agreements that were not allowed under current law, allowing our carriers to be more competitive with foreign carriers. All carriers may also take independent rate action on 10 calendar days' notice to the conference.

The Act, of course, has not yet become fully effective. We are confident that once the Act has been fully implemented and the new competitive freedom given to ocean carriers has worked itself out in the marketplace, carriers will realize that the shipping of commodities by land transportation, sometimes over long distances, solely to avoid FMC regulation is no longer justified. We believe that the changes to come as a result of the Shipping Act of 1984 particularly make this proposed legislation unnecessary.

There is one possible potential remaining argument for the bill; the fact that U.S. carriers must file their domestic intermodal rates with the FMC while the intermodal rates through Canada are not filed.

As you will recall during the debate on the Shipping Act of 1984, the Administration supported the end to all tariff filing in our ocean trades. There was widespread opposition to the termination of tariff filing requirements from many segments of the maritime industry. Clearly, had the mandatory filing of tariffs been ended, there would not have been any reason for the continuation of this series of hearings. After we have had a year or so of experience with the new Shipping Act, the

Administration will be prepared to discuss methods for further reducing tariff filing requirements on domestic intermodal movements if there appears to be significant inequity as regards tariff filing in the trades over contiguous country ports compared to domestic ports.

It is the firm belief of this Administration that shippers and carriers should make maximum use of the marketplace in their business decisions, with a minimum of interference from the government. In this connection, it is important to point out that nearly as many containers originating in or destined to Canada move through U.S. ports, as containers originating in or destined to the U.S. move through Canadian ports. Even on the East Coast of the U.S. and Canada, about half as many Canadian containers are shipped through U.S. ports as there are U.S. containers shipped through Canadian ports. On the West Coast almost all of the transborder container movements are Canadian containers through U.S. ports, since relatively few U.S. containers are shipped through Canadian Pacific ports. I am submitting for the record a table prepared by the Maritime Administration giving details of United States and Canada transborder intermodal shipments for the period CY 1980 through the first half of 1983.

We believe that the economies of both the United States and Canada have benefited from regulatory policies designed to minimize the barriers to the development of an integrated North American transportation network. Under these policies, transport movements between the two countries, with third countries, and between regions within each country, have developed in response to economic and market conditions rather than

administrative restrictions. This is evident from the two-way traffic in containers. This Administration supports a free and competitive regime for international trade in both goods and services. This two-way trade in container transportation movement represents services used and desired by both consumers and shippers in both countries. The United States is currently running a very high deficit in its balance of trade. The role of exports is crucial to reducing our trade deficit and makes us keenly aware of the need to be export competitive and to preserve export related jobs in all sectors of our economy.

Finally, we understand that the State Department has serious foreign policy objections to this legislation. We fully support those views.

This concludes my testimony, and I shall be glad to answer any questions the Subcommittee may have.

Transborder Container Movements Detail

(TEUs)

	At East Coast Ports	At West Coast Ports	Total all Ports
(1st Half CY 1983)			
Container cargo for the U.S. discharged at Canadian Ports	31,047	180	31,227
U.S. container cargo loaded at Canadian Ports	24,008	148	24,156
Total all containers to and from U.S. handled at Canadian Ports	55,055	328	55,383
Canadian destination cargo Discharged in U.S. Ports	10,636	20,839	31,475
Canadian origin cargo loaded in U.S. Ports	12,370	7,943	20,313
Total cargo to and from Canada handled at U.S. Ports	23,006	28,782	51,788

Comparison Canada over U.S. and U.S. over Canada cargo in TEUs
1980 to 1st half 1983

Year	Canada cargo over U.S. Ports (TEUs)	U.S. cargo over Canada Ports (TEUs)
1983 (6 mo)	51,788	55,383
1982	100,539	100,204
1981	91,878	126,692
1980	101,483	106,857

Source: DOT, Maritime Administration