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**Folder Title:** Folder 14 (11/13/1981-11/18/1981)
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# WITHDRAWAL SHEET
## Ronald Reagan Library

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**File Folder:** Folder 14 (11/13/81-11/18/81) Box 2 **Date:** 10/22/98

| DOCUMENT NO. AND TYPE | SUBJECT/TITLE | DATE | RESTRICTION |
|---|---|---|---|
| ~~1. Memo~~ | ~~Malcolm Baldridge to the President re the Shipping Act of 1981, 7p~~ 4 opened 2/28/19 jsm | ~~11/18/81~~ | ~~P5~~ |
| ~~2. Memo~~ | ~~Dennis Kass to Craig Fuller re Agency Views, 5p~~ opened 2/28/19 jsm | ~~12/14/81~~ | ~~P5~~ |
| ~~3. Memo~~ | ~~L. Paul Bremer to Craig Fuller re Shipping Act of 1981, 2p~~ opened 2/28/19 jsm | ~~12/3/81~~ | ~~P5~~ |
| ~~4. Memo~~ | ~~re the Shipping Act of 1981, 4p~~ opened 2/28/19 jsm | ~~n.d.~~ | ~~P5~~ |

**RESTRICTION CODES**

**Presidential Records Act - [44 U.S.C. 2204(a)]**
P-1 National security classified information [(a)(1) of the PRA].
P-2 Relating to appointment to Federal office [(a)(2) of the PRA].
P-3 Release would violate a Federal statute [(a)(3) of the PRA].
P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA].
P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA].
P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].

C. Closed in accordance with restrictions contained in donor's deed of gift.

**Freedom of Information Act - [5 U.S.C. 552(b)]**
F-1 National security classified information [(b)(1) of the FOIA].
F-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
F-3 Release would violate a Federal statue [(b)(3) of the FOIA].
F-4 Release would disclose trade secrets or confidential commercial or financial information [(b)(4) of the FOIA].
F-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA].
F-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
F-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
F-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

052683
PR007101

Edward M. Kennedy
Massachusetts

File 13 Nov 1981

United States Senate

Dear President and Mrs Reagan -

I would like to express my sincere appreciation for receiving my mother and me with such warmth and graciousness at the White House yesterday.

Mother was honored and delighted to meet you both, and this visit added yet another highlight to her long and abundant life -

My best personal wishes Ted Kennedy

052683
1210
PR007
IV08
FG114

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

10/27/81

October 16, 1981

TO: GREG NEWELL

FROM: NANCY KENNEDY

SUBJECT: President & Mrs. Reagan Meeting with Senator Ted Kennedy and his Mother, Rose Kennedy

Greg, per the attached, I have talked with Kennedy's Administrative Assistant who advises that Mrs. Kennedy plans to leave Hyannisport for her home in Florida on October 31st. If a meeting could be arranged, perhaps in the private quarters for 15 minutes, anytime between now and the 31st, the Senator would make arrangements for her to come to Washington and then proceed on to Florida.

(I assure you there is no ~~sibling~~ interest here!)

[redacted]

End
case
File

049843
ME001-03

[illegible]ITING FILE

Nov 19 81

049847
GI002

THE WHITE HOUSE

WASHINGTON

November 19, 1981

Dear Don:

Thanks very much for the photos. I'm delighted to have them and appreciate your description of the meeting. I'm glad Marion took over.

While I'm at it, thank you both very much for going on the mission. I keep trying to get them to schedule me for a trip -- to California.

Nancy sends her love and from both of us to Marion.

Best regards.

Sincerely,

Ron

Mr. Don De Fore
2496 Mandeville Canyon Road
Los Angeles, California 90049

Kathy O.
[illegible]
H-D

# DON DE FORE

2496 MANDEVILLE CANYON RD.
LOS ANGELES, CALIFORNIA 90049

November 9, 1981

President Ronald Reagan
The White House
Washington, D.C.

Dear President, Ron:

The enclosed snapshots are the only photos taken during out delegation's audience with his majesty, King Sobhuza II of Swaziland. In fact, most of us were too awed meaklings to have even ventured permission to do so -- but not wife, Marion! Just prior to the audience, she'd asked for and received permission from the Prime Minister, Richard Mablanda Dlamini.

I'm sure our delegation chief, air force secretary, Vernon Orr, included in his report to you of the youthful-like delight expressed by this eighty two year old monarch when he opened your gifts to him -- as a matter he was so delighted he insisted his aides do so immediately. Each unveiling brought several high-pitched hummmmmms! particularly your autographed photo. He expressed deep concern over your current health and welfare, and when holding your photo up to secretary Orr and asked, "Does your president now look like this, or is he much thinner?" He delightedly, "hmmmmmed," when told you look very much the same.

Allow me again to thank you for the privilege of serving our country in this prestigious manner.

Sincerely,

Don

Enclosures

Dear Don

Thanks very much for the photos. I'm delighted to have them and appreciate your description of the meeting. I'm glad Marion took ~~[illegible]~~ over.

While I'm at it thank you both very much for going on the mission. I keep trying to get them to schedule me for a trip — to Calif.

Nancy sends her love & from both of us to Marion. Best Regards Ron

#10 storage

End
case
File

033929SS.
FG006-01

THE WHITE HOUSE
WASHINGTON

Date: 11/16/81

NOTE FOR: EDWARD V. HICKEY

The President has

- seen ☐
- acted upon ☐
- commented upon ☒ XX

the attached; and it is forwarded to you for your:

- information ☒ XX
- action ☐

Richard G. Darman
Assistant to the President
(x-2702)

*cc:*

The President has seen

THE SECRETARY OF DEFENSE

WASHINGTON, THE DISTRICT OF COLUMBIA

Send to Ed Hickey — As per last paragraph I'm adding my thanks too. Keep it up RR

81 NOV 12 9 NOV 1981

WHITE HOUSE SITUATION ROOM

MEMORANDUM FOR THE PRESIDENT

SUBJECT: White House Military Office

At the extremely fast pace which seems to prevail all the time in Washington, I fear I may sometimes forget to recognize outstanding performance. With this in view, I want to mention the superb job being done by the White House Military Office. Since we work together on a daily basis, I can speak with confidence when I say that the support and assistance given to this Department by Ed Hickey, Dennis LeBlanc, Frank Millner and the others in that office is phenomenal.

I have been told by those who have dealt with the White House Military Office in the past that never have relations been closer or more professional. Please convey to Ed my most sincere thanks for all that he and his staff are doing for us.

Cap

THE SECRETARY OF COMMERCE
Washington, D.C. 20230

The President has seen____

November 18, 1981

MEMORANDUM FOR THE PRESIDENT

FROM: MALCOLM BALDRIGE, CHAIRMAN PRO TEMPORE
CABINET COUNCIL ON COMMERCE AND TRADE MB

SUBJECT: The Shipping Act of 1981

Your Administration has been asked to state its position on the Shipping Act of 1981 (S. 1593), a major piece of legislation sponsored by Senator Gorton to revise the economic regulation of international ocean liner shipping operating in the U.S. foreign trade. The existing regulatory regime tends to place U.S. flag carriers at a competitive disadvantage and is a major source of irritation to our trading partners.

The Bill's principal objective is to reestablish the primacy of the Shipping Act of 1916 by granting complete anti-trust immunity to authorized forms of economic cooperation among carriers. The Bill would also simplify the process by which liner conference* activities are sanctioned in the U.S. foreign trade and would strengthen the conference system as a method of insuring stability in that trade.

S. 1593

The following principal provisions of the Bill were considered by the Cabinet Council:

1. Ocean carriers may enter into agreements among themselves regarding capacity, service and prices.

2. Such agreements must be filed with and approved by the Federal Maritime Commission. The FMC has discretionary authority to disapprove an agreement if it is found to be unjustly discriminatory or unfair, or detrimental to U.S. commerce.

3. Any activities permitted by the Act are exempt from the anti-trust laws.

---

*Conference means an association of ocean common carriers which provides ocean transportation on a particular route or routes and which operates within the framework of an agreement establishing rates and any other conditions of service.

4. Every carrier is required to file with the Federal Maritime Commission (FMC) tariffs showing all rates in effect over routes served by such carrier. In order to deter unadvertised discounting or "rebating", the FMC is empowered by the Act to penalize carriers for failure to adhere to filed tariffs.

Cabinet Council Position

Areas of Agreement

There is a broad area of agreement that covers the following points:

- closed conferences, setting of ocean rates by conferences, and agreements among carriers to rationalize services should be permitted.

- extended anti-trust immunity should be granted.

- predatory practices, such as use of "fighting ships" subsidized by conferences to drive independents from a trade, should be banned.

- the FMC should not approve agreements among carriers on the basis of the two vague and arbitrary criteria contained in the Bill. Rather, any agreement should be approved automatically if none of the concerted activities it specifies is prohibited explicitly in the Act.

- the tariff filing requirement and enforcement of tariffs by the FMC should be discontinued and the Federal government should be removed from all involvement in rate-making activities. The Cabinet Council believes that if the conferences are free to set rates and to establish self-policing mechanisms to enforce rates, they should not have assistance from the Federal government to compel adherence by conference members to agreed upon rates.

Areas of Disagreement

There remains disagreement within the Cabinet Council over the ocean shipping activities that should be prohibited. There is further disagreement over the application of anti-trust laws to any prohibited activity. The Justice Department argues that anti-trust laws should be applied to ocean shipping activities prohibited explicitly in the Act. The industry argues that their primary problem is with the anti-trust laws themselves and with the uncertainty that has been created by Justice Department enforcement and court interpretation of those laws. In the view of ocean shipping interests and of Senate sponsors of the bill, the application of anti-trust laws to ocean shipping activities has created a destabilizing and untenable situation. Accordingly, the Department of Transportation proposes that anti-trust laws not be allowed to apply to any ocean shipping activities whether permitted or prohibited under the Shipping Act.

There is a further disagreement about what activities should be prohibited. The disagreement is based on two fundamentally different views of the economic effects of rate-setting by conferences. In the view of the Department of Justice, permitting conferences to set and enforce rates without restraint would result in prices higher than those that would prevail if that ability were limited. The Department of Justice argues that maintenance of higher than competitive rates will draw excess capacity into our trades, resulting in service competition rather than price competition and in a loss of economic efficiency.

The Department of Transportation seeks to minimize as far as possible government regulation of conference rate-setting activities. The Department of Transportation argues that there is or will be sufficient competition from independent carriers to hold down prices and to discipline conference power. The Department of Transportation argues further that because attempts by conferences to set rates at excessively high levels will attract new independent carriers into the trades, government intervention in conference activities should be limited to assuring that conferences do not abuse their power by driving independent carriers from those trades. In the view of the Department of Transportation, any limits on conference rate-setting activity will undercut the economic benefits of conferences to financially distressed U.S. flag carriers.

The Department of Justice argues that if the purpose of allowing conferences to set prices at higher than competitive levels is to provide a substitute for government operating subsidies, then the approach is wasteful because it benefits carriers in proportion to their shares of the trade. In the view of the Department of Justice, since foreign flag carriers carry about 75% of the cargoes in the U.S. foreign trade, they will receive about 75% of the benefits of any super-normal return implicit in the rate structure.

Department of Justice Position

The Department of Justice proposed three measures that they believe would resolve substantially their problems relating to "cartelization" of ocean liner shipping by preserving avenues for price competition between conference carriers. These are:

1. Prohibition of revenue and profit pooling. Under this practice, carriers establish in advance of an accounting period the respective shares of revenue and/or profits that each will receive irrespective of the amounts of cargo carried. Cargo pooling, which is a form of space sharing, would be permitted.

2. Prohibition of inter-modal rate-setting by conferences. Under this practice, conferences set the "through rates" for inter-modal shipments over transportation routes having both ocean and land segments. Individual ocean carriers would still be free to negotiate "through rates" with individual inland carriers and such "through rates" could be advertised by the conference.

3. Prohibition of inter-conference agreements. This would preserve the so-called "gateway competition" that assures rivalry between conferences serving different ports, such as the U.S. Gulf Coast and the U.S. East Coast. Inter-conference agreements are permitted under present law.

The Department of Justice seeks to remove the regulatory uncertainties relating to enforcement of any prohibitions on conference activities by exempting those activities from the sanctions of the FMC, a regulatory agency. All of its penalties for violating prohibited activities would come under the anti-trust laws, not the Shipping Act.

Department of Transportation Position

The Department of Transportation objects to the limitations on conference activity proposed by the Department of Justice. The position of the Department of Transportation is similar to the Bill in the forms of economic cooperation that would be permitted, including closed conferences, limits on capacity, and inter-modal rates. The Department of Transportation believes that conferences should be free to establish inter-modal through rates to satisfy the demand for containerized services and to prevent erosion of the conference system. The Department of Transportation position would remove the government from involvement in conference activities, prohibiting only predatory practices. The Department of Transportation seeks to remove the uncertainties regarding the scope of anti-trust immunity for conference activities by completely exempting those activities from antitrust laws. All of its penalties for violating prohibited activities would come under the Shipping Act, not the anti-trust laws.

Implications for Legislative Strategy

The Senate Bill has the support of U.S. flag carriers, shippers and our trading partners. The two provisions considered most essential to passage are anti-trust immunity for carriers and FMC tariff filing requirements.

Anti-trust Immunity

The present position of the Department of Justice with respect to anti-trust immunity represents a major change from its past positions. In conferring blanket anti-trust immunity with specific exceptions, the Department's position probably would be viewed as a substantial concession to maritime interests and to the demands of our trading partners for greater comity.

The industry, however, may view the exceptions to anti-trust immunity that would remain under the Department of Justice proposal as confusing and destabilizing because of the arbitrary distinctions they believe the Department of Justice has drawn in the past between those activities that are subject to the anti-trust laws and those that are not. The industry believes there will be continuing uncertainty as to how the Anti-trust Division may interpret concerted ocean shipping activities under the clarified anti-trust immunity proposed by the Department of Justice.

Tariff Filing Requirement

The Cabinet Council position favoring abolition of tariff filing requirements, while entirely consistent with the Administration's overall deregulation objectives, will provoke extremely hostile reaction from Congressional sponsors of the bill, from U.S. flag carriers and from shippers. Carriers regard the tariff filing requirement as the only effective means to enforce anti-rebating statutes, which protect U.S. flag carriers from aggressive price competition from foreign flag carriers. Shippers support tariff filing requirements as a protection against discrimination by carriers as between large and small shippers.

It was never the intent of Congressional sponsors to tamper with tariff-filing requirements because these have never been problematic. Continuation of tariff-filing probably will be a condition of passage for new legislation. If a bill with such requirements reaches your desk, it will on the surface contain most of what the Administration supports, and it will be difficult at that time to justify a veto. However, such a bill would set aside our central philosophical concern that conference rate-making authority should not be reinforced by government enforcement of conference rates.

Options

There are two options for you to consider. The essential difference between them pertains to the ocean shipping activities that would be prohibited, and to the anti-trust treatment that would be accorded those prohibited activities.

Option 1 (Department of Justice)

o Permit ocean carriers to enter into agreements among themselves regarding capacity, service and prices subject to the following restrictions:

-- Prohibit revenue and profit pooling
-- Prohibit inter-modal rate setting by conferences
-- Prohibit inter-conference agreements

o Require the FMC to approve an agreement if it does not specify any activity that is prohibited explicitly in the Act. End use of discretionary approval criteria.

o Grant anti-trust immunity to every form of cooperative activity that is not prohibited explicitly in the Act.

o Discontinue tariff filing requirements and tariff enforcement by the FMC.

<u>Option 2</u> (Department of Transportation) OK RR

o Permit ocean carriers to enter without restrictions into agreements among themselves regarding capacity, service and prices.

--Permit revenue and profit pooling
--Permit inter-modal rate-setting by conferences
--Permit inter-conference agreements

o Require the FMC to approve an agreement if it does not specify any activity that is prohibited explicitly in the Act. End use of discretionary approval criteria.

o Grant complete anti-trust immunity to ocean shipping activities. The exclusive remedy for engaging in prohibited activities would be under the Shipping Act.

o Discontinue tariff filing requirements and tariff enforcement by the FMC. Require carriers to publish their tariffs with a commercial service.

THE WHITE HOUSE

WASHINGTON

December 14, 1981

TO: CRAIG FULLER

FROM: DENNIS KASS

SUBJECT: Agency Views of Ocean Shipping Policy Options Sent to the President

The Memorandum for the President on the Shipping Act of 1981, dated 11/18/81, set forth the following two options:

Option 1 (Department of Justice)

o Permit ocean carriers to enter into agreements among themselves regarding capacity, service and prices subject to the following restrictions:

--Prohibit revenue and profit pooling
--Prohibit inter-modal rate setting by conferences
--Prohibit inter-conference agreements

o Require the FMC to approve an agreement if it does not specify any activity that is prohibited explicitly in the Act. End use of discretionary approval criteria.

o Grant anti-trust immunity to every form of cooperative activity that is not prohibited explicitly in the Act.

o Discontinue tariff filing requirements and tariff enforcement by the FMC.

Option 2 (Department of Transportation)

o Permit ocean carriers to enter without restrictions into agreements among themselves regarding capacity, service and prices.

--Permit revenue and profit pooling
--Permit inter-modal rate-setting by conferences
--Permit inter-conference agreements

o Require the FMC to approve an agreement if it does not specify any activity that is prohibited explicitly in the Act. End use of discretionary approval criteria.

o Grant complete anti-trust immunity to ocean shipping activities. The exclusive remedy for engaging in prohibited activities would be under the Shipping Act.

o Discontinue tariff filing requirements and tariff enforcement by the FMC. Require carriers to publish their tariffs with a commercial service.

These options differ with respect to treatment of the following commercial activities or regulatory functions:

1) conference inter-modal rate authority

2) revenue and profit pooling by ocean common carriers

3) inter-conference agreements

4) anti-trust immunity for ocean shipping activities, including activities that may be prohibited explicitly in the Act

5) requirement that carriers publish tariffs with a commercial service

The table below indicates the positions of the various agencies on each of the five contested elements in the DOT and DOJ options. Certain agencies endorsed a single option in its entirety, while others supported features of both options.

Agency Positions on Areas of Disagreement
Between Option 1 (Justice) and Option 2 (Transportation)

| | Option Supported | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| Issue | State | Treasury | Energy | OMB | USTR | CEA | Option 1 | Option 2 | Other |
| Intermodal rate authority | 1 | 1 | 2 | 2 | 2 | 1 | 3 | 3 | 0 |
| Revenue Pooling | 1 | 1 | 2 | 2 | 2 | 1 | 3 | 3 | 0 |
| Inter-conference agreements | 1 | Note B | 2 | 2 | 1 | 1 | 3 | 2 | 1 |
| Anti-trust immunity | 1 | 1 | 2 | 1 | 2 | 1 | 4 | 2 | 0 |
| Tariff Publication | Note A | 2 | 2 | Note A | 2 | 1 | 3 | 1 | 2 |

NOTES

A - Position not clear
B - Subject to anti-trust laws and allow any agreements that are not in restraint of trade

In addition, the Office of Public Liaison has endorsed Option 2.

None of the agencies has opposed any of the positions comprised within the substantial area of agreement between Justice and Transportation. In particular, there is solid support for the abolition of tariff filing requirements.

The Office of Legislative Affairs has provided a paper from the Senate Commerce Committee which discusses likely political reaction to the Administration's proposals. (See Attachment)

Potential for Compromise

There may exist a basis for compromise between Options 1 and 2 that takes account of the arguments of both Justice and Transportation, and that satisfies the essential concerns of carriers, shippers and our trading partners. That compromise would have the following features:

1. Grant conference intermodal rate authority in the form proposed jointly by the Federal Maritime Commission and the Interstate Commerce Commission (See Attachment A). Their proposal grants anti-trust immunity to the setting of intermodal rates by conferences, but requires conference members to negotiate rate divisions individually with inland carriers, subjects those negotiations to anti-trust enforcement, and disallows the disclosure in tariff filings of inland divisions of a joint through rate.

2. Impose severe limitations on revenue pooling and inter-conference agreements, bud do not prohibit them. Predicate approval of these activities on the requirement that they not be in restraint of trade. Criteria used by the Justice Department in issuing business review letters on proposed mergers should also apply to scrutiny of the types of business combinations contemplated by revenue pooling and inter-conference agreements. It is not necessary for the Justice Department to have jurisdiction over these ocean shipping activities in order to base regulation of them on the Departmment's merger guidelines. Enforcement authority could reside in the FMC instead of in the Justice Department.

3. Grant anti-trust immunity to ocean common carriers, other persons subject to the Act (Shipping Act of 1916) and activities within the jurisdiction of the FMC under the Act. This is consistent with the intent of the Gorton Bill to reaffirm the primacy of the Act over the anti-trust laws, but does not extend anti-trust immunity to inland commerce in any form. Accordingly, such a proposal would comport with the FMC/ICC proposal to subject negotiations between ocean carriers and inland carriers to the anti-trust laws. It would also deny anti-trust immunity to Shippers Councils, which in any event are not supported strongly by either carriers or shippers. (Shippers Councils might be a necessary

countervailing force to the power of conferences if conferences were to be given authority to negotiate on behalf of their members with individual inland carriers. However, such authority is not contemplated by the FMC/ICC proposal, nor is it favored by any of the agencies.) This position essentially would lift anti-trust immunity at the water's edge, save for agreements of certain portside entities subject to the Act. It would give the FMC authority to approve and police revenue pooling and inter-conferencer agreements.

Position on Tariff Filing Requirements

The Gorton Bill does not tamper with the tariff filing requirement, and it was never considered a candidate for regulatory reform before the Administration proposal surfaced.

Continuation of the tariff filing requirement and of FMC tariff enforcement ranks with anti-trust immunity in terms of importance to U.S. flag carriers, whose economic interests the Gorton Bill is intended to advance.

The purpose of the tariff filing requirement is to prevent so-called "destructive competition" in the form of unlawful price discounting or rebating. It is the instrument through which the "common carrier" concept, which assures shippers and ports of non-discriminatory treatment, is made to work in ocean transportation. Neither carriers nor shippers favor abandoning the common carrier concept.

Without the tariff filing requirement, the FMC would have no effective means to enforce the anti-rebating statute enacted in 1979 or the statutes relating to controlled carriers. Most U.S. flag carriers greatly fear rebating by foreign flag carriers and price discounting by controlled carriers because of U.S. flag carriers' high cost structure and generally weak financial condition. Because U.S. flag carriers believe that abolition of tariff filing requirements would stimulate uncontrollable price competition, and because small shippers fear the price discrimination that would result therefrom, both U.S. flag carriers and shippers vigorously oppose any change in the status quo.

The Department of Transportation and the Assistant to the President for Policy Development have indicated their readiness to retreat from support of the proposal on tariff filing if legislation omitting that proposal reaches the President's desk. If we are not serious about this radical deregulatory provision, it may be prudent to drop it from the Administration's proposal now. If we do so, we will be perceived as helping the industry in accordance with the President's campaign promises, while avoiding a fight we have neither the will nor the ability to win anyway.

Although DOT, Energy and USTR probably would not oppose continuation of the tariff filing requirement, Justice, Treasury, CEA and State probably would.

In order to accomodate the general agency support for deregulation in the tariff area, the Administration might propose the following variation on the DOT model.

1. Require publication of tariffs with a commercial service.

2. Maintain penalties under the Act for failing to publish tariffs and for failing to adhere to published tariffs.

3. Treat the FMC as an administrative law court to which carriers or shippers could bring cases of alleged violation of tariff requirements.

4. Deny the FMC the right to initiate cases on its own.

This proposal would involve substantial <u>streamlining</u> of tariff regulation and would relegate the FMC to a passive quasi-judicial role, but it would leave enough teeth in the anti-rebating statutes to placate industry opposition.

December 3, 1981

MEMORANDUM FOR MR. CRAIG L. FULLER
ASSISTANT TO THE PRESIDENT FOR CABINET AFFAIRS
THE WHITE HOUSE

Subject: Shipping Act of 1981

Your Cabinet Affairs Staffing Memorandum No. 018994CA of November 20 requested comments on CM#120 "The Shipping Act of 1981" by November 25. We are submitting the following comments at this time as the staffing memorandum did not reach the State Department until yesterday.

Ocean shipping conferences are cartels and operate with the same effect on economic efficiency as similar organizations in other economic sectors. The United States must tolerate their operation in ocean shipping, however, as the policies of our trading partners favor their existence. Any attempt to ban conference operations would cause a serious crisis in our international relations. Therefore, the United States should allow conferences to exist under conditions which will constrain them to operate in the most economically efficient way, but which are nonetheless consistent with the demands of international comity.

The Department believes that the proposal put forward by the Department of Justice best meets this objective. Legalization of closed rationalized conferences, abolition of tariff filing and enforcement, extension of antitrust immunity, and abolition of subjective approval standards for conference agreements will move us far closer to the prevailing international practices in shipping. At the same time, the prohibition of revenue pooling, intermodal rate setting and interconference agreements will retain the assurances of price competition necessary for economic efficiency.

The Department strongly favors an active Administration policy for revitalization of the U.S. merchant marine but agrees with Justice that regulatory reform is unlikely to make a significant contribution in this regard. Unless conferences were permitted to engage in predatory practices against new entrants, the above normal conference rates will attract additional tonnage into the U.S. trades and thereby dissipate the increased profits conference members hope to earn. Moreover, if the conferences are able to win any extra profits, three-quarters of the gain will go to foreign-flag operators as US-flag companies carry only one-quarter of our liner trade.

Finally, Secretary Baldrige may be unduly pessimistic about Congressional disposition of the generally agreed proposal to abolish tariff filing and enforcement. An amendment with the same effect recently won solid Republican support in the House Merchant Marine Subcommittee and was defeated, by only one vote, by the Democratic majority. Senator Gorton reportedly has no ingrained opposition to this idea, and shippers have indicated to us that early expressions of opposition were not based on a thorough examination of the question. In the Department's view, this proposal could succeed with active Administration support.

L. Paul Bremer, III
Executive Secretary

THE WHITE HOUSE

WASHINGTON

# CABINET AFFAIRS STAFFING MEMORANDUM

CLOSE OF BUSINESS

DATE: 11/20/81  NUMBER: 018994CA  DUE BY: WEDNESDAY, 11/25/81

SUBJECT: THE SHIPPING ACT OF 1981 (CM#120)

| | ACTION | FYI |
|---|---|---|
| ALL CABINET MEMBERS | ☐ | ☐ |
| Vice President | ☑ | ☐ |
| State | ☑ | ☐ |
| Treasury | ☑ | ☐ |
| Defense | ☐ | ☑ |
| Attorney General | ☑ | ☐ |
| Interior | ☐ | ☑ |
| Agriculture | ☑ | ☐ |
| Commerce | ☑ | ☐ |
| Labor | ☑ | ☐ |
| HHS | ☐ | ☑ |
| HUD | ☐ | ☑ |
| Transportation | ☑ | ☐ |
| Energy | ☑ | ☐ |
| Education | ☐ | ☑ |
| Counsellor | ☑ | ☐ |
| OMB | ☐ | ☑ |
| CIA | ☐ | ☑ |
| UN | ☐ | ☑ |
| USTR | ☑ | ☐ |
| CEA | ☑ | ☐ |
| CEQ | ☐ | ☐ |
| OSTP | ☐ | ☐ |
| ________ | ☐ | ☐ |
| ________ | ☐ | ☐ |

| | ACTION | FYI |
|---|---|---|
| Baker | ☑ | ☐ |
| Deaver | ☐ | ☐ |
| Allen | ☑ | ☐ |
| Anderson | ☑ | ☐ |
| Darman *(For WH Staffing)* | ☑ | ☐ |
| Jenkins | ☐ | ☑ |
| Gray | ☐ | ☑ |
| Beal | ☐ | ☑ |
| ________ | ☐ | ☐ |
| ________ | ☐ | ☐ |
| ________ | ☐ | ☐ |
| ________ | ☐ | ☐ |
| ________ | ☐ | ☐ |
| ________ | ☐ | ☐ |
| ________ | ☐ | ☐ |
| CCNRE/Boggs | ☐ | ☐ |
| CCHR/Carleson | ☐ | ☐ |
| CCCT/Kass | ☐ | ☑ |
| CCFA/McClaughry | ☐ | ☐ |
| CCEA/Porter | ☐ | ☐ |

**Remarks:** Please review the attached Presidential decision memorandum from Secretary Baldrige on the Shipping Act of 1981 and submit any comments to Ken Cribb by close of business Wednesday, November 25.

RETURN TO:

Craig L. Fuller
Assistant to the President
for Cabinet Affairs
456-2823

CONTACT:

Kenneth Cribb, Jr.
Assistant Director
Office of Cabinet Affairs
456-2800

Form ...

SHORT STATEMENT OF THE ISSUES REGARDING THE SHIPPING ACT OF 1981

There is general agreement that reform of the regulation of the international ocean liners in the U.S. foreign trade is necessary. The Shipping Act of 1981, S. 1593, sponsored by Senator Gorton contains four principal provisions that were discussed by the Cabinet Council.

S. 1593

1. Ocean carriers may enter into closed conferences, which can agree upon capacity, service and prices, and can exclude other carriers from joining the conference.

2. Conference agreements must be filed with and approved by the Federal Maritime Commission. The FMC has discriminatory authority to disapprove an agreement if it is found to be unjustly discriminatory or unfair, or detrimental to U.S. commerce.

3. Any activities permitted by the Act are exempt from the antitrust laws.

4. Ocean carriers must file tariffs with the FMC that show all rates in effect over all routes served. The FMC is empowered by the Act to penalize carriers for failure to adhere to filed tariffs, which deters unadvertised discounting, or 'rebating'.

Cabinet Council Position

The Cabinet Council agreed upon the following points:

1. Closed conferences, setting of ocean rates by conferences, and agreements among carriers to rationalize services should be permitted.

2. Predatory practices, such as the use of 'fighting ships', subsidized by conferences to drive independents from a trade, should be banned.

3. The FMC should approve all agreements filed that are not expressly prohibited by the Act. This would end the use of vague and arbitrary criteria.

4. Tariff filing requirements and the enforcement of tariffs by the FMC should be discontinued. The Federal government should not be involved in rate-making activities, and particularly not in the enforcement of conference rates.

Issues Left Unresolved

The Departments of Justice and Transportation have different positions on the following issues.

1. Revenue and profit pooling. Under this practice carriers establish the shares of revenues and/or profits that each will receive irrespective of the amounts of cargo carried.

- DOJ argues that revenue and profit pooling should be prohibited. Revenues and profits must continue to be tied to performance; otherwise ocean carriers have an incentive to provide lower cost, lower quality service while shippers receive no reduction in rates.

- DOT argues that the government should not interfere in the types of activities that conferences undertake.

2. Intermodal rate setting by conferences. Conferences would set the 'through rate' for intermodal shipments over routes with both ocean and land segments.

- DOJ opposes intermodal rate setting by conferences. The benefits of land competition may be eliminated if conferences are able to set intermodal rates. Lower rail rates would not reduce the final cost to the shipper. Individual ocean carriers would still be free to negotiate 'through rates' with individual land carriers and such rates could be advertised by the conferences.

- DOT argues that intermodal rates are necessary to satisfy the demand for containerized services and to prevent erosion of the conference system.

3. Inter-conference agreements. Conferences would be able to make agreements with each other.

- DOJ opposes permitting inter-conference agreements to preserve the gateway competition that assures rivalry between conferences serving different ports, such as the U.S. Gulf Coast and the U.S East Coast. This kind of competition limits the ability of conferences to raise rates above competitive levels.

- DOT would allow inter-conference agreements, since they are permitted under present law, and prohibiting them would involve government in conference activities.

4. Antitrust Immunity. All parties favor the extention of antitrust immunity.

- DOJ would grant antitrust immunity for all agreements filed with the FMC. Since the FMC can reject only those agreements expressly prohibited, this would set a clear standard for agreements that would be immune. All agreements not filed with the FMC would be subject to the antitrust laws.

- DOT proposed that the antitrust laws not be allowed to apply to any ocean shipping activities, whether permitted or prohibited by the Shipping Act.

The two departments disagree about the effects of allowing closed conferences.

DOJ believes that prohibitions on the first three activities listed above are necessary to ensure that competition restrains the rate-setting ability of the conferences. If competition does not prevent rates above competitive levels, non-conference carriers will be attracted into the trades, leading to greater excess capacity in the conferences than currently exists, service competition, and a loss in economic efficiency.

DOJ also argues that if the closed conferences are viewed as a substitute for operating subsidies, then this approach is wasteful. Ocean carriers will benefit in proportion to their share of the trade; since foreign flag carriers obtain about 75 percent of the cargoes in the U.S. foreign trade, they will receive about 75 percent of the benefits of any super-normal returns.

DOT would like to minimize federal government regulation of conference rate setting activities. They argue that any attempt to raise rates above competitive levels will attract independent carriers into the trades. Any limits on conference rate-setting activity will undercut the economic benefits of conferences to financially distressed U.S. carriers.

Options

There are two options to be considered. The first issue reflects a difference of beliefs about the need to prohibit certain activities to assure competition when more effective rate-setting conferences are permitted. The extension of antitrust immunity is a question of who should judge and penalize an illegal agreement.

Option 1

§ The following restrictions would be placed on the activities of closed conferences.

- Revenue and profit pooling agreements would be prohibited.

- Intermodal rates could not be set by conferences.

- Agreements between conferences would be prohibited.

§ Antitrust immunity would be granted for all agreements filed with the FMC

Option 2

§ There would be no restrictions placed on the rate-setting powers of closed conferences.

§ Antitrust immunity would be granted to all ocean shipping activities. The remedy against prohibited activities would be from the Shipping Act.

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Phoned reply For files

15 November 1981

E

Dear Mr. President:

I thought I had better communicate to you directly on a situation which concerns me deeply.

On his recent visit to the West Coast in a private discussion with King Hussein, he told me, "I had begun to dispair of the United States ever returning to its position of dependability which, for so long, characterized all of its actions. The inconsistencies and vacillations of the U.S. in the last years have been of grave concern to all of its friends in the rest of the world. Now that I have met President Reagan, I, for the first time, am confident that this behavior will cease. He is a man who radiates his personal integrity and strength. Because of this I am, for the first time, optimistic there can be meaningful resolutions of the problems, not only in the Middle East but in other parts of the world. The United States is such an important ingredient in the decisions of all nations that the fact it is now being led by a man of purpose and character can only give us all hope." When stating this, King Hussein had an almost religious look, totally sincere.

I have known Hussein personally for almost twenty years and have had many discussion where he usually had a facade of optimism, but he played a careful and lone hand with a touch of cynicism underneath. This was all removed in this encounter by the force of your personality on him.

On a recent trip to Korea, I met with President Chun who, in a private meeting with me, told of the great impression that you had made on him personally. I quote: "My visit with President Reagan in February, so early in his Administration and mine, had a profound effect on me. I believe it was providence (his word) that made such a man the head of the United States at this time. He is a man of character with integrity and sincerity. I believe we can now count on the word of the United States. On my recent trip to the ASEAN countries, when I talked to the leaders of these countries, each confessed a distrust of the United States as a dependable ally. I spoke with each, telling of my experience with President Reagan, my belief that under his leadership the word of the United States could be counted upon. I was able to convince each of them to believe this. In two cases, I had to stay an extra day to insure that they did understand that the United States, under President Reagan, would be dependable and reliable where before it was not." Once again I saw in President Chun, a tough military leader, an almost religious belief in you as a person.

I thought it was important to communicate these words to you directly (in fact, in President Chun's case, he asked me to do so) together with my concerns. I felt it important that you know first-hand the way that these and other leaders of the world with whom I have talked all trust you. The important things is that these leaders trust you because they believe they understand you and that under you the United States' actions will be based upon principles that they see in you. I believe it is essential at this time that you personally project those principles into the decisions that govern our important relations with other countries. I think it is important that you use your personal leadership to insure that those who are making our foreign policy decisions know there are some things the United States stands for simply because they are right, regardless of the situation. Among these are:

. We sincerely respect the sovereignty of other nations as we expect them to respect our sovereignty. We don't think of the world as a chess board with kings and queens and pawns to be moved and sacrificed in the name of some grand strategy. It is our country's belief that in the world there are no pawns; all nations are important; that a commitment of the United States to any nation, once given, will always be kept. If a mistake is made in a commitment, we will honor the commitment but will not repeat the mistake and shall so state, and we expect other nations to do the same. Because our commitments will always be honored, they will not be lightly taken.

I know these are your principles and that they are the reasons other nations' leaders trust you. I am sorry to say that frequently the people in your Administration do not project these same principles in their decision process involving our relations with other nations. Because of what I have seen over the years and what I now see, my greatest personal fear is that we will continue to repeat past errors unless you personally insist that this country will conduct its foreign affairs consistent with fundamental principles rather than expediency.

Sincerely,

Tom ?

End
Case
File

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

To Richard Crane
206 N.E. 49th St.
Pompano Beach Fla. 33064

Dear Dick

I've just learned of your recent surgery. Gosh let me know. Take care of yourself and please know you will be in my thoughts and prayers.

Tell Monta to remind you, if you get rambunctious, that "a surgeons scalpel is 5 months long." And while you're about it give her my love.

It's a long way back to Eureka days but I have to say those days are as fresh in my memory as if they happend last week.

Again the very best to you both.

Sincerely
Yours In The Bond
Dutch

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THE WHITE HOUSE
WASHINGTON

November 19, 1981

Dear Dick: Pres. get well message re

I've just learned of your recent surgery -- Garth let me know. Take care of yourself, and please know you will be in my thoughts and prayers.

Tell Monta to remind you, if you get rambunctious, that "a surgeon's scalpel is five months long". And, while you're about it, give her my love.

It's a long way back to Eureka days, but I have to say those days are as fresh in my memory as if they happened last week.

Again, the very best to you both.

Yours in the Bond,

Dutch

Mr. Richard Crane
206 N.E. 49th Street
Pompano Beach, Florida 33064

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11-19-81

End
case
File

THE WHITE HOUSE

WASHINGTON

November 19, 1981

Dear Garth:

Thanks very much for your letter and for letting me know about Dick. I had lost all track of him and so knew nothing about his illness. I've just written to him.

It was good to hear from you and about Eureka days, in spite of the sad news.

Again, my thanks and best regards.

Sincerely, Ron

Mr. Garth Henrichs
East Parkview
Litchfield, Illinois 62056

End
Case
File

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

To Garth Henrichs

Dear Garth

Thanks very much for your letter and for letting me know about Dick.

I had lost all track of him and so knew nothing about his illness. I've just written to him.

It was good to hear from you + about Eureka days ~~but wish~~ in spite of the sad news.

Again my thanks & Best Regards

Sincerely

Ron

The Spacious Reception Room of the House of Sunshine in Sunshine Park, Litchfield, Illinois, home of Sunshine Magazine, Good Reading, and the Henrichs Goodwill Publications. Here is the mirrored fernery with water fountain. The curved stairway leads to the second floor balcony, Music Room and Library Lounge, and the American Heritage Room.

Photo by C.L. Bence

Pub. by C.L. Bence, 12 Noyes Court, Mattoon, Ill.

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post card

Ed Meece, personally:

I'll appreciate your passing this card on to Ron Reagan, as it shows the reception room of our main building where he expects to visit me some day. And tell him also, please, that my brother-in-law, Dick Crane, back in Pompany Beach, Fla., is right now in a very ~~poor~~ health condition, very serious with cancer, as he knows, and a personal word to Dick would mean a great deal to him.

Garth H. [illegible]

dp MADE BY DEXTER PRESS, INC. WEST NYACK, NEW YORK

Dick and Ron were classmates in Eureka College, and they were togther last May at the College. We're afraid Dick's days are numbered!

Thank you so much,

Ed Meece

Garth

# Garth Henrichs

To our friends of the 'Greetings Office'

at The White House . . .

The enclosed personal letter to The President is quite important for his attention, as you can see from its content.

The President, as 'Dutch' Reagan, and my brother-in-law, Dick Crane, were quite close in college; it would be so good for Dick to have even a personal word of good wishes while he is attempting to recover from the serious surgery he had recently.

Thank you very much for giving this some special attention, as quickly as possible.

The President knows me as the Publisher of SUNSHINE MAGAZINE, which he has received for uears.

Nov. 10, 1981

Garth Henrichs

Garth Henrichs · East Parkview · Litchfield, Illinois
62056

President Ronald Reagan
The White House
Washington, D. C.

Dear Ron:

You will understand my addressing you as I do, recalling our longtime friendship, and our mutual interests in Eureka College.

Also, the close friendship with your Eureka classmate, Dick Crane, who married my sister, Monta, as you well know.

You probably haven't heard of Dick's quite recent and very serious illness, where he and Monta are living in Pompano Beach, Florida.

In late September Dick had hospital tests, and the diagnosis was, unfortunately, cancer, and he underwent surgery on October 6. His condition is a little improved, but we fear that he will not ultimately recover.

I thought if you knew this you would want to send a personal word to Dick--and Monta. Their address is 206 N.E. 49th Street, Pompano Brach, FL 33064. It would, of course, be a big 'lift' to Dick to hear from you.

Madge and I attended the Eureka Founders' Dinner at the Mt. Hawley Country Club in Peoria on Oct. 29. I sat with Dee Harrod, and Sam H. III spoke of the letter he'd received from you, after Sam's death.

I also talked with Heinie and Edna Sand, as well as other 'old' Eureka people you know well. Dr. Dan Gilbert spoke of his 'plane' visit with you enroute to Philadelphia rather recently.

Best wishes, always . . .

Garth

THE WHITE HOUSE

WASHINGTON

November 16, 1981

I made the call to Jennings Randolph. Got no commitment but said he'd ponder the situation & take my ~~[illegible]~~ remarks under consideration. RR

MEMORANDUM FOR THE PRESIDENT

FROM: MAX L. FRIEDERSDORF M.F.

SUBJECT: The John Van de Water nomination for National Labor Relations Board/ Letter from Roy M. Brewer

Roy Brewer's assessment of the situation on the Senate Labor and Human Resources Committee regarding the Van De Water nomination is accurate.

We have spent a great deal of time working Senator Jennings Randolph (D-W.Va.) to support the nomination, but he remains undecided and is under great pressure from the AFL-CIO, which vehemently opposes this nomination.

We submitted a Recommended Telephone Call for you to make to Senator Randolph last Friday, and feel that such a call is crucial to our efforts.

With regard to Senator Robert T. Stafford (R-Vt.), he is shaky on this one, but we have a commitment from him to either vote for the nomination, if his vote is decisive, or take a walk.

If Randolph votes with us and Stafford votes with us or takes a walk, we can win the nomination by one vote.

Stafford, who is a more liberal Republican, is also under strong union pressure, and he is susceptible this year because he is up for reelection in 1982.

This is the same committee that the Bill Bell nomination for EEOC is in trouble, and we have been restraining ourselves on the Bell nomination until after we get past the Van de Water vote, which is scheduled this Thursday, November 19.

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THE WHITE HOUSE
WASHINGTON

Date: 11/19/81

NOTE FOR: MAX FRIEDERSDORF ✓

The President has

seen ☐
acted upon ☐
commented upon ☒

the attached; and it is forwarded to you for your:

information ☒ AND/OR
action ☒

Richard G. Darman
Assistant to the President
(x-2702)

~~cc~~ Original: Central Files ✓

End
case
File