100TH CONGRESS 1st Session | HOUSE OF REPRESENTATIVES | REPORT 100-39

OCEAN TRANSPORTATION PRACTICES ACT OF 1987

APRIL 6, 1987.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. JONES of North Carolina, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

[To accompany H.R. 1290]

The Committee on Merchant Marine and Fisheries to whom was referred the bill (H.R. 1290) an Act to counter unfair ocean transportation practices, and for other purposes, having considered the same, report favorably thereon with an admendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and substitute the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Ocean Transportation Practices Act of 1987."

SEC. 2. DEFINITIONS.

In this Act—

(1) "class of goods" means goods as classified by a data classification system prescribed by regulation by the Commission.

(2) "Commission" means the Federal Maritime Commission.

(3) "conference" has the same meaning as in section 3 of the Shipping Act of 1984 (46 App. U.S.C. 1702).

(4) "documented vessel" means a vessel documented under chapter 121 of title 46, United States Code.

(5) "goods" means articles of any kind.

(6) "vessel of a foreign country" includes a vessel—

(A) documented under the laws of a foreign country;

(B) on which at least four citizens of the foreign country are employed; or

(C) effectively controlled by a citizen of the foreign country.

SEC. 3. INVESTIGATION BY THE COMMISSION.

(a) The Commission shall investigate whether unfair practices are used that affect transportation in the foreign waterborne commerce of the United States. The Commission shall begin the investigation—

(1) on the Commission's own initiative;

(2) on a complaint by—

(A) an operator of an affected documented vessel; or

(B) a representative of the crew of an affected documented vessel; or

(3) when, during a twelve month period, at least 25% of any class of goods are transported—

(A) from a foreign country to the United States by the vessels of the foreign country; or

(B) from the United States to a foreign country by the vessels of the foreign country.

(b) After notice and opportunity for a hearing, the Commission shall find an unfair practice when the acts, policies, or practices of a foreign country unreasonably impair the transportation of goods in the foreign commerce of the United States by documented vessels. In making the finding under this subsection, the Commission shall consider the market share of documented vessels in transporting the goods investigated. In addition, the Commission shall determine whether the acts, policies, and practices of the foreign country—

(1) permit restraint of trade in transportation services, including:

(A) unregulated common management between the shipper and carrier of goods.

(B) special arrangements between the government of the foreign country and the carriers or shippers of that country favoring the use of the vessels of that foreign country.

(C) any other arrangement unreasonably favoring the vessels of the foreign country in the transport of goods in the foreign commerce of the United States.

(2) deny fair and equitable market opportunities for documented vessels by—

(A) being party to a cargo sharing or reservation agreement to which the United States is not a party;

(B) violating section 13(b)(5) of the Shipping Act of 1984 (46 App. U.S.C. 1712(b)(5)); or

(C) any other agreement or arrangement impairing the access of a documented vessel to the transportation of goods in the foreign commerce of the United States.

(3) deny internationally recognized seafarer's rights, including:

(A) a prohibition on the use of any form of forced or compulsory labor.

(B) a minimum age for the employment of children.

(C) acceptable, regionally adjusted, conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

(c) Unless a foreign government or operator of a vessel of the foreign country, by a preponderance of the evidence, proves otherwise, an unfair practice is deemed to exist when market domination by vessels of the foreign country is found to exist under subsection (a)(3) of this section and—

(1) vessels of the foreign country transport at least 15% more of that class of goods being imported or exported than documented vessels; or

(2) a finding has been made under subsection (b) (1) or (2) of this section.

(d)(1) In an investigation or adjudicatory proceeding under this Act, the Commission may issue subpenas to compel the attendance and testimony of witnesses and the production of records or other evidence.

(2) In an investigation or adjudicatory proceeding under this Act, a person not complying with a regulation, order or subpena is liable to the United States Government for a civil penalty of not more than $5000 for each day the violation continues.

(3)(A) After notice and opportunity for a hearing, the Commission also may suspend any tariff of a foreign commerce common carrier, or that carrier's right to use a tariff of any conference of which the carrier is a member, when the carrier does not provide evidence required to be provided under a subpena issued under this subsection in an investigation or proceeding under this Act.

(B) On notification by the Commission that a carrier has not provided evidence required to be provided under a subpena issued under this subsection in an investigation or proceeding under this Act, the Secretary of the department in which the Coast Guard is operating shall prohibit that carrier's vessels from entering the United States.

(C) The Commission shall submit immediately to the President an order issued under this paragraph. Within 10 days after receiving the order, the President may disapprove it if the President finds that disapproval is required for reasons of national defense or foreign policy of the United States. If not disapproved, the order of the Commission may be effective only after the end of the 10-day period.

(e) The Commission shall complete an investigation under this section within six months of initiating the investigation. An unfair practice is deemed to exist if the Commission is unable to complete the investigation within that time because the Commission cannot get the necessary witnesses or records from a foreign country.

SEC. 4. NEGOTIATIONS.

If the Commission finds an unfair practice under this Act, the Secretary of Transportation, in consultation with the Secretary of State and the Commission, shall enter into negotiations that makes goods unfairly transported available to vessels of all countries serving that trade by—

(1) removing the unfair practice; or

(2) reducing the level of transportation by vessels of the foreign country to the level of transportation by documented vessels.

SEC. 5. PENALTIES.

(a) Unless the negotiations under this subsection have been completed within six months after the Commission finds an unfair practice under this Act—

(1) the owner of the vessel of a foreign country is liable to the United States Government for a civil penalty equal to the value of the freight on the goods transported unfairly under this Act from the date the finding was made under section 3 of this Act; or

(2) the Commission may limit or prohibit specific operations of the owner or operator of vessels of a foreign country in the same manner and to the same extent that owners or operators of documented vessels are restricted in that foreign country.

(b) Subsection (a) of this section may be suspended—

(1) in any single case for not more than one year at a time if the President requests the suspension for reasons of national defense or foreign policy; or

(2) temporarily if the Commission finds that documented vessels are not available to transport a class of goods in the foreign commerce of the United States.

(c) Any action taken under this section shall be reported to Congress in writing within 60 days.

SEC. 6. MARITIME PRACTICES ACCOUNT.

The "Maritime Practices Account" is an account in the Treasury of the United States. Civil penalties collected under section 5 of this Act shall be deposited into that account. The Commission shall use the amounts in the account to enforce this Act.

PURPOSE OF THE LEGISLATION

The purpose of H.R. 1290 is to establish procedures to examine and, if necessary, counter unfair maritime practices. A further purpose is to require negotiations to eliminate either those unfair practices or the advantage gained by vessels of the nation engaged in the unfair practices.

BACKGROUND AND NEED FOR THE LEGISLATION

In a normal commercial transaction where merchandise is shipped by sea between two nations, the buyer and seller are free to decide how the cargo will be transported. Theoretically, the party paying for the transportation and associated costs makes the decision based on the price, service, reputation, reliability, schedule and other characteristics of various steamship lines serving the route. In practice, however, the situation is complicated by the actions of maritime nations, which because of their perceived strategic and economic importance, often go to extraordinary lengths to assure business for their own domestic fleets. Further complicating the conduct of transportation has been the development of intermodalism, which injects into ocean transportation subsidiary activities such as inland rail and trucking operations and a wide range of port interface activities.

Recent investigations by the Committee have documented the widespread use by foreign nations of numerous devices that create unfair impediments to U.S.-flag operators and place them at a competitive disadvantage vis-a-vis their foreign competition. Submissions by the Federal Maritime Commission (FMC), the Maritime Administration (MarAd), the United States Trade Representative (USTR), and U.S.-flag carriers have underscored and verified this conclusion. The elimination of these unfair practices will greatly increase the ability of U.S.-flag operators to compete in the world shipping market.

The Maritime Administration, the Department of State, and the United States Trade Representative have documented examples of practices by foreign countries that serve to unfairly impede access to cargo by American vessels in the U.S. foreign waterborne commerce. These include everything from barring operation of landside support services by U.S. companies operating overseas to commercial cargo preference schemes. Detailed lists follow:

ADVERSE PRACTICES AND BARRIERS TO TRANSPORTATION IN U.S.-FLAG LINER SERVICES IDENTIFIED BY U.S. MARITIME ADMINISTRATION

Taiwan

Trucking operations.—Taiwan prohibits U.S. carriers from owning and operating trucking services for the purposes of picking up and dropping off containers as part of their ocean transportation service.

Container terminal operations.—Except where there is two-thirds Taiwanese ownership, U.S. carriers are prohibited from operating their own terminals. Taiwan carriers are allowed to operate container terminals in Taiwan as well as in the United States.

Shipping agency services.—U.S. carriers are prohibited from providing agency services, except on their own behalf. Again, Taiwan carriers are permitted to provide these services in the U.S. and in Taiwan.

Domestic cargo participation.—U.S. carriers are denied participation in Taiwan's domestic trade. U.S. carrier access to the domestic trade, as part of their international operations, would assist in the repositioning of containers and balancing container capacity utilization.

Importation of transfer of dockside equipment and container chassis.—Foreign carriers are restricted from importing or transferring dockside equipment and container chassis into Taiwan, except for certain equipment that may be imported only upon payment of exorbitant import duties and taxes. Dockside equipment must be leased from harbor bureaus, and it is the bureau's prerogative to determine the brand, type, and rental rate of the equipment supplied.

Taiwan liner trades.—Taiwan subjects its liner trade with the U.S. to substantial discriminatory allocation and reservation of cargo to Taiwan-flag vessels. In its cross-trades, cargo-sharing and discriminatory practices restrict U.S. carriers' competitive access to cargo.

Remittance of earnings.—U.S. carriers are unfairly restricted in remitting earnings from their Taiwan operations. There are no comparable controls on foreign exchange in the United States.

Japan

High-cube containers.—U.S. carriers are restricted by Japanese laws and policies in the land movement of high-cube containers. The Jpanaese have been slow to lift restrictions on the use of these more efficient containers; however, in June 1986, Japan announced a series of measures to reduce these restrictions. Progress has been made recently. Our carriers now are waiting for these steps to be fully implemented—with the expectation that the problems they have been experiencing will be alleviated.

Tobacco transport.—For several years, U.S. carriers have sought to break into the U.S. tobacco trade with Japan, which has been monopolized by Japanese carriers. After subjecting U.S. carriers to 3 years of trial shipments, Japan Tobacco, Inc. (Japan's tobacco monopoly) suddenly selected a Taiwan carrier, Yangming, to serve this trade without a test requirement.

Port service problems.—The practice by Japanese ports of "no cargo-handling on Sunday" has resulted in increased cost to U.S. and foreign carriers. It is not the practice for the world's major ports to close down their ship loading/unloading operations on Sundays.

Auto carriers.—U.S.-flag operators have only recently broken into the Japan/U.S. auto trade to carry fully assembled cars. Japanese car exports, however, are expected to decline as Japanese car manufacturers establish more assembly plants in the U.S. Consequently, U.S.-flag carriers should receive a share of the knocked-down set movements.

Korea

Korean foreign shipowners' association.—Foreign-flag carriers, including U.S. operators, have been denied approval to form an association to represent their collective shipping interest in Korea.

Negative list.—U.S. carriers are seeking removal of ocean shipping from the negative list of those sectors in which foreign investment is prohibited. The inclusion of ocean shipping on the negative list, which is maintained by the Ministry of Finance, is a major impediment to U.S. carrier operations in Korea.

Terminal operating restrictions.—U.S. carriers are prohibited from owning/operating their own terminal facilities and are denied equal access to common user facilities. U.S. carriers seek the same preferential berth arrangements, which with the Busan Container Terminal Operating Company (BCTOCC), that are accorded Korean-flag carriers.

Shipping agency restrictions.—The Korean Maritime and Port Administration (KMPA) requires that all foreign shipowners appoint a 100-percent Korean-owned agent. The impact of KMPA's agency requirement is that all sales, marketing, contracting, warehousing, maintenance, and repair must be carried out by a Korean-owned agent. Korean-flag carriers, however, act as their own agents in the United States.

Trucking operations.—U.S.-flag carriers are prohibited from owning and operating their own trucking operations—even as part of their ocean freight services.

Bangladesh

Cargo waiver system.—U.S. carriers are required to obtain waivers for the carriage of FOB-nominated export cargo. The waiver system, which is intended to increase the share of Bangladesh-origin cargoes to the Bangladesh national line, discriminates against U.S.-flag carriers.

India

Cargo reservation.—U.S. carriers will face vastly reduced prospects in the U.S./India trade if the government of India carries out plans to submit cargo reservation legislation to Parliament and the legislation is enacted.

Shipping tax.—U.S. carriers are subject to a 5½% gross receipt tax on exports from India and on imports to India. U.S. carriers view this tax as unfair, since it does not take into account the profit-or-loss position of a carrier serving India. U.S. carriers are pressing for a reduction in the tax.

Pakistan

Shipping tax.—U.S. carriers are seeking an exemption from Pakistan's 8% gross receipt tax on shipping—one of the highest in the world. Although Pakistan has temporarily suspended the shipping tax prospectively for an indefinite period, and retroactively to March 1986, no formal bilateral agreement has been concluded.

ADVERSE PRACTICES AND BARRIERS TO TRANSPORTATION IN U.S.-FLAG LINER SERVICES IDENTIFIED BY DEPARTMENT OF STATE

Turkey and Pakistan

Shipping taxes.—Turkey and Pakistan have for some years levied taxes on the revenues of U.S. carriers while their own carriers were not comparably liable here.

Colombia

Cargo reservation.—Colombia refused to admit an American-owned carrier into the bilateral trade in order to carry cargo financed by the Export-Import Bank.

Venezuela

Cargo reservation.—Venezuela recently objected to the entry of an additional U.S. carrier in the bilateral trade.

Korea

A major Korean shippers' organization refused to ship with American-flag carriers transshipping in a third country because of alleged documentary problems relating to U.S. quota regulations.

Bangladesh

Bangladesh tightened restrictions last spring on foreign flag carriers of FOB-nominated cargoes.

PROBLEMS ENCOUNTERED IN MARINE TRANSPORTATION INDUSTRIES IDENTIFIED BY TRADE REPRESENTATIVE

Argentina

Discriminatory bilateral agreements.—Discriminatory bilateral agreements with Brazil, Chile, Colombia, Lebanon, Peru, Venezuela, and U.S.S.R. Two U.S. lines have permission to cover southbound movement of government controlled cargo.

Governmental incentives.—Governmental incentives favor national vessel use by Argentine exporters, regulations include reduced port charges, rebates of wharfage fees, elimination of consular fees, export port charges, export credit may be up to 5% of freight transported under the national flag. Tax rebates for manufactured exports are calculated at F.O.B. when shipped in foreign bottoms and at C.I.F. when shipped in Argentine bottoms.

Commercial cargo reservation.—Government and private purchases and sales and government financed imports are reserved for national vessels, unless exemption authorized by the Director of the Merchant Marine.

Australia

Governmental cargo reservation.—40% of certain government cargo on certain goods must be carried in domestic bottoms.

Coastal trade restrictions.—Foreign vessels must be licensed for coastal trade. In practice such licenses are almost never granted.

Brazil

Limitations on container shipments.—Government of Brazil prohibits transhipments of containers in its trade; prohibits use of non-ISO size containers in its trades, thus discriminating against major foreign carriers.

Governmental incentives.—Governmental incentives favor national vessel use by shippers. Stamp tax levied on freight carried in foreign bottoms. Brazilian vessels exempt from light dues and receive reduced pilotage fees as 40% at Santos and 30% at Rio de Janiero.

Governmental cargo reservation.—Imports purchased by public authorities or bought with government assistance must be carried in national vessels.

Canada

Preferential duties.—Government applies a preferential duty rate on any cargo moving directly from the United Kingdom and Singapore to Canada. These cargoes which move via a third country do not receive the preferential duty. This puts foreign carriers at a disadvantage because of vessel deployment.

Colombia

Discriminatory bilateral agreements.—Discriminatory bilateral agreements, 50/50 clauses with Argentina, Uruguay, and U.S., equal access agreements with Colombia national line and 2 U.S. lines.

Commercial cargo reservation.—Minimum 50% of cargo transported on established routes must be carried on domestic bottoms.

Dominican Republic

Cammercial cargo reservation.—National law reserved 40% of commercial cargo, 50% of "Exonerated cargo" and 60% of government cargo for national flag lines. Law applies to bulk and liner trades.

Egypt

Discriminatory bilateral agreements.—Discriminatory bilateral agreements with Ceylon, Indonesia, Libya, Pakistan, Romania, U.S.S.R., East Germany, Hungary, and Yugoslavia.

Commercial cargo reservation.—30% of imports and exports must be carried on domestic bottoms.

France

Commercial cargo reservation.—All national defense goods, 40% of coal tonnage, 66% of petroleum tonnage, and all bananas must be carried on national flag bottoms. Monopoly traffic between metropolitan France and Tunisia and Algeria.

Limitations on containers.—Government previously threatened to disallow use of refrigerated containers because they did not met Agreement of Transport of Perishables (ATP) standards, which actually exempts deep sea containers.

Export insurance.—Purchase of export insurance from national backed Export Insurance Company requires shipper to use national flag vessels if the insurance covers the cost of the freight.

Germany

Government cargo reservation.—Foreign aid cargoes must be carried on national flag bottoms.

Ghana

Commercial cargo reservation.—Minimum 25% of national timber must be carried on national flag bottoms.

India

Discriminatory bilateral agreements.—Discriminatory bilateral agreements with Iran, Poland, Romania, U.S.S.R., Czechoslovakia, Hungary, East Germany, and Peru.

Discriminatory port charges.—Reductions in port charges for national vessels.

Indonesia

Commercial cargo reservation.—45% of all cargo must be carried on national flag bottoms. And 50/50 clauses with Singapore and U.S.S.R.

Italy

Discriminatory treatment.—Agent must maintain in escrow monies to cover all obligations of each ship and certify such before ship departs. Same practice is not required of national lines. This results in tie up of monies for approximately 90 days.

Japan

Restrictions on containers.—Government restricts the use of "High Cube" containers even though the height of these containers of a low chassis is not greater than the standard container on a flat bed truck.

Discriminatory treatment.—U.S. companies may not act as their own operating agents or perform their own trucking in Japan. While Japanese carriers may do so in the U.S.

Tobacco shipments.—Shipment of leaf tobacco is directed to Japanese flag vessels by the Japan Tobacco and Salt Public Corporation.

Korea

Commercial cargo reservation.—Unilateral protective measures used by countries to reserve a substantial portion of their own trade for their own ships.

Discriminatory treatment.—U.S. carriers are not allowed to own assets such as trucks, chassis, or facilities in Korea, nor can U.S. carriers own any type of agency. Korean operators are free to own any of these in the U.S.

Mexico

Directing cargo to national carriers.—July 1979 container decree sets up multimodal transport—Operator made up of National Ocean and Inland Carriers (100% national owned). This MTO carries out all contracts with shippers and carriers to handle inland carriage of cargo. This provides opportunity for directing cargo for national carrier.

Limitations on competition.—Container decree regulates the movement of all containers moving in Mexico. Consequently, routing of cargo by the carrier is restricted, and as such, the carrier may not be able to compete effectively.

Pakistan

Commercial cargo reservation.—50% of U.S. and World Bank aid cargoes must be carried on national flag bottoms.

Discriminatory bilateral agreements.—Bilateral agreements with Egypt, India, and Poland.

Philippines

Commercial cargo reservation.—Government decrees interpreted and employed in a discriminatory manner to direct non-government supported and purchased goods to national flag line.

Discriminatory treatment.—National flag lines pay not billing tax, all other lines pay 2.5%.

Singapore

Discriminatory bilateral agreements.—Discriminatory bilateral agreement between shipping associations with Indonesia.

Sweden

Discriminatory treatment.—Carriers whose line-haul vessels call directly at Swedish ports are exempted from paying light dues.

Taiwan

Commercial cargo reservation.—Government preference laws cover 100% of government financed programs and cargoes of government monopolies including liquor and tobacco.

Turkey

Commercial cargo reservation.—Preference given to national flag vessels. All imports must be carried on Turkish vessels, unless specific permission is given to do otherwise.

Venezuela

Commercial cargo reservation.—Merchant Marine Law stipulates that all preferential cargo must be carried on domestic bottoms. "Preferential cargo" is defined as cargo destined for government use financed by the government, subject to import licensing, or arriving under any import duty exoneration. Effective result of policies is that Venezuela is attempting to reserve 50% of all cargo moving in its bilateral trade.

Yugoslavia

Commercial cargo reservation.—CIF cargoes are reserved for national flag carriers and a 20% rebate on the freight is given for their use.

Unfair transportation barriers take the form of legislation, foreign government regulations, and public and private practices and procedures. They include the reservation of cargo for national-flag shipping lines; tax credits and other benefits for shippers using national-flag shipping lines; preferential treatment for national-flag shipping lines; loan guarantees or interest-free loans to assist in the acquisition of vessels; accelerated tax depreciation on equipment; duty-free treatment of ship construction materials and shoreside equipment; cabotage restrictions; direct and indirect subsidies for the operation and construction of vessels; and restrictions and prohibitions against certain shoreside transportation activities for U.S.-flag operators.

A February 1983 MarAd publication, entitled "Maritime Subsidies", required over 160 pages to outline the maritime subsidy programs of the following 48 maritime nations:

Algeria	India	Panama
Argentina	Indonesia	Peru
Australia	Ireland	Philippines
Belgium	Israel	Portugal
Brazil	Italy	Singapore
Canada	Japan	South Africa
Chile	Korea	Spain
Colombia	Kuwait	Sweden
Denmark	Liberia	Switzerland
Ecuador	Malaysia	Taiwan
Egypt	Mexico	Thailand
Finland	Morocco	Turkey
France	Netherlands	United Kingdom
West Germany	Nigeria	United States
Ghana	Norway	Uruguay
Greece	Pakistan	Venezuela

In addition to the 48 nations found by MarAd to offer maritime subsidies, there are nations whose maritime industries are controlled by the central government and, therefore, receive direct and substantial aid. These include the Warsaw Pact nations, the People's Republic of China, Albania, Cuba, North Korea, and Yugoslavia.

It is obvious that the United States engages in providing some of the same aids to our merchant fleet as are offered by other maritime nations, and H.R. 1290 obviously is not designed or intended to eliminate all aids, even though they may constitute barriers to entry or restrictions against some other maritime competitor. H.R. 1290's intent is to examine and eliminate those acts and practices that upset a normally balanced transportation by imposing restrictions that operate particularly against U.S. operators. H.R. 1290 is a successor to other provisions in law that were designed to counter some of the very same problems that necessitate the solutions advanced in the Ocean Transportation Practices Act. Unfortunately, these forerunners, while still on the books, have not been as effective as they must be.

Section 19 of the Merchant Marine Act, 1920 empowers the Federal Maritime Commission to make rules to meet general or special conditions unfavorable to shipping when those conditions result from either the actions of a foreign government or a foreign shipping line or its agent. The Commission is also authorized to ask any United States Government department, board, bureau, or agency to suspend, modify, or annul rules that affect shipping in the foreign trade.

The remedy the Commission has chosen to employ, if it finds a practice, that by rule has been determined to be "unfavorable" to shipping, is the suspension of tariffs or closing down the operations of the wrongdoing carrier in the United States. While the Commission has recently undertaken section 19 investigations into cargo reservation systems established by Argentina, Brazil, Venezuela, and the Philippines, section 19 has never proceeded to a final order, nor have other types of unfair practices been subject to section 19 scrutiny. Section 19 has been effective in getting some countries to negotiate, but elimination of a practice has never been the result.

Section 13(b)(5) of the Shipping Act of 1984 is designed to offer some protection against foreign abuse of American shipping in the cross-trades. While U.S. carriers complain of cross-trading restrictions, no section 13(b)(5) action has been brought. Aside from never having been used, its protection is incomplete, because it only makes actionable those practices of foreign governments and common carriers. It does not address the actions of foreign contract carriers or their affiliates, as does H.R. 1290. Again, as in section 19, the remedy is the suspension of tariffs—unlikely to be employed and applicable only to those operators having tariffs on file with the Federal Maritime Commission.

Section 306 of the Trade and Tariff Act of 1984 is aimed at the "effective development, coordination and implementation of United States policies on trade in services." It directs each department and agency responsible for the regulation of a service industry to advise the United States Trade Representative of the treatment afforded that industry in foreign markets and to report allegations of unfair practices by foreign governments or companies.

Section 301 of the Trade Act of 1974 provides that the President shall take appropriate action (such as suspending trade concessions, imposing duties, or restricting services) when the President determines that it is appropriate to respond to an act, policy, or practice of a foreign nation that "is unjustifiable, unreasonable or discriminatory and burdens or restricts United States commerce".

While ocean transportation is "commerce" within the meaning of the Trade Act, all remedies available are directed towards the amelioration of trade in goods problems. As a result, there has been no use made of trade law protections for transportation services, despite the well documented list of continuing abuses against U.S. ocean carriers.

Clearly, this language could include foreign practices that have an impact on ocean carriers. However, with respect to ocean transportation, the President has never made the necessary finding "that action by the United States is appropriate . . . to respond to . . . Acts of a foreign country or instrumentality that . . . is unjustified, unreasonable, or discriminatory and burdens or restricts United States commerce". Therefore, the President has never ordered retaliatory action.

The general power of the President to engage our trading partners in discussions and formal negotiations in aid of our desire to establish free and open trade among nations also exists as a mechanism to address and correct abuses against U.S. maritime interests. Unfortunately, the results, as with other statutory mechanisms, have been less than salutory. Last year, officials of the Department of Transportation visited Taiwan, Japan, Korea, Hong Kong, and the People's Republic of China to discuss specific maritime barriers. To date, there have been no changes in those nation's trading policies.

The various protections described above have all proven inadequate in eliminating unfair transportation practices. Among the criticisms of these provisions are that operators fearing retaliation by the foreign government engaged in the unfair practice are reluctant to file a complaint, the Executive Branch agencies involved fail to pursue diligently complaints brought to their attention, the elimination of these unfair practices is often a secondary priority of U.S. negotiations, and these abuses are allowed to continue in exchange for other foreign policy concessions.

DISCUSSION

The primary purpose of H.R. 1290 is to provide an administrative framework for the examination and elimination of unfair maritime practices.

Under the provisions incorporated in H.R. 1290, the Federal Maritime Commission may initiate an investigation of whether a foreign nation is using unfair practices that have an effect on the transportation of goods to or from the United States. This is complementary to the authority granted the Commission by section 19(b) of the 1920 Merchant Marine Act. To address the concern that under the current procedure the Commission does not investigate all unfair practices, H.R. 1290 requires the Commission to begin an investigation when a complaint is made by an operator of an affected U.S.-flag vessel or a qualified representative of the crew of an affected U.S.-flag vessel. An affected vessel is one that claims it is injured by the unfair practice of a foreign country. A vessel that is excluded from the trade because of the unfair practices is an affected vessel for purposes of initiating an investigation; a U.S. vessel that cannot operate at the same level of efficiency because of the unfair practice is also an affected vessel. In other words, failure to achieve equality of access to a trade because of the unfair practice gives rise to a valid complaint by a vessel (or its crew).

The Commission is also required to initiate an investigation whenever, during a 12-month period, 25 percent or more of a class of goods is transported to or from the United States on vessels of the foreign country. The Committee anticipates that the Commission will make reasonable rules to prevent repetitive or overlapping investigations. Hence, the Commission could, by rule, provide that it will not investigate a commodity if, within one year prior to the filing of a complaint, an investigation was made of that commodity in the same trade. Similarly, in defining a "class of goods," the Commission by rule is expected to segment or consolidate goods or commodities in classes that meaningfully reflect the normal manner in which those goods are transported. As introduced, H.R. 1290 specified the use of the 7 digit code derived from the Standard Industrial Classification Code. While the Committee amended that provision to allow the Commission to determine the classification system to be used, a system that would class goods more broadly than a 3 digit SICC, would not be consistent with the intent of the Committee. The Commission would be expected to consolidate in one investigation an examination of similarly situated items in the same trade.

The Commission is not precluded from conducting informal, preliminary investigations, and if there is a reasonable expectation that an unfair practice exists, to proceed under the terms of the Act.

If the Commission, after its preliminary investigation, determines that it is appropriate to continue the process, then the Commission shall provide notice and an opportunity for a hearing before reaching a determination as to whether there exists an unfair practice that unreasonably impairs the access of United States vessels.

The Ocean Transportation Practices Act requires investigations into practices of other countries where the ocean carriers of that country occupy a dominant position not explainable by normal market forces.

If a finding is made by the Commission that transportation of a class of goods in the foreign commerce of the U.S. is dominated by carriers of that trading partner and that the dominance results from the imposition of a discriminatory law or trading practice, or if the Commission finds any other unfair practice that unreasonably impairs the transportation of goods by U.S. vessels, then negotiators from the Executive Branch have six months in which to get the other country to eliminate the unfair practice or to reduce the carriage by its operators to levels they would have carried had those same unfair practices been applied to them. This is done by requiring the foreign nation's carriers to reduce carriage to levels enjoyed by carriers of the United States.

If negotiations are unsuccessful, the proceedings are remanded to the Commission, which is empowered to impose a civil penatly on the foreign ship operator(s) equal to the revenue (freight) on the cargo unfairly carried; alternatively, if the unfair act or practice in the foreign country involved the prohibition against U.S. operators engaging in a transportation related activity not foreclosed to foreign operators in the U.S., then the Commission may prohibit the foreign operator from engaging in otherwise permitted conduct until the sanction is lifted in the foreign country.

However, if for foreign policy or national defense reasons, The President determines any of the proceedings or sanctions in the Act are contrary to the public interest, the bill provides for suspension. Likewise, if non-availability of U.S. shipping makes it impossible to exploit opportunities for increased access, then the remedies provided for in the bill are suspended.

An unfair practice in this bill is an affirmative act of another country or its ocean operators designed to limit access—or equal opportunity to the ocean transportation trade between that country and the United States—to vessels of the United States. Since the bill measures effect as well as intent, it is not H.R. 1290's purpose to make every potentially unfair practice actionable. When the United States engages in the same or similar conduct as the unfair practice attributed to the other state, it is not intended that the other country's practice will be considered an actionable unfair practice.

When the Commission begins any investigation, it shall determine whether the act, policy, or practice of the foreign country constitutes an unfair practice that unreasonably impairs the transportation of goods in the foreign commerce of the United States.

To avoid the delays and "non-action" that existing statutes permit, the bill requires that the Federal Maritime Commission reach a determination within 6 months as to whether an action unreasonably impairs the transportation of goods in the U.S. foreign commerce. If the Commission cannot complete its investigation within that time because it is prevented from obtaining from a foreign country the necessary witnesses or records, then an unfair practice will be deemed to exist.

In response to criticism that the Federal Maritime Commission lacks the necessary discovery tools, H.R. 1290 provides that the Commission may subpena witnesses, records, and other evidence.

A person not complying with a Commission subpena is subject to a fine of up to $5,000. A U.S.- or foreign-flag ocean carrier that fails to provide evidence requested in a subpena could also have its tariffs suspended, be prohibited from operating under a conference tariff, and he prohibited from entering a U.S. port. The Commission shall notify the President of any action suspending tariffs or requesting that a carrier be barred from entering U.S. ports, and the President may, within 10 days, disapprove the action if the disapproval would serve the national defense or foreign policy interests of the United States.

No Commission action shall become effective until after the 10-day period for review by the President.

If the Commission finds the existence of an unfair practice that unreasonably impairs the transportation of goods in the U.S. foreign commerce, the Secretary of Transportation—in consultation with the Commission and the Secretary of State—shall enter into negotiations to assure that the goods under consideration are accessible to vessels of all countries serving that trade. The goods can be made accessible to all vessels in the trade by removal of the unfair practice or by reducing the share of the identified cargo carried by that trading partner's carriers to the level of those goods carried by the U.S. operator. in this regard, it should be emphasized that the negotiations' goal is not the setting of shares for the U.S. carriers in that trade. The reduction to the level of the U.S. operators is meant to quantify the level of undue benefit enjoyed by the foreign country's carriers.

Likewise, an agreement concluded as a result of the negotiations should not freeze either the U.S. or the foreign country's level of carriage at the level carried by the U.S. operators at the outset of the negotiations. It is not the intent of the Committee that agreements freeze the share of U.S. carriers and those of trading partner at the level of the U.S. carriers' share at the time negotiations conclude. Such an interpretation would serve only to guarantee increased market share to cross-traders, which is not the objective of this legislation. The objective of this provision is to make available to all competitors, regardless of flag, cargoes that heretofore have been dominated by the carriers of a respondent foreign country due to unfair transportation practices.

If the Secretary of Transportation does not reach an agreement, within six months after the Commission finds the existence of an unfair practice, removing the unfair practice or reducing the carriage of goods by the foreign operator to U.S. levels then the owner of the vessel of the foreign country benefitting from the unfair practice shall be subject to a civil penalty equal to the compensation paid to transport the goods under consideration. The quantification of benefits used in negotiating a reduction in cargo carriage by vessels of the other country may be the measure by which the civil penalty is assessed. The penalty will be based on compensation received after the Commission reaches its determination under section 3 that an unfair practice exists.

Alternatively, the Commission may restrict the operations of an owner or operator of vessels of the foreign country to the same extent U.S. operators are restricted in the nation permitting the unfair practices. It cannot be stated strongly enough that this sanction may be directed only to those transportation-related practices that the United States permits foreign operators to engage in, where those same practices are denied or severely limited in the foreign country to U.S. ocean carriers. This provision does not contemplate, for instance, the levy of any duty to counter actions of another country since the levy of a duty is not a transportation practice.

The President may, for national defense or foreign policy reasons, suspend for a period of up to one year any penalty assessed in lieu of a negotiated settlement.

If the Commission finds U.S.-flag vessels are unavailable to transport the goods under examination, it may temporarily suspend the penalties assessed in lieu of a negotiated settlement.

Penalties collected by the Commission in lieu of a negotiated settlement will be deposited into a Maritime Practices Account and used to enforce this Act.

COMMITTEE ACTION

H.R. 1290 was introduced on February 26, 1987 by Mr. Jones of North Carolina, Mr. Anderson, Mr. Davis of Michigan, and Mrs. Bentley. Additional cosponsors are Mr. Bateman, Mr. Biaggi, Mr. Borski, Mrs. Boxer, Mr. Cardin, Mr. Clinger, Mr. Dyson, Mr. Espy, Mr. Fazio, Mr. Fish, Mr. Garcia, Mr. Hefner, Mr. Hertel, Mr. Hochbrueckner, Mr. Hubbard, Mr. Hughes, Ms. Kaptur, Mr. Lancaster, Mr. Lewis of Georgia, Mr. Lipinski, Mr. McKinney, Mr. Manton, Mr. Mavroules, Mr. Mrazek, Mr. Ortiz, Mr. Pickett, Mr. Quillen, Mr. Roe, Mr. Tallon, Mr. Vento, Mr. Williams, Mr. Wise, Mr. Bosco, Mr. Dellums, Mr. Foglietta, Mr. Kolter, Mr. Murtha, Mr. Sweeney, Mr. DioGuardi, Mr. Yatron, Mr. Brennan, Mr. Hayes of Louisiana, and Mr. Thomas of Georgia.

The bill was referred to the Committee on Merchant Marine and Fisheries and subsequently to the Subcommittee on Merchant Marine. The Merchant Marine Subcommittee held a hearing on H.R. 1290 on March 12, 1987. The Subcommittee included a closed session to take testimony from a U.S. carrier concerned with retaliation, immediately following by an open session during which the following witnesses testified: the Chairman of the Federal Maritime Commission and the Administrator of the Maritime Administration (Department of Transportation) as well as representative of the Maritime Trades Department, AFL–CIO; Shipbuilders Council of America; and the Joint Maritime Congress.

The Committee received submissions from the Department of State, the Federal Maritime Commission, the Maritime Administatration, American President Lines, and the American Institute of Marine Underwriters.

H.R. 1290 was opposed by the Department of State, the Federal Maritime Commission, and the Maritime Administration. All other witnesses expressed support for the legislation. Administration witnesses assumed that H.R. 1290 would allocate cargo shares and would consequently violate longstanding Administration free trade policy.

The Merchant Marine Subcommittee unanimously accepted an amendment in the nature of a substitute at Subcommittee Markup on April 1, 1987. The Subcommittee amendment:

Raised the triggering percentage on mandating an investigatioon from 15 percent to 25 percent (section 3(a));

Raised from 10 percent to 15 percent the differential between U.S. and foreign country carriage to trigger a presumption of an unfair practice (section 3(c));

Eliminated some of the detailed listings of labor issues to be considered in the investigations (section 3(b)(3));

Clarified that the goal of negotiations after a finding of unfair practices applied only to "goods unfairly transported," as well as providing for Executive Branch leadership in the negotiations process (section 4); and

Authorized the Commission to issue subpenas in investigations under the Act and added additional penalties if a person does not respond to a subpena (section 5(a)(2)).

On April 2, 1987, the Full Committee unanimously reported the bill, as amended by the Subcommittee on Merchant Marine. At the mark-up, Mr. Davis of Michigan offered an amendment intended to assure that various forms of subsidies to foreign shipyards are within the scope of the bill. The amendment was withdrawn upon the assurances by the Chairman that this and other similar vessel construction subsidies are covered by H.R. 1290 in the treatment of special arrangements, or "other arrangements" unreasonably favoring the vessel of a foreign country in section 3(b)(1) (B) and (C). Other members of the Committee wished to make certain that various shoreside activities are included within scope of the legislation. Mrs. Bentley of Maryland made reference to restrictions placed on the use of "high cube" containers, rail and trucking restrictions, port and labor restrictions on U.S. operators, and foreign operating subsidies. Other members also made reference to specific intermodal restrictions that unfairly impair efficiency and raise operating costs for U.S. operators. Mrs. Bentley further stated that according to her information, the General Agreement on Trade and Tariff has failed to adequately address U.S. trade problems. Mr. Miller requested that the report reflect the Committee's intent as to what constitutes an "unfair practice" which is included where appropriate throughout the report.

SECTION-BY-SECTION ANALYSIS

Section 1

This section cites the bill's short title as the Ocean Transportation Practices Act of 1987.

Section 2

Section two defines "class of goods", "Commission", "conference", "documented vessel", "goods", and "vessel of a foreign country".

"Class of goods" is defined as that classification prescribed by Federal Maritime Commission rule, to be as narrow or broad as the Commission considers appropriate to properly base a finding of market domination. The Commission may decide, for example, that it is more efficient to examine all motorcycles and parts as a "class of goods", rather than motorcycle wheel spokes.

The "Commission" is the Federal Maritime Commission.

The term "conference" is given the same meaning as in section three of the Shipping Act of 1984.

A "documented vessel" is one documented under title 46, U.S. Code.

"Goods" refers to articles of any kind, and is intended to refer to all types of merchandise, wares, and goods.

"Vessel of a foreign country" includes one flying the flag of that country, owned by a national of that country, or employing at least four crewmembers from that nation.

The purpose of drawing a broad definition of a foreign vessel is to include effectively controlled vessels within the purview of the Act, whether the control is through ownership or manning, so that a nation may not evade the purposes of the Act while still receiving the benefits derived from transporting cargoes.

Section 3

This section describes the circumstances under which an investigation by the Federal Maritime Commission may begin, what constitutes an unfair practice, and the factors the Commission must consider in its investigation.

The agency may, on its own initiative, undertake an investigation of the transportation practices of a foreign nation. Further, it is mandated to investigate the transportation practices of a foreign nation when:

(1) Their vessels carry at least twenty-five percent of a class of goods to or from the U.S.; or

(2) There is a complaint by—

(A) a representative of the crew of an affected U.S.-flag vessel; or

(B) the owner of an affected U.S.-flag vessel.

The trigger mechanism initiating an investigation is intended to be wide enough to minimize unproductive investigations, and to efficiently use the Commission's resources. The market domination level by a foreign carrier, is set at 25% so that an inordinately high number of investigations are not triggered.

The bill allows the representative of the crew of a U.S. vessel that is affected by foreign practices to petition the Commission for an investigation. The intent of this is to counter the fear of retaliation against carriers who report an unfair practice, and who may be unwilling to do so.

The information needed to begin an investigation under paragraph (a) above would be gathered from the Census Bureau, Customs declarations at the port of entry, and various private reporting services, if necessary. The Commission would need to monitor the aggregate imports and exports of each appropriate commodity class by: (1) vessels flying the flag of the trading partner; (2) vessels owned by citizens of the trading partner; and (3) vessels that employ at least four crewmembers who are citizens of the trading partner.

Section three broadly defines an unfair practice so that if the acts, practices, or policies of the foreign nation "unreasonably impair" the access of U.S. vessels to the carriage of a commodity to or from U.S. market, an unfair practice exists. This definition is not meant to apply solely to the government of the foreign state, but to that state's corporate and private policies and actions as well.

Unfair practices affecting the foreign waterborne commerce of the United States must, because of intermodal development, include activities conducted on land as well as at sea. Some of these practices involve restrictions against United States ocean transportation companies operating trucking and rail links, utilizing company agents and sales personnel, utilizing public port and right-of-way facilities, and the way in which cargo insurance is obtained.

Interference with any element involved in the integrated transportation system of today affects the efficiency of the ocean operations, and it is the Committees' intent that the Commission view restrictions against non-water transport activity as seriously as they would restrictions, for example, on the number of U.S.-flag vessels permitted to enter a given foreign port.

It is intended that the Commission consider whatever factors it feels are necessary in making this determination. Four factors are specifically enumerated. First is the market share enjoyed by U.S.-flag vessels in the carriage of the commodity. For example, the Commission may find that transportation by U.S. vessels is close to or at zero percent of the trade, and such a level may indicate some type of specific discrimination against U.S.-flag vessels.

Second is the extent to which the foreign country permits restraint of trade in transportation services by favoring its own vessels. For example, a vertically-integrated industry, whereby the producers of a good also own or control the means of transporting that good to market, may be restraining trade in transporation services to the detriment of U.S.-flag shipping companies.

Third is the extent to which the foreign country denies fair and equitable access to the U.S.-flag vessels. For example, a trading partner that is party to a commercial cargo preference arrangement which allocates cargo in the U.S. cross-trade commerce on a non-market basis would be denying fair and equitable market opportunites to U.S. vessels, thereby impairing the ability of U.S. operators to compete efficiently in the foreign commerce of the United States.

Fourth is whether that nation's labor laws permit its ship operators to gain an unfair economic edge over U.S. operators at the expense of their seafaring labor. The language regarding the rights of seafaring personnel was modified in the amendment so that it clearly applies to seafarers.

Other acts, policies, or practices on the part of foreign nations that are not specifically enumerated may fit within the purview of the Act and may be found to unreasonably impair the access of U.S.-flag ships to cargo. Such activities might include, for example, shipbuilding subsidies offered by a foreign nation to their own flag carriers which contribute to a lower operating cost in the U.S. foreign trade, and therefore harm U.S. carriers.

The Federal Maritime Commission may find that any combination of these factors "unreasonably impairs" the access of U.S.-flag ships to cargo. Or it may determine that such a condition does not exist, even though some of the factors are present.

In certain cases, however, the foreign nation or a carrier of that nation may be required to show that their actions are not unreasonably impairing access by U.S. vessels to cargo. The burden will be on the foreign nation or carrier to show they are not using unfair practices if:

(1) The lines of a foreign nation carry at least twenty-five percent of a commodity; and

(2) The lines of that nation carry at least fifteen percent in excess of U.S.-flag vessels, or a finding is made that either the foreign nation allows a restraint of trade in transportation

services, or they deny fair and equitable market access for U.S. ships.

Subpena power is included to ensure access by the Commission to documents necessary to conclude an investigation. Proper penalties are provided if the subpenas are ignored. They include the suspension of tariffs and barring of entry to a U.S. port.

Under this section, the Commission is directed to complete the investigation within six months. The due process rights of the entities being investigated are intended to be protected through notice and opportunity for hearings.

Section 4

Section four sets forth action when unfair practices are found to exist. If an unfair practice is found, the Secretary of Transportation must enter into negotiations to:

(1) Remove the unfair practice; or

(2) Reduce the level of transport by the foreign nation's vessels to no more of the commodity than that transported by U.S. ships.

The language of this section is in no way intended to be a cargo reservation provision. The purpose is to make available cargo that is transported unfairly to vessels of all nations to be competed for and carried on a market-oriented, competitive basis.

Section 5

Section five sets forth penalties against the owner or operator of foreign vessels. If the negotiations do not produce one of the results listed in section four within six months, the owner of the foreign ship is liable to the U.S. for a civil penalty in the amount of the freight on the goods transported unfairly. Alternatively, the Commission may decide to limit or prohibit foreign commercial transportation practices in this country to the extent that U.S. carriers are prohibited from those same practices overseas, and to the extent that those practices account for the loss of access to cargo.

Despite a finding of an unfair practice, it may not be appropriate to take action against the foreign entity if the United States has an identical or substantially similar practice in place.

The civil penalty may be waived temporarily if no U.S. vessels are available to transport the commodity in question. Furthermore, if the President so requests for reasons of national defense or foreign policy, the negotiations and penalty provided for in this section may be waived for no longer than one year.

If penalties are to be imposed, they shall take effect from the time an unfair practice is found under the Act.

Section 6

Section six establishes an account in the Treasury funded by the penalties collected under section five and used to enforce the Act.

COST OF THE LEGISLATION

Pursuant to clause 7a of Rule XIII of the Rules of the House of Representatives, the Committee establishes that enactment of H.R. 1290, as amended, will not result in any additional cost to the Government, since penalties imposed under the Act will be used for costs of enforcement.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of Rule XI of the Rule of the House of Representatives, the Committee estimates that enactment of H.R. 1290, as amended, will have no inflationary impact on prices and costs in the operation of the national economy.

COMPLIANCE WITH CLAUSE 2 (l) (3) OF RULE XI

With respect to the requirements of clause 2(l)(3) of Rule XI of the Rules of the House of Representatives:

(A) No oversight hearings were held on the subject of this legislation.

(B) The requirements of section 308(a) of the Congressional Budget Act of 1974 are not applicable to this legislation.

(C) The Committee on Merchant Marine and Fisheries has received no report from the Committee on Government Operations of oversight findings and recommendations arrived at pursuant to clause 4(c)(2) of Rule XI of the Rules of the House of Representatives.

(D) The Director of the Congressional Budget Office has furnished the Committee with an estimate and comparison of costs for H.R. 1290, pursuant to section 403 of the Congressional Budget Act of 1974. The submission is as follows:

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., April 6, 1987.

Hon. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 1290, the Ocean Transportation Practices Act of 1987, as ordered reported by the House Committee on Merchant Marine and Fisheries, April 2, 1987. Because the costs are dependent on very uncertain future events, trade conditions and actions by unknown parties, CBO is not able to arrive at any precise estimate of ths bill's impact. However, based on our analysis of the bill, we expect that its enactment could have a very significant impact on the budget of the Federal Maritime Commission (FMC) and, to a lesser extent, those of other federal and local agencies. Any costs would depend on appropriation action and penalties collected under Section 5.

H.R. 1290 would require the FMC to undertake investigations against vessels of the United States' foreign trading partners in any case where a complaint is received from a U.S. vessel operator or crew representative or where specified market conditions are found to exist. Specifically, investigations would be triggered in any situation where the FMC finds that during a 12-month period at least 25 percent of any class of goods was transported between the United States and a foreign country on that country's liner or non-liner vessels. Investigations of per se violations or of complaints would be mandatory, and, because the commission would have very little flexibility in deciding when unfair trade practices exist, many cases would require full investigations complete with hearings and international negotiations. Such proceedings would have to be concluded within six months of their initiation, with the burden of proof falling on the foreign vessel operator. If foreign operators do not cooperate fully and in a timely manner, the U.S. Coast Guard would be forced to deny entry into U.S. ports, and the FMC would be required to reach an unfavorable finding. Any finding of unfair trade practices on the part of a foreign government would require that negotiations begin with that country. If negotiations are not finished within six months, the commission may be required to limit the activities of that country's carriers in the United States or to impose a penalty on the carriers equal to the value of the freight on goods transported unfairly.

Proceeds from penalties would be deposited into a newly established Maritime Practices Account, from which they would be available to the FMC without appropriation to enforce the bill. Because the bill would require the FMC to monitor thousands of possible combinations of commodities, trade routes, vessel operators and types, the number of potential investigations is very large. Whether consolidation of cases would be possible is not clear.

A cost estimate prepared by the FMC on a much less comprehensive version of this bill indicated that the direct costs of carrying out the requirements in that version of the bill would be about $3 million a year. (The FMC's 1987 appropriation is $11.9 million.) However, the commission limited its analysis to only liner traffic on vessels most easily recognized as "foreign"; that is, those with foreign operators. These assumptions are quite limited in scope in comparison to the much broader definitions in H.R. 1290. If these assumptions were expanded to include all situations covered by the bill, implementation would be much more costly and possibly infeasible given existing data sources. Also, only two routes were examined for liner market shares on the top 15 commodities by tonnage for only one 12-month period. (If a moving average of each 12 months is deemed to be required under the bill, as it appears to be, preliminary monitoring costs alone would be very high.) For these relatively few cases, at least 10 potential investigations were revealed on each route. Even so, the commission limited its analyses to an expanded caseload of only 10 additional cases a year for all routes and commodities, which is all that it would be able to undertake with existing facilities. Consequently, no costs related to new overhead capacity requirements, data base development or start-up have been included. Even the consideration of only ongoing costs for ten additional cases a year would yield an estimated increase in the agency's budget of over 20 percent above the 1987 appropriation. However, it is likely that the number of cases would be much greater than ten. If investigations of all complaints and market-triggered cases were undertaken, the resources necessary to handle this caseload could dwarf the FMC's current budget.

Other direct and indirect federal costs that may be incurred to enforce the bill's provisions are very difficult to estimate. Direct costs related to additional activities that would have to be undertaken by other federal agencies, such as the departments of State, Transportation and Justice, to negotiate agreements and collect penalties cannot be estimated with any precision but are likely to be sizable. In particular, the cost of enforcing the bill's penalty provisions could be quite significant, requiring lengthy legal proceedings and possibly triggering legal action against the United States.

Because of the uncertainties involving the collection of penalties imposed on foreign companies, CBO cannot estimate potential revenues under Section 5. Revenue collections, if they occur, are expected to lag behind the commission's findings by at least one year and would in any case not be expected to be sufficient to fund an ongoing program of this scope.

Finally, enactment of H.R. 1290 may have an adverse financial impact on local agencies such as harbor and port authorities, particularly on the West Coast. These could occur if actions taken by the FMC to remedy unfavorable trade conditions result in lost dockage fees or in the cancellation of contracts between local authorities and foreign companies. The cost to such agencies is difficult to estimate but could be substantial in some cases. Local authorities may seek compensation from the federal government in these cases.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

EDWARD M. GRAMLICH,
Acting Director.

cc: Honorable Robert W. Davis, Ranking Minority Member

DEPARTMENTAL REPORTS

The Administrator of Maritime Administration of the Department of Transportation and the Chairman of the Federal Maritime Commission appeared and testified at the Subcommittee hearing on March 12, 1987. The Committee also received correspondence from the Department of State and the Federal Maritime Commission. Those letters followed herewith:

U.S. DEPARTMENT OF STATE,
Washington, DC, March 27, 1987.

Hon. WALTER B. JONES,
Chairman, Merchant Marine and Fisheries Committee, House of Representatives.

DEAR MR. CHAIRMAN: I appreciate the opportunity to supplement the record of the March 12 investigative hearing of the Subcommittee on Merchant Marine concerning unfair foreign trade practices. As I testified before the Subcommittee one year ago, the Department of State is deeply involved in efforts to eliminate restrictions placed upon our carriers and shippers and to promote wider implementation of the principle of free and fair competition.

We are pursuing two, essentially complementary policy lines. Working together with major developed maritime countries in the Organization for Economic Cooperation and Development (OECD) and the Consultative Shipping Group (CSG), we are seeking to avoid the introduction of protectionist measures in or direct trades and to resist restrictions imposed by third countries. In the bilateral sphere we are assiduously seeking resolution by foreign governments of every complaint we receive from carriers and shippers relating to their treatment abroad.

COOPERATION IN MULTILATERAL FORA: THE U.S./CSG TALKS AND THE OECD

Last April in Copenhagen, the United States and the CSG (thirteen European nations and Japan) issued a Joint Statement which recalled their policies of safeguarding and promoting competition in all sectors of ocean shipping and of resisting protectionist measures. Since that time the two sides have participated in joint representations to three governments, opposing restrictive measures either instituted or proposed by those governments. In the case of India, I represented the United States in a joint U.S./CSG mission to New Delhi in February to underline to the Indian Government the adverse impact that its proposed legislation would have upon our bilateral trades. Prior to the joint mission, the Administration had made a unilateral representation to the Indian Government opposing the same proposed legislation. With respect to Peru and Sri Lanka, the United States and the CSG countries submitted joint diplomatic notes concerning, respectively, problems created by a Peruvian cargo reservation decree and the Sri Lankan central freight bureau.

As we had anticipated, the direct effects of those initial efforts have been varied. With opposition also being voiced by Indian exporters, the Government of India has not proceeded with introduction of its draft legislation. On the other hand, Peru and Sri Lanka have recently rejected the U.S./CSG requests, necessitating consideration of follow-up actions. Despite those mixed results, we feel that it is too early to assess how useful these joint efforts are; we do not view them, however, as a substitute for direct, bilateral diplomacy where our carriers and shippers are encountering serious problems.

Last month in the OECD, we and other developed maritime nations successfully concluded an eight-year effort to define a set of common principles of shipping policy. The common principles are the most detailed set of pro-competitive guidelines agreed upon by the principal shipping powers. Their aim is to safeguard and promote open trades. To give substance to this objective, the non-binding Recommendation incorporating the principles also calls upon OECD member states to oppose requests by non-members for cargo sharing and cargo reservation and to ensure that member governments have the necessary legislative authority to resist protectionist measures. Of particular note is an annex devoted to guidelines for carriers and shippers concerning competitive practices of conferences and independent carriers, which are fully compatible with our own shipping legislation.

We have briefed members of the Committee staff on several occasions concerning U.S./CSG activities and the OEDC Recommendation and related Resolution and will be pleased to provide whatever further details the Committee may wish.

BILATERAL DIPLOMACY IN SUPPORT OF U.S. CARRIERS AND SHIPPERS

Maritime Administrator Gaughan and FMC Chairman Hickey have testified at some length on a number of specific bilateral problems—Korea, Taiwan, the People's Republic of China, Peru and Colombia. We offer the following additional examples of adverse foreign trade practices we have challenged:

Turkey and Pakistan had for some years levied taxes on the revenues of U.S. carriers while their own carriers were not comparably liable here. Armed with the retaliatory provisions of the Tax Reform Act, Treasury and our Embassy in Ankara reached agreement with the Turkish Government on reciprocal exemptions from taxation. We are now discussing a similar solution with Pakistan.

Colombia refused to admit an American-owned carrier into the bilateral trade in order to carry cargo financed by the Export-Import Bank. Our Embassy in Bogota interceded successfully with the Colombian shipping authorities to ensure the American carrier was given the right of carriage. We are currently addressing a comparable complaint submitted by a second U.S.-flag operator.

Venezuela recently objected to the entry of an additional U.S. carrier in the bilateral trade. Following a single diplomatic exchange, Venezuela dropped its opposition.

A major Korean shippers' organization refused to ship with American-flag carriers transshipping in a third country because of alleged documentary problems relating to U.S. quota regulations. Out Embassy in Seoul was able to assure the Korean association that U.S. Customs had no problem with the documentation submitted by the American carriers employing feeder vessels, and Korean exporters dropped their prohibition on the use of the U.S. operators.

Bangladesh tightened restrictions last spring on foreign flag carriage of FOB-nominated cargoes. Upon its receipt of representations by our Embassy, the Government of Bangladesh relaxed the restrictions. We have learned, however, that there has been a recent resumption of Bangladesh intervention and are contacting U.S. carriers to determine whether they are being affected.

IMPROVED RESPONSES TO UNFAIR TRADE PRACTICES

Diplomacy, as the examples cited attest, is often sufficient to persuade the offending country to remove its restrictions. In instances where diplomacy does not achieve the desired result, however, we recognize and accept that there may have to be recourse to statutory remedies. Our experience suggests that the main legal tool—Section 19—has been effective. As Chairman Hickey pointed out in his testimony, the mere invocation of Section 19 has provided a deterrent to restrictive actions so that no sanctions have ever had to be implemented under the provision.

Given this record, we do not perceive a need for the sweeping and potentially restrictive approaches proposed in H.R. 300 and H.R. 1290. Like its forerunner, H.R. 300 would essentially reverse the steadfast policy of successive Administrations opposing the intrusion of government cargo reservation into the commercial sector. It would substitute bilateralism for the open international trading and transportation system we have so carefully constructed. Rather than promoting competitiveness, it would disadvantage American industry and, over the longer term, the very carriers it seeks to protect.

Our concerns regarding H.R. 1290 parallel those expressed by Administrator Gaughan. While not requiring cargo reservation, the bill sanctions it. In its creation of a percentage test of fairness, the proposal also relies on what we believe is an incorrect assumption: that foreign market penetration cannot be the result of economic efficiency and superior service. The successful performance of U.S.-flag vessels in a host of foreign markets clearly belies that proposition.

While we remain sympathetic to the motives behind these two pieces of legislation, we believe our emphasis should be on an enhancement of American competitiveness. Diplomacy and the appropriate recourse to existing legislative authority appear to us to be more effective and flexible responses to unfair trade practices than the remedies incorporated in the proposed legislation. To the extent there are demonstrated shortcomings in the existing legal framework, some limited refinement of the statutes seems preferable to adoption of the wholesale overhaul proposed in these bills.

If there are points on which the Committee wishes additional information, I will be happy to furnish them.

Sincerely,

JEFFREY N. SHANE,
Deputy Assistant Secretary for Transportation Affairs.

FEDERAL MARITIME COMMISSION,
Washington, DC, March 31, 1987.

Hon. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Federal Maritime Commission (FMC or Commission) on H.R. 1290, a bill "to counter unfair ocean transportation practices, and for other purposes."

This bill would significantly alter the role of the Commission in regulating our waterborne foreign commerce. Under certain enumerated circumstances, it would require the Commission to investigate whether unfair trade practices were being used in our foreign commerce. Moreover, when particular events occur, it would shift the burden to a foreign country or foreign carrier to show that they were not engaging in unfair practices.

As I indicated in my testimony of March 12, 1987 before the Subcommittee on Merchant Marine, in order for the Commission to adequately implement this measure, it would need a substantial increase in personnel, equipment, and money. In addition, it would appear that any of the practices which H.R. 1290 is attempting to address can already be addressed by either section 19(1)(b) of the Merchant Marine Act, 1920 or section 13(b)(5) of the Shipping Act of 1984. The principal differences between these statutes and H.R. 1290 are the provisions which automatically trigger an investigation and which shift the burden of proof. There are advantages and disadvantages to this approach which are discussed more fully below.

More specifically, we would like to offer the following comments on individual provisions of the bill.

SECTION 2(1)—"CLASS OF GOODS"

This section defines "class of goods" as goods classified by the seven-digit code derived from the Standard Industrial Classification Code. However, the Standard Industrial Classifiation Code is a classification that is used for domestic industries and would not, therefore, be applicable to commodities moving in the waterborne foreign commerce of the United States. It might be more appropriate to use one or more of the following recognized international commodity classification codes: (1) the Standard International Trade Classification, (2) the Tariff Schedule of the United States Annotated (TUSA), (3) Schedule B (the export equivalent of TUSA), (4) Schedules A and E (a rearrangement of TSUSA and Schedule B data into a form resembling SITC), or (5) the Harmonized Commodity Description and Coding System.

Regardless of which classification code is employed, the choice of a seven-digit, individual commodity description appears to be too narrow. It would be a monumental task to review all commodities at seven-digit level. There are thousands of seven-digit classifications that would have to be analyzed for each U.S. bilateral trade.

SECTION 2(6)—"VESSEL OF A FOREIGN COUNTRY"

This section defines "vessel of a foreign country" as including a vessel: (1) documented under the laws of a foreign country, (2) on which at least four citizens of the foreign country are employed, or (3) effectively controlled by a citizen of the foreign country.

As an initial matter, we question whether the focus of the bill should be on the "vessel of a foreign country." We are not aware of any database that captures commodity information by the flag of a vessel. The standard approach is to compile data base on the nationality of the vessel operator. If the bill were modified to comport with this approach, it would certainly be easier to implement. Moreover, a focus on "vessel operator of a foreign country" would bring space charter arrangements and flags of convenience within the ambit of the bill. They might otherwise escape inclusion.

If section 2(6) is retained as written, the Commission would be unable to ascertain the nationality of each crew member, for each non-U.S.-flag vessel that operates in our trades in a given 12-month period. It would be equally difficult to determine whether a vessel is "effectively controlled by a citizen of a foreign country" at any given time, especially given the fact the bill does not further define what "effective control" is.

SECTION 3—"APPLICATION"

The bill would apply to the import and export trades of the United States. It would also, without further limitation, apply to all cargoes carried, whether by liner, bulk, tramp, or contract carrier. However, no presently available data source can provide information on who is actually operating non-liner vessels. The best that available data sources can do is to provide the tonnage of specific commodities that move on a non-liner basis.

Accordingly, we recommend that the bill clearly be limited to the carriage of goods by liner vessels.

SECTION 4(a)(3)

This section provides that the Commission must initiate an investigation into whether unfair trade practices are being used whenever, during a 12-month period, at least 15 percent of any class of goods is transported by the vessels of the foreign country.

We note, however, that there is no finite beginning and end to the 12-month period. As a result, the Commission would have to assess, on a monthly basis, the previous twelve month's carriage of each seven-digit commodity, in each United States trade, by each vessel of a foreign country. Moreover, in light of the extremely detailed commodity descriptions which would result from the seven-digit classification mentioned above, it may not be that unusual for the vessels of the foreign country to carry greater than 15 percent of a class of goods. Consideration might be given to raising this threshold level, so that the Commission is not overwhelmed with conducting mandatory investigations that reveal conditions that are unrelated to unfair government trade practices.

SECTION 4(b)

This section directs the Commission to find an unfair trade practice whenever the acts, policies, or practices of a foreign country unreasonably impair the transportation of goods in the foreign commerce of the United States by U.S.-flag vessels. In making a finding under this section, the Commission must consider the market share of U.S.-flag vessels. In addition, the Commission must determine whether the acts, policies, and practices of the foreign country: (1) permit restraints of trade in transportation services, (2) deny fair and equitable market opportunities for U.S.-flag vessels, or (3) deny internationally recognized worker rights.

At the very least, the labor-related provisions contained in section 4(b)(3) would require the Commission to make determinations outside its traditional expertise as a maritime regulatory agency. Moreover, it is unclear what the effect of a Commission finding under section 4(b)(3) is to be. Is it intended to rise to the level of a per se "unfair trade practice?" Or is it just another factor to be considered when determining whether the acts, policies, or practices of a foreign country "unreasonably impair" the transportation of goods in the foreign commerce of the United States by U.S.-flag vessels?

SECTION 4(c)

This section creates a rebuttable presumption that an unfair trade practice exists whenever: (1) during a 12-month period at least 15 percent of any class of goods is transported on the vessels of the foreign country, and (2) those vessels of the foreign country transport at least 10 percent more than do U.S.-flat vessels; or the Commission makes a finding under sections 4(b) (1) or (2).

There are, of course, certain advantages to creating rebuttable presumptions in this area. U.S.-flag carriers, who may be the victim of an unfair trade practice, may be unwilling to come forward and publicly accuse a foreign government of unfair practices. However, there must be some rational basis for any such presumption and we are not convinced that one necessarily exists here. The mere fact that foreign vessels carry more of a specific commodity than U.S.-flag carriers in a specific trade may be the result of a variety of factors, such as: (1) the competitive and marketing abilities of the carriers involved; (2) the relative rates of the carriers; (3) shipper preference; (4) quality or frequency of service; or (5) unlawful practices of a carrier that are unrelated to foreign government acts, policies or practices.

SECTION 5(a)(1)

If the Commission finds an unfair trade practice, this section requires it, in consultation with the Secretary of State, to enter into negotiations which result in either (1) levels of transportation by vessels of the foreign country not exceeding levels transported by U.S.-flag vessels, or (2) removal of the unfair trade practice.

As an initial matter, removal of an unfair trade practice, as specified in sections 4(b) (1) or (2), may not necessarily result in relief for U.S.-flag carriers. But more importantly, this section places the Commission in the position of negotiating with foreign governments, albeit in consultation with the Secretary of State. Although the exact role of the Secretary of State is unclear, the more critical concern is whether this arrangement violates elemental notions of separation of powers. It would appear to place an independent regulatory agency in the position of negotiating bilateral agreements with foreign nations. Moreover, bilateral arrangements negotiated by the Commission pursuant to this section could be inconsistent with the Commission's responsibilities under section 19 of the Merchant Marine Act, 1920 which has been interpreted as including consideration of interests other than solely those of U.S.-flag carriers.

SECTION 5(a)(2)

If negotiations are not completed within six months, the owner of the vessel of a foreign country is liable to the United States for a civil penalty which equals the value of the freight on the goods transported unfairly.

It is difficult to conceive how the specific goods which were "transported unfairly" can be identified for any particular voyage. Moreover, although the bill generally is directed against unfair practices of foreign governments, this section would make the individual owner of the vessel liable for the civil penalty. Finally, it is noted that there is no provision for additional action against a foreign vessel if it fails to pay the penalty that has been assessed.

SECTION 6—"MARITIME DISPLACEMENT ACCOUNT"

The civil penalties collected pursuant to section 5 are to be deposited into an account that the Secretary of Transportation can use "to assist vessels injured by unfair trade practices to gain access to the trades."

It may be that any amount of money may not assist vessels injured by an unfair trade practice to gain access to a trade. Moreover, the methods by which such amounts will be disbursed and the standards that will be employed are somewhat unclear.

COST ESTIMATE

Pursuant to Rule 13 of the Rules of the House of Representatives, we have attempted to provide a cost estimate of the expenses which would be incurred by the Commission in implementing H.R. 1290. However, as a result of the feasibility study which we conducted pursuant to your request at the hearing of March 12 and which is attached hereto, we do not believe that this bill can be implemented as currently written. In arriving at a cost estimate, therefore, we have had to make the following assumptions: (1) that an appropriate classification code will be employed; (2) that the bill will focus on vessel operators of a foreign country; (3) that the bill will only address carriage by liner vessels; and (4) that suitable arrangements will be made so that relevant information can be obtained from the Bureau of the Census. The attached table takes these assumptions into account when arriving at the five years of projected costs for H.R. 1290. It also projects costs for two alternative sources of data—the Bureau of Census and the Journal of Commerce's PIERS system.

Thank you for the opportunity to comment on H.R. 1290. It is an innovative attempt to deal with the problems of unfair practices by foreign governments in our foreign trades, and with some changes might be capable of being implemented.

Sincerely,

EDWARD V. HICKEY, Jr.,
Chairman.

Enclosures.

IMPLEMENTATION OF H.R. 1290 BY THE FEDERAL MARITIME COMMISSION [1]

Introduction

The purpose of this report is to assess the ability of the Federal Maritime Commission (Commission or FMC) to implement H.R. 1290, the Ocean Transportation Practices Act of 1987. The report is divided into two sections. The first explains why it is not possible to implement H.R. 1290 as it is currently written. The second section examines a slightly modified version of H.R. 1290 which we believe would make the bill feasible. The modifications leave untouched the essential features of the legislation, with the exception of altering the scope of the bill to limit it to "liner" cargoes only.

The necessary changes are as follows:

[1] Prepared by: Bureau of Trade Monitoring, Federal Maritime Commission, March 30, 1987.

Modify section 2(1) to include various international commodity classification codes in lieu of the Standard Industrial Classification Code (which pertains only to domestic industries).

Modify section 2(6) to change the focus from "vessel of a foreign country" to "vessel operator of a foreign country."

Include in the bill express recognition of the ability of the Secretary of Commerce to provide an exclusion to the Confidentiality restriction on Bureau of the Census data.

Modify the bill to limit its scope to "liner" cargoes. To the best of our knowledge, there is simply no available computerized information on individual operators of nonliner vessels.

I. IMPLEMENTATION OF H.R. 1290

We do not believe that H.R. 1290 can be implemented as currently written for the following reasons: (1) the term "class of goods" contains a reference to the Standard Industrial Classification Code, but this is a classification code for domestic industries which is not applicable to international movements; (2) the bill requires Commission action in certain circumstances against "a vessel of a foreign country," yet all known commodity movement information is currently being gathered in the private and the public sector according to "vessel operator"; (3) there is no known source of information on the carryings of individual nonliner operators; and (4) the Bureau of the Census is currently prevented from disclosing information that would reveal the activities of a single vessel operator. These points are discussed in further detail below.

A. Availability of data resources

1. Coding classification

Section 2(1) of H.R. 1290 reads: " 'Class of goods' means goods as classified by the seven-digit code derived from the Standard Industrial Classification Code."

The Standard Industrial Classification Code (SIC) is a classification for domestic industries and, thus, would not pertain to international commodity movements which are the subject of H.R. 1290. A reference to international commodity classification codes would have to be inserted into the legislation to make its implementation possible.

2. Identifying the nationality of vessels

Section 2(6) of H.R. 1290 reads: "vessels of a foreign country" includes a vessel—

(A) documented under the laws of a foreign country;

(B) on which at least four citizens of the foreign country are employed; of

(C) effectively controlled by a citizen of the foreign country.

At the present time, the Bureau of the Census database captures detailed commodity information by the nationality of the vessel operator, not by the flag of the vessel. In other words, we would know that 1,000 tons of widgets should be considered a movement of a particular country, not by looking at the flag of the vessel that the widgets moved on, but by looking at the nationality of the operator of that vessel. As far as the database search is concerned, a focus on an operator would be similar to looking at everything carried by Sea-Land, and concluding it is a U.S. movement. A database search by flag of vessel is entirely different and much more difficult.

In addition to the problems relating to the availability of this detailed information, there is the problem of vessels registered in countries with "flags of convenience" or outflagging. If the focus is on "flag of vessel," it is conceivable that cargoes that appear to be intended to fall within the purview of this bill will not be considered even though the operator is a bilateral-flag operator. For example, a number of Japanese carriers are using the Singapore-flag for their vessels. If one of these vessels were carring 16 percent of a specific commodity in the Japanese bilateral trade, and our investigations were focused on flag of vessel, we would overlook this vessel.

Moreover, there is no ready known source for the information sought in section 2(6)(B) pertaining to the citizenry of individuals on vessels.

3. Liner vs. non-liner data

The FMC has contracts with the Bureau of the Census and the Journal of Commerce, which provide the Commission with access to their database of detailed commodity movement information by liner operator only. Liner operators are those operators that provide regularly scheduled service. The FMC is currently procuring this information on a timeshare basis from the Journal of Commerce. The Bureau of Census is providing the FMC aggregated commodity movement information by operator which is not broken out in any commodity detail. Although Census and the Journal of Commerce can indicate the tonnage of specific commodities that were moved as non-liner (e.g. bulk and contract carriage), they cannot identify those operators who actually moved those commodities. In other words, neither data source is capable of providing information on who is operating non-liner vessels.

4. Confidentiality

Currently, the Bureau of the Census is prevented from disclosing information that would reveal the activities of a single vessel operator. In an agreement with the Bureau of the Census, the FMC has bound itself to this non-disclosure restriction. It is our understanding that the Secretary fo the Department of Commerce has the ability under 13 U.S.C. 301G to give an exclusion to this disclosure restriction on national interest grounds, but such determination are rarely made.

B. Feasibility of implementation

It is our opinion, based upon the foregoing, that it is virtually impossible, regardless of the level of funding, to implement H.R. 1290. Therefore, we are unable to complete a feasibility study on the bill as written.

II. IMPLEMENTATION OF A MODIFIED VERSION OF H.R. 1290

A. Availability of data resources

1. Commodity classification code

We believe that Section 2(1) should be modified to include various commodity classification codes. This change would allow the Commission to use available data bases. This would avoid the "bridging" problems that Census and the Journal of Commerce would have in converting the classifications they are currently using to the SIC, as well as allow for the use of any new improved classification codes that are being developed.

One or more of the following international commodity classification codes might be appropriate:

(*a*) The "Standard International Trade Classification" (SITC). This system was established by the United Nations in 1950 and provides approximately 2,000 export commodity descriptions and roughly an equivalent number for imports. Most countries and all major international agencies use the SITC data to some extent in reporting and analyzing trade flows.

(*b*) The "Tariff Schedule of the United States Annotated" (TSUSA). This is a very detailed (10,500 seven-digit items) classification system in which United States import data are originally recorded. This classification is the basis for Customs duty calcuations.

(*c*) "Schedule B." This is the export equivalent of TSUSA. U.S. export data are originally recorded using this 4,500 7-digit system.

(*d*) "Schedules A and E." These are rearrangements of the TSUSA and Schedule B data, respectively, into a form resembling the SITC data format.

(*e*) The "Harmonized Commodity Description and Coding System," which is intended to replace the myriad of current coding systems, is currently being developed by the Customs Cooperation Council. All OECD countries are participating in the development of this system. Compared with the current SITC codes, this new system will increase the level of detail, establishing approximately 5,000 import and export product categories. Implementation of this major change is presently scheduled for early 1988.

2. Identifying the nationality of vessels

At the current time there are no databases that the Commission is aware of that include the specific vessel flag information discussed in Part I of this report. Therefore, by requiring this detail the bill is not feasible. However, H.R. 1290 would be made feasible by changing section 2(6) to focus on "vessel operator of a foreign country" instead of "vessel of a foreign country." In addition, by focusing on an operator, the problem of dealing with time and slot charter vessels would also be alleviated because both bills of lading and manifests list the operators of vessels, not the owners.

3. Liner vs. non-liner data

It is recommended that H.R. 1290 be modified to limit the scope of its jurisdiction to "liner" cargoes. To the best of our knowledge, there is simply no available computerized information on individual operators of non-liner vessels.

4. Confidentiality

It is recommended that the bill be modified to recognize that the information requirements of H.R. 1290 may warrant the Secretary of Commerce to provide an exclusion from the confidentiality restrictions under 13 U.S.C. 301G as discussed in Part 1 of this report. Without such recognition there are serious doubts that any Bureau of the Census data could be used to implement the Act.

B. Feasibility of implementation

In order to determine our ability to implement this bill, the FMC staff conducted a samply study based upon the various suggested modifications.

The sample study was conducted using Journal of Commerce data that had been generated previously for use in other monitoring reports. The subtrades analyzed were outbound Pacific Southwest/Japan and inbound Korea/Pacific Southwest.

Given the requirements of this bill, the most efficient approach would be to determine which commodities have an overall bilateral flag market share exceeding the threshold of 15 percent. In order to do this, it is necessary to examine each individual commodity movement to determine the operator and its nationality. These would then be accumulated into bilateral-flag shares. Once the flag share has been determined, the commodities that reflect a share which exceeds the threshold of 15 percent would trigger an investigation.

Given the time constraints associated with developing this sample study, the following decisions were made: (1) market shares for the middle month of each quarter were used to represent market shares for the entire quarter; (2) only one twelve month time period was analyzed (it should be noted that the amount of work involved in implementing the legislation would appear to be directly proportional to the number of twelve month time periods analyzed); (3) the nationality of vessel operator and not the nationality of the vessel itself, was used to determine bilateral and U.S-flag shares; (4) movements by third flag or unknown operators (including bulk movements) were lumped together in an unknown flag category; (5) the Journal of Commerce's own commodity classification system was used. This system is identical to the TSUSA with the exception of a complete 7-digit detail; and (6) most importantly, the analysis of commodity shares was limited to the top fifteen commodities ranked by tonnage in each trade being studied.

The same study found that in each month analyzed, the bilateral-flag had a 15 percent or more share of at least 10 of the top 15 different commodities analyzed for the Japanese trade. In the Korean trade, there was on average 11 out of the top 15 commodities that were analyzed, that fell within the 15 percent category. The attached tables (See Attachment 1) reflect the "first step" analysis for the four months studied in each trade, with an indication of which commodities would be the subject of an investigation.

When the test results of our sample study are extrapolated to cover all trades and all commodities on a monthly basis, literally tens of thousands of investigations will be triggered.

III. CONCLUSION

In Part I of this sample study we concluded that H.R. 1290 cannot be implemented as currently written. In Part II a sample test was conducted on a slightly modified version of H.R. 1290 in order to determine our ability to implement the bill. The test was extremely limited in that it was confined to the top fifteen commodities in the two trades examined, and the commodity detail was less than 7-digit in a number of instances. Furthermore, market share information for the middle month of each quarter was used to represent market shares for the entire quarter.

Test results confirm that the implementation of H.R. 1290 will (1) trigger literally thousands of investigations given the bill, and (2) require an extensive amount of personnel and computer resources in order to examine the thousands upon thousands of detailed commodity movements in our bilateral trades.

ATTACHMENT 1.—TABLES REFLECTING BILATERAL FLAG SHARES IN SAMPLE STUDY

U.S. PACIFIC SOUTHWEST TO JAPAN (EXPORTS)

[In percent]

TSUSA code	Commodity description	Percent of total trade	Japan-flag share	U.S.-flag share	Unknown share
	AUGUST 1985				
4757050	Lube oil additives	45.16	0.04	0.03	99.93
5213140	Petroleum coke [1]	11.21	73.03	0	26.97
6022500	Copper concentrate [1]	5.23	99.49	0	.51
1841000	Afalfa hay [1]	4.97	87.04	5.04	7.92
6071100	Stainless steel scrap	3.40	4.31	.40	95.29
7930000	Scrap cobra	3.08	0	0	100.00
2003573	Pulpwood in chip form	2.72	0	0	100.00
1706500	Cigarettes	1.97	4.46	.12	95.42
2563000	Paper [1]	1.83	45.07	5.99	48.94
2023000	Lumber [1]	1.68	97.71	1.34	.95
6181000	Aluminum scrap [1]	1.14	57.48	14.16	28.36
1051000	Beef [1]	1.14	99.71	.29	0
1214000	Brine cured cattlehides [1]	1.13	94.10	1.03	4.87
2070000	Wood articles [1]	1.09	98.61	.61	.78
1473100	Fresh oranges [1]	1.09	25.94	16.99	57.07

U.S. PACIFIC SOUTHWEST TO JAPAN (EXPORTS)—Continued

[In percent]

TSUSA code	Commodity description	Percent of total trade	Japan-flag share	U.S.-flag share	Unknown share
	NOVEMBER 1985				
4750525	Sulfur fuel oil	22.52	0.02	0	99.98
5213140	Petroleum coke [1]	21.03	65.47	0	34.53
5216100	Bentone	8.16	.06	0	99.90
4750535	Residual fuel oil	7.03	0	0	100.00
1841000	Alfalfa hay [1]	5.36	52.74	2.72	44.54
6037000	Scrap mental [1]	4.39	98.14	.74	1.12
5213180	Coal	3.23	.99	00	.01
2003573	Pulpwood in chip form [1]	2.83	100.00	.00	0
6037000	Metal scrap stainless steel [1]	2.48	95.10	1.85	3.05
3956000	Cotton [1]	2.17	86.13	7.28	6.59
2563000	Paper [1]	1.80	70.43	21.44	8.13
2023000	Lumber [1]	1.71	95.84	2.53	1.63
1214000	Cattlehides [1]	1.34	95.86	.61	3.51
6181000	Aluminum scrap [1]	1.05	60.11	4.23	35.66
1051000	Beef [1]	1.01	98.27	1.73	0
4750535	Residual fuel oil	28.92	0	0	100.00
5213140	Petroleum coke [1]	13.90	18.98	0	81.02
4750525	Distillate fuel oil	7.68	0	0	100.00
6071100	Stainless steel scrap	6.20	.60	.35	95.05
1841000	Alfalfa hay [1]	6.01	75.65	4.03	20.32
2070000	Wood articles [1]	4.31	99.51	.49	0
6022500	Copper concentrate ore [1]	3.51	100.00	0	0
2563000	Paper [1]	2.81	75.18	11.87	12.95
3956000	Cotton [1]	2.76	82.13	17.53	0.34
4752550	A fuel	1.58	0	0	100.00
1471900	Lemons [1]	1.57	18.53	7.34	74.13
1214000	Cattlehides [1]	1.51	94.71	1.12	4.17
6181000	Aluminum scrap [1]	1.50	44.30	26.14	29.56
105100	Beef [1]	1.47	98.47	1.34	.19
1264100	Alfalfa beed [1]	1.13	24.30	.33	75.37
	MAY 1986				
5213140	Petroleum coke [1]	28.37	56.21	0	42.79
5231810	Sunnyside coal [1]	7.13	100.00	0	0
4750535	Residual fuel oil	7.02	0	0	100.00
5213180	Steam coal [1]	5.72	64.55	0	35.45
4750525	Coker gas oil	5.67	.03	0	99.97
1841000	Alfalfa hay [1]	5.57	68.12	.95	30.93
6022500	Copper concentrate [1]	4.47	100.00	0	0
1473100	Fresh oranges [1]	3.37	20.42	15.82	63.76
6037000	Aluminum metal scrap	3.01	.38	.17	99.45
4730400	Carbon black	3.00	.38	.54	99.08
1471000	Fresh grapefruit [1]	2.27	29.20	20.91	49.89
2070000	Wood articles [1]	1.84	99.78	.19	.03
2563000	Paper [1]	1.72	88.62	3.70	7.68
6088420	Plate and structural steel	1.60	0	0	100.00
1471900	Fresh lemons [1]	1.48	16.12	5.62	78.06

[1] Possible investigations.

KOREA TO PACIFIC SOUTHWEST (IMPORTS)

[In percent]

TSUSA code	Commodity description	Percent of total trade	Korean-flag share	U.S.-flag share	Unknown share
	AUGUST 1985				
4752520	Gasoline	21.52	0	0	100.00
6103000	Pipes cast iron [1]	13.13	26.92	0	73.08
7008550	Footwear [1]	5.60	15.52	40.88	43.60
6088744	Steel sheets [1]	3.45	31.24	0	68.76
7725155	Tires [1]	3.18	16.21	19.06	64.73
6081500	Steel castings [1]	2.97	27.26	.99	71.75
3800000	Men and boys wear [1]	2.69	32.25	32.08	35.67
6852000	Televisions [1]	2.37	21.23	25.20	53.57
6463000	Nails [1]	2.07	0	49.14	50.86
6572030	Iron and steel articles [1]	1.89	12.76	0	87.24
6090220	Stainless steel coils [1]	1.81	34.18	0	65.82
7379000	Toys [1]	1.68	34.54	25.62	39.84
6088420	Iron and steel plates [1]	1.65	19.41	0	80.63
3956000	Fabrics and materials [1]	1.54	35.66	2.52	61.82
6090240	Cold rolled coils [1]	1.39	46.53	0	53.47
6103000	Pipes cast iron [1]	18.64	58.44	0	41.56
4752520	Gasoline [1]	18.00	0	0	100.00
6081500	Steel castings [1]	5.33	35.51	.48	64.01
7006550	Footwear [1]	3.47	15.28	40.50	44.22
6088744	Steel sheets [1]	3.40	10.60	0	89.40
7725155	Tires [1]	2.97	15.00	25.15	59.85
6090240	Cold rolled coils [1]	2.92	7.12	0	92.88
684200M	Microwaves [1]	2.43	43.70	9.17	47.14
6463000	Nails [1]	2.29	0	30.27	69.73
6852000	Televisions [1]	2.15	32.86	28.22	38.90
6084560	Steel bars [1]	1.62	91.08	0	8.92
6090220	Stainless steel coils [1]	1.41	60.68	0	39.32
7985000	Advertising material [1]	1.32	30.48	39.90	29.62
6572030	Iron and steel articles [1]	1.31	22.76	0	77.24
7379000	Toys [1]	1.31	26.13	22.39	51.48
6103000	Pipes cast iron [1]	19.46	50.66	0	49.34
7008550	Footwear [1]	5.92	20.06	39.03	40.91
6572030	Iron and steel articles [1]	4.20	8.96	.62	90.42
6090220	Stainless steel coils [1]	4.04	14.77	0	85.23
6088744	Steel sheets [1]	3.54	2.28	0	97.72
684200M	Microwaves [1]	3.34	58.50	21.39	20.09
6090240	Cold rolled coils [1]	3.29	28.24	0	71.76
6852000	Televisions [1]	3.14	26.00	33.00	41.00
7725155	Tires	2.80	8.22	26.11	65.67
6463000	Nails	2.12	.71	37.00	62.29
6921000	Automobiles [1]	2.02	24.13	1.53	74.34
6084000	Reinforcing bars [1]	1.94	100.00	0	0
3800000	Men and boys wear [1]	1.90	30.48	40.45	29.00
6088420	Iron and steel plates [1]	1.70	36.46	0	63.54
6421640	Galvanized wire [1]	1.53	27.40	3.16	69.44
4752520	Gasoline [1]	15.17	0	0	100.00
6103000	Pipes cast iron [1]	8.90	41.67	0	58.33
7008550	Footwear [1]	5.32	18.72	47.55	33.73
6572030	Iron and steel articles [1]	4.50	12.46	1.24	86.31
6090240	Cold rolled coils [1]	3.42	37.85	0	62.15
6852000	Televisions [1]	3.25	32.11	27.50	40.39
7379000	Toys [1]	2.35	16.55	19.35	64.10
6088744	Steel sheets [1]	2.29	27.04	0	72.93
7725155	Tires [1]	2.21	15.13	24.08	60.79
6921000	Automobiles [1]	2.21	8.54	2.16	89.30
3800000	Men and boys wear [1]	2.11	29.35	41.85	28.81
68400M	Microwaves [1]	2.05	66.49	14.44	19.07
4017450	Xylene [3]	1.81	0	0	100.00
6081500	Steel castings [1]	1.79	48.84	.77	50.39
6090220	Stainless steel coils [1]	1.77	51.90	0	48.10

H.R. 1290 PROJECTIONS, 1988–93

	1988		1989		1990		1991		1992		1993	
	Census	PIERS	Census	PIERS	Census	PIERS	Census	PIERS	Census	PIERS	Census	PIERS
Personnel compensation and benefits	1,610,516	1,654,245	1,924,627	1,980,799	2,190,642	2,248,229	2,293,348	2,381,746	2,361,433	2,423,216	2,422,887	2,486,003
Travel	300,000	300,000	310,500	310,500	321,367	321,367	332,615	332,615	344,256	344,256	356,305	356,305
Administrative expenses	560,150	554,100	579,755	573,494	600,046	593,566	621,048	614,341	642,784	635,842	665,282	658,097
Witness frees	77,500	77,500	80,212	80,212	83,019	83,019	85,925	85,925	88,932	88,932	92,045	92,045
Total	2,548,166	2,585,845	2,895,094	2,945,005	3,195,074	3,246,181	3,332,936	3,414,627	3,437,405	3,492,246	3,536,519	3,592,450

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes to existing law.

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