REPORT NO. DOT-TSC-OST-76-31

POTENTIAL ECONOMIC IMPACTS OF NON-MARKET CARGO ALLOCATION IN U.S. FOREIGN TRADE: WITH SPECIAL ANALYSIS OF THE UNCTAD CODE OF CONDUCT FOR LINER CONFERENCES

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JULY 1976

FINAL REPORT

Prepared for

U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
Office of the Assistant Secretary for Policy
Plans and International Affairs
Office of Transportation Economic Analysis
Washington DC 20590

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Technical Report Documentation Page

1. Report No.
DOT-TSC-OST-76-31

2. Government Accession No.

3. Recipient's Catalog No.

4. Title and Subtitle
POTENTIAL ECONOMIC IMPACTS OF NON-MARKET CARGO ALLOCATION IN U.S. FOREIGN TRADE: WITH SPECIAL ANALYSIS OF THE UNCTAD CODE OF CONDUCT FOR LINER CONFERENCES

5. Report Date
July 1976

6. Performing Organization Code

7. Author(s)
Robert W. Schuessler and David Spiller

8. Performing Organization Report No.
DOT-TSC-OST-76-31

9. Performing Organization Name and Address
U.S. Department of Transportation
Transportation Systems Center
Kendall Square
Cambridge MA 02142

10. Work Unit No. (TRAIS)
OPT15/R6810T

11. Contract or Grant No.

12. Sponsoring Agency Name and Address
U.S. Department of Transportation
Office of the Secretary
Office of the Assistant Secretary for Policy Plans and International Affairs
Office of Transportation Economic Analysis
Washington DC 20590

13. Type of Report and Period Covered
Final Report
July 1975-April 1975

14. Sponsoring Agency Code

15. Supplementary Notes

16. Abstract

The objective of the report is to analyze the impacts of the non-market allocation of cargo in the U.S.-International liner trades, with a special emphasis on analyzing the impacts of cargo allocation as prescribed by the United Nations Code of Conduct for Liner Conferences. The report analyzes the effects of the non-market allocation of cargo on U.S. carriers, U.S. shippers, the consuming public and U.S. regulatory policy. A trade-route analysis has been made of the UNCTAD code's cargo-allocation provision on the basis of 1973 U.S.-foreign trade flows, and additions to U.S. shipping capacity have been indicated using four possible implementation scenarios. A specific methodology was developed to treat military cargos, as well as to account for cargo allocation by volume as well as value.

17. Key Words
Non-Market Cargo Allocation
Shipping Bilateralism
UNCTAD
Pooling Agreements

18. Distribution Statement
DOCUMENT IS AVAILABLE TO THE U.S. PUBLIC THROUGH THE NATIONAL TECHNICAL INFORMATION SERVICE, SPRINGFIELD, VIRGINIA 22161

19. Security Classif. (of this report)
Unclassified

20. Security Classif. (of this page)
Unclassified

21. No. of Pages
144

22. Price

Form DOT F 1700.7 (8-72)

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

JUL 6 1976

Honorable Elliot L. Richardson
Chairman, President's Interagency
Committee on Export Expansion (PICEE)
U. S. Department of Commerce
Washington, D. C. 20230

Dear Mr. Secretary:

The enclosed report, concerning the effects of marine cargo allocation in the U. S. foreign trade, arises from the work program of the PICEE Transportation Economics Working Group (TEWG), which is chaired by the Department of Transportation. The report was prepared by the Transportation Systems Center of this Department. It has been reviewed by the TEWG and is representative of the Working Group's views.

I am forwarding the report to you for distribution to the PICEE membership and for consideration at that level.

Sincerely,

Bill

William T. Coleman, Jr.

Enclosure

PREFACE

This report was initiated under the general sponsorship of the Transportation Economics Working Group (TEWG) which is part of the President's Interagency Committee on Export Expansion (PICEE). Under the chairmanship of Dr. P. E. Franklin, TPI-34, Department of Transportation, TEWG provided basic support and feedback throughout all stages of this study.

The objectives of this study have been to:

1. Provide information for helping to shape the shipping aspects of U.S. export expansion policy;

2. Help concerned Federal agencies develop new policies as a result of the UNCTAD code;

3. Provide guidance to the Executive Branch on whether to ratify the UNCTAD code or not;

4. Help develop a new U.S. policy or reaffirm exciting policy on the regulation of international shipping.

The authors would like to express their gratitude and thanks to each member of the Transportation Economics Working Group for the support and advice each has given throughout the preparation of this report. We would also like to acknowledge Mr. Arthur Weber for his computer programming work, and Mr. Ronald Webb for his interpretation of the code.

METRIC CONVERSION FACTORS

Approximate Conversions to Metric Measures

Symbol	When You Know	Multiply by	To Find	Symbol
		LENGTH		
in	inches	2.5	centimeters	cm
ft	feet	30	centimeters	cm
yd	yards	0.9	meters	m
mi	miles	1.6	kilometers	km
		AREA		
in^2	square inches	6.5	square centimeters	cm^2
ft^2	square feet	0.09	square meters	m^2
yd^2	square yards	0.8	square meters	m^2
mi^2	square miles	2.6	square kilometers	km^2
	acres	0.4	hectares	ha
		MASS (weight)		
oz	ounces	28	grams	g
lb	pounds	0.45	kilograms	kg
	short tons (2000 lb)	0.9	tonnes	t
		VOLUME		
tsp	teaspoons	5	milliliters	ml
Tbsp	tablespoons	15	milliliters	ml
fl oz	fluid ounces	30	milliliters	ml
c	cups	0.24	liters	l
pt	pints	0.47	liters	l
qt	quarts	0.95	liters	l
gal	gallons	3.8	liters	l
ft^3	cubic feet	0.03	cubic meters	m^3
yd^3	cubic yards	0.76	cubic meters	m^3
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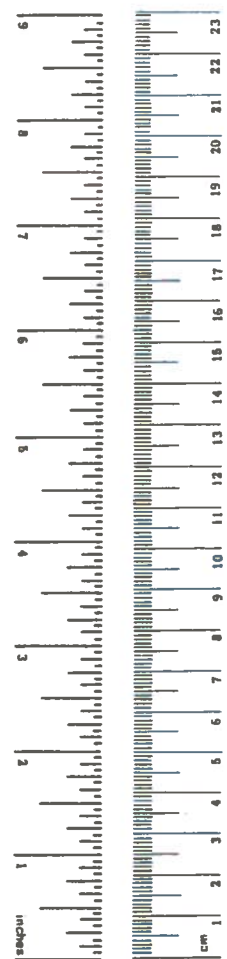

Approximate Conversions from Metric Measures

Symbol	When You Know	Multiply by	To Find	Symbol
		LENGTH		
mm	millimeters	0.04	inches	in
cm	centimeters	0.4	inches	in
m	meters	3.3	feet	ft
m	meters	1.1	yards	yd
km	kilometers	0.6	miles	mi
		AREA		
cm^2	square centimeters	0.16	square inches	in^2
m^2	square meters	1.2	square yards	yd^2
km^2	square kilometers	0.4	square miles	mi^2
ha	hectares (10,000 m^2)	2.5	acres	
		MASS (weight)		
g	grams	0.035	ounces	oz
kg	kilograms	2.2	pounds	lb
t	tonnes (1000 kg)	1.1	short tons	
		VOLUME		
ml	milliliters	0.03	fluid ounces	fl oz
l	liters	2.1	pints	pt
l	liters	1.06	quarts	qt
l	liters	0.26	gallons	gal
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m^3	cubic meters	1.3	cubic yards	yd^3
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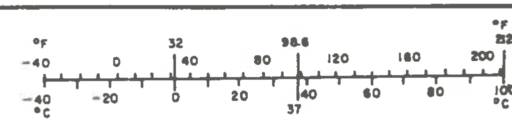

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1. SUMMARY AND RECOMMENDATIONS

1.1 INTRODUCTION

Over the course of the past year, two major reports issued by senior authorities of the United States Government have examined recent developments in the organization of the market for ocean shipping. The first of these was the Annual Report of the Council on International Economic Policy (CIEP), forwarded to the Congress by the President in March of 1975. The second was the Statement of National Transportation Policy published by Secretary of Transportation William T. Coleman, Jr., on September 17, 1975.

Each of these documents noted that in the supply of ocean shipping, a significant factor in the health of international trade, national governments are coming under increasing pressure to adopt, approve, or tolerate non-competitive arrangements. Such arrangements can take many forms. Examples are unilateral steps by governments to allocate certain portions of commercial cargo in their foreign trades to their own merchant fleets; liner conference pools directing agreed shares of cargo to member carriers by various formulas; and bilateral agreements between governments, stipulating percentages of their mutual trade to be handled by their own fleets and, if any, by third-flag carriers.

United States policy has traditionally prohibited or discouraged the use of such devices in our foreign trade for the allocation of purely commercial cargo.[1] The objective has been to preserve the benefits of competition among carriers in attracting cargo, to the extent that this is consistent with reasonable stability of service and our own national requirement for a viable United States merchant marine. Competition has been regarded as the primary guarantee of reasonable rates and efficient service for shippers, and of the existence of third-flag fleets which have provided high quality service to our foreign commerce. Both of the reports cited above, observing a persistent shift away from competitive practices in the liner trades world-wide, call for careful evaluation of the impact of non-competitive cargo allocation upon the U.S. shipper and carrier interests potentially affected.

The recent UN Convention on a Code of Conduct for Liner Conferences, although not yet in force, provides the most extensive international endorsement of cargo allocation systems to date. The question of its possible ratification by the United States would raise major issues of shipping policy in the country. Even without U.S. ratification, broad adoption of the Code elsewhere in the world would have important implications for U.S. interests.[2] The potential impact of such a flag preference system upon U.S. shippers and carriers consequently needs careful investigation, and is the subject of this analysis.

1.2 THE UNCTAD* CODE OF CONDUCT FOR LINER CONFERENCES

On April 7, 1974, a conference meeting under UNCTAD auspices in Geneva adopted a Code of Conduct for Liner Conferences (for full text see Appendix I). From its very beginning, UNCTAD devoted special attention to liner conference practices[3], reflecting an historical concern on the part of the developing nations about the fairness of the system which transported their vital foreign trade.[4] In some cases, the shipping services were operated by the colonial power from which the developing nation (LDC) had recently gained its independence -- a fact that would tend to foster suspicion even if there were no record of abuse. Freight rates might be raised arbitrarily, without consultation with shippers or advance notice, and LDC shipping lines might be denied membership in conferences serving their own foreign trade, depriving them of a voice in conference matters as well as a role in the trade.

Because of a long tradition of regulation of conferences through the Federal Maritime Commission, a much more open and competitive environment exists in U.S. trades than in non-U.S. trades. Shipping conference membership in U.S. trades is open to all responsible lines, the right of independent non-conference lines to operate is much more firmly guaranteed, rates are publicly available by law and cannot be increased without advance notice, and so on. Ill-will on the part of the LDC's was directed predominantly, therefore, at the more restrictive foreign conferences.

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* United Nations Conference on Trade and Development

1.3 THE UNCTAD CODE CARGO SHARING PROVISIONS

Although the UNCTAD Code deals with all aspects of the liner conference--including freight rate determination and changes, consultation machinery, conciliation procedures, etc. - it was established at an early stage that this study should deal solely with the expected impacts of the cargo allocation arrangement (Code Chapter II, Article 2) and related issues.[5] The cargo sharing provisions stipulate that when conferences operate pools - the market-sharing schemes which dominate most non-U.S. conferences - shares of the trade shall be allocated so that the national shipping lines of each trading partner carry forty percent of the bilateral trade while third-country shipping lines have the right to transport the remainder. Although this would seem to have little relevance to U.S. conferences, where pools are severly restricted, other paragraphs of Article 2 suggest that - under the Code - such arrangements could be implemented automatically by conference members or even imposed unilaterally by a subgroup of conference lines. This would be in direct conflict with current U.S. law (as embodied in the Shipping Act of 1916) which requires Federal Maritime Commission approval of all proposed pools, and would expose actors to prosecution under U.S. "anti-trust" laws.

The rules for conference membership also constitute a major diversion from existing U.S. law. Under the Code, admission to the conference for nations whose trade is not served by the conference depends upon the adequacy of conference shipping space to meet prospective shipping volumes. The application of protectionist, discriminatory criteria for conference membership violates the spirit and the letter of U.S. regulatory policy.

With competition for cargos within the conference framework limited by non-market allocation and membership restrictions, the role of non-conference carriers in a trade becomes important. If independent carriers operate in a trade on a large scale, then the potential impacts of the Code are lessened because the pool would apply to only a fraction of total cargo, and because shippers would have an alternative if conference performance faltered. If non-conference operations are limited, on the other hand, an important safety valve against potential conference excesses is lost. The UNCTAD Conference dealt with the "outsider" question by passing a <u>non-binding</u> resolution asserting a role for non-conference carriers - a role which the U.S. negotiators felt was intended to be a very limited one. If government chose to restrict independents unilaterally, potential impacts would be increased.

The final issue of coverage involves the definition of which cargos would be subject to cargo allocation under the Code. The sole explicit exemption is "military equipment for national defense purposes" - a definition which may not exempt non-hardware Department of Defense shipments (currently reserved in full for U.S. flag vessels) and certainly does not exempt civilian government-impelled cargo (also subject to cargo preference law).

Mini-bridge and land-bridge operations constitute another area of uncertainty. In the U.S. foreign trade, rates for these intermodal movements are generally filed separately from the conference agreement covering the same geographic range. These cargos are a significant part of total traffic on several important U.S. trade routes, and whether they would be included in the conference pool is an important question. If they are not included, then the cargo base to which the Code might potentially be applied would be significantly reduced.

In summary the UNCTAD Code explicitly violates several specific elements of U.S. law and apparently accords shipping conferences the right to act unilaterally in areas where Federal Maritime Commission concurrence is currently necessary. U.S. ratification of the Code would, therefore, imply a major turnabout in regulatory philosophy. Amgibuity and omissions leave many important issues unsettled, making a clear delineation of the state-of-the-world under the Code difficult.

1.4 SHIPPER IMPACTS

Shippers feel that anti-competitive elements of the Code (especially cargo-sharing and the potentially limited role of independent carriers) would inevitably lead to a deterioration in liner transportation service. These fears are based on experience with the pooling and/or equal access agreements existing in some U.S.-Latin American trades as well as on an understanding of the theory and history of cartel operations.

Potential shipper impacts fall into two categories - rates and quality of service. The freight rate arguments assume that rates will increase at an accelerated pace in the absence of competition in the shipping industry[6], increasing the delivered price of foreign trade commodities and decreasing their competitiveness in foreign markets.

State-of-the-art estimates of the price sensitivity of U.S. exports suggest that a ten percent increase in world liner freight rates (implying a change in the delivered price of cargos of less than one percent) would lead to an estimated decline of between 108 and 324 million dollars out of an export total of 70.3 billion dollars in 1973. Individual shippers whose products are more price sensitive than average or for whom shipping costs are a particularly large share of total cost would, of course, suffer disproportionately. Larger percentage rate increases would lead to larger export sales declines, while modal substitution (e. g., utilization of tramp shipping) might mitigate any impacts somewhat. Balance of trade effects would be negligible because imports would be affected to an approximately equal degree. The expected inflationary impact of liner import price increases is also found to be minimal (Chapter 4).

Shippers also fear a loss of sales and increased costs due to declines in the quality of liner service. Non-market determination of liner market shares would allow carriers to alter their schedules and port ranges in order to increase vessel utilization rates and profits per ton. To shippers this can mean less frequent sailings between smaller port ranges, an increased probability of a shipment being shut out (i.e., left in port because of insufficient capacity availability) and a general decline in the reliability of service. Although these impacts are difficult to quantify, their costs to shippers are very real.[7]

If a shipper's regular port is removed from service or served with less regularity, cargos may have to be re-routed, creating additional inland transportation costs, or inventory policies may have to be adjusted, tying up valuable working capital. Decreases in the directness of service also increase the possibility of pilferage or cargo damage causing higher cargo insurance rates.

Cargo shut-outs and general depreciation in the reliability of service also give rise to more exposure to pilferage and force shippers to pay increased wharfage or storage fees in ports as their cargos await shipping space. Perhaps more seriously, the disruption due to delayed shipments may cause purchasers to seek out more convenient local sources of supply.

The UNCTAD Code addresses these problems, allowing for waivers from conference loyalty agreements in cases of shut-outs or other service non-availability, but the conditions required for such waivers are not clearly defined, and experience indicates that the waiver process is often extremely slow. Further, a system of waivers assumes that independent shipping capacity is available on short notice, a likelihood which is diminished if the trades are made unattractive for non-conference operators. All of these problems may be especially serious to the U.S. export expansion effort because U.S. producers facing a large, prosperous domestic market might be especially likely to be discouraged from export competition by increased annoyances and uncertainties in transportation logistics.

1.5 CARRIER IMPACTS

U.S. carriers operate one of the most modern, technologically advanced fleets in the world due to an extensive building program over the last decade. Their high cost, capital intensive operations have a very high break-even load factor, but once that point is reached, incremental revenues are estimated to be between fifty and seventy percent profit. The break-even point, however, has seldom been reached during the past two decades, with the subsidized carriers relying on the operating-differential subsidy (21% of revenue in 1971) for their being "in the black".

The carriers view cargo sharing as one possible remedy for their financial situation. Any additional cargo accruing to them under cargo sharing would yield revenues far in excess of additional costs. U.S. carrier revenues would increase by as much as 500 million dollars (270 million for imports and 220 million for exports, assuming revenues to be ten percent of value). (This is clearly an overestimate of profit changes because of changes in operations required in order to carry increased traffic.) The ability to rationalize services - i.e., alter sailings to increase capacity utilization - would provide a boost to profitability, even at existing market shares.

Although most U.S. carriers would like to see cargo sharing become a more common practice in U.S. conferences, they have reservations concerning the UNCTAD Code on several grounds. First, the Code-allocated forty percent share of trade is exceeded by actual liftings on several conference routes, and it is felt that a commercially negotiated pool, reflective of existing patterns of operations, would be more beneficial. Losses on one route and gains on another cannot be considered as fully offsetting since they may involve different carriers with non-transferable operations. Similarly they would prefer a broader definition of exempt cargos to include all government impelled cargos, at least fifty percent of which already move in U.S. bottoms, in accordance with cargo preference law.

Several U.S. carriers earn substantial revenues as "third-nation" carriers in the foreign trade of other countries - 219 million dollars in 1973 - a service frequently performed in conjunction with feeder operations which are an essential part of their U.S. directed trade. These carriers fear that the economic viability of their feeder systems, and thus their whole method of operation, would be threatened if application of the Code were to inhibit their right to operate as third-nation carriers on the same routes.

One of the strongest fears among U.S. flag operators is that widespread application of the UNCTAD Code in the rest of the world could lead to extensive overtonnaging (and consequent rate warring) on U.S. trade routes, if third-flag carriers forced from non-U.S. trades gravitated to the less restrictive U.S. trades. This situation could arise whether or not the U.S. adheres to the Code.

1.6 TRADE ROUTE ANALYSIS

Under the UNCTAD Code, U.S. carriers (probably defined to include Seatrain Lines, a U.S.-owned, U.K.-flag carrier) would have a right to carry forty percent - in terms of both volume and freight revenues - of the liner conference cargo in U.S. foreign trade. In 1973 - according to Census data - U.S. flag operators carried 25.4 percent of the total liner cargo tonnage and 28.0 percent of total value (a reasonable proxy for freight revenues). This exaggerates the gains which might accrue to U.S. carriers under the Code, however, for several reasons.

In the first place, Seatrain Lines carries significant cargos on three major routes - the North Atlantic, the Far East, and the Caribbean - raising sharply the current U.S. share as defined by the Code. Secondly, Military Sealift Command liner cargos, which are excluded from Census data, constitute a large part of total movements on the European and Far Eastern routes - equivalent to 32% of total non-military exports on the high volume Pacific/Far Eastern trade route. Since they are predominantly carried by U.S. flag operators, their inclusion in the cargo sharing base would cut deeply into potential U.S. gains.

Further, there are several routes and national trades with low U.S. shares which are not covered by conference agreements, and which would, therefore, be unaffected by the UNCTAD Code. These include all of the U.S./Canadian routes as well as most trade routes out of the Great Lakes. Also, there are several routes and national trades where U.S. participation is minimal - in large part because the trade is unsuitable logistically for the type of service operated by U.S. carriers. These include the remainder of the Great Lakes routes, "island-hopping" Caribbean and Central American trades, the one-way (export) trade to the Near East, and the long Pacific/European routes. The meaning of increased U.S. market shares on these routes is much more clouded than gains on routes with heavy U.S. commercial participation already.

Finally, the Bureau of Census data include all cargos, while the Code deals with conference cargos only. This can be very important. For example, whereas the U.S. carriers on the North Atlantic (including SeaTrain) carry less than thirty-five percent of total non-military cargo (in value or volume terms) a proposed North Atlantic Pool which has been submitted to the FMC would give them 55 percent of the <u>conference</u> trade on the same route. This implies greater existing U.S. market shares within the conference than in the total trade (most non-conference carriers are foreign flag) and suggests a better deal for U.S. carriers outside the Code.

With all of these caveats in mind, individual trade routes are analyzed in Chapter 6.0. In the Latin American trades, the only significant increases in U.S. market shares under the Code would come on the Caribbean and Central American routes (Chapter 6.3.4), since the U.S. carriers already participate in commercial pooling agreements on major South American routes. At 1973 levels of trade, carriage of these gains would require the addition to the route of at least three C5-type vessels or five to six C3-type vessels under the U.S. flag.

The African trades offer no gains to U.S. market shares under 40 percent cargo sharing (Chapter 6.3.2). Potential gains on the West African routes are fully offset by losses to East Africa, where existing U.S. shares exceed forty percent.

The impact of forty percent cargo sharing in the Far Eastern trade routes depends very much on the status of MSC cargos under the Code, as well as on whether cargo value or volume is the metric of allocation (Chapter 6.3.3). With full exemption for military cargos, a forty percent share of the total trade would create U.S. losses on the Pacific/Far Eastern route which are more than offset by gains in cargo allocation on the Atlantic and Gulf routes. In each case, all potential gains under the Code accrue in the bilateral trade with Japan, existing shares with other Far Eastern nations far exceeding forty percent. Inclusion of military cargos eliminates any gains from cargo sharing in the Far East.

U.S. flag carriers currently carry considerably less than 40 percent of liner cargos to South Asia, the Near East and the Straits (Malaysia, Singapore, Indonesia), implying increased cargo allocation under the Code. Trade on the lengthy Near East route is almost entirely outbound. Thus, although the U.S. market allocation would increase by almost 400 thousand measurement tons outbound - requiring new U.S. capacity equivalent to 5 C7-type vessels - there would be essentially no inbound cargo on the route.

In the South Asian trade U.S. carriers would realize a net gain of about 200 thousand measurement tons under UNCTAD cargo sharing. Almost all of this increase would accrue in the Indian trade, where application for a pooling agreement has been made with the FMC. Forty percent cargo sharing in the Straits trade would increase U.S. carrier market allocations significantly, but with no new capacity requirements because of existing trade imbalances and excess capacity on the route.

The impact of forty percent cargo sharing on the North Atlantic is very sensitive to the status of MSC cargos and the extent of the conference pool (Chapter 6.3.4). U.S. market shares of non-military cargo fall well short of forty percent on all of the Northern European routes, although the gains disappear on the routes serving the U.S. Atlantic ports if MSC cargos are not exempt from the pool. Further, non-conference service is heavy on these routes and there is evidence (the North Atlantic Pool allocations discussed above) which suggests that U.S. carriers lift well over forty percent of conference cargos.

Large increases in cargo allocation would accrue to U.S. carriers on the Gulf and Pacific routes to Northern Europe, nearly all requiring new capacity to be added to the routes - the service equivalent of 3 to 5 C7-type vessels from Pacific and at least two more from the Gulf.

In the Mediterranean trade, modest gains on the Atlantic and Gulf trades (half of which accrue on non-conference routes) are transformed to significant losses under the Code if MSC cargos are included in the base. Increased allocations on the Pacific/Mediterranean route (where no direct U.S. flag service has existed until recently) accrue almost entirely in the trade with nations which, like the U.S., voted against the Code.

Finally, the analysis indicates gains to U.S. carriers in the Australian trades, but large increases in U.S. market shares experienced in the first half of 1974 would tend to eliminate them.

1.7 CONCLUSIONS AND RECOMMENDATIONS

Pressures have been growing in recent years for the application of non-market allocation methods to the shipping routes serving the U.S. foreign trade. Although the FMC has approved cargo sharing and/ or equal access agreements in some trades, consideration has always been on a case-by-case basis, with inputs from all interested parties. The UNCTAD Code, on the other hand leaves the decision up to the conference carriers themselves, and threatens to establish a legal monopoly in the industry.

From the shippers' point of view, the negative aspects of cargo sharing under the Code apply also to cargo sharing in general. Under cargo sharing, the portion of the total trade each carrier enjoys is determined outside of the marketplace, reducing the probability that competition - either through rates or the quality of service - will act to the benefit of shippers. U.S. shippers and consumers have very little to gain from cargo sharing.

Although the UNCTAD Code includes references to acceptable levels of service for shippers, the language is frequently vague or tucked away in supplementary resolutions which are not legally binding. U.S. policy should be to avoid any cargo-sharing arrangements which threaten to eliminate (either financially or by fiat) responsible, independent carriers who serve the particular needs of individual shippers on the route.

At the very least this requires carefully worded guarantees which are tailored to the peculiarities of each trade. If UNCTAD-type cargo sharing were to become a reality, maximum competition among U.S. flag carriers for the total U.S. share should be encouraged as a minimum shipper safeguard.

The benefits of cargo sharing accrue to carriers in the context of a dynamic environment, allowing them to maintain constant, high utilization levels and steady (or increasing) rates while trade volumes fluctuate. U.S. carrier arguments in favor of cargo sharing are essentially protectionist in nature. They operate high cost, capital intensive services and their financial situation is extremely vulnerable to volume declines and rate cutting. Thus, cargo sharing, like cargo preference law, is seen as a way of insulating U.S. carriers from foreign competition.

The immediacy of the issue of merchant marine promotion and protection has diminished since late 1973 because of high trade volumes and record industry profit levels. If trade volumes decline from current levels (or capacity on key routes grows faster than trade) and rate cutting develops in U.S. trades, then protection will become a key issue again, especially if the financial viability of a few U.S. carriers is seriously threatened. If a U.S. flag fleet of a given size is accepted as a national goal, economic theory suggests that lump sum subsidy is the least distorting way of accomplishing it. Not only does it make the full cost of promotion visible as a budget item, but it also does less to discourage competition and innovation than non-market allocation methods.

Although U.S. carriers advocate a more favorable policy stance toward cargo sharing, they do not consider the UNCTAD Code to be the optimal vehicle toward that end. This attitude is due in large part to the rate-making provisions in the Code, but also reflects dissatisfaction with the form of the cargo sharing provisions. It is important from the carriers' point of view that the allocative proportions in the sharing formula are at least equal to the shares carried in the absence of pooling. This is normally accomplished via commercial negotiations between pool members. Under the UNCTAD Code, U.S. carriers would clearly be harmed by a strict implementation of forty percent cargo sharing on some trade routes. Further, the major gains to be made on any particular route frequently accrue in a single bilateral trade, making cargo sharing agreements which are geographically limited a superior option to across-the-board arrangements, because they minimize distortions in the remainder of the trades.

The high cost, capital intensive nature of U.S. carrier operations encourages them to concentrate on a subset of total trade - viz, where high volume, balanced trade flows are supported by direct service to a limited number of ports. Many of the cases which provide the greatest potential gains to U.S. carriers under the Code are in trades which have attributes diametrically opposed to their sphere of comparative advantage. These would include the island-hopping trade in the Caribbean and the very long, one-way trade with the Persian Gulf and the Red Sea nations. Therefore, potential gains in such trades are not fully offsetting to losses suffered in trades where U.S. carriers currently compete successfully, since different carriers are frequently involved on the different routes and operations are not strictly transferable. For example, a comprehensive container service on the North Atlantic, including modern port facilities and feeder services, cannot readily be transferred to the Persian Gulf to soak up increased volumes there.

A more limited Code, involving trade with the less developed nations alone (a suggestion which was rejected at the UNCTAD Conference), is not a superior option for U.S. carriers. Gains in market shares in some Latin American and South Asian trades would be more than offset by sharp losses in the Far East, where U.S. carriers carry a very large share of the trade.

On balance, U.S. support for the UNCTAD Code of Conduct for Liner Conferences is not advisable at this time. Although the U.S. can support the motives of those nations which, as shippers, are seeking to limit the power of restrictive liner conferences serving their foreign trade - the original reason for a Code - the Code as it has emerged does not meet this end. More importantly, the cargo sharing provisions cannot even be shown to act to the unambiguous benefit of the U.S. merchant marine, the single major U.S. interest which might be expected to gain from them. Any change in current practices as significant as universal cargo sharing shoud occur only in the context of a complete re-evaluation of U.S. goals and policy in the maritime area, with all options being examined. Short of this, cargo sharing should continue to be considered on a case-by-case basis, in the context of a single route or bilateral trade, taking account of the specific needs of all interested parties.

2. LINER INDUSTRY BACKGROUND

2.1 THE SHIPPING CONFERENCE

The structure of the liner industry is characterized by the shipping conference, an institution which must be understood in order to understand the industry, the UNCTAD Code and the reservations of the various U.S. interests about the Code. Basically, a conference is a formal association of liner operators serving a particular route or trade, and adhering to a common rate schedule. According to estimates, there are over 350 conferences in the world, including "short sea" conferences (e.g., between the United Kingdom and Northern Europe). Normally, the outward and homeward legs of a particular trade route are represented by separate conferences, although it is common practice for a carrier to belong to both conferences on each route it serves - for reasons of logistics if nothing else.

Beyond a common rate schedule, the functions and effect of different conferences vary widely, depending on such factors as their historical development, peculiarities of the trade, and, probably most critically, the structure of countervailing powers. These include shipper organizations, independent competition, and government regulation.

A critical distinction is frequently made between what are called "open" and "closed" conferences. Membership in an open conference is available to all carriers in the trade who can meet certain reasonable criteria. Conferences in all U.S. trades are limited to this form by law.[7] The closed conference which strictly limits membership, is the more common form in the rest of the world.

The conference system was developed in response to frequent rate wars due to overcapacity in the late nineteenth century. Serious rate instability led ship operators to seek stability by combining to control the supply of shipping services. High fixed capital requirements and the relatively low cost of stowing and carrying an extra ton of cargo can lead naturally to "cut-throat" competition by pricing well below long-run average cost whenever overcapacity is perceived.

The major function of conferences is, therefore, to restrict competition between members and non-members (independents or outsiders) and among the members themselves. Both forms of restraint work better in a closed conference structure; first because the distinction between members and non-members is more permanently guaranteed, and second because the claimants to an "equitable" share are similarly more fixed.

All conferences try to reserve the largest possible share of cargo movements on their routes for their members. Conference domination of a trade is fostered in several ways. Primary among these in all conferences are exclusive patronage contracts (loyalty arrangements) in combination with dual rates or deferred rebates. Exclusive patronage contracts require a shipper to ship all his liner cargo within the conference range in conference members' vessels. In return, the shipper is accorded a lower tariff rate (hence the "dual rate" system). Shippers without such contracts pay a penalty rate which can be as high as fifteen percent. Under a system of deferred rebates, the rate premium is returned to the shipper only after a fixed period of continuous exclusive patronage (six months is a common period). Deferred rebates are illegal in U.S. trades, and it is reported that they are being supplanted by immediate rebates in many non-U.S. trades (e.g., in the U.K.).

These practices are generally adequate to reserve the major share of trade for conference members. Shippers are unlikely to forego dual rate privileges unless they feel that independent carriers will be able to serve their needs on a long-term basis at or below the lower of the dual conference rates. A shipper who violates an exclusive patronage contract risks not only loss of discount rate privileges, but also suit for breach of contract. However, independent carriers do operate in most trades, even (as is frequently not realized) in competition with closed conferences in foreign trades.[8] Sufficiently powerful independent carriers who show a willingness (and ability) to fight their way into a trade, are often invited into a closed conference.

As stated earlier, conferences also strive to restrain competition among members by insuring each an "equitable" share of the total trade. This is accomplished in most non-U.S. conferences through some form of revenue-pooling or cargo-sharing.[9] Cargo-sharing, used by conferences since their inception, can involve limitations on sailings, restrictions on ports in direct service, tonnage lifting restrictions or some combination of the three. Penalties are levied on conference members for under-fulfillment of their designated service requirements to avoid conflict with shipper groups. Over-fulfillment penalties are levied to preserve harmony within the group. Generally, any adjustments in quotas take place in years of trade growth, so no carrier's total business is diminished.

Revenue-pooling in its most common form involves the carriers combining their revenues (net of certain carefully defined cost allowances) and redistributing them in predetermined shares. Various tools are employed to guarantee that each member carries its fair share. Most obvious are penalties for a carrier consistently contributing less revenues than its allotted portion to the pool. Minimum service obligations are also common to lessen the likelihood of members seeking to fulfill revenue obligations by carrying fewer, but higher rated cargoes. Each of the pooling devices allows the members to carry the available trade at the most economical level of capital utilization by adjusting the number of ships available and the time pattern of sailings to achieve a high load factor. This practice is known as rationalization and provides the basis for pooling or sharing arrangement. Attempts by a carrier to rationalize its service (i.e., to increase load factors by adjusting sailings downward) in isolation would probably just result in a lower share of the total trade -- thus, the collusive nature of pooling.

In the conferences serving U.S. foreign trade, pooling arrangements must be filed with and approved by the FMC. U.S. carriers have been allowed to participate in equal access/pooling arrangements (a type of cargo-sharing arrangement) covering portions of the bilateral trade with individual nations on a conference route. Such arrangements have been approved separately for our trade with Brazil, Argentina, Venezuela, Peru, Colombia, Chile and Israel and a proposal for a pool in the U.S.-India trade has been filed with the FMC (Federal Maritime Commission). Also, a conference-level revenue pool proposal has been submitted for the U.S. North Atlantic trade (North Atlantic Pool Agreement, dated November 17th, 1971 - F.M.C. Docket No. 72-17, Exhibit No. 5). Its approval is deemed unlikely at this time, but the exhibit documented above provides a comprehensive look at the structure of a conference pool.

The potential for independent competition places some limitations on the power of conferences to raise rates and downgrade services. Shippers' councils also limit conference power in most non-U.S. trades.[10] Beyond the obvious force of numbers in the rate and service determination processes, these councils have at times been able to thwart rate increases by establishing (or threatening to establish) a competing shipping service with chartered tonnage. Currently, the FMC is entrusted with protecting the interests of U.S. shippers, but some shippers have criticized this mechanism as being inadequate.

2.2 CONFERENCES IN U.S. TRADES

All liner carriers operating in U.S. foreign trades are required to file a rate schedule with the FMC for those services. Conference carriers generally file a common rate schedule. The conference agreement includes the range of ports covered at each end of the trade. This range usually includes a U.S. coastal district (e.g., North Atlantic-Maine to Virginia, South Atlantic-North Carolina to Key West, etc.) or a combination of such districts on the U.S. end and a multi-country port range on the foreign end (e.g., Spain, north of Portugal to Hamburg, or Australia, New Guinea, and the South Sea Islands). In several instances conference agreements name a single nation's ports at the foreign end,[11] and less frequently a smaller than coastal district range in the U.S. (e.g., Florida to Panama Rate Agreement - #10045, or Hawaii to Europe Rate Agreement #8410).

Most conferences and rate agreements in U.S. trades are unidirectional (i.e., serving inbound or outbound movements, but not both), although a few cover both directions. Also, the range of ports of a single outbound conference may be covered by more than one conference inbound (and vice-versa) or no conference at all. For example, the North Atlantic/Mediterranean Freight Conference (FMC Agreement #9548) covers the liner trade from U.S. North Atlantic ports outbound to ports of the Mediterranean (excluding Spain and Israel which are covered by other agreements), the Black Sea, the Sea of Marmara, and the Atlantic Morocco, while the inbound trade to the North Atlantic from that range of ports is covered by separate agreements in the cases of Italy and Yugoslavia (Agreement #2846), Greece (#9238), Romania (#9577), and the French Mediterranean ports (#5660). The remainder of the range is not covered by any agreements. When no agreement is filed, each carrier files its own rate schedule, just as in the case of independents operating in competition with a conference.

There are approximately 140 conferences and rate agreements covering U.S. foreign trade, including a few dormant trades (e.g., Cuba-U.S.) and several joint agreements (agreements among conferences or between conferences and independents).[12] The purpose of such side agreements is to coordinate rate schedules, rules, and regulations with respect to discharge and delivery of cargo. It is not clear how the UNCTAD Code relates to such joint agreements.

Conferences in U.S. trades are composed of from two to twenty (there is technically no upper limit) member lines flying the flag of nations served by the trade as well as nations not served by the trade (e.g., Mitsui O.S.K. Lines, Ltd. in the Latin American/Pacific Coast Steamship Conference-Agreement #8660). More than one U.S. carrier usually belongs to a U.S. conference, and each carrier belongs to several U.S. conferences.[13]

The range of ports in a conference agreement refers to the ports of lading and unlading and not to the actual course of any vessel. Thus, a carrier belonging to the conference serving the U.S. Gulf - U.K. route as well as that serving North Atlantic - U.K. shipments and also operating a coast-wide feeder service in the U.S. might ship its Gulf - U.K. cargoes to New York by feeder vessel and reload the cargo onto a vessel carrying the North Atlantic - U.K. conference shipments. The two shipments would be subject to the coverage of the two different conferences. At the same time, the same ship might be carrying cargo on the final leg of a Pacific - U.K. (or Germany, etc.) service which the carrier operates as an independent. The possibilities and combinations are almost limitless.[14]

A final peculiarity of U.S. conferences is related to intermodal traffic. Several carriers (U.S. and foreign) operate services which involve trans-U.S. movements by rail with subsequent transoceanic shipment under a joint rate. For example, rather than move by an all water route from New York to Japan, a shipment might go to Oakland, California by rail and from there to Japan by vessel (the intermodal routing requires a fraction of the shipping time of the Panama Canal Route).

The intermodal shipment described above is generally a non-conference shipment even if the carrier belongs to the conference serving the trade (either New York - Japan or Oakland - Japan) while the all-water shipment is a conference movement, (assuming conference membership in the conference covering the New York - Japan trade) even if the shipment involves a feeder vessel to the West Coast and transshipment from there via a second vessel of the carrier.

2.3 HISTORY OF U.S. REGULATION OF CONFERENCES

By the time governmental authority was brought to bear against alleged abuses of shipping conferences, the conference structure was a fait accompli on most of the world's trade routes. The earliest formal organization of individual shipping lines arose in the United Kingdom-Calcutta Trade in 1875-1876.[15] In Great Britain, the Royal Commission on Shipping Rings was appointed in 1911 to investigate complaints by shippers and the general public concerning abusive and predatory activities by the shipping conferences. In the United States, the Alexander Committee followed suit with its investigations in 1912-1914.

After extensive hearings,[16] the Alexander Committee concluded that with few exceptions "the established shipping lines plying foreign trade routes to and from American ports were parties to restrictive written agreements or gentlemen's understandings and in many instances were affiliated in shipping conferences".[17] There were two objectives of such agreements whether formally or informally arranged:

1. Regulation of competition between lines which were parties to the agreement or conference, and
2. Control or elimination of competition from lines which were non-participants.

Several devices were used to rationalize competition per se. Pooling and price fixing were characteristic. The committee documented a case where four lines engaged in the trade between the North Atlantic ports of the United States and the Baltic were party to a pooling arrangement, known as the "Baltic Pool", relating in part to the carriage of flour. Percentage allotments, based on prior carryings, were established and the profits of the pool were divided in accordance with these percentages. Lines which carried more than their proper allotment were required to make periodic compensatory payments to those which had undercarried. The committee had received complaints showing that this pooling arrangement had caused considerable increases in the rates on American exports of flour which greatly damaged that trade.[18]

The Alexander Committee also found that territorial divisions of the market existed in addition to rate leadership or rate fixing. Traffic in and out of certain ports was reserved to each of the lines joining in the arrangements with mutual agreements not to extend service into recognized spheres of influence. Restrictions on the number of sailings or on the value of freight carried by each line were also common.

To restrict or eliminate outside competition, conferences used several methods, including the deferred rebate system and "fighting ships".[19] Conferences also retaliated against patrons of independent lines by refusing them space accommodations on conference vessels at any price.

The Committee, citing evidence showing advantages and disadvantages of the system, concluded that the conference system was the result of a "natural evolution" in the industry. Among the advantages, it listed regularity of service, faster and better vessels, stability of rates over extended periods, uniformity of rates to all shippers rather than preferential treatment accorded large shippers in times of rate wars, and the maintenance of rates on a parity with those of other countries.[20] The Committee was of the opinion that although the conference system resulted in rates above competitive levels, they would ultimately be "reasonable" because:

1. It was in the interest of the lines themselves not to charge rates that would constrict the trade,
2. World conditions governed ocean freight rates, and
3. Tramps were a form of competition for large bulk shipment.[21]

It should be pointed out that freight rates for many commodities would have to be very high before they would become oppressive to the movement of the traffic, yet the rate actually charged by conferences for the movement of these commodities might still be highly disproportionate to the economic cost of transporting these goods. Further, the presence of world conditions governing ocean freight rates acting as a restraint on conference rates is unrealistic. A properly functioning, unregulated conference system can, for the most part, insulate itself from world governing conditions. Finally, the impact of tramp competition has been minimal since the days of the Alexander Committee, although it does exist. The Celler Hearings (1959-1961)[22] document the limits of these checks to conference rate making power.

The disadvantages of the conference system cited by the Alexander Report invariably centered upon the limited monopoly accorded the established lines over each trade route. The Report suggested that because of the unregulated monopoly inherent in a conference, the advantages to a shipper which it was said to secure might be withdrawn without the shipper obtaining any legal redress.[23] Cases were documented of excessive and arbitrary rates, retaliation against shippers, indifference to honoring damage claims, arbitrary increases in rates without notice, preferential rates granted large shippers based upon value of freight, and failure of many conferences to publish their rate schedules.[24]

The Alexander Committee Report concludes by recommending government supervision of shipping lines engaged in the foreign trade of the United States.

> The Committee believes that the disadvantages and abuses connected with steamship agreements and conferences as now conducted are <u>inherent</u> and can only be eliminated by <u>effective government control</u>; and it is such control that the Committee recommends as the means of preserving to American exporters and importers the advantages, and of preventing the abuses complained of.[25]

Many of the recommendations were drafted into the Shipping Act of 1916, which represents the cornerstone of American regulatory policy. Conferences with open membership were accepted provided that they were honestly and fairly conducted. The focus of governmental action then and now has been to insure adequate procedural methods designed to prevent abusive and predatory practices. Government agencies have been charged to insure the force of competition in the industry, but within the confines of the open conference system.

2.4 U.S. MARITIME REGULATION

Many of the practices of shipping conferences exposed by the Alexander Committee are prohibited by the Shipping Act of 1916 as amended, while others are strictly controlled. The Federal Maritime Commission and its predecessors have been entrusted with determining whether the Act has been violated.

The Shipping Act of 1916 makes it a misdemeanor punishable by a fine of not more than $25,000 for each offense (1) to pay, or enter into any agreement to pay, a deferred rebate; (2) to use a fighting ship; (3) to retaliate against any shipper by refusing or threatening to refuse space accommodations or by other discriminatory or unfair methods; or (4) to make any unfair or unjustly discriminatory contract or to discriminate unfairly against any shipper with respect to cargo space, loading and landing of freight or the adjustment of claims (Section 14). Section 14a - added by Section 20 of the Merchant Marine Act of 1920 - charges the Federal Maritime Commission with responsibility for determining whether any person not a citizen of the United States has violated any provision of Section 14. Section 14b - added by Public Law 87-356 (1961) - allows for the use of dual rate contracts provided they do not discriminate betwen shippers and are not detrimental to the commerce of the United States nor contrary to the public interest.

Section 15 of the Shipping Act of 1916 is the most important element of U.S. maritime regulatory law. It provides that

> every common carrier by water, or other persons subject to this Act, shall file immediately with the board a true copy, or if oral, a true and complete memorandum, of every agreement with another such carrier or other person subject to this Act or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings

> between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive preferential, or cooperative working arrangement. The term "agreement" in this section includes understandings, conferences and other arrangements.[26]

The Federal Maritime Commission is charged with disapproving, canceling, or modifying any agreement which it finds to be

> unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competition, or to operate to the detriment of the commerce of the United States, or to be in violation of this Act.[27]

Every agreement, modification, or cancellation which is declared to be lawful under the Shipping Act of 1916 is exempted from the anti-trust laws of the United States.[28]

Sections 16 and 17 make unlawful certain discriminatory actions by persons subject to the Act. Among these actions are false billing and discrimination against persons, localities or specific traffic. Sections 18 and 19 grant the commission rate-supervisory powers in domestic and intercoastal commerces, including the power to set aside unjust or unreasonable rates and to establish any just and reasonable maximum rate - powers not granted in the foreign trade of the United States. Section 18b(5) does, however, grant the Commission power to disapprove any rate which, after hearing, it finds "to be so unreasonably high or low as to be detrimental to the commerce of the United States". It further sets forth the requirements for the adherence by carriers to rates filed with the FMC and open to public inspection. Also, thirty days' advance notice is required for rate changes.

Section 25 authorizes the Commission to investigate the action of any foreign government which appears to discriminate against vessels of the United States and to report the results of such investigation to the President with appropriate recommendations.

With the exception of Section 15 of the Shipping Act of 1916, the intent of U.S. maritime regulation has been to prevent arbitrary action on the part of maritime carriers and conferences, and to curtail specific abusive and predatory activities. The burden of proof of "unjust or discriminatory" action concerning rates rests with the Commission. Unfortunately, regulatory scrutiny over thousands of scheduled rates filed each year is, to say the very least, an extremely ponderous task.

Only in Section 15 does the conference agreement itself come under regulatory scrutiny.

> The procedure for approval of Section 15 agreements governs what in many ways is the Board's (Commission's) most important function under the 1916 Act. This is because its favorable action on a Conference agreement has the consequence of arresting the operation of the Federal Anti-trust laws.[29]

Under federal anti-trust laws, price fixing and the division of markets are deemed illegal per se - United States v. McKesson and Robbins, 351 U.S. 305, 309-10 (1956), and cases cited; also United States v. Timken Roller Bearing Co., 341 U.S. 593 (1951); United States v. National Lead, 63F. Supp. 513, 523, (S.D.N.Y. 1945), aff'd, 332 U.S. 319 (1947)[30]. This stringent (but traditional) American standard has not been applied in federal maritime regulation. Rather, Congress has granted limited immunity to practices and agreements which otherwise would be considered in violation of the anti-trust laws. The Federal Maritime Commission must enforce the law, which prohibits practices and agreements which are "unjust or discriminatory" and operate "to the detriment of the commerce of the United States or contrary to the public interest". Once approved by the Commission, these practices and agreements are granted exemption from further application of federal anti-trust laws.

2.5 SUBSIDIES AND OTHER PROMOTIONAL POLICIES

The development of government promotional policies for the merchant marine stems in part from the American experience in World War I. The outbreak of the war, with the withdrawal of belligerents' ships from U.S. foreign commerce, made apparent the need for an American-owned and operated merchant fleet which would be able to meet America's immediate war needs and carry a substantial portion of America's foreign commerce in peacetime.

The first comprehensive program for the development and promotion of an American merchant marine was provided by the Merchant Marine Act of 1936. With certain amendments - the most important coming under the Merchant Marine Act of 1970 - the promotional programs established in the Act of 1936 remain intact today.

The Act consists of nine titles. Title I contains the declaration of policy.

> It is necessary for the national defense and development of its foreign and domestic commerce that the United States have a merchant marine (a) sufficient to carry its domestic water-borne commerce and a substantial portion of the water-borne export and import foreign commerce of the United States and to provide shipping service on all routes essential for maintaining the flow of such domestic and foreign water-borne commerce at all times (b) capable of serving as a naval and military auxiliary in times of war or national emergency, (c) owned and operated under the United States flag by citizens of the United States insofar as may be practicable and (d) composed of the best equipped, safest, and most suitable types of vessels, constructed in the United States and manned with a trained and efficient citizen personnel. It is hereby declared to be the policy of the United States to foster the development and encourage the maintenance of such a merchant marine.

Responsibility for the promotion of the U.S. merchant marine is vested in the Maritime Administration of the Department of Commerce.

The most important elements of merchant marine promotion are the subsidy programs. Title V of the 1936 Act establishes the construction-differential subsidy, which is intended to achieve parity in vessel acquisition costs between American shipping lines and their foreign competitors. The subsidy is based upon the cost differentials between the lowest "fair and reasonable" bid by American shipyards and the lowest bid by their foreign competitors. The construction-differential subsidy cannot, however, exceed certain statutory limits.[31] For fiscal year 1974, the limit has been set at 39 percent of the construction cost of the vessel; in fiscal year 1975, 37 percent; in fiscal year 1976 and thereafter, 35 percent. In all cases, specific national defense features are paid for in total by the government. All vessels built and financed under Title V must be documented under U.S. registry and are limited to operating in the foreign commerce of the United States.

The operating-differential subsidy, authorized under Title VI is paid to contracting U.S. flag carriers on a voyage day basis to reflect the differential between U.S. and foreign-flag vessel operating costs. Foreign competition must therefore be present before such a subsidy is granted. The subsidy is intended to allow American shipping lines to compete with their foreign competitors for cargo generated by the foreign commerce of the United States by equalizing operating costs.

Both subsidy programs have attempted to foster the development and expansion of an American owned and operated merchant marine whose vessels are constructed in American shipyards by compensating for cost disadvantages which accrue to a merchant fleet registered and documented under American laws.

A third element of U.S. policy includes the various cargo preference laws. These laws require that at least 50 percent of government-impelled cargo be routed on American ships; 100 percent of Department of Defense and Export-Import Bank cargo must be allocated to American ships.[32] The juxtaposition of cargo-preference laws and the operating differential subsidy has given rise to the so-called "double subsidy" issue[33] which may have important implications for UNCTAD-type cargo sharing in U.S. trades.

The Merchant Marine Act of 1936 provides for subsidy payments to equalize the costs of American operators with that of their foreign competitors, allowing them to compete for cargo at freight rates determined at the world market level. Cargo preference laws, however, provide

> that agencies shall take such steps as may be necessary and practicable to assure at least 50 percent of the gross tonnage of such equipment, materials or commodities (computed separately for dry bulk carriers, dry cargo liners, and tankers) which may be transported on privately owned United States - flag commercial vessels, to the extent such vessels are available at fair and reasonable rates for United States - flag commercial vessels.[34]

Fair and reasonable rates have historically been interpreted as rates which are compensatory to full distributed costs. The Federal cargo preference program therefore attempts to promote the development and expansion of the American merchant fleet by guaranteeing cargo to American operators at rates fully compensatory to <u>their</u> costs, insulating them from foreign competition. The "double-subsidy" issue involves the question of whether the government should reduce the operating-differential subsidy to any American shipping line in proportion to its carriage of government preference cargo at freight rates which by law are set at levels which are fully compensatory. It is claimed that failure to reduce subsidy payments in proportion to the carriage of preference cargo involves the payment of two subsidies, one direct, the other indirect, for the carriage of the same cargo.[35] Because the cargo sharing provisions of the UNCTAD Code would also insulate U.S. carriers from foreign competition for their share of U.S. trade, implementation of the Code could require a reevaluation of American merchant marine promotional policies.

3. THE UNCTAD CODE OF CONDUCT FOR LINER CONFERENCES

3.1 LEGISLATIVE HISTORY OF THE CODE

The concept of a liner code began to take form at the 1971 meeting of the UNCTAD Committee on Shipping. The LDC's presented a draft Code of Conduct at the UNCTAD meeting in Santiago in April-May of 1972 in response to a proposed Code of Conference Practice drafted by the Western European Nations and Japan. The Code of Conference Practice defended the laissez-faire structure which those nations' ship operators dominated, while the LDC's wanted to regulate what they saw as unrestricted monopoly control of liner service.

The LDC's adopted a resolution at the Santiago meeting recommending that the U.N. convene a conference of plenipotentiaries in 1973 to draft and adopt a convention on the proposed Code. U.N. General Assembly Resolution 3035 (XXVII) was passed in December 1972, over the objection of the maritime nations (including the U.S.), resulting in the Conference which ultimately adopted the Code.[36]

The Resolution which called for the Conference transmitted the LDC draft Code to a Preparatory Committee. The first meeting of this committee was distinctly unproductive, in large part because the Group B (developed) nations had insufficient time to prepare. At the second meeting, in June 1973, the Group B countries tabled a set of counterproposals which, for many of them, represented a considerable compromise.

The LDC draft Code of Conduct, reflecting the long-standing concerns of that group, was in some respects patterned after U.S. shipping law. It went well beyond U.S. practice in many areas, however, particularly in controls on international freight rates and the detailed service and consultation obligations placed on conferences. Further, it included a procedure for international compulsory arbitration of disputes arising under the Code, except where contrary to national law. Finally, it ran counter to U.S. shipping policy by institutionalizing rigid cargo-sharing. This latter element was included to satisfy those Asian and Latin American nations with an advanced interest in merchant marine development.

The Group B counterproposals, on the other hand, permitted both open and closed conferences; deleted the cargo-sharing provisions; maintained an emphasis on consultative procedures between shippers and conferences, as opposed to compulsory arbitration; granted final rate authority to the conference, while establishing certain limitations on existing practices; deleted specific references to governments as having power over conferences.

The draft Code and counterproposals, with some minor disagreements worked out, were sent to the Conference meeting in Geneva in November. The first session of the Conference was marked by significant concessions by both the LDC's and elements of Group B. In particular, the LDC's relaxed their insistence on the role of governments, and compulsory arbitration, and also agreed upon a shortening of the fixed interval between general freight increases (a point of no small interest to shipowners in time of world-wide inflation). The Group B countries reciprocated with complementary concessions on these same points, accepting specific reference to some role for governments, some control of conference rate-making practices, and a system of mandatory but non-binding conciliation for settling certain classes of dispute.

Although opposed to the compromise package as it emerged from this session, the U.S. refrained from formally taking a position until the remaining significant issues as well as critical language in certain areas might be resolved at the second session. The major unresolved issues were whether the cargo-sharing scheme would apply to all conferences or only those electing to establish pools, and to what extent the Code should apply to "outsiders", i.e., shipping lines operating independently of the conferences. The first of these, as will be seen in the analysis below, was "resolved" by an elaborate compromise of wording which is viewed by some as effectively mandating cargo-sharing in most cases.

The Code was revised to exclude any reference to the "outsider" issue. Instead, a resolution was adopted affirming the right of independent lines to operate in competition with conferences, as long as they do so fairly and on a commercial basis. The right of shippers to choose such carriers was also asserted in the resolution, but the attitudes of certain supporters of the Code and omission of a guarantee from the Code itself tend to weaken these affirmations.

Although the U.S. voted against the Code as a whole (in a 72 to 7 vote with 5 abstentions), it was able to agree with the majority on many of the paragraphs.[37] The State Department, through its Shipping Coordinating Committee, worked to identify conflicts between the Code and the interests of various U.S. parties including shippers and ship-operators. Simultaneously, intense efforts went into identifying how the Code violated U.S. law and economic philosophy.

To implement the Code, at least twenty-four nations representing at least twenty-five percent of world liner tonnage must ratify it. Thirty nations representing 25.8% of liner tonnage signed the Code (most subject to ratification) prior to June 30, 1975 the closing date for signature. Seven of these nations (with 1.3% of world liner tonnage) have also ratified, with the remainder still subject to ratification. Since the closure of signatures, two nations (with insignificant tonnage) have acceded to the Code--ratified in the absence of signature. (See Appendix II) Prospects of its ever being implemented in its present form are considered uncertain. It is a safe assumption, however, that whatever the disposition of this particular Code, the inherent concepts will be at the forefront of world maritime affairs in the coming years.

3.2 ANALYSIS OF THE CODE OF CONDUCT FOR LINER CONFERENCES

The elements of the Code which deal directly with cargo-sharing are isolated in this section. Other elements such as conference membership, national shipping lines and inter-modalism are also discussed because they could affect the conference environment in which cargo-sharing might occur. Issues dealing with elements such as rates, consultation machinery, etc., are considered outside the range of this study. Similarly, this report does not identify all conflicts between Code provisions and U.S. law.

The Code is essentially a set of rules governing the practices of liner[38] conferences. These rules cover four principal areas: (full text appears in Appendix I)

a) Relations among conference members, especially conference membership, participation in the trade or cargo-sharing, and also certain conference procedural matters (Code Chapter II);

b) Relations between shippers and conferences, including articles outlining requirements for consultation, public availability of conference rate schedules, and the rights and responsibilities inherent in loyalty agreements (Code Chapter III and Articles in Chapter IV relating to consultation on freight rate issues);

c) General freight rate changes, surcharges, rate adjustments due to currency fluctuations, uniform rate applicability, and tariff simplification (Code Chapter IV); and

d) Standards of conference service (Chapter V).

For the purpose of studying the potential impacts of the Code's cargo-sharing scheme on U.S. interests, certain aspects and ambiguities of the Code must be examined in detail. Questions of coverage, the openness of conference membership and the role of non-conference carriers are of particular importance because of their potential effects on rates and the quality of service.

The cargo-sharing provision is outlined in Chapter II, Article 2(4) of the Code. It states that the conference-carried foreign trade between two nations will be allocated so that the national shipping lines of each trading partner carry forty percent of the total volume of such traffic (and receive forty percent of shipping revenues). The remaining twenty percent will be available for third-country shipping lines within the conference. Article 2(2) and the heading of Article 2(4) would seem to restrict application of this scheme to conferences which practice pooling. This would prevent its application to most U.S. conferences as they currently operate. Pooling arrangements are illegal under U.S. law, except when sanctioned by the Federal Maritime Commission, and are generally discouraged.[39] The non-applicability to U.S. trades is called into question, however, by Article 2(13) to (15), which deals with cases where no trade participation agreements exist. There is an apparent inconsistency between the words "require" and "request" in paragraphs (13) and (14) where one case seems to leave open the possibility of a unilateral imposition of pooling by one group of national shipping lines (or one member of one such group) while the other case leaves the ultimate decision, in a case of disagreement, in the hands of the conference decision-making mechanism. This uncertainty is heightened by the use of "they" in paragraph (14), which might be construed to refer to the national lines of one of the trading partners.

The second sentence of Article 2(14) would seem to allow one national shipping line to request a pooling arrangement unilaterally where the trading partner has no national line. If this could be interpreted to include situations where national shipping lines exist but do not participate in the conference, then such unilateral declarations might be possible in certain U.S. trades where no U.S. carriers participate (e.g., some trades from the Great Lakes). There are other cases where there are U.S. members of a conference, but, at least in some years, no U.S. flag liftings (e.g., the Pacific to Continental Europe trade).[40] U.S. carrier involvement in this trade is generally intermodal with rail movement to the Atlantic Coast. These movements are either non-conference or under the rate of the conference serving the ocean port of lading. In any event, decisions concerning the formation of pools are uniquely delegated to the conferences under the Code, a major divergence from U.S. law.

U.S. negotiators sought first to produce an acceptable code and secondly a text which clearly allows non-application of the code's rules to non-contracting nations. For these reasons, the U.S. voted against these particular paragraphs and in the end, the Code as a whole.

The Code exempts from the cargo-sharing provisions only shipments consisting of military equipment for national defense purposes - Article 2 (17). This paragraph was added to eliminate the possibility of a country's circumventing the Code by declaring all of its shipments exempt on some ground such as being under government jurisdiction. This is, from the U.S. carriers' perspective a narrow definition of defense-related goods, which includes even non-hardware logistic support for U.S. troops in the cargo sharing base.[41] Inclusion of government cargos - more than half of which are currently guaranteed to U.S. flag carriers under cargo preference law - in the cargo sharing base would cut into the potential commercial liftings for these carriers under the Code.

A special ambiguity arises in the case of Department of Defense movements. Of this agency's total shipments by liner vessel, only a fraction move on berth term, i.e., subject to space available at published rates. The remainder of such "liner" movements are quasi-charter and subject to special shipping agreements. Whether such shipments would qualify as exempt would be subject to dispute. The U.S. abstained in the vote on this paragraph because the wording in the definition of exempt cargoes was ambiguous.

In addition to cargo-sharing and its application, the U.S. was concerned with the terms of conference membership. Since U.S. law requires conference membership in conferences serving U.S. trade to be open, U.S. negotiators opposed those elements of the Code which served to restrict membership.[42] The Code establishes discriminatory criteria for conference membership for third-flag carriers, as opposed to national shipping lines of nations whose trade is served by the conference. All carriers must "furnish evidence of (their) ability and intention to operate a regular, adequate and efficient service on a long-term basis as defined in the conference agreement within the framework of the conference", abide by conference rules, and deposit a financial guarantee to cover certain contingencies (Article 1(2)). Membership for third country lines depends additionally on the existing and <u>prospective shipping capacities</u> on the routes, and the current participation of the lines on the same route. It is felt that these additional considerations would create, for all intents and purposes, a closed conference structure.

With this potential internal restraint on competition, the role of independents or "outsiders" operating in competition with the conference becomes very important, especially to shippers.

Although a non-binding resolution passed by the UNCTAD Conference assetts a role for independents (Annex II of Appendix 1, below), U.S. negotiators felt that this role was intended by some LDC's to be a very limited one.[43]

The "outsiders" question is particularly important in judging the impacts and even the viability of the Code. It is not difficult to imagine that existing third flag conference carriers in a trade would find the 20% share that the Code allots to them as a group insufficient to justify conference operations at current levels.

Two alternatives open to them are withdrawal from the trade, and withdrawal from the conference to compete as outsiders. The latter alternative, were it to occur on a large scale, would subvert the intent of the cargo-sharing provision since the 40-40-20 allocation would operate on a significantly smaller conference volume base. Since the LDC's sought to avoid circumvention of the Code through the paragraph limiting cargo exemptions, many of them might be expected to prevent this circumvention through unilateral action such as port access restrictions or by reserving trade for conference members only.[44]

The alternative of the third flag carriers' leaving the trades altogether is anathema to all interested U.S. groups. On the one hand, the shippers fear loss of the competitive force of independents in U.S. trade. The U.S. shipping lines, on the other hand, fear a glut of competition and consequent overcapacity on U.S. trade routes because the third flag lines which might be forced out of the trades served by restrictive conferences could gravitate to U.S. routes where their right to compete is protected by U.S. law.

One must differentiate between two groups of "third flag" shipping lines in order to evaluate the probability of their continued participation in the conference structure. The first group consists of the national shipping lines of nations served by the conference when they are engaged in carrying the trade of other nations on the conference route. A carrier of Argentinian registry serving the Brazil-U.S. trade would be an example of this type of third flag liner. The second group consists of national shipping lines of nations not served by the route (e.g., European lines which are participating members in the conference serving the U.S. Pacific - West Coast of Latin America trade). The first group might find that the twenty percent "third country share" which they can obtain is a convenient supplement to the liftings they make in their own national trade. The second group, however, might find competition for this share unprofitable even though it may provide an important service to shippers. Article 2(4) does not specifically reserve any cargo for the second group alone.

Another problem is in the definition of national shipping lines (Code Chapter 1). A flag-of-registry-related definition was rejected, probably to avoid circumvention of the effects of the Code through resort to "flags of convenience".[45] It is not clear how the location of "effective power" is to be determined, and to which country the share is allocated when the national location of this power differs from the location of the head office. Even more problems arise when multi-national shipping consortia are considered. This is no small matter since at least one U.S.-controlled shipping line flies the British flag, and its carriage would constitute a significant fraction of the allotted share of either the U.S. or the U.K. Thus, each would have an interest in denying jurisdiction.

A further shortcoming of the Code is its silence on foreign trade in-transit and intermodalism. The growth of mini-bridge and land-bridge container movements in recent years and the existence of significant cargo diversions between Canadian and U.S. ports - all of which fall outside of conference agreements - demonstrate the oversimplification of the cargo sharing concepts in the Code.

Since the Code does not treat the "outsider" issue directly, several actions might emerge from Code adherents. First, governments might unilaterally eliminate non-conference carriers from their foreign trade either by direct prohibition or special port charges (i.e., complete exclusion). Second, some participants might allow independents access to the 20 percent third-country share, but force 100 percent of cargo to be subject to the 40-40-20 sharing.[46] Most likely, some independent participation would be tolerated, but not to an extent which would subvert the workings of the Code.

The attitude of one LDC spokesman was that for the moment the Code would regulate liner <u>conferences</u>, but in five years, when the Code is reviewed, it should be expanded to cover the entire liner industry (including independents).

4. CODE IMPACTS ON SHIPPERS

U.S. producers exported 69.7 billion dollars' worth of merchandise in 1973.[47] Of this total, 21.6 billion dollars' worth (31.0 percent) were transported by liner, the remainder moving by tramp, tanker, or a non-water mode (Table 4.1).[8] American producers and consumers are also purchasers of foreign goods - 69.5 billion dollars in 1973, of which 26.6 billion dollars (38.8 percent) moved by liner. Shippers have expressed concern that the decreased competition inherent in any non-market allocation scheme - whether the proposed Code or any other equal access and/or pooling arrangement - leads inevitably to deterioration of both price and non-price attributes of liner service and thus inhibits their ability to export (or increases their costs in the case of imported goods).

Although conference practices already limit rate competition in the liner industry, it is felt that rigid cargo allocation procedures can only serve to lessen any downward pressure on rates. This threat would be increased to the degree that the role (actual or potential) of non-conference carriers on conference routes is reduced.

In the absence of rate competition, carriers currently compete with each other in terms of other service attributes (speed, reliability, etc.). If carrier market shares were determined by non-market allocation rules shippers might stand to lose the benefits which now accrue to them from service-based competition.[49]

TABLE 4.1

TOTAL WATERBORNE AND LINER SHARES
OF U.S. FOREIGN TRADE 1973 (billions of dollars)

	Total	Waterborne	Liner
Domestic Exports	69.7	39.6	21.6 (31%)
General Imports	69.5	42.7	26.6 (38.3%)

Sources: Statistical Abstract of the U.S., 1974; Bureau of Census, SA-305/705 Report, 1973;

Shippers have testified in Congressional hearings and other forums of the necessity for low, stable and competitively determined shipping rates.[50] Rates which are disproportionate to the real social and economic cost of transporting goods are not only inefficient; they also tend to lower the real income of all trading nations by impairing the volume of freely exchanged trade. An individual shipper's goods may be pushed out of foreign markets because of excessive transport costs.

Whether and by how much freight rates might increase under the Code depends on how the balance of power between shipping interests and the consumers of shipping develops. The ability of non-conference carriers to continue operations in a given trade and the functioning of the freight rate provisions of the Code are just two determining factors. Although liner freight rates may exceed ten percent of value (c.i.f.) for some commodities, they probably fall between five and ten percent on most major routes.[51] This implies a lower share still of eventual market price once tariffs and duties, inland transportation, and mark-ups are accounted for. A ten percent increase in transport costs, therefore, produces (on average) a one-half to one percent increase in the delivered price of foreign trade cargos. The economic literature on foreign trade suggests a price elasticity of demand for total U.S. exports in the range of -1 to -1.5.[52] This implies that the above mentioned change in export prices would cause a fall in U.S. liner-carried exports of .5 to 1.5 percent - 108 to 324 million dollars out of a total of 21.6 billion dollars in 1973 - assuming no substitutability of alternative transportation such as tramp services. This amounts to from .0015 to .0046 of the value of total U.S. exports. Clearly, some shippers whose merchandise is more price sensitive than average or for whom transport costs are a greater share of value would be harmed disproportionately - although value-of-service pricing would tend to lessen their problem. Rate increases larger than ten percent would have proportionately greater impacts on everyone. For example, a 100% rate increase would have impacts roughly 10 times as great as those described above.

The dollar magnitude of the effect on the level of liner-carried imports would be roughly the same as for exports since their estimated price elasticities and total dollar value (for the base year 1973) are approximately equal. If anything, the impact on imports should be somewhat greater in absolute terms since liner service accounts for a greater share of import than export value.

Increases in liner freight rates would also have an impact on the domestic price level, although this inflationary impact would be very small. Liner-carried imports are equal in magnitude to about two percent of GNP in 1973. This implies an effect on the GNP deflator in the range of .0001 to .00015 for a one-half to one percent increase in the price of these imports (the expected effect of a ten percent freight increase). This method is simplistic, but it is adequate to show that inflationary effects on the economy as a whole are not a key issue in this study. Inflationary impacts in nations which rely more heavily on liner carried foreign trade would, of course, be greater.

The impact of "non-price" effects (i.e., those which are not rate-related), should the Code be implemented in American trades, is perhaps of even greater concern to American shippers. These effects include the frequency of service, number of ports of call, service from a particular port, "shut-outs" (i.e., the non-carriage of one's shipments), the routing of commodity shipments, and discriminatory behavior against particular shippers or ports.

One shipper cites the 1972 U.S.-Soviet Maritime Agreement, which also includes cargo-sharing provisions, as illustrative of some of the problems faced by shippers under such provisions. The case involved the shipment of 20,000 tons of caustic soda in drums to the Soviet Union. The shipper was referred to the terms of the U.S.-Soviet Maritime agreement before shipment could begin. Both U.S. and Soviet liner operators quoted freight rates which were out of line with the quoted charter market rate of $60/long ton, but a "certificate of non-availability" could be obtained to ship only 5,000 tons at the charter market rate. The remaining 15,000 tons had to be shipped on liner vessels at a premium of $10/ton. In addition to the premium freight rate, the shipment of the remaining 15,000 tons was indirect, involving the physical rehandling of 39,000 drums. The shipper concludes that the forced re-routings of the cargo under the U.S.-Soviet equal-access agreement had the impact of inferior service, damage due to unnecessary rehandling, indirect routing (when direct routing was available through the charter market), as well as a premium freight cost of $150,000.

In two recent "equal-access" agreements involving U.S. trade with Argentina and Colombia respectively, a number of shippers testified before the Federal Maritime Commission of potential harmful impacts should both agreements come into operation (Docket 73-72, pooling agreement 10056 and Docket 74-5, Cooperative Working Agreement 10066). A typical case involved the Pacific Coast Coffee Association, which opposed approval of Agreement No. 10066 involving U.S. trade with Colombia. Mr. R. Powell, representing the Pacific Coast Coffee Association, whose members handle, either as importers or roasters, about 90 percent of the coffee on the West Coast, testified that because much of their cargo is carried by third flag carriers, Association members would be greatly affected should these carriers be pushed out of the trade. He also said that service out of the port of Buenaventura, from which the greatest portion of cargo originates, would be impaired by adoption of the agreement. Mr. Powell concluded:

> We are particularly concerned about cargo routing restrictions in the northbound Colombia trade because of our experiences in the northbound Brazil trade. Coffee associations participated in an FMC hearing (Docket No. 68-10), the subject of which were agreements (Nos. 9682, 9683, and 9684) between Brazilian and American flag carriers for the carriage of green coffee from Brazil to U.S. Atlantic ports. There were assurances by the signatory lines that third-flag carriers would continue to have cargoes. This guarantee was a fixed percentage, but it was later cut back. Basically, the result was that third-flag liners were shut out of cargoes, except for those situations where there was an emergency and they were somehow able to get a waiver. We have experienced an overall deterioration of vessel service in the Brazil trade, and we want to avoid a similar experience in the Colombian trade. Our Association is concerned wherever carrier service may deteriorate. We are especially concerned here where third-flag carriers such as Westal-Larsen and ELMA, upon whom we rely heavily, may be forced out or withdraw from the trade.[53]

Other complaints and problems, either actual or potential, concerning the impact of "equal access" agreements have also been cited. Testimony has been presented in FMC hearings concerning the lack of service from particular ports deemed critical to shippers (Weyerhaeuser Corp., Port of Seattle)[54]; the possibilities of costly and inefficient routings and re-routing of cargo (Weyerhaeuser Corp., Normac Seed Co., Pacific Lumber Co.)[55]; fear of oppressive rate structures (Heidner and Company, and others)[56]; the inability to get waivers when national flag vessels were unavailable, and the problem of cargo shut-outs and high inventory costs from less frequent sailings (Georgia Pacific Co., Oregon Lumber Co. and Seaport Shipping Co.).[57] In almost all cases, shippers who gave testimony argued that chartering on the tramp market is not a feasible alternative.

Although these impacts are difficult to quantify, their costs to shippers are very real. If a shipper's regular port is removed from service or served with less regularity, cargos may have to be rerouted - creating additional inland transportation costs - or inventory policies may have to be adjusted, tying up valuable working capital. Decreases in the directness of service also increase the possibility of pilferage or cargo damage, causing higher cargo insurance rates.

Cargo shut-outs and general depreciation in the reliability of service also give rise to more exposure to pilferage and, additionally, force shippers to pay increased wharfage or storage fees in ports as their cargos await shipping space. Perhaps more seriously, the disruption due to delayed shipments may cause purchasers to seek more convenient local sources of supply.

The UNCTAD Code has not ignored entirely these problems experienced or feared by shippers. Article 2, paragraph 16 provides that in the event cargo has been shut out by a participating member line, any vessel with unbooked space may lift the cargo. However, the Code allows for the conferences to set a "reasonable" time period of non-availability of member line vessels before waiving their right to carry the cargo. The failure of the Code to set a specific time period creates great uncertainty in the minds of shippers.

In Article 8, paragraph 2 the Code attempts to provide safeguards to shippers in "out-ports" - smaller ports where not all shipping lines call, or where minimum tonnage must be offered before service is provided - by allowing any vessel to carry the cargo. Again, these safeguards are weakened by the Code's failure to specify the conditions under which shippers may choose to ship on non-member vessels from out-ports without being considered in violation of any loyalty agreements into which they have entered.

In summary, most if not all shippers view the UNCTAD Code with some apprehension. This is especially important to the U.S. export expansion effort because U.S. producers, facing a large, prosperous domestic market, might be easily discouraged from export competition by increased annoyances and uncertainties in transportation logistics. Also, many elements of the Code lend themselves to multiple interpretations which may worsen the relations between carriers and shippers.

5. U.S. CARRIER IMPACTS

According to industry reports, the financial picture for U.S. liner operators over the last fifteen years has been bleak. During 1966, the best year in the 1960's, the return on total investment was 8.2%. Operating profits fell from a high of 8.9% of revenues in 1966 to near zero in the early 1970's. Debt-equity ratios rose from an average of .33 in the early sixties to .84 in 1971.[58]

The carriers' financial problems are generally attributed to sharply rising costs, decreases in military cargo, over-capacity with consequent pressure on rates, and burdensome debt processing. The industry reports conclude that a financially viable U.S. fleet over the next decade, in the absence of continuous growth in U.S. foreign trade volumes, will require fairly drastic changes in U.S. regulatory policy. Closed conferences, limitations on the role of independent operators, and cargo sharing are frequently suggested as remedies.

The successful financial performance of the U.S. flag liner fleet in 1974 -- the best year for the fleet since 1940 -- may refute pessimistic conclusions based on the historical record. In the first six months of 1974, U.S. trade was up ten percent in tonnage terms over the same period in 1973, and U.S. flag-carried tonnage was up sixteen percent. A reversal in trade volumes - and consequent rate wars on key routes (especially to the Far East), would certainly change the financial picture again and rekindle demands for institutional change. This would be heightened by an expected increase in competitive pressure from the growing Soviet container fleet.

U.S. flag liner carriers presently operate the world's most modern, technologically advanced fleet, as a result of an extensive building program over the last decade. Table 5.1 shows the additions to the fleet over the last six years.[59] The average age of the total fleet is less than nine years, compared to an expected ship life of at least 25 years.

The U.S. flag market share of non-military liner cargo in U.S. trades is shown in Table 5.2. Variations over time reflect a number

TABLE 5.1 SHIPS IN U.S. LINER FLEET (as of 9/74)

BUILT FROM 1968 - 1973*	68	69	70	71	72	73	68-73
# Ships	18	14	7	7	9	24	79
Dead Weight Tonnage	306,800	243,000	159,000	195,500	204,200	537,000	1,645,800
Bale Cubeage (1,000's cu. ft.)	16,870	14,114	9,652	8.906	12,957	37,000 (approx.)	99,500

*Includes some ships in domestic service

Source: Maritime Administration Operational Ship File, MAEAC, Office of Policy and Plans.

TABLE 5.2 U.S. FLAG MARKET SHARE OF LINER TRADE TONNAGE AND VALUE

	Tonnage	Value
1960	28.6%	32.1%
1961	25.8	31.4
1962	26.2	30.1
1963	27.7	31.5
1964	28.1	32.8
1965	22.8	27.8
1966	22.9	30.4
1967	22.2	29.8
1968	24.0	29.0
1969	22.6	27.3
1970	23.5	28.8
1971	22.7	28.2
1972	21.8	NA
1973	25.4	28.0
1974	28.4*	NA

*Based on first six months

Source: Bureau of Census FT-985 reports and MARAD Annual Reports of factors. Chief among these are the U.S. share of available capacity on each route, and variations in the military tonnages carried in different years - liftings not included in the data, which at certain times may conceivably "shut out" commercial liftings on particular routes. Variations in the introduction of new capacity as evidenced in Table 5.1, have clearly visible effects on the U.S. market share. For example, the increases during 1973 and 1974 in tonnage market shares are in large part due to the significant increase in new capacity coming on the line in 1973. On the other hand, the early seventies was a period during which the U.S. merchant fleet grew less rapidly than the world fleet.

Market share itself is not a good measure of the economic health of the liner industry. A positive increment in market share bought at the expense of an increase in capacity availability (and consequently debt service and operating expenses) is not necessarily a financial gain to the carriers. Measures of capacity utilization, which are available only in confidential carrier data, are much more relevant. On the trade routes where total volumes are particularly high and the most advanced systems employed, the U.S. flag share is above the average found for total trade as shown in Table 5.3. In general, there has been growth in the U.S. share on these routes over the past seven years. It is precisely on such routes, however, with their highly capital intensive systems (including vessels, containers, dock facilities, etc.), where a lower volume of trade - even at constant, high market shares - can be financially devastating. The same high technology (high cost) investments which bring about the high market shares make the carriers more sensitive to fluctuations in trade.[60] Containerized operations have a higher break-even load factor than conventional services, but once that point is reached, incremental revenues are estimated to be between fifty and seventy percent profit. As indicated by the industry financial record, however, these break even load factors have seldom been achieved in recent years.

Most carriers view cargo sharing as one possible remedy for their financial situation. The ability to rationalize services (i.e., adjust sailings to increase capacity utilization) would provide

TABLE 5.3

U.S. FLAG TONNAGE MARKET SHARE ON

SELECTED HIGH VOLUME TRADE ROUTES

	5,7,8,9, (N. Atlantic/ N. Europe)	10 (N. Atlantic/ Med.)	29 Pacific/ Far East)
1968	26%	34%	33%
1969	31%	28%	36%
1970	33%	32%	40%
1971	31%	33%	37%
1972	29%	27%	41%
1973	31%	37%	39%
1974	31%	47%	39%

*Based on first six months

Source: Bureau of Census, FT-985 reports a boost to their profitability, even at existing market shares. Any additional cargo accruing to them under cargo sharing would yield revenues far in excess of their additional costs. Finally, removal of cargo allocation from the market process would reduce the probability of rate warring in times of slack demand.

Table 5.2 implies that U.S. carriers would increase their share of liner-carried foreign trade by about one-third - from almost 30 percent to 40 percent of total value - under the Code. In 1973, this would have represented an increase in the value of goods carried by U.S. flag operators of about $4.8 billion, implying increases in gross revenues of from 240 to 480 million dollars (assuming freight rates to equal from five to ten percent of value). However, the disaggregated trade route analyses of Chapter 6.0 indicates that these carrier gains may be grossly exaggerated because of the exclusion of military cargo and U.S. owned-foreign flag operators, inclusion of non-conference cargos, and the necessity of altering service patterns (at a real cost) in order to obtain cargo increases. Finally, balance of payments improvements would be considerably smaller than the revenue gains indicated above due to increased payments by U.S. carriers in foreign ports and decreased receipts from foreign ship operators in U.S. ports - a figure which almost equaled U.S. freight payments to foreign carriers for waterborne import transportation services in 1973.[61]

Although most U.S. carriers would like to see cargo sharing become a more common practice in U.S. conferences, they have serious reservations concerning the UNCTAD Code on several grounds. U.S. carrier opposition to the Code stems from their concern that:

1. Third country carriers closed out of the trade in the rest of the world will flood the relatively open U.S. trades with excess tonnage;

2. They will be closed out of foreign trades as third flag carriers;

3. The rigid cargo sharing formula is not sufficiently reflective of existing U.S. commercial operations on different routes;

4. The definition of exempt cargoes is too restrictive;

5. The Code is implicitly designed to keep high technology carriers from competing for "too high" a share of the trade;

6. The Code might portend increasing government control of the industry;

7. The rate provisions of the Code might be too strict.

Fears about over-tonnaging in the U.S. trades hinge on the relative ease of entry into U.S. trades due to the regulatory restraint on conference practices. If third-flag carriers in non-U.S. trades were restricted under the Code to a share of the trade smaller than they currently carry, they might abandon those trades and operate in U.S. trades. As an alternative to laying up their vessels, they might be willing to operate, even at cut-throat rates, just to recover some of their fixed costs. Such a scenario might cause a political reaction which could lead to a change in U.S. regulatory practices, but not before serious harm to several U.S. carriers might occur.[62] On the other hand, if growing LDC fleets acquire their ships by charter or purchase from existing third-nation carriers, this problem would be reduced accordingly, because there would be fewer "surplus" ships to enter U.S. traffic.

Several U.S. carriers have substantial business as third-nation carriers in the foreign trade of other countries. Frequently such service is performed in conjunction with feeder services[63] which are an essential part of their U.S.-directed trade. These carriers fear that the economic viability of their feeder systems, and thus their whole mode of operation, would be threatened if application of the Code were to inhibit their right to operate as third-nation carriers on the same routes. It was in the interest of maximizing the potential for such third-flag participation that the U.S. supported a narrow definition of exempt cargo, thus preserving the largest possible cargo-sharing base in third-country trades. The definition ultimately adopted, however, is more restrictive than that supported by the U.S.

Cargo liftings by U.S. liner operators as third-flag carriers are difficult to document since they do not pass through points where U.S. shipping data are normally collected. Freight earnings on shipments between foreign countries for all types of U.S. flag serv: (including bulk carriers) were 219 million dollars in 1973. A partial record of liner volumes in isolation can be constructed. Table

5.4 documents U.S. participation in third-country liner trades for certain categories of cargo for which data are available - Agency for International Development and Military Sealift Command cargos, and foreign trade in transit through U.S. ports. U.S. flag carriage between foreign countries in these categories is equivalent to between 3.1 and 4.9 per cent of U.S. flag commercial tonnage liftings.[64] This is an understatement of total U.S. carrier third-flag activities however, because it excludes commercial liftings by U.S. vessels between other countries which do not enter U.S. ports - e.g., Japan to Hong Kong or Sweden to the U.K.

A complaint by a high technology carrier states that the Code is a veiled attempt to thwart highly efficient container operations from competing and making inroads in LDC trades. This is presumably accomplished by sheltering large shares of the trade (the LDC's 40% at minimum) from competition.

The above reservations refer to scenarios in which the Code is implemented in non-U.S. trades, but not necessarily in the U.S. trades. The remaining carrier objections refer to the Code's application in U.S. trades. Although the U.S. carrier market share of liner-carried U.S. foreign trade is less than 40 percent, U.S. carriers would clearly be harmed by a strict implementation of forty percent cargo sharing on some conference routes, including the major European and Far Eastern routes, if military cargos are included in the cargo sharing base (See Chapter 6.0, "Trade Route Analysis"). Currently, the carriers likely to be classified as U.S. carriers under the Code carry in excess of 40% of the U.S. North Atlantic-Northern Europe conference trade. Under the proposed North Atlantic Pool, they would be entitled to over fifty percent of this important trade, and this allocation would exempt much cargo not exempt under the Code. Further, at least one of the carriers originally requesting the above-mentioned pool reserves the right to renegotiate its proposed share upward in light of changes in its commercial position since the pool was initially proposed.

The major gains under forty percent cargo sharing in any particular area frequently accrue in a single bilateral trade, making

TABLE 5.4

U.S. CARRIER BUSINESS

IN FOREIGN-TO-FOREIGN TRADES (1973)

		Tonnage (thousands)	Value (millions of dollars)
A.I.D.[a]	Total	93.8	NA
	U.S. Flag	34.3 (37%)	NA
MSC[b]	Total	179.1	NA
	U.S. Flag	125.3 (70%)	NA
Foreign Trade In-Transit[c]			
Exports	Total	556.2	646.4
	U.S. Flag	241.8 (43.5%)	325.6 (50.4%)
Imports	Total	424.3	871.1
	U.S. Flag	228.4 (53.8%)	624.1 (71.6%

[a]Agency for International Development liner shipments from outside U.S. (A.I.D. World Shipping Summary).

[b]Assume 2 measurement tons per long ton and MSC estimates of 70 percent U.S. flag share (MSC, Financial and Statistical Report - Part 2).

[c]Census SA305/705 data tape.

cargo sharing agreements which are geographically limited a superior option to across-the-board arrangements. For example, the bulk of gains to be made on the Far Eastern and South Asian routes are in the bilateral trades with Japan and India respectively. If cargo sharing with the Asian trades is to be considered at all, bilateral arrangements with these two nations would afford most of the benefits to carriers with minimum distortion in the remainder of the trades, in which U.S. carriers already carry well over forty percent of liner cargos.

The high cost, capital intensive nature of U.S. carrier operations encourages them to concentrate on a subset of total trade - where high volume, balanced trade flows are supported by direct service to a limited number of ports.

Many of the cases which provide the greatest potential gains to U.S. carriers under the Code are in trades which have attributes diametrically opposed to their sphere of comparative advantage. These would include the island-hopping trade in the Caribbean and the very long, one-way trade with the Persian Gulf and Red Sea nations. Therefore, potential gains in such trades are not fully offsetting to losses suffered in trades where U.S. carriers currently compete successfully, since different carriers are frequently involved on the different routes and operations are not strictly transferable. For example, a comprehensive container service on the North Atlantic, including modern port facilities and feeder services, cannot readily be transferred to the Persian Gulf to soak up increased volumes there.

One U.S. carrier's representatives note that the Code would allocate a share of trade to the U.S. carriers as a group, leaving the further allocation among those lines untreated. This carrier feels strongly that, if the Code were applied, the U.S. government should only interpret the definition of national flag lines in the U.S. and have no other increased responsibilities in the workings of the Code. Particularly, it is felt that the U.S. forty percent should be entirely open to competition between U.S. carriers. More strongly, the unsubsidized U.S. lines feel that when they compete with subsidized carriers for Code-reserved cargoes, the latter should not receive a subsidy. These lines fear some form of government allocation of

Code cargoes which might limit their ability to compete for a greater share of cargo, and inhibit their greater flexibility.[65]

Finally, carriers object to any Code restrictions on conference freedom to set rates (subject to FMC review). They feel that the fifteen month minimum interval between general rate increases is excessive, especially in time of wide-spread inflation. On the other hand, this longer interval might just cause conferences to seek larger increases when announcing changes. Such rate questions are outside the scope of this cargo-sharing study and thus are not considered in depth.

6. TRADE ROUTE ANALYSIS

6.1 INTRODUCTION

Under the UNCTAD Code, U.S. carriers (probably defined to include Seatrain Lines, a U.S. owned-U.K. flag carrier) would have a right to carry forty percent - in terms of both volume and freight revenues - of the liner conference cargo in U.S. foreign trade. It is of interest to compare this potential Code-allocated share with existing U.S. carrier market shares on conference routes. Several problems impede this comparison, however. The Code applies to conference cargos only, yet the published Bureau of Census shipping data do not allow the isolation of conference movements in total trade movements. In the first place, Census origins and destinations are the ports of lading and unlading for the transoceanic vessel involved in a movement. If an intercoastal feeder vessel is used, the true origin of a movement (and, therefore, the relevant conference) is indeterminate. Secondly, mini-bridge movements (intermodal movements which substitute rail service between two port ranges for part of the normal route) are, in general, non-conference,[66] even though the carrier might belong to the conference serving the route. Thus, a single vessel sailing from New York to Rotterdam may be carrying cargos moving under the rates of several conferences (including those serving Gulf and Pacific ports) as well as cargo moving under non-conference rates, yet all cargo would appear in the Census data as New York to Rotterdam movements. Finally, in the publicly available data, carriers are identified as U.S. flag or foreign flag only, and so conference membership cannot be determined even if true origin and destination are known.[67]

Even if the existing level of conference participation in the trade on a route were known, there is no reason to believe that this level would be preserved after an institutional change as significant as the introduction of universal cargo sharing. If a cargo sharing pool did not cover a fixed (high) share of total trade, the effects of cargo sharing in absolute terms would be lessened. For example, if ten percent of total liner trade on a route is non-conference, and all non-conference operators on the trade route are foreign flag carriers, then a thirty-six percent market share of total liner trade would be equivalent to a forty percent share of conference-covered trade. If a third of the trade were non-conference (again all foreign flag), then forty percent of conference-carried trade would represent only 26.6 percent of total trade.[68] This emphasizes both the shortcomings of the data base and the importance of the level of independent service to the functioning of the UNCTAD Code cargo sharing provisions.

In the trade route analyses below, the U.S. market share refers to the share of total liner trade, which may differ from the U.S. share of conference trade. This is consistent with the case - believed most likely by some - in which independent carriers are allowed no significant participation outside the Code cargo pool.

Aggregate U.S. carrier liner market shares in recent years have seldom exceeded thirty percent of total value[69] or tonnage as indicated by Bureau of Census shipping data (See Table 5.2). This exaggerates potential U.S. carrier gains from UNCTAD cargo sharing for several reasons however. Many trade routes (most with low U.S. carrier participation) are not covered by conference agreements and would, therefore, be unaffected by the Code. These include the thirteen U.S./Canada trade routes and the routes between the U.S. Great Lakes and Northern Europe, the Caribbean, South Asia and the Middle East, the Far East (except Japan), Oceania, and both coasts of Latin America (except inbound from Pacific Colombia and Ecuador). Portions of other trade routes (e.g., inbound movements from Africa to the Pacific and trade between the Gulf and the Baltic Sea) are also non-conference. Since 1974 several U.S. flag liner services to and from the Great Lakes have been established. Some of these are conference members in either or both the outbound and inbound trades. However, not all trade routes in this potentially expanding shipping area have U. S. participation.[70]

Finally, the Census data include only civilian cargo. The Military Sealift Command (MSC) of the Department of Defense ships a wide variety of goods ranging from military hardware and ammunition to household goods for military dependents. Almost all of these goods are shipped on U.S. flag vessels, yet none of them are included in the Census data. Existing U.S. flag market shares of total trade (military and non-military) are obviously greater than market shares for non-military cargos alone. Consequently, the fraction of MSC shipments meeting the definition of exempt cargos is extremely important.

Only those MSC shipments moving on commercial liner vessels are relevant to the Code. This excludes most military hardware (weaponry, ammunition, etc.), which generally moves on MSC controlled vessels. The remaining cargos include troop support shipments (both job- and recreation-oriented) as well as private vehicles, household goods, and other dependents-related shipments. Which of these would be exempt from cargo sharing under the Code is uncertain, so three different scenarios are considered in the empirical analysis; total exemption of MSC cargos from the cargo sharing base, a 50 percent exemption, and full inclusion of MSC commercial liner movements in the base. Inclusion of MSC cargos in the cargo sharing base always increases the baseline (existing) U.S. market share and decreases the potential gains accruing to U.S. carriers under the Code.

6.2 METHODOLOGY

The UNCTAD Code calls for 40-40-20 allocation of volumes and revenues. If value is used as a proxy for revenues,[71] a complication in the trade route analysis as well as a problem in the implementation of the Code is apparent. U.S. flag carriers as a group tend to carry a high-value mix of commodities on most routes, due in part to their emphasis on container and other high technology services, and possibly because of an alleged tendency to skim high value, high revenue cargos from government shippers under cargo preference.

A clear example of this occurs in the outbound trade from the U.S. Atlantic and Gulf to the East Coast of South America (Table 6.1) where U.S. carriers account for 46.2 percent of value and 36.0 percent of tonnage. An increase to 40 percent of tonnage ("volume-based cargo sharing") would give U.S. flag operators at least half of total value unless the commodity mix changed significantly. They would almost certainly be earning more than forty percent of revenues, a favorable situation from their point of view, but probably not consistent with the intent of the Code. Alternatively, it might be assumed that the large market share by value implies that U.S. carriers already exceed their UNCTAD allocated share by as much as 6.2 percent ("value-based cargo sharing") and that implementation of the Code on that route would lead to a decrease in their volumes. The likely result of cargo sharing implementation, which would be subject to negotiation within the conference, lies between these two extremes, and so Code-induced changes in U.S. flag carriers liftings are estimated using both value and volume as the base.[72]

This indicates a second problem. Although public shipping data are reported in weight tons, the relevant volume measure in the industry is the revenue ton, which may be a weight ton or a measurement ton (40 cubic feet), the choice for each shipment depending on which yields the greater revenue. Measurement tons in this study are calculated from weight tons, using commodity-specific density factors for the conversion.[73]

Current vessel capacity on each route is calculated as the product of 1974 (first six months, annualized) U.S. flag liftings (in tons) and route-specific average cargo densities.[74] 1974 was a year of very high capacity utilization on most routes, with reports in the trade papers of intermittent capacity shortages. This capacity measure has the dual advantage of being calculated at a time of minimum excess capacity (generally a difficult phenomenon to measure) and of including the contribution of the large additions to the U.S. liner fleet during 1973.

Actual 1973 U.S. flag volumes fall far short of current capacity (measured in the manner described above) because of increases in both load factors and fleet size in 1974. This means that serious excess capacity would exist on most routes if trade levels returned to 1973 (the base year for trade data in this study) from the record high 1974 levels. In the analysis below, routes on which additional capacity would be required under the Code are identified because they present less clear cut gains to carriers and because they can give rise to more serious political and philosophical questions than cases in which cargo gains can be accommodated with existing capacity.

In order to assess the effects of a partial implementation of the Code in a subset of U.S. trades, estimates of U.S. market shares have been developed for four different scenarios:

Scenario 1:

Cargo-allocation is implemented in the U.S. trade with the less developed countries, but existing U.S. shares with all other nations remain unchanged (Group definitions in Appendix III);

Scenario 2:

Cargo-allocation is extended to the socialist nations which voted for the Code, as well as the LDC trades.

Scenerio 3:

Cargo-allocation is further extended to U.S. trade with Group B countries who favor the Code.

Scenario 4:

The Code's cargo-allocation formula is implemented in all U.S. trades. This is the full implementation scenario.

All four scenarios may not be relevant for any given route. For example, in the Latin American trades, nearly all of our trading partners are LDC's while cargos to Group B or socialist nations are insignificant.[75]

6.3 EMPIRICAL ANALYSIS

6.3.1 Latin American Trade Routes

The Latin American nations were among the keenest supporters of cargo sharing at the UNCTAD Conference. They are deeply committed to merchant marine development, and already operate under equal access and/or pooling agreements in many of their trades. U.S. carrier market shares by value significantly exceed their shares by tonnage on almost all of these routes (See Table 6.1) and shares in the outbound trade greatly exceed those for imports, due in part to their preferential access to U.S. government impelled shipments.

U.S. flag market shares are already in the vicinity of 40 percent on the South American trade routes (See Table 6.1) from both the Pacific and from the Atlantic and Gulf, reflecting existing

TABLE 6.1

1973

U.S. LINER MARKET SHARE BY TRADE ROUTE (Percent)

Foreign Trade Area/ U.S. Coast (Trade Route #)	Exports Value	Exports Weight	Imports Value	Imports Weight
East Coast So. America/ U.S. Atlantic & Gulf (T.R. #1, 20)	46.2	36.0	39.2	31.8
West Coast So. America U.S. Atlantic & Gulf (T.R. #2, 31)	41.6	40.0	35.3	30.7
Caribbean, East Coast C. America/ U.S. Atlantic & Gulf (T.R. #4, 19)	18.2	13.0	6.6	5.3
West Coast Central America/+ U.S. Atlantic and Gulf (T.R. #71,72, 77,78)	16.4	8.6	15.9	3.5
Caribbean, East Coast C. America/U.S. Pacific (T.R. #23)	34.0	25.6	30.3	18.7
East Coast S. America/ U.S. Pacific (T.R. #24)	46.9	44.7	37.1	28.9
West Coast S. America/ U.S. Pacific (T.R.#25)	47.0	41.1	21.6	25.6

*Much of the East Coast of Central America is non-conference
+There is no regularly scheduled liner service except to Canal Zone

Source: Bureau of Census SA305/705 data tapes

equal access and/or pooling agreements with those nations. As indicated by these market shares, there is relatively little change in U.S. volume between the Atlantic and Gulf and South America under the Code (See Table 6.2). Since volume and value shares vary, the results depend on which base is used. For example, a 40 percent allocation by value in the East Coast of South America trade would cause a net loss of almost 20 thousand measurement tons while a volume based allocation would yield a gain of 150 thousand measurement tons (50 outbound and over one hundred inbound). Changes in market shares on the South American routes in 1974 have the effect of diminishing gains as those indicated above.

U.S. market shares to Central America and the Caribbean are, in general, lower than those to South America. This may be a statistical artifact stemming from the fact that a large portion of U.S.-carried trade with the Caribbean Islands is not via direct service. A U.S. carrier might carry a shipment to Puerto Rico in domestic service (not entered in the Census shipping data), where it is transshipped to the true destination. Only the final leg of the shipment appears in the shipping data, and it may not be under the U.S. flag. Similarly, all Seatrain Lines volumes (foreign flag in the Census data but probably a U.S. carrier under the Code) should be added to the U.S. share.

Also, the figures suffer from over-aggregation. The island hopping inherent in direct service to the entire range of Caribbean ports may not be profitable for U.S. operators. Where they operate regular, direct service, U.S. carriers carry respectable shares of the trade. Ninety-six percent of U.S. carried export shipments (by value) in the Atlantic/Caribbean trade goes from the North Atlantic to six countries - the Dominican Republic, Panama, the Netherlands Antilles, Jamaica, Colombia, and Venezuela - markets in which U.S. flag shares range from thirty percent in Colombia and Venezuela,[76] where equal access agreements already exist, to 86.4 percent in the Dominican trade. U.S. direct service to other destinations, except possibly by trans shipment, is negligible. Also U.S. shipments to and from Puerto Rico, all of which are domestic and insulated from foreign competition, exceed the total volume of all other shipments

TABLE 6.2 THE EFFECTS OF 40 PERCENT CARGO ALLOCATION ON U.S. CARRIER VOLUMES (thousands of measurement tons)

Trade Route/ Scenario	Exports Allocation by Value	Exports Allocation by Volume	Imports Allocation by Value	Imports Allocation by Volume
#1/				
Actual 1973	268.9	268.9	265.9	265.9
Full Implementation	218.6	285.3	265.8	360.4
#2/				
Actual 1973	134.1	134.1	209.9	209.9
Full Implementation	133.4	140.5	301.3	241.3
#4/				
Actual 1973	267.9	267.9	48.8	48.8
LDC's only	509.4	621.8	267.2	282.3
All supporters	528.8	627.7	268.5	283.6
Full Implementation	512.5	634.1	269.7	286.4
#19/				
Actual 1973	108.7	108.7	8.8	8.8
LDC's only	502.7	445.6	79.5	79.5
All supporters	507.6	447.9	79.5	79.5
Full Implementation	546.6	489.5	113.8	113.8
#20/				
Actual 1973	194.0	194.0	143.6	143.6
Full Implementation	213.6	228.4	156.1	155.2
#23/				
Actual 1973	34.1	34.1	5.0	5.0
Full Implementation	40.0	53.1	6.7	11.3
#24/				
Actual 1973	55.5	55.3	33.3	33.3
Full Implementation	47.3	48.9	36.0	48.0
#25/				
Actual 1973	113.0	113.0	42.7	42.7
Full Implementation	96.5	109.1	79.6	122.1
#31/				
Actual 1973	183.4	183.4	59.8	59.8
Full Implementation	164.2	166.2	41.4	67.2
#71, 77/				
Actual 1973	12.5	12.5	9.5	9.5
Full Implementation	17.8	28.9	114.1	102.2

TABLE 6.2 (continued)

Trade Route/ Scenario	Exports Allocation by Value	Volume	Exports Allocation by Value	Volume
#72, 78/				
Actual 1973	4.1	4.1	.1	.1
Full Implementation	30.9	55.1	19.4	41.4

Source: Bureau of Census SA 305/705 data tapes

†Measurement ton volumes in all tables estimated from Census SA 305/705 weight figures and commodity specific cargo densities from Transoceanic Cargo Study, P.R.C. for D.O.T. Contract DOT-OS-A9-024 (NTIS PB-201-040).

to the Caribbean (U.S. and foreign-carrier), making these a much more critical focus for U.S. operations. In fact, nearly all U.S. flag services to Central America and the Caribbean Islands are operated in conjunction with other carrier operations. For example, all of the U.S. liftings on the Central American route represent cargos carried in the domestic Atlantic/Pacific trade or the Atlantic/Far East trade and trans-shipped to other Central American destinations (chiefly Panama) via the Canal Zone. The Pacific/Caribbean trade in which the U.S. tonnage share increased markedly (by 25%) in the first half of 1974, is served in conjunction with operations on trade route #24 (U.S. Pacific/East Coast South America).

Implementation of forty-percent cargo sharing on the Atlantic and Gulf/Caribbean route would yield U.S. carriers an estimated 700 thousand measurement tons in excess of actual 1973 volumes and half that amount inbound.[77] This estimate is subject to the criticisms listed above, and at very least would have to be met by a reshuffling of services as cargos lost where U.S. service currently exists are offset by increases where new services are required. If the figures are accepted at face value, the annual service equivalent of at least[78] three C5-type vessels or four or five C3-type vessels would have to be added to U.S. flag service[79] to carry the increments.

Major changes in U.S. flag volumes occur in the Atlantic and Gulf/West Coast Central America trade under 40 percent sharing. Increases of 33 to 67 thousand measurement tons outbound and 120 to 140 thousand measurement tons inbound are estimated (depending on the allocation base), much of this increase requiring new capacity,[80] since U.S. carrier operations are very light on this route.

In summary, net gains would be made on some U.S. routes to Latin America although their size in individual cases varies with the allocation base used. Significant gains might be realized in the Atlantic and Gulf/Caribbean trade and the Atlantic and West Coast Central America trade, with new service requirements in each case. U.S. percentage shares on almost all Latin American routes increased in the first half of 1974, lessening, but probably not entirely eliminating the small net gains on the South American routes.

6.3.2 African Trade Routes

U.S. carriers would have little to gain from an application of UNCTAD cargo sharing in the African trades (Table 6.3). In the two-way conference trade between the U.S. Atlantic and Gulf and West Africa (American/West African Freight Conference), U.S. flag carriers lifted 34.7% of total trade by value and 29.5% by weight in 1973. Although UNCTAD-allocated volumes would be greater than current shares on this route, there would be offsetting losses in the East African trades where U.S. flag carriers carried 47.8% of value (46.5% by weight) in the outbound trade and 62.7% of value (50.9% by weight) on the inbound conference route.[81]

A forty percent share of all 1973 West African/Atlantic and Gulf cargos (inbound plus outbound) would mean an added 65 to 161 thousand measurement tons for U.S. carriers, depending on the degree of implementation of the Code and the method of allocation (Table 6.4). The added flows would not require significant additions to current capacity, since current U.S. capacity exceeds 1973 volumes on that route. These gains would be offset on the East African routes by losses of 79 to 136 thousand measurement tons if U.S. carriers were restricted to a forty percent share of that trade.[82] There is, therefore, no clear cut gain to U.S. flag carriers from a move to 40-40-20 cargo sharing in the Africa trades.

The Pacific/African trade is quite small, and void of any regular U.S. flag liner service. Only the outbound trade is subject to conference agreement, and that by trans-shipment through European ports only.

6.3.3 Asian Trade Routes

By far the most important Asian trades in volume terms are the Far East trades served by MARAD trade route #29 from the Pacific Coast and trade routes #12 and #22 from the Atlantic and Gulf. On trade route #29, U.S. flag carriers carried over 40 percent of traffic in value terms both inbound and outbound in 1973 (Table 6.5) and 39.7 percent outbound and 36.9 percent inbound in weight terms.[83] These aggregate route shares conceal wide discrepancies between groups of countries served by the route (Table 6.6). U.S. flag carriers

TABLE 6.3

1973

U.S. LINER MARKET SHARE BY TRADE ROUTE (percent)

Foreign Trade Area/ U.S. Coast (Trade Route #)	Exports Value	Exports Weight	Imports Value	Imports Weight
West Coast Africa/ U.S. Atlantic & Gulf (T.R. #14-1, 14-2)	35.8	29.0	34.5	27.5
East Coast Africa/ U.S. Atlantic & Gulf (T.R. #15-A, 15-B)	47.8	46.5	52.7	50.9
West Coast Africa/ U.S. Pacific (T.R. #14-3)[a]	-	-	[b]	[b]
East Coast Africa/ U.S. Pacific (T.R. #15-C)[a]	-	-	[b]	[b]

[a] No regular scheduled U.S. flag liner service

[b] No conference agreement

Source: Bureau of Census SA 305/705 data tapes.

TABLE 6.4

THE EFFECT OF 40 PERCENT CARGO ALLOCATION ON U.S. CARRIER VOLUME

(Thousands of measurement tons)

Route		Value Based Allocation	Volume Based Allocation
14-1, 14-2	LDC's only	65	146
	Full Implementation	120	161
15A, 15B	LDC's only	136	-110
	Full Implementation	-132	- 79

SOURCE: BUREAU OF CENSUS SA305/705 data tapes

TABLE 6.5

1973 U.S. LINER MARKET SHARE
BY TRADE ROUTE (percent)

Foreign Trade Area/ U.S. Coast (Trade Route #)	Exports Value	Exports Weight	Imports Value	Imports Weight
Far East/ U.S. Pacific (T.R. #29)	41.8	39.7	41.0	36.9
U.S. Atlantic & Gulf (T.R. #12, 22)	33.7	28.4	21.6	15.9
So. Asia, Persian Gulf, Red Sea/U.S. Atlantic & Gulf (T.R. #18)	13.5	23.7	20.8	18.5
U.S. Pacific (T.R. #28)	12.0	13.2	13.4	8.0
Indonesia, Singapore, Malaysia/ All U.S. Ports (T.R. #17)	29.9	31.4	27.0	20.7
U.S. Atlantic & Gulf (part of T.R. #17)	29.0	28.1	20.5	16.9
U.S. Pacific (part of T.R. #17)	33.0	39.1	43.7	31.1

Source: Bureau of Census SA 305/705 data tapes.

TABLE 6.6

U.S. LINER MARKET SHARE BY COUNTRY GROUP (PERCENT)

	Value		Weight	
	Export	Import	Export	Import
	TRADE ROUTE #29			
LDC's (S.E. Asia, Korea, Taiwan)	61.7	63.0	61.3	54.7
Group B Supporters of Code (Japan, Macao)[a]	34.3	31.4	27.3	26.8
Hong Kong	45.4	63.0	45.1	61.9
	TRADE ROUTES #12 and #22			
LDC's	42.7	34.1	40.4	21.7
Group B supporters	25.9	14.7	14.5	10.4
Hong Kong	36.8	31.6	29.3	27.2

SOURCE: BUREAU OF CENSUS SA305/705 data tapes

[a]Colonies and possessions have been allocated to the country group of the parent country. In most cases, as here, the volumes are not large and do not impact the results.

currently carry more than 60 percent of the export trade to the LDC's on the route and 55 to 63 percent (by weight and value respectively) of the inbound trade. In the Japanese trade, on the other hand, U.S. market shares fall well short of 40 percent (27-34 percent outbound and 27-31 percent inbound). U.S. flag shares in the Hong Kong trade are 45 percent for exports and over 60 percent for imports.

All of these figures must be adjusted upward if the impact of UNCTAD cargo sharing on this route is to be analyzed. In the first place, Seatrain, an American-owned British flag carrier operates on Trade Route #29. Adjustment for Seatrain liftings increases existing U.S. shares to an estimated 43 or 44 percent.[84] A second adjustment in existing U.S. flag shares must be made if military cargos are not exempt from the cargo sharing base (Table 6.7). Military cargo on trade route #29 in FY 1973 accounted for over 1.7 million measurement tons, equivalent to 32 percent of the non-military outbound volume on the route. If only half of MSC cargos on the route are included in the cargo sharing base, the 1973 U.S. market share is over 47 percent. Full inclusion would have yielded a 54 percent market share for U.S. flag carriers. Simultaneously adjustment for Seatrain Line makes existing U.S. shares 51 and 58 percent under the two MSC scenarios respectively.

U.S. flag market shares between the Far East and the U.S. Atlantic and Gulf[85] are lower than for the U.S. Pacific Coast (Table 6.5) and less encumbered by unknowns, since Seatrain operates no direct service on the route. Also, military cargos are less critical on this route raising the total U.S. share of outbound trade from 29.4 percent to 34.8 percent when 100% are included in the cargo sharing base. As on T.R. #29, U.S. flag shares in the trade with Japan are considerably lower than with the LDC's, reflecting both the government preference cargos to the LDC's and relatively stiff competition from Japanese carriers in the Japanese trade (Table 6.6).

The impacts of 40-40-20 cargo sharing in the Far East trades depend on whether value (as a proxy for revenues) or volume is the allocation base and whether military cargos enter the base. Under full implementation of a value-based Code with all trading partners, U.S. carriers suffer a loss of 235 thousand measurement tons on both inbound and outbound legs of trade route #29 (See Table 6.8), while gaining 70 thousand MT outbound and 658 thousand MT inbound on trade routes #12 and #22. The total change over the three routes is a loss of 165 thousand MT outbound and a gain of over 400 thousand measurement tons inbound.

If Seatrain Ltd. were classified as a U.S. carrier under the Code, U.S. gains would be diminished (or losses magnified) by 160 thousand to 220 thousand measurement tons[86] both inbound and outbound - all on trade route #29. This is enough to wipe out all gains from a value-based code.

If volume is the base for cargo allocation, on the other hand, U.S. carriers would gain over 500 thousand MT outbound and 1.3 million MT inbound over the three routes (less adjustment for Seatrain). Because of additions of capacity to the U.S. fleet in 1973 and 1974 and the unbalanced nature of MSC shipments, even these increases over 1973 U.S. flag volumes would require no new capacity or service.

The effects of inclusion of MSC cargos are dramatic. Inclusion of one half of MSC cargos in the cargo sharing base would cause the 500 thousand measurement gain over 1973 volumes outbound to be transformed to a 90 thousand MT <u>loss</u>. Full inclusion of MSC cargos would cause a total loss outbound of 730 thousand MT from actual 1973 U.S. flag volumes.[88] Inclusion of inbound MSC cargos affects those results very little.

U.S. carriers carried 220 thousand measurement tons of inbound in-transit cargos from the Far East in 1973 (200 thousand on T.R. #29 and 23 thousand on T.R. #12) and 150 thousand measurement tons of exports in-transit (105 on T.R. #29 and 50 on T.R. #12). They also carried significant third country trade within the trade area which is not included in the in-transit trade. Unless they could retain this trade as third flag carriers under the UNCTAD Code, these volumes would represent serious losses to U.S. carriers.

The overall impacts estimated above reflect large gains in the Japanese trade offset by large losses in the remainder of the route, where existing U.S. shares are very high (Table 6.8), and gains on the Atlantic and Gulf route offset by losses from the Pacific route. As in the case of the African trades discussed above, the net impacts

TABLE 6.7

EFFECTS ON U.S. FLAG MARKET SHARE INCLUDING MILITARY CARGOS IN CARGO SHARING BASE (percent)

	Excluding Military Cargos	50 percent Inclusion of MSC Cargo	Full Inclusion of MSC Cargo
Trade Route #29 (U.S. Pacific Port Range)			
Total Trade	39.1	47	54
Japan and Ryuku Islands	26.9	32	36
Southeast Asia, Korea, Taiwan, etc.	61.7	72	78
Trade Route #12 and #22 (U.S. Atlantic and Gulf Port Range)			
Total Trade	29.4	32.2	34.8
Japan and Ryuku Islands	15.8	17.6	19.3
Southeast Asia, Korea, Taiwan, etc.	40.6	44.2	47.4

SOURCE: BUREAU OF CENSUS SA305/705 data tapes; MSC Annual Report

TABLE 6.8

THE EFFECTS OF 40 PERCENT CARGO ALLOCATION ON U.S. FLAG VOLUMES UNDER ALTERNATIVE IMPLEMENTATION SCENARIOS (thousands of measurement tons)

Trade Route/ Scenario	Exports Allocation by		Imports Allocation by	
	Value	Volume	Value	Volume
Trade Route #29				
Actual 1973	2145	2145	2224	2224
LDC's only	1783	1783	1854	1926
All supporters	1935	2223	2101	2361
Full Implementation	1910	2196	1989	2253
Trade Routes #12 and 22				
Actual 1973	1383	1383	1052	1052
LDA's only	1279	1368	1134	1408
All supporters	1426	1837	1666	2216
Full implementation	1454	1882	1710	2302

SOURCE: BUREAU OF CENSUS SA305/705 data tapes

on these routes involve trade-offs between gains on one route (T.R. #12 and 22) and losses on another (T.R. #29). Although there is a greater tendency in this case for carriers to serve both routes (frequently in the same service), several carriers are concentrated on the Pacific Coast route and might, therefore, be damaged while the others were making gains.

U.S. flag carriers carry considerably less than 40 percent of non-military liner cargos to South Asia, Indonesia, Malaysia, and Singapore (Table 6.5). Trade routes #18 and #28 can be divided into two areas - South Asia (consisting primarily of India, Pakistan and Bangladesh) and the Near East (Persian Gulf and Red Sea ports).

The Near East portion of the trade on this route is very much a one-way trade - outbound tonnages from the U.S. exceeding inbound tonnages by almost nine to one. The South Asia trade, on the other hand, is more balanced (500 thousand long tons inbound and outbound).[89] Perhaps as a result of these route characteristics, U.S. flag service to the Near East is minimal (non-existent from the Pacific Coast), with U.S. flag operators concentrating on the South Asian portion of the route. Although the U.S. flag export market share on the whole of trade route #18 is 13.5% by value and 23.7% by weight, the U.S. flag share of liner exports to South Asia alone is 44.6% by value and 49.6% by weight. Inbound, the U.S. flag shares from South Asia are 25.3 percent and 20.6 percent, by value and weight respectively, compared to 20.8 percent and 18.5 percent for the route as a whole. The discrepancy between outbound and inbound shares reflects the influence of U.S. government preference cargos; AID cargos alone accounting for 177 of the 329 thousand long tons lifted by U.S. carriers on this route.

In the South Asian trade, on T.R. #18, U.S. flag carriers would stand to lose from 30 to 89 thousand measurement tons outbound (depending on the base used) and gain from 118 to 180 thousand MT inbound.[90] Forty percent allocation would more than quadruple U.S. volumes outbound to the Near East, yielding 380 thousand measurement tons over 1973 liftings of the U.S. flag carriers. Because of the low volume of total inbound movements, only 47 thousand measurement tons would be added in that direction. If the full outbound increase to the Near East is to be carried, new capacity, equivalent to approximately 5 C7-type vessels, would have to be added to that service, with no cargo to occupy the capacity on the inbound voyage.

On trade route #28 (U.S. Pacific/South Asia and Near East), there is no conference and no U.S. participation to the Near East port range. Forty percent cargo sharing in the Pacific/South Asian outbound trade would net U.S. carriers 55 thousand additional measurement tons, all of which would accrue in the Indian trade, where the U.S. flag share of tonnage is less than 3 percent. U.S. carriers already lift over 40 percent of the remainder of South Asian cargos. The India trade would also supply the bulk of inbound gains under UNCTAD cargo sharing on trade route #28, providing 45 thousand of the additional 60 thousand measurement tons.

Trade route #17 serves Indonesia, Malaysia, and Singapore from all U.S. ports. Separate conference agreements (and, frequently, different shipping services) serve the Pacific and Atlantic and Gulf subroutes, however, and so these are disaggregated in table 6.5. A forty percent allocation of 1973 base year flows on these routes would yield U.S. flag carriers almost 85 thousand measurement tons outbound from the Atlantic and Gulf and 0 to 40 thousand measurement tons from the Pacific (depending on whether a value or volume base is used to calculate shares). Inbound gains are more significant, ranging from 150 to 190 thousand measurement tons to the Atlantic and Gulf, and 0 to 20 thousand to the Pacific Coast.

No significant capacity requirements would be generated by those increases, particularly the inbound increments, for which significant excess capacity exists.[91]

6.3.4 Northern European Trade Routes

Logistic complexities in carrier operations on U.S./European trade routes make their analysis difficult. Feeder service at both ends of the trade and mini-bridge movements originating in the Gulf and Pacific make treatment of individual routes with Census data less useful. Therefore, total flows for certain aggregated routes as well as individual route flows, are presented in Table 6.9.

The U.S. flag market share (by weight) for both inbound and

TABLE 6.9

1973 U.S. LINER MARKET SHARE
BY TRADE ROUTE (percent)

Foreign Trade Area/ U.S. Coast (Trade Route #)	Exports Value	Exports Weight	Imports Value	Imports Weight
U.K., Atlantic Europe/ U.S. North Atlantic (T.R. #5, 7, 8, 9)	25.0	29.9	29.1	31.9
Baltic, Scandinavia/ U.S. North Atlantic (T.R. #6)	3.6	4.8	12.8	9.3
Total Northern Europe/ U.S. North Atlantic (T.R. #5, 6, 7, 8, 9)	22.5	27.1	27.1	27.9
U.K., Atlantic, & Baltic Europe/ U.S. South Atlantic (T.R. #11)	12.2	13.1	16.9	10.2
U.S. Gulf (T.R. #21)	31.1	25.4	38.6	23.5
U.S. Pacific (T.R. #26)	0.5	0.6	1.8	1.7
Total Northern Europe/ U.S. Atlantic and Gulf	23.2	24.5	27.2	25.1
U.S. Atlantic, Gulf, and Pacific	21.4	21.9	24.6	22.9

Source: Bureau of Census SA305/705 data tapes.

outbound flows on the major North Atlantic route (encompassing T.R. #5, 7, 8, 9) has been approximately 30 percent for several years, even over the course of wide fluctuations in trade. Inclusion of Seatrain Lines as a U.S. carrier would increase current U.S. volumes and shares in the Atlantic trade about 25 percent. Ships serving this route also frequently serve the smaller Baltic Sea trade (trade route #6), where the estimated U.S. flag share is lower. This analysis is hindered by the fact that a significant fraction of total North Atlantic traffic is non-conference. We cannot, therefore, determine the U.S. share of trade for conference traffic alone, or estimate the impacts of a strictly interpreted UNCTAD Code. The proposed North Atlantic Pool Agreement, which would include the seven North Atlantic conferences, allocates 43.75 percent of conference trade to U.S. flag carriers and an additional 11.25 percent to Seatrain, making this a much more beneficial arrangement for U.S. carriers than the UNCTAD Code cargo sharing formula.[92] Further, this pooling agreement would exclude military cargos an important consideration as will be seen below.

For the entire Atlantic and Gulf/Northern European trade U.S. flag percentage shares are slightly lower than from the North Atlantic, with shares falling below 25 percent if the Pacific/Northern European route (#26), on which U.S. flag direct service has, until recently, been non-existent,[93] is included.

A large volume of MSC cargo to Europe (1.2 million measurement tons outbound from U.S. Atlantic Ports and 214 thousand inbound) makes the inclusion of these cargos in the Code base a key issue. Although the U.S. flag share of non-military cargos outbound from the U.S. Atlantic Coast (North and South) is 23.6 percent, this figure rises to 31.5 percent if only one half of MSC cargos are included (See table 6.10). If estimated Seatrain volumes[94] are included in the U.S. figures, existing U.S. market shares of non-military cargo for the entire Atlantic Coast (T.R. #5, 7, 8, 9, 11, and 6) rise to 29.9 percent outbound and 26 percent inbound (from 23.6 and 28.8 percent respectively).

Under the scenario of full MSC inclusion, Seatrain volumes drive

TABLE 6.10

EFFECTS OF INCLUDING MILITARY CARGO IN THE CARGO ALLOCATION BASE

	Market Shares of Volume (percent)		
	Non-military	Inclusion of 50% MSC	Full Inclusion
Atlantic/Northern Europe			
Exports	23.6	31.5	37.9
Imports	28.8	29.9	30.9
Gulf/Northern Europe			
Exports	25.3	28.0	30.5
Imports	25.3	28.3	30.9
Pacific/Northern Europe			
Exports	0.6	2.3	3.9
Imports	1.8	2.4	4.0

Note: Non-military measurement tons calculated using commodity specific densities at 4-digit Schedule A and B level. Military measurement tons taken from MSC Annual Financial and Statistical Report, FY '73 the U.S. outbound share of volume to 42.7 percent, and the inbound share to 38 percent (Table 6.11), eliminating potential U.S. gains under this interpretation of the Code.

As indicated by the market shares discussion above, there are large volume gains to U.S. flag carriers in the European trades if the allocation base consists of all non-military cargo on the routes[95] (Table 6.12). Over the three MARAD Atlantic routes, which are, for the most part, served by common ship schedules, total gains of 830 thousand to 1.3 million measurement tons outbound and 800 thousand to 990 thousand measurement tons inbound are indicated (for volume and value-based allocations respectively).[96] Adjustment for Seatrain liftings reduces these estimates by about 310 thousand measurement tons outbound and 515 thousand measurement tons inbound. Current U.S. fleet capacity on these routes is adequate to carry these increments to actual 1973 listings, implying that substantial excess capacity would exist with a return to 1973 levels of trade at existing market shares.

Inclusion of one half of MSC cargos reduces U.S. carrier gains an additional 360 thousand measurement tons outbound and 90 thousand measurement tons inbound, making total gains over 1973 volumes approximately 200 thousand measurement tons outbound and inbound. Full inclusion of MSC cargo would mean slight losses relative to actual 1973 volumes - a gain of 155 thousand measured tons inbound - offset by a loss of 174 thousand outbound.

Estimated U.S. volume gains on the Gulf/Northern European route would range from 200 thousand to 450 thousand measurement tons outbound and from 9 thousand to 150 thousand inbound (for a value base and volume base respectively). More than two-thirds of these gains would accrue in the trades with nations which opposed the Code. Thus, they would not materialize except under the broadest implementation of the Code. Any inbound increments could be accommodated by existing excess capacity in that direction, but outbound changes would, for the most part necessitate increases in U.S. flag route capacities.

There are also large apparent volume gains in the Pacific/European trade (one-third to one-half million measurement tons outbound and

TABLE 6.11

U.S. PERCENTAGE SHARES OF VOLUME WITH INCLUSION OF SEATRAIN LINES IN U.S. BASE - U.S. ATLANTIC/NORTHERN EUROPE[a]

	Exports		Imports	
	U.S. Flag	U.S. Flag w/Seatrain	U.S. Flag	U.S. Flag w/Seatrain
Non-military Cargo only	23.6	29.5	28.8	36
50% Exemption of MSC Cargo	31.5	36.8	29.9	37
Full Inclusion of MSC Cargo	37.9	42.7	30.9	37.9

[a]Trade Routes #5, 7, 8, 9, #6, #11

SOURCE: BUREAU OF CENSUS SA305/705 data tapes; MSC Annual Report

TABLE 6.12

THE EFFECTS OF 40 PERCENT CARGO ALLOCATION ON U.S. CARRIER VOLUME
(thousands of measurement tons)

Trade Route/ Scenario	Exports Allocation by Value	Exports Allocation by Volume	Imports Allocation by Value	Imports Allocation by Volume
#5, 7, 8, 9				
Actual 1973	1,074.4	1,074.4	1,864.9	1,864.9
All Supporters	1,463.9	1,397.7	2,341.0	2,163.1
Full Implementation	1,635.4	1,415.8	2,513.3	2,142.7
#6				
Actual 1973	22.3	22.3	110.3	110.3
Eastern Europe	49.4	43.2	196.1	171.1
All Supporters	49.4	43.2	197.2	171.4
Full Implementation	249.3	188.4	377.7	432.4
#11				
Actual 1973	142.3	142.3	83.7	83.7
Eastern Europe	170.0	170.0	87.6	92.8
All supporters	378.8	330.4	147.1	205.9
Full Implementation	492.3	466.2	196.1	281.4
#21				
Actual 1973	790.7	790.7	265.7	265.7
Eastern Europe	801.4	830.1	267.3	276.3
All supporters	849.0	905.1	266.7	335.5
Full Implementa-	988.3	1,248.3	276.4	419.7
#26				
Actual 1973	6.6	6.6	17.6	17.6
Eastern Europe	8.2	8.2	18.2	18.2
All Supporters	288.3	191.9	236.4	206.2
Full Implementa-	558.2	423.1	385.7	398.6

SOURCE: BUREAU OF CENSUS SA305/705 data tapes

inbound), all of which would require new capacity since there is no direct U.S. flag service on this route; but the extensive use of intermodal and feeder services in this trade makes these estimates unreliable.

Finally, U.S. operators carry large amounts of in-transit cargos on the Northern European routes - over 100 thousand measurement tons outbound and twice that amount inbound. If access to these cargos were hindered by the Code, they would represent a serious loss to U.S. flag carriers.

6.3.5 Mediterranean Trade Routes

U.S. carriers serve the Mediterranean ports primarily from the U.S. Atlantic and Gulf. There was, until recently, no regularly scheduled liner service from the Pacific, although a small amount of cargo moved on U.S. flag carriers even in 1973 (table 6.13). Most cargo originating on the U.S. West Coast moves via rail bridge to the East Coast, for transshipment to the Mediterranean.[97] All of the outbound trade to the Mediterranean is covered by conference agreements, but inbound coverage is limited to the Group B nations (with the exception of Yugoslavia and Romania on Trade Route #10 to the North Atlantic).

U.S. flag market shares are approximately 35 percent by value on the major Mediterranean routes but vary from 23.3 percent to 41.3 percent by weight.

At 1973 levels of trade, this implies gains of up to 100 thousand measurement tons inbound and outbound on T.R. #10 and 90 to 130 thousand measurement tons outbound and 32 to 90 thousand inbound (depending on whether the allocation is weight or value-based) on T.R. #13[98] (See table 6.14). If inbound trade with the LDC's on the routes (generally non-conference) is unchanged under the Code, then the inbound gains are halved.

Inclusion of military cargo in the cargo sharing base significantly affects the analysis of U.S. shares and Code induced impacts, particularly on the Atlantic and Gulf routes. If 50 percent of MSC (Military Sealift Command) cargos are included in the cargo-sharing

TABLE 6.13

1973 U.S. LINER MARKET SHARE
BY TRADE ROUTE (percent)

Foreign Trade Area/ U.S. Coast (Trade Route #)	Export		Import	
	Value	Weight	Value	Weight
Mediterranean, Black Sea, Portugal, Spain/ U.S. No. Atlantic (T.R. #10)	34.8	41.3	35.5	35.7
Mediterranean, Black Sea Portugal, Spain/ U.S. So. Atlantic and Gulf (T.R. #13)	33.1	31.3	34.4	23.3
Mediterranean, Black Sea, Portugal, Spain/ Pacific (T.R. #26-C)	0.6	0.6	0.5	0.6
Total (excluding Pacific)	34.3	38.4	35.4	32.7
Total Atlantic, Gulf, Pacific	31.9	34.6	32.2	29.7

Source: Bureau of Census SA305/305 data tapes.

TABLE 6.14

THE EFFECTS OF 40 PERCENT CARGO ALLOCATION ON U.S. CARRIER VOLUMES (thousands of measurement tons)

Trade Route/ Scenario	Exports Allocation by Value	Exports Allocation by Volume	Imports Allocation by Value	Imports Allocation by Volume
#10				
Actual	652.5	652.5	731.9	731.9
LDC's only	708.9	698.0	781.4	785.8
All supporters	703.5	670.1	747.8	808.8
Full Implementation	752.4	660.7	833.4	853.7
#13				
Actual 1973	454.9	454.9	87.0	87.0
LDC's only	517.3	463.6	110.4	123.7
All supporters	540.3	512.9	127.3	173.7
Full Implementation	545.8	583.8	120.0	176.2
#26-C				
Actual 1973	1.8	1.8	1.6	1.6
LDC's only	9.2	9.2	5.2	5.2
All supporters	21.6	35.6	26.8	34.7
Full Implementation	110.0	124.5	132.0	86.5

SOURCE: BUREAU OF CENSUS SA305/705

base, current U.S. volume shares rise to 46.9 and 36.1 percent (outbound and inbound respectively). For 100 percent inclusion of military cargo, U.S. baseline shares on T.R. #10 rise to 52.7 and 37.7 percent respectively. In either case, gains from the Code would be transformed to losses if MSC cargos enter the cargo base. For trade route #13, the effect of including military cargo is minimal.

If the Code were applied to the Pacific/Mediterranean trade and U.S. carriers chose to operate on that route, the U.S. allocation under the full implementation scenario would be 100 to 130 thousand measurement tons outbound and inbound, but most of this would accrue in our trade with nations which did not vote in favor of the Code, particularly Italy and Greece. The new volume under full Code implementation would require the addition of the service equivalent of one C7-type vessel to this route. Any lower implementation scenario would not justify regular, direct U.S. flag service.

In the first half of 1974 the U.S. flag market shares by weight rose significantly on the Atlantic[99] and Gulf routes, pushing the U.S. tonnage market share above 40 percent over routes 10 and 13 combined. These higher shares would preclude any direct gains from establishing 40-40-20 cargo allocation.

6.3.6 Australasia

The Australasian trade of the U.S. is primarily with Australia, which represents about eighty percent of the trade, and New Zealand, which accounts for most of the remainder. There is full conference coverage on the route from the U.S. Atlantic and Gulf, but the inbound conference to the U.S. Pacific covers only Australia. Trade on the Atlantic and Gulf route is approximately double the Pacific Coast trade.

U.S. flag market shares are significantly less than 40 percent on all legs of these routes, with the exception of the inbound tonnage market share to the U.S. Pacific (See table 6.15). The size of U.S. carrier gains under the Code depends heavily on the base used because of the differences in U.S. value and weight percentage shares (See table 6.16). On the Atlantic and Gulf trade route, U.S. carriers

TABLE 6.15

1973 U.S. LINER MARKET SHARE BY TRADE ROUTE (percent)

Foreign Trade Area/ U.S. Coast (Trade Route #)	Exports		Imports	
	Value	Weight	Value	Weight
Australasia/ U.S. Atlantic & Gulf (T.R. #16)	23.0	17.1	16.0	15.3
Australia	23.0	17.4	15.7	15.3
New Zealand	22.7	15.8	16.4	15.3
Australasia U.S. Pacific (T.R. #27)	23.4	29.9	23.7	35.2
Australia	25.5	35.8	25.5	35.8
New Zealand	13.7	13.8	13.7	13.8

SOURCE: BUREAU OF CENSUS, SA305/705 data tapes

TABLE 6.16

THE EFFECTS OF 40 PERCENT CARGO ALLOCATION ON U.S. CARRIER VOLUMES (thousands of measurement tons)

Trade Route/ Scenario	Exports Allocation by Value	Exports Allocation by Volume	Imports Allocation by Value	Imports Allocation by Volume
#16				
Actual 1973	156.9	156.9	85.7	85.7
Australia Only	251.4	296.9	166.5	169.7
Full Implementation	273.5	334.1	214.6	226.4
#27				
Actual 1973	138.0	138.0	84.7	84.7
Australia Only	209.8	157.8	136.6	103.2
Full Implementation	235.4	183.2	150.4	103.1

SOURCE: BUREAU OF CENSUS SA305/705 data tapes

would gain 120 thousand to 180 thousand measurement tons (relative to their 1973 volumes) outbound and approximately 130 thousand measurement tons inbound - the largest gains being made in the trade with Australia, which voted for the Code. Existing capacity would be sufficient for all inbound gains, but additional service would have to introduce to cover the full outbound gain.[100]

Increments to U.S. flag volumes on the Pacific route would be 45 to 97 thousand measurement tons outbound and 19 to 87 thousand tons inbound. No significant capacity increases would be necessary to carry these increments. In the first half of 1974, U.S. flag percentage shares (by weight) rose to over 40 percent outbound and 50 percent inbound, eliminating any gains on this route from UNCTAD cargo sharing.

FOOTNOTES

1. Chapter 2. reviews liner conference practices and the U.S. regulatory environment.

2. UNCTAD procedures utilize a "regional" grouping system with group spokesman. As such it may at times be convenient to make reference to the positions of participants in the Conference by their group names. The Group of 77 includes the developing nations or LDC's; Group B, the "market economy" developed nations; and Group D, the socialist developed nations.

3. Chapter 3. of this paper reviews the legislative history of the Code and provides a more detailed analysis of several key elements.

4. Chapter IV of the Code provides guidelines for general freight rate increases and special surcharges. Although this chapter might conceivably prevent serious rate inflation it was outside of the scope of this analysis.

5. Actual cases of shipper damages are presented and discussed in Chapter 4. below.

6. Some carriers have also operated profitably without direct subsidy. A more detailed picture of the financial condition of the U.S. fleet and a more complete treatment of U.S. carrier attitudes toward the Code is presented in Chapter 5.0 below.

7. Section 15 of the Shipping Act of 1916.

8. Government regulation or its absence determines which type of structure rules. The market environment, however, is not as dichomotous as the categories "open" or "closed" might suggest. Closed conferences, for example, may have competition from independent carriers and open conferences may not have any competition at all.

9. As explained more fully below, these practices are severely limited in U.S. conferences.

10. See UNCTAD document TD/B/C.4/14, Consultation in Shipping for review of shipper council practices. Although shipper councils currently operate in U.S. export trade - even to the extent of certain rate negotiation activities - where specifically authorized by the Federal Trade Commission, the legality of the activities and the closely defined limits of action are sufficiently ambiguous to discourage their wide-spread application.

11. One conference covers only Yugoslav cargo moving through the Greek port of Salonika.

12. An example of a joint agreement between conferences involves the conferences serving the Far East from the East and West Coasts, respectively. A majority of members of each conference belongs to both conferences. The joint agreement covers Far East and U.S. Pacific Coast movements and serves to coordinate rate

making policies of the two conferences, which for some commodity movements are competitive.

13. American Export Line, for example, belongs to over 30, and Sea-Land over 40.

14. The above-mentioned vessel might even be carrying cargo on the final leg of Japan to U.K. movement which the U.S. operator carries (as a third flag carrier) as a member of the conference in <u>that</u> trade or as an independent.

15. P. 6, House Report No. 1419, Report on the Anti-Trust Subcommittee of the Committee on the Judiciary, 87th Congress.

16. Ibid. p. 8, footnote. "The Alexander Report described in detail some 80 steamship agreements and Conference arrangements in the American foreign trade. The report expressed concern at the prevalence of oral understandings and the secrecy in which many of the agreements were shrouded."

17. Ibid. p. 8; p. 293-294, House Document No. 805, "The Alexander Report" House Committee of Merchant Marine and Fisheries, Investigation of Shipping Combinations, 63rd Congress, 2nd Session (1914).

18. P. 9, Report of the Anti-Trust Subcommittee. P. 71, the Alexander Report.

19. P. 10, Report of the Anti-Trust Subcommittee. (The Alexander Committee) noted the appointment by a certain conference of a committee that was empowered to select 'fighting ship' vessels from any of the conference liners to sail on the same day and between the same ports as had been scheduled by the independent carrier at rates reduced sufficiently to secure the traffic. The expenses of the voyage and the incidental loss would be distributed among the conference members who collectively were far better able to bear them than the independent line, which therefore would be ultimately driven from the trade.

20. p. 11, Report of the Anti-Trust Subcommittee. p. 295-302, The Alexander Report.

21. p. 11, Report of the Anti-Trust Subcommittee.

22. House Report No. 1419, Report on the Anti-Trust Subcommittee of the Committee on the Judiciary, 87th Congress.

23. Ibid. p. 11

24. Ibid. p. 11

25. P. 418, The Alexander Report.

26. Section 15, Shipping Act of 1916.

27. Ibid.

28. Immunity from anti-trust laws is limited to the agreement only and not to the universal actions of the parties.

29. Pt. 1, vol. 1, p. 314, Hearings before The Committee on the Judiciary, Celler Committee, 87th Congress.

30. P. 13, footnote, Report of the Anti-Trust Subcommittee.

31. Several conditions were established precedent to granting such a subsidy: (1) the plans and specifications must meet the foreign commerce and national defense requirements of the United States; (2) any applicant must possess the ability, experience, financial resources and any other qualifications necessary to operate and maintain such a vessel and (3) the granting of a subsidy must be consonant with the purposes and policy of the Act.

32. a) 901 (b), 46 U.S.C. Sec. 1241(b) granted preference to vessels of American registry in the carriage of cargo paid or financed by the United States.

b) The Act of April 28, 1904, 33 Stat. 518, 10 U.S.C. Sec. 2631 (1964) granted preference to vessels of American registry with respect to military cargo.

c) P. Res. 17, 73 Cong; 48 Stat. 500 (1934), 15 U.S.C. Sec. 616(a), granted preference to vessels of American Registry with respect to cargo financed by the Export-Import Bank of the United States. In practice, waivers for foreign flag carriage may be granted on as much as 50 percent of Export-Import Bank cargo.

33. The double subsidy issue is currently under litigation before the United States Court of Appeals for the District of Columbia. The Authors in preparing this section, have avoided any temptation to provide a "judicial" resolution on matters of fact or law. The conclusions reached in this section concerning the nature and purpose of the subsidy programs were arrived at from the exercise of independent judgement and the reading of the relevant statutes involved. The authors note, however, that many of their conclusions concur with the "Ultimate Fact Findings" of the Chief Examiner in Docket S-244, Fact Finding Hearing re: Payment of Operating Subsidy for Carriage of Preference Cargoes, Maritime Subsidy Board, 6/22/71.

34. Public Law 664, 83rd Congress, 2nd Session, Amendment to Sec. 901 of the Merchant Marine Act of 1936.

35. The important inference is that U.S. cost differential subsidies would be unnecessary were world freight rates at levels compensatory to American costs. The official rationale for the existence of the cost-differential subsidy programs is that world freight rates are believed to be non-compensatory to American costs. To the extent that U.S. cargo preference laws guarantee

freight rates which are compensatory to American costs, the rationale for promoting and developing an American merchant fleet through a cost-differential subsidy program is lacking.

36. The U.S. and several other Group B nations objected primarily because the Code was to be a convention, which is legally binding on Contracting Parties, rather than a resolution, which is more a statement of official sentiment. This point is especially important, since, as will be seen in the analysis below, many aspects of the Code are contrary to U.S. law and traditional practices.

37. Separate votes were taken on each paragraph as well as on the entire Code.

38. The liner industry is that segment of the shipping industry which performs regularly scheduled service between a specified range of ports on a common carrier basis. Movements by tanker and dry bulk carrier, as well as certain large movements of general cargo (tramp operations) are by charter and are not considered part of the liner industry.

39. The FMC has approved a number of equal access and equal access/pooling agreements which are discussed in Chapter 2. Moreover, oil cargo preference legislation favoring U.S. flag carriers has been considered by the Congress. Such facts made the U.S. position on pooling more difficult for U.S. negotiators to defend.

40. Pacific Coast European Conference - Agreement #5200.

41. Of course this does not necessarily mean foreign flag ships would be carrying Department of Defense goods. It simply means that such goods would have to be applied toward the U.S. carriers' 40% share.

42. The existence of this problem is curious since the early intentions of the LDC's was the creation of a more competitive environment for the transportation of their foreign trade. In large part it represents the compromise between merchant marine promotion (desired in particular by Latin Americans and some Asians) and the above sentiments about conferences (on the part of countries with limited interest in national fleets) that was required for LDC unity.

43. 10-20% might be considered by some to be a "reasonable" level of outside competition which would make the 40-40-20 allocation operate on 80-00% of total trade. The Venezuelan government guarantees that 80% of Venezuelan-U.S. trade enters the bilateral pool for that trade. Similar, independent competition has been stifled in the Brazilian - U.S. trade. It is possible that many LDC's would try to enforce a 100% conference coverage of their trade by simply legislating away the independent's access to their ports.

44. See footnote 43.

45. This involves ships which sail under another nation's flag because of greater profitability to the carrier because of lower taxes and wages.

46. This would effectively make the Code apply to outsiders as well as conference members (at least in the cargo-sharing provisions).

47. 1973 was chosen as the study year because it is the most recent year for which all shipping data are available. An update is suggested as more data become available.

48. Some additional portion of U.S. foreign trade moves by surface transportation to Canadian ports and thence by liner service to its ultimate destination, but the level cannot readily be determined from existing data. Similarly, some Canadian trade moves through U.S. ports. See "U.S.-Canadian Overseas Trade Diversion: a report to the Federal Maritime Commission," March, 1972.

49. It should be noted that the UNCTAD cargo sharing rules allocate cargo to national carriers as a group and not to individual lines. Where more than one national shipping line operates, competition for shares of the national allocation might continue.

50. Discriminatory Ocean Freight Rates and the Balance of Payments, Joint Economics Committee, part 1, 1963 F 88th Congress, 1st session; FMC hearings, especially Dockets 74-5, 73-2, 67-47, 67-48, 70-30.

51. An OECD study "Ocean Freight Rates as Part ot Total Transport Costs" (1968) found the average sea freight in liner services on the North Atlantic to equal only 3.3 percent of value FOB, implying an even smaller percentage of delivered price. A second source - Discriminatory Ocean Freight Rates and the Balance of Payments, Hearing before the Subcommittee on Federal Procurement and Regulation, 27th May, part 2, p. 415 - gives a figure of 4.7 percent for U.S.N.A. - U.K. cargos. Obviously some commodities - especially low value bulks - pay a higher percentage of value when they move by liner, while others may pay well below five percent. The figure may also vary by route. Unfortunately, very little additional information is available on this point.

52. The classic article on price elasticities in foreign trade is H. S. Houthaker and S.P. Magee, "Income and Price Elasticities in World Trade, "Review of Economics and Statistics, 51 (1969), p. 111-123. Also see Almon, et al., 1985: Interindustry Forecasts of the American Economy, Lexington Books (1974); Synergy Inc., A Long Run Prediction of U.S. Seaborne Trade from 1972 to 1992, Marad (1973); Planning Research Corporation, Transoceanic Cargo Study, for D.O.T. (1971); Linneman, H., An Econometric Study of International Trade Flows, Amsterdam North Holland Publishing Co., 1966; Armington, P.S., "A Theory of Demand for Products Distinguished by Place of Production", I.M.F. Staff Papers, Volume XVI, 3/69, pp. 159-176.

53. FMC Dockets 74-5.

54. Op. cit. Conference Ratemaking etc.

55. FMC Dockets 73-2, 74-5.

56. Ibid.

57. Ibid.

58. It must be borne in mind that different carriers operate different types of service at varying levels of efficiency, so any characterization of "the industry" necessarily does some violence to some individual carriers' experiences. The subsidized carriers performed less well on the average, despite revenues from the ODS equal to as much as 20-25% of operating revenues.

59. It does not show that the investments have for the most part been of the most up-to-date technology, with accompanying high technology cargo handling facilities. Nor does the table include ship conversions.

60. It is interesting to note that the advent of shipping conferences resulted in no small part from the introduction of the steamship with its relatively high capital intensity, relative to wind-powered vessels.

61. Statistical Abstract of the U.S., 1974, Table No. 980.

62. In recent years limits to the competitive force of independents on U.S. trades (by putting a floor on their rates or tying their rates to conference rates) have been proposed in Congressional Committee. This is in part due to the rise of the Soviet merchant marine fleet, which is considered by some to be non-commercial in its behavior.

63. Carriers often serve a limited range of base ports at both ends of their routes, with other ports being served by reloading the shipments onto smaller, slower vessels operating in coastwise services. This latter service is referred to as a feeder service.

64. If A.I.D. and M.S.C. shipments are assigned a value per ton equal to that for commercial cargos carried by U.S. shipping lines, then the U.S. liftings in Table 5.4 equal 6.1 to 7.5 percent of their commercial cargo value.

65. Unsubsidized lines have greater operational flexibility than subsidized carriers due to their ability to shift vessels between trade routes as levels of cargo flows change. Subsidized vessels are tied to a given route for a specified period.

66. This information derives from FMC and carrier sources. Although the rates for an intermodal movement may be the same as for a conference all-water movement, they are filed separately from the conference agreements.

67. Base census tapes - available to FMC and MARAD - identify the operator, but even this is insufficient to identify conference <u>shipments</u> as opposed to conference members.

68. When any portion of total liner trade is "non-conference", the

total U.S. flag share (as determined from the Census data base) understates the potential benefits of a strictly interpreted UNCTAD formula - 40-40-20 sharing of conference movements - if the U.S. flag share of non-conference movements is greater than the total share. Conversely, if U.S. flag carriers are under-represented in non-conference movements, then the market share of total trade overstates the potential benefits of a 40 percent allocation of conference trade.

69. This refers to civilian cargos only.

70. It is precisely these routes which evoke greatest shipper concerns. Fears that mandatory cargo allocation and gaps in service might force cargo rerouting and prohibitive transportation costs were outlined in an earlier chapter. The fears focus not so much on gaps in U.S. flag service as on LDC fleets whose service ranges may be more strictly limited.

71. No comprehensive data on revenues is available. The fact that freight charges per ton correlate with value per ton - both across commodities and within commodity groups - justifies the use of value as a rough proxy for revenues on a given route. Frequently, a single commodity in a freight tariff list will have separate rates for different value classes.

72. Volume-based cargo allocations are estimated by assigning 40 percent of the measurement tonnage in each trade to U.S. carriers. Value-based allocations adjust U.S. value market shares to 40 percent and proportionately adjust cargo volumes to reflect the change-assuming increments (gains or losses) to have the average value of existing U.S. volumes.

73. The stowage characteristics of 4 digit schedule A and B commodities were estimated for the Transoceanic Cargo Study, D.O.T. (1971).

74. Route capacity is defined as the greater of inbound and outbound 1974 volumes. Obviously, excess capacity may exist in one direction on a route while capacity is fully utilized in the other because of differences in tonnage flows and/or cargo densities.

75. Group B nations are represented only by their territories or possessions on several LDC routes - e.g., Bermuda or Belize in the Caribbean or Portuguese colonies in Africa.

76. Each of these national trades is covered by a separate conference which covers the entire Atlantic and Gulf range at the U.S. end of the route. U.S. shares for the entire conference route in each case are lower than for the North Atlantic alone, where U.S. service concentrates.

77. Seatrain volumes should be deducted to arrive at the correct estimate.

78. These figures are underestimates since the narrow range of ports

currently served would have to be expanded significantly, necessitating greater costs per ton than in current more limited services.

79. Annual capacities of a 700,000 bale cubic, and a 1,100,000 bale cubic, 20 knot vessel on routes #4 and #19 were assumed in this estimate. Ship and route characteristics were given by the Maritime Administration.

80. The needed capacity is the annual service equivalent of less than one C3 type vessel, but this may be an under-estimate of the increased cost since most of the existing U.S. volume is concentrated in a limited port range.

81. It is interesting to note that U.S. flag import and export shares are both high, even though U.S. carriers have preferential access to government impelled exports to Africa.

82. It is dangerous to consider such gains and losses as offsetting since different carriers are frequently involved on each route.

83. In the first half of 1974, the weight shares were 39.1 and 40.1 respectively.

84. With publicly available data we are unable to evaluate the volume of Seatrain liftings on this route directly. In very rough terms, this carrier's sailings are equivalent to about 7 to 10 percent of U.S. flag sailings to the Far East, with an emphasis on the Japanese trade which makes its impact considerably stronger on that traffic.

85. Although separate MARAD trade routes serve the Far East from the Atlantic (#12) and Gulf (#22) ranges, common conference agreements cover the entire Atlantic and Gulf range. In practice a single ship may cover the U.S. and foreign range of trade routes #12, 22 and 29, as well as 17, 18, and 28.

86. Over 2 million measurement tons of MSC cargo moved outbound on these routes in FY 73.

87. This is based on an estimate that Seatrain tonnage is equivalent to from 7.5 to 10% of U.S. volume on T.R. #29.

88. The net loss from actual 1973 U.S. flag volumes outbound over routes 29, 12, and 22 under a value-based cargo allocation would have been 430 thousand MT and 1.1 million MT for half and full MSC inclusion (assuming equal value per MT for MSC and non-military cargos).

89. In measurement ton terms, inbound volumes exceed outbound volumes - 955 thousand versus 550 thousand measurement tons.

90. The U.S. flag market share of import tonnages increased from 18% to 26% in the first half of 1974. This would clearly cut the potential gains of UNCTAD cargo sharing over market allocation.

Also, well over half of these inbound gains are in the Indian trade alone.

91. Although there are no military shipments to these nations, most carriers serve them jointly with trade routes 12, 22, and 29 on which significant inbound excess capacity exists.

92. See Table 6.11 for U.S. flag shares of the total non-military trade flows through these ports. The U.S. share of conference shipments is surely closer to the commercially negotiated North Atlantic Pool shares.

93. U.S. Lines operates an all-water service from the Pacific to Europe which utilizes inbound vessels on its Far East Service as feeder vessels between the Pacific and Atlantic Coasts. These movements are under the Pacific/European conference, but appear in the data as Atlantic-Europe movements. U.S. shares in the conference trade from the Pacific Coast are, therefore, certainly much larger than the Census data imply. APL has recently initiated this service on its around-the-world route.

94. This assumes Seatrain carries an amount equal to 25 percent of U.S. flag non-military volumes.

95. Recall from the previous discussion that these numbers may seriously overstate gains from a Code including conference cargos only - See comments on North Atlantic Pooling agreement.

96. Over one-third of the total gains come in our trade with European nations which opposed the Code, and would, therefore, not materialize except in the broadest implementation of the Code.

97. The Pacific/Mediterranean route has only one-tenth the volume of the North Atlantic route.

98. No significant new capacity would be required for these increases.

99. The tonnage market share was 47 percent both inbound and outbound on T.R. #10.

100. The required new capacity would be the equivalent of less than one C7-type vessel.

APPENDIX I

ANNEX I

CONVENTION ON A CODE OF CONDUCT FOR LINER CONFERENCES

OBJECTIVES AND PRINCIPLES

The Contracting Parties to the present Convention,

DESIRING to improve the liner conference system,

RECOGNIZING the need for a universally acceptable code of conduct for liner conferences,

TAKING into account the special needs and problems of the developing countries with respect to the activities of liner conferences serving their foreign trade,

AGREEING to reflect in the Code the following fundamental objectives and basic principles:

a) the objective to facilitate the orderly expansion of world sea-borne trade;

b) the objective to stimulate the development of regular and efficient liner services adequate to the requirements of the trade concerned;

c) the objective to ensure a balance of interests between suppliers and users of liner shipping services;

d) the principle that conference practices should not involve any discrimination against the shipowners, shippers or the foreign trade of any country;

e) the principle that conferences hold meaningful consultations with shippers' organizations, shippers' representatives and shippers on matters of common interest, with, upon request, the participation of appropriate authorities;

f) the principle that conferences should make available to interested parties pertinent information about their activities which are relevant to those parties and should publish meaningful information on their activities,

HAVE AGREED as follows:

PART ONE

CHAPTER I: DEFINITIONS

Liner conference or conference

A group of two or more vessel-operating carriers which provides international liner services for the carriage of cargo on a particular route or routes within specified geographical limits and which has an agreement or arrangement, whatever its nature, within the framework of which they operate under uniform or common freight rates and any other agreed conditions with respect to the provision of liner services.

National shipping line

A national shipping line of any given country is a vessel-operating carrier which has its head office of management and its effective control in that country and is recognized as such by an appropriate authority of that country or under the law of that country.

Lines belonging to and operated by a joint venture involving two or more countries and in whose equity the national interests, public and/or private, of those countries have a substantial share and whose head office of management and whose effective control is in one of those countries can be recognized as a national line by the appropriate authorities of those countries.

Third-country shipping line

A vessel-operating carrier in its operations between two countries of which it is not a national shipping line.

Shipper

A person or entity who has entered into, or who demonstrates an intention to enter into, a contractual or other arrangement with a conference or shipping line for the shipment of goods in which he has a beneficial interest.

Shippers' organization

An association or equivalent body which promotes, represents and protects the interests of shippers and, if those authorities so desire, is recognized in that capacity by the appropriate authority or authorities of the country whose shippers it represents.

Goods carried by the conference

Cargo transported by shipping lines members of a conference in accordance with the conference agreement.

Appropriate authority

Either a government or a body designated by a government or by national legislation to perform any of the functions ascribed to such authority by the provisions of this Code.

Promotional freight rate

A rate instituted for promoting the carriage of non-traditional exports of the country concerned.

Special freight rate

A preferential freight rate, other than a promotional freight rate, which may be negotiated between the parties concerned.

CHAPTER II: RELATIONS AMONG MEMBER LINES

Article 1

Membership

1) Any national shipping line shall have the right to be a full member of a conference which serves the foreign trade of its country, subject to the criteria set out in Article 1(2). Shipping lines which are not national lines in any trade of a conference shall have the right to become full members of that conference, subject to the criteria set out in Article 1(2) and (3) and to the provisions regarding the share of trade as set out in Article 2 as regards third-country shipping lines.

2) A shipping line applying for membership of a conference shall furnish evidence of its ability and intention, which may include the use of chartered tonnage, provided the criteria of this paragraph are met, to operate a regular, adequate and efficient service on a long-term basis as defined in the conference agreement within the framework of the conference, shall undertake to abide by all the terms and conditions of the conference agreement, and shall deposit a financial guarantee to cover any outstanding financial obligation in the event of subsequent withdrawal, suspension or expulsion from membership, if so required under the conference agreement.

3) In considering an application for membership by a shipping line which is not a national line in any trade of the conference concerned, in addition to the provisions of Article 1(2), the following criteria, *inter alia*, should be taken into account:

a) the existing volume of the trade on the route or routes served by the conference and prospects for its growth;

b) the adequacy of shipping space for the existing and prospective volume of trade on the route or routes served by the conference;

c) the probable effect of admission of the shipping line to the conference on the efficiency and quality of the conference service;

d) the current participation of the shipping line in trade on the same route or routes outside the framework of a conference; and

e) the current participation of the shipping line on the same route or routes within the framework of another conference.

The above criteria shall not be applied so as to subvert the implementation of the provisions relating to participation in trade set out in Article 2.

4) An application for admission or readmission to membership shall be promptly decided upon and the decision communicated by a conference to an applicant promptly, and in no case later than six months from the date of application. When a shipping line is refused admission or readmission the conference shall, at the same time, give in writing the grounds for such refusal.

5) When considering applications for admission, a conference shall take into account the views put forward by shippers and shippers' organizations of the countries whose trade is carried by the conference, as well as the views of appropriate authorities if they so request.

6) In addition to the criteria for admission set out in Article 1(2), a shipping line applying for readmission shall also give evidence of having fulfilled its obligations in accordance with Article 4(1) and (4). The conference may give special scrutiny to the circumstances under which the line left the conference.

Article 2

Participation in trade

1) Any shipping line admitted to membership of a conference shall have sailing and loading rights in the trades covered by that conference.

2) When a conference operates a pool, all shipping lines members of the conference serving the trade covered by the pool shall have the right to participate in the pool for that trade.

3) For the purpose of determining the share of trade which member lines shall have the right to acquire, the national shipping lines of each country, irrespective of the number of lines, shall be regarded as a single group of shipping lines for that country.

4) When determining a share of trade within a pool of individual member lines and/or groups of national shipping lines in accordance with Article 2(2), the following principles regarding their right of participation in the trade carried by the conference shall be observed, unless otherwise mutually agreed:

a) The group of national shipping lines of each of two countries the foreign trade between which is carried by the conference shall have equal rights to participate in the freight and volume of traffic generated by their mutual foreign trade and carried by the conference;

b) Third-country shipping lines, if any, shall have the right to acquire a significant part, such as 20 per cent, in the freight and volume of traffic generated by that trade.

5) If, for any one of the countries whose trade is carried by a conference, there are no national shipping lines participating in the carriage of that trade, the share of the trade to which national shipping lines of that country would be entitled under Article 2(4) shall be distributed among the individual member lines participating in the trade in proportion to their respective shares.

6) If the national shipping lines of one country decide not to carry their full share of the trade, that portion of their share of the trade which they do not carry shall be distributed among the individual member lines participating in the trade in proportion to their respective shares.

7) If the national shipping lines of the countries concerned do not participate in the trade between these countries covered by a conference, the shares of trade carried by the conference between those countries shall be allocated between the participating member lines of third countries by commercial negotiations between those lines.

8) The national shipping lines of a region, members of a conference, at one end of the trade covered by the conference, may redistribute among themselves by mutual agreement the shares in trades allocated to them, in accordance with Article 2(4) to 7) inclusive.

9) Subject to the provisions of Article 2(4) to (8) inclusive regarding shares of trade among individual shipping lines or groups of shipping lines, pooling or trade-sharing agreements shall be reviewed by the conference periodically, at intervals to be stipulated in those agreements and in accordance with criteria to be specified in the conference agreement.

10) The application of the present Article shall commence as soon as possible after entry into force of the present Convention and shall be completed within a transition period which in no case shall be longer than two years, taking into account the specific situation in each of the trades concerned.

11) Shipping lines members of a conference shall be entitled to operate chartered ships to fulfil their conference obligations.

12) The criteria for sharing and the revision of shares as set out in Article 2(1) to (11) inclusive shall apply when, in the absence of a pool, there exists berthing, sailing and/or any other form of cargo allocation agreement.

13) Where no pooling, berthing, sailing or other trade participation agreements exist in a conference, either group of national shipping lines, members of the conference, may require that pooling arrangements be introduced, in respect of the trade between their countries carried by the conference, in conformity with the provisions of Article 2(4); or alternatively they may require that the sailings be so adjusted as to provide an opportunity to these lines to enjoy substantially the same rights to

participate in the trade between those two countries carried by the conference as they would have enjoyed under the provisions of Article 2(4). Any such request shall be considered and decided by the conference. If there is no agreement to institute such a pool or adjustment of sailings among the members of the conference, the groups of national shipping lines of the countries at both ends of the trade shall have a majority vote in deciding to establish such a pool or adjustment of sailings. The matter shall be decided upon within a period not exceeding six months from the receipt of the request.

14) In the event of a disagreement between the national shipping lines of the countries at either end whose trade is served by the conference with regard to whether or not pooling shall be introduced, they may require that within the conference sailings be so adjusted as to provide an opportunity to these lines to enjoy substantially the same rights to participate in the trade between those two countries carried by the conference as they would have enjoyed under the provisions of Article 2(4). In the event that there there are no national shipping lines in one of the countries whose trade is served by the conference, the national shipping line or lines of the other country may make the same request. The conference shall use its best endeavours to meet this request. If, however, this request is not met, the appropriate authorities of the countries at both ends of the trade may take up the matter if they so wish and make their views known to the parties concerned for their consideration. If no agreement is reached, the dispute shall be dealt with in accordance with the procedures established in this Code.

15) Other shipping lines, members of a conference, may also request that pooling or sailing agreements be introduced, and the request shall be considered by the conference in accordance with the relevant provisions of this Code.

16) A conference shall provide for appropriate measures in any conference pooling agreement to cover cases where the cargo has been shut out by a member line for any reason excepting late presentation by the shipper. Such agreement shall provide that a vessel with unbooked space, capable of being used, be allowed to lift the cargo, even in excess of the pool share of the line in the trade, if otherwise the cargo would be shut out and delayed beyond a period set by the conference.

17) The provisions of Article 2(1) to (16) inclusive concern all goods regardless of their origin, their destination or the use for which they are intended, with the exception of military equipment for national defence purposes.

Article 3

Decision-making procedures

The decision-making procedures embodied in a conference agreement shall be based on the principle of equality of all the full member lines; these procedures shall ensure that the voting rules do not hinder the proper work of the conference and the service of the trade and shall define the matters on which decisions will be made by unanimity. However, a decision cannot be taken in respect of matters defined in a conference agreement relating to the trade between two countries without the consent of the national shipping lines of those two countries.

Article 4

Sanctions

1) A shipping line member of a conference shall be entitled, subject to the provisions regarding withdrawal which are embodied in pool schemes and/or cargo-sharing arrangements, to secure its release, without penalty, from the terms of the conference agreement after giving three months' notice, unless the conference agreement provides for a different time period, although it shall be required to fulfil its obligations as a member of the conference up to the date of its release.

2) A conference may, upon notice to be specified in the conference agreement, suspend or expel a member for significant failure to abide by the terms and conditions of the conference agreement.

3) No expulsion or suspension shall become effective until a statement in writing of the reasons therefor has been given and until any dispute has been settled as provided in chapter VI.

4) Upon withdrawal or expulsion, the line concerned shall be required to pay its share of the outstanding financial obligations of the conference, up to the date of its withdrawal or expulsion. In cases of withdrawal, suspension or expulsion, the line shall not be relieved of its own financial obligations under the conference agreement or of any of its obligations towards shippers.

Article 5

Self-policing

1) A conference shall adopt and keep up to date an illustrative list, which shall be as comprehensive as possible, of practices which are regarded as malpractices and/or breaches of the conference agreement and shall provide effective self-policing machinery to deal with them, with specific provisions requiring:

a) the fixing of penalties or a range of penalties for malpractices or breaches, to be commensurate with their seriousness;

b) the examination and impartial review of an adjudication of complaints, and/or decisions taken on complaints, against malpractices or breaches, by a person or body unconnected with any of the shipping lines members of the conference or their affiliates, on request by the conference or any other party concerned;

c) the reporting, on request, on the action taken in connexion with complaints against malpractices and/or breaches, and on a basis of anonymity for the parties concerned, to the appropriate authorities of the countries whose trade is served by the conference and of the countries whose shipping lines are members of the conference.

2) Shipping lines and conferences are entitled to the full co-operation of shippers and shippers' organizations in the endeavour to combat malpractices and breaches.

Article 6

Conference agreements

All conference agreements, pooling, berthing and sailing rights agreements and amendments or other documents directly related to, and which affect, such agreements shall be made available on request to the appropriate authorities of the countries whose trade is served by the conference and of the countries whose shipping lines are members of the conference.

CHAPTER III: RELATIONS WITH SHIPPERS

Article 7

Loyalty arrangements

1) The shipping lines members of a conference are entitled to institute and maintain loyalty arrangements with shippers, the form and terms of which are matters for consultation between the conference and shippers' organizations or representatives of shippers. These loyalty arrangements shall provide safeguards making explicit the rights of shippers and conference members. These arrangements shall be based on the contract system or any other system which is also lawful.

2) Whatever loyalty arrangements are made, the freight rate applicable to loyal shippers shall be determined within a fixed range of percentages of the freight rate applicable to other shippers. Where a change in the differential causes an increase in the rates charged to shippers, the change can be implemented only after 150 days' notice to those shippers or according to regional practice and/or agreement. Disputes in connexion with a change of the differential shall be settled as provided in the loyalty agreement.

3) The terms of loyalty arrangements shall provide safeguards making explicit the rights and obligations of shippers and of shipping lines members of the conference in accordance with the following provisions, _inter alia_:

a) The shipper shall be bound in respect of cargo whose shipment is controlled by him or his affiliated or subsidiary company or his forwarding agent in accordance with the contract of sale of the goods concerned, provided that the shipper shall not, by evasion, subterfuge, or intermediary, attempt to divert cargo in violation of his loyalty commitment.

b) Where there is a loyalty contract, the extent of actual or liquidated damages and/or penalty shall be specified in the contract. The member lines of the conference may, however, decide to assess lower liquidated damages or to waive the claim to liquidated damages. In any event, the liquidated damages under the contract to be paid by the shipper shall not exceed the freight charges on the particular shipment, computed at the rate provided under the contract.

c) The shipper shall be entitled to resume full loyalty status, subject to the fulfilment of conditions established by the conference which shall be specified in the loyalty arrangement.

3) The loyalty arrangement shall set out:

i) a list of cargo, which may include bulk cargo shipped without mark or count, which is specifically excluded from the scope of the loyalty arrangement;

ii) a definition of the circumstances in which cargo other than cargo covered by (i) above is considered to be excluded from the scope of the loyalty arrangement;

iii) the method of settlement of disputes arising under the loyalty arrangement;

iv) provision for termination of the loyalty arrangement on request by either a shipper or a conference without penalty, after expiry of a stipulated period of notice, such notice to be given in writing; and

v) the terms for granting dispensation.

4) If there is a dispute between a conference and a shippers' organization representatives of shippers and/or shippers about the form or terms of a proposed loyalty arrangement, either party may refer the matter for resolution under appropriate procedures as set out in this Code.

Article 8

Dispensation

1) Conferences shall provide, within the terms of the loyalty arrangements, that requests by shippers for dispensation shall be examined and a decision given quickly and, if requested, the reasons given in writing where dispensation is withheld. Should a conference fail to confirm, within a period specified in the loyalty arrangement, sufficient space to accommodate a shipper's cargo within a period also specified in the loyalty arrangement, the shipper shall have the right, without being penalized, to utilize any vessel for the cargo in question.

2) In ports where conference services are arranged subject to the availability of a specified minimum of cargo (i.e. on inducement), but either the shipping line does not call, despite due notice by shippers, or the shipping line does not reply within an agreed time to the notice given by shippers, shippers shall automatically have the right, without prejudicing their loyalty status, to use any available vessel for the carriage of their cargo.

Article 9

Availability of tariffs and related conditions and/or regulations

Tariffs, related conditions, regulations, and any amendments thereto shall be made available on request to shippers, shippers' organizations and other parties concerned at reasonable cost, and they shall be available for examination at offices of shipping lines and their agents. They shall spell out all conditions concerning the application of freight rates and the carriage of any cargo covered by them.

Article 10

Annual reports

Conferences shall provide annually to shippers' organizations, or to representatives of shippers, reports on their activities designed to provide general information of interest to them, including relevant information about consultations held with shippers and shippers' organizations, action taken regarding complaints, changes in membership, and significant changes in service, tariffs and conditions of carriage. Such annual reports shall be submitted, on request, to the appropriate authorities of the countries whose trade is served by the conference concerned.

Article 11

Consultation machinery

1) There shall be consultations on matters of common interest between a conference, shippers' organizations, representatives of shippers and, where practicable, shippers, which may be designated for that purpose by the appropriate authority if it so desires. These consultations shall take place whenever requested by any of the above-mentioned parties. Appropriate authorities shall have the right, upon request, to participate fully in the consultations, but this does not mean that they play a decision-making role.

2) The following matters, inter alia, may be the subject of consultation:

a) changes in general tariff conditions and related regulations;

b) changes in the general level of tariff rates and rates for major commodities;

c) promotional and/or special freight rates;

d) imposition of, and related changes in, surcharges;

e) loyalty arrangements, their establishment or changes in their form and general conditions;

f) changes in the tariff classification of ports;

g) procedure for the supply of necessary information by shippers concerning the expected volume and nature of their cargoes; and

h) presentation of cargo for shipment and the requirements regarding notice of cargo availability.

3) To the extent that they fall within the scope of activity of a conference, the following matters may also be the subject of consultation:

a) operation of cargo inspection services;

b) changes in the pattern of service;

c) effects of the introduction of new technology in the carriage of cargo, in particular unitization, with consequent reduction of conventional service or loss of direct services; and

d) adequacy and quality of shipping services, including the impact of pooling, berthing or sailing arrangements on the availability of shipping services and freight rates at which shipping services are provided; changes in the areas served and in the regularity of calls by conference vessels.

4) Consultations shall be held before final decisions are taken, unless otherwise provided in this Code. Advance notice shall be given of the intention to take decisions on matters referred to in Article 11 (2) and (3). Where this is impossible, urgent decisions may be taken pending the holding of consultations.

5) Consultations shall begin without undue delay and in any event within a maximum period specified in the conference agreement or, in the absence of such a provision in the agreement, not later than 30 days after receipt of the proposal for consultations, unless different periods of time are provided in this Code.

6) When holding consultations, the parties shall use their best efforts to provide relevant information, to hold timely discussions and to clarify matters for the purpose of seeking solutions of the issues concerned. The parties involved shall take account of each other's views and problems and strive to reach agreement consistent with their commercial viability.

CHAPTER IV: FREIGHT RATES

Article 12

Criteria for freight-rate determination

In arriving at a decision on questions of tariff policy in all cases mentioned in this Code, the following points shall, unless otherwise provided, be taken into account:

a) Freight rates shall be fixed at as low a level as is feasible from the commercial point of view and shall permit a reasonable profit for shipowners;

b) The cost of operations of conferences shall, as a rule, be evaluated for the round voyage of ships, with the outward and inward directions considered as a single whole. Where applicable, the outward and inward voyage should be considered separately. The freight rates should take into account, amon other factors, the nature of cargoes, the interrelation between weight and cargo measurement, as well as the value of cargoes;

c) In fixing promotional freight rates and/or special freight rates for specific goods, the conditions of trade for these goods of the countries served by the conference, particularly of developing and land-locked countries, shall be taken into account.

Article 13

Conference tariffs and classification of tariff rates

1) Conference tariffs shall not unfairly differentiate between shippers similarly situated. Shipping lines members of a conference shall adhere strictly to the rates, rules and terms shown in the tariffs and other currently valid published documents of the conference and to any special arrangements as permitted under this Code.

2) Conference tariffs should be drawn up simply and clearly, containing as few classes/categories as possible, depending on the particular requirements of a trade, specifying a freight rate for each commodity and, where appropriate, for each class/category; they should also indicate, wherever practicable, in order to facilitate statistical compilation and analysis, the corresponding appropriate code number of the item in accordance with the Standard International Trade Classification, the Brussels Tariff Nomenclature or any other nomenclature that may be internationally adopted; the classification of commodities in the tariffs should, as far as practicable, be prepared in co-operation with shippers' organizations and other national and international organizations concerned.

Article 14

General freight-rate increases

1) A conference shall give notice of not less than 150 days, or according to regional practice and/or agreement, to shippers' organizations or representatives of shippers and/or shippers and, where so required, to appropriate authorities of the countries whose trade is served by the conference, of its intention to effect a general increase in freight rates, an indication of its extent, the date of effect and the reasons supporting the proposed increase.

2) At the request of any of the parties prescribed for this purpose in this Code, to be made within an agreed period of time after the receipt of the notice, consultations shall commence, in accordance with the relevant provisions of this Code, within a stipulated period not exceeding 30 days or as previously agreed between the parties concerned; the consultations shall be held in respect of the bases and amounts of the proposed increase and the date from which it is to be given effect.

3) A conference, in an effort to expedite consultations, may, or upon the request of any of the parties prescribed in this Code as entitled to participate in consultations on general freight-rate increases shall, where practicable, reasonably before the consultations, submit to the participating parties a report from independent accountants of repute, including, where the requesting parties accept it as one of the bases of consultations, an aggregated analysis of data regarding relevant costs and revenues which in the opinion of the conference necessitate an increase in freight rates.

4) If agreement is reached as a result of the consultations, the freight-rate increase shall take effect from the date indicated in the notice served in accordance with Article 14 (1), unless a later date is agreed upon between the parties concerned.

5) If no agreement is reached within 30 days of the giving of notice in accordance with Article 14 (1), and subject to procedures prescribed in this Code, the matter shall be submitted immediately to international mandatory conciliation, in accordance with chapter VI. The recommendation of the conciliators, if accepted by the parties

concerned, shall be binding upon them and shall be implemented, subject to the provisions of Article 14 (9), with effect from the date mentioned in the conciliators' recommendation.

6) Subject to the provisions of Article 14 (9), a general freight-rate increase may be implemented by a conference pending the conciliators' recommendation. When making their recommendation, the conciliators should take into account the extent of the above-mentioned increase made by the conference and the period for which it has been in force. In the event that the conference rejects the recommendation of the conciliators, shippers and/or shippers' organizations shall have the right to consider themselves not bound, after appropriate notice, by any arrangement or other contract with that conference which may prevent them from using non-conference shipping lines. Where a loyalty arrangement exists, shippers and/or shippers' organizations shall give notice within a period of 30 days to the effect that they no longer consider themselves bound by that arrangement, which notice shall apply from the date mentioned therein, and a period of not less than 30 days and not more than 90 days shall be provided in the loyalty arrangement for this purpose.

7) A deferred rebate which is due to the shipper and which has already been accumulated by the conference shall not be withheld by, or forfeited to, the conference as a result of action by the shipper under Article 14 (6).

8) If the trade of a country carried by shipping lines members of a conference on a particular route consists largely of one or few basic commodities, any increase in the freight rate on one or more of those commodities shall be treated as a general freight-rate increase, and the appropriate provisions of this Code shall apply.

9) Conferences should institute any general freight-rate increase effective in accordance with this Code for a period of a stated minimum duration, subject always to the rules regarding surcharges and regarding adjustment in freight rates consequent upon fluctuations in foreign exchange rates. The period over which a general freight-rate increase is to apply is an appropriate matter to be considered during consultations conducted in accordance with Article 14 (2), but unless otherwise agreed between the parties concerned during the consultations, the minimum period of time between the date when one general freight-rate increase becomes effective and the date of notice for the next general freight-rate increase given in accordance with Article 14 (1) shall not be less than 10 months.

Article 15

Promotional freight rates

1) Promotional freight rates for non-traditional exports should be instituted by conferences.

2) All necessary and reasonable information justifying the need for a promotional freight rate shall be submitted to a conference by the shippers, shippers' organizations or representatives of shippers concerned.

3) Special procedures shall be instituted providing for a decision within 30 days from the date of receipt of that information, unless mutually agreed otherwise, on applications for promotional freight rates. A clear distinction shall be made between these and general procedures for considering the possibility of reducing freight rates for other commodities or of exempting them from increases.

4) Information regarding the procedures for considering applications for promotional freight rates shall be made available by the conference to shippers and/or shippers' organizations and, on request, to the governments and/or other appropriate authorities of the countries whose trade is served by the conference.

5) A promotional freight rate shall be established normally for a period of 12 months, unless otherwise mutually agreed between the parties concerned. Prior to the expiry of the period, the promotional freight rate shall be reviewed, on request by the shipper and/or shippers' organization concerned, when it shall be a matter for the shipper and/or shippers' organization, at the request of the conference, to show that the continuation of the rate is justified beyond the initial period.

6) When examining a request for a promotional freight rate, the conference may take into account that, while the rate should promote the export of the non-traditional product for which it is sought, it is not likely to create substantial competitive distortions in the export of a similar product from another country served by the conference.

7) Promotional freight rates are not excluded from the imposition of a surcharge or a currency adjustment factor in accordance with Articles 16 and 17.

8) Each shipping line member of a conference serving the relevant ports of a conference trade shall accept, and not unreasonably refuse, a fair share of cargo for which a promotional freight rate has been established by the conference.

Article 16

Surcharges

1) Surcharges imposed by a conference to cover sudden or extraordinary increases in costs or losses of revenue shall be regarded as temporary. They shall be reduced in accordance with improvements in the situation or circumstances which they were imposed to meet and shall be cancelled, subject to Article 16 (6), as soon as the situation or circumstances which prompted their imposition cease to prevail. This shall be indicated at the moment of their imposition, together, as far as possible, with a description of the change in the situation or circumstances which will bring about their increase, reduction or cancellation.

2) Surcharges imposed on cargo moving to or from a particular port shall likewise be regarded as temporary and likewise shall be increased, reduced or cancelled, subject to Article 16 (6), when the situation in that port changes.

3) Before any surcharge is imposed, whether general or covering only a specific port, notice should be given and there shall be consultation, upon request, in accordance with the procedures of this Code, between the conference concerned and other parties directly affected by the surcharge and prescribed in this Code as entitled to participate in such consultations, save in those exceptional circumstances which warrant immediate imposition of the surcharge. In cases where a surcharge has been imposed without prior consultation, consultations, upon request, shall be held as soon as possible thereafter. Prior to such consultations, conferences shall furnish data which in their opinion justify the imposition of the surcharge.

4) Unless the parties agree otherwise, within a period of 15 days after the receipt of a notice given in accordance with Article 16 (3), if there is no agreement on the question of the surcharge between the parties concerned referred to in that article, the

relevant provisions for settlement of disputes provided in this Code shall prevail. Unless the parties concerned agree otherwise, the surcharge may, however, be imposed pending resolution of the dispute, if the dispute still remains unresolved at the end of a period of 30 days after the receipt of the above-mentioned notice.

5) In the event of a surcharge being imposed in exceptional circumstances without prior consultation as provided in Article 16 (3), if no agreement is reached through subsequent consultations, the relevant provisions for settlement of disputes provided in this Code shall prevail.

6) Financial loss incurred by the shipping lines members of a conference as a result of any delay on account of consultations and/or other proceedings for resolving disputes regarding imposition of surcharges in accordance with the provisions of this Code, as compared to the date from which the surcharge was to be imposed in terms of the notice given in accordance with Article 16 (3), may be compensated by an equivalent prolongation of the surcharge before its removal. Conversely, for any surcharge imposed by the conference and subsequently determined and agreed to be unjustified or excessive as a result of consultations or other procedures prescribed in this Code, the amounts so collected or the excess thereof as determined hereinabove, unless otherwise agreed, shall be refunded to the parties concerned, if claimed by them, within a period of 30 days of such claim.

Article 17

Currency changes

1) Exchange rate changes, including formal devaluation or revaluation, which lead to changes in the aggregate operational costs and/or revenues of the shipping lines members of a conference relating to their operations within the conference provide a valid reason for the introduction of a currency adjustment factor or for a change in the freight rates. The adjustment or change shall be such that in the aggregate the member lines concerned neither gain nor lose, as far as possible, as a result of the adjustment or change. The adjustment or change may take the form of currency surcharges or discounts or of increases or decreases in the freight rates.

2) Such adjustments or changes shall be subject to notice, which should be arranged in accordance with regional practice, where such practice exists, and there shall be consultations in accordance with the provisions of this Code between the conference concerned and the other parties directly affected and prescribed in this Code as entitled to participate in consultations, save in those exceptional circumstances which warrant immediate imposition of the currency adjustment factor or freight-rate change. In the event that this has been done without prior consultations, consultations shall be held as soon as possible thereafter. The consultations should be on the application, size and date of implementation, of the currency adjustment factor or freight-rate change, and the same procedures shall be followed for this purpose as are prescribed in Article 16 (4) and (5) in respect of surcharges. Such consultations should take place and be completed within a period not exceeding 15 days from the date when the intention to apply a currency surcharge or to effect a freight-rate change is announced.

3) If no agreement is reached within 15 days through consultations, the relevant provisions for settlement of disputes provided in this Code shall prevail.

4) The provisions of Article 16 (6) shall apply, adapted as necessary, to currency adjustment factors and freight-rate changes dealt with in the present Article.

CHAPTER V: OTHER MATTERS

Article 18

Fighting ships

Members of a conference shall not use fighting ships in the conference trade for the purpose of excluding, preventing or reducing competition by driving a shipping line not a member of the conference out of the said trade.

Article 19

Adequacy of service

1) Conferences should take necessary and appropriate measures to ensure that their member lines provide regular, adequate and efficient service of the required frequency on the routes they serve and shall arrange such services so as to avoid as far as possible bunching and gapping of sailings. Conferences should also take into consideration any special measures necessary in arranging services to handle seasonal variations in cargo volumes.

2) Conferences and other parties prescribed in this Code as entitled to participate in consultations, including appropriate authorities if they so desire, should keep under review, and should maintain close co-operation regarding, the demand for shipping space, the adequacy and suitability of service, and in particular the possibilities for rationalization and for increasing the efficiency of services. Benefits identified as accruing from rationalization of services shall be fairly reflected in the level of freight rates.

3) In respect of any port for which conference services are supplied only subject to the availability of a specified minimum of cargo, that minimum shall be specified in the tariff. Shippers should give adequate notice of the availability of such cargo.

Article 20

Head office of a conference

A conference shall as a rule establish its head office in a country whose trade is served by that conference, unless agreed otherwise by the shipping lines members of that conference.

Article 21

Representation

Conferences shall establish local representation in all countries served, except that where there are practical reasons to the contrary the representation may be on a regional basis. The names and addresses of representatives shall be readily available, and these representatives shall ensure that the views of shippers and conferences are made rapidly known to each other with a view to expediting prompt decisions. When a conference considers it suitable, it shall provide for adequate delegation of powers of decision to its representatives.

Article 22

Contents of conference agreements, trade participation agreements and loyalty arrangements

Conference agreements, trade participation agreements and loyalty arrangements shall conform to the applicable requirements of this Code and may include such other provisions as may be agreed which are not inconsistent with this Code.

PART TWO

CHAPTER VI: PROVISIONS AND MACHINERY FOR SETTLEMENT OF DISPUTES

A. General provisions

Article 23

1) The provisions of this chapter shall apply whenever there is a dispute relating to the application or operation of the provisions of this Code between the following parties:

a) a conference and a shipping line;

b) the shipping lines members of a conference;

c) a conference or a shipping line member thereof and a shippers' organization or representatives of shippers or shippers; and

d) two or more conferences.

For the purposes of this chapter the term "party" means the original parties to the dispute as well as third parties which have joined the proceedings in accordance with (a) of Article 34.

2) Disputes between shipping lines of the same flag, as well as those between organizations belonging to the same country, shall be settled within the framework of the national jurisdiction of that country, unless this creates serious difficulties in the fulfilment of the provisions of this Code.

3) The parties to a dispute shall first attempt to settle it by an exchange of views or direct negotiations with the intention of finding a mutually satisfactory solution.

4) Disputes between the parties referred to in Article 23(1) relating to:

a) refusal of admission of a national shipping line to a conference serving the foreign trade of the country of that shipping line;

b) refusal of admission of a third-country shipping line to a conference;

c) expulsion from a conference;

d) inconsistency of a conference agreement with this Code;

e) a general freight-rate increase;

f) surcharges;

g) changes in freight rates or the imposition of a currency adjustment factor due to exchange rate changes;

h) participation in trade; and

i) the form and terms of proposed loyalty arrangements

which have not been resolved through an exchange of views or direct negotiations shall, at the request of any of the parties to the dispute, be referred to international mandatory conciliation in accordance with the provisions of this chapter.

Article 24

1) The conciliation procedure is initiated at the request of one of the parties to the dispute.

2) The request shall be made:

a) in disputes relating to membership of conferences: not later than 60 days from the date of receipt by the applicant of the conference decision, including the reasons therefor, in accordance with Articles 1(4) and 4(3);

b) in disputes relating to general freight-rate increases: not later than the date of expiry of the period of notice specified in Article 14(1);

c) in disputes relating to surcharges: not later than the date of expiry of the 30-day period specified in Article 16(4) or, where no notice has been given, not later than 15 days from the date when the surcharge was put into effect; and

d) in disputes relating to changes in freight rates or the imposition of a currency adjustment factor due to exchange rate changes: not later than five days after the date of expiry of the period specified in Article 17(3).

3) The provisions of Article 24(2) shall not apply to a dispute which is referred to international mandatory conciliation in accordance with Article 25(3).

4) Requests for conciliation in disputes other than those referred to in Article 24(2) may be made at any time.

5) The time-limits specified in Article 24(2) may be extended by agreement between the parties.

6) A request for conciliation shall be considered to have been duly made if it is proved that the request has been sent to the other party by registered letter, telegram or teleprinter or has been served on it within the time-limits specified in Article 24(2) or (5).

7) Where no request has been made within the time-limits specified in Article 24(2) or (5), the decision of the conference shall be final and no proceedings under this chapter may be brought by any party to the dispute to challenge that decision.

Article 25

1) Where the parties have agreed that disputes referred to in Article 23(4) (a), (b), (c), (d), (h), and (i) shall be resolved through procedures other than those established in that Article, or agree on procedures to resolve a particular dispute that has arisen between them, such disputes shall, at the request of any of the parties to the dispute, be resolved as provided for in their agreement.

2) The provisions of Article 25(1) apply also to the disputes referred to in Article 23(4) (e), (f), and (g), unless national legislation, rules or regulations prevent shippers from having this freedom of choice.

3) Where conciliation proceedings have been initiated, such proceedings shall have precedence over remedies available under national law. If a party seeks remedies under national law in respect of a dispute to which this chapter applies without invoking the procedures provided for in this chapter, then, upon the request of a respondent to those proceedings, they shall be stayed and the dispute shall be referred to the procedures defined in this chapter by the court or other authority where the national remedies are sought.

Article 26

1) The Contracting Parties shall confer upon conferences and shippers' organizations such capacity as is necessary for the application of the provisions of this chapter. In particular:

a) a conference or a shipper's organization may institute proceedings as a party or be named as a party to proceedings in its collective capacity;

b) any notification to a conference or shippers' organization in its collective capacity shall also constitute a notification to each member of such conference or shippers' organization;

c) a notification to a conference or shippers' organization shall be transmitted to the address of the head office of the conference or shippers' organization. Each conference or shippers' organization shall register the address of its head office with the Registrar appointed in accordance with Article 46(1). In the event that a conference or a shippers' organization fails to register or has no head office, a notification to any member in the name of the conference or shippers' organization shall be deemed to be a notification to such conference or organization.

2) Acceptance or rejection by a conference or shippers' organization of a recommendation by conciliators shall be deemed to be acceptance or rejection of such a recommendation by each member thereof.

Article 27

Unless the parties agree otherwise, the conciliators may decide to make a recommendation on the basis of written submissions without oral proceedings.

B. International mandatory conciliation

Article 28

In international mandatory conciliation the appropriate authorities of a Contracting Party shall, if they so request, participate in the conciliation proceedings in support of a party being a national of that Contracting Party, or in support of a party having a dispute arising in the context of the foreign trade of that Contracting Party. The appropriate authority may alternatively act as an observer in such conciliation proceedings.

Article 29

1) In international mandatory conciliation the proceedings shall be held in the place unanimously agreed to by the parties or, failing such agreement, in the place decided upon by the conciliators.

2) In determining the place of conciliation proceedings the parties and the conciliators shall take into account, inter alia, countries which are closely connected with the dispute, bearing in mind the country of the shipping line concerned and, especially when the dispute is related to cargo, the country where the cargo originates.

Article 30

1) For the purposes of this chapter an International Panel of Conciliators shall be established, consisting of experts of high repute or experience in the fields of law, economics of sea transport, or foreign trade and finance, as determined by the Contracting Parties selecting them, who shall serve in an independent capacity.

2) Each Contracting Party may at any time nominate members of the Panel up to a total of 12, and shall communicate their names to the Registrar. The nominations shall be for periods of six years each and may be renewed. In the event of the death, incapacity or resignation of a member of the Panel, the Contracting Party which nominated such person shall nominate a replacement for the remainder of his term of office. A nomination takes effect from the date on which the communication of the nomination is received by the Registrar.

3) The Registrar shall maintain the Panel list and shall regularly inform the Contracting Parties of the composition of the Panel.

Article 31

1) The purpose of conciliation is to reach an amicable settlement of the dispute through recommendations formulated by independent conciliators.

2) The conciliators shall identify and clarify the issues in dispute, seek for this purpose any information from the parties, and, on the basis thereof, submit to the parties a recommendation for the settlement of the dispute.

3) The parties shall co-operate in good faith with the conciliators in order to enable them to carry out their functions.

4) Subject to the provisions of Article 25(2), the parties to the dispute may at any time during the conciliation proceedings decide in agreement to have recourse to a different procedure for the settlement of their dispute. The parties to a dispute which has been made subject to proceedings other than those provided for in this chapter may decide by mutual agreement to have recourse to international mandatory conciliation.

Article 32

1) The conciliation proceedings shall be conducted either by one conciliator or by an uneven number of conciliators agreed upon or designated by the parties.

2) Where the parties cannot agree on the number or the appointment of the conciliators as provided in Article 32(1), the conciliation proceedings shall be conducted by three conciliators, one appointed by each party in the statement(s) of claim and reply respectively, and the third by the two conciliators thus appointed, who shall act as chairman.

3) If the reply does not name a conciliator to be appointed in cases where Article 32(2) would apply, the second conciliator shall, within 30 days following the receipt of the statement of claim, be chosen by lot by the conciliator appointed in the statement of claim from among the members of the Panel nominated by the Contracting Party or Parties of which the respondent(s) is(are) a national(s).

4) Where the conciliators appointed in accordance with Article 32(2) or (3) cannot agree on the appointment of the third conciliator within 15 days following the date of the appointment of the second conciliator, he shall, within the following 5 days be chosen by lot by the appointed conciliators. Prior to the drawing by lot:

a) no member of the Panel of conciliators having the same nationality as either of the two appointed conciliators shall be eligible for selection by lot;

b) each of the two appointed conciliators may exclude from the list of the Panel of conciliators an equal number of them subject to the requirement that at least 30 members of the Panel shall remain eligible for selection by lot.

Article 33

1) Where several parties request conciliation with the same respondent in respect of the same issue, or of issues which are closely connected, that respondent may request the consolidation of those cases.

2) The request for consolidation shall be considered and decided upon by majority vote by the chairmen of the conciliators so far chosen. If such request is allowed, the chairmen will designate the conciliators to consider the consolidated cases from among the conciliators so far appointed or chosen, provided that an uneven number of conciliators is chosen and that the conciliator first appointed by each party shall be one of the conciliators considering the consolidated case.

Article 34

Any party, other than an appropriate authority referred to in Article 28, if conciliation has been initiated, may join in the proceedings:

either

a) as a party, in case of a direct economic interest,

or

b) as a supporting party to one of the original parties, in case of an indirect economic interest,

unless either of the original parties objects to such joinder.

Article 35

1) The recommendations of the conciliators shall be made in accordance with the provisions of this Code.

2) When the Code is silent upon any point, the conciliators shall apply the law which the parties agree at the time the conciliation proceedings commence or thereafter, but not later than the time of submission of evidence to the conciliators. Failing such agreement, the law which in the opinion of the conciliators is most closely connected with the dispute shall be applicable.

3) The conciliators shall not decide ex aequo et bono upon the dispute unless the parties so agree after the dispute has arisen.

4) The conciliators shall not bring a finding of non liquet on the ground of obscurity of the law.

5) The conciliators may recommend those remedies and reliefs which are provided in the law applicable to the dispute.

Article 36

The recommendations of the conciliators shall include reasons.

Article 37

1) Unless the parties have agreed before, during or after the conciliation procedure that the recommendation of the conciliators shall be binding, the recommendation shall become binding by acceptance by the parties. A recommendation which has been accepted by some parties to a dispute shall be binding as between those parties only.

2) Acceptance of the recommendation must be communicated by the parties to the conciliators, at an address specified by them, not later than 30 days after receipt of the notification of the recommendation; otherwise, it shall be considered that the recommendation has not been accepted.

3) Any party which does not accept the recommendation shall notify the conciliators and the other parties, within 30 days following the period specified in Article 37(2), of its grounds for rejection of the recommendation, comprehensively and in writing.

4) When the recommendation has been accepted by parties, the conciliators shall immediately draw up and sign a record of settlement, at which time the recommendation shall become binding upon those parties. If the recommendation has not been accepted by all parties, the conciliators shall draw up a report with respect to those parties rejecting the recommendation, noting the dispute and the failure of those parties to settle the dispute.

5) A recommendation which has become binding upon the parties shall be implemented by them immediately or at such later time as is specified in the recommendation.

6) Any party may make its acceptance conditional upon acceptance by all or any of the other parties to the dispute.

Article 38

1) A recommendation shall constitute a final determination of a dispute as between the parties which accept it, except to the extent that the recommendation is not recognized and enforced in accordance with the provisions of Article 39.

2) "Recommendation" includes an interpretation, clarification or revision of the recommendation made by the conciliators before the recommendation has been accepted.

Article 39

1) Each Contracting Party shall recognize a recommendation as binding between the parties which have accepted it and shall, subject to the provisions of Article 39(2) and (3), enforce, at the request of any such party, all obligations imposed by the recommendation as if it were a final judgement of a court of that Contracting Party.

2) A recommendation shall not be recognized and enforced at the request of a party referred to in Article 39(1) only if the court or other competent authority of the country where recognition and enforcement is sought is satisfied that:

a) any party which accepted the recommendation was, under the law applicable to it, under some legal incapacity at the time of acceptance;

b) fraud or coercion has been used in the making of the recommendation;

c) the recommendation is contrary to public policy (ordre public) in the country of enforcement; or

d) the composition of the conciliators, or the conciliation procedure, was not in accordance with the provisions of this Code.

3) Any part of the recommendation shall not be enforced and recognized if the court or other competent authority is satisfied that such part comes within any of the sub-paragraphs of article 39(2) and can be separated from other parts of the recommendation. If such part cannot be separated, the entire recommendation shall not be enforced and recognized.

Article 40

1) Where the recommendation has been accepted by all the parties, the recommendation and the reasons therefor may be published with the consent of all the parties.

2) Where the recommendation has been rejected by one or more of the parties but has been accepted by one or more of the parties:

a) the party or parties rejecting the recommendation shall publish its or their grounds for rejection, given pursuant to Article 37(3), and may at the same time publish the recommendation and the reasons therefor;

b) a party which has accepted the recommendation may publish the recommendation and the reasons therefor; it may also publish the grounds for rejection given by any other party unless such other party has already published its rejection and the grounds therefor in accordance with Article 40(2) (a).

3) Where the recommendation has not been accepted by any of the parties, each party may publish the recommendation and the reasons therefor and also its own rejection and the grounds therefor.

Article 41

1) Documents and statements containing factual information supplied by any party to the conciliators shall be made public unless that party or a majority of the conciliators agrees otherwise.

2) Such documents and statements supplied by a party may be tendered by that party in support of its case in subsequent proceedings arising from the same dispute and between the same parties.

Article 42

Where the recommendation has not become binding upon the parties, no views expressed or reasons given by the conciliators, or concessions or offers made by the parties for the purpose of the conciliation procedure, shall affect the legal rights and obligations of any of the parties.

Article 43

1) (a) The costs of the conciliators and all costs of the administration of the conciliation proceedings shall be borne equally by the parties to the proceedings, unless they agree otherwise.

b) When the conciliation proceedings have been initiated, the conciliators shall be entitled to require an advance or security for the costs referred to in Article 43(1) (a).

2) Each party shall bear all expenses it incurs in connexion with the proceedings, unless the parties agree otherwise.

3) Notwithstanding the provisions of Article 43(1) and (2), the conciliators may, having decided unanimously that a party has brought a claim vexatiously or frivolously, assess against that party any or all of the costs of other parties to the proceedings. Such decision shall be final and binding on all the parties.

Article 44

1) Failure of a party to appear or to present its case at any stage of the proceedings shall not be deemed an admission of the other party's assertions. In that event, the other party may, at its choice, request the conciliators to close the proceedings or to deal with the questions presented to them and submit a recommendation in accordance with the provisions for making recommendations set out in this Code.

2) Before closing the proceedings, the conciliators shall grant the party failing to appear or to present its case a period of grace, not exceeding 10 days, unless they are satisfied that the party does not intend to appear or to present its case.

3) Failure to observe procedural time limits laid down in this Code or determined by the conciliators, in particular time limits relating to the submission of statements or information, shall be considered a failure to appear in the proceedings.

4) Where the proceedings have been closed owing to one party's failure to appear or to present its case, the conciliators shall draw up a report noting that party's failure.

Article 45

1) The conciliators shall follow the procedures stipulated in this Code.

2) The Rules of Procedure annexed to the present Convention shall be considered as Model Rules for the guidance of conciliators. The conciliators may, by mutual consent, use, supplement or amend the rules contained in the Annex or formulate their own rules of procedure to the extent that such supplementary, amended or other rules are not inconsistent with the provisions of this Code.

3) If the parties agree that it may be in the interest of achieving an expeditious and inexpensive solution of the conciliation proceedings, they may mutually agree to rules of procedure which are not inconsistent with the provisions of this Code.

4) The conciliators shall formulate their recommendation by consensus or failing that shall decide by majority vote.

5) The conciliation proceedings shall finish and the recommendation of the conciliators shall be delivered not later than six months from the date on which the conciliators are appointed, except in the cases referred to in Article 23(4) (e), (f) and (g), for which the time limits in Articles 14(1) and 16(4) shall be valid. The period of six months may be extended by agreement of the parties.

C. Institutional machinery

Article 46

1) Six months before the entry into force of the present Convention, the Secretary-General of the United Nations shall, subject to the approval of the General Assembly of the United Nations, and taking into account the views expressed by the Contracting Parties, appoint a Registrar, who may be assisted by such additional staff as may be necessary for the performance of the functions listed in Article 46(2). Administrative services for the Registrar and his assistants shall be provided by the United Nations Office at Geneva.

2) The Registrar shall perform the following functions in consultation with the Contracting Parties as appropriate:

a) maintain the list of conciliators of the International Panel of Conciliators and regularly inform the Contracting Parties of the composition of the Panel;

b) provide the names and addresses of the conciliators to the parties concerned on request;

c) receive and maintain copies of request for conciliation, replies, recommendations, acceptances, or rejections, including reasons therefor;

d) furnish on request, and at their cost, copies of recommendations and reasons for rejection to the shippers' organizations, conferences and governments, subject to the provisions of Article 40;

e) make available information of a non-confidential nature on completed conciliation cases, and without attribution to the parties concerned, for the purposes of preparation of material for the Review Conference referred to in Article 52; and

f) such other functions as are prescribed for the Registrar in Articles 26(1) (c) and 30(2) and (3).

CHAPTER VII: FINAL CLAUSES

Article 47

Implementation

1) Each Contracting Party shall take such legislative or other measures as may be necessary to implement the present Convention.

2) Each Contracting Party shall communicate to the Secretary-General of the United Nations, who shall be the depositary, the text of the legislative or other measures which it has taken in order to implement the present Convention.

Article 48

Signature, ratification, acceptance, approval and accession

1) The present Convention shall remain open for signature as from 1 July 1974 until and including 30 June 1975 at United Nations Headquarters and shall thereafter remain open for accession.

2) All States a/ are entitled to become Contracting Parties to the present Convention by:

a) signature subject to and followed by ratification, acceptance or approval; or

b) signature without reservation as to ratification, acceptance or approval; or

c) accession.

3) Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to this effect with the depositary.

Article 49

Entry into force

1) The present Convention shall enter into force six months after the date on which not less than 24 States, the combined tonnage of which amounts to at least 25 per cent of world tonnage, have become Contracting Parties to it in accordance with Article 48. For the purpose of the present Article the tonnage shall be deemed to be that contained in Lloyd's Register of Shipping, Statistical Tables 1973, table 2 "World Fleets - Analysis by Principal Types", in respect of general cargo (including passenger/cargo) ships and container (fully cellular) ships, exclusive of the United States reserve fleet and the American and Canadian Great Lakes Fleets. b/

a/ At its 9th plenary meeting on 6 April 1974, the Conference adopted the following understanding recommended by its Third Main Committee:

"In accordance with its terms, the present Convention will be open to participation by all States, and the Secretary-General of the United Nations will act as depositary. It is the understanding of the Conference that the Secretary-General, in discharging his functions as depositary of a convention or other multilateral legally binding instrument with an "All-States" clause, will follow the practice of the General Assembly of the United Nations in implementing such a clause and, whenever advisable, will request the opinion of the General Assembly before receiving a signature or an instrument of ratification, acceptance, approval or accession."

b/ The tonnage requirements for the purposes of Article 49(1) are set out in the report of the United Nations Conference of Plenipotentiaries on a Code of Conduct for Liner Conferences on the second part of its session (TD/CODE/10), annex I.

2) For each State which thereafter ratifies, accepts, approves or accedes to it, the present Convention shall come into force six months after deposit by such State of the appropriate instrument.

3) Any State which becomes a Contracting Party to the present Convention after the entry into force of an amendment shall, failing an expression of a different intention by that State:

a) be considered as a Party to the present Convention as amended; and

b) be considered as a Party to the unamended Convention in relation to any Party to the present Convention not bound by the amendment.

Article 50

Denunciation

1) The present Convention may be denounced by any Contracting Party at any time after the expiration of a period of two years from the date on which the Convention has entered into force.

2) Denunciation shall be notified to the depositary in writing, and shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the date of receipt by the depositary.

Article 51

Amendments

1) Any Contracting Party may propose one or more amendments to the present Convention by communicating the amendments to the depositary. The depositary shall circulate such amendments among the Contracting Parties, for their acceptance, and among States entitled to become Contracting Parties to the present Convention which are not Contracting Parties, for their information.

2) Each proposed amendment circulated in accordance with Article 51(1) shall be deemed to have been accepted if no Contracting Party communicates an objection thereto to the depositary within 12 months following the date of its circulation by the depositary. If a Contracting Party communicates an objection to the proposed amendment, such amendment shall not be considered as accepted and shall not be put into effect.

3) If no objection has been communicated, the amendment shall enter into force for all Contracting Parties six months after the expiry date of the period of 12 months referred to in Article 51(2).

Article 52

Review conferences

1) A Review Conference shall be convened by the depositary five years from the date on which the present Convention comes into force to review the working of the Convention, with particular reference to its implementation, and to consider and adopt appropriate amendments.

2) The depositary shall, four years from the date on which the present Convention comes into force, seek the views of all States entitled to attend the Review Conference and shall, on the basis of the views received, prepare and circulate a draft agenda as well as amendments proposed for consideration by the Conference.

3) Further review conferences shall be similarly convened every five years, or at any time after the first Review Conference, at the request of one-third of the Contracting Parties to the present Convention, unless the first Review Conference decides otherwise.

4) Notwithstanding the provisions of Article 52(1), if the present Convention has not entered into force five years from the date of the adoption of the Final Act of the United Nations Conference of Plenipotentiaries on a Code of Conduct for Liner Conferences, a Review Conference shall, at the request of one-third of the States entitled to become Contracting Parties to the present Convention, be convened by the Secretary-General of the United Nations, subject to the approval of the General Assembly, in order to review the provisions of the Convention and its Annex and to consider and adopt appropriate amendments.

Article 53

Functions of the depositary

1) The depositary shall notify the signatory and acceding States of:

a) signatures, ratifications, acceptances, approvals and accessions in accordance with Article 48;

b) the date on which the present Convention enters into force in accordance with Article 49;

c) denunciations of the present Convention in accordance with Article 50;

d) reservations to the present Convention and the withdrawal of reservations;

e) the text of the legislative or other measures which each Contracting Party has taken in order to implement the present Convention in accordance with Article 47;

f) proposed amendments and objections to proposed amendments in accordance with Article 51; and

g) entry into force of amendments in accordance with Article 51(3).

(2) The depositary shall also undertake such actions as are necessary under Article 52.

Article 54

Authentic texts - Deposit

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, will be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, having been duly authorized to this effect by their respective governments, have signed the present Convention, on the dates appearing opposite their signatures.

ANNEX TO THE CONVENTION ON A CODE OF CONDUCT FOR LINER CONFERENCES

Model Rules of Procedure for International Mandatory Conciliation

Rule 1

1) Any party wishing to institute conciliation proceedings under the Code shall address a request to that effect in writing, accompanied by a statement of claim to the other party, and copied to the Registrar.

2) The statement of claim shall:

a) designate precisely each party to the dispute and state the address of each;

b) contain a summary statement of pertinent facts, the issues in dispute and the claimant's proposal for the settlement of the dispute;

c) state whether an oral hearing is desired and, if so, and to the extent then known, the names and addresses of persons to give evidence, including experts' evidence, for the claimant;

d) be accompanied by such supporting documentation and relevant agreements and arrangements entered into by the parties as the claimant may consider necessary at the time of making the claim;

e) indicate the number of conciliators required, any proposal concerning the appointment of conciliators, or the name of the conciliator appointed by the claimant in accordance with Article 32(2); and

f) contain proposals, if any, regarding rules of procedure.

3) The statement of claim shall be dated and shall be signed by the party.

Rule 2

1) If the respondent decides to reply to the claim, he shall, within 30 days following the date of his receipt of the statement of claim, transmit a reply to the other party and copied to the Registrar.

2) The reply shall:

a) contain a summary statement of pertinent facts opposed to the contentions in the statement of claim, the respondent's proposal, if any, for the settlement of the dispute and any remedy claimed by him with a view to the settlement of the dispute;

b) state whether an oral hearing is desired and, if so, and to the extent then known, the names and addresses of persons to give evidence, including experts' evidence, for the respondent;

c) be accompanied by such supporting documentation and relevant agreements and arrangements entered into by the parties as the respondent may consider necessary at the time of making the reply;

d) indicate the number of conciliators required, any proposal concerning the appointment of conciliators, or the name of the conciliator appointed by the respondent in accordance with Article 32(2); and

e) contain proposals, if any, regarding rules of procedure.

3) The reply shall be dated and shall be signed by the party.

Rule 3

1) Any person or other interest desiring to participate in conciliation proceedings under Article 34 shall transmit a written request to the parties to the dispute, with a copy to the Registrar.

2) If participation in accordance with (a) of Article 34 is desired, the request shall set forth the grounds therefor, including the information required under Rule 1(2)(a), (b) and (d).

3) If participation in accordance with (b) of Article 34 is desired, the request shall state the grounds therefor and which of the original parties would be supported.

4) Any objection to a request for joinder by such a party shall be sent by the objecting party, with a copy to the other party, within seven days of receipt of the request.

5) In the event that two or more proceedings are consolidated, subsequent requests for third-party participation shall be transmitted to all parties concerned, each of which may object in accordance with the present Rule.

Rule 4

By agreement between the parties to a dispute, on motion by either party, and after affording the parties an opportunity of being heard, the conciliators may order the consolidation or separation of all or any claims then pending between the same parties.

Rule 5

1) Any party may challenge a conciliator where circumstances exist that cause justifiable doubts as to his independence.

2) Notice of challenge, stating reasons therefor, should be made prior to the date of the closing of the proceedings, before the conciliators have rendered their recommendation. Any such challenge shall be heard promptly and shall be determined by majority vote of the conciliators in the first instance, as a preliminary point, in cases where more than one conciliator has been appointed. The decision in such cases shall be final.

(3) A conciliator who has died, resigned, become incapacitated or disqualified shall be replaced promptly.

4) Proceedings interrupted in this way shall continue from the point where they were interrupted, unless it is agreed by the parties or ordered by the conciliators that a review or re-hearing of any oral testimony take place.

Rule 6

The conciliators shall be judges of their own jurisdiction and/or competence within the provisions of the Code.

Rule 7

1) The conciliators shall receive and consider all written statements, documents, affidavits, publications or any other evidence, including oral evidence, which may be submitted to them by or on behalf of any of the parties, and shall give such weight thereto as in their judgment such evidence merits.

2) a) Each party may submit to the conciliators any material it considers relevant, and at the time of such submission shall deliver certified copies to any other party to the proceedings, which party shall be given a reasonable opportunity to reply thereto.

b) The conciliators shall be the sole judges of the relevance and materiality of the evidence submitted to them by the parties.

c) The conciliators may ask the parties to produce such additional evidence as they may deem necessary to an understanding and determination of the dispute, provided that, if such additional evidence is produced, the other parties to the proceedings shall have a reasonable opportunity to comment thereon.

Rule 8

1) Whenever a period of days for the doing of any act is provided for in the Code or in these Rules, the day from which the period begins to run shall not be counted, and the last day of the period shall be cou ted, except where that last day is a Saturday, Sunday or a public holiday at the place of conciliation, in which case the last day shall be the next business day.

2) When the time provided for is less than seven days, intermediate Saturdays, Sundays and public holidays shall be excluded from the computation.

Rule 9

Subject to the provisions relating to procedural time limits in the Code, the conciliators may, on a motion by one of the parties or pursuant to agreement between them, extend any such time limit which has been fixed by the conciliators.

Rule 10

1) The conciliators shall fix the order of business and, unless otherwise agreed, the date and hour of each session.

2) Unless the parties otherwise agree, the proceedings shall take place in private.

3) The conciliators shall specifically inquire of all the parties whether they have any further evidence to submit before declaring the proceedings closed, and a noting thereof shall be recorded.

Rule 11

1) Conciliators' recommendations shall be in writing and shall include:

a) the precise designation and address of each party;

b) a description of the method of appointing conciliators, including their names;

c) the dates and place of the conciliation proceedings;

d) a summary of the conciliation proceedings, as the conciliators deem appropriate;

e) a summary statement of the facts found by the conciliators;

f) a summary of the submissions of the parties;

g) pronouncements on the issues in dispute, together with the reasons therefor;

h) the signatures of the conciliators and the date of each signature; and

i) an address for the communication of the acceptance or rejection of the recommendation.

Rule 12

The recommendation shall, so far as possible, contain a pronouncement on costs in accordance with the provisions of the Code. If the recommendation does not contain a full pronouncement on costs, the conciliators shall, as soon as possible after the recommendation, and in any event not later than 60 days thereafter, make a pronouncement in writing regarding costs as provided in the Code.

Rule 13

Conciliators' recommendations shall also take into account previous and similar cases whenever this would facilitate a more uniform implementation of the Code and observance of conciliators' recommendations.

ANNEX II

RESOLUTIONS ADOPTED BY THE CONFERENCE

1. Completion of the work of the Conference

[For the text of this resolution, adopted by the Conference at its 6th plenary meeting, on 15 December 1973, upon the adjournment of the Conference, see the report of the Conference on the first part of its session (TD/CODE/7), annex I.]

2. Non-conference lines

The United Nations Conference of Plenipotentiaries on a Code of Conduct for Liner Conferences,

Having prepared the Convention on a Code of Conduct for Liner Conferences with a view to improving the liner conference system,

Bearing in mind that the Convention is applicable to liner conferences and their external relations,

Resolves that:

1. Nothing in that Convention shall be construed so as to deny shippers an option in the choice between conference shipping lines and non-conference shipping lines subject to any loyalty arrangements where they exist;

2. Non-conference shipping lines competing with a conference should adhere to the principle of fair competition on a commercial basis;

3. In the interest of sound development of liner shipping service, non-conference shipping lines should not be prevented from operating as long as they comply with the requirements of paragraph 2 above.

9th plenary meeting
6 April 1974

3. Local conciliation

The United Nations Conference of Plenipotentiaries on a Code of Conduct for Liner Conferences,

Bearing in mind the importance of the consultation provisions and the dispute settlement procedures provided in the Convention on a Code of Conduct for Liner Conferences,

Noting that proposals were made to provide in the Code for submitting some disputes to local conciliation,

1. _Requests_ the first Review Conference to be convened in accordance with article 52 of the Convention to give priority consideration to the subject of local conciliation, taking into account the views expressed by the Contracting Parties to the Convention on whether or not the absence of local conciliation has hampered the effective settlement of disputes and, if so, which subjects should be considered appropriate for local conciliation and what procedures should be applied for resolving such disputes.

2. _Agrees_ that in preparing for the Review Conference the depositary shall seek the views of all States entitled to attend the Review Conference, which should be required to take into account the views expressed by appropriate authorities, liner conferences and shippers' organizations.

9th plenary meeting
6 April 1974

APPENDIX II

Code Actions to Date (July 28, 1975)

Definitive Signatures - signatures without reservations as to ratification, acceptance, or approval.

Togo	6/25/75
Chile	6/25/75
Pakistan	6/27/75
Sri Lanka	6/30/75
Venezuela	6/30/75
Gambia	6/30/75

Nations signing and subsequently ratifying:

Ghana	5/14/75
(ratification	6/24/75)

Nations acceding to Code - ratification without signature

Bangladesh	7/24/75
Nigeria	9/10/75

Nations signing subject to ratification:

Phillipines	8/ 2/74
Iran	8/ 7/74
Gabon	10/10/74
Ecuador	10/22/74
Guatemala	11/15/74
Yugoslavia	12/17/74
Indonesia	2/ 5/75
Ivory Coast	5/ 1/75
Costa Rica	5/15/75
Malta	5/15/75
Ethiopia	6/19/75
Brazil	6/23/75
Niger	6/24/75
Algeria	6/27/75
U.S.S.R.	6/27/75
German Democratic Republic	6/27/75
India	6/27/75
Federal Republic of Germany	6/30/75
France	6/30/75
Belgium	6/30/75
Senegal	6/30/75
Czechoslovakia	6/30/75
Turkey	6/30/75

APPENDIX III

For the implementation scenarios, nations were allocated by their UNCTAD group and voting position on the Code. Non-participants and non-voters are allocated to preserve, as much as possible, the homogeneity of the groups. Territories and possessions are allocated with the parent country.

Developed Nations Voting Against Code or Abstaining (Code applies in Scenario 4 only):

Canada	Greenland
Sweden	Br. Honduras
Norway	Bermuda
Finland	Leeward and Windward I
Denmark	Netherlands Antilles
United Kingdom	Iceland
Ireland[a]	Gibraltar
Netherlands	Hong Kong
Italy	Br. Pacific I.
Greece	Br. West Africa
New Zealand	Switzerland[b]

Developed Non-socialist Nations which (voted for) or favor for the Code (Code applies in Scenarios 3 and 4):

France	Fr. West Indies
Belgium	Fr. Guiana
F.R.G.	Azores[a]
Spain	Macao[a]
Portugal[a]	Fr. Pacific I.
Japan	Canary Islands
Australia	Spanish Africa
Turkey	Portuguese Africa[a]
Malta	French Indian Ocean

Developed Socialist Nations (Code applies in Scenarios 2,3, and 4):

U.S.S.R.	Bulgaria
Poland	Czechoslovakia[b]
Hungary	
G.D.R.	

Less Developed Nations (Code applies in all Scenarios):

African, Asian, and Latin American LDC's plus "Socialist LDC'S" - Yugoslavia and Romania

[a]Allocated - Not in attendance at conference

[b]Landlocked nations - trade data included in nations of port of vessel lading or unlading

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