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TRANSCRIPT OF ADDRESS OF REAR ADMIRAL HOWARD L. VICKERY, USN,
OVER ASSOCIATED STATIONS OF THE BLUE NETWORK, SHORTWAVED FROM
LONDON, 4:01 - 4:15 EWT, SEPTEMBER 23, 1943

VICKERY ON BATH

I have just come through the still blacked-out streets of London to this microphone to talk to my fellow workers in the shipyards of the United States.

Several weeks ago when I discussed this trip with my Chief, Admiral Land, it was his intention that I visit the shipyards and engineering shops of the United Kingdom. I wanted to see how the British, Scotch and Irish were building ships. I wanted to see for myself what made the British Merchant Marine tick, particularly what made every citizen of the United Kingdom proud of this nation's tradition of sea power.

We in the United States are firmly convinced that we have shattered many of the old theories of shipbuilding. Unlike the British, we do not build ships -- we manufacture them.

Every man and woman, every one of you who works in our Nation's shipyards is helping manufacture a ship. If we were to build them like the people on this side we never would have obtained the output we have, but geographically we are more fortunate. We are more fortunate in that we are a bit farther away from enemy bombers. We have more elbow room to do our job. I dare say that, if given half a chance the shipbuilders on this side might do a far better job than ours.

Shipyards in this country are old - hundreds of years old. Their ways originally built the schooners and sloops of the past centuries. As sea commerce progressed and bigger hulls were the order of the day, these same shipyards expanded as best they could. Many of the yards were hemmed in by shallow rivers on one side. I mean shallow considering the size of the ships we build today. On the other side the shipyards were hemmed in by warehouses, highways and the homes of seafaring men. They could not expand so they did the next best -- they tried to build big ships in small yards. What's more, they succeeded. They built the Queen Mary and the Queen Elizabeth in cramped quarters. Today we see war ships and cargo vessels similar to

our Liberty Ships coming out of these same small yards.

Many of you now in our yards on the Pacific and Atlantic Coasts may be listening to this broadcast in your well-ventilated canteens. The picture here is different; longer shifts and Sunday work are standard practice. At night their recreations are limited; the blackout is on and it's enforced. They have little or no gasoline and no pleasure driving whatsoever. Their manpower shortage is far more acute than ours. At best, they are a nation of 40 millions against our 130 millions. Women and young boys try to stem the tide caused by the man shortage. Their foods are severely rationed. They don't get the quantities we get. Shipyards here have only one shift -- there can be no night work with blackouts. Yet day in and day out they work. They have been doing it for four years. Their vacations are few. After work they do home guard. They are tired; their incomes are taxed, and much heavier than ours. Their night's rest is often disturbed by the whisling of air raid sirens and the falling of bombs, but they do turn out ships.

I do not mean to give you the impression that you have an altogether easy time by comparison with the British, or that our people couldn't work under similar hardships. The workman here loves his freedom and his independence quite the same as we do. Sure, they have their differences and their disagreements with their employees now and then. And by the same token, the shipbuilders here, like our shipbuilders, sometimes disagree with their Government Maritime officials. Here, too, as at home, absenteeism is a problem. Women have children and homes to look after. The problem is the same. I mention this to show you that basically the shipyard workers think, try and hope the same as our men and women.

There's another important item I found on my inspection trip which will interest you and perhaps give you a little food for thought. The British build their ships at less cost than we do. Their actual manhours consumed in building a cargo vessel are

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far under ours. This is something to conjure with when the war is over and the sea lanes are again open for commerce. You notice, in computing the building of a ship, I say manhours and not dollars. We all know that the American working man is paid a much higher scale; the fact is that here in Britain a given number of men consume less time in turning out a comparable ship. This is a remarkable record and a challenge. The British do all this with less space, with severely food-rationed workers, less tools, less facilities and the ever-present darkness of blackouts. However, there's an answer for this on our side of the picture. If we didn't get into mass production strides on our shipbuilding, regardless of manhours, this war picture might today have been a different pattern. Our shipping as much as any one American effort helped to save this Island from invasion.

The views expressed here are not my own, but I am quoting from officials of the British Government, and strangely enough, they are the very same words expressed by the men who drive the rivets and hang the plates in the shipyard. Our American ships brought the food, the arms and the planes that are now helping to bring us victory. Many of you in our shipyards have worked with me and know I haven't availed myself of this invitation to speak to you over the Blue Network just to tell you how wonderful everything is here in the shipyards.

I said earlier that we can out-produce the British although they build their ships cheaper. I found here that shipbuilders are not as modernized as we are; I found that they are not as enthusiastic as regards welding and greatly prefer riveting. We in the United States believe the future of shipbuilding in a large part lies in the welding process. Back home we build the same kind of ships in every way in a given yard. Here they do not. I found three and four types of ships being constructed in one yard. They tell me, however, there is a strategic reason for doing this. We have believed from the beginning that standardization is the key

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to rapid production.

Why don't the British change their system around? I asked that question, too. Some of their answers are most convincing; some of their answers, I believe personally, are not; however, we must remember that the British built ships long before we came into being as a nation. Some of their methods and ideas are better than ours. In many other ways I believe we excell.

The point of all this is, it seems to me, that there is nothing wrong in friendly disagreement. It is only by exchange of such views and ironing out of differences of methods in building that we will achieve quicker victory.

Everywhere I went -- England, Scotland and Northern Ireland, I found nothing but cooperation and agreement. Every shipbuilder wanted to know what we would do with our shipping after the war. I told them we were thinking about it too and that our country has every intention of continuing as a maritime nation. At several gatherings which I was privileged to attend leading maritime and shipping officials here voiced the hope that our two nations would continue to work together in peace as we are now working together in war.

Now, a word about the man who sails the ships you build. The British like them. Our boys have been a credit to our nation, both by their conduct on the seas and when they get into port. I cannot say enough for the United Seamen's Service -- for those who carry out its mission and to those back home who support it. Our seamen have only the highest praise. I visited several American Seamen's Clubs in Scotland and Northern Ireland. The clubs were well patronized. Many of the men I saw are veterans of torpedoings. Here the War Shipping Administration has taken over hotels, provided food from United States Army stores and arranged for medical care by our own Army doctors. Our boys tell me they want to be with Americans when they are hurt or sick.

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It is natural -- you feel closer home. We have arranged to give them American food, which is not too plentiful here -- eggs, fruit and coffee, the very foods which they get at home.

The British have turned over many fine buildings for the use of the seamen. This is part of the reverse lend-lease policy. Here social workers, both American and British, arrange recreation and entertainment for our boys. Here they can see American films, they can send mail and messages home. I talked to our boys in those Seamen's Clubs. When they get back home, let them tell you themselves. They are enthusiastic -- they know that a welcome and a home awaits them.

One group of men told me they were rescued by a passing British freighter after their own ship had been torpedoed only a few hours out of an Atlantic port. They said they drank their last drop of water at midnight, awaiting their doom. At dawn a plane spotted them, and soon a British merchant ship picked them up. They were brought into a Scottish port where the entire town turned out to give them a hero's welcome and provided them with all possible comforts. Such is the feeling this maritime nation affords us. I think the Axis nations by now have found out that our two peoples and our other Allies form an unbeatable combination in a common goal to make the seven seas safe for all nations.

This war is far from won. We still have a big job on the Pacific to do. You have heard that story before. I can best sum up what lies ahead of us by quoting from Mr. Churchill's speech the other day in the House of Commons, when he said:

"We can only be defeated by the U-boat if we are guilty of gross neglect of duty in the shipyards and on the seas, and in all this the first tribute must go to the officers and men of the Merchant Navy."

I am sure those words echo the sentiment of Admiral Land and my other colleagues of the Maritime Commission who are witnessing the deeds of our shipyard workers and our seamen writing a glorious chapter in the history of our Nation.

STATEMENT OF REAR ADMIRAL EMORY S. LAND, ADMINISTRATOR, WAR SHIPPING ADMINISTRATION, BEFORE THE COMMITTEE ON MERCHANT MARINE AND FISHERIES OF THE HOUSE OF REPRESENTATIVES, JUNE 10, 1943, ON H. R. 2731.

Mr. Chairman and Members of the Committee:

The measure now before the Committee is described by its title as -

"A bill to facilitate the award and payment of just compensation for property requisitioned under the authority of section 902 (a) of the Merchant Marine Act, 1936, as amended * * *."

The objective is one upon which all can agree. The War Shipping Administration, certainly, is eager to see it attained.

The Problem And Need For Legislative Solution

Nearly 4,000 ships have been purchased, chartered, or requisitioned by the War Shipping Administration. More than 90 per cent of them were taken after Pearl Harbor. About 1,500 of the 4,000 are large vessels, such as freighters, tankers, and passenger ships. These 1,500 ships comprise practically the entire ocean-going merchant fleet of the United States, which has been taken over for war duty by the Government through the War Shipping Administration. The remaining 2,500 are small craft, such as fishing vessels, tugs, barges, yachts, and harbor craft. No industry has been more thoroughly and completely converted to war use than the merchant marine.

The War Shipping Administration is unable to settle many of the financial obligations of the United States resulting from this ship procurement program because of doubts which have arisen as to the meaning

of the laws under which the vessels were acquired, particularly section 902(a) of the Merchant Marine Act of 1936. The difficulty arises out of the requirement of section 902(a) that the value of requisitioned vessels shall not be deemed enhanced by reason of "the causes necessitating the taking".

The Comptroller General has ruled that the causes necessitating the taking developed on September 8, 1939. War Shipping Administration believes that the causes did not begin to develop until late in 1940. The owners feel that the causes did not develop until the general emergency was proclaimed by the President on May 27, 1941, or perhaps not until after December 7, 1941.

Most of the members of this Committee have personal knowledge of the problems of specific shipowners, especially small shipowners, such as fishermen, that have developed because of the valuation question resulting from the ruling of the Comptroller General dated November 28, 1942. I am sure that those members of this Committee will appreciate that the delay in settling the Government's obligations on terms fair and equitable both to the owner and to the Government is due entirely to causes beyond our control. In recent months, the difficulty has become so severe as to force a complete breakdown in the handling of claims for just compensation. It now seems that the problem can be effectively resolved only by an act of Congress or by judicial decision.

Obviously, solution by act of Congress is preferable to the alternative of judicial review, since resort to the Courts in this situation would involve the institution of upwards of 4,000 law suits, with attendant

expense, delay, uncertainty, and general demoralization of the industry, particularly of the smaller units. No one, except perhaps the lawyers, could profit from a judicial disposition of the problem. Legislative solution, such as that proposed by the bill now under discussion, would seem to be the most desirable approach.

Position Of War Shipping Administration On This Legislation

It is the view of the War Shipping Administration that the initiative for such legislation should be carried by the owners and not by this agency. The shipowners will undoubtedly present their cases to the Committee. It is therefore my purpose at this time to outline our past experience on the subject of valuations and the policies and techniques that have been evolved in the administration of our procurement program. I do not intend to urge any particular solution, but only to assist the Committee in formulating such legislation as the Committee may wish to report to Congress.

If the Committee feels that the present law is adequate for our purposes, we shall be guided by the Committee's interpretation of the law. In the absence of specific legislative direction, however, there should be an authoritative interpretation of the present law, positive enough to dispel conflicting interpretations. If the existing situation is not clarified as a result of these hearings, it will be clarified by the courts, after a further protracted delay, and in such manner, we believe, as to establish substantially higher awards than are now in prospect.

At the request of the Chairman, we have submitted a number of memoranda, charts, and other material bearing on the subject of valuation, to which reference will be made during the course of this statement.

Construction Subsidy Not Involved

At the outset I should like to correct a misunderstanding that has confused some people as to the status of vessels that have received construction subsidies under the Merchant Marine Act of 1936. There are approximately 160 vessels in this category. Approximately 35 of these vessels have either been purchased by the Government or lost while under charter to the Government. The remainder are now under charter. In each case, the owners of such vessels are paid only depreciated cost. No profit whatsoever is allowed, since the vessels are acquired pursuant to section 802 of the 1936 Act, which makes them available to the Government at depreciated cost. Under no circumstances can the owner of a vessel built with the aid of a construction subsidy profit by one cent when the Government requisitions title to the vessel, or reimburses him in case the vessel is lost while under charter to the Government.

The controversy over valuation therefore relates to vessels built without construction differential subsidy and includes vessels of all types: fishing vessels, tugs, barges, harbor craft, freighters, tankers, and passenger ships. None of these ships has received construction subsidies from the Government, and less than ten per cent of the ocean-going vessels have received operating subsidies. In short, except for perhaps 150 ocean-going dry cargo vessels, we are dealing with ships which have not been aided by Government subsidies.

Pre-War High Profit Level In Steamship Industry Has Been Destroyed

There has been an erroneous tendency to assume that the steamship industry is now enjoying enormous prosperity.

This is not true.

High profits were earned in 1941, before we became involved in the war; but these high profits are now a thing of the past.

Generally speaking, the 1941 prosperity was not based on monies received from the United States Government, for we were then at peace and had not requisitioned our merchant fleet, but rather on the great improvement in the steamship business in that year, which was world-wide in scope. The history of the steamship industry indicates that these peak periods occur once in 10 or 20 years. In this case, the boom was rather short-lived, since the Maritime Commission and the War Shipping Administration rates of hire have drastically reduced steamship earnings.

Steamship earnings in 1943 represent a slash of more than $66\frac{2}{3}$ per cent from the 1941 peak, before taxes, and an even greater slash after taxes. It is believed that current earnings in the steamship industry will be on the low side of the trend of profits in general. The Office of Price Administration has recently reported that railroad earnings have increased more than 1,000 per cent before taxes since 1939, and that the profits of mining, manufacturing, and trade in general have increased more than 300 per cent, before taxes, in the same period. It may therefore be said that, during this war, the historic wartime advantage of the steamship industry as compared with industry generally has largely been destroyed.

Committee Document 20 contains memoranda outlining the rates and values established by the War Shipping Administration and comparing the results achieved with the standards established by the Comptroller General.

At this point, may I direct attention to the fact that in the First War earnings of freighters and tankers on bareboat charter were fixed at the basic rate of \$4.15 per deadweight ton per month, which the Court of Claims increased to \$6.60. Corresponding earnings on freighters and tankers under our existing charters are estimated at about \$1.50 per ton per month, or approximately one-third of the earnings permitted in the First War, with somewhat better results for the most efficient operators.

In the First War, time charter rates were about 50 per cent higher than War Shipping Administration rates, although the owners' cost of operation today is about one-third higher than in the First War. The existing rates also represent drastic reductions in the earnings and profits for the peak year of 1941, when vessel owners earned well in excess of \$4 per deadweight ton on old freighters and tankers. Our insurance values for old freighters and tankers start at a basic rate of \$65 per ton, while the comparable rate in the First War was \$160 per ton for freighters and \$165 for tankers. In 1941, the values of freighters and tankers had risen to somewhere between \$100 and \$150 per ton.

Background And History Of Present Rate And Value Structure

Since the middle of 1939, there have been six distinct phases in the fluctuations of ship values and earnings. In late 1940 and early 1941, before we became involved in the war, vessel earnings and values reached extraordinary high and uncontrolled levels. Since that time, the administrative problem of the Maritime Commission and the War Shipping Administration has been by negotiations to squeeze the water out of the exorbitantly high market values of 1941, on the one hand, and to avoid litigation in the

courts, on the other. Litigation in a period of extraordinarily high market values might well have been disastrous to the United States.

The third quarter of 1939 may be considered pre-war, although early September marked the beginning of hostilities in Europe. One cargo vessel was sold in the domestic market during this period for less than \$15 per ton. A British cargo ship sold about the same time brought a fraction over \$20 per ton. Pre-war sales prices are thereby indicated to have been from \$15 to \$20 per deadweight ton. The shipping industry was then suffering from a greatly over-tonnage situation. The surplus was world-wide in scope. It had a particularly depressing effect on domestic market values. 1939 sales prices therefore cannot be regarded as normal peacetime valuations.

The second stage of ship valuations marks a chapter in American merchant marine history that is all but forgotten now, but which was dramatic enough, and fraught with ominous possibilities at the time - namely, the adoption of neutrality legislation in November 1939. Congress convened in extraordinary session on September 21, 1939, and the Neutrality Act of 1939 was approved on November 4. That Act made it unlawful for any American vessel to carry passengers or cargo into combat zones.

The effect of the Neutrality Act of 1939 upon the American merchant marine is graphically told in news stories of that period. Item XIII of Committee Document 20 (page 215) contains a quotation from a news article in the New York Times of October 22, 1939, together with a sampling of headlines from other papers on the same subject.

Many ships had to be laid up as they returned to the United States from voyages on routes over which they could no longer move. There was a serious crisis of idle ships and idle men in November and December 1939.

What an American cargo ship was worth at that time, when the prospects of its commercial operation were so limited, I don't know. It was a foregone conclusion that the United States Government would not permit large scale sales of American merchant vessels in the foreign market, because we might need them ourselves. Yet if one American operator could not employ them, another could not. For a few weeks, at any rate, American merchant vessels were practically frozen assets.

Fortunately, employment was found for the ships in a short time, and the crisis was over by the spring of 1940. The British were withdrawing their ships from commercial routes to India and the Far East, and arrangements were made for the substitution of American flag ships on those and other long-voyage routes.

The readjustment of the American merchant marine to conditions resulting from the European war marks the third stage of ship rates and values. The period may be said to extend from the beginning of 1940 to December of the same year. It extended through the closing weeks of the so-called phony war, the invasions of Norway and the Low Countries, the Fall of France, and the Battle of Britain.

The market value of dry cargo ships during this time, in the domestic market, reached \$50 per ton or more. The market responded in this manner to the elimination of the depressing over-supply of 1939. World time charter rates for the year 1940 averaged about \$4 per ton per month,

though some charterers realized more. Bareboat rates reached a high of \$3 per ton during this period.

The United States began to prepare for national defense in earnest after the Fall of France in June 1940. The movement of strategic and critical materials began to be reflected in ship earnings in the fall of 1940. By December the tonnage situation began to show signs of tightening.

From December 1940 to July 1941 there was a marked rise in charter rates and ship values. This is the fourth stage of the sequence. Shipping space was hard to get. Water-borne transportation was at a premium. The strategic worth of vessels to war had begun to make itself felt, unmistakably. By the time of the President's proclamation of unlimited national emergency on May 27, 1941, the process of spiralling rates and prices was in full swing. It was not brought under control until July, when the Ship Warrants Act was passed.

In the meantime, the need of the Government for water-borne transportation to support the national defense effort increased, and contributed to the scarcity of shipping space.

During this period, from December 1940 to July 1941, sales prices rose from \$50 per ton to about \$100 per ton in the domestic market and more than \$140 per ton in the world market. Time charter rates went up to an average of \$10.20 per ton per month by the end of the second quarter of 1941.

The coordination of shipping for the national defense effort was begun by the Maritime Commission in the early part of the spring of 1941, in accordance with directives from the President. The Commission had no

specific statutory authority with which to control ship values or charter rates. It was of the opinion, however, that such values and rates were then too high, and it set about to reduce them to more reasonable levels, using its economic power in the assembling of a pool of 2,000,000 tons of shipping.

Immediately after the adoption of the Ship Warrants Act, the Maritime Commission established time charter rates at levels of approximately \$4.50 per deadweight ton per month. As more and more ships became subject to the new time charters, the market responded accordingly.

World time charter rates in the free market averaged \$6.75 per ton per month during the third quarter of 1941, and continued downward during the fourth quarter. Sales values were slower in reacting, but the sales curve was ultimately affected by the lowered charter rates and the refusal of the Maritime Commission to pay full market prices for ships it bought during that time.

This roll-back of charter rates and sales values from the inflated levels to which they had climbed during the early months of 1941 represents the fifth phase of the sequence. It extended from the late spring of 1941 to April 1942, when the sixth phase, the requisitioning of vessels, was begun by the War Shipping Administration.

The Maritime Commission had refrained from requisitioning, as far as possible, in order to accomplish its purpose of reducing and stabilizing rates and values. By the time this objective was in hand, the War Shipping Administration, created by Executive Order in February 1942, had assumed the responsibility for the acquisition and operation of vessels in the war effort.

According to the Maritime Commission's interpretation of section 902, the requisition powers did not become available to it until May 27, 1941. The statute provides that "during any national emergency declared by proclamation of the President, it shall be lawful" to requisition vessels. The Commission understood this to mean the proclamation of unlimited national emergency, and not the limited emergency proclaimed on September 8, 1939. The reasons for this interpretation are fully set forth in item IV of the Committee Document 20.

It should be emphasized that when the Commission decided that section 902(a) did not become effective on September 8, 1939, it had the advice and counsel of a former Member of Congress, Mr. Carl Moran, of Maine, who was then a member of the Commission. Mr. Moran had served in Congress while the Merchant Marine Act of 1936 was being considered. He had taken a very active interest in the passage of the legislation, as is indicated by various comments and suggestions made by him on the floor of the House. The views of the Maritime Commission in this respect therefore, fortified as they were by the concurrence of Mr. Moran, seemed to us to be unquestionably correct.

However, even if the Maritime Commission had the power to requisition before May of 1941, the exercise of that power during the high market conditions of late 1940 and early 1941 would have been most unwise and unfortunate, since the owners would then have been in a position to file suit in the Court of Claims for the full market values of that peak period. The results of such premature requisitioning would therefore have been very costly to the United States. The only sound strategy was to delay the

date of requisitioning as we did until rates and values could be reduced to more moderate levels.

Under the circumstances, the Maritime Commission determined not to resort to requisition, even after May 27, 1941, but to continue operations under private ownership until such time as its efforts to reduce and stabilize rates and values should produce results or the need for requisitioning should become clearer and more pressing.

In April 1942, the War Shipping Administration ordered the requisition for use of practically the entire ocean-going merchant fleet of the United States.

General Orders 8 and 9 were issued on May 14, 1942, and the basis of payment for vessels so requisitioned was established. These orders specify a basic time charter rate of \$4 per ton per month, and basic insurance values of \$65 per deadweight ton.

Although General Orders 8 and 9 had the effect of gradually reducing market values of ships subject to requisitioning, it may be pointed out that the world market value for shipping continues uncontrolled and by now has reached dizzy heights. As a matter of fact, within the past two weeks a Portuguese shipowner has offered an American owner more than \$110 per deadweight ton for a 39-year-old six-masted schooner. The world market for ships is at least two or three times as high as the War Shipping Administration basic \$65 per ton scale for 20-year-old steamers.

The Committee Document contains charts comparing charter rates and ship values in this war with those of World War I (Pages 397 and 398). The Shipping Board paid a bareboat rate of \$4.15, which the Court of Claims

increased to \$6.60, against our equivalent of \$1 to \$1.25 and \$1.50. Insurance values paid during the last war ranged around \$160 per deadweight ton for vessels comparable to those we have valued at \$65 per ton.

Charter rates and ship values in 1941 were moving toward the levels of the first World War. Time charters of \$10 and \$12 per deadweight ton per month were being paid by commercial operators, yielding voyage profits of \$4, \$5, and \$6. Sales prices in the domestic market for old ships not in particularly good condition were ranging upward of \$80 per ton; prices of more than \$100 per ton were being asked for the better ships, and such prices were being paid in the world market.

War Shipping Administration Values And The Enhancement Clause

Generally speaking, WSA rates and values approximate the levels of 1940. While they are, in some respects, higher than the rates and values prevailing in the summer of 1939, they are even more substantially lower than the levels resulting after the real scarcity of cargo space began to make itself felt in 1941.

The enhancement over pre-war values which the War Shipping Administration would allow in its determinations is, in our opinion, the result of economic factors brought about by the improved business conditions of the early months of the war, - not by the causes necessitating the taking.

Economic improvement throughout American business is reflected in the 33 per cent increase of corporate profits for 1940 over 1939, for industry generally, while profits for railroads and other transportation industries increased more than 50 per cent between 1939 and 1940.

It is well known that the transportation industry tends to benefit more sharply and suffer more severely from the rise and fall of industrial activity than most other industries. Upon the whole, the increase in ship values and rates during the early months of the European war do not appear to be out of line with the improvement normally to be expected from such an upswing in the volume of business as occurred at that time.

In this connection it should be pointed out that the price spread indicated on the sales chart, from \$15 per ton pre-war to \$50 per ton in 1940, is extreme. There was one sale in the domestic market at \$15 per ton in the summer of 1939. At the same time, however, the owners were insuring the same kind of ships against marine casualties at \$40 per ton, and general average appraisals were averaging \$25 per ton and higher. The low market price in the domestic market was the result of the over-tonnaged condition of the domestic trades. Earnings in the foreign trades averaged between \$10 and \$15 per ton per annum, which would justify a 1939 capitalized value of at least \$50 per ton.

Concurrently with the increase of market values in 1940, there was a coalescence of market values, insurance values, and general average appraisals approximating \$50 per ton. This coalescence of the three primary indices of value reflects a much more normal condition than the market values in the domestic trades just before the war, from which the lower figure is taken.

Under the circumstances, the enhancement of ship values and rates during 1940 over those obtaining before the war started appear to be properly included in the determinations of value required by section 902, since they were not caused by the emergency.

Rates and values about the same as those prevailing in 1940 appear to us to square with the letter and spirit of the enhancement clause in section 902, which provides that -

"in no case shall the value of the property taken or used be deemed enhanced by the causes necessitating the taking or use."

The causes necessitating the taking or use were, according to our interpretation, the need of the United States for water-borne transportation in furtherance of the national interests. That need, in the sense of commandeering or even of control, did not become clear until the spring of 1941.

However, the increases in charter rates and ship values that began in December 1940 are traceable to a large extent to the effect of war economy upon shipping. Under the circumstances, such increases would, to a large extent, appear to lie within the spirit of the enhancement clause and should be excluded to that extent.

WSA Rates And The Comptroller General's Ruling

The Comptroller General's ruling holds that all increases in rates or values after September 8, 1939, should be excluded "provided such excess be determined as due to economic conditions directly caused by the national emergency." It will be noted that the Comptroller General does not insist on the application of September 8, 1939 values. He merely requires that rate and value determinations should commence with values prevailing on that date and that subsequent increases should be excluded only to the extent found to have been "directly" caused by the emergency.

The difficulty in applying the ruling lies in determining what portion of the increase was "directly" caused by the emergency.

It is our opinion that the improvement within six to nine months or possibly a year after September 8, 1939, which forms the basis for our present rate structure, was not directly caused by the national emergency, but represents general business improvement and the elimination of depressing conditions that existed in 1939, particularly the over-tonnaged situation, and merely restored ship values and earnings to normal levels. If this is a sound conclusion, then our rates and values comply substantially with the Comptroller General's ruling.

Conferences have been held between officials of the War Shipping Administration and the office of the Comptroller General in an effort to agree as to how much of the increase that occurred after 1939 is due "directly" to the emergency rather than the general change in economic conditions. Unfortunately, we are unable to agree, principally because it is impossible to allocate the increase in value that occurred after the outbreak of war with any degree of accuracy (first) to that portion caused by the emergency and (second) to that portion caused by general economic conditions.

The Proposed Bill

The bill under consideration would attempt to solve this dilemma by permitting enhancement in rates and values since 1939 equal to the increase in the wholesale commodity index since that date, which I understand is approximately 35 per cent. Apparently, this 35 per cent adjustment would apply to all vessels whether heretofore or hereafter requisitioned.

Whatever administratively feasible solution is approved by the Congress will find me in hearty accord, for no answer can be more complete than that given by the elected representatives of the people themselves, after considering the facts against the background of actual experience.

It is interesting to note that the theory of the proposed legislation is in conformity both with the ruling of the Comptroller General and the administration of the law by WSA. The bill recognizes that at least that portion of the enhancement in shipping values which does not exceed the enhancement in commodities generally must have been caused by economic conditions rather than by the causes necessitating the taking. It further recognizes that the payment in dollars of 35 per cent more than the 1939 dollar value of equivalent ships or other commodities does not result in any enhancement since \$135 in 1943 will only buy on the average goods which could have been purchased for \$100 in 1939.

This bill, although extremely conservative in its approach, would confirm most of the rates and values previously established by the War Shipping Administration.

With respect to fishing vessels, the Committee will note from the printed material (item XVI-A of Committee Document 20) that in the case of fishing boats our values do not represent an enhancement of more than 35 per cent of the 1939 value of fishing vessels computed in accordance with the Martin formula. This bill would also confirm the values reached by the War Shipping Administration with respect to tankers, which had a market value in 1939 of about \$45 per ton, insurance value of about \$50 per ton, and earning capacity of from \$10 to \$15 or more per ton, which

would justify a capitalized value of at least \$50 to \$60 per ton, exclusive of the commodity index adjustment. Our present tanker values start with the basic \$65 value under General Order No. 9, and would be in complete conformity with the bill. The values we have used for passenger ships would likewise comply with the formula used in this legislation, since our values for these ships are, on the average, below 1939 insurance values.

However, the legislation would probably require some reduction in freighter values, for freighters, in 1939, although insured for \$40 a ton on the average, and earning from \$10 to \$15 per ton per annum, were selling for as low as \$15 per ton because of the abnormal market conditions.

The Comptroller General recognizes that abnormally low and depressed market conditions should not furnish the guide for values established under section 902(a). If we apply the insurance values or capitalized earning values of 1939 and add the permissible enhancement under this legislation, the bill would justify freighter values of between \$50 and \$60 per ton, which would require a reduction of about \$10 per ton in our present values. This would cause considerable damage to owners who bought during peak market conditions.

The attention of the Committee should be called, however, to certain types of situations which would not be covered by the proposed legislation.

The Committee Document contains a communication from the State Department pointing out that under international law owners of foreign vessels requisitioned pursuant to Public 101 are entitled to market value as of the date of requisitioning, and that the establishment of a different precedent in dealing with foreign vessels would permit foreign governments

to take American properties in foreign countries at less than their market value. The proposed bill does not solve this problem.

The Document also contains two illustrative cases showing the purchase of a fishing boat and a tanker in 1941 at prices which were higher than those permissible under the proposed legislation. This raises the question as to whether a bona fide purchaser of a vessel in 1940 or 1941 who paid no more than the prevailing market price should be forced to take a loss when the vessel is requisitioned by the Government. The Committee will undoubtedly wish to consider this problem.

Another problem, somewhat similar in nature, is presented in cases where banks or other creditors have made advances against ships in good faith in 1940 and 1941 on the basis of the then prevailing American market. One such illustration will be found in the record involving a loan by the First National Bank of Boston of about \$75 a ton on a tanker in 1941. This presents a serious question as to whether creditors should be forced to take losses in cases where vessels are requisitioned by the Government under section 902(a).

The standards prescribed by the bill would guide the proposed Committee on Awards in establishing more detailed standards for final administrative determinations. At the present stage of the situation, it is believed that a review of valuations by some such independent official or body as the proposed Committee on Awards would be helpful.

The bill relates entirely to administrative determinations of the just compensation to be paid for requisitioned vessels. Any shipowner who is dissatisfied with the administrative determination, by whomever it may be

made, can always sue and recover just compensation judicially determined under the Fifth Amendment of the Constitution. It is generally agreed, I believe, that the enhancement clause is not a limitation upon the courts, and that in the event of litigation just compensation would be determined in accordance with judicial precedents in applying the Constitutional guaranty.

The question before the Committee, therefore, is whether to force these claimants into the courts for relief, or to provide administratively for the necessary adjustments.

Fishing Boats

I should like to make special comment regarding fishing boats, since so many members of this Committee are interested in that problem.

In connection with the smaller vessels - those under 1,000 tons - the War Shipping Administration has applied the same basic principles of conservative valuations and exclusion of enhancement resulting from the causes necessitating the taking. A complete report on valuations of small vessels is contained in the Committee Document, and reference is made to it for details. (Item XVI-A; page 357)

The application of pre-war values to small craft, like fishing vessels, tugs, and barges, for example, appears to us to be particularly inept. These boats were not taken in appreciable numbers until after Pearl Harbor, nor was there any such foreshadowing of requisitioning being applied to them as might be said to be true of the larger vessels. The owners were put on notice, of course, that requisition was a possibility, by the President's proclamation of national emergency in May 1941.

But requisitioning did not become a probability for them until after Pearl Harbor.

To turn back the clock for a period of two full years for the purpose of determining prices to be paid the owners of these small boats, particularly fishing vessels and tugs, would be to mete out a harsher treatment than has been applied to any other American property owner during the war.

Conclusion

The War Shipping Administration does not have dictatorial powers to fix values by edict. It has been our policy to fix rates and values at the lowest reasonable levels. By this is meant the lowest levels consistent with equity which can be sustained in the event of judicial attack. Any attempt to fix rates and values at levels which will force all shipowners into the courts can be justified only if there is reasonable probability that the courts would sustain such reduced rates and values. Forcing the valuations into court in the absence of such reasonable probability would merely result in the payment of higher rates and values plus interest during the interval. Wise administrative action therefore calls for fixing rates and values at the lowest reasonable levels that can be sustained in the courts. A drastic effort to return rates and values to 1939 levels would, we believe, throw the whole matter into court and might lead to very much higher valuations and rates than those that have been established by the War Shipping Administration.

The choice is believed to lie between a gamble on 1939 values, on the one hand, and on the other a stabilization of rates and values at or below 1940 levels, which we believe the rates and values established by the War

Shipping Administration conclusively achieve. In this connection it should be noted that the courts invariably increased the World War I determinations of the Shipping Board by almost 50 per cent as indicated in the Legal memorandum contained in the Committee Document, even though World War I rates and values were from 150 to 400 per cent higher than those now prevailing. A review of the judicial decisions arising out of the various problems relating to the First War indicate the danger of inviting litigation so long as high market values exist, and the advisability of reducing or otherwise destroying such high market values. It should also be noted that the enhancement clause does not apply to the courts. Judicial proceedings would be instituted in accordance with section 902(d), which does not contain any enhancement clause. The courts are bound only by the Constitution.

In this statement, I have attempted to give the Committee an outline of the question of ship valuation as it appears to the administrative agency now charged with the responsibility of administering the problem. May I also express the hope that the legislation recommended by this Committee will not be either so liberal to the owners as to negate our past successes in reducing rates and values, nor so stringent as to force mass litigation in the courts, where there is a serious danger that the Government will meet with severe reverses.