DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 72

THE ATLANTIC REFINING COMPANY

v.

ELLERMAN & BUCKNALL STEAMSHIP CO., LTD., ET AL.

Submitted December 6, 1935. Decided January 24, 1936

Issues presented by complaint having been voluntarily adjusted, and agreements alleged to be unlawful superseded by new agreements, complaint dismissed.

R. Granville Curry and *Frederick M. Dolan* for complainant.

Cletus Keating and *Roger Siddall* for defendants.

R. H. Horton for Port of Philadelphia Ocean Traffic Bureau; *S. H. Williams* for Philadelphia Chamber of Commerce; *Charles P. Roeder* for The Philadelphia Bourse; *Walter W. McCoubrey* for Boston Port Authority; *Julius Henry Cohen*, *Wilbur LaRoe, Jr.*, and *W. H. Connell* for The Port of New York Authority, interveners.

REPORT OF THE DEPARTMENT ON REHEARING

BY THE SECRETARY OF COMMERCE:

This proceeding, reopened, involves issues discussed in a report of the United States Shipping Board, 1 U. S. S. B. 242. The complaint was dismissed by order of that board, issued December 14, 1932. Complainant alleged that rates held out to and charged by defendants on its shipments of petroleum products from Philadelphia, Pa., and New York, N. Y., to ports in South Africa higher than rates contemporaneously charged by them on shipments to the same ports of similar products shipped from New York by a competitor, the Vacuum Oil Company of South Africa, Limited, and/or Vacuum Oil Company, were unduly and unreasonably prejudicial to it and unjustly discriminatory, in violation of sections 14, 16, and 17 of the Shipping Act, 1916. Reparation and lawful rates for the future were sought.

At the original hearing allegations of unlawfulness were made with respect to agreements filed by defendants and approved by the board as provided by section 15 of that act. Since the complaint contained no reference to the agreements the board held that issue was not properly before it for determination.

Upon petitions of complainant and the Port of Philadelphia Ocean Traffic Bureau, which amended the complaint to include issues under section 15 of the act, the case was reopened to consider the lawfulness of defendants' agreements and to reconsider the issues presented by the original complaint. The Boston Port Authority, Norfolk Port Traffic Commission, Philadelphia Chamber of Commerce and The Philadelphia Bourse intervened. After the case was reopened new agreements filed by defendants superseding those in effect were approved by the department. At the rehearing complainant testified that since January 1, 1933, rates charged on its shipments from New York were the same as those charged on shipments of its competitor from that port. Subsequent to rehearing complainant and defendants entered into an agreement whereby an equality of rates and conditions was established whether shipments move from New York or Philadelphia, in consideration of which complainant withdrew its claim for reparation, and joined with defendants in a petition filed of record November 20, 1935, requesting that the complaint be dismissed. The removal of the difference in rates to which the complaint was directed and the cancellation of the agreements attacked renders unnecessary further action by the department. An order dismissing the complaint will be entered.

DEPARTMENT OF COMMERCE

OFFICE OF THE SECRETARY

WASHINGTON

No. 72

THE ATLANTIC REFINING COMPANY

v.

ELLERMAN & BUCKNALL STEAMSHIP CO., LTD., ET AL.

ORDER

This case, reopened upon petitions of complainant and the Port of Philadelphia Ocean Traffic Bureau, intervener, having been duly heard, and subsequent thereto, the issues involved having been voluntarily adjusted, and the entry of an order dismissing the complaint requested by complainant and defendants, and the department having, on the date hereof, made and entered of record a report containing its conclusions and decisions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That the complaint in this proceeding as amended, be, and it is hereby, dismissed and this proceeding discontinued.

(Sgd.) DANIEL C. ROPER,
Secretary of Commerce.

JANUARY 24, 1936.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 171

IN RE GULF BROKERAGE AND FORWARDING AGREEMENTS

Submitted December 13, 1935. Decided February 19, 1936

Agreements between certain carriers by water in foreign commerce and other persons purporting to fix brokerage commissions and forwarding charges denied approval under section 15 of the Shipping Act, 1916, without prejudice to filing of new agreements as indicated. Proceeding discontinued

Walter Carroll for applicants.

J. M. Gloer, Jr., and *P. F. Cornwell* for Atlantic Cotton Association, protestant.

S. P. Gaillard, Jr., for Alabama State Docks Commission; *W. A. Olliff* for City of Panama City, Florida, and Chamber of Commerce of Panama City, Florida; *Frank A. Leffingwell* for Texas Industrial Traffic League; *Luther M. Walter*, *J. H. Beek*, *E. H. Thornton*, and *H. J. Wagner* for National Industrial Traffic League; *E. H. Hogueland* and *Frank A. Leffingwell* for Southwestern Millers' League; *T. C. Burwell* for A. E. Staley Manufacturing Company; *J. H. Rauhman*, *C. A. Mitchell*, and *E. H. Thornton* for New Orleans Joint Traffic Bureau, interveners.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

Exceptions to the report proposed by the examiner were filed by protestant and National Industrial Traffic League, to which applicants replied. The conclusions herein are in accord with the recommendations of such report.

This proceeding concerns ninety-two agreements[1] filed with the Department for approval under section 15 of the Shipping Act, 1916,

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[1] Addenda Nos. 1 to 46 to U. S. Shipping Board Bureau Conference Agreement No. 140, and Addenda Nos. 1 to 46 to U. S. Shipping Board Bureau Conference Agreement No. 161.

by common carriers by water in foreign commerce who are members of the Gulf/United Kingdom or Gulf/French Atlantic Hamburg Range Freight Conferences, and other persons therein termed brokers. The agreements purport to fix the amounts of commissions the carriers are agreeable to pay such other persons for brokerage services, and also the amounts of the charges to be collected from shippers for forwarding services to be performed by the carriers and such other persons. Upon protest by Atlantic Cotton Association, a hearing was had. Alabama State Docks Commission, City of Panama City, Florida, Chamber of Commerce of Panama City, Florida, Texas Industrial Traffic League, National Industrial Traffic League, Southwestern Millers' League, A. E. Staley Manufacturing Company, and New Orleans Joint Traffic Bureau intervened.

Brokers are not subject to the Shipping Act, 1916, and consequently agreements between carriers subject to that act and brokers are not of the character required to be filed under section 15 thereof. However, if carriers enter into agreements with each other relating to their employment of brokers, such agreements must be submitted for the Department's consideration. The two conference agreements concerned already contain certain provisions relating to brokerage, and any additional agreements on this subject should be filed as modifications to such conference agreements.

Forwarders are subject to the Shipping Act, 1916, and consequently agreements between carriers and forwarders fall within the purview of section 15 thereof. The agreements under consideration, although fixing the minimum charges for forwarding services which the Brokers and carriers, when acting in the capacity of forwarders, will assess shippers, fail to set forth precisely what the contemplated forwarding services are. Such services are described as including "whatever is required to arrange the delivery from the inland carrier to the custody of the ocean carrier when the rail rate or charge as collected by the inland carrier does not cover that particular service." Some of the services referred to in the record as sometimes falling within the accepted meaning of forwarding as, for example, the filing of damage claims against themselves, and the issuance to themselves of letters of guarantee, are of a character which properly cannot be performed by common carriers.

The proposed agreements do not provide a charge for the issuance of ocean bills of lading by carriers, but testimony at the hearing is to the effect that charges will be made for the mere issuance by carriers of such bills. Under the Harter Act it is the duty of carriers to issue ocean bills of lading, or equivalent documents, as a part of their common carrier service. Agreements regulating charges made for forwarding probably are desirable, but if such agreements are entered into they should state clearly the forwarding services covered and should not include charges by carriers for issuing ocean bills of lading or for performing other services which it is a carrier's duty to perform.

If the suggestions here made are followed, care should be taken both in the modification of the conference agreements and in the agreements covering forwarding services to keep brokerage activities and forwarding activities separate. Although it may be proper for carriers to refuse to pay brokerage to any broker who solicits for a competitor or receives brokerage from a competitor, the Department will not approve agreements under which the forwarder, whether also a broker or not, would refuse to handle as a forwarder shipments as to which routing by a competing carrier has been specified by the shipper.

In view of the above, the agreements filed cannot be approved. An order denying approval of the proposed agreements, without prejudice to the filing of new agreements as indicated, and discontinuing this proceeding, will be entered.

DEPARTMENT OF COMMERCE

OFFICE OF THE SECRETARY

WASHINGTON

No. 171

IN RE GULF BROKERAGE AND FORWARDING AGREEMENTS

ORDER

This proceeding having been duly heard, and full investigation of the matters and things involved having been had, and the Department, on the date hereof, having made and entered of record a written report stating its conclusions and decisions thereon, which report is hereby made a part hereof;

It is ordered, That approval under section 15 of the Shipping Act, 1916, of the agreements concerned be, and it is hereby, denied, without prejudice to the filing of new agreements as indicated in said report; and that this proceeding be discontinued.

(Sgd). DANIEL C. ROPER,
Secretary of Commerce.

February 19, 1936.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 163 [1]

CANNERS LEAGUE OF CALIFORNIA
v.
ALAMEDA TRANSPORTATION COMPANY ET AL.

Submitted January 17, 1936. Decided February 19, 1936

Ground for allegations that intercoastal rates on canned goods were unlawful having been removed, complaints based thereon dismissed

Irving F. Lyons for complainant in No. 163 and *Fitz-Gerald Ames* for complainant in No. 178.

Joseph J. Geary and *Theodore M. Levy* for certain defendants.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

These cases were consolidated for hearing and will be disposed of in one report. Exceptions to the report of the Examiner filed by complainants are discussed herein.

Complainants allege that the rate of 46.5 cents per 100 pounds, minimum weight 36,000 pounds, maintained by defendants other than Shepard Steamship Company for the transportation of canned fruits and other canned products, including animal food N. O. S., from points on the Pacific Coast to points on the Atlantic Coast of the United States, via the Panama Canal, was unjust and unreasonable as compared with the rate of 40 cents per 100 pounds, minimum weight, 24,000 pounds, contemporaneously maintained by the same defendants for the transportation of the same commodities in the opposite direction, in violation of section 18 of the Shipping Act, 1916; and that the 40-cent rate was unduly and unreasonably preferential in favor of competitiors of complainants' members, in viola-

[1] This report also embraces No. 178, *Pacific Coast Dog Food Manufacturers Association v. Alameda Transportation Company et al.*

tion of section 16 of said act. The prayer in each case is for the establishment of the same rate in both directions. At the hearing complainant in No. 178 withdrew the allegation of unreasonableness. The east-bound rate of Shepard Steamship Company was shown to be 45 cents per 100 pounds, minimum weight 36,000 pounds, and its west-bound rate was shown to be 38 cents per 100 pounds, minimum weight 24,000 pounds.

Subsequent to the hearing, but prior to the service of the Examiner's report, defendants other than Shepard Steamship Company filed new tariffs, effective October 3, 1935, which name the same rates for east-bound as for west-bound intercoastal transportation of the commodities involved. The report of the Examiner recommended that the complaints be dismissed, this action of defendants apparently having removed the ground for complaint.

Complainants filed exceptions contending that the proposal to dismiss the complaints against all defendants is unsupported by the record or the facts, and that as long as Shepard Steamship Company maintains a lower rate for west-bound than it does for east-bound transportation of canned goods, complainants are injured thereby, and this defendant's continuance of different rates exposes complainants to the danger of the reestablishment of alleged discriminatory west-bound rates on canned goods by all intercoastal carriers. Since the filing of the exceptions Shepard Steamship Company has filed tariffs to become effective March 11, 1936, which name the same rate for east-bound transportation of canned goods as is maintained by that carrier for west-bound transportation.

Reparation is not involved; the complaint in each case being based on the disparity in east-bound and west-bound rates between the same points. Since the rate situations complained of have been adjusted the questions presented are moot. If the new adjustment is changed by tariffs hereafter filed, the remedies provided by the Shipping Act, 1916, and Intercoastal Shipping Act, 1933, are available to complainants. An order dismissing the complaints and discontinuing the proceedings will be entered.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 186

PORT OF PHILADELPHIA OCEAN TRAFFIC BUREAU

v.

THE EXPORT STEAMSHIP CORPORATION ET AL.

Submitted December 17, 1935. Decided March 18, 1936

Rates on general cargo and olive oil from Italian ports to Philadelphia, Pa., not shown to be unduly preferential or prejudicial, or unjustly discriminatory. Agreement governing The West Coast of Italy and Sicilian Ports/North Atlantic Range Conference not shown to be detrimental to the commerce of the United States or in violation of the Shipping Act, 1916. Complaint dismissed.

R. H. Horton for complainant.

Roscoe H. Hupper for defendants.

Walter W. McCoubrey for Boston Port Authority; *Charles R. Seal* for Baltimore Association of Commerce; and *H. J. Wagner* for Norfolk Port-Traffic Commission, interveners.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

The examiner's report recommending dismissal of the complaint was excepted to by complainant. The findings recommended by the examiner are adopted herein.

Complainant, a corporation existing under the laws of Pennsylvania, was organized for the purpose of maintaining and developing the commerce of the Port of Philadelphia. Defendants are common carriers by water in foreign commerce subject to the Shipping Act, 1916, and all are members of The West Coast of Italy and Sicilian Ports/North Atlantic Range Conference, U. S. Shipping Board Bureau Agreement No. 2846, approved March 23, 1934.

The complaint, as amended, alleges that the existing conference agreement, under which defendants provide on cargo from Italy higher rates to Philadelphia, Pa., than to New York, N. Y., and other North Atlantic ports, results in unlawful and unfair discrimination against the Port of Philadelphia and the shippers, importers, and receivers of freight located at or using that port; subjects that port and such shippers, importers, and receivers of freight to unjust and unreasonable prejudice and disadvantage; gives unjust and unreasonable preference and advantage to New York and other North Atlantic ports and to the shippers, importers, and receivers of freight located at or using such other ports; is detrimental to the commerce of the United States, and violates the Shipping Act, 1916. It prays that defendants be required to cease and desist from the aforementioned violations of law, that the agreement referred to be disapproved, and for such other and further relief as may be deemed proper.

The Boston Port Authority, Baltimore Association of Commerce, and Norfolk Port-Traffic Commission intervened.

The conference tariff, filed with this Department, was identified and made a part of the record. The title page thereof describes it as Freight Tariff No. 1, effective August 1, 1934, applying from shipside to shipside by direct steamer from Genoa, Leghorn, Naples, Catania, Messina, and Palermo to New York and Boston. A note on page 95 states "Surcharges to Philadelphia and Baltimore, to be arranged." The tariff rates are divided into three categories according to the class of service. Those in the first category apply on traffic moving in the passenger vessels *Rex* and *Conte di Savoia*, those in the second category apply on traffic moving in the so-called combination passenger and freight vessels, and those in the third category apply on traffic moving in cargo vessels.

Traffic destined to Philadelphia is transported by defendants only in cargo vessels, which call first at New York. With this service it takes approximately eight days longer for cargo to be delivered at Philadelphia than at New York, and the service to Philadelphia is less frequent than the service to New York. Occasionally traffic destined to Philadelphia is transshipped at New York. The rate to Philadelphia is constructed by adding a surcharge of 65 cents per ton, or cubic meter, on general cargo, and $1.30 per ton on olive oil, to the New York rate. A memorandum containing these surcharges, filed with this Department and made a part of the record, lists twenty-nine items on which no surcharge is assessed when destined to Philadelphia. These items comprise about 4 per cent of the total number of items in the tariff. The record is silent as to any movement of these commodities.

Under a previous tariff surcharges also applied on traffic destined to Boston, but apparently such charges were canceled when direct service was established to that port with combination passenger and cargo vessels coming within the second category under the existing tariff. The removal of the differential against Boston is relied upon to some extent by complainant as justification for the relief sought in behalf of Philadelphia, but the evidence does not show that the transportation conditions surrounding the two services are sufficiently similar to require like treatment. A witness for complainant testified that it was a general practice to accord the same rates on import and export traffic to all North Atlantic ports, but that, in addition to the situation here complained of, there are differentials against Philadelphia in certain other trades. There is no showing of competition with ports other than New York.

Complainant's witnesses testified, in substance, that the surcharges applicable on traffic to Philadelphia have caused diversion of import traffic from that port to New York, but no evidence of actual diversions was submitted. The record is replete with general statements and conclusions that the effect of the surcharges is to discourage the movement of commerce to Philadelphia and unduly favor New York, and that even in those cases where Philadelphia has an advantage in rail rates to interior points, the surcharges prevent merchants in some of these interior communities from doing business through the port of Philadelphia. However, there is no substantial evidence in support of these allegations.

A member of complainant's board of directors, secretary of the Philadelphia Bourse, an organization engaged in the promotion of commercial activities of Philadelphia and the State of Pennsylvania, testified that although he had heard of some complaints, only one was made to him personally. This dealt with the surcharge on olive oil, and was made by a retail chain-store organization having concentration warehouses at Philadelphia and other points from which it distributes food products by truck to its stores within a limited area contiguous to each focal point of distribution. The witness stated that if this importer is forced to distribute from New York to points now served from Philadelphia it will be handicapped by increased operating costs, but admitted that in some instances it is advantageous to importers at Philadelphia to take delivery of goods at New York and distribute therefrom as a focal center. However, it was emphasized in this connection that where warehousing is involved, the cost of distribution through Philadelphia would be lower because the importers there have their own storage facilities. The witness had no definite knowledge of the volume of traffic moving under the assailed rates to Philadelphia as compared to traffic under the alleged preferential rates to New York, but he conceded that to Philadelphia the volume would be "modest." This and other witnesses testified that the service to Philadelphia is inferior to that enjoyed by importers at New York, because it is slower and less frequent, notwithstanding the greater charge therefor. The record does not show that the surcharges have caused any changes to be made in the distribution of olive oil or any other commodities.

A Philadelphia customs house broker, appearing also as secretary of the Italian Wholesalers & Importers Association, testified that the surcharges on shipments destined to Philadelphia have tended to decrease his business as well as the business of the port and of those whose enterprise depends upon port activity; and that complaints have been made by importers at meetings of the association that they have lost business to New York importers because the latter are in a position to deliver goods in territory even where Philadelphia has an advantage in rail rates at the same cost, or, in many instances, at a lower cost. Testimony of like import was given by another Philadelphia customs house broker. Neither of these witnesses supported these general statements with any evidence showing actual loss of business to himself or to others.

Defendants offered no testimony.

It is well settled that the existence of unjust discrimination and undue prejudice and preference is a question of fact which must be clearly demonstrated by substantial proof. As a general rule there must be a definite showing that the difference in rates complained of is undue and unjust in that it actually operates to the real disadvantage of the complainant. In order to do this it is essential to reveal the specific effect of the rates on the flow of the traffic concerned and on the marketing of the commodities involved, and to disclose an existing and effective competitive relation between the prejudiced and preferred shipper, localities, or commodities. Furthermore, a pertinent inquiry is whether the alleged prejudice is the proximate cause of the disadvantage. Manifestly, the general representations made by witnesses for complainant do not afford convincing proof of the alleged disadvantages under which they and other interests at Philadelphia operate, or that the rate situation is solely responsible therefor. It may be that their conclusions are based on specific facts bearing upon the question of discrimination and prejudice, but the Department cannot accept such conclusions without an examination of the underlying facts upon which they are based, which facts are not of record in this proceeding.

The uniformity of treatment contemplated by the Shipping Act is a relative equality based on transportation conditions only. To justify an order compelling exact equality of rates a complainant must show a substantial similarity in the conditions surrounding the transportation under the rates sought to be equalized. Among the factors to be considered are: The value of the service to the shipper; the interest of the carrier; the relative volume of traffic; the relative cost of the service; the competition as between carriers; and the advantages or disadvantages which inhere in the natural or acquired position of the shippers or localities concerned.

Complainant may be correct in contending that the value of the service to the shipper at New York is greater than to the shipper at Philadelphia, but in this instance it is due largely to the fact that New York is the first port of call. This fact emphasizes the geographical disadvantage of Philadelphia in so far as the route here concerned is involved. The dissimilarity also suggests another: namely, the cost of service. The lack of evidence on this point does not warrant the assumption that there is no difference in the cost of services to New York and Philadelphia. A dissimilarity of conditions with respect to volume of movement is admitted but there is no substantial evidence as to the existence or lack of carrier competition. Complainant's proof on the whole is not convincing that the transportation conditions surrounding the services to New York and Philadelphia are substantially similar.

For the reasons stated above, it is concluded further that the conference agreement under attack is not shown to be unlawful or detrimental to the commerce of the United States.

Upon this record the Department finds that the rates assailed are not shown to be unduly preferential or prejudicial, or unjustly discriminatory; and that the conference agreement under which defendants operate in this trade has not been shown to be detrimental to the commerce of the United States or to be in violation of the Shipping Act, 1916. An order dismissing the complaint will be entered.

DEPARTMENT OF COMMERCE

OFFICE OF THE SECRETARY

WASHINGTON

No. 186

PORT OF PHILADELPHIA OCEAN TRAFFIC BUREAU

v.

THE EXPORT STEAMSHIP CORPORATION ET AL.

ORDER

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Department having, on the date hereof, made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

(Sgd.) DANIEL C. ROPER,
Secretary of Commerce.

MARCH 18, 1936.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 156

CALIFORNIA PACKING CORPORATION

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY ET AL.

Submitted April 7, 1936. Decided May 13, 1936

Rate on canned coffee from Brooklyn, N. Y., to Pacific Coast ports not shown to be unreasonable or unduly prejudicial in violation of the Shipping Act, 1916. Complaint dismissed.

Irving F. Lyons for complainant.

Joseph J. Geary and *Theodore M. Levy* for defendants except Argonaut Steamship Line, Inc., and Isthmian Steamship Company.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

Exceptions were filed by complainant to the report proposed by the Examiner. The conclusions herein are in accord with the recommendations of such report.

Complainant is engaged in roasting and packing coffee at Brooklyn, N. Y. By complaint filed October 22, 1934, it alleges that the rate maintained by defendants for the transportation of ground roasted coffee, in tin cans, in boxes, from Brooklyn to Pacific Coast ports via the Panama Canal, is unjust, unreasonable, and unduly prejudicial. A lawful rate for the future and reparation are sought. Rates are stated in cents per 100 pounds.

Complainant relies upon the following facts: On June 1, 1933, defendants' westbound rate on canned coffee was increased from 55 cents plus 3 percent surcharge, minimum weight 20,000 pounds, to 75 cents plus surcharge. Effective March 21, 1934, this rate was changed to 77.5 cents, surcharge eliminated, and the minimum weight increased to 24,000 pounds. This is the alleged unlawful rate. Effective May 23, 1934, the eastbound rate of 55 cents plus 3 percent surcharge, minimum weight 12,000 pounds, was changed to 56.5 cents per 100 pounds, surcharge eliminated, with no change in the minimum weight.

Defendants' explanation of the different rates for eastbound and westbound transportation of canned coffee is that different circumstances and competitive elements enter into the making of intercoastal rates, the amount of the rate depending largely upon point of origin or destination of the freight, or both. If either point is in the interior, cost of transportation to or from the port is considered. The westbound movement of canned coffee is strictly port-to-port, whereas a great portion of the shipments moving eastbound is destined to points, in some instances, as far inland as Detroit, Michigan. In reaching that territory, movement via intercoastal lines is largely water-and-rail. There are no through or proportional rates on this commodity in the eastbound intercoastal trade and therefore port-to-port rates are maintained which permit a maximum movement into the interior along with whatever movement there might be for consumption at Atlantic ports. For these reasons it was said "if our rate eastbound did not permit us to get coffee going beyond the Atlantic Coast ports of discharge to interior points, we would not handle as much coffee. Therefore, that rate produces a greater volume than it would if it were named strictly for a port-to-port movement."

In further support of the allegation of unreasonableness complainant shows westbound rates in effect upon a number of commodities lower than the rate on canned coffee. Its exhibit shows weights per cubic foot and revenue per cubic ton but no showing is made as to the volume of traffic, value, risk, or other conditions pertaining to transportation of the named commodities. Reference to these rates without a showing of similarity of transportation conditions does not prove unreasonableness of the higher rate on canned coffee.

One of complainant's exhibits is a statement, compiled from Panama Canal records, of the tonnage of coffee moving between Atlantic and Pacific ports during the calendar years 1933 and 1934, which shows the preponderance of the movement each year was westbound. From January through May 1933, an average of 265 tons moved each month; from June 1, when the rate was increased, through December 1933, the average was 266 tons. During 1934, the movement averaged 257 tons per month. The figures for the period September–December 1934, totaling 635 tons, represent complainant's tonnage exclusively, in explanation of which was testimony that "it seems, from September 1934, some of the other people that have been shipping this roasted coffee out here discontinued, and these figures therefore represent the California Packing Corporation tonnage, from that date. Competition was so keen that it drove these other people out of the market, and they did not hope, like we did, to get back the difference in the freight rate by reparation." The identity of such other people, however, was not known and no figures showing complainant's annual shipments were put in evidence.

Illustrative shipments of complainant are of cases containing 12 one-pound cans, each case weighing 17½ pounds. Complainant bears transportation charges and all of its coffee is sold on a delivered basis. Certain competitors maintain coffee roasting and packing plants on the Pacific coast. Wholesale prices of the leading brands are the same and complainant shows that subsequent to the increase in the westbound rate of approximately 3.7 cents on each case, the selling price of its coffee was reduced 12 cents a case, which reduction complainant described as "a competitive price feature" uninfluenced by the level of the intercoastal rate. Since the westbound rate was increased, complainant has absorbed the increase, asserting it is not possible to pass the 21-cent difference in freight rates on to the buyer. Commercial and economic conditions of this character, however, cannot be made the basis of a finding that carriers' rates are unlawful. Prejudice to one shipper, to be undue, must ordinarily be such that it shall be a source of positive advantage to another. The fact that western packers are accorded a lower rate on eastbound shipments of canned coffee than complainant pays on like shipments westbound is not sufficient to sustain the allegation of unlawful prejudice. The evidence negatives any contention that complainant has been unduly prejudiced by the rate attacked.

Upon this record the Department finds that no violation of the Shipping Act, 1916, as alleged has been shown. An order dismissing the complaint and discontinuing the proceeding will be entered.

DEPARTMENT OF COMMERCE

OFFICE OF THE SECRETARY

WASHINGTON

No. 156

CALIFORNIA PACKING CORPORATION
v.
AMERICAN-HAWAIIAN STEAMSHIP COMPANY ET AL.

ORDER

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Department, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed, and that this proceeding be discontinued.

(Sgd.) J. M. JOHNSON,
Acting Secretary of Commerce.

MAY 13, 1936.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 164

CALIFORNIA PACKING CORPORATION

v.

STATES STEAMSHIP COMPANY, ET AL.

Submitted April 15, 1936. Decided May 13, 1936

Rates on canned grapefruit and grapefruit juice from Jacksonville and Tampa, Fla., to Pacific Coast ports, not shown to be in violation of the Shipping Act, 1916. Complaint dismissed.

Irving F. Lyons for complainant and interveners.
Joseph J. Geary and *Theodore M. Levy* for defendants.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

The Examiner's proposed report found there had been no violation of the Shipping Act, 1916, and recommended dismissal of the complaint. Exceptions were filed by complainant, but they show no errors of fact or law.

Complainant is engaged at Tampa, Fla., in canning and shipping grapefruit and grapefruit juice. Its complaint alleges that rates on those commodities from Jacksonville and Tampa to Pacific Coast ports via the Panama Canal are unduly preferential of Jacksonville and shippers therefrom and unduly prejudicial to complainant and the locality of Tampa; also that rates of defendant Gulf Pacific Line (Swayne & Hoyt, Ltd., Managing Owners) are unjust and unreasonable. The Hills Brothers Company of Florida, Florida Grapefruit Canners Association and Tampa Chamber of Commerce, intervened in support of the relief sought.

The only intercoastal service between Tampa and Pacific coast ports is that of Gulf Pacific Line; it does not serve Atlantic ports. At the time of hearing the rate of this defendant was 46.5 cents per 100 pounds, minimum weight 24,000 pounds, to designated Pacific coast terminal ports, rates of 7 cents and 10 cents per 100 pounds in addition being applied to Stockton and Sacramento, respectively, in connection with local river lines. The rate of the other defendants, from Jacksonville, was 40 cents per 100 pounds, minimum weight 24,000 pounds, and applied to all Pacific coast ports, including Stockton and Sacramento.

Canned grapefruit and grapefruit juice shipped from Tampa are sold on the Pacific Coast in competition with the same products shipped from Jacksonville, the difference in freight rates generally being absorbed by packers in the Tampa district. Complainant did not know the origin of its competitors' products and could give no indication of the volume of grapefruit and grapefruit juice moving from Jacksonville. A witness for Gulf Pacific Line testified that twenty or twenty-one canners of grapefruit and grapefruit juice ship through Tampa, but he knew of only two shippers of any volume through Jacksonville. The record shows a material increase each year since 1929 in the volume of grapefruit transported from Tampa to the Pacific Coast by the Gulf Pacific Line and that complainant's shipments from Tampa in the 1933–1934 season exceeded by more than 23,000 cases its shipments during the previous season. In the same period shipments of The Hills Brothers Company from Tampa increased 8,500 cases.

Some evidence was submitted tending to show the difficulty of making sales, due to the necessity of absorbing the difference in rates from Jacksonville and Tampa and the arbitraries of 7 and 10 cents, respectively, to Stockton and Sacramento. In two instances, where absorptions were not made, prospective sales to persons in Sacramento were lost. Complainant was unable to show whether sales were lost to competitors shipping from Jacksonville, Tampa, or other points.

No defendant serves both Tampa and Jacksonville and carriers serving one port have no voice in the establishment of rates from the other port. Undue prejudice under section 16 is not shown when the carriers serving the alleged preferred point do not serve or participate in routes from the alleged prejudiced point for the movement of the traffic involved.

Complainant's only evidence of the unreasonableness of Gulf Pacific Line's rates from Tampa is that the rate from Jacksonville was 40 cents. Defendants' witness testified that the 40-cent rate was a depressed rate established to meet competitive conditions existing in the Atlantic-Pacific trade. With respect to the arbitraries added to make through rates to Stockton and Sacramento it was explained that such arbitraries were added on all traffic from Gulf ports; that any departure from this practice with respect to one commodity would break down the rate structure and make it necessary for the carriers to absorb the arbitraries on all commodities; and that the average rate on all commodities from Gulf ports was so low that the absorption of the arbitraries would not leave the carriers revenue which is compensatory. Comparison of rates of one carrier with rates of carriers in other trades is of little value in the absence of a showing of similarity of transportation conditions. Subsequent to the hearing the rates on canned grapefruit and grapefruit juice from Tampa to designated Pacific Coast terminal ports and the rate from Jacksonville to Pacific Coast ports were changed and are now at the same level. The grounds for complaint thus have been removed in so far as these commodities move to the named terminal ports.

The Department finds that the alleged violations of the Shipping Act, 1916, have not been shown. An order dismissing the complaint and discontinuing the proceeding will be entered.

DEPARTMENT OF COMMERCE

OFFICE OF THE SECRETARY

WASHINGTON

No. 164

CALIFORNIA PACKING CORPORATION

v.

STATES STEAMSHIP COMPANY ET AL.

ORDER

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Department, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed, and that this proceeding be discontinued.

[SEAL] (Sgd.) J. M. JOHNSON,

Acting Secretary of Commerce.

MAY 13, 1936.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 175

AMERICAN CARIBBEAN LINE, INC.

v.

COMPAGNIE GENERALE TRANSATLANTIQUE, ET AL.

Submitted April 4, 1936. Decided May 13, 1936

Complainant's application for admission to membership in The Association of West India Trans-Atlantic Steam Ship Lines, "Islands" Section, not shown to be on equal terms with all other parties thereto as required by section 14a of the Shipping Act, 1916. Complaint dismissed.

Roscoe H. Hupper for complainant.

Geo. H. Terriberry, *G. J. Moraillon*, *Manuel G. Casseres*, and *Hendrik S. Muller* for defendants.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

The examiner's report recommending dismissal of the complaint was not excepted to. The findings recommended by the examiner are adopted herein.

Complainant is a common carrier by water and a citizen of the United States. Defendants are members of The Association of West India Trans-Atlantic Steam Ship Lines, "Islands" Section, hereinafter called "the Association", a conference of foreign steamship lines engaged in the transportation of property between Europe and the Windward and Leeward West India Islands (St. Thomas and east thereof) and the Guianas.

By complaint filed February 6, 1935, it is alleged that complainant has been excluded from admission to the Association upon equal terms with all other parties thereto; that in respect to traffic between European ports and foreign ports in the West Indies and the

Guianas the Association has an arrangement for deferred rebates as defined in section 14 of the Shipping Act, 1916; and that the participation of defendants in the Association places them within the provisions of subsection (2) of section 14a of the Shipping Act, 1916. Complainant prays that if, after due hearing and investigation, it is found that any defendant is a party to any such combination, agreement, or understanding as defined in subsection (2) of section 14a of the Shipping Act, 1916, a certification of such fact shall thereupon be made to the Secretary of Commerce as therein provided.

Section 14a of the Shipping Act, 1916, reads as follows:

> The board upon its own initiative may, or upon complaint shall, after due notice to all parties in interest and hearing, determine whether any person, not a citizen of the United States and engaged in transportation by water of passengers or property—
>
> (1) Has violated any provision of section 14, or
>
> (2) Is a party to any combination, agreement, or understanding, express or implied, that involves in respect to transportation of passengers or property between foreign ports, deferred rebates or any other unfair practice designated in section 14, and that excludes from admission upon equal terms with all other parties thereto, a common carrier by water which is a citizen of the United States and which has applied for such admission.
>
> If the board determines that any such person has violated any such provision or is a party to any such combination, agreement, or understanding, the board shall thereupon certify such fact to the Secretary of Commerce. The Secretary shall thereafter refuse such person the right of entry for any ship owned or operated by him or by any carrier directly or indirectly controlled by him, into any port of the United States, or any Territory, District, or possession thereof, until the board certifies that the violation has ceased or such combination, agreement, or understanding has been terminated.

It is admitted of record that the Association holds out to shippers between ports in Europe and foreign ports in the West Indies and the Guianas an arrangement for a deferred rebate as defined in section 14 of the Shipping Act, 1916. Although the Association agreement refers to St. Thomas, Virgin Islands, the deferred rebate arrangement does not apply to that Island and there is no allegation or showing that it is applied to traffic moving from or to any port of the United States or its possessions.

Complainant maintains a regular fortnightly service between New York, N. Y., and the Virgin, Windward, and Leeward Islands, and the Guianas. Complainant's service was started in October 1934, but it had a predecessor in the same trade. On October 10, 1934, complainant applied for membership in the Association, undertaking to maintain conference rates on cargo to and from European ports with transshipment at New York. A proposal by the Association that the application be amended to exclude traffic to and from Great Britain was declined by complainant and thereafter, on or about December 6, 1934, the Association advised complainant that it was not prepared to extend affiliation to include traffic to and from Great Britain. The record shows that all members of the Association with the exception of defendant Thos. & Jas. Harrison (hereinafter called "Harrison Line") voted in favor of the admission of complainant to affiliated membership in the Association and by informal answer to the complaint, stipulated of record, reiterated their willingness to admit complainant to affiliated membership, but as the agreement governing the Association provides that "applicants for admission to the Association must be unanimously elected in order to obtain membership", the negative vote of the Harrison Line was sufficient to reject the application. The Harrison Line was the only defendant to file a formal answer to the complaint and stood alone at the hearing in defense of the denial of complainant's application. Its objections to the admission of complainant to membership in the Association are substantially as follows: (1) Complainant is not a regular line from Europe serving the West Indies across the Atlantic and, therefore, is not seeking membership in the Association upon equal terms with all other parties thereto; (2) the Harrison Line is concerned in the trade from Great Britain to the British West India Islands, and British Guiana, which trade is domestic in character; and (3) to bring another company into the trade would only serve to increase the existing redundancy of tonnage. This defendant also pleaded by supplemental answer and argued by brief that if section 14a of the Shipping Act, 1916, can, upon the facts in this case, be construed to require the Secretary of Commerce to refuse the defendant the right of entry for its ships into the ports of the United States, then said provision of law is void because it contravenes the terms of the Convention of Commerce and Navigation between the United States and Great Britain of July 3, 1815, and extensions thereof. In view of the findings herein, it is unnecessary to consider this question.

The record contains no reference to British law under which the trade between Great Britain and its possessions in the West Indies and the Guianas is reserved to British vessels, and the plea of redundancy of tonnage is not tenable under the provisions of law applicable to this case.

There remains for consideration the objection that complainant is not a regular line from Europe serving the West Indies across the Atlantic and, therefore, is not seeking membership in the Association upon equal terms with all other parties thereto. All lines in the Association are engaged in the trade between European ports and ports in the West Indies and the Guianas by direct transatlantic service. The agreement provides that for outward cargo each member has the right to fix rates or freight "for its own proper sphere", and those rates are to be strictly observed by other members obtaining traffic from that sphere, either directly or indirectly. The record indicates there is an understanding that each member line will confine its operations to its particular sphere, but is permitted to handle traffic by transshipment between European terminal ports and between terminal ports in the Islands.

The position of defendant Harrison Line that the conference is limited to regular lines from Europe serving the West Indies by direct transatlantic service seems to be well taken. This position is not affected by the fact, relied upon by complainant, that in certain other conferences, associated for administrative purposes with the conference here involved, American lines maintaining transshipment service similar to that of complainant have been admitted to participation as affiliated members, with the Harrison Line voting in favor of such affiliation. The record shows that the relation between such other conferences and the conference involved in this proceeding involves nothing more than an association for the purpose of providing office space, clerical help, and a secretary, with division of the expense among the individual conferences. There is no showing as to the circumstances and conditions under which American lines were admitted to membership in the other conferences referred to, but it was testified that such admissions were acts of grace and not of necessity. It was testified further that the Association involved in this proceeding, during nineteen years existence, has never admitted to membership of any character any but carriers that actually carry transatlantic. The action taken by other conferences in regard to the admission of American lines cannot be regarded as precedents to support a finding that the action of the Association here complained of brings the defendants within the provisions of section 14a (2) of the Shipping Act.

Complainant does not operate any vessels in transatlantic service to and from European ports, but handles shipments to and from such ports on through bills of lading which provide for transshipment at New York. In such cases complainant's agent takes out a local bill of lading with the transatlantic line for the purpose of protecting complainant as to that part of the transportation. It was testified on behalf of complainant that all the steamship lines operating between Europe and New York are agreeable to accepting as the charge for their transportation service, a division of the through rate maintained by the Association for the direct line service. It should be noted, however, that none of these transatlantic lines has joined with complainant in applying for membership in the Association. Complainant desires, as an affiliated member of the Association, to afford a transshipment service between the West Indies and all European ports via New York, using any transatlantic carriers that may be operating between New York and such European ports. The transatlantic portion of the transshipment route between Europe and the West Indies represents in the neighborhood of two-thirds of the entire route, using as a basis for this comparison distances stipulated of record as follows: London to New York, 3,301 miles; New York to St. Kitts, 1,540 miles. It is also of interest to compare this transshipment route of 4,841 miles with the direct route of 3,802 miles also stipulated of record.

Complainant's application for admission to the Association is based on the participation of a number of undisclosed transatlantic lines in a transshipment route substantially longer than the direct route observed by conference lines, with no restriction as to sphere of operations at European terminal ports. The members of the Association operate direct transatlantic services with some limitation of sphere for each line at European ports. Such application therefore is not for admission on equal terms with the members of the Association in accordance with the letter and spirit of the agreement as shown by the record in this proceeding.

Complainant has failed to show that it has been excluded from admission to the Association upon equal terms with all other parties thereto and, therefore, is not entitled to the relief prayed for. An order dismissing the complaint will be entered.

DEPARTMENT OF COMMERCE

OFFICE OF THE SECRETARY

WASHINGTON

No. 175

AMERICAN CARIBBEAN LINE, INC.

v.

COMPAGNIE GENERALE TRANSATLANTIQUE ET AL.

ORDER

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Department having, on the date hereof, made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

(Sgd.) J. M. JOHNSON,
Acting Secretary of Commerce.

MAY 13, 1936.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 370

Gulf Westbound Intercoastal Soya Bean Oil Meal Rates

Submitted May 13, 1936. Decided June 6, 1936

Proposed increased rate on soya bean oil meal from Gulf ports to Pacific Coast ports, found justified. Order of suspension vacated and proceeding discontinued.

M. G. de Quevedo and *Elisha Hanson* for respondents.
W. M. Carney for carriers supporting respondents.
E. H. Thornton, *J. H. Rauhman, Jr.*, *T. C. Burwell*, and *R. V. Craig* for protestants.
Ed. P. Byars for Texas Cottonseed Crushers Association.

Report of the Department

By the Secretary of Commerce:

By schedules filed to become effective February 13, 1936, respondents[1] proposed to increase the rate on soya bean oil meal, in sacks, from United States Gulf ports to United States Pacific Coast ports via the Panama Canal from \$5.50 per net ton, minimum 500 net tons, to \$6.50 per net ton, same minimum. Upon protests filed on behalf of the National Soybean Oil Manufacturers Association, The New Orleans Joint Traffic Bureau, and other interested parties, the operation of the proposed schedules was suspended until June 13, 1936. Certain carriers, formerly members of the United States Intercoastal Conference, operating between Atlantic and Pacific ports intervened in support of respondents. Rates and prices will be stated in amounts per net ton unless otherwise noted.

[1] Luckenbach Gulf Steamship Co., Inc., Swayne & Hoyt, Ltd. (Gulf Pacific Line), Gulf Pacific Mail Line, Ltd., and on-carriers.

The production of soya beans has attained the status of an important commercial crop in the United States only in the last 10 years. From the relatively small acreage of 864,000 acres, from which 12,000,000 bushels were harvested commercially in 1930, the planting increased to about 5,000,000 acres in 1935, producing over 43,500,000 bushels, which is almost three times the crop of 1934. Illinois produces approximately one-half of the crop, Ohio, Indiana, Missouri, and Iowa about one-third, and other States, chiefly Virginia, Tennessee, and North Carolina, approximately one-sixth.

The principal crushing plants are at Decatur, Peoria, and Chicago, Ill., and St. Louis, Mo. The operator at Peoria has a subsidiary plant at Hampton Roads, Va., which at times secures soya beans from mid-western producing areas.

Soya bean oil meal is used mainly in the manufacture of poultry feed. It is shipped in sacks and has a stowage factor of 70 cubic feet. The selling price at the date of hearing was $20.00 f. o. b. Decatur. At San Francisco, Calif., one of the principal markets, the delivered price was $28.50 to $29.00, which is from $2.42 to $3.04 less than the f. o. b. price at Decatur plus the total transportation charges including the proposed rate of $6.50.

The history of the westbound rate on soya bean oil meal from the Gulf to the Pacific is not sufficiently developed of record to show the rate prior to June 2, 1933, the effective date of the Intercoastal Shipping Act, 1933. On that date the rate became $4.50, minimum 500 tons. Later a three per cent surcharge was added, increasing the rate to $4.63½, which remained in force until October 3, 1935. In the general rate advance following the decision in *Intercoastal Investigation, 1935*, 1 U. S. S. B. B. 400, respondents proposed to establish the following rates: 36 cents per 100 pounds, minimum 40,000 pounds, density not to exceed 60 cubic feet; and 41 cents per 100 pounds, minimum 40,000 pounds, density over 60 cubic feet, to become effective October 3, 1935. This increase was protested, and rather than risk suspension of all increased rates respondents established the present rate of $5.50, effective October 3, 1935.

On basis of the suspended rate, the through rate and charges over the rail-ocean route from Chicago to San Francisco would be $11.42, consisting of the following factors: $4.50 rail rate plus 20 cents emergency charge, $6.50 ocean rate, 7 cents marine insurance, and 15 cents wharfage at San Francisco. From Decatur the rail-barge-ocean rate and charges would be $11.54, which, according to the record, consists of the following factors: $3.90 rail-barge rate plus 27 cents emergency charge, 50 cents transfer charge at Cairo, Ill., 15 cents tollage at New Orleans, $6.50 ocean rate, 7 cents marine insurance, and 15 cents wharfage at San Francisco.

The record indicates that there was no intercoastal movement of soya bean oil meal through Gulf ports until after October 3, 1935. Since then respondents have transported about six 500-ton lots, and one 2,000-ton shipment moved via the S. S. *Suwied*, a non-conference carrier. There has been a more or less regular movement of this commodity since 1932 from Norfolk, Va., which traffic is, to some extent, competitive with similar traffic through New Orleans. However, there does not appear to be any water carrier competition for the intercoastal traffic from mid-western points.

Respondents call attention to their need for additional revenue as disclosed in the recent intercoastal investigation, and endeavor to justify the increased rate upon the following grounds: (1) The cost of service justifies a higher rate; (2) there should be a parity of rates with Atlantic intercoastal carriers which have already established the rate proposed; and (3) the proposed rate is in line with other comparable rates.

Cost figures purporting to cover the out-of-pocket cost of operation per ton during 1934 of a representative ship in the trade, the S. S. *Katrina Luckenbach*, were introduced by respondents. For stevedoring there was included a cost of $1.00 each for loading and unloading, which figure is derived from respondents' present stevedoring contract on brewers grain at New Orleans. The Panama Canal toll is included at 87.5 cents. For competitive reasons the cost of fuel oil, crew wages, subsistence of crew, repairs on ship, and insurance on hull and machinery is not itemized. The total cost amounts to $5.61½. It was testified that operating costs have increased from 40 to 50 per cent in the last 18 months due to labor troubles and increased commodity prices.

This cost figure, as applied to soya bean oil meal, represents a cost of 8 cents per cubic foot, whereas the proposed rate would yield 9.3 cents. Ten cents per cubic foot is said to be the minimum compensatory earning. Protestants disparage this cost study, stating that it is merely a theoretical calculation not supported by underlying data, and that the ship selected is older and larger than the average in the trade and therefore more expensive to operate. The latter contention is denied by respondents. Protestants also point out that the stevedoring rate on cottonseed meal of 75 cents per ton could properly have been used instead of the charge on brewers grain.

Both shippers and carriers agree that a parity of rates as between Gulf and Atlantic ports is desirable, but they differ as to the manner of accomplishing this result. It appears that the same rates applied from these ports until October 3, 1935, when alternative rates of 36 cents and 41 cents per hundred pounds, as sought to be established then by Gulf carriers, became effective from Atlantic ports after denial of request for their suspension. Competitive reasons are said to have forced the Atlantic lines to establish on January 7, 1936, the present rate of $6.50, minimum 500 net tons. Protestants contend that parity should be established on basis of a rate determined primarily by the traffic and transportation conditions obtaining from Gulf ports, inasmuch as the preponderant movement, both present and prospective, is tributary to those ports. New Orleans interests urge that in determining the proper relations as between Gulf and Atlantic ports due consideration should be given to the fact that the service from the Gulf is slower, the Gulf lines have a better balanced cargo in and out, and the rates therefrom are more directly affected by transcontinental rail competition.

Respondents compare the proposed rate with westbound rates on other low-grade commodities moving regularly over their lines in heavy volume as follows:

	Rate per net ton	Stowage factor	Revenue per cu. ft.
			Cents
Soya Bean Oil Meal	$6.50	70	9.3
Soda Ash	6.50	30	21.7
Phosphate Rock	6.20	40	14.7
Bone Meal	8.00	59	13.5
Rosin	10.30	70	14.7
Wrapping Paper	11.30	80	14.1
Pulpboard	9.30	100	9.3

The value of these commodities is not disclosed. Respondents also refer to the following coastwise rates from New Orleans to Philadelphia and Boston: Corn gluten feed, corn gluten meal, corn oil meal, and soya bean oil meal, $4.00, minimum 20 tons, plus 20 cents emergency charge; bran and brewers dried grain, $4.60, minimum 18 tons.

Protestants give emphatic expression to their objection against the proposed increase, stating that it would prevent them from meeting the competition on the Pacific Coast of soya bean oil meal imported principally from points in the Orient. While preferring to sell at the higher prices obtainable in eastern markets, they say that the greatly increased production of domestic soya beans makes imperative an outlet for soya bean oil meal to the markets on the Pacific Coast. During 1934, 30,193 tons were imported to the United States, 23,538 of which went to the Pacific Coast; and in 1935, 53,731 tons were imported, 25,781 tons going to the Pacific Coast. The declared value of the meal imported to the Pacific Coast averaged

$19.20 in 1934, and $20.30 in 1935. The import duty was $6.00 per ton. The rate from the Orient to San Francisco was $3.60. In March 1935, the quoted price at San Francisco said to apply on imported soya bean oil meal was $30.75 when the f. o. b. price at Decatur was $38.45. This was prior to the advent on the market of the new crop, and the supply was limited. Protestants testified that they were unable to meet this competition in the first three quarters of 1935, but made a sale of 1,500 tons at San Francisco in September 1935, at $28.25, which price represented a shrinkage of 10 cents a ton under their regular delivered price, including the f. o. b. Decatur price of $19.00 per ton. Protestants also face competition from sesame meal which is manufactured at Los Angeles from sesame seed imported from the Orient duty free. At San Francisco the price of sesame meal at the time of the hearing ranged from $26.50 to $27.00 per ton. At North Pacific ports soya bean oil meal comes into competition with corn.

Protestants lay considerable stress upon a comparison of the proposed rate with the westbound rate on bran, brewers dried grain, corn gluten feed, corn gluten meal, and corn oil meal, which articles are now grouped with soya bean oil meal at the present rate of $5.50. These commodities compare more or less favorably with soya bean oil meal as to price, stowage, use, and general transportation characteristics. They are also grouped with soya bean oil meal by rail carriers at the same classification and the same commodity rates from mid-western producing points to the Pacific Coast. Respondents assert that they intend to increase these rates to the level of any increased rate approved on soya bean oil meal. Moreover, they testified that, with the exception of a light movement of corn gluten feed prior to October 3, 1935, these commodities have never moved from the Gulf via their lines, and consequently the rates are merely paper rates.

Reference is also made by protestants to the following rates between Gulf and Pacific ports:

WESTBOUND	Rate per net ton	Minimum net tons	Stowage factor
Corn, bulk	$3.50,[1] $9.00[2]	500	47
Oats, bulk	$3.75,[1] $9.25[2]	500	55-72
Clean rice	$6.50	12	50
EASTBOUND			
Flour	$6.00-$7.20	12	
Oats	$5.40	500	55-72

[1] Owners' risk. [2] Ship's risk.

A witness for the New Orleans interests testified to a movement of corn and oats westbound, but he had no personal knowledge to that effect. At these rates the shipper absorbs the cost of loading and unloading and is also subject to a demurrage penalty. Respondents explain that the rate on clean rice is depressed on account of rail competition and is in line for an increase.

Protestants instance rates on numerous kinds of meal and oil cake from Gulf ports to ports in the United Kingdom and continental Europe which range from $3.20 to $10. The rate on soya bean oil meal is shown as $4.40 to United Kingdom ports and $4.00 to continental European ports. One of protestants' witnesses testified that his company had made shipments to Antwerp, Rotterdam, and Amsterdam at the $4.00 rate. The record indicates that in the matter of balanced cargo in both directions, operating conditions are more favorable to respondents than to Gulf-transatlantic lines which depend largely upon a one-way cargo, but respondents maintain that this is more than offset by the Panama Canal tolls paid by the intercoastal carriers and their higher operating expenses which are due primarily to higher labor costs. The meagre evidence as to similarity of traffic and transportation conditions affecting the compared rates minimizes the importance that should be attached to the comparison. Furthermore, there is considerable doubt as to the stability of the rates to these foreign ports.

The all-rail transcontinental rate on soya bean oil meal from the principal producing points to the Pacific Coast is 76.5 cents per 100 pounds or $15.30 per net ton, minimum 25 tons. Recently the rail lines attempted to reduce this rate to 55 cents per 100 pounds or $11 per net ton, minimum 40 tons, to meet barge-and-ocean and rail-barge-and-ocean rates, and to permit domestic soya bean oil meal to compete with the imported meal at Pacific Coast points. This reduced rail rate of $11 would have been lower than both the rail-ocean charge of $11.42 and the rail-barge ocean charge of $11.54, the ocean rate being included at $6.50. However, the rate of 55 cents was suspended and found not justified by the Interstate Commerce Commission because it concluded that such rate would unduly prejudice cottonseed cake and meal and the shippers thereof. That Commission expressed the view that the rate would not be prejudicial or otherwise unlawful if it were also established on cottonseed cake and meal. The establishment of the 55-cent rate would undoubtedly affect the value of respondents' service to the shipper. Apart from that, however, such rate, established under the competitive pressure heretofore mentioned, would afford no criterion of a maximum reasonable rate for the services here in question.

It was testified that the general rate advance, effective October 3, 1935, following the intercoastal investigation, amounted to an increase of approximately 12 percent. Protestants point out that the present rate represents an increase of 18 percent over the voluntarily established rate of \$4.63½, and argue that an advance of 40 percent, as manifested by the proposed rate of \$6.50, is clearly excessive. In this connection respondents indicated that the increases on the various commodities were not uniform, and that the advance proposed here is not out of line with those made on certain other commodities. Ordinarily, the voluntary establishment of a rate raises a presumption of its reasonableness, but such an inference does not necessarily follow when there is no movement under such rate. Furthermore, the fundamental question is whether the proposed rate is reasonable regardless of the amount of the advance.

As a general rule, a maximum reasonable rate should in principle be no lower than the cost of service to the carrier plus a reasonable profit, and no higher than the reasonable worth of the service to the shipper. The value of respondents' evidence in regard to the cost of service is necessarily impaired by the fact that no attempt was made to itemize all of the cost factors; also the failure to submit the underlying supporting data from which the accuracy of the figures can be tested. Nevertheless, the cost study affords, in a general way, a rough guide in view of the increased operating expenses since 1934, and considering the fact that ordinarily substantial additions should be made to out-of-pocket cost in order to reflect all the cost that may be fairly allocated to the service plus a reasonable margin of profit to the carrier. But even though the study were unusually comprehensive and exact, the cost developed thereby, though entitled to considerable weight, could not be accepted as controlling, since due consideration must also be given to the value of the service to the shipper.

The competition met by protestants in the sale of soya bean oil meal on the Pacific Coast may be considered only in so far as it is a factor affecting the value of the service to the shipper. The Department has no authority to reduce a rate primarily to protect an industry from foreign or domestic competition. *Atchison, T. & S. F. Ry Co.* v. *Interstate Commerce Commission*, 190 Fed. 591. That function lies within the managerial discretion of the carrier.

The value of the service to the shipper in a general sense is the ability to reach a market at a profit. The commodity in question has moved rather freely from the Gulf under the present rate. Also, shipments have moved from Norfolk at a rate of \$5.66½, minimum 50 net tons, prior to October 3, 1935, and \$7.20, minimum 12 net tons, subsequent thereto. Since reducing their rate to \$6.50, the Atlantic lines have received requests from shippers of this commodity for rates ranging from $5.20 to $6.00. There was an all-rail movement of 50 tons from Decatur to Portland, Oregon, at a rate of $15.30. It was testified that large consumers on the Pacific Coast would pay $1.00 more per ton on shipments via rail than over the water route. This differential under the all-rail rate would produce a rate of $14.30. It is of interest to compare this figure with the aggregate charges via Gulf ports of $11.42 and $11.54, including the ocean rate at $6.50. However, the lack of an appreciable all-rail movement lessens the significance of this comparison.

The possibility of reaching a market at a profit depends not only on the measure of the rate, but also on the amount by which a shipper can shrink his base price to meet competition. Apparently protestants fix the price f. o. b. Decatur. They have shrunk this price in certain instances, but the record is silent as to the lowest profitable base price. There is no showing of what it costs to produce the commodity in question, or the margin of profit on which the operations are conducted. Although it is not clear what relation the declared value of imported meal has to the selling price, it is worthy of note that the declared value of soya bean oil meal imported on the Pacific Coast in 1935, plus the duty and freight rate, amounts to $29.90, or $1.65 more than the delivered price one protestant was able to make in September 1935.

Upon all the facts of record and the argument based thereon, it is concluded that the suspended schedules have been justified.

The Department finds that the suspended schedules have been justified. An order will be entered vacating the order of suspension and discontinuing this proceeding.

DEPARTMENT OF COMMERCE

OFFICE OF THE SECRETARY

WASHINGTON

No. 370

Gulf Westbound Intercoastal Soya Bean Oil Meal Rates

Order

It appearing, That by order dated February 10, 1936, the Department entered upon a hearing concerning the lawfulness of the rates, charges, regulations, and practices stated in the schedules enumerated and described in said order, and suspended the operation of said schedules until June 13, 1936;

It further appearing, That a full investigation of the matters and things involved has been made and that said Department on the date hereof has made and filed a report containing its findings of fact and conclusions thereon which report is hereby referred to and made a part hereof, and has found that respondents have justified the schedules under suspension;

It is ordered, That the order heretofore entered in this proceeding, suspending the operation of said schedules, be, and it is hereby, vacated and set aside as of June 12, 1936, and that this proceeding be discontinued.

(Sgd.) Ernest G. Draper,
Acting Secretary of Commerce.

June 6, 1936.

DEPARTMENT OF COMMERCE

UNITED STATES SHIPPING BOARD BUREAU

No. 412

IN THE MATTER OF

MODIFICATION NO. 3 OF NORTH ATLANTIC CONTINENTAL FREIGHT CONFERENCE AGREEMENT

(United States Shipping Board Bureau Agreement No. 4490–3)

Submitted June 12, 1936. Decided July 14, 1936

Modification of conference agreement found to be unjustly discriminatory and unfair as between carriers, and detrimental to commerce of the United States. Modification ordered disapproved and cancelled, and proceeding discontinued.

M. G. de Quevedo for American Diamond Lines, Inc.; *J. Newton Nash* for Compagnie Maritime Belge (Lloyd Royal) S. A.; *Roscoe H. Hupper* for N. V. Nederlandsch-Amerikaansche Stoomvaart Maatschappij; *J. Sinclair* for North Atlantic Continental Freight Conference; *J. J. Moore* for United States, Department of Commerce (Yankee Line); *Thor Eckert* for Arnold Bernstein Schiffahrtsgesellschaft m. b. H. and Red Star Linie G. m. b. H.; and *J. E. Waldorf* for Hamburg-Amerikanische Packetfahrt Actien Gesellschaft.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

Respondents waived the filing of briefs and a proposed report, and argued the case before the examiner at the hearing.

This proceeding is an investigation into and concerning Modification No. 3 to North Atlantic Continental Freight Conference Agreement (United States Shipping Board Bureau Agreement No. 4490). It was instituted by the Department following a petition of American Diamond Lines, Inc., for cancellation of Modification No. 3 under section 15 of the Shipping Act, 1916. All carriers parties to

Agreement No. 4490, as modified, were made respondents[1] in the proceeding. A hearing was held in New York, N. Y., on June 12, 1936.

Respondents are common carriers by water in foreign commerce engaged in transportation between North Atlantic ports of the United States and Canada, Hampton Roads/Montreal Range, and ports in Belgium, Holland, and Germany. The issues of this proceeding relate largely to the eastbound traffic of the so-called Western Group, which consists of Black Diamond serving Antwerp and Rotterdam, Holland-America serving Rotterdam, and Lloyd Royal, Red Star, and Arnold Bernstein serving Antwerp, the latter transhipping unboxed automobiles, etc., to Rotterdam and Amsterdam since Modification No. 3 became effective. The other respondents, with the exception of three lines serving only Canada in the westbound trade, comprise the Northern Group and generally serve German ports. They apparently have only a nominal interest in the immediate question involved. Respondents, with the exception of the Canadian lines, operate westbound under the Continental North Atlantic Westbound Freight Conference (Agreement No. 70). Strictly speaking, the group designations apply only in connection with the westbound trade of respondents, but are used herein for convenient reference. Respondents in both groups, including the Canadian lines, are members of the North Atlantic Continental Freight Conference under Agreement No. 4490, which relates only to eastbound traffic.

Prior to the change in Agreement No. 4490 by virtue of Modification No. 3, the applicable tariff rules issued pursuant to the agreement, except in certain instances not here material, provided that all charges and expenses beyond customary port of call should be charged to the shipper. There is no allocation of ports under the agreement. As an inducement to Arnold Bernstein to refrain from calling direct at Rotterdam and for other reasons, about which there is considerable controversy in the record, all respondents agreed to permit Arnold Bernstein to tranship unboxed automobiles and related articles at Antwerp when destined to Rotterdam or Amsterdam and to absorb all charges and expenses beyond Antwerp. This

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[1] American Diamond Lines, Inc. (Black Diamond Lines); Baltimore Mail Steamship Company, Inc. (Baltimore Mail Line); Arnold Bernstein Schiffahrtsgesellschaft m. b. H. (Arnold Bernstein Line); Canadian Pacific Steamships, Ltd.; Compagnie Maritime Belge (Lloyd Royal) S. A.; Ellerman's Wilson Line, Ltd. (Ellerman's Wilson Line); Hamburg-Amerikanische Packetfahrt Actien Gesellschaft (Hamburg-American Line); Inter-Continental Transport Services, Ltd. (County Line); N. V. Nederlandsch-Amerikaansche Stoomvaart Maatschappij "Holland-Amerika Lijn" (Holland America Line); Norddeutscher Lloyd (North German Lloyd); Red Star Linie G. m. b. H. (Red Star Line); United States Lines Company (United States Lines); United States, Department of Commerce (Yankee Line). Respondents are hereinafter referred to by their trade names appearing in parentheses following their corporate titles.

agreement is embodied in Modification No. 3, approved by the Department February 28, 1936, which reads as follows:

> All such freights and other charges shall be the same via the vessels of all parties, except that on shipments of unboxed automobiles, chassis, and trucks on wheels destined to Rotterdam or Amsterdam on vessels of Arnold Bernstein Schiffahrtsgesellschaft m. b. H. rates to Rotterdam and Amsterdam may be applied on the shipments to Rotterdam and Amsterdam moving under through bills of lading via Antwerp.

Black Diamond and Lloyd Royal state: (1) That this exclusive transhipping privilege accorded to Arnold Bernstein is detrimental to their interests; (2) that they agreed to it only in consideration of a mutual understanding existing among the Western Group members that an additional agreement would be executed concerning westbound traffic; and (3) that Holland-America, to whom the transhipping arrangement is advantageous, now unjustly refuses to sign such proposed westbound agreement which, among other things, would restrict its service to Rotterdam. Wherefore, cancellation of the modification is requested, failing which Black Diamond states that it will withdraw from the conference. Lloyd Royal indicates that it will do likewise and extend its service to Rotterdam.

A brief statement of the situation confronting the Western lines in December 1935 and a general idea of their several objectives will serve to clarify the negotiations culminating in Modification No. 3. There was a question of whether a new agreement would be negotiated for 1936 covering westbound cargo from the Rotterdam/Antwerp Range, including an allocation of ports. Also, the matter of a new pool agreement for the Western lines, to replace No. 223–E which had expired, was pending. Finally, the lines were faced with the question of how to deal with the Arnold Bernstein transhipping situation.

Prior to its admission to the eastbound conference Arnold Bernstein transhipped unboxed automobiles at Antwerp to Rotterdam, absorbing the transhipping rates and charges. After its admission to the conference it could no longer make such absorptions. It therefore discontinued this service and began to call at Rotterdam direct. Up to this time its eastbound cargo had been confined to unboxed automobiles and related cargo. In order to offset the expenses for direct calls at Rotterdam, it decided, apparently in December 1935, to expand its service to include general cargo to and from Dutch ports. Holland-America was emphatically opposed to this, but as an alternative was disposed to agree to the transhipping arrangement at Antwerp, which was also satisfactory to Arnold Bernstein and Red Star. Black Diamond and Lloyd Royal, as in the past, were opposed to this alternative.

As to the westbound trade, Black Diamond and Lloyd Royal were opposed to a pooling by the members of the Western Group among themselves, but favored a westbound agreement which would allocate ports, and were willing to enter a pool agreement between the Western Group and the Northern Group, on the condition that the distribution of overcarryings or undercarryings of the Western Group be divided among the members of that group upon the basis of their actual pool contributions. Holland-America, Arnold Bernstein, and Red Star favored a pool agreement for the Western Group. Moreover, Holland-America would not consider any westbound agreement until definitely assured that Arnold Bernstein would not serve Rotterdam direct with general cargo.

After preliminary negotiations it appears that on January 13, 1936, at a meeting at Antwerp all parties agreed to the transhipping arrangement which later became Modification No. 3; also to admitting Arnold Bernstein and Red Star as members of a proposed westbound agreement which would allocate ports and a group pool agreement with the Northern Group. As a result of this understanding the North Atlantic Continental Freight Conference, on February 6, 1936, unanimously approved Modification No. 3, which, as stated, was later approved by the Department on February 28, 1936. Shortly thereafter a pool agreement was negotiated between the Western and Northern Groups, but up to the present Black Diamond and Lloyd Royal have refused to sign it, apparently because of the situation that has arisen in connection with Modification No. 3.

Tentative drafts of the understanding of January 13 were prepared and discussed at later meetings of the Western lines, and on March 6, 1936, at Antwerp, the Western lines agreed, among other things: (1) To allocate ports restricting Holland-America to Rotterdam, Arnold Bernstein, Red Star, and Lloyd Royal to Antwerp, and Black Diamond to Rotterdam and Antwerp, subject to the exception in Modification No. 3 as to Arnold Bernstein, and (2) to distribute the group's overcarryings or undercarryings under the Western Group-Northern Group pool on the relative basis of the actual contributions of the individual lines.

Despite the agreed allocation of ports, however, Holland-America announced its intention to carry parcels of grain to Antwerp. Although there is no mention of grain traffic in the minutes of the meetings, it appears from the record that there was no objection to Holland-America's carrying full cargoes of grain to Antwerp. But Holland-America asserts that there was also a tacit agreement as to its right to carry parcels of grain. At this time Holland-America had booked several loads of grain from Boston to Antwerp, notice of which, coupled with Lloyd Royal's objection, apparently reached the home office in Holland about March 4. Holland-America insists on the right to carry grain to Antwerp despite the proposed agreement as to port allocation. Furthermore, it contends that the term "cargo" used in setting forth the scope of the port allocation in the proposed agreement does not include grain, apparently basing this contention solely upon the fact that grain is frequently an "open" item, or a commodity on which conferences do not fix rates. On the other hand, there is general testimony to the effect that it is a custom among conference carriers to respect the port rights of the individual members.

Because of the refusal of Black Diamond and Lloyd Royal to concede the right to carry parcels of grain without their permission, Holland-America, as early as May 12, 1936, signified its intention not to sign the proposed westbound agreement of the Western Group. Black Diamond and Lloyd Royal seriously question the good faith of Holland-America in these negotiations, asserting that after eliminating Arnold Bernstein as a competitor at Rotterdam, Holland-America, through the pretense of an unrestricted right to carry parcels of grain to any port, is attempting to enter the overtonnaged Antwerp trade without regard to the port rights of the Antwerp lines. The grain traffic to Antwerp is an important item to the Antwerp lines.

Finally, Black Diamond and Lloyd Royal attempted to secure the rescission of Modification No. 3 by the North Atlantic Continental Freight Conference, but failed at its meeting on May 7, 1936, through the adverse vote of Holland-America which was concurred in later by Arnold Bernstein and Red Star. The Northern Group carriers took a neutral position and did not vote.

The foregoing résumé of the circumstances and conditions surrounding the negotiation of Modification No. 3 indicates rather conclusively that the acquiescence of Black Diamond and Lloyd Royal to the transhipping arrangement was predicated chiefly on their understanding that Holland-America was ready to join in a new westbound working agreement. Whether Holland-America was justified in refusing to execute such an agreement need not be decided here inasmuch as the principal issue is whether the modification is unjustly discriminatory or unfair as between carriers or shippers or operates to the detriment of the commerce of the United States, or is in violation of the Shipping Act, 1916.

A witness for Lloyd Royal testified that the modification is particularly discriminatory and unfair to that line in that it gives Arnold Bernstein a preferential advantage in the solicitation of traffic. Where a shipper has both unboxed automobiles for Rotterdam and cargo for Antwerp he would naturally patronize Arnold Bernstein to the exclusion of Lloyd Royal, who is not permitted to offer transhipping privileges at the Rotterdam rate. It is contended that when the same shipper later offers cargo for Antwerp only, Arnold Bernstein has the natural commercial advantage over Lloyd Royal because of the prior contact and transactions. The witness also testified that Arnold Bernstein, freed from the necessity of calling direct at Rotterdam, is able to offer a better Antwerp service, thus intensifying the competition at that port.

A witness for Black Diamond testified that the modification is discriminatory and unfair to that line because of the competitive advantage it gives Arnold Bernstein. Generally speaking, Black Diamond's sailings from New York to Antwerp are on the 5th, 15th, and 25th of the month, and to Rotterdam on the 10th, 20th, and 30th. Therefore, if it had the same transhipping privilege as Arnold Bernstein it could offer service to Rotterdam on unboxed automobiles six times a month instead of three. Arnold Bernstein carries the greater portion of this traffic, for which there is keen competition among the Western lines.

No traffic studies were submitted to show that Black Diamond or Lloyd Royal had lost any shipments on account of the modification, but these two carriers contend that such evidence, which would take considerable time to compile, is unnecessary when an agreement, on its face, is patently unfair and discriminatory.

There is no direct testimony in the record in support of the lawfulness of the modification under section 15 of the Act. Holland-America's testimony was confined to an effort to justify its refusal to sign the westbound agreement on account of the dispute over grain to Antwerp, and to show that such agreement had no connection with Modification No. 3. Arnold Bernstein offered no testimony. There is an admission by Black Diamond that in one respect the modification has been of benefit to it by indirectly keeping Arnold Bernstein out of Rotterdam with direct calls and with cargo other than that covered by the modification.

Summed up, the situation, briefly, is this: Originally, under Agreement 4490 all of the Western lines were upon an equal footing. Now, Arnold Bernstein is given a distinct competitive advantage over Black Diamond and Lloyd Royal through their concessions under Modification No. 3 made under the assumption of a consideration which never materialized.

The Department finds that Modification No. 3 of North Atlantic Continental Freight Conference Agreement (United States Shipping Board Bureau Agreement No. 4490–3) is unjustly discriminatory and unfair as between carriers and detrimental to the commerce of the United States. An order will be entered disapproving and cancelling said modification and discontinuing this proceeding.

DEPARTMENT OF COMMERCE
OFFICE OF THE SECRETARY
WASHINGTON

No. 412

IN THE MATTER OF

MODIFICATION NO. 3 OF NORTH ATLANTIC CONTINENTAL FREIGHT CONFERENCE AGREEMENT

(United States Shipping Board Bureau Agreement No. 4490–3)

ORDER

It appearing, That by order dated May 29, 1936, the Department initiated an investigation into and concerning Modification No. 3 of North Atlantic Continental Freight Conference Agreement (United States Shipping Board Bureau Agreement No. 4490–3);

It further appearing, That a full investigation of the matters and things involved has been made and that said Department on the date hereof has made and entered of record a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof, and has found that said modification is unjustly discriminatory and unfair as between carriers and detrimental to the commerce of the United States;

It is ordered, That said modification be, and it is hereby, disapproved and cancelled and this proceeding discontinued.

[SEAL]

(Sgd.) DANIEL C. ROPER,
Secretary of Commerce.

JULY 14, 1936.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 120

SEAS SHIPPING COMPANY, INC.

v.

AMERICAN SOUTH AFRICAN LINE, INC., ET AL.

Submitted May 28, 1936. Decided August 1, 1936

Defendants' vessels operated from North Atlantic ports of the United States to South and East Africa not shown to be fighting ships in violation of section 14 of the Shipping Act, 1916; provisions of section 14a found not applicable.
Defendants' denial of complainant's application for participation in rate-fixing agreement and modification of rotation of sailings agreement found justified.
Justification for disapproving, canceling, or modifying rate-fixing agreement (3578) and rotation of sailings agreement (3578–A), or pooling agreement (3578–B) not shown.

Frank V. Barns and *Richard F. Weeks* for complainant.
Cletus Keating and *Roger Siddall* for defendants.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

Exceptions were filed by all parties to the report of the examiner, and the case was orally argued. The conclusions herein differ somewhat from those proposed by the examiner.

Complainant, a corporation organized in 1920 under the laws of New York, is engaged in the transportation of property from New York, N. Y., and Baltimore, Md., to ports in South and East Africa. Defendants,[1] except American South African Line, Inc., also a New York corporation, are foreign corporations, each with an agent in

[1] American South African Line, Inc.; The Clan Line Steamers, Ltd.; Deutsche Dampfschifffahrts Gesellschaft Hansa (Hansa Line); Ellerman & Bucknall Steamship Co.; Houston Line (London) Ltd.; Prince Line, Ltd.; and The Union-Castle Mail Steamship Co., Ltd.

New York City, who, for many years prior to complainant's entrance into that trade, engaged in such transportation from New York, N. Y., and occasionally from other Atlantic coast ports of the United States. Complainant and defendants are common carriers by water in foreign commerce subject to the Shipping Act, 1916.

American flag participation in this trade began with the establishment in 1919 by the United States Shipping Board of a service under the trade name "American South African Line." Effective February 1, 1925, and until January 1926, the American South African Line maintained monthly sailings from North Atlantic ports of the United States under agreements with the foreign defendants which had been negotiated on behalf of the United States by the United States Shipping Board Emergency Fleet Corporation and approved by the United States Shipping Board under the provisions of section 15 of the Shipping Act, 1916. In January 1926 the American South African Line and the vessels operated in its service were sold to defendant American South African Line, Inc., organized for the purpose of purchasing the line.

Defendants now operate in the outbound trade as a conference under United States Shipping Board Bureau Agreement No. 3578, approved by the Department of Commerce October 22, 1934, pursuant to section 15 of the Shipping Act, 1916, their purpose, as stated in article 1 of that agreement, being:

> * * * to promote commerce from New York and other United States Atlantic coast ports (from Portland, Maine, to Key West, inclusive) at which inducement offers to west, southwest, south and east African ports (from Lobito to Mombasa, both inclusive) and including the islands of St. Helena, Ascension, Madagascar, Reunion, and Mauritius, for the common good of shippers and carriers by establishing and maintaining agreed rates and charges for the transportation of merchandise and agreed classifications, regulations, and practices in connection therewith.

They operate with a joint tariff of rates covering all sailings made by them from the United States ports to the African ports here involved. Defendants also have an agreement (no. 3578–A) for rotation of sailings out of New York, article 2 of which provides that:

> If not more than 48 sailings per year are maintained the American South African Line, Inc., shall have 1 sailing each calendar month. If the trade should warrant the maintenance of more than 48 sailings per year the lines shall confer with a view to making suitable addition to or modification of this agreement.

During the life of this agreement and for some time prior thereto, in no one year have there been more than 48 sailings. After deducting the minimum of 12 sailings allotted the American South African Line, the sailings allotted the foreign line members are divided by the agreement into seven equal shares, the Union-Castle Mail Steamship Co., Ltd., having two shares, the other foreign lines one share each. Article 5 of the agreement further provides that:

> The parties shall take their turn as nearly as may be in regular rotation, subject to the provisions of article 2, but turns shall be exchanged as may be necessary to meet the exigencies of trade. Equal time shall be allowed on berth for each vessel sailing and two vessels shall not be on berth at the same time except by consent.

There is also an agreement for pooling of revenue (no. 3578–B) to which only the foreign defendant lines are parties.

Traffic originating in the United States and destined to south and east African ports, except that exported through Pacific coast ports, moves through North Atlantic and Gulf ports of the United States, and to a considerable extent through Montreal, Quebec, St. John, New Brunswick, and Halifax, Nova Scotia. An investigation of conditions made by complainant disclosed that in the latter part of 1934 and early 1935 exports to the destinations involved had increased considerably over 1932. Automobiles of United States manufacture were moving in large volume through Montreal and New Orleans, La., ports beyond the scope of the above described agreements, and complainant felt that an additional service from United States North Atlantic ports would attract such shipments and also shipments of other commodities moving through Canadian and Gulf ports. Complainant owned four vessels suitable for the trade, which at that time were not in active operation, and on April 18, 1935, it announced its service, under the American flag, with monthly sailings from New York and Baltimore, beginning June 22, 1935. At the time of hearing six consecutive monthly sailings had been made.

Complainant's desire to become a member of the conference was first expressed at a meeting with the secretary thereof on April 30, 1935. Other meetings subsequently took place during which it was stated on defendants' behalf that in view of the denial of an application of the Kerr Steamship Co., operating Silver Line vessels, for conference membership it would be inconsistent to admit complainant. The conditions upon which the Kerr Steamship Co. desired to participate in the conference were not disclosed. In discussing the situation at these meetings complainant announced its desire and willingness to operate at rates no lower than the rates of defendants. Requests for permission to present personally and discuss the matter with members of the conference at its regular meeting were denied, but complainant was advised it might submit a formal application. Accordingly, on June 7, 1935, a written application to become a party to agreement no. 3578 and a member of the conference was submitted in which it was stated:

In making this application, the Seas Shipping Co., Inc., realizes that if it is accepted as a member of the conference, it will be necessary to amend the agreement for rotation of sailings in the outbound South African trade, United States Shipping Board agreement no. 3578–A * * *. The Seas Shipping Co., Inc., asks that it be allowed to become a member of the conference and have one sailing each calendar month, and upon the same terms and conditions as provided for the American South African Line, Inc., by * * * agreement no. 3578–A * * *.

At the hearing when asked what amendment to agreement no. 3578–A would be necessary to meet the conditions of its application, complainant replied:

If we were admitted into the conference they would have to give us free loading time the same as other members of the conference enjoyed. * * * with our being in there it would mean the conference might be sailing a boat every 5 days instead of every 7 days.

Agreement no. 3578–A gives the American South African Line, Inc., a minimum of 12 sailings each year, with equal loading time on berth for each sailing free of competitive loading by other conference vessels, which, based upon the estimated total of 48 conference sailings, would be approximately 7 days. Complainant's application, therefore, was in substance a request for participation in rate making under agreement no. 3578, under which no rate change can be made except by unanimous consent, and an amendment of article 5 of agreement no. 3578–A to give it, like the American South African Line, a minimum of 12 sailings a year with equal loading time for each sailing free of competitive loading by the other members of the conference including the American South African Line. On June 27, 1935, the conference, through its secretary, denied the application without stating any reason for such action. Later, when requested by complainant to state its reasons, the secretary of the conference replied that "in their opinion it is not incumbent on them to specify to you the reasons why you are not entitled to admission, and that, in their judgment, you have wholly failed to do so."

Complainant alleges that defendants in refusing it admission to the conference have violated their conference agreement and that such action is also a violation of section 14a, paragraph 2, of the Shipping Act, 1916. It further alleges that rate reductions by defendants, on June 6, 1935, just prior to complainant's application, and again on September 19, 1935, were initiated for the purpose of driving it out of the trade; that each of defendants' vessels sailing on and subsequent to June 15, 1935, was a fighting ship, operated in violation of section 14 of that act; and that defendants' action in reducing rates to an unremunerative and noncompensatory level resulted in a complete destruction of the rate structure in the trade, a condition which has been and continues to be not only detrimental to complainant's business, but also detrimental to the commerce of the United States. A cease and desist order, disapproval, and cancelation of agreements nos. 3578, 3578-A, and 3578-B, hereinabove mentioned, under authority of section 15, an award of reparation for injuries alleged to have been sustained, and denial to defendants, other than American South African Line, Inc., of the right of entry into ports of the United States are requested.

Defendants in defense of their action state that as early as 1933 the conference rate structure became unstable, because of nonconference competition from North Atlantic ports, Gulf ports of the United States, and ports in Canada. As early as June 1934 it was felt that because of the increased number of sailings offered by carriers operating from the Gulf and Canada, the conference rate structure could not much longer be maintained.

Defendants' combined service from North Atlantic ports of the United States, since early 1930, maintained, with some exceptions, on a basis of from three to four and occasionally five sailings each month, in February 1935, was established upon a regular weekly basis out of New York, with some calls at other Atlantic ports for loading. In addition thereto, monthly sailings were maintained from New York, N. Y., and other ports by the nonconference Baron Line for approximately 15 years operated by the United States Navigation Co., Inc., at rates consistently below the conference level. These services were further augumented in June 1935 by one sailing each per month by the Kerr Steamship Co. and by complainant.

From Montreal and other Canadian ports the service of Elder Dempster & Co., Ltd., and subsidiaries increased in 1934 over 100 percent, or from 12 to 25. Although in September 1935 that company had only one sailing, and only one in October and two in November, in May and June of that year Isbrandtsen-Moller Co., Inc., also placed vessels on berth from Montreal.

From Gulf ports, the service of the Silver-Java-Pacific Line, which started with monthly sailings in August 1932, was placed upon a semimonthly basis in July 1934. In August of that year monthly sailings were inaugurated by the States Marine Corporation, but that line withdrew in May 1935. On April 18, 1935, the American South African Line, Inc., enlarged the scope of its operations by establishing a separate monthly service from Mobile, Tampa, and New Orleans.

The following table shows the number of sailings of all lines from the various ports during the past 5 years, and the increased service available since 1931:

Year	Sailings from New York		Sailings from Canadian ports	Sailings from Gulf ports	All ports
	Conference	Others			
1931	43	12	13	0	68
1932	36	12	12	4	63
1933	36	12	12	14	74
1934	42	12	25	22	101
1935 (10 months)	38	20	27	[1] 25	[1] 110

[1] Exclusive of 7 sailings of the American South African Line, Inc., from Gulf ports between April and October, inclusive.

A major factor in bringing about the increased sailings from Gulf ports and Canadian ports is the fact that inland all-rail and rail-water differentials have operated against the port of New York and in favor of Gulf ports and the port of Montreal on automobiles originating at principal manufacturing cities. The all-rail rate from such points to New York, N. Y., on unboxed automobiles was and is 17 cents per 100 pounds higher than the all-rail rate to New Orleans, La., and 2 cents per 100 pounds higher than the all-rail rate to Montreal. There are also rail-water combination rates from Detroit, Mich., to Montreal, which, dependent upon the routing, are from 33 to 67 cents per 100 pounds lower than the rail rate to New York. Export all-rail rates to St. John and Halifax are the same as the rates to New York.

As already stated, the Baron Line for many years consistently underquoted the conference. During July 1934 rates from the Gulf quoted by the Silver-Java-Pacific Line on agricultural implements, hardware, radios, electric refrigerators, and rubber tires ranged from $1 to $6 per ton lower than rates on such commodities at that time maintained by defendants. Rate reductions made by defendants to secure cargo for their vessels were met with still lower rates by this Gulf competitor. In that month the conference attempted to enter into contracts with shippers for automobiles at $7 per ton, but were advised lower rates could be obtained from the Gulf. At this time conference rates on automobiles were $10 per ton unboxed, $8 boxed. In August 1934 it was found that exports through Gulf ports of the above-mentioned commodities, which previously moved through North Atlantic ports, had increased materially. As stated by a principal witness for defendants, "once in a while a large parcel might come up in the market. We would bid for it. Sometimes we would get it and sometimes we would not. Naturally, we had to cut the rates to get it. Every reduction we made, the other people went us one better as a rule, and they practically got the cargo."

In January 1935, Gulf operators, Silver-Java-Pacific Line and States Marine Corporation, reduced rates on trucks to $5 per ton and on unboxed automobiles from $10 to $9 per ton. In March the conference further reduced the latter rate to $7, due to an understanding that the Baron Line and Elder Dempster for some time had been charging $7 or lower, and also to meet Gulf competition. At this time there appears to have been in effect generally in this trade a differential of $2 per ton between boxed and unboxed automobiles. In April, when the Kerr Steamship Co. and complainant announced their entrance into the trade from New York, competition became so severe that defendants decided that in order to retain the business which the conference lines had developed, the level of rates would have to be reduced.

Prior to complainant's entry into the trade defendants maintained rates ranging from $5 to $20 per ton of 40 cubic feet or 2,240 pounds, Capetown basis, with fixed differentials to outports beyond. On June 6, 1935, they announced the following reductions, effective June 3, 1935:

Rates prior to June 3, 1935:	Rates effective June 3, 1935:
$5 to $8.	$5 Capetown basis.
$9 to $12.	$6 Capetown basis.
$13 to $16.	$7 Capetown basis.
$17 to $20.	$8 Capetown basis.

Some exceptions to the new scale were made, and a 50-percent reduction was made in outport differentials. At this time they quoted a $6 rate on unboxed and $5 on boxed automobiles, thus reducing the differential from $2 to $1. The only evidence that complainant up to this date had quoted any rates lower than those of the conference carriers is that on one occasion in late February or in March an automobile manufacturer who previously had moved the majority of his shipments via Montreal was offered a lower rate applicable only on shipments of 5,000 tons per ship per month. The actual rate quoted is not in evidence, and the offer was not accepted. As hereinbefore stated, defendants attempted in July 1934 to contract for automobiles at $7 per ton and in March 1935 they reduced their unboxed rate to that figure.

Complainant testified that up to June 6, 1935, it had tentatively booked cargo at rates no lower than those quoted by defendants. To hold that cargo and to secure other bookings for its June 22 and subsequent sailings, complainant reduced its rates, as did other nonconference carriers. The record does not disclose the specific amount of such reductions. It does show that in July 1935 complainant quoted the same rates on automobiles as those announced by the conference on June 6. Tariffs filed with the Department show that on

September 1, 1935,[2] complainant had a rate of $5 for the transportation of automobiles whether boxed or unboxed. Complainant states this rate was named in August 1935 because at that time very few automobiles were moving and the reduction was necessary to obtain business. Prior to September 1, 1935, but subsequent to June 3, rates of complainant on numerous other commodities were $1 or $2 per ton lower than those of defendants, and in some instances the difference in rates was greater. In some cases, however, complainant's rates were no lower than rates of other nonconference carriers with which it competed.

A large part of the cargo moving in this trade is booked through freight brokers. Defendants had been paying brokerage at the rate of 1¼ percent. About 10 days prior to its first sailing, complainant increased its rate from 1¼ to 2½ percent, for the stated purpose of meeting the rate paid by the Baron Line and Kerr Steamship Co. Later, upon information that a rate in excess of 2½ percent was being paid by the Baron Line, defendants increased their rate to 5 percent. Complainant also increased its rate of brokerage to 5 percent.

On September 19, 1935, defendants made a further general reduction in their rates to $4 per ton, with some exceptions, on all commodities destined to ports within the Capetown-Laurenco Marques range, and $6.50 to Beira. At this time all port differentials were abolished, and the rate on automobiles, the largest moving commodity in volume except petroleum products, was made $4 whether boxed or unboxed. Such rates are admitted to be unremunerative for the service rendered and noncompensatory.

Defendants state their rate reductions were initiated solely in their own defense, designed to eliminate alleged unnecessary tonnage in the trade, to retain business which they had developed, and also in the hope that rates would thereby be stabilized. They deny any intention to drive any competitor out of business. The tonnage carried by them during the period 1930–35, inclusive, is as follows:

Year	Tonnage carried by defendants	Sailings	Average tonnage per sailing	Percentage of unused space
1930	279, 394	48	5, 444	----------
1931	229, 319	43	5, 393	32. 3
1932	122, 031	36	3, 390	55. 6
1933	156, 826	36	4, 356	42. 5
1934	281, 162	42	6, 694	19. 7
1935	[1] 231, 985	[1] 46	[1] 5, 124	[1] 35. 2

[1] Last quarter estimated on basis of prior 9 months.

[2] Prior to this date rates actually charged by common carriers in foreign commerce were not on file.

A more detailed analysis of exhibits from which the foregoing table is compiled shows that in June 1935 defendants carried a total of 18,743 tons of cargo, with an average of 4,686 tons per sailing. During July and August total volume increased to 19,099 and 21,994 tons, respectively, with an average per sailing of 4,775 and 5,498 tons, respectively. In September, however, both the total volume and average tonnage per vessel declined below that of June, and in the third quarter of 1935 the unused space in defendants' vessels amounted to 39.3 percent, the highest for any period since 1933.

The record does not show to what extent the vessel tonnage in the trade exceeded the amount of cargo actually moving. Certain data showing the value of exports from the United States to South and East Africa were submitted. Such information, however, is of little value when attempting to show that unnecessary tonnage was being operated.

In 1935 exports of automobiles to South and East Africa were greater than at any time in the past; notwithstanding, shipments of that commodity via defendants' vessels in 1935, up to and including October, decreased materially from 1934. In November 1935, the movement through New York, principally unboxed, due to the removal of the differential between boxed and unboxed cars, was exceptionally heavy. This was attributed primarily to the advancement of the annual automobile shows, usually held in January or February, to November; also to the fact that steamship service from Montreal had decreased and that carriers from New Orleans had not placed additional vessels on berth. In November the conference placed two additional steamers on berth, but during that month the American South African Line, Inc., was compelled to shut out cargo which, upon instructions from the shippers, was delivered to complainant, who also had requests for space it could not grant. In December defendants did not have sufficient space available to accommodate the shipments offered. Offerings were sufficiently heavy to induce the American South African Line, Inc., to charter an additional vessel. Complainant states it has experienced no scarcity of cargo and that its carryings have increased with each sailing.

The shortage of space did not exist until after the removal of the differential between boxed and unboxed automobiles. It is obvious that a ship can accommodate more boxed automobiles than unboxed ones. Automobiles for export are delivered to carriers by water as follows: (1) Knocked down, packed densely in boxes of moderate size—shipments of this character present no unusual stowage problem, and are regarded as ideal cargo, but since only a few manufacturers have assembly plants at destinations, such shipments are limited; (2) in large boxes, completely assembled, except that the wheels, bumpers, etc., are removed; and (3) unboxed and completely assembled as seen on the street. It costs shippers from $40 to $45 to box an automobile for shipment, and with the rate the same whether a car be boxed or unboxed, there is little incentive for manufacturers to box their cars. Prior to April 1933 defendants did not accept unboxed automobiles, and subsequent thereto the rate quoted for such shipments was $3 per ton of 40 cubic feet higher than that quoted for boxed shipments. This differential was later reduced to $2 per ton, then to $1 per ton, and finally abolished. Difficulties of stowage and consequent loss of space which at times could be utilized for other cargo, in the opinion of both complainant and defendants, makes the cost of transporting unboxed automobiles greater than the cost of transporting boxed shipments. Because of the risk of damage nothing can be placed on top of or close beside an unboxed car, while with boxed shipments space on top of or between boxed cars can be utilized. Both complainant and defendants have overlooked, apparently, the possibility that the removal of the differential between boxed and unboxed automobiles may involve a violation of one or more sections of the Shipping Act, 1916. While the record affords no basis for a specific finding of unlawfulness in this respect nor the determination of a proper differential, in view of the large number of cars moving, the importance of automobiles in our export trade, the shortage of cargo space that has developed, and the fact that the carriers all admit they are operating at a loss, the Department will give consideration to the question of instituting on its own motion an investigation of the failure to maintain a differential, unless the carriers themselves promptly restore a prima facie reasonable differential.

Complainant alleges that each of defendants' vessels sailing on and subsequent to June 15, 1935, was a fighting ship, operated in violation of section 14 of the Shipping Act, 1916. That section provides, as to fighting ships:

That no common carrier by water shall, directly or indirectly, in respect to the transportation by water of passengers or property * * *.

Use a fighting ship either separately or in conjunction with any other carrier, through agreement or otherwise. The term "fighting ship" in this act means a vessel used in a particular trade by a carrier or group of carriers for the purpose of excluding, preventing, or reducing competition by driving another carrier out of said trade.

Defendants on brief, after a review of court decisions on the subject of fighting ships, contend that a fighting ship is a vessel placed on berth out of regular course at rates less than those charged on vessels regularly scheduled by the carrier or carriers operating such vessels. Inasmuch as the cases on which defendants rely arose prior to the enactment of the Shipping Act, 1916, which, itself, as quoted above, defines a fighting ship, the decisions in such cases are not necessarily controlling. The thing condemned, however, is clearly a device of some sort by means of which carriers endeavor to drive another carrier out of business. Defendants deny any intention of driving anyone out of business, but admit that one of their purposes in making the rate reductions described herein was to eliminate unnecessary tonnage. One apparent effect of such reductions has been to reduce, temporarily at least, the number of competitive sailings from Canadian ports. It is true that a continuation of the present unremunerative rate level may eventually result in complainant's withdrawal from the trade, although complainant states that it has developed new business, that its carryings have increased, and that it intends to stay in the trade. It is likewise true, however, that a continuation of the present rate level is equally liable to make it necessary for one or more of the defendants to withdraw from the trade.

There is nothing in the record to show that defendants have altered the normal operation of their ships. It has been defendants' practice for years to have a vessel on berth ready to receive cargo at all times. When one vessel has completed loading, within a comparatively short time another is placed in position. Beginning February 1, 1935, and until the end of October of that year defendants maintained four sailings each month. Such sailings were spaced from 4 to 10 days apart, dependent upon the amount of cargo at the time available. Despite allegations to the contrary, there is no evidence of any disarrangement of sailing frequency because of complainant's entrance into the trade.

Defendants claim that the entrance of complainant into the trade was but one factor in bringing about their rate reductions and that such reduction was not directed particularly against complainant. They had faced increasing competition, involving rate cutting, for some time, including competition from carriers operating from Canadian ports and therefore not subject to the Department's jurisdiction. Rate cutting by carriers out of Canada and the Gulf, coupled with the advantage which those carriers enjoy because of the inland rate differentials heretofore shown, created a combination of circumstances sufficient to draw considerable traffic from New York. The establishment of additional services by the Kerr Steamship Co. and complainant from North Atlantic ports of the United States finally crystallized into definite action the necessity, long apparent to defendants, of protecting their position in the trade.

The shipping act itself recognizes that a carrier may reduce rates below a fair and remunerative basis with the intent of driving a competitive carrier by water out of business without such action constituting the operation of a fighting ship. This is apparent when the fighting ship prohibition in section 14 is compared with section 19 of that act. The fighting ship prohibition does not condemn rate reductions per se, but makes it unlawful to use a vessel in any particular trade whether in interstate or foreign commerce "for the purpose of excluding, preventing, or reducing competition by driving another carrier out of said trade"; whereas section 19 provides that if any common carrier by water in interstate commerce reduces its rates "below a fair and remunerative basis, with the intent of driving out or otherwise injuring a competitive carrier by water," the carrier cannot increase its rates unless after hearing the Department finds that such proposed increase "rests upon changed conditions other than the elimination of said competition." Broadly speaking, the Department's powers over carriers in interstate commerce are considerably greater than those over carriers in foreign commerce, yet under section 19 any common carrier by water in interstate commerce which reduces its rates "below a fair and remunerative basis with the intent of driving out or otherwise injuring a competitive carrier by water" is merely forbidden to increase such rates unless after hearing the Department finds that such proposed increase "rests upon changed conditions other than the elimination of said competition." Section 14 makes no distinction between fighting ships in interstate commerce and fighting ships in foreign commerce, and the broad interpretation of the term "fighting ship," which complainant seeks, is not compatible with the provisions of section 19 just quoted. On this record no showing has been made that defendants have at any time resorted to any device that involved the operation of a fighting ship.

Inasmuch as no violation of section 14 has been shown and because of the fact that the commerce involved is not "between foreign ports", the provisions of section 14a of the Shipping Act, 1916, are not applicable and the relief sought thereunder cannot be granted. Inasmuch as there is no evidence that the shipping act has been violated, no grounds exist upon which to base an award of reparation.

There remains for consideration defendants' refusal to permit complainant to become a party to agreement no. 3578 and to modify the rotation of sailings agreement (no. 3578–A); and complainant's request that these agreements and the pooling agreement (no. 3578–B) be canceled.

The request that the pooling agreement be canceled will be considered first. There is nothing in the record to indicate that complainant has at any time applied for participation in this particular agreement or that such agreement has in any way injured complainant. The agreement, to which the defendant, American South African Line, Inc., is not a party, sets forth a formula whereby the parties thereto apportion their combined revenue after certain specified deductions. There is no showing that it has in any way aided the carriers parties thereto, or the American South African Line, Inc., in the present rate war, or that it is in any way detrimental to the commerce of the United States or otherwise of a character which the Department is permitted to cancel or modify under authority of section 15 of the Shipping Act, 1916. The request of the complainant that this agreement be disapproved accordingly must be denied.

Agreements providing for rotation of sailings, such as agreement no. 3578–A, are valuable to both carriers and shippers. They tend to coordinate the number and frequency of sailings with the flow of cargo offering and to make less frequent occasions on which there is either a surplus or a scarcity of space. It is unquestionable that the value of such an agreement would be enhanced if participated in by all lines in a trade, but that is not to say that the mere failure to admit all lines to participation warrants disapproval of the agreement. Actually, the existence of the agreement has to some extent proven advantageous to complainant and also to other nonconference carriers. It is now possible for each such carrier to so arrange its sailings as to be on berth with only one of defendants' vessels on berth at the same time. Without such an agreement each defendant would have been free to place a vessel on berth at any time, and complainant might then have found itself faced with the necessity of meeting the competition of several of defendants' vessels at the same time. It is perhaps well to point out here that although in this particular instance all parties to the rate-fixing agreement in the trade have agreed to rotate sailings, it is by no means necessary that this be the case. Rotation of sailings agreements, like pools, can and do exist without being participated in by all members of the rate-fixing group to which such members are parties. The existence in this trade of the seven defendants, like the existence of nonconference carriers, may afford sufficient service to shippers to make it difficult in the future for complainant to attract cargo, but complainant has not indicated how cancelation of this agreement will in any way benefit it. It has encountered no difficulty because of this agreement. It is free to continue its monthly sailings or even to increase its sailings with that agreement in effect, and there is no reason for concluding that its cancelation would reduce the amount of competition which it must meet. On the contrary, it is more logical to believe that in the absence of a rotation of sailings agreement competition would become keener for reasons already indicated. In short, complainant has failed to show that this particular agreement has been injurious to it, or that it is detrimental to commerce or otherwise within that class of agreements which section 15 of the shipping act authorizes this Department to cancel.

Agreement no. 3578 is the agreement under which defendants are permitted to agree upon the freight rates they will charge with exemption from the antitrust laws. Article 5 thereof provides:

> Any person, firm or corporation, regularly engaged as a common carrier by water in the trade covered by this agreement may become a party to this agreement and a member of the conference upon unanimous assent of the parties hereto, by affixing his, their, or its signature hereto, or to a counterpart hereof, and giving written notice thereof to the United States Shipping Board, or its successor in authority. No eligible applicant shall be denied admission to conference membership as above provided except for just and reasonable cause.

As hereinbefore stated, defendants in denying formally complainant's application for participation in the conference, on June 27, 1935, did not furnish complainant with any reason for such denial. Under the terms of the agreement an application for admission may not be denied "except for just and reasonable cause," and while there is no specific requirement that an applicant be advised why it is believed ineligible, such information should have been furnished. An applicant may conscientiously believe it is eligible, and unless advised by an authorized representative of the conference why it is regarded as ineligible such applicant is handicapped in presenting to the Department for determination issues arising because of such denial. The record before the Department has disclosed defendants' reasons. They did not consider complainant had made an adequate showing of its financial ability to continue permanently in the trade, and also took the position that at the time of complainant's formal application complainant was not regularly engaged in the trade. Complainant was not requested to disclose his financial position, however, and it cannot be disputed that events subsequent to the denial of the application have reflected considerable financial strength; and certainly the argument that complainant was not regularly engaged in the trade has today no force whatsoever. Defendants point to the fact that "Complainant's application for admission to the conference (3578) has always been coupled with the demand that defendants make a place for complainant in their rota of sailings maintained under agreement no. 3578–A * * *. Complainant does not ask to join the conference unless this demand be complied with." Over and above these reasons, however, is evident the conviction on the part of defendants that the North Atlantic trade is overtonnaged, and that it is impossible for all carriers now operating from Atlantic coast ports, the Gulf, and Canadian ports to South Africa to operate on a financially profitable basis. Reference has heretofore been made to the large amount of unused space in defendants' vessels in 1935, a condition which continued to exist until after the removal of the differential between boxed and unboxed automobiles. Complainant states that it has developed new business but fails to furnish any evidence in support of such statements. Any such new business developed, of course, may possibly be attributable to the existing low level of rates, admitted by all to be unremunerative.

As indicated above, defendants had at least four different reasons for their refusal to admit complainant to membership in the conference. Although it appears that at the time of the hearing one, and possibly two, of those reasons no longer existed, it has not been established on this record that the other two reasons are not valid grounds for the action of the defendants. Whether or not the agreement itself operates to the detriment of the commerce of the United States, or otherwise falls within the class of agreements which the Department may disapprove, is a separate question.

The power of the Department to disapprove agreements between carriers is derived from the second paragraph of section 15 of the Shipping Act, 1916, which reads as follows:

> The board may by order disapprove, cancel, or modify any agreement, or any modification or cancelation thereof, whether or not previously approved by it, that 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 competitors, or to operate to the detriment of the commerce of the United States, or to be in violation of this act, and shall approve all other agreements, modifications, or cancelations.

Apart from allegations concerning sections 14 and 14a already disposed of, complainant has made no attempt to prove that the agreement itself or any acts of defendants are in violation of the shipping act, nor has it alleged that the agreement is unjustly discriminatory or unfair as between shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors. There remains to be considered, therefore, only whether the agreement is unjustly discriminatory or unfair as between carriers and whether it operates to the detriment of the commerce of the United States.

Although complainant has submitted no competent evidence to show the actual financial losses sustained by it, it is unquestionable that complainant has suffered severe financial losses because of the existing rate war. It is also unquestionably true, however, that defendants have suffered severe losses because of the rate war. Wherein the agreement itself is responsible for complainant's losses, or is actually unjustly discriminatory or unfair as between carriers, complainant does not show.

If the existence of the agreement were the cause of the low rates the Department's course of action would be reasonably clear. Whatever their immediate effect, rates unremunerative or noncompensatory are in the long run detrimental to our commerce, for our commerce embraces not only cargo moving but the instrumentalities employed in moving such cargo. Both complainant and one of the defendants, American South African Line, are part of the American merchant marine, and section 1, Merchant Marine Act, 1920, contains an admonition that in the administration of the shipping laws there be kept always in view the policy of the United States to do whatever may be necessary to develop and encourage the maintenance of an adequate privately owned merchant marine.

In determining whether a particular agreement should be disapproved under authority of section 15, the Department must weigh all facts involved in the light of this policy. Had the power been given this Department to compel complainant, defendants, and all other carriers in the trade to raise their rates, the situation is such that that power would now be exercised. Were the agreement under consideration actually responsible for the low rates in the trade, the Department's course of action under existing power would also be clear. There is nothing in the record, however, to warrant the conclusion that the agreement has brought about the unremunerative rate level. On the contrary, the provision in the agreement requiring unanimous consent for rate changes gives ground for concluding that in the absence of the agreement the competitive situation would have brought about a rate war at an earlier date than was the case. Furthermore, were the agreement to be disapproved at this time, thus leaving each of defendants free to charge whatever rates it desired, there is reason to believe that rates might go still lower, to the greater detriment of the American merchant marine.

Complainant appears to have had no difficulty because of this agreement in securing cargo for its vessels. It is free to make as many sailings as it desires, and in that respect has an advantage not possessed by defendants because of the rotation of sailings agreement.

Restoration of rates to a remunerative level is apparently complainant's main concern.

A rate war has previously existed in this trade, and rates are not now as low as the level then reached. Complainant itself at certain times during the present disturbance has been charging lower rates on some commodities than defendants. Moreover, complainant eliminated the differential between boxed and unboxed automobiles prior to such action by defendants. Defendants have been in the trade for many years, three of them since 1896. The steps taken by them indicate a natural, though perhaps ruinous, attempt to meet and overcome everincreasing competition and retain business developed by them over a period of years through good times and bad. However disastrous to all concerned a rate war in our foreign commerce may prove, the Congress has not given this Department the power to terminate it.

The Department is not without sympathy for the position in which complainant finds itself, but nothing in the shipping act prohibits carriers from using every legitimate means to wage economic warfare in their efforts to secure or retain traffic. The only weapon apparently used by defendants is the reduction of rates to a level unremunerative for themselves as well as for their competitors, and this the statute does not prohibit.

The Department finds that defendants are not shown to have operated fighting ships from North Atlantic ports of the United States to South and East Africa in violation of section 14 of the Shipping Act, 1916; and that in the absence of such a finding the provisions of section 14a of that act are not applicable. The Department further finds that on June 27, 1935, defendants were justified in denying complainant's application for admission to the Conference (agreement no. 3578); that unremunerative and noncompensatory rates are detrimental to the commerce of the United States; that the existence of such rates in the trade involved is not the result of defendants' agreement no. 3578; that agreements nos. 3578, 3578–A, and 3578–B are not unjustly discriminatory or unfair as between carriers, and do not operate to the detriment of the commerce of the United States; and that complainant is not entitled to reparation. An appropriate order dismissing the complaint will be entered.

DEPARTMENT OF COMMERCE

OFFICE OF THE SECRETARY

WASHINGTON

No. 120

SEAS SHIPPING COMPANY, INC.

v.

AMERICAN SOUTH AFRICAN LINE, INC., ET AL.

ORDER

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Department having, on the date hereof, made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

[SEAL]

(Sgd.) J. M. JOHNSON,
Acting Secretary of Commerce.

AUGUST 1, 1936.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 180

JOHNSON PICKETT ROPE COMPANY

v.

DOLLAR STEAMSHIP LINES, INC., LTD., ET AL.

Submitted May 13, 1936. Decided August 15, 1936

Rates on Manila rope from the Philippine Islands to the United States not shown to be unreasonable or unduly prejudicial Complaint dismissed.

Gardner D. Howie, *John T. Money*, and *John T. Bailey* for complainant.

Elkan Turk, *Herman Goldman*, *Leo E. Wolf*, *A. A. Alexander*, *J. A. Stumpf*, *R. H. Specker*, and *James H. Condon* for defendants.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

The examiner's report recommending dismissal of the complaint was excepted to by complainant. The findings recommended by the examiner are adopted herein.

Complainant, a corporation existing under the laws of the Philippine Islands, is a manufacturer of Manila rope, which it ships from the Philippines to the United States. Defendants are engaged in the transportation of property by water between Manila, Philippine Islands, and the United States, and in respect of such transportation are common carriers by water in interstate commerce.

By complaint filed April 5, 1935, it is alleged that the rates charged by defendants for the transportation of Manila rope from Manila, P. I., to United States ports were and are unduly prejudicial, unjustly discriminatory, and unjust and unreasonable in violation of sections 16, 17, and 18 of the Shipping Act, 1916, to the extent such rates exceed the rates on Manila hemp, and in comparison also with the rates on other commodities from the Philippine Islands to the United

States, and with the rates on rope and hemp between other comparable points. Lawful rates for the future and reparation are sought. Except as otherwise specified, rates will be stated in amounts per ton of 2,240 pounds.

Section 17 of the statute is inapplicable to common carriers by water in interstate commerce. The allegation of unjust discrimination prohibited by that section, therefore, will not be considered further.

The rates complained of are $35 to Atlantic and Gulf ports of the United States and $23.65 to Pacific ports, with no limitation as to measurement. It is shown that these rates were paid to defendants, Dollar Steamship Lines, Inc., Ltd., and Barber Steamship Lines, Inc., on numerous shipments of rope made by complainant during a period of approximately two years prior to the filing of the complaint. The other defendants are named as transshippers only. Defendants' rates on hemp from the Philippines to the United States are $2.25 per bale to Atlantic and Gulf and $1.50 per bale to Pacific ports, with a limitation that these rates apply to bales not in excess of 13 cubic feet. A bale of hemp ready for shipment weighs approximately 280 pounds, so that eight bales make a ton of 2,240 pounds. Computed on a weight basis, the rates on hemp amount to $18 per ton to Atlantic and Gulf, and $12 per ton to Pacific ports.

Hemp is shipped in bales measuring, with wrapper, approximately 13 cubic feet, and stows approximately 104 cubic feet to the ton. Rope is shipped in coils of varying weight and measurement. Figures of record taken from the bills of lading of defendant Dollar Line covering rope shipments made by complainant via that line indicate that the rope involved in such shipments stowed between 68 and 69 cubic feet per ton. The sizes of the rope included in these shipments are not shown. There is other testimony for complainant that the average stowage of Manila rope is about 70 to 75 cubic feet per ton, but that the stowage increases as the size of the rope decreases. Defendants produced figures based upon approximate cubic measurements of Manila rope manufactured in the United States contained in a pamphlet issued as information to exporters of rope, which indicate that a ton of rope varies widely in its cubic displacement according to the size of the rope. These figures show that rope $\frac{3}{16}$ of an inch in diameter measures 138.95 cubic feet to the ton, and as the size of the rope increases, up to $\frac{5}{8}$ of an inch in diameter, the measurement decreases to 60.49 cubic feet. With still larger sizes of rope, up to $1\frac{5}{16}$ inches in diameter, the measurement varies from 69.58 to 80 cubic feet. For sizes $\frac{3}{16}$ of an inch to 1 inch the average measurement is shown to be 93.50 cubic feet, and for sizes $\frac{3}{16}$ of an inch to $1\frac{5}{16}$ inches the average is shown to be 88.73 cubic feet. Complainant's chief witness testified that for the past year they had been concentrating on the smaller sizes of rope, which are a little more profitable, but ordinarily sell more rope of the large sizes than of the small sizes.

Using an average stowage of 70 cubic feet per ton of rope and 104 cubic feet per ton of hemp, complainant draws a comparison between the rates on these commodities to show that on a measurement basis the rate on rope is approximately three times the rate on hemp, and asserts that the spread between these rates, both on a weight and measurement basis, is unduly prejudicial to complainant and unduly preferential of and advantageous to the hemp importer. The record shows that the cubic displacement of a ton of rope is a variable factor, depending upon the size of the rope, and, therefore, the comparison of the rates on a measurement basis is not well founded. Undue prejudice or preference is not established by a mere showing of lower rates on a competitive commodity. There must also be a showing of the character and intensity of the competition, of the specific effect of the rate relation on such competition, and that the difference has operated to shipper's disadvantage in marketing the commodity. There is no direct competition between rope and hemp, but Manila hemp manufactured into rope in the United States is sold in competition with complainant's product.

The record shows that the importations of rope from the Philippines increased from 2,925,484 pounds in 1923 to 4,942,347 pounds in 1932, and 9,863,119 pounds in 1934, and for the first five months of 1935 amounted to 6,536,311 pounds. With the exception of the years 1931 and 1932, there has been an uninterrupted increase in the volume of rope imports from the Philippine Islands since 1921. The movement of Manila hemp from the Philippines to the United States decreased from 235,258,240 pounds in 1923 to 57,236,480 pounds in 1932, and then increased to 93,130,240 pounds in 1934.

By act of Congress approved June 14, 1935, it is provided:

That effective May 1, 1935, and for three years thereafter, the total amount of all yarns, twines, cords, cordage, rope, and cable, tarred or untarred, wholly or in chief value of Manila (abaca) or other hard fibre, produced or manufactured in the Philippine Islands, coming into the United States from the Philippine Islands, shall not exceed six million pounds during each successive twelve months' period, which six million pounds shall enter the United States duty free.

Complainant's attorney in fact and principal witness testified that the rates complained of will not prevent the bringing in of the full legal limit of 6,000,000 pounds of Philippine rope per year.

The rate on rope to Atlantic and Gulf ports exceeds the rate on hemp by approximately ¾ cent per pound and to Pacific Coast ports by approximately ½ cent per pound. The import price of Philippine rope has been substantially lower than the factory price of American rope for a number of years, as evidenced by figures of record, as follows:

Year	F. o. b. factory price American rope	Import price Philippine rope	Year	F. o. b. factory price American rope	Import price Philippine rope
	Per pound	*Per pound*		*Per pound*	*Per pound*
1921	$0.1843	$0.1119	1929	$0.1936	$0.1371
1923	.1617	.1075	1931	.1506	.1015
1925	.2157	.1407	1933	.1210	.0825
1927	.2140	.1471			

Complainant's attorney in fact testified that "as a rule our prices are lower than the American manufacturers'; there is no question about that." This witness gave the wholesale price of Philippine rope in the United States as 10½ cents to 11 cents per pound, whereas the record indicates that the wholesale price of American rope f. o. b. factory is 15½ cents less discounts, which result in a net price of approximately 14½ cents per pound. It seems clear from the record that the difference between the rates on Manila rope and hemp has not materially affected the movement or marketing of either commodity.

The other commodities referred to by complainant bear no relation to rope, and complainant has not shown that its product is prejudiced in any way by the rates on such other commodities. The record affords no basis for a finding of undue prejudice or preference.

In support of its allegation that the rates assailed were and are unreasonable, complainant compares them with the rates on hemp from the Philippines to the United States and with the rates on rope and hemp between other points. Hemp is a raw material used in the manufacture of rope, and is of much lower value than rope as shown by a comparison of import values of record as follows:

	1933	1934	1935 (5 months)
	Per pound	*Per pound*	*Per pound*
Rope	$0.0825	$0.0927	$0.0840
Hemp	.0253	.0296	.0302

In the process of manufacturing hemp into rope in the United States there is a loss of 3 to 7 pounds of hemp per bale. The wrappers on a bale of hemp weigh about 4 pounds and have no value, so that the total loss is from 7 to 11 pounds or 2.5 to 3.9 percent of each bale. The record does not show that any allowance is made for this loss in either the merchandising or transportation of hemp. Hemp moves in much larger volume than rope and is less expensive to handle and stow. It is shipped in bales of uniform weight and measurement, can be stowed in any part of the ship, and is also used for topping off the cargo. Rope is shipped in coils of varying weight and measurement and requires special stowage. If stowed too near the boilers, the heat will dry out the oil which is necessary to the longevity of the rope. The record does not justify a finding that the rates complained of are unreasonable when compared with the rates on hemp.

The rates complained of are alleged to be unjust and unreasonable as compared with defendants' rates on many other commodities from the Philippines to the United States. The commodities referred to do not compete with, and in no instance are they analogous to, rope. They vary in character, volume of movement, value, and stowage, and by comparison are of little or no help in determining the reasonableness of the rates complained of.

Complainant refers to the fact that defendants made a through rate on rope of $24 per ton from the Philippines to Puerto Rico, with transshipment from New York, absorbing the cost of the transportation from New York to Puerto Rico, a distance of about 1,400 miles, which amounts to 40 percent of the through rate, and absorbing 60 percent of the cost of transfer to the on-carrying line at New York. It was testified on behalf of defendants that this rate was established at complainant's request to enable it to compete with rope from England, Germany, and other foreign countries. With the aid of this rate, complainant was able to build up its business in Puerto Rico, but the record indicates that this business has since collapsed and that the rate now is nothing more than a paper rate. Considering the special circumstances and competitive conditions which induced the rate referred to, in a different trade, it is of little, if any, evidentiary value in determining the reasonableness of the rates complained of.

Complainant also compares the relation between the rates on rope and hemp from the Philippines to the United States with the relation between defendants' rates on the same commodities from the Philippines to the Orient, showing that to the Orient rope takes a lower rate than hemp. It is further shown that the rate on rope from Mexico to the United States via the New York and Cuba Mail Steamship Company varies from 16⅔ to 66⅔ percent in excess of the rate on sisal, and from Havana, Cuba, to New York the rates on these two commodities via the same line are the same. From Hamburg, Rotterdam, and Bordeaux to Valparaiso, Chile, the Hamburg-American Line will carry rope for about 8 percent more than hemp, and from Rotterdam and Bordeaux to Valparaiso the Grace Line and French Line, respectively, will carry rope for about 10 percent less than hemp.

Defendants showed that from the Philippines to various destinations, including Buenos Aires and Rotterdam, their rate on rope is 100 percent in excess of the rate on hemp. The record contains no evidence that conditions in any of the trades referred to are similar to the conditions in the trade involved in this proceeding.

The Department finds that upon this record defendants' rates on Manila rope from the Philippine Islands to the United States have not been shown to be unreasonable or unduly prejudicial. An order dismissing the complaint will be entered.

DEPARTMENT OF COMMERCE

OFFICE OF THE SECRETARY

WASHINGTON

No. 180

JOHNSON PICKETT ROPE COMPANY

v.

DOLLAR STEAMSHIP LINES, INC., LTD., ET AL.

ORDER

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Department, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

[SEAL.]

(Sgd.) J. M. JOHNSON,
Acting Secretary of Commerce.

AUGUST 15, 1936.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 374

MACON COOPERAGE COMPANY
v.
(ARROW LINE) SUDDEN & CHRISTENSON ET AL.

Submitted August 8, 1936. Decided September 3, 1936

Defendants' rate on oak whiskey barrels from Savannah, Ga., to Los Angeles, Calif., not shown to be inapplicable, unreasonable or otherwise unlawful. Complaint dismissed.

Harry E. Nottingham for complainant.

W. M. Carney, *W. P. Rudrow*, and *F. D. M. Strachan*, *Jr.* for defendants.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

No exceptions were filed to the report proposed by the examiner. His findings are adopted herein.

Complainant is a corporation engaged in the cooperage business at Macon, Ga. By complaint filed March 5, 1936, it alleges that defendants' rates of $1.03 and $1.10 on empty oak liquor barrels from Savannah, Ga., to Los Angeles, Calif., were, and that the rate of $1.10 still is, unduly prejudicial, unjustly discriminatory, and unjust and unreasonable, in violation of sections 16, 17 and 18 of the Shipping Act, 1916. A lawful rate for the future and reparation are sought. Rates are stated in cents or dollars and cents per 100 pounds.

Section 17 does not apply to common carriers by water in interstate commerce. The alleged violation of that section will not, therefore, be considered further.

Effective March 21, 1934, defendants established a commodity rate of $1.03 on tight wooden barrels, set up, minimum weight 12,000 pounds, from Atlantic Coast ports, including Savannah, to Pacific Coast ports, including Los Angeles, which was increased to $1.10 effective October 3, 1935. Since September 28, 1934, they have maintained a commodity rate of 87.5 cents, minimum weight 20,000 pounds, on wooden malt liquor barrels from and to the same ports. From September 29, 1934, to August 24, 1935, both dates inclusive, the tariff description of the latter barrels read "Barrels, Malt liquor, wooden." Effective August 25, 1935, this description was changed to "Barrels, Malt liquor, wooden, viz.: Ale, Beer, Beer Tonic, Porter or Stout."

Complainant ships whiskey barrels, which are tight barrels made of scaly bark, forked leaf, white oak. Of nine shipments which were referred to, all exceeded 20,000 pounds, except one, which weighed 18,900 pounds. The rate charged in each instance was that provided for tight wooden barrels, set up. The applicability of this rate to shipments made on or subsequent to August 25, 1935, is not disputed, but those made prior to that date were sold by complainant on the basis of the rate on wooden malt liquor barrels, and as to these it contended at the hearing that the tariff description "Barrels, Malt liquor, wooden" embraced whiskey barrels and that the legally applicable rate, therefore, was 87.5 cents.

This question was originally considered on the informal docket, and certain documents of record there were introduced by complainant in this proceeding. Three of them, it is said, show that the rates charged on complainant's shipments were excessive, that the description "Barrels, Malt liquor, wooden" was indefinite, and that the carriers took steps to limit its application by adding thereto the words "Ale, Beer, Beer Tonic, Porter or Stout." From one it appears that in July 1935 the general manager of defendant States Steamship Company informed complainant that he personally felt it was within its rights in contending that the rate of 87.5 cents was applicable to its shipments; from another that trans-continental railroads about the same time proposed changing the description in their tariffs from "Barrels, Malt liquor, wooden" to "Barrels, Malt liquor, wooden, viz.: Ale, Beer, Beer Tonic, Porter or Stout," and from the third that for competitive and clarification purposes the tariff publishing agent of defendants and other carriers by water proposed to make the same change. They contain no facts showing that oak whiskey barrels are the same as wooden malt liquor barrels, nor do the other documents referred to. Complainant contends that whisky barrels are malt liquor barrels "inasmuch as the common understanding of the word 'liquor' is taken to mean whiskey and all whiskey is manufactured of a mixture of malt and cereal grains." It says, in effect, that whisky is malt liquor, but there is no evidence to support the assertion.

Complainant also points out that western classification, by which defendants' tariffs were and are governed, did not carry a rating on wooden malt liquor barrels, as such, but did provide a specific rating on wooden ale, beer or cereal-beverage barrels. From sometime prior to April 1935, when the first shipment here involved moved, to August 25, 1935, western classification included ale, beer, beer tonic, cereal beverage, porter, and stout under the heading "LIQUORS, MALT." Ale, beer, and cereal-beverage barrels, wooden, minimum weight 20,000 pounds, were rated class D. Tight wooden barrels, N. O. I. B. N., minimum weight 12,000 pounds, were rated fourth class. Defendants' class-D rate was 87.5 cents and their fourth-class rate was $1.805. The commodity rate on "Barrels, Malt liquor, wooden" removed the application of class rates on wooden ale, beer, beer-tonic, cereal-beverage, porter, and stout barrels. As stated above, complainant does not dispute the applicability of the rates charged on or subsequent to August 25, 1935. In effect, therefore, it concedes that whiskey barrels are not the same as ale, beer, beer-tonic, porter or stout barrels, and there is no evidence that they are the same as cereal-beverage barrels.

The evidence consists mainly of a comparison of whiskey barrels with beer barrels, which, admittedly, do not compete with each other. Complainant's barrel is charred, has a capacity of about 50 gallons, and weighs 90 pounds. The staves are 35″ long, and the heads 20⅛″ in diameter. Both staves and heads are 1″ thick. The hoops, eight in number, are made of steel and differ in width and gauge. The circumference at the bilge varies between 78″ and 80½″. Defendants' witness testifies, without objection, that figures furnished him on rye barrels indicate that the whiskey barrel has a capacity of 47 to 49 gallons, is 35″ long, 20½″ in diameter at the chime, 24″ in diameter at the bilge, and weighs 82 pounds. This weight is coincident, or nearly so, with the testimony of complainant's witness that it has made whiskey barrels of possibly 83 or 84 pounds, when it used a lighter stave or head. The gauge of the hoops also affects the weight.

The figures as to beer barrels were obtained by witnesses for complainant and defendants from different sources. They were received without objection by either side. According to the information of complainant's witness, a standard beer barrel is pitched, has a capacity of 31 gallons, and weighs from 115 to 120 pounds. The staves are 31″ long, 1¾″ thick at each end, and $1\frac{7}{16}$″ thick at the bilge. The heads are 18½″ in diameter and 1¾″ in thickness. Defendants' witness testifies that according to his information the so-called half beer barrel is, roughly, 24½″ long, 14¾″ in diameter at the chime, 61″ in circumference at the bilge, and weighs 122 pounds. The difference between complainant's and defendants' weight figures is admitted to be a reasonable variation.

Using the above figures for rye barrels and half beer barrels, defendants show, by multiplying the square of the bilge diameter by the length of the barrel, that the half beer barrel requires approximately 5.33 cubic feet of space, or only one cubic foot for each 22.7 pounds, whereas the rye barrel requires approximately 11.6 cubic feet, or one cubic foot for every 7 pounds. On the basis of complainant's figures, its barrel, by the same method of calculation, requires between 12.48 and 13.29 cubic feet, or approximately one cubic foot for 6.77–7.21 pounds. Its witness was unable to produce figures as to the bilge measurement of the so-called standard beer barrel, and while his testimony indicates that puncheons and hogsheads, which take the same rate as beer barrels, are larger than either beer or whiskey barrels, there is no evidence on which their weight density can be computed.

The price of complainant's barrels, delivered at Los Angeles, ranges from $5.50 to $6.00, and its profit thereon from 25 to 60 cents, each. For beer barrels, according to information received by its witness, coopers on March 21, 1935, were asking from $3.00 to $10.60 apiece. Keystone eighths, quarters, halves, and wholes were priced at $3.00, $4.00, $5.75 and $10.50, respectively, and Peerless at ten cents higher. After July 4, 1935, this witness was informed, the prices were twenty-five cents lower. Where the coopers referred to were located and whether their prices were quoted c. i. f. was not disclosed, but his informant stated that it had a few halves and quarters that it would like to move at the prices indicated f. o. b. Baltimore.

Neither the beer-barrel nor whiskey-barrel traffic is heavy. Beer barrels moved in considerable volume to the Pacific Coast shortly after the repeal of the Eighteenth Amendment to the Constitution, but their movement has so dwindled that now there are only occasional small-lot shipments. Complainant's shipments and several less-than-carload lots from the North Atlantic appear to be the only whiskey barrels shipped since the spring of 1935. Defendants contrast this tonnage with the movement of rosin and oyster shells. In the course of a normal year, it is testified, defendant Sudden & Christenson handles probably 7,500 weight tons of rosin and a greater volume of oyster shells. They also compare their earnings on oyster shells, rosin, and beer barrels with those derived from carrying whiskey barrels. Whereas whiskey barrels pay between 7 and 8 cents per cubic foot, oyster shells are said to pay 14.7 cents, rosin approximately 16 cents, and beer barrels approximately 20.7 cents, per cubic foot. Complainant says "it would appear that the revenue per cubic foot of a coca-cola barrel weighing 50 lbs., which under the tariff would move under the $1.10 rate, would be much less in proportion than the revenue from a whiskey barrel weighing 90 lbs." and that "it, therefore, is reasonable to say that if a 50 lb. barrel and a 90 lb. barrel would move under the same rate there should not be such a wide difference between the rate on a 90 lb. barrel and a barrel weighing 115 lbs. as now exists." Besides the weight, the only evidence presented as to coca-cola barrels is the testimony of complainant's witness that they are the lightest barrels it ever made to hold fifty gallons and that they cannot be used for whiskey.

According to the record, the all-rail rate from Savannah to Los Angeles on wooden malt liquor barrels, minimum weight 20,000 pounds, has since sometime prior to April 1935 been $1.73, plus an emergency charge of 5 cents, and on tight wooden barrels, minimum weight 16,000 pounds, $1.92, plus an emergency charge of 5 cents. Complainant points out that the rate of $1.92 is approximately 110.97 per cent of the $1.73 rate and asserts that, similarly, defendants' rate on tight wooden barrels should be no higher than 110.97 per cent of their rate on wooden malt liquor barrels, or 97 cents. It also points out that defendants' rate on wooden malt liquor barrels is about 50.6 per cent of the rail rate thereon, and suggests that their rate on tight wooden barrels should be 50.6 per cent of $1.92, or 97 cents, to be in proper proportion. The facts of record do not justify condemnation of the rates existing at present or in the past.

The Department finds that the rates assailed have not been shown to be inapplicable, unreasonable or otherwise unlawful. An order dismissing the complaint will be entered.

DEPARTMENT OF COMMERCE

OFFICE OF THE SECRETARY

WASHINGTON

No. 374

MACON COOPERAGE COMPANY

v.

(ARROW LINE) SUDDEN & CHRISTENSON ET AL.

ORDER

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Department having, on the date hereof, made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

[SEAL]

(Sgd.) J. M. JOHNSON,
Acting Secretary of Commerce.

SEPTEMBER 3, 1936.

DEPARTMENT OF COMMERCE

UNITED STATES SHIPPING BOARD BUREAU

No. 167

ARGONAUT STEAMSHIP LINE, INC., ET AL.

v.

AMERICAN TANKERS CORPORATION

Submitted August 16, 1935. Decided September 19, 1936

Issues presented by the complaint having become moot by the voluntary cancellation of defendant's tariff, complaint dismissed.

Roscoe H. Hupper, *Burton H. White*, and *Robert C. Thackara* for all complainants and interveners except Calmar Steamship Corporation and Isthmian Steamship Company.

Russell T. Mount, *H. W. Warley*, and *E. J. Karr* for complainant Calmar Steamship Corporation.

C. S. Belsterling and *T. F. Lynch* for complainant Isthmian Steamship Company.

H. E. Manghum for defendant.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

Complainants allege that defendant's eastbound rates on lumber and shingles from Pacific Coast ports to Atlantic Coast ports of the United States, by way of the Panama Canal, which are lower by substantial percentages than the rates charged by complainants and by all other common carrier steamship lines operating in the eastbound intercoastal trade, were made or arrived at deliberately for the purpose of securing an undue proportion of the shipments of lumber and shingles offered for transportation; that such rates will not permit the upbuilding of the trade and continued maintenance of proper services as intended by the various shipping acts; that defendant avails itself unduly of the protection of the stabilized rate structure which has been provided by complainants; and that the reduced rates and charges are not just and reasonable. American-Hawaiian Steamship Company and Williams Steamship Corporation intervened in support of the complaint.

At the time the complaint was filed complainants and interveners were engaged in the intercoastal trade, and published eastbound rates of $12 per 1,000 feet, net board measurement, on lumber, and 65 cents per 100 pounds on shingles. During the time complained of defendant operated a single vessel in the trade and published rates of $10.50 per 1,000 feet, net board measurement, on lumber, and 60 cents per 100 pounds on shingles.

After full hearing and submission of the case the Department, on its own motion, instituted an investigation into and concerning the lawfulness and the propriety of defendant's tariffs remaining on file with the United States Shipping Board Bureau. Prior to hearing defendant voluntarily cancelled its tariffs, and the proceeding was discontinued. The questions here presented, therefore, have become moot. An order will be entered dismissing the complaint and discontinuing the proceeding.

DEPARTMENT OF COMMERCE

OFFICE OF THE SECRETARY

WASHINGTON

No. 167

ARGONAUT STEAMSHIP LINE, INC., ET AL.

v.

AMERICAN TANKERS CORPORATION

ORDER

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Department, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the complaint be, and it is hereby, dismissed, and that this proceeding be, and it is hereby, discontinued.

[SEAL] (Sgd.) DANIEL C. ROPER,

Secretary of Commerce.

SEPTEMBER 19, 1936.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 165

UNITED STATES LINES COMPANY
v.
CUNARD WHITE STAR LIMITED ET AL.

Submitted December 14, 1935. Decided October 9, 1936

Petition to withdraw complaint granted. Proceeding discontinued

Roger Siddall and *Cletus Keating* for complainant.
Parker McCollester and *James S. Hemingway* for defendants.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

Complainant and defendants are common carriers by water. Complainant, under American registry, and defendant Cunard White Star Limited, under British registry, operate between New York, N. Y., and Liverpool, England. Defendants Bibby Line Limited, British & Burmese Steam Navigation Company Limited, and Burma Steamship Company Limited, all under British registry, operate collectively under the trade name of Bibby-Henderson Line between Liverpool, on the one hand, and Port Said and Suez, Egypt; Port Sudan, Anglo-Egyptian Sudan; and Colombo and Rangoon, India, on the other.

The complaint alleged that defendants are parties to an agreement under which they actively solicit general cargo in the United States and transport it at joint through rates and under through bills of lading in vessels of Cunard to Liverpool, thence in vessels of Bibby-Henderson Line to the destinations named; that denial of complainant's requests that it be admitted as a party to that agreement on an equal basis with Cunard, or that Bibby-Henderson Line enter into a similar agreement with complainant, makes it impossible for complainant to participate in such traffic in competition with Cunard; that the said agreement gives defendants a monopoly of the traffic in question, and is unjustly discriminatory and unfair to complainant and to the shippers using its line, operates to the detriment of the commerce of the United States, and is in violation of sections 14, 14a, 15, 16, and 17 of the Shipping Act, 1916.

As required by the statute, hearing upon the complaint was duly held. Subsequent to the service of the examiner's proposed report and the filing by complainant of exceptions thereto, complainant served upon defendants and filed with the Department a petition requesting that it be permitted to withdraw the complaint and that the proceeding be discontinued. None of defendants filed an answer to the petition. In the absence of any objection to complainant's request, a determination of the issues appears unnecessary. The petition will be granted, without prejudice to any other regulatory proceeding upon complaint or otherwise involving the same or related issues. An appropriate order will be entered.

DEPARTMENT OF COMMERCE

OFFICE OF THE SECRETARY

WASHINGTON

No. 165

UNITED STATES LINES COMPANY

v.

CUNARD WHITE STAR LIMITED ET AL.

ORDER

This case, at issue upon complaint and answer on file, having been duly heard, and subsequent thereto complainant having filed a petition requesting that it be permitted to withdraw the complaint and that the proceeding be discontinued, and the Department, on the date hereof, having made and entered of record a report stating its conclusions and decision, which report is hereby referred to and made a part hereof;

It is ordered, That the petition be, and it is hereby, granted without prejudice to any other regulatory proceeding upon complaint or otherwise involving the same or related issues, and that this proceeding be, and it is hereby, discontinued.

[SEAL] (Sgd.) DANIEL C. ROPER,
Secretary of Commerce.

OCTOBER 9, 1936.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 413

Gulf Intercoastal Rates to and From San Diego, Calif. (No. 2)

Submitted September 25, 1936. Decided October 19, 1936

Proposed cancellation of through intercoastal transshipment rates between San Diego, Calif., on the one hand, and United States ports on the Gulf of Mexico and Mississippi River, on the other, found not unlawful. Suspension order vacated and proceeding discontinued.

H. R. Kelly for respondents.
C. F. Reynolds for protestant.

Report of the Department

By the Secretary of Commerce:

Exceptions to the examiner's proposed report were received by the Department seven (7) days after the time for filing exceptions provided by the Rules of Procedure had expired. They accordingly were returned to protestant and not accepted for filing. The conclusions herein do not differ substantially from those contained in the proposed report.

By schedules filed to become effective June 18 and July 8, 1936, respondents proposed to cancel all rates for through intercoastal transportation of freight between San Diego, Calif., and United States ports on the Gulf of Mexico, transshipped at Los Angeles Harbor, Calif., hereinafter called Los Angeles, and to San Diego from points on the Mississippi River and other inland points, transshipped at New Orleans, La., and at Los Angeles. Upon protests of the Harbor Commission of City of San Diego, the operation of the schedules was suspended until October 19 and November 8, 1936, respectively.

A complete description of respondents' type of service, methods of transportation, and manner of naming rates for the routes involved herein is given in *Gulf Intercoastal Rates*, 1 U. S. S. B. B. 516.

Briefly, Inland Waterways Corporation and Mississippi Valley Barge Line Company perform the service from Mississippi River and other inland points to New Orleans, La., the Canal lines, Gulf Pacific Mail Line, Ltd., Luckenbach Gulf Steamship Company, Inc., and Swayne & Hoyt, Ltd. (Gulf Pacific Line) members of Gulf Intercoastal Conference, perform the service between Gulf ports and Los Angeles; The McCormick Steamship Company and Pacific Steamship Lines, Ltd., hereinafter termed on-carriers, perform the service between Los Angeles and San Diego. The traffic moves on through bills of lading at through rates, which consist of the Canal lines' rates to and from Los Angeles, truck and terminal charges for transshipment at Los Angeles, and a so-called arbitrary to cover the service between Los Angeles and San Diego. Rates on shipments from points on the Mississippi River and other inland points are constructed by adding to the through rates from such points to Los Angeles the San Diego arbitrary and the truck and terminal charges at Los Angeles. Hereinafter the term Gulf ports will include such inland points.

The purpose of the suspended schedules is to cancel not only joint through rates but also through routes between San Diego and the Gulf and inland points involved, as to freight transshipped at Los Angeles. If the cancellations become effective, it is proposed to move any such cargo as separate shipments between San Diego and Los Angeles on local bills of lading. It is not known what the resulting rates will be except that they will not be published as through rates. No change in other rates or direct call service is involved, nor is the measure of future rates here in issue.

Respondent Canal carriers offered the following grounds in support of the suspended schedules: (1) Small volume of transshipment cargo between San Diego and Gulf ports, (2) absence of prompt and dependable service between Los Angeles and San Diego, (3) inability of the Canal lines to fix or control the rate factor between Los Angeles and San Diego and the trucking and terminal charges incidental to the transshipment, and (4) the fact that the bulk of traffic between San Diego and Los Angeles moves over competitive rail and motor carrier lines.

Figures of record show that during 1935 the following transshipped San Diego tonnage was carried by respondent Canal carriers between Los Angeles and Gulf ports: By Luckenbach Gulf eastbound 9 tons on 27 ships, an average of 667 pounds per ship, and westbound 128 tons on 24 ships, an average of 5.12 tons per ship; by Gulf Pacific and Gulf Pacific Mail eastbound 29 tons on 47 ships, an average of 1,233 pounds per ship, and westbound 37.1 tons on 48 ships, an average of 1,547 pounds per ship. At present the only coastwise carriers operating between San Diego and Los Angeles, 92 miles, in connection with Gulf transshipments under joint intercoastal rates, are The McCormick Steamship Company and Pacific Steamship Lines, Ltd. The former operates 13 vessels, but maintains no regular service to San Diego. It calls there only when it has sufficient cargo from northern ports such as Seattle and Tacoma. During the past several months it averaged about one call per week. Between January 16 and September 4, 1935, it maintained regular service to and from San Diego of about two calls per week, but this schedule was discontinued due to insufficient tonnage. McCormick points out that where volume is small the cost per ton of handling freight is greater and asserts that experience has proven that the small volume of San Diego tonnage does not warrant regular service. Failure to maintain a regular service makes it impossible for shippers or originating carriers to know in advance when McCormick steamers will be available at San Diego or Los Angeles for transshipments. Pacific Steamship Lines is now in the hands of a court under Sec. 77 (b) of the Bankruptcy Act, and maintains a regular weekly passenger and freight schedule between San Diego and Los Angeles. In order to maintain its passenger schedule the time is limited at both ports within which to load Gulf transshipments. During the winter of 1935–1936 it did not serve San Diego and abandonment of this service after the summer passenger season is being considered. Although both coastwise carriers solicit San Diego tonnage, McCormick now holds itself out to make direct calls only as inducement offers, minimum tonnage 250 net tons. The record is replete with evidence that these carriers do not furnish prompt and reliable service to San Diego in connection with Gulf intercoastal traffic.

The third ground advanced to justify cancellation of transshipping rates to and from San Diego rests partly upon the uncertainty of truck charges for transfer of tonnage from one wharf to another at Los Angeles. None of respondents fixes or controls those charges, although they are published in their tariffs as part of through rates to and from San Diego. Such rates are published by the truckers in tariffs which are not filed with the Department. The record shows that where those rates have been increased on short notice, water carriers, not having sufficient time to adjust their rates accordingly, were obliged to absorb the increased charges. Where wharfage or demurrage accrues, due to delay in moving transshipment tonnage, they likewise are compelled to absorb the expense. The outport arbitraries, which are also the divisions The McCormick Steamship Company and Pacific Steamship Lines receive out of the intercoastal through rate, are fixed independently by those two carriers, the other respondents having no control over them and deriving no revenue therefrom.

The last ground is based on the selection of rail and truck transportation between San Diego and Los Angeles by shippers and receivers of freight for the bulk of the Gulf intercoastal tonnage. Respondents do not provide joint rates or routes with rail or motor carriers in this trade. All such rail and truck tonnage between San Diego and Los Angeles moves on local bills of lading and is billed from and to Los Angeles via Canal carriers on local steamship bills of lading. During 1935 Gulf Pacific and Gulf Pacific Mail handled on local bills of lading out of Los Angeles 625.9 tons which had been handled by truck, and to Los Angeles 171.7 tons which were transported to San Diego by some form of transportation other than by McCormick or Pacific Steamship Lines. The record does not disclose the volume of similar tonnage handled by Luckenbach Gulf. Some tonnage may have moved by truck without knowledge of water carriers. The tonnage of record moving over land routes between San Diego and Los Angeles in the Gulf intercoastal trade in 1935 amounted in the aggregate to 797.6 tons, whereas the total shipped over the Pacific coastwise respondents was 203.1 tons.

Protestant urges that the proposed cancellation of transshipping rates will result in unreasonable, unjustly discriminatory, and unduly prejudicial and preferential rates in violation of the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933. It does not deny any of the facts hereinbefore stated. It shows the total volume of all coastwise traffic received and forwarded at San Diego for each year from June 30, 1930, to June 30, 1935, which ranges from 416,900 tons in 1935 to 772,588 tons in 1930, received, and from 11,448 tons in 1932 to 25,107 tons in 1935, forwarded. The principal commodity received is lumber from north Pacific Coast ports. That forwarded consists chiefly of canned fish, which is not regarded as high revenue cargo by the steamship lines.

In support of its allegations that the suspended schedules will result in unlawful rates if allowed to become effective, protestant (1) compares rates on various commodities applicable over water and land routes, (2) points to past increased rates and apparent proposed increased rates for the future, (3) offers truck cost studies purporting to show likelihood of increased truck rates between San Diego and Los Angeles, and (4) maintains that the suspended schedules unduly prefer Los Angeles competitors. It compares present carload and less-than-carload rates on canned fish, cooking oil, molasses, lumber, oyster shells, rice, cast iron pipe, and cotton piece goods between San Diego and Gulf ports moving over (1) respondents' lines, (2) intercoastal water routes between Los Angeles and New Orleans and by motor carrier between Los Angeles and San Diego, (3) rail-and-water routes, and (4) all-rail routes, with rates which it assumes will prevail over respondents' routes if the transshipment rates are cancelled. For example, it shows that the going transshipment rate on canned fish from San Diego to New Orleans is 73 cents per hundred pounds, carload, and $1.115 less-than-carload; that the truck and water rate is 64.5 cents, carload, and $1.21 less-than-carload; that the rail and water rate is 67 cents, carload, and $1.29 less-than-carload; that the all-rail carload rate is 95 cents, minimum 40,000 pounds, and 80 cents, minimum 60,000 pounds, and that the less-than-carload rate, all-rail, is $3.57. The lowest rate appears to be the truck and water carload rate. These rates are compared with rates of 77 cents, carload, and $1.165, less-than-carload, which protestant assumes will be the future rates based upon the present intrastate coastwise rates from San Diego to Los Angeles.

Such comparisons, unsupported by evidence of value of commodities, value of service, volume of movement, and other factors commonly considered in determining maximum reasonable rates, are of little probative force. The truck rates are described by protestant as being the result of "cut throat" competition. The rail rates between Los Angeles and San Diego are named in the railroad tariffs as truck competitive rates. It seems clear that they can not be considered maximum reasonable rates.

Moreover, there is no certainty what rates will be applicable to the movement between San Diego and Los Angeles if the through routes and applicable rates here under consideration are cancelled. Protestant refers to certain increases in water rates that have been made in the past and calls attention to truck cost studies being made by California state authorities to indicate the probability that truck rates between San Diego and Los Angeles will be increased. The increased water rates referred to were before the Department in *Gulf Intercoastal Rates*, *supra*, and were found not unlawful. The reasonableness of the truck rates between San Diego and Los Angeles is a matter within the jurisdiction of the Railroad Commission of the State of California and the findings of that Commission cannot be anticipated by this Department. Furthermore, such rates have little, if any, bearing on the reasonableness of rates subject to the jurisdiction of this Department. This observation also applies to protestant's comparison of the division of through transshipment rates between carriers engaged in foreign and Atlantic intercoastal commerce.

Testimony concerning alleged undue prejudice consists of general statements regarding competition between distributors in Los Angeles and San Diego. No San Diego shipper or receiver of freight appeared at the hearing, and the general statements made by protestant's witnesses are not sufficient to support a finding of undue preference or prejudice.

It is desirable to point out here that carriers maintaining through routes and joint rates are expected to furnish reasonable service to the public. This record is convincing that respondents cannot profitably maintain reliable and satisfactory service between San Diego and Gulf and inland points under the present transshipping rates and low volume of San Diego tonnage. As hereinbefore pointed out, however, the measure of rates resulting from the suspended schedules is not here in issue. The purpose of the suspended schedules is not to increase rates applicable on a through route movement, but to cancel the through routes themselves. In the absence of a through route a movement on local bills of lading between Los Angeles and San Diego becomes intrastate. Any movement between points within the same State is not subject to this Department's jurisdiction unless it constitutes part of a through route movement in interstate or foreign commerce. If through routes are again established, the question of the lawfulness of the applicable rates may be the subject of future consideration.

The Department finds the suspended schedules are not unlawful. An order will be entered vacating the suspensions and discontinuing the proceeding.

DEPARTMENT OF COMMERCE

OFFICE OF THE SECRETARY

WASHINGTON

No. 413

GULF INTERCOASTAL RATES TO AND FROM SAN DIEGO, CALIF. (No. 2)

ORDER

It appearing, That by orders dated June 16 and July 1, 1936, the Department entered upon a hearing concerning the lawfulness of cancellation of through routes and rates stated in the schedules enumerated and described in said orders, and suspended the operation of said schedules until October 19 and November 8, 1936, respectively;

It further appearing, That a full investigation of the matters and things involved has been made and that said Department on the date hereof has made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof, and has found that the schedules under suspension are not unlawful;

It is ordered, That the orders heretofore entered in this proceeding, suspending the operation of said schedules, be, and they are hereby, vacated and set aside, and that this proceeding be discontinued;

It is further ordered, That respondents be, and they are hereby, authorized to file schedules effective on not less than one day's notice announcing the vacation of the Department's suspension order and naming the date upon which the suspended schedules shall become effective.

[SEAL]

(Sgd.) DANIEL C. ROPER,
Secretary of Commerce.

OCTOBER 19, 1936.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 409

INTERCOASTAL SCHEDULES OF HAMMOND SHIPPING COMPANY, LTD.

Submitted October 6, 1936. Decided October 22, 1936

Respondent found not a common or contract carrier by water in intercoastal commerce. Its intercoastal schedule ordered stricken from the files of the Department.

R. C. Robinson for respondent.
C. W. Cook for intervener.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

No exceptions to the examiner's proposed report were filed. The conclusions herein do not differ from those contained in the proposed report.

This proceeding was instituted by the Department on its own motion to determine the lawfulness and propriety of respondent's intercoastal schedules remaining on file with the Department. Swayne & Hoyt, Ltd., intervened at the hearing in support of the Department's motion.

Respondent, Hammond Shipping Company, Ltd., owns and operates six ships, two of which were out of service at the time of the hearing, due to labor trouble in the lumber industry, and is engaged in the Pacific Coast coastwise trade exclusively, carrying lumber and general merchandise. It has been in business about seven years. On May 29, 1933, it filed its tariff SB–I No. 1, effective June 1, 1933, publishing local class and commodity rates for transportation of property between North and South Atlantic and Gulf ports in the United States, on the one hand, and Pacific Coast ports in the United States, on the other, via the Panama Canal. On November 18, 1933, it filed its tariff SB–I No. 2, effective December 30, 1933, publishing local commodity rates for transportation of property between the same ports via the Panama Canal, which tariff cancelled SB–I No. 1. Since the first tariff was cancelled and is not in effect, it will not be further considered here. Only one voyage was made under SB–I

No. 1. No shipments have moved under SB–I No. 2. Respondent states that its intercoastal operations were discontinued, due to business depression, during and since the year 1934.

Respondent admits that it does not engage in the intercoastal trade, does not advertise or solicit such traffic, and would not accept cargo for intercoastal transportation at the rates published in the tariff under consideration. Those rates are lower than the prevailing rates in effect over other lines and are admittedly not on a compensatory basis. Respondent takes the position that, while it is not now willing to enter intercoastal commerce, it may do so in the future if business conditions improve. In that event it would file a supplemental tariff increasing its rates. It objects to withdrawing its tariff at this time on the ground that, since the Bureau has accepted the tariff, respondent will occupy a better position if it later decides to transport intercoastal cargo. If, however, business conditions do not improve within the next year, respondent would have no objection to then cancelling the tariff.

Intervener developed the fact that respondent's ships average less than 5,000 tons dead weight and testified that regular intercoastal service requires ships exceeding 7,500 tons dead weight. Respondent maintains that it can enter the intercoastal trade with its present equipment supplemented by the purchase of two additional ships.

The record establishes clearly that Hammond Shipping Company, Ltd., is not now engaged in intercoastal commerce. It therefore is not a common or contract carrier by water in intercoastal commerce and is not subject to the provisions of the Intercoastal Shipping Act, 1933. The existence of its schedules holding itself out as a subject carrier when it admits that it is not in the trade, and will not accept cargo if offered, amounts to a false representation, contrary to the letter and spirit of the law. If and when respondent is ready to engage in intercoastal commerce it may publish and file its tariffs under the provisions of the statute. Certainly it gains no advantage or rights under its existing tariff. The situation here considered is similar to that before the Department in *Intercoastal Investigation, 1935*, 1 U. S. S. B. B. 400, 450, wherein Calmar Steamship Corporation was found not a common carrier engaged in Gulf intercoastal transportation. The Department there found that Gulf port rates, charges, rules, and regulations filed by Calmar should be cancelled.

The Department finds that respondent is not a common or contract carrier by water in intercoastal commerce. An order will be entered striking its intercoastal tariff SB–I No. 2 from the files of the Department and discontinuing this proceeding without prejudice to the filing of schedules at such future time as respondent may enter intercoastal commerce.

DEPARTMENT OF COMMERCE
OFFICE OF THE SECRETARY
WASHINGTON

No. 409

INTERCOASTAL SCHEDULES OF HAMMOND SHIPPING COMPANY, LTD.

ORDER

It appearing, That by order dated May 23, 1936, the Department entered upon a hearing concerning the lawfulness and propriety of the intercoastal schedules enumerated and described in said order remaining on file with the United States Shipping Board Bureau, Department of Commerce;

It further appearing, That a full investigation of the matters and things involved has been made and that said Department on the date hereof has made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof, and has found that respondent is not a common or contract carrier by water engaged in intercoastal commerce;

It is ordered, That respondent's tariff SB-I No. 2 be, and it is hereby, stricken from the files of the United States Shipping Board Bureau, Department of Commerce, effective on the date hereof, without prejudice to the filing of schedules at such future time as respondent may enter intercoastal commerce.

[SEAL] (Sgd.) J. M. JOHNSON,
Acting Secretary of Commerce.

OCTOBER 22, 1936.

UNITED STATES MARITIME COMMISSION

No. 416

EASTBOUND INTERCOASTAL LUMBER

Submitted October 11, 1936. Decided October 31, 1936

Proposed increased rates on eastbound lumber from Pacific coast ports to Gulf and Atlantic coast ports, found justified. Order of suspension vacated and proceeding discontinued.

M. G. de Quevedo, *Joseph J. Geary*, *O. N. Shepard*, *C. E. Belsterling*, *T. F. Lynch*, and *R. T. Mount* for respondents.

William C. McCulloch, *W. B. Greeley*, *K. C. Batchelder*, *R. B. Seeley*, and *R. T. Titus* for protestants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

By schedules filed to become effective July 1, 1936, respondents, who are all of the regular common carriers transporting lumber by water in intercoastal commerce, proposed to increase the rates on lumber and products thereof from United States Pacific coast ports to United States ports on the Gulf and Atlantic coast from $12.50 to $13.00 per 1,000 feet net board measure, minimum 12,000 feet net board measure, and from $13.00 to $13.50 on quantities less than the minimum.

Upon protests filed on behalf of West Coast Lumbermen's Association and Intercoastal Lumber Distributors' Association, the operation of the proposed schedules was suspended until November 1, 1936. Unless otherwise noted, rates and prices will be stated in amounts per 1,000 feet board measure. A board-foot of lumber measures 12 inches in length, 12 inches in width, and 1 inch in thickness.

The West Coast Lumbermen's Association consists of 189 companies, who represent approximately 80 percent of the total production of lumber in the so-called Douglas fir region in Oregon and Washington. The membership consists of manufacturers, wholesalers, and independent loggers. The Intercoastal Lumber Distributors' Association is composed of wholesalers, including some manufacturers, who distribute approximately 90 percent of all west coast lumber shipped intercoastally to the Atlantic coast.

The proposed increased rates are alleged to be unreasonable in violation of section 18 of the Shipping Act, 1916, and in contravention of section 16 thereof, in that they would be unduly prejudicial to west coast lumber and unduly preferential of other descriptions of traffic.

Practically all of the traffic affected is lumber from ports of origin in Washington and Oregon. Typical routes are from Seattle, Wash., and Portland, Oreg., through the Panama Canal to New Orleans, La., and Galveston, Tex., on the Gulf, and Norfolk, Va.; Baltimore, Md.; Philadelphia, Pa.; New York, N. Y., and Boston, Mass., on the Atlantic coast.

Although the present rate is published as $12.50 per 1,000 board feet, the charge actually paid for that quantity may vary from $12.50 to $10.00. This is due to the fact that manufactured lumber, although sold on gross measurement, is actually shipped on basis of the net measurement after manufacture. Thus 1,000 board feet of dressed 2 by 4 lumber, which actually measures 1¾ by 3¾ inches, or 16 percent less in volume, represent a net measurement of 840 board feet, on which the charge would be $10.50.

The Douglas fir region, which lies west of the Cascade Mountains, contains standing timber aggregating 546 billion board feet, or 38 percent of all standing timber in the United States. The principal species are fir, hemlock, spruce, and cedar. The capital investment there in timber, mills, and logging facilities was estimated at approximately $839,000,000 in 1930. The mills in actual operation or potentially capable of being operated in 1935 numbered 868, with a normal annual productive capacity of 11½ billion board feet. Sixty-five per cent of these mills are located on tidewater and are served by railroad.

The following table prepared from exhibits of record sets forth in concise form the key points in the west coast lumber industry's economic history for the past 10 years:

	Production	Percent of capacity used	Shipments including exports	Average cost of production	Average price	Number of sawmills operating	Estimated number of employees	Average wage per 8-hour day
	M.M. feet		*M.M. feet*	*Per M. feet*	*Per M. feet*			
1926	10,411	----------	----------	$21.10	$20.73	----------	----------	$4.70
1927	9,988	----------	----------	20.48	19.74	----------	----------	4.74
1928	10,182	----------	10,385	19.46	19.28	----------	86,000	4.73
1929	10,377	72.0	9,964	20.42	20.63	706	----------	4.81
1930	7,638	47.9	7,615	19.90	17.80	540	60,200	4.71
1931	5,368	33.6	5,633	16.20	13.55	432	47,300	3.95
1932	3,090	19.8	3,516	15.50	11.50	398	30,100	3.17
1933 (first half)	2,052	30.8	2,250	14.58	12.50	350	33,000	2.90
1933 (second half)	2,601		2,403	17.48	16.60	425	38,250	4.32
1934	4,276	29.6	3,998	20.00	17.23	410	38,250	4.43
1935	4,766	35.4	4,891	19.28	17.28	435	38,000	5.00
1936 (first half)	3,273	48.6	3.221	----------	19.40 [1] 18.00	468	41,500	5.22

[1] Average price at present time.

For the first half of 1936 the rate of production and shipments approximated 63 percent of the volume in 1929, and the use of sawmill capacity was 48.6 percent as compared with 72 percent in 1929. Apparently 1929 was the only year in which the average selling price exceeded the average price of production. In the face of this situation, the survival of the industry is attributed to its living through one form or another upon its capital resources.

Employment in the industry is about 50 percent, and the average wage approximately 100 percent, of the 1929 level. The average wage paid by the west coast industry, which accounts for something less than one-half of the cost of production of lumber, is one of the highest of the basic industries. In June 1936 it averaged 67.8 cents per hour, or approximately 31 cents higher than the average wage of all competing lumber-producing regions in the United States, and 18.3 cents higher than the present British Columbia average wage.

The foremost merchandising problem of the industry is finding ways and means of selling its large production of low-grade lumber. This type is found in low-grade logs left after logging operations, estimated to be one-sixth of the total cut of lumber, in center portions of higher-grade logs, and to a great extent in standing timber damaged by forest fires, of which there is approximately 14 billion board feet. The average yield of the logs produced in the Douglas fir region is 21.12 percent of clear or higher quality grade, 19.85 percent of structural and select common grades, 32.16 percent of no. 1 common timber, dimension, and boards, and 26.65 percent of no. 2 and no. 3 common timber, dimension, and boards. The disposal of the middle and lower grades, amounting to 78 percent of the total lumber production, is the chief concern of the west coast industry. This problem is accentuated by the falling off by two-thirds of the industry's export trade from 1,646 million board feet in 1929 to 567 million board feet in 1935, which loss has diverted a large volume of low-grade lumber to the domestic market. The Atlantic coast market normally takes 85 to 90 percent of inch lumber consumed there in no. 2 and no. 3 grades, and absorbs over 60 percent of the production of no. 2 and no. 3 boards by west coast mills. Protestants seek a rate that will enable them to convert low-grade logs and burned-over timber into commercial form and move it to the Atlantic coast markets at prices that will enable it to compete with similar grades produced locally and in nearby Southern States.

Based upon present selling prices f. a. s. dock, the value of the various grades of west coast lumber is as follows: Upper grades, which constitute 14 percent of the production, $25.50; no. 1 dimension, boards, and timbers, representing 55 percent, $15.00; no. 2 common dimension and boards, or 21 percent, $12.50; and no. 3 common dimension and boards, constituting 10 percent, $10.00. The weighted average price of these grades is $15.45.

The net freight rate on these various grades, after deduction is made from the basic $12.50 rate of the weighted coefficients for each item, averages $10.58. Thus the delivered price without insurance would be $26.03, of which the shipper gets 59 percent and the intercoastal carrier 41 percent. It was testified that while prices in the eastern markets fluctuate, the possibility of increased prices of the 86 percent of middle and lower grade lumber is very definitely limited on account of the intense competition that it has to meet. Witnesses for protestants concede that one factor contributing to low prices is overproduction in the Douglas fir region induced by the industry's effort to overcome the economic advantage of its competitors who pay lower wages and have a longer working week. A program of curtailment in production is now being inaugurated by the west coast industry in an attempt to increase prices.

Lumber is a comparatively low-grade bulk cargo moving regularly in tremendous volume. It is stable, not easily damaged, fairly easily handled, and can be loaded on deck to the extent of 20 to 25 percent of the total cargo. The record indicates that a fair average weight for intercoastal lumber per 1,000 board feet is 3,000 pounds or more, some of the recorded tests indicating as much as 3,300 and 3,628 pounds. Lumber stows 80 cubic feet per net ton or 120 cubic feet per 3,000 pounds.

Protestants compute the volume of intercoastal lumber traffic from the west coast in 1929 as 2,295,000 net tons, which at a net rate of $10.58, produced gross earnings of $17,986,000. At the present volume of movement, 1936 shipments should produce gross revenue amounting to $13,500,000 under the rate now in force. The stability of this traffic is revealed by the fact that normally the fluctuation, quarter by quarter, does not vary more than 7 percent.

The total eastbound lumber movement in 1935 to Atlantic coast ports was approximately one-fourth of the combined eastbound and westbound intercoastal tonnage, excluding petroleum and sulphur. In 1931 it was 36 percent. To the Gulf, eastbound lumber was 5.6 percent of the total eastbound and westbound intercoastal tonnage in 1935. From 1925 to 1935 the percentage of lumber traffic from Oregon and Washington to North Atlantic ports to total tonnage from and to the same territories ranged from 60 percent in 1934 to approximately 87 percent in 1928. To the Gulf, comparable percentages range from 24 percent in 1934 to 70 percent in 1930.

The following table, compiled from exhibits of record, discloses the movement of lumber from Oregon and Washington to Atlantic and Gulf ports, together with the average prevailing rates:

Year	To Atlantic coast ports		To Gulf ports [1]	
	Average rate	Footage	Rate	Gross tons
1922	$15.06	604,606,011		
1923	13.58	771,852,581		
1924	13.00	1,027,046,030	$14	
1925	14.16	1,375,028,957	14–15	28,133
1926	13.08	1,613,138,155	15–14	73,449
1927	14.00	1,625,107,499	14	44,781
1928	14.29	1,689,074,233	14	31,415
1929	11.50	1,593,518,783	14	39,923
1930	10.00	1,342,070,584	14–12	57,936
1931	9.70	1,236,314,756	12	30,837
1932	9.93	723,474,878	12–12.36	19,215
1933	10.20	848,553,410	12	19,411
1934	12.00	600,945,663	12	25,458
1935 [2]	12.12	825,561,062	12–12.50	39,330
1936 (first half)	12.50	574,288,284	12.50	26,785

[1] For fiscal years ending June 30.
[2] Rate increased from $12 to $12.50 on Oct. 3, 1935.

Respondents point out that during the first 4 months in 1936 the movement of lumber from Oregon and Washington to North Atlantic ports exceeded by approximately one-third the volume for the corresponding period in 1935, despite the 50-cent increase in rate during the later period. To the Gulf the increase in volume for the same period was over one-fourth. Gulf respondents also point out that the reduction in 1930 from $14.00 to $12.00 was made on the representation that such action would double the volume of shipments, which prediction was not borne out as indicated by the above table.

The intercoastal route is the most important single artery for the distribution of lumber in volume. In 1929, 44 percent moved by rail, 20 percent by intercoastal steamers, 17.5 percent coastwise to California, and 18.5 percent to foreign markets. During the recent depression intercoastal lumber maintained its volume more nearly than the lumber movement to any other market, and in the first half of 1936 it had reached 72 percent of the 1929 volume, whereas rail shipments were only 69 percent of the 1929 level. One of protestants' members, representing 18 mills located on Puget Sound, which supply 16 to 17 percent of all lumber moving intercoastally from Oregon and Washington, testified that for their lumber sold, c. i. f., or approximately one-half of total sales, they employed respondents' facilities for the carriage of 60 percent and chartered ships for the remainder. After reaching the Atlantic coast about 40 percent of intercoastal lumber is consumed in the seaboard markets, while 60 percent moves inland by rail, truck, and canal to points as far west as Detroit and Grand Rapids, Mich., and Cincinnati, Ohio.

Prior to the reduction of the transcontinental rail rate on lumber from the Northwest to eastern points from 90 cents to 72 cents per 100 pounds on August 24, 1935, the lumber traffic therefrom to eastern markets split about 84.5 percent to the intercoastal carriers and 15.5 percent to rail lines, based on the movement for 12 months ending August 1935. Under the influence of the 18-cent reduction in the rail rate, and perhaps the increase of 50 cents in the water rate on October 3, 1935, the percentage of rail traffic increased from 15.5 percent to 26.4 percent up to July 1, 1936, when the transcontinental rail rate was increased to 78 cents per 100 pounds. The percentage carried by intercoastal carriers dropped correspondingly to 73.6 percent in the same period.

The principal market for west coast lumber is in the 15 States from Michigan and Ohio eastward to the Atlantic coast, classed by the railroads as official territory, which is supplied by the so-called "back-haul" movement of intercoastal lumber from the eastern seaboard. The lumber consumption in these States represents approximately 33 percent of the total for the United States. Out of the 4½ billion board feet of domestic lumber consumed there in 1934, 25.5 percent was produced locally, 46.5 percent in the South, 21 percent in Oregon and Washington, and 7 percent in other northern and western States.

These percentages indicate that, disregarding the native woods, west coast lumber meets its strongest domestic competition with southern yellow pine. This is felt principally at New York and points east and south thereof. It was testified that at some points yellow pine enjoyed a price advantage as much as $5 under west coast lumber.

Another potent rival in these markets is Canadian lumber, principally fir and hemlock from British Columbia and spruce and pine from eastern Canada. The movement from British Columbia to United States Atlantic coast ports from 1923 to 1931 ranged from 139,724,000 board feet to 375,774,000 board feet annually. It slumped to 452,000 board feet in 1934, chiefly as the result of increased tariffs, but rose to 39,670,000 board feet in 1935, due primarily to strike conditions in Oregon and Washington. The Canadian Trade Treaty, which became effective January 1, 1936, reduced the tariff on Canadian lumber from $4.00 to $2.00. Thereupon importations of fir and hemlock increased to 84,250,000 board feet in the first 6 months of 1936, 56 million board feet of which went to North Atlantic ports. This represents 63 percent of the treaty quota of 250 million board feet on Canadian fir and hemlock. The maximum imports of Canadian spruce occurred in 1929, aggregating 499 million board feet, and during the first 6 months of 1936 the imports of Canadian spruce and pine amounted to 172 million board feet.

It was testified that from March to July 1936, Canadian lumber dominated the eastern markets with price reductions ranging from 50 cents to $1.50 under American west coast lumber. The competition eased off temporarily in July due to diversion of Canadian lumber to the United Kingdom, but still persists to a substantial degree on certain low-grade items, such as no. 2 and no. 3 grades, which are not shipped to the United Kingdom. Lumber from British Columbia moves on charter rates ranging from $8.75 to $10.00, which, according to the evidence, is sufficient to offset the remaining duty of $2.00. Apparently Canadian lumber is not a factor in the Gulf markets.

West coast lumber also encounters competition in the eastern markets with Russian lumber, which is accorded the same reduction in tariffs as lumber from Canada under the Canadian Trade Treaty, without any quota restrictions. In 1930 Russian imports amounted to 66 million board feet, consisting chiefly of spruce, and in the second half of 1935, 33 million board feet entered Atlantic ports. This lumber was a real competitive factor in 1930 and 1931, but is not so at present except potentially.

Standards of rate making offered by both respondents and protestants by which to test the reasonableness of the rates proposed consist chiefly of rate testimony showing the percentage advances in lumber rates as compared to increases on other commodities; and comparisons to show how earnings under the proposed rate correspond with the revenue yielded by rates on other intercoastal traffic.

Respondents emphasize the fact that in the general rate advance of October 3, 1935, following the intercoastal investigation of 1935, the rate on lumber was increased by only 4 percent, whereas on other traffic increases amounted to as much as 60 percent. Typical rate advances on eastbound traffic are as follows: 6.78 and 16.12 percent on wheat, 10.75 percent on dried beans, canned goods, and green salted hides, 15.38 percent on vegetable oil, 7.69 percent on sugar, 21.50 percent on wrapping paper, and 15.04 percent on alcohol. Increases in westbound rates amounted to 10.75 percent and 28.55 percent on canned goods, 20 percent on agricultural implements, 6.94 to 9.66 percent on iron and steel articles, 24 percent on soap, and 16.66 to 60 percent on solid fibreboard boxes. The proposed rate of $13.00 represents an increase of 8.3 percent over the $12.00 rate in effect prior to the general increase of October 3, 1935.

Rate studies offered by protestants portray the increases from the period June 1, 1933, to July 1, 1936. It appears that on eastbound traffic there were no rate changes on 63 commodities, reductions were made on 3, and increases were made on 198. The average change on all commodities, except lumber, was an increase of 8.1 percent as compared to the increase on lumber of 28.2 percent on basis of the present rate and 33⅓ percent under the proposed rate of $13.00. A similar comparison in respect to westbound traffic reflects an average increase of 10.5 percent. A comparable study of rates to and from the Gulf disclosed average increases of 7.9 percent eastbound and 11.5 percent westbound. Protestants lay particular stress upon the relatively small increases on iron and steel articles, moving in considerable volume westbound from the Atlantic coast, ranging from 5 to 10 percent.

Protestants feel that there is no justification for making a further increase in the lumber rate after the general increase of intercoastal rates on October 3, 1935, in view of the fact that since then, out of 1,040 rate items in Agent Thackara's Westbound Tariff, there was one increase in rates westbound from the Atlantic coast up to July 1, 1936, and five reductions. A similar study of the eastbound tariff indicates that out of 441 items an increase was made on 1 item and reductions on 2 commodities. During the same period in the Eastbound Gulf Intercoastal Tariff, out of 271 items there was 1 reduction and no increase except on lumber.

From the foregoing it appears that the proposed rate of $13.00 represents an increase of 33⅓ percent over the level of June 1, 1933, as compared with advances on other intercoastal traffic of approximately 9.5 percent during the same period; but an increase of only 8.3 percent over the level of October 2, 1935, as compared with the general advance on all commodities on October 3 averaging somewhat higher.

In criticism of the selection of the level of June 1, 1933, as the basis for comparison, respondents call attention to the statement in *Intercoastal Investigation, 1935*, 1 U. S. S. B. B. 400, 411, that "The record makes clear that the conference rates on file are the offspring of provisional compromises forced by carrier competition. They do not adjust to any other system of rate making." Supporting their contention that the lumber rate in force on June 1, 1933, was depressed, respondents demonstrate that, considering only the month of October, from 1927 to 1935, and excluding 1931, the rates on other intercoastal traffic were relatively stable, and in October 1935 were generally higher than during the previous years. This is not true of lumber, however, since the rate of $14.00 prevailing during 1927 and 1928 broke to $9.00 in 1929, and by gradual increases reached its present figure of $12.50 in October 1935, still $1.50 under the previous level of $14.00.

Earnings under the present and proposed rates on lumber are compared by respondents with the revenue yielded by rates on other commodities moving in the intercoastal trade in the table following:

Commodity	Rates per 100 pounds Oct. 3, 1935	Stowage per net ton	Revenue per cubic foot of stowage
EASTBOUND			
Lumber:	*Cents*	*Cubic feet*	*Cents*
Present rate	[1] 41.6	80	10.4
Proposed rate	[1] 43.3	80	10.8
Flour	30.0	45	13.3
Wood pulp	27.0	50	10.8
Canned goods	51.5	55	18.7
Dried beans	51.5	55	18.7
Copper ingots	15.9	10	31.8
Powdered milk	51.5	80	12.8
Mill feed	43.0	80	10.7
Hides, G. S. ... bundles	55.0	44	25.0
Linoleum	70.0	68	20.5
Alfalfa meal	41.0	80	10.2
Seeds, garden ... bags	120.0	80	30.0
Oats, in bags (minimum 500 tons)	27.5	65	8.4
WESTBOUND			
Canned goods	51.5	55	18.7
Glass bottles (beer)	44.0	66	13.3
Iron and steel bars	36.0	15	48.0
Iron and steel pipe	38.5	36	21.3
Pig iron	22.7	9	50.4
Wire, iron, and steel (coils)	38.5	40	19.2
Lawn mowers, in boxes	70.0	71	19.7
Paints in oil ... bbls	72.0	24	60.0
Wrapping paper ... rolls	55.0	53	20.7
Solid fibreboard boxes	51.5	50	20.6
Salt ... bbls	38.0	56	13.5
Rope and cordage ... bales	60.0	72	16.6
Alcoholic liquors (whisky)	154.5	[2] 80	38.6

[1] Converted to cents per 100 pounds on basis of 3,000 pounds for 1,000 board measure feet.
[2] Cases.

Gulf respondents convert the $13.00 rate to $8.66 per net ton on basis of 3,000 pounds per 1,000 board feet and, using a stowage factor of 120 cubic feet per 1,000 board feet, arrive at a revenue yield of $4.33 per cubic ton, as against an average revenue yield of $6.26 per ton of 40 cubic feet on general cargo.

In the composite table appearing below protestants indicate the relative importance of the lumber traffic from Oregon and Washington ports and contrast the earnings thereon with those on other traffic moving in comparatively heavy volume from and to the same points:

Commodity	Gross tons handled[1]		Rate per gross ton		Percent of total tons handled		Ton-mile earnings [2]	
	Atlantic	Gulf	Atlantic	Gulf	Atlantic	Gulf	Atlantic	Gulf
							Mills	*Mills*
Logs and lumber	1,023,145	39,330	[3] $9.34	[3] $9.34	60.07	25.78	1.5	1.7
Flour, wheat	167,974	19,017	6.72	6.72	9.86	12.46	1.1	1.2
Canned goods	97,206		11.54		5.71		1.9	
Copper sulphate	37,122		11.42		2.18		1.9	
Oats	24,580		8.06		1.44		1.3	
Paper stock		9,439				6.19		
Canned salmon		17,180		11.54		11.26		2.1
Fruits, canned		4,507		11.54		2.95		2.1

[1] Fiscal year ending June 30, 1935.
[2] Based on 5,467 miles to the Gulf and 6,039 miles to Atlantic ports.
[3] Based on 3,000 pounds per 1,000 board feet.

The value of lumber is stated to be $12.82 per ton as compared to values per ton of $70.00 to $170.00 on canned goods, $79.97 on flour, and $108.64 on copper sulphate.

Ton-mile earnings on typical commodities moving from Atlantic coast ports to Oregon and Washington for the same period are shown to be 1.7 mills on lumber, 1.9 mills on canned goods, and 1.4 mills on iron and steel articles. Similar figures on traffic from the Gulf are from 0.1 to 0.2 mills higher. It should be pointed out that the distances used in these computations are not necessarily the average distances actually steamed by vessels in the intercoastal trade, due to the variation in the number of ports of call. Special emphasis is placed by protestants on the lower earnings on the heavy volume of westbound iron and steel traffic, which is only one-half the volume of eastbound lumber from the west coast. But these earnings would figure higher if consideration is given to the shorter distances to south Pacific coast ports, at which 90 percent of the westbound iron and steel shipments are delivered.

Reference is also made by protestants to lower rates on lumber to foreign destinations and to charter rates from British Columbia to North Atlantic ports. Obviously such rates do not afford proper comparisons with those here in issue in the absence of a showing of similarity of transportation conditions and the circumstances under which they were made.

Protestants regard certain allowances and divisions granted by some of the respondents out of their present rate as an admission that such rate is not too low. For instance, Calmar, in its Tariff SB–I No. 7, under the so-called Berth Quantity Allowance Rule, provides for reductions from the basic rate on two berthings ranging from 50 cents to $3.52 for footage shipped, ranging from 1,100,000 board feet to 5,300,001 board feet and over. If this is a legitimate inference to be drawn against Calmar it should not be used to the disadvantage of other respondents who have not seen fit to establish such a rule. Furthermore, the issue as to the lawfulness of this rule is before the Commission in another proceeding.

Certain of respondents have agreements with on-carriers to tranship cargo at Seattle to Atlantic coast ports which originates at and is shipped on through bills of lading from points in British Columbia. As illustrative, one provides that the through rate shall be the rate from Seattle, divided as follows: 12.5 cents per 100 pounds to the on-carrier, the remainder to respondent carrier. However, it is logical to suppose that this agreement was limited to general cargo, excluding lumber, in view of the testimony that no lumber has moved under it, and that the on-carrier's division of the through rate is measured in rates per 100 pounds, whereas the lumber rate is on a footage basis.

In justification of their claim for the need of additional revenue respondents call attention to the deficits of intercoastal carriers amounting to $770,988 in 1930, $4,550,821 in 1931, $4,075,971 in 1932, $95,959 in 1933, and $4,510,200 in 1934. They also point to the statement in *Intercoastal Investigation, 1935, supra*, at page 462, that "respondents appear in need of additional revenue to enable them to keep their fleets in good repair and maintain modern and efficient service." Respondents contend that operating costs have increased disproportionately with rate increases, and by way of proof compare vessel operating expenses for the first 6 months of 1936 with those for the year 1933. The following table indicates the percentage increases in these cost items:

	Wages	Ships stores	Stevedoring		Clerking	Total increase
			Loading	Discharging		
	Percent	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*
Williams	32.00	30	[1] 61.00	[1] 65.00		26.00
American-Hawaiian [2]	25.00	37	61.00	62.50	60.00	28.50
Isthmian	16.00	25	24.00	24.00	[3] 77.00 [4] 9.00	26.27
Luckenbach	60.84		[3] 59.52 [4] 68.88	[3] 59.52 [4] 68.88	31.03	
Luckenbach Gulf	70.22		[3] 66.79 [4] 94.84	[3] 66.79 [4] 94.84	37.95	

[1] Includes clerking.
[2] First 5 months 1936 over year 1933.
[3] East-bound.
[4] West-bound.

In contrast to this showing of increased operating costs, protestants adduced testimony indicating a decided improvement in respondents' gross operating revenues since 1933. Briefly, it is demonstrated that the percentage of increase of the westbound intercoastal movement in the fiscal year 1936 over the calendar year 1933 was 37.5 percent. This percentage of increase, applied to the gross operating westbound revenues of 17 intercoastal lines for 1933 of $19,093,482, indicates gross operating westbound revenue for 1936 amounting to $7,160,056 in excess of 1933 revenue, which does not include any increased revenue that may have resulted in that period from increases in rates. This figure, plus the increase in gross operating revenues during the same period for eastbound intercoastal lumber of $4,167,473, equals $11,327,529, which does not take into account any increased revenues derived from increased volume of eastbound traffic other than lumber.

Additional evidence of the recovery of intercoastal lines is seen by protestants in the net earnings of American-Hawaiian amounting to $494,843 for the first 6 months of 1936, the new shipbuilding program of Calmar, and the fact that the loans of the former United States Shipping Board Bureau to respondents are reported as current, having been reduced from $7,627,614 to $1,608,661.

There is abundant testimony in behalf of protestants to the effect that the industry cannot stand a further rate increase of 50 cents. One shipper declared that in view of the chaotic condition of the market, with prices below cost of production, his agency would not be able to pass on the increase to the buyer, which would result in an increase in the losses now being sustained. But he conceded that if the demand at the present time for west coast woods was greater, the 50 cents could be absorbed. Another shipper stated that for several months past the market has not paid the current going f. a. s. price plus the $12.50 freight rate plus insurance, by anywhere from 50 cents to $1.00. He estimated that the proposed rate increase would reduce the volume of west coast lumber shipments to the North Atlantic coast by 2 percent or possibly more. Another shipper stated that "probably this fifty cents won't kill us. It is the cumulative effect of fifty cents after fifty cents that will be asked for continuously, from the time our rate was, in the old days, $10, that does hurt. * * * That is our real fear." The consensus of opinion among shippers was that an increase would divert business to Canadian and yellow pine lumber producers, and cause the shifting of a substantial proportion of the movement of dry stock, dimension, and uppers to rail transportation; also that $12.00 would be a fair rate and $12.50 the maximum that the traffic could bear.

Protestants also expressed the definite view that establishment of the proposed rate would restrict the territory in which intercoastal lumber could be distributed inland from the Atlantic seaboard. They show that in many instances the combination of the $13.00 rate, plus transfer charges, plus the normal back-haul rail rate would exceed the all-rail transcontinental rate of 78 cents per 100 pounds. This would be true as to Buffalo and Syracuse, N. Y., Pittsburgh and Altoona, Pa., and Huntington, W. Va. To Roanoke, Va., there would be a slight difference in favor of the rail-and-water route. Also, to Syracuse the aggregate rail-and-water rate through the port of Albany would be lower than the all-rail rate. However, ice conditions in the Hudson River interfere with shipments through Albany from 3 to 4 months in the year. Assuming that 21.5 cents per 100 pounds is the maximum rail back-haul rate that could be combined with a $13.00 intercoastal rate, a witness for protestants stated that the effect of the proposed rate would be the elimination of markets in a strip of territory roughly 100 miles east of Buffalo and Pittsburgh.

Respondents are entitled under the law to a maximum reasonable rate, or one that is not so high as to be excessive or extortionate, and not so low as to yield less than the cost of service plus a fair profit. In determining whether the proposed rates come within these bounds, the most important considerations are: The probable effect of the rate upon the flow of the traffic, the element of risk involved, the regularity and volume of movement, the value of the commodity, the relation of the rate in question to rates for comparable services, the value of the service to the shipper, and the cost to the carrier of rendering the service.

The record makes clear that lumber is entitled to whatever advantages flow from the fact that it is a relatively low-grade commodity, moves regularly in huge volume, and is not unduly susceptible to loss or damage in transit.

Whether the establishment of the proposed rates would curtail the volume of movement cannot be determined. But the fair import of the testimony of witnesses qualified to speak on the subject is that the rate would not seriously affect the flow of the traffic. Protestants insist that the rate should not only permit the movement of the present volume undiminished but also promote the marketing of a distinct type of low-grade lumber recoverable from inferior timber that is now largely wasted. While the ideal function of a reasonable rate is to facilitate the widest distribution of a commodity, the question of extending promotional rates for that purpose rests primarily within the managerial discretion of the carriers. They are entitled to demand, and the Commission has no alternative but to prescribe or approve, a maximum reasonable rate.

The value of the service to the shipper, in a general sense, is the ability to reach a market at a profit. Where, as in this industry, f. a. s. prices are less than the cost of production, it is obvious that the failure to market at a profit cannot be attributed to the cost of transportation. The present rate has permitted a steadily increasing volume of lumber to reach the eastern markets at prices which the industry evidently considers profitable in the sense that they make it possible to liquidate capital investments, which is said to be preferable to shutting down operations entirely.

It is only in measuring value of service that consideration may be given to the competition that protestants meet in the eastern markets with lumber from Canada, Russia, the South, and elsewhere, because the Commission has no authority to reduce a rate primarily to protect an industry from foreign or domestic competition. *Atchison, T. & S. F. Ry. Co.* v. *Interstate Commerce Commission*, 190 Fed. 591. This decision is a reflection of the basic rule expressed by the Supreme Court of the United States in *Interstate Commerce Commis-*

sion v. *Diffenbaugh*, 222 U. S. 42, 46, that "The law does not attempt to equalize fortune, opportunities or abilities" of competitors.

It is true that the active market competition from other lumber-producing regions has a limiting effect upon the value of the service to protestants. Furthermore, the availability of relatively cheap rail transportation and water transportation at lower charter rates tends to lessen the worth of respondents' services. Just what weight should be given to these factors is difficult to determine. However, it is significant that Canadian competition is easing off, and in the face of all competition, the movement of west coast lumber intercoastally has steadily and progressively risen in volume since 1934, in spite of the increase of 50 cents in the rate in October 1935. Roughly, the movement of lumber to Atlantic coast ports was 360 million board feet for the first half of 1935, 465 million in the second half of that year, and 574 million during the first half of 1936. It is interesting to note here that one producer was able to sell over 6 million board feet of lumber since January 1, 1935, in markets reached via the Mississippi River, principally St. Louis, Mo., and Chicago, Ill., at through ocean-and-barge rates of $16.83 and $19.33, respectively. The price of lumber has followed a gradual upward trend since 1932. This evidence of improving conditions is corroborated by testimony of record showing that the per capita consumption of lumber has increased from 94 board feet in 1932 to 135 board feet in 1935, and that all kinds of building in 37 Eastern States has increased from 20 percent of 1926 volume in 1933 to 40 percent of 1926 volume in the first half of 1936. The national outlook, according to the record, indicates the prospect of a large and active building period, due in a large measure to an acute shortage of homes and buildings, particularly of the low-cost type, which makes up the major market for lumber. There is no reason to doubt that west coast lumber, due to its superiority over certain other types of competing lumber, and the fact that it has aggressively competed with other woods in the past, will obtain its fair share of any new business in the future.

No very satisfactory conclusion can be drawn from the evidence bearing upon cost of service. An investigation of the deficits referred to by respondents for the years 1930 to 1934 in the intercoastal trade reveals that they are based in part upon coastwise and foreign operations of some of the respondents. Moreover, the revenue figures include passenger and mail revenue, and income from nonoperating activities, while the expense figures embrace these items as well as capital losses. Some of the passenger lines which are mainly responsible for the deficits do not carry any lumber at all from Oregon and Washington. The increases in respondents' operating expenses for the first half of 1936 over 1933 would be more persuasive of increased costs of operation generally if, in addition, there had been shown for each year the volume of revenue tonnage and the operating expenses and revenues, so that the unit cost per payable ton could be determined. It may also be said, in connection with protestants' showing of increased gross operating revenue of respondents over the year 1933, that such statistics do not mean much unless accompanied with a statement of the corresponding operating expenses, and the return on the recorded property investment that is thereby produced.

In the absence of a satisfactory showing as to the cost of service, the most tangible evidence by which to gage the reasonableness of the rates in issue consists of the comparative rate analyses of record. As stated, protestants demonstrate that the proposed rate of $13.00 is 33⅓ percent higher than the lumber rate in effect June 1, 1933, as compared with an increase in commodity rates generally of approximately 9.5 percent during the corresponding period. But we are not particularly impressed by this comparison in view of the fact that the lumber rate established on that date clearly shows the influence of the intense carrier competition indicated by the rate history of the preceding 4-year period, whereas the rate level of June 1, 1933, on commodities generally does not appear to be affected to the same marked degree. We are convinced that the rate level existing just prior to the advance of October 3, 1935, was more responsive to the present-day trends and conditions in the intercoastal trade than that of June 1, 1933, and that an increase of only 8.3 percent over that basis is not out of line with the general rate advance of October 3, 1935.

The comparative earnings of the rates in issue form an instructive guide in determining their reasonableness. The ton-mile test employed by protestants is subject to the objection that it excludes from consideration the stowage factors of the various commodities and unduly emphasizes the matter of distance, which does not figure prominently as a factor in rates for water transportation. For instance, protestants show that westbound rates on iron and steel articles yield ton-mile earnings of 1.4 mills, as compared with ton-mile revenue of 1.5 mills on lumber. However, when the earnings are computed upon the basis of space occupied in the ship, a comparison of the same rates reveals that the rates on iron and steel articles yield from 21.3 cents to 50.4 cents per cubic foot of stowage, whereas the proposed rate on lumber produces only 10.8 cents. The revenue of 10.8 cents on lumber is based upon the $13.00 rate converted to a rate of 43.3 cents per 100 pounds, using 3,000 pounds as the equivalent of 1,000 board feet. Using 3,300 pounds, the rate and earnings would be 39 cents and 9.8 cents, respectively. As shown in one of the preceding tables, the rate of $13.00, on the basis of relative earnings, compares favorably with the going rates on other intercoastal traffic moving regularly in volume.

We revert to the economic distress of the lumber industry, which has been discussed at considerable length in this report, because the subject was mainly dwelt upon by protestants, who seemed to assume that it ought to be controlling in the disposition of the case. Our only duty with respect to the rates in issue is to inquire whether they are in accordance with the provisions of the Shipping Act, 1916, and related acts. We cannot require of carriers the establishment of rates which assure to a shipper the profitable conduct of his business. The carrier may not impose an unreasonable transportation charge merely because the business of the shipper is so profitable that he can pay it; nor, conversely, can the shipper demand that an unreasonably low charge shall be accorded him simply because the profits of his business have shrunk to a point where they are no longer sufficient.

The effect of a rate upon commercial conditions, whether an industry can exist under particular rates, are matters of consequence, and facts tending to show these circumstances and conditions are always pertinent. But they are only a single factor in determining the fundamental question. A narrowing market, increased cost of production, overproduction, and many other considerations may render an industry unprofitable, without showing the freight rate to be unreasonable.

Upon consideration of all the evidence as a whole, in the light of argument of counsel adduced therefrom, and the principles that must govern our decision, we conclude that the rates under suspension have not been shown to be unlawful.

We find that the suspended schedules are not shown to be unlawful. An order will be entered vacating the order of suspension and discontinuing this proceeding.

Order

At a session of the United States Maritime Commission, held at its office in Washington, D. C., on the 31st day of October, A. D. 1936.

No. 416

Eastbound Intercoastal Lumber

It appearing, That by order dated June 27, 1936, the Department of Commerce of the United States entered upon a hearing concerning the lawfulness of the rates, charges, regulations, and practices stated in the schedules enumerated and described in said order, and suspended the operation of said schedules until November 1, 1936;

It further appearing, That on October 26, 1936, the United States Maritime Commission, pursuant to the authority vested in it by the Merchant Marine Act, 1936, took over the powers and functions theretofore exercised by the said Department as the successor to the powers and functions of the United States Shipping Board, by virtue of the President's Executive order of June 10, 1933, which were transferred to the said Commission by section 204 (a) of the said Merchant Marine Act, 1936;

It further appearing, That a full investigation of the matters and things involved has been made and that said Commission on the date hereof has made and filed a report containing its findings of fact and conclusions thereon which report is hereby referred to and made a part hereof, and has found that the schedules under suspension have not been shown to be unlawful;

It is ordered, That the order heretofore entered in this proceeding, suspending the operation of said schedules, be, and it is hereby, vacated and set aside as of October 31, 1936, and that this proceeding be discontinued.

By the Commission.

(SEAL)

H. A. Wiley, *Chairman.*
M. M. Taylor.
Geo. Landick, Jr.

Attest:

Telfair Knight, *Secretary.*

UNITED STATES MARITIME COMMISSION

No. 407

C. W. SPENCE, DOING BUSINESS AS PACIFIC LUMBER & SHIPPING COMPANY

v.

PACIFIC-ATLANTIC STEAMSHIP COMPANY

Submitted October 26, 1936. Decided December 1, 1936

Rate charged on piling from Everett and Tacoma, Wash., to Wilmington, Del., found not unreasonable or otherwise unlawful. Complaint dismissed.

Tyre H. Hollander for complainant.
W. T. Sexton for defendant.

REPORT OF THE COMMISSION

BY THE COMMISSION:

No exceptions were filed to the examiner's proposed report. Our conclusions do not differ from those contained in the proposed report.

By complaint filed April 15, 1936, as amended, complainant C. W. Spence, an individual trading and doing business as Pacific Lumber and Shipping Company, alleges that the rate charged by defendant, a common carrier by water in intercoastal commerce, on two shipments of piling moving from Everett and Tacoma, Wash., to Wilmington, Del., October 26 and November 21, 1935, was in violation of section 14 of the Shipping Act, 1916, in that defendant failed to provide cargo space prior to October 3, 1935, as agreed; was in violation of section 18 in that the governing tariff was not filed with the United States Shipping Board Bureau, Department of Commerce, and public notice given within the statutory period, and was unjust, unreasonable, and unduly prejudicial in violation of sections 18 and 16 of that act. Reparation is sought. Rates will be stated in amounts per 1,000 net board measure feet.

During August 1935 complainant entered into negotiations with defendant for September shipment of about 225 pieces of piling ranging from 102 to 110 feet in length from Everett and Tacoma to Wilmington at the rate of $12 plus 10 per cent then in effect and published in Agent Thackara's Tariff SB–I No. 5. By letter dated September 6, 1935, complainant tendered the piling for shipment, and understood that such letter, together with prior correspondence and oral agreements, constituted a firm booking. The record does not establish that defendant made firm reservation for September movement. Both parties understood that effective October 3, 1935, the rate would be increased, but defendant misquoted the increased rate as being $12.50 plus 10 per cent, whereas it was $12.50 plus 25 per cent, published in Agent Thackara's Tariff SB–I No. 7, filed with the United States Shipping Board Bureau, Department of Commerce, August 31, 1935. Complainant testifies that he had actual knowledge of the latter rate about September 27, 1935.

Although from time to time during the negotiations defendant agreed to furnish cargo space at the $12 plus 10 per cent rate during September, it testified that it was unable to place ships in Puget Sound during that month due to strike conditions in the shipping industry. No other ships were available to complainant for the same reason. Several of defendant's ships intended for Puget Sound were turned back off California due to labor troubles. In a letter dated August 2, 1935, defendant advised complainant to bear in mind that the rate would be increased and stated "it is, of course, always understood that our agreement to lift is subject to Force Majeure, strikes, etc." There was no agreement to observe the $12 rate plus 10 per cent after the increased rate became effective.

On October 26 and November 21, 1935, defendant called at Tacoma and Everett and lifted the cargo consisting of 298,482 board feet at the tariff rate of $12.50 plus 25 per cent, total freight charges amounting to $4,663.79, which were paid by consignee and deducted from complainant's invoice. While complainant maintains that the legal rate was $12 plus 10 per cent, it seeks reparation in the amount of $559.65 based on a rate of $12.50 plus 10 per cent which was erroneously quoted by defendant as being applicable on and after October 3, 1935. The misquotation of a rate by the agent of a carrier does not warrant the exaction of a rate other than that applicable, *Texas & Pacific Ry.* v. *Mugg*, 202 U. S. 242. It also, of itself, affords no basis for a finding that the rate is unreasonable or for an award of reparation by the Commission.

Complainant urges that the rate which became effective October 3, 1935, did not apply on the shipments and that no rate other than that effective at the time the contract of affreightment was entered into was legally applicable. In support of that contention *Ambler* v. *Bloedel Donovan Lumber Mills*, 68 Fed. (2nd) 268, is cited in his brief. That case involved a contract between shipper and carrier for transportation of lumber from Puget Sound to Atlantic ports during 1931 at a rate of $8, whereas the carrier was a party to an agreement with other carriers to observe a $10 rate. Although the shipments moved during the period the $10 rate agreement was in force, the shipper's contract with carrier was made before that time. The court found that the contract was not unlawful and that the agreed rate did not apply. That case is distinguishable from the instant case in that the traffic there considered moved prior to the enactment of the Intercoastal Shipping Act, 1933, which governs here in so far as determining the applicable rate is concerned. In 1931 carriers were prohibited by section 18 of the Shipping Act, 1916, from charging rates higher than those published and properly filed, but there was no specific prohibition against their making contracts with shippers at lower rates. In the cited case the court recognized such contracts as not unusual and stated that the practice was then well known. Complainant mentions other court cases in harmony with the *Ambler case*. None of them deals with transportation governed by the Intercoastal Shipping Act, 1933. In *Intercoastal Investigation, 1935*, 1 U. S. S. B. B. 400, 455, it was found that under the provisions of that act, the rate in the effective tariff affords the only legal basis upon which freight charges may be collected, any agreement to the contrary notwithstanding. We find that the applicable rate was $12.50 plus 25 per cent as charged.

There remains for determination the question whether the rate charged was otherwise unlawful as alleged. Complainant's contention that Agent Thackara's Tariff SB–I No. 7 was not filed with sufficient public notice is based on his understanding that no printed copies of the tariff were available for posting on the Pacific coast until about a week prior to the effective date of the rates published therein. Section 2 of the Intercoastal Shipping Act, 1933, provides that unless shorter notice is authorized, new schedules shall become effective not earlier than thirty days after date of posting and filing thereof with the United States Shipping Board, now the United States Maritime Commission. The tariff involved here was filed August 31, 1935, within this requirement of the statute. The fact that it was not posted at origin ports does not invalidate the rates published therein. *United States* v. *Miller*, 223 U. S. 599.

At the hearing complainant admitted that defendant failed to furnish cargo space prior to October 3 because the space was not available. He also stated that he had no knowledge of unjust discrimination as between him and other shippers in the adjustment and settlement of claims, and that there was apparently no undue preference of competing shippers since they were all treated alike by defendant. This amounts to abandonment of the allegations under sections 14 and 16. No evidence under section 18 was offered in support of the allegation of unreasonableness of the rate charged.

Defendant denies that the rate charged was unreasonable or otherwise unlawful, but is willing to pay the reparation sought on the theory that complainant was forced to pay the higher rate through no fault of his own. The Commission has no authority under the law to award reparation except upon a showing of violation of the shipping acts. Apparently, if there is liability under the contract of affreightment for failure of defendant to furnish cargo space within the time agreed upon, any recourse of complainant is before a court of competent jurisdiction.

An order dismissing the complaint and discontinuing this proceeding will be entered.

Order

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 1st day of December, A. D. 1936

No. 407

C. W. Spence, Doing Business as Pacific Lumber & Shipping Company

v.

Pacific-Atlantic Steamship Company

This case being at issue upon complaint and answer filed with the Department of Commerce of the United States, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had; and this Commission, pursuant to the authority vested in it by the Merchant Marine Act, 1936, having taken over the powers and functions theretofore exercised by the said Department as the successor to the powers and functions of the United States Shipping Board; and the Commission having, on the date hereof, made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the Commission.

[seal] (Sgd.) Telfair Knight,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 201

THE PARAFFINE COMPANIES, INC.,

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, ET AL.

Submitted September 28, 1936. Decided December 28, 1936

Defendants' failure to provide split delivery service on eastbound intercoastal shipments of feltbase rugs, feltbase carpeting, linoleum, and accessory commodities not shown to be unduly preferential or prejudicial, or unjust and unreasonable. Complaint dismissed.

A. W. Brown and *R. A. McWhinney* for complainant.

Joseph J. Geary for all defendants except Isthmian Steamship Company and Nelson Steamship Company.

Thomas F. Lynch for Isthmian Steamship Company.

James A. Russell for Nelson Steamship Company.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions to the examiner's proposed report were filed by complainant and defendants replied. The findings recommended by the examiner are adopted herein.

Complainant alleges that the refusal of defendants to provide split delivery service at Atlantic coast ports for straight and/or mixed carloads of feltbase rugs, feltbase carpeting, linoleum, and accessory commodities, while providing such service in connection with the same commodities at Pacific coast ports, is a violation of sections 16 and 18 of the Shipping Act, 1916, and asks that defendants be required to provide the same service on eastbound shipments as now applies on westbound shipments.

The above commodities are manufactured by complainant at Emeryville, Calif., on the east side of San Francisco Bay. Complainant's witness testified that his company is the only one on the west coast which manufactures these commodities. While he stated that his company has lost business to competitors he was unable to give a single instance where such loss was due to the non-existence of the split delivery privilege. It was admitted that there was no competition between shipments made by his company eastbound with those shipped westbound by manufacturers on the east coast, and there is no positive evidence that the east coast manufacturers availed themselves of the privilege and profited thereby on their westbound shipments. Ordinarily, under section 16 of the Shipping Act, 1916, there must be a competitive relation between persons, localities, or traffic before undue preference can arise, and the undue prejudice must be of such kind as will result in positive advantage to the one unduly preferred. Moreover, it is essential to show the specific effect of the alleged prejudicial rate or practice upon the flow of the traffic and the marketing of the commodity.

It is contended that the refusal to accord the privilege eastbound is an unjust and unreasonable practice in violation of section 18 of the Shipping Act, 1916. Defendants' rates in both directions on feltbase rugs, feltbase carpeting, linoleum, and accessory commodities are 70 cents per 100 pounds, carload, minimum 30,000 pounds, and $1.50 per 100 pounds less than carload. Because of the inability to obtain the service, complainant consigns most of its carload shipments to Brooklyn, N. Y., where they are kept in storage pending distribution to dealers along the Atlantic coast and at inland points east of Chicago, Ill. Only a few carload shipments are forwarded out of Brooklyn. There is very little distribution at the South Atlantic ports on account of the expense in shipping less than carloads from the concentration point in Brooklyn. In order to compete in the East, complainant must absorb all freight charges from the Pacific coast to ultimate destination, and the handling and storage charges at Brooklyn. While complainant may encounter economic and geographical disadvantages in selling its products in the East, the law does not contemplate the equalization of natural advantages and disadvantages through an adjustment of freight rates.

When complainant began the manufacture of linoleum in 1931 it expected to supply the major portion of the demand for that commodity on the Pacific coast, but eastern competitors have reduced their prices on linoleum in the Pacific coast markets to such an extent that complainant has not been able to obtain that business, and is now forced to find an outlet in eastern markets in order to keep its plant in operation. Complainant feels that if split delivery "is available and is given to our competitors on the west coast, that we should be given the same privilege on the east coast." Complainant assumed, but made no showing, that operating conditions in the eastbound and the westbound intercoastal trades were similar, and defendants declined to explain why the service is available in one direction and not in the other.

Upon this record we find that complainant's allegations have not been sustained. An order will be entered dismissing the complaint.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 28th day of December A. D. 1936

No. 201

THE PARAFFINE COMPANIES, INC.

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY ET AL.

This case being at issue upon complaint and answers on file with the Department of Commerce of the United States, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had; and this Commission, pursuant to the authority vested in it by the Merchant Marine Act, 1936, having taken over the powers and functions theretofore exercised by the Department of Commerce as the successor to the powers and functions of the United States Shipping Board; and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof; it is

Ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the Commission.

[SEAL] (Sgd.) TELFAIR KNIGHT,

Secretary.

UNITED STATES MARITIME COMMISSION

No. 386

H. KRAMER & COMPANY

v.

INLAND WATERWAYS CORPORATION ET AL.

Submitted December 16, 1936. Decided January 13, 1937

Charges on shipments of brass ingots, in carloads, during the period August 12 to October 17, 1935, found applicable, but unjust and unreasonable. Reparation awarded.

H. J. Niemann, *W. G. Oliphant*, and *E. Holzborn* for defendants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed by defendants to a finding recommended by the examiner in his proposed report regarding the failure of the carriers to file their agreement under section 15 of the Shipping Act, 1916, covering joint through intercoastal transportation. A determination of the issues presented by complainant does not require a decision on the question which these exceptions raise and, therefore, that matter will not be considered at this time. As to issues directly involved, the findings recommended by the examiner are adopted herein.

By complaint filed March 13, 1936, complainant, H. Kramer & Company, engaged in the business of smelting and refining of nonferrous metals and in selling brass, bronze, and aluminum ingots and other alloys, with principal offices at Chicago, Ill., alleges that transportation charges assessed and collected by defendants, Inland Waterways Corporation and Swayne & Hoyt, Ltd. (Gulf Pacific Line), common carriers by water in intercoastal commerce, on four carload shipments of brass ingots, weighing 75,198, 41,196, 50,080, and 50,028 pounds, respectively, which moved September 3, 13, 17, and October 11, 1935, from Chicago, Ill., to Los Angeles Harbor, Calif., were inapplicable; unduly and unreasonably preferential, prejudicial, and disadvantageous in violation of section 16 of the

Shipping Act, 1916; unjustly discriminatory and prejudicial under section 17; and unjust and unreasonable in violation of section 18 thereof. Reparation is sought in the amount of $49.13. Charges involved are stated in cents per 100 pounds.

Complainant was charged a joint through rate of 75 cents under Item 4250–A of defendants' tariff SB–I No. 4, applicable on brass ingots in carloads, minimum weight 30,000 pounds, which became effective December 27, 1934. In addition, there was assessed and collected a 5-cent emergency charge under Item 85. Paid freight bills attached to the complaint disclose that 32 cents or 40 percent of the combined rate and charge accrued to the Inland Waterways Corporation, and 48 cents or 60 percent of the Gulf Pacific Line.

Complainant contends that its shipments were interstate shipments within the meaning of Item 40 (a) of the Tariff of Emergency Charges filed with the Interstate Commerce Commission, identified as Agent L. E. Kipp's I. C. C. No. A–2611, and that an emergency charge of 2.5 cents provided under Part 4, Group 521, of that tariff was applicable and should have been applied to its shipments.

Item 40 (a) above mentioned provides that—

> Where a shipment moves via an all-water * * * route the line-haul emergency charge will be, if a carload shipment, 10 percent of the line-haul transportation charges * * * but not more in any case than the line-haul emergency charge which would be applicable if the shipment moved all-rail from and to the same points.

That provision has application only to shipments moving via the routes of carriers subject to the jurisdiction of the Interstate Commerce Commission with which the tariff was filed. It is not applicable to the shipments here in issue. Since such a provision does not appear in the tariff of defendants on file with this Commission, the charge of 5 cents assessed and collected under Item 85, Supplement 36, to defendants' joint tariff SB–I No. 4 was legally applicable.

Section 17 of the Shipping Act, 1916, applies only to common carriers by water in foreign commerce. Consequently, the allegation of a violation of that section will not be considered.

Complainant did not appear at the hearing. Defendants introduced evidence and admitted the statements of fact set forth in the complaint and all of complainant's charges except that of unreasonableness.

The Tariff of Emergency Charges above mentioned originated with a decision of the Interstate Commerce Commission in Ex Parte 115, *Emergency Freight Charges, 1935*, 208 I. C. C. 4, which permitted temporary increases in rates and as a tariff publishing expedient authorized publication of such increases in the form of emergency charges which were to be added to the current rates. A maximum level for emergency charges was prescribed. The Tariff of Emergency Charges filed pursuant to that authorization became effective April 18, 1935. It named a 5-cent charge on shipments of brass ingots in carloads, applicable not only on all-rail traffic but also on all-water and rail-barge routes subject to the Interstate Commerce and related acts. The 5-cent charge was reduced to 2.5 cents, effective August 12, 1935.

Defendants operate on a through route in connection with other carriers, the traffic of which was and still is subject to the Tariff of Emergency Charges above mentioned. Upon the establishment of such charges defendant Inland Waterways Corporation applied for and received from the United States Shipping Board Bureau, Department of Commerce, special permission authority to file on five days' notice increased rates in the form of emergency charges in the same amounts as those charged by other carriers. Pursuant to that authorization it established a 5-cent charge on the commodity involved, effective May 28, 1935. On October 17, 1935, the charge was reduced to 2.5 cents.

By the publication of the 5-cent emergency charge the 75-cent joint through rate was increased to 80 cents. As shown above that total charge later was reduced to 77.5 cents. Complainant alleged the charge assessed and collected was excessive and unreasonable to the extent of 2.5 cents. In substance, this is an allegation that the total transportation charge of 80 cents was unreasonable to the extent it exceeded 77.5 cents. The 5-cent increase was made five months after the initial voluntary establishment of the 75-cent rate. The higher charge remained in effect approximately four and one-half months. The 77.5-cent charge is still in effect. When rates or charges are increased for a short period and then voluntarily reduced, there is established a prima facie presumption that the increased rate or charge was unreasonable to the extent it exceeded the subsequently established rate. Defendants made no attempt to rebut the presumption thus raised. The defendant barge line testified it concurred in the Tariff of Emergency Charges filed with the Interstate Commerce Commission in so far as its rail-barge rates were concerned, and that it endeavored to keep emergency charges on its intercoastal transportation on the same level as that applicable to transportation by rail carriers. Defendant Gulf Pacific Line concurred in that testimony. With the exception of the period August 12 to October 17 defendants' published charge on brass ingots did not exceed that level. Their action in establishing the 5-cent charge in the first instance and in subsequently reducing it to 2.5 cents followed similar action which had previously been taken by other carriers and indicated that they regarded the level of such other carriers as a maximum level.

Defendants also testified the tariff filed with the Interstate Commerce Commission, in which the 2.5-cent charge observed by other carriers was published, was not received by them until June 29, and that the publication of a similar reduction in their behalf, effective August 12, would have required very expeditious handling and would have been possible only by special permission of the Department of Commerce. The tariff in which the reduction was finally made was not issued until September 12, 1935; it became effective October 17, 1935. No application was submitted for the special permission claimed to have been necessary. Defendants by previous experience in such matters are familiar with special permission procedure, and the implication that there was not sufficient time is unjustified. The only reason cited for the delay was "press of other matters." Whatever the cause of the delay, it does not relieve defendants from their obligation under section 18 of the Shipping Act, 1916, to establish, observe, and enforce just and reasonable charges.

Defendants admitted complainant's allegation of undue and unreasonable preference, prejudice, and disadvantage. Such an allegation, however, is not proven by the mere admission of a carrier. It is well settled that the existence of unlawful preference and prejudice is a question of fact to be clearly demonstrated by substantial proof. As a general rule there must be a definite showing that the preference and prejudice complained of is undue and unreasonable in that it actually operates to the real disadvantage of the complainant. To do this it is of primary importance that there be disclosed an existing and effective competitive relation between the prejudiced and preferred shipper. *Port of Philadelphia Ocean Traffic Bureau* v. *The Export Steamship Corporation et al.*, 1 U. S. S. B. B. 538, 541. The record is silent as to any shipments other than those of complainant. Proof of a violation of section 16 of the Shipping Act, 1916, supported by proof of damage resulting directly therefrom is a prerequisite to an award of reparation. The record contains no such proof.

The Commission finds that the rate assailed on the shipments under consideration was legally applicable, but that it was unjust and unreasonable to the extent it exceeded 77.5 cents. It further finds that complainant made the shipments above described; that it paid total charges thereon aggregating $1,572.02 at the rate legally applicable and was damaged thereby in the amount of the difference between the amount paid and $1,522.89, the amount payable on the basis herein found lawful, and is entitled to reparation in the amount of $49.13. An order awarding reparation will be entered.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 13th day of January A. D. 1937

No. 386

H. KRAMER & COMPANY

v.

INLAND WATERWAYS CORPORATION ET AL.

This case being at issue upon complaint and answer on file with the Department of Commerce of the United States, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had; and this Commission, pursuant to the authority vested in it by the Merchant Marine Act, 1936, having taken over the powers and functions theretofore exercised by the Department of Commerce as the successor to the powers and functions of the United States Shipping Board; and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the defendants, Inland Waterways Corporation and Swayne & Hoyt, Ltd. (Gulf Pacific Line) be, and they are hereby, authorized and directed to pay unto complainant, H. Kramer & Company, of Chicago, Ill., on or before thirty days from the date hereof, the sum of $49.13 as reparation on account of unjust and unreasonable transportation charges assessed and collected on four carload shipments of brass ingots from Chicago, Ill., to Los Angeles Harbor, Calif., on September 3, 13, 17, and October 11, 1935, respectively.

By the Commission.

[SEAL] (Sgd.) TELFAIR KNIGHT,

Secretary.

UNITED STATES MARITIME COMMISSION

No. 423

PHELPS BROS. & CO., INC.

v.

COSULICH-SOCIETA TRIESTINA DI NAVIGAZIONE ET AL.

Submitted March 12, 1937. Decided March 29, 1937

Allegation that defendants have established and are maintaining a system of exclusive patronage contracts under agreements or understandings not filed or approved pursuant to section 15 of the Shipping Act, 1916, not sustained, and defendants' conference agreement and contracts with shippers entered into pursuant thereto not shown to result in undue or unreasonable preference or advantage to shippers who patronize defendants' lines exclusively or to operate to the detriment of the commerce of the United States.

Defendants' conference agreement and contracts with shippers entered into pursuant thereto found to result in unjust discrimination and to be unfair as between complainant and defendants and to subject complainant to undue and unreasonable prejudice and disadvantage.

If defendants do not admit complainant to full and equal membership in the conference, consideration will be given to the question of issuing an order disapproving the conference agreement.

John Tilney Carpenter for complainant.

Roscoe H. Hupper and *Burton H. White* for defendants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

No exceptions were filed to the report proposed by the examiner. His findings are adopted herein.

Complainant is a New York corporation engaged in the transportation of property in foreign commerce of the United States. Defendants[1] are the sole members of the Adriatic, Black Sea, and Levant Conference.

[1] Cosulich-Societa Triestina di Navigazione, Compagnie Generale de Navigation a Vapeur, The Export Steamship Corporation, and Isthmian Steamship Company, hereinafter referred to as Cosulich Line, Fabre Line, American Export Lines, and Isthmian Lines, respectively.

Complainant alleges, in substance, that defendants refuse to admit it to membership in the conference and that the conference agreement,[2] therefore, is unjustly discriminatory and unfair as between complainant and defendants, subjects complainant to undue and unreasonable prejudice and disadvantage, and operates to the detriment of the commerce of the United States; further, that defendants have established and are maintaining a system of exclusive patronage contracts under agreements or understandings not filed or approved pursuant to section 15 of the Shipping Act, 1916, and that such contracts and agreements or understandings result in undue and unreasonable preference and advantage to shippers who patronize defendants' lines exclusively, subject complainant to undue and unreasonable prejudice and disadvantage, and operate to the detriment of the commerce of the United States. We are asked to require defendants to admit complainant to full and equal membership in the conference or, if we lack such power, to disapprove and cancel the conference agreement and require defendants to cease and desist from demanding, charging, or collecting rates based on exclusive patronage lower than those that would otherwise be applicable.

The conference agreement in question was approved by the United States Shipping Board February 26, 1930. Its declared purpose is "to promote commerce from North Atlantic ports of the United States of America to Egyptian (Mediterranean), Palestinian, Syrian, Grecian, Turkish, Russian (Black Sea), Bulgarian, Roumanian, and Adriatic ports for the common good of shippers and carriers by providing just and economical cooperation and avoiding uneconomic competition between steamship lines operating in such trades." Among other things, it provides that "Any person, firm, or corporation now or hereafter engaged in operating a regular service in the aforesaid trade may become a member of this Conference upon agreeing to perform and abide by this Agreement and rules and regulations thereunder, which agreement shall be signified by signature of this Agreement."

In December 1935 complainant announced its intention to operate a regular monthly service in the trade covered by the agreement and applied to the conference for membership therein. The latter suggested that it be furnished the names of complainant's officials, the specific ports within the conference range from and to which complainant intended to operate, the flag or flags complainant's vessels would fly, and the vessels complainant would employ on its first three sailings, together with their sailing dates. Thereupon complainant expressed a desire to withdraw its application from con-

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[2] United States Maritime Commission Conference Agreement No. 133.

sideration until such time as it was able to supply the information indicated. Two days later it again applied for membership, listed the names of its officers, and expressed the intention to inaugurate a service to Egypt and the Levant with one sailing monthly to the ports of Alexandria, Jaffa, Haifa, Beirut, Piraeus, all within the conference range, and such other ports as cargo conditions warranted. For the immediate future, it stated, it proposed to operate Scandinavian motorships or, possibly, freighters under the British flag, depending entirely on charter and economic conditions. It said that it was not prepared at the time to furnish specific names of vessels or sailing dates, but endeavored to assure the conference that it would berth tonnage well suited for the trade and that it would try to arrange its sailing dates to the best advantage of all concerned. Under date of December 21, 1935, it was notified by the conference that the information submitted and other known facts relating to the trade indicated that it was not entitled to be regarded as a regular line in the trade within the meaning and interpretation of the conference agreement. It was also informed that the names of the vessels to be employed by it and their sailing dates should be specified as a preliminary to further consideration. Complainant replied that its first sailing would be on or about January 18, 1936, the second approximately February 15, 1936, and the third about March 14, 1936. The Norwegian motorships *Talisman*, *Hoegh Trader*, and *Hoegh Merchant*, respectively, were nominated, complainant reserving the right to make substitutions. On January 7, 1936, the application was declined. Thereafter it was renewed three times without success. At the time of the last renewal complainant had made two sailings in the trade: the motorship *Tonsbergfjord* September 5, 1936, and the steamer *Idefjord* October 7, 1936.

Defendants' position now, as at the time the application was declined, is that complainant is not engaged in operating a regular service. They state that they dealt with the question of regular service in good faith; that this question was one for their sole determination under the conference agreement; and that, there being no lack of good faith, their decision, notwithstanding that complainant or anybody else might think it incorrect, is not subject to third party reversal or revision. This contention may be answered by pointing out that the conference agreement may continue in effect only so long as it has the approval of this Commission. If, because of defendants' interpretation or application of its terms or for any other reason, it is found to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the

United States, or to be in violation of the Shipping Act, 1916, we may disapprove, cancel, or modify it. If it be disapproved, it will be unlawful for defendants to carry it out, directly or indirectly, in whole or in part. Complainant seeks admission to the conference in preference to disapproval of the agreement.

Complainant was incorporated in November 1935, at which time there were transferred to it the good will of the business and the right to use the trade name of Phelps Brothers and Company, a New York copartnership established in 1830. This copartnership, as mechants, common carrier and agent of common carriers, pioneered in developing the trade and commerce of the United States with Adriatic and Levant countries. It also was a party to the North Atlantic-Adriatic, Black Sea and Levant Conference Agreement approved by the United States Shipping Board June 26, 1923, which was in effect until superseded by the present agreement. On January 1, 1930, it became inactive and resigned from the conference. Upon the transfer of its rights to the trade name and the good will of its business to complainant it was dissolved. One of the partners acquired a financial interest in complainant, and another became president thereof.

It is testified by the latter that from the date complainant first applied for conference membership it made efforts to engage in the trade but found that the greater part of the business was tied up under contracts between shippers and defendants. These contracts provide, among other things, that in consideration of the rates and other conditions stated therein, the shipper agrees to offer to defendants for transportation on vessels which may load at Baltimore, Boston, Philadelphia, and New York all of the shipments of the commodities therein mentioned made or controlled, directly or indirectly, by him, his agents, and/or subsidiaries to conference ports during a specified period.[3] If defendants fail to name space within 3 business days after the shipper duly applies therefor on a vessel scheduled to sail from the port of shipment desired within 15 days after the shipment date desired, he may secure space for the shipment elsewhere without prejudice to his right to future shipment under the contract. He may avail himself of the services of any or all of the defendants, as follows: approximately 15 sailings per year by the Cosulich Line, which serves Fiume, Trieste, Venice, Patras, and Piraeus; 26 sailings per year to Alexandria, Haifa, Jaffa, and Beirut, and 36 sailings per year to Piraeus, Istanbul, and Constanza by American Export Lines; and 15 sailings per year by Isthmian Lines, which calls at Alexandia, Port Said, and, if there is sufficient cargo,

[3] One year, excepting automobiles, auto trailers, busses, trucks, chassis, and parts, for which the contract period is 11 months.

Jaffa, Haifa, and Beirut.[4] To obtain the contract rate on a particular commodity to one port the shipper must agree to make all of his shipments of the same commodity to all other conference ports on defendants' vessels.

The record shows that the contract rate system was first established in the trade about 1925, when the superseded conference agreement hereinbefore referred to was in effect, and that it is now maintained under the provisions of the conference agreement herein assailed. The contract rates, like other rates of defendants, now are filed with the Commission pursuant to order entered in *Section 19 Investigation, 1935*, 1 U. S. S. B. B. 470.

The contract rates do not apply on all commodities, but where a contract rate is established the shipper must, if he patronize defendants,[5] either enter into a contract or ship at the noncontract rate, which is 20 percent higher than the contract rate, subject to a minimum spread of $2 per ton. In either event, whether the contract or noncontract rate is assessed, the transportation service is the same, the purpose of the contracts being, according to defendants, "to assure shippers uniformity and stability, as well as to assure the carriers of a steady flow of traffic in the commodities covered thereby."

Witnesses in the employ of five shippers testified at the hearing. Three of these shippers have not entered into contracts with defendants. As to them, therefore, complainant can have no grievance. Two are parties to such contracts, one a shipper of boilers to Yugo-Slavia, which is not within the range of complainant's present or intended operations, the other an exporter of automobiles, trucks, and parts to Alexandria, Piraeus, Salonica, Jaffa, Haifa, and Beirut. It is asserted that the latter would prefer to make its shipments without executing contracts in order to be free to patronize any line it chooses, but that it enters into them to avoid paying the higher noncontract rate. It is not shown that the noncontract rate on its shipments or any other commodity is unreasonable or that the contracts operate to the detriment of its business or commerce in general. Indeed, it is the contract shippers, of which it is one, that are alleged to be unduly preferred. In order to establish such preference, undue prejudice of some other shipper should be shown. To do this it is of primary importance that there be disclosed an existing and effective competitive relation between the prejudiced and preferred shippers. *H.*

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[4] Fabre Line has been inactive in the trade since June 1934. The vessels which it operated prior to that time now ply exclusively between Mediterranean ports.

[5] Besides the services of complainant and defendants, the only other direct service in the trade is that of Ellerman & Bucknall Steamship Company, Ltd., whose vessels call at Alexandria about once every fourteen days on their way to the Far East. By indirect routes, cargo may be transshipped at London, Antwerp, Hamburg, and other European ports.

Kramer & Company v. *Inland Waterways Corporation et al.*, 1. U. S. M. C. 630, 633. Undue prejudice of any shipper is not alleged, and neither undue preference nor undue prejudice of any shipper is shown. As stated in *Gulf Intercostal Contract Rates*, 1 U. S. S. B. B. 524, with reference to contract rate systems in foreign commerce, whether any such system is lawful is a question which must be determined by the facts in each case.

We find, therefore, that the allegation that defendants have established and are maintaining a system of exclusive patronage contracts under agreements or understandings not filed or approved pursuant to section 15 has not been sustained, and that defendants' conference agreement and contracts with shippers entered into pursuant thereto have not been shown to result in undue or unreasonable preference or advantage to shippers who patronize defendants' lines exclusively or to operate to the detriment of the commerce of the United States. Whether the conference agreement and contracts are unjustly discriminatory and unfair as between complainant and defendants, and subject complainant to undue and unreasonable prejudice and disadvantage, will now be considered.

Although complainant has quoted rates about 10 percent lower than the conference rates, this inducement to patronize it has not been sufficient to offset the value to shippers of the combined defendants' services. The latter concede that they carry between 80 and 85 percent of the freight moving in the trade, and the testimony that the greater part of it is transported under the contracts hereinbefore described is undisputed. If complainant were granted the membership it seeks, it would be entitled to participate in the contracts and would be on an equal footing with defendants in competing with them for contract cargo.

A witness who represented the Cosulich Line at conference meetings testified that he voted to deny complainant membership because, so far as he knew, it had no financial backing and upon the thought that there was no room in the trade for an additional service. In this connection, another witness stated that complainant started with more capital than some of the defendants had when they began to operate, and the record discloses that since October 1936, American Export Lines has increased its sailings from two to three per month to "take care of the homeward movement and the prospective eastbound movement." Moreover, as admitted by the traffic manager of American Export Lines, where a carrier is already in the trade the vessel tonnage is not increased by reason of its admission to the conference.

At the time of hearing, complainant had made four sailings in the trade: the motorship *Tonsbergfjord*, September 5, 1936, with general cargo and mail, from New York to Casablanca,[6] Alexandria, Port Said, Piraeus, and the Persian Gulf;[6] the steamer *Idefjord*, October 7, 1936, with general cargo and mail, from New York to Casablanca,[6] Alexandria, Port Said, Piraeus, and Istanbul; the motorship *Tonsbergfjord*, November 21, 1936, with general cargo and mail, from New York to Casablanca,[6] Gibraltar,[6] Alexandria, Port Said, Piraeus, and Istanbul; and the motorship *Bayard*, December 10, 1936, with general cargo and mail, from New York to Casablanca,[6] Alexandria, Port Said, Piraeus, Istanbul, Izmir, Beirut, and Haifa. All of these vessels and another, the *Brenas*, which arrived at New York October 10, 1936, with a cargo of dates from the Persian Gulf,[6] were operated under charters for the one-way or round trip, complainant owning no vessels and depending entirely upon chartering to carry on its business. The steamer *Idefjord* was scheduled to sail again January 16, 1937, from New York to Casablanca,[6] Port Said, Piraeus, and Istanbul.

Although the conference, at the time complainant applied for membership, asked for the names of vessels and sailing dates for only three sailings, the representative of the Cosulich Line did not think the four sailings made by complainant between conference ports were sufficient to constitute a regular service. He expressed the view that a regular line should be considered as one that has been in operation for a year, which appears to be out of accord with other testimony given by him that neither an advertised nor actual sailing is necessary for admission to the conference. Under the superseded agreement,[7] the American Palestine Line, which owned one vessel, was admitted to membership before its first sailing.

Defendants stress the fact that complainant's service is operated with vessels which it neither owns nor has under time charters "in sharp contrast with that of the other lines in the trade, operating either their own vessels or vessels under time charter." According to the record, whether complainant operated trip-chartered, time-chartered, or its own vessels the conference would be no differently affected by its membership therein. Isthmian Lines, which owns its vessels and has been in the trade since 1922, was admitted to the conference about one month prior to the date complainant first applied. That the effect on the conference of the latter's admission would be no different from that of the former's is conceded.

The record also discloses that although the Fabre Line has not operated a vessel in the trade since June 1934, it has retained its mem-

[6] Not within the conference range of ports.

[7] This agreement provided that such owners, managers, and loading agents of steamers that might load in the trade as were willing to be bound by the rules of the conference were eligible for membership.

bership in the conference and, with the other defendants, voted to decline complainant's application. Its right to vote, which is questionable, is not in issue and is not, therefore, determined. The point here is that it is considered to be a regular carrier in the trade and enjoys full and equal membership in the conference, which complainant is denied. Such discrimination is manifestly unjust.

Defendants' witness, who has been long and intimately connected with the steamship business, is of the opinion that if the conference agreement be disapproved there will be a natural tendency to increase brokerage rates and lower the freight-rate structure, with consequent demoralization of the trade. In another proceeding,[8] it is shown, he expressed the view that there should be some means of requiring carriers to become conference members. If complainant's application for membership were granted, no reason for disapproving the agreement would exist.

An examination of the cases relied upon by defendants in support of their denial of complainant's application reveals that such cases are distinguishable from the instant case either from the standpoint of the issues involved or the essential facts upon which the decisions rest.

We find that complainant is entitled to membership in the conference on equal terms with each of the defendants and that the conference agreement and contracts assailed result in unjust discrimination and are unfair as between complainant and defendants and subject complainant to undue and unreasonable prejudice and disadvantage. Defendants will be allowed ten days within which to admit complainant to full and equal membership in the conference, and if upon the expiration of that time they shall not have done so, consideration will be given to the question of issuing an order disapproving the conference agreement.

By order of United States Maritime Commission:

[SEAL] (Sgd.) TELFAIR KNIGHT,
Secretary.

WASHINGTON, D. C.,
March 29, 1937.

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[8] *Section 19 Investigation, 1935, supra.*

UNITED STATES MARITIME COMMISSION

No. 438

COMMODITY RATES BETWEEN ATLANTIC PORTS AND GULF PORTS

Submitted June 22, 1937. Decided June 26, 1937

Schedules naming increased rates on various commodities between Gulf ports and north Atlantic ports, found justified in part. Rates on binder twine and proposed effective date rule on grain milled in transit found not justified. Appropriate order entered.

Robert E. Quirk and *Frank W. Gwathmey* for respondents.

W. L. Guice, *E. P. Byars*, *Frank A. Leffingwell*, *D. R. Simpson*, *C. B. Bee*, *Thomas L. Philips*, *Paul T. Jackson*, *D. H. Berry*, *Laurence F. Daspit*, *William Graves*, *V. T. Zwinak*, *M. J. McMahon M. L. Dickerson*, *L. D. Estes*, *J. H. Greene*, *John Movar, Jr.*, *H. R. Paul*, *E. H. Thornton*, *E. E. Dullahan*, *L. D. Smith*, *B. T. Hodges*, *and Murray L. Gibson* for protestants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Respondents, common carriers by water in interstate commerce, by schedules filed to become effective May 1, 1937, proposed to increase the rates on most commodities which they transport between United States ports on the Gulf of Mexico and United States ports on the Atlantic coast north of and including Norfolk, Va. Schedules containing rates between the same ports and joint rail-and-water rates applicable via Gulf of Mexico ports were filed with the Interstate Commerce Commission by respondents and by rail and water carriers subject to the jurisdiction of that Commission.

Upon protests of various shippers and port representatives this Commission, acting under authority of section 18 of the Shipping Act, 1916, withheld approval of the schedules containing rates on cotton, grain and grain products, paper bags, wrapping paper, pulpboard, wallboard, canned goods, binder twine, charcoal, bones and bone meal, north-bound, and scrap or waste paper, south-bound.

The present and proposed rates, in cents per 100 pounds, in carloads except when otherwise noted, on the commodities here considered, and the percentages of increase are shown below:

Commodity	Present	Proposed	Amount of increase	Percentage
Northbound			*Cents*	
Cotton, any quantity	30	33	3	10
Grain	20	24	4	20
Wrapping paper	18	23	5	27.77
Wallboard	28	37	9	31
Canned goods	36.5	41	4.5	12.33
Binder twine	31	42	11	35.48
Bone meal	26	31	5	19.23
Southbound				
Scrap paper	25	27	2	8

Rates on some of these commodities and several others, filed with the Interstate Commerce Commission, were suspended by that commission. Because of the similarity of the issues the Interstate Commerce Commission and the Maritime Commission arranged to hear the cases jointly on the same record and oral argument was heard before both commissions sitting together.

In justification of the proposed rates, respondents point to the rising costs of operation reflected in increased wage scales and cost of fuel and supplies, and urge that the increased rates are necessary to enable them to maintain adequate transportation service. They maintain that during the past several years they have in some cases been operating at a loss. According to exhibits of record the Clyde-Mallory Lines operated at a deficit during the years 1933 to 1935 ranging from $239,906.13 in 1933 to $759,510.49 in 1934. They show a net income of $193,502.16 in 1936. Mooremack-Gulf shows deficits of $18,576.99 in 1934 and $29,494.14 in 1935. The Bull Steamship Company shows no deficits between 1933 and 1936. Its net income ranges from $3,656.17 in 1933 to $133,777.16 in 1936. During the years 1934 to 1936, inclusive, Pan-Atlantic operated on net incomes from $3,278.56 in 1934 to $66,016.04 in 1936. Between 1933 and 1936 Southern Steamship had no deficit, its net income ranging from $26,678.91 in 1934 to $167,508.80 in 1933. During the period April 18, 1935, to December 31, 1936, respondents enjoyed the benefit of emergency charges. Between 1933 and 1936 the lowest operating ratio is shown to be 87.9 and the highest 100.88.

Respondents show the ages and tonnage of all ships operated in this trade and that the average age is 19.23 years. The oldest is the Clyde-Mallory Line "Brazos" built in 1899. They urge that additional revenue is necessary to enable them to make replacements.

Stevedoring and maritime wage scales have recently increased and prices of fuel and supplies are higher than during the past several years. Respondents estimate that crew wages have increased nearly 30 percent over 1933. They state that for a given freight ship the monthly wage in 1933 averaged $2,625 per month whereas in 1937 it is about $3,317 per month. Using the Clyde-Mallory Lines as representative, the fuel cost, 1936 over 1933, was $561,178.

Respondents state that the general increases, including rates that have gone into effect May 1, 1937, approximate an average of 22.5 percent. Increased costs of fuel, 1937 over 1933, are about 26 percent; increased wage scales appear to be about 30 percent; and they estimate cost of repairs and supplies to have increased about 54 percent, 1936 over 1933.

It should be stated that neither this Commission nor any of its predecessors has prescribed or approved a general maximum rate structure for application between Gulf and north Atlantic ports. Present rates have been established voluntarily, apparently on the basis dictated by competitive conditions and with little regard to the establishment of a scientific rate structure. The bulk of this coastwise traffic moves to and from interior points served by rail carriers. Port-to-port rates of lines subject to the Panama Canal Act, port-to-port rates used in combination with rates of rail carriers for application on shipments moving over through rail-and-water routes, and joint rail-and-water rates are not subject to the jurisdiction of this Commission. The Interstate Commerce Commission has prescribed rates of the types described above and respondents' position is that since none of the proposed rates exceeds such prescribed rates or rates related thereto, the proposed rates before us do not exceed maximum reasonable rates. While this argument may be persuasive it is not controlling.

The divisions which the water lines receive out of joint rail-and-water rates are not shown of record. However evidence submitted is convincing that respondents are in need of additional revenue and that the filing of schedules reflecting a general increase in rates has been justified. The question of whether the specific rates under consideration are within the bounds of reasonableness required by section 18 of the Shipping Act, 1916, must still be determined.

The record contains no material evidence that the increased rates on cotton, canned goods, and scrap paper are unreasonable. On the other hand, respondents have shown the need for additional revenues to meet increased costs for wages, fuel, operating and other expenses. The increases on other commodities are larger and will be discussed in more detail.

Testimony of record shows that little, if any, of the grain and flour from Gulf to north Atlantic ports moves on local port-to-port rates. The evidence dealing with these commodities relates almost wholly to rail-and-water rates over which this Commission has no jurisdiction. Respondents also propose a rule providing that as to flour milled in transit the rate will be that in effect on the date of forwarding the flour from the transit point irrespective of the date of shipment into the transit point. Transit is granted by rail carriers and has no application in connection with movements by water unless the shipments move as through shipments from interior country points of origin to final destination. Our jurisdiction extends only to local port-to-port transportation, and on such traffic the rate is that published in the tariff in effect at time of shipment. The rule is not approved and should be cancelled.

The proposed rates on wallboard, wrapping paper, paper bags, and pulpboard represent increases ranging from approximately 27 to 31 percent. Respondents show that on wallboard they absorb the cost of switching of 2 cents per 100 pounds, minimum $9, maximum $11.50, per car, or 3 cents for drayage from plant to dock, and accord split delivery at an estimated cost of 5 cents per 100 pounds for segregation; and that on the other commodities referred to a large proportion of the deliveries at New York are made according to marks, brands, and sizes involving a segregation expense estimated at 5 cents per 100 pounds. If the costs for these services are deducted from the rate the resulting rates do not seem excessive. The increases on bone meal are 19.23 per cent. Protestant has not given its value and other pertinent rate-making factors are not developed on the record. Respondents state that this article is highly odorous and requires special stowage. In view of the stowage difficulties the proposed rate does not seem unreasonable.

On binder twine an increase of 35.48 per cent is proposed. Protestant offered little substantial evidence with respect to the reasonableness of this rate. On the other hand, respondents offered no justification for the increased rate and, therefore, have not borne the burden of justifying it. The increased rate should be cancelled.

We find that the proposed rate on binder twine and the proposed rule with respect to the effective date of rate changes on grain milled in transit have not been justified. We further find that the proposed rates on other commodities here in issue have been justified. This finding is without prejudice to further findings which might be made upon an adequate record in a formal complaint proceeding. An appropriate order will be issued.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 26th day of June A. D. 1937

No. 438

COMMODITY RATES BETWEEN ATLANTIC PORTS AND GULF PORTS

It appearing, That by order dated April 30, 1937, the Commission withheld approval of the rates, charges, regulations, and practices stated in the schedules enumerated and described in said order, and entered upon a hearing concerning the lawfulness of said schedules;

It further appearing, That a full investigation of the matters and things involved has been made and that said Commission on the date hereof has made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof, and has found that respondents have justified said schedules, except as to the rates on binder twine and the proposed effective date rule on grain milled in transit;

It is ordered, That the order heretofore entered in this proceeding withholding approval of said schedules, except as to the rates on binder twine and the proposed effective date rule on grain milled in transit, be, and it is hereby, vacated and set aside as of July 10, 1937, and that this proceeding be discontinued;

It is further ordered, That respondents be, and they are hereby, authorized to file schedules effective on not less than one day's notice, announcing the vacation of the Commission's order and naming the date upon which the schedules as approved herein shall become effective.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 418 [1]

IN THE MATTER OF SERVICES, CHARGES, AND PRACTICES OF CARRIERS ENGAGED IN THE EASTBOUND TRANSPORTATION OF LUMBER AND RELATED ARTICLES BY WAY OF THE PANAMA CANAL

Submitted March 10, 1937. Decided May 21, 1937

Lumber berth quantity allowance rules of Calmar Steamship Corporation and Weyerhaeuser Steamship Company found unlawful, and ordered cancelled. No. 424 discontinued.

Roscoe H. Hupper for respondent in No. 424.

Frank Lyon for protestants in No. 424.

H. W. Warley, *Russell T. Mount*, *Roscoe H. Hupper*, *Thos. H. Shepard*, *Otis N. Shepard*, *M. G. de Quevedo*, *Ramond F. Burley*, *Joseph J. Geary*, *T. F. Lynch*, *William J. Dean*, *Gerald A. Dundon*, *E. F. McGrath*, *George B. Milnor* and *Mack G. Klosty* for respondents in No. 418.

Hugh P. Brady for Brady Lumber Company; *William C. McCulloch* and *K. C. Batchelder* for West Coast Lumbermen's Association; *Walter W. McCoubrey* for Boston Port Authority; *W. Scott Blanchard* for Blanchard Lumber Company; *R. T. Titus* for Intercoastal Lumber Distributors Association; *H. J. Wagner* for Norfolk Port Traffic Commission; *Charles R. Seal* for Baltimore Association of Commerce; *L. B. Anderson* for Guernsey-Westbrook Company; *Samuel G. Spear* for Wiggin Terminals, Inc.; *W. W. Weller* for General Timber Service, Inc.; and *Frank S. Davis* for Maritime Association of Boston Chamber of Commerce.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions to the examiner's proposed report were filed by respondent Calmar Steamship Corporation. The findings recommended by the examiner are adopted herein.

[1] This report also embraces No. 424, Lumber Berth Quantity Allowances.

No. 418 is an investigation concerning the lawfulness of the services, charges, and practices of respondents in connection with the eastbound intercoastal transportation of lumber and related articles from Pacific to Gulf and Atlantic ports in the United States. All intercoastal carriers regularly engaged in the trade together with on-carriers, were made respondents.

No. 424 is an investigation concerning the lawfulness of Rule L–25, Berth Quality Allowance, published for Weyerhaeuser Steamship Company in Alternate Agent Wells' Tariff SB–I No. 7. The schedule containing the rule was filed to become effective November 14, 1936. Upon protest filed on behalf of certain other intercoastal carriers [1] the operation of the proposed schedule was suspended until March 14, 1937. Respondent Weyerhaeuser voluntarily postponed the effective date to May 31, 1937.

All parties in No. 424 are respondents in No. 418. One of the issues in No. 418 concerns the lawfulness of Rule 24, Berth Quantity Allowance, in Calmar Steamship Corporation's Tariff SB–I No. 7, and testimony was adduced therein on that subject. By stipulation this evidence was incorporated by reference into No. 424, and a hearing was waived. This report disposes of all the issues in No. 424. It deals with No. 418 only in so far as Calmar's Rule 24 is concerned; a supplemental report will dispose of the remaining issues in No. 418.

Unless otherwise noted, rates and allowances will be stated in amounts per 1,000 feet, board measure.

Calmar's Rule 24, which is practically identical to Weyerhaeuser's Rule L–25, makes allowances in the form of deductions from the basic rate based on the quantity shipped and the combined total number of berths used for loading and discharging lumber. The rule was first established by Calmar on June 1, 1933, with allowances ranging from 10.5 cents to $1.00. Effective December 12, 1935, it was revised to provide the present increased allowances ranging from 50 cents to $3.52.

The only evidence offered by a respondent in support of the rule was the testimony of the vice-president of Calmar. No brief was filed by Weyerhaeuser. The term "respondent" will hereinafter refer to Calmar. Respondent's witness testified that the allowances under the rule eliminate operating expense incurred in making numerous shifts from port to port and between berths in a port district in the loading and discharging of lumber. In 1935, vessels

[1] American-Hawaiian Steamship Company, Dollar Steamship Lines, Inc., Ltd., (Grace Line) Panama Mail Steamship Company, Luckenbach Steamship Company, Inc., McCormick Steamship Company, Panama Pacific Line (American Line Steamship Corporation—The Atlantic Transport Company of West Virginia), (Arrow Line) Sudden & Christenson, and Williams Steamship Corporation.

of Calmar received lumber at 50 different berths and discharged it at 23 separate berths. At 3 berths most frequently used, the average loads received were 211 thousand, 221 thousand, and 265 thousand board feet, respectively. The average loads discharged at 5 berths most frequently used ranged from 208 thousand to 425 thousand board feet.

Under the more liberal allowances established in December 1935, the loadings increased and during the first 6 months of 1936 approximately 55 per cent of the shipments of lumber in volume qualified for some allowance. And while in 1934 the average per shipment for each berth of loading and discharging was 278 thousand board feet, and in 1935, 323 thousand board feet, the average for the first 6 months of 1936 was 783 thousand board feet. Since December 1935 there have been at least 9 different concerns who have received allowances ranging from 11 to 268 cents. Obviously these are not the actual allowances on the lumber moving under the rule since the minimum allowance is 50 cents.

The rule is further defended on the ground that it enables Calmar more effectively to compete with chartered vessels and other lines having lower minima for shifting vessels. According to respondent, the rule also affords shippers a means of competing with lumber shipped on chartered vessels without incurring the risks that attend the chartering of ships. Respondent points out that the principle underlying the rule is followed in making its less-than-carload rate on lumber 50 cents higher than the carload rate; also, in the practice of adding varying arbitraries to the basic rate, depending upon the length of the lumber, ranging from $1.00 on lengths over 42 feet, to $9.00 for lengths over 90 feet.

Opposition to the rule was expressed by representatives of the West Coast Lumbermen's Association consisting of manufacturing, logging, and wholesale lumber companies which represent approximately 80 per cent of the total production of lumber in the so-called Douglas fir region in Oregon and Washington. A witness speaking for the General Maritime Committee of the Association stated that the granting of berthing allowances interjects uncertainty as to transportation costs into the intercoastal rate structure, thus making the c. i. f. market on the Atlantic coast unstable because of the variability in the rates. He testified that quotations were made on business offered on the basis of an assumed berthing allowance, and in many cases the lumber sold at such quotations is not shipped under the assumed berthing allowance, which has a bearish effect upon the Atlantic coast market.

One of the smaller wholesale dealers testified that the rule operates to the detriment of small shippers and confers an undue advantage on large shippers. Some of the larger shippers operate storage yards on the Atlantic seaboard and are thereby able to buy large quantities for shipment and engage space considerably in advance of the date of shipment. This the smaller shipper is unable to do because he buys and sells firm in small quantities. This witness further criticized the rule because it creates a secret rate known only to the carrier and the shipper, therefore producing a competitive situation that is unfair to the shipper not using the rule.

A dealer who is one of the chief beneficiaries of the rule testified that approximately 50 per cent of his shipments moved over respondent's line. The average allowance on lumber shipped by this dealer under the rule was 87 cents, and on the total shipped over respondent's line the amount averaged 68 cents. He stated that lumber prices in the eastern markets, which at times range from 50 cents to $1.00 below normal c. i. f. prices, are set by shippers using chartered vessels and lumber companies who own and operate their own steamships. In his view the berth quantity allowances are the only means by which other shippers can meet this competition.

The Intercoastal Lumber Distributors Association, a group of wholesalers and manufacturers who distribute approximately 90 per cent of all west coast lumber shipped intercoastally to the Atlantic coast, advocated an equal ocean freight rate on lumber for all vessels in the trade, but took no position respecting the merits of the rule.

The case turns primarily upon the question of whether the rule is unjustly discriminatory or unduly preferential or prejudicial. In other words, are shippers generally prepared to make shipments in the proposed unit? Is it a recognized unit of quantity adapted to the particular commerce? Are quantity rates of the type here considered an integral part of the lumber rate structure? The answer to these questions is found in the statement of respondent's witness, who admitted that reduced rates under the rule "could not be applied to lumber carrying as a whole, because the bulk of the lumber trade is still carried on by calling at many berths for small quantities of lumber and discharging the lumber at many berths on the Atlantic coast." It is significant also that in 1936 only 9 shippers qualified for allowances under the rule. The loadings of Calmar during 1935 indicate rather clearly that the average shipment of lumber is far short of the minimum required for a berth allowance.

A further criticism of the rule is that it results in an undisclosed rate to the shipper. *United States* v. *Chicago & A. Ry. Co.*, 148 Fed. 646. Knowledge of the details of shipments subject to the rule is necessary to determine the actual rate charged. The disclosure of such information, however, is unlawful under section 20 of the Shipping Act, 1916.

We find that Calmar Steamship Corporation's Rule 24, and Weyerhaeuser Steamship Company's Rule L-25 contravene the provisions of section 14 of the Shipping Act, 1916, which forbids the making of any unfair or unjustly discriminatory contract with any shipper based on the volume of freight offered; are unduly and unreasonably preferential or and advantageous to lumber shipped under the said rules and the shippers thereof, and unduly and unreasonably prejudicial and disadvantageous to lumber moving over the lines of respondents which is not shipped under the said rules, and the shippers of such lumber in violation of section 16 of the same Act; and are violative of section 2 of the Intercoastal Shipping Act, 1933, in that they do not show definitely all the rates and charges for or in connection with the transportation of eastbound intercoastal lumber. These conclusions are predicated solely upon the record before us.

Appropriate orders will be entered.

Orders

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 21st day of May A. D. 1937

No. 418

In the Matter of Services, Charges, and Practices of Carriers Engaged in the Eastbound Transportation of Lumber and Related Articles By Way of the Panama Canal

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This case, instituted under section 22 of the Shipping Act, 1916, having, as to the issues involved herein, been duly heard, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its conclusions and decision thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That respondent Calmar Steamship Corporation be, and it is hereby, notified and required to cancel Rule 24, Berth Quantity Allowance, of its Tariff SB–I No. 7, and all references to said rule in said tariff now contained, on or before June 27, 1937, upon notice to this Commission and to the general public by not less than one day's filing and posting in the form and manner prescribed in section 2 of the Intercoastal Shipping Act, 1933.

No. 424

Lumber Berth Quantity Allowances

It appearing, That by order dated November 9, 1936, a hearing was entered upon concerning the lawfulness of the rates, charges, regulations, and practices stated in the schedules enumerated and described in said order, and the operation of said schedules was suspended until March 14, 1937;

It further appearing, That the operation of said schedules has been voluntarily deferred by respondent until May 31, 1937;

And it further appearing, That a full investigation of the matters and things involved has been had, and that this Commission, on the date hereof, has made and filed a report containing its conclusions and decision thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the respondent herein be, and it is hereby, notified and required to cancel said schedules, on or before June 27, 1937, upon notice to this Commission and to the general public by not less than one day's filing and posting in the form and manner prescribed in section 2 of the Intercoastal Shipping Act, 1933, and that this proceeding be discontinued.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, JR.,

Secretary.

UNITED STATES MARITIME COMMISSION

No. 202

COLORCRAFT CORPORATION, LTD.

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY ET AL.[1]

Submitted June 11, 1937. Decided August 25, 1937

Complaint alleging rates for intercoastal transportation of woolen, worsted, and wood mohair mixed yarns from ports on the Atlantic coast to ports on the Pacific coast, of the United States, are unreasonable, dismissed upon motion of complainant and intervener.

A. D. Schaffer for complainant and intervener.

Joseph J. Geary for all respondents except Nelson Steamship Company and Isthmian Steamship Company.

James A. Russell for Nelson Steamship Company.

Harry S. Brown for members of Intercoastal Steamship Freight Association.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Complainant corporation alleges, by complaint filed June 12, 1935, as amended, that rates of $1.29 per 100 pounds, minimum 10,000 pounds, and $1.805 per 100 pounds, less carload, charged on intercoastal shipments of woolen, worsted, and wool mohair mixed yarns from ports on the Atlantic coast to ports on the Pacific coast, in the United States, were and are unreasonable. Jenkins-Wright Company intervened. Reasonable rates for the future and reparation are sought. Rates will be stated in cents per 100 pounds.

[1] Luckenbach Steamship Company, Inc., Williams Steamship Co., American Line Steamship Corporation, Sudden & Christenson, Isthmian Steamship Company, McCormick Steamship Company, Nelson Steamship Company, Dollar Steamship Lines, Inc., Ltd., Panama Mail Steamship Company, Inc., Weyerhaeuser Steamship Co., Pacific-Atlantic Steamship Co., and States Steamship Company.

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A hearing was held beginning March 10, 1936, at which time complainant showed that the rates on knit goods manufactured from the above-mentioned yarns, and on cotton yarns, were lower than rates on the yarns involved herein. There was in addition testimony with respect to the transportation characteristics of the three commodities. At the termination of this hearing complainant requested an adjourned hearing in order to enable it to secure further evidence. The matter was again heard June 11, 1937. Prior to the latter hearing defendants filed amendments to their tariff, changing the rates on the above-mentioned commodities effective June 15, 1937. A tariff check reveals that the rates in issue were increased to $1.35 carload, same minimum, and $1.90 less carload. Increases were also made on cotton yarns to 95 cents, any quantity, and on knit goods to $1.45, any quantity. At the second hearing complainant and intervener moved to dismiss the complaint, without submitting further evidence. No objection was made to the motion.

The rate structure complained of has now been altered by the tariff amendments referred to, and complainant and intervener have withdrawn their request for reparation. Therefore a determination as to the lawfulness of the assailed rates is unnecessary. An order will be entered dismissing the complaint without prejudice to any other regulatory proceeding upon complaint or otherwise involving the same or related issues.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 25th day of August, A. D. 1937

No. 202

COLORCRAFT CORPORATION, LTD.

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY ET AL.

This case being at issue upon complaint and answers filed with the Department of Commerce of the United States, and having been duly heard and submitted by the parties, and complainant and intervener having filed a motion to dismiss said complaint, and no objections having been made thereto; and this Commission, pursuant to the authority vested in it by the Merchant Marine Act, 1936, having taken over the powers and functions theretofore exercised by the said Department as the successor to the powers and functions of the United States Shipping Board; and the Commission having, on the date hereof, made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed without prejudice to any other regulatory proceeding upon complaint or otherwise involving the same or related issues.

By the Commission.

[SEAL]

(Sgd.) W. C. PEET, JR.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 429

INLAND WATERWAYS CORPORATION

v.

INTERCOASTAL STEAMSHIP FREIGHT ASSOCIATION, ET AL.[1]

Submitted May 28, 1937. Decided August 25, 1937

Motion to dismiss granted. Proceeding discontinued.

T. Q. Ashburn, Jr., and *W. G. Oliphant* for complainant.

Harry C. Ames for intervener, The Mississippi Valley Barge Line Company.

M. G. de Quevedo for defendants.

E. H. Thornton for intervener, New Orleans Joint Traffic Bureau.

REPORT OF THE COMMISSION

BY THE COMMISSION:

The complaint in this proceeding alleges that United States Maritime Commission Agreement No. 5630 is unduly and unreasonably preferential and prejudicial in violation of Section 16 of the Shipping Act, 1916, as amended, and unjust and unreasonable in violation of Section 18 thereof. We are requested to cancel the agreement under Section 15 of the same act. The parties to the agreement are members of the Intercoastal Steamship Freight Association and the Gulf Intercoastal Conference, and are common carriers

[1] American-Hawaiian Steamship Co., American Line Steamship Corporation and The Atlantic Transport Co. of West Virginia (Panama Pacific Line), Calmar Steamship Corporation, Dollar Steamship Lines, Inc., Ltd., Isthmian Steamship Company, Luckenbach Steamship Company, Inc., McCormick Steamship Company, Pacific-Atlantic Steamship Co. (Quaker Line), Panama Mail Steamship Co. (Grace Line), States Steamship Co. (California-Eastern Line), Sudden & Christenson (Arrow Line), Weyerhaeuser Steamship Co. (Pacific Coast Direct Line, Inc.), Gulf Intercoastal Conference, Gulf Pacific Line, Swayne & Hoyt, Ltd. (Managing Owners), Gulf Pacific Mail Line, Ltd., Luckenbach Gulf Steamship Company, Inc.

by water operating between ports on the Atlantic and Gulf Coasts of the United States, respectively, and ports on the Pacific Coast of the United States. Petitions of intervention were filed on behalf of The Mississippi Valley Barge Line Company and New Orleans Joint Traffic Bureau, and were granted.

The agreement was approved January 9, 1937. By its terms it was to continue in effect for a period of six months unless further extended as provided therein. In accordance with this proviso, there was a renewal for a period of one year beginning July 9, 1937.

Article 7 of the agreement reads as follows:

It is recognized, for the purpose of this agreement only, that the territory east of an imaginary line from Michigan City, Indiana, diagonally southeast to Logensport, Indiana, thence south to Frankfort, Indiana, thence following the line of the Chicago, Indianapolis, and Louisville Railroad to Indianapolis, thence following the line of the Baltimore and Ohio Railroad to Cincinnati, shall be deemed to be naturally tributary to the ports served by the members of the Intercoastal Steamship Freight Association (except that, as to Steel Sheets only, Middletown, Ironton, and Postmouth, Ohio, and Ashland, Ky., shall be regarded territory common to both groups of ports) and that territory west of such lines shall be deemed to be naturally tributary to the ports served by the members of the Gulf Intercoastal Conference, and that all points located on such line shall be deemed territory naturally tributary to both groups of ports. It is further recognized that traffic from or to the territory south and southeast of Cincinnati, Ohio, shall flow through its natural port as established by the applicable rail rate structure to and from the ports.

The agreement further provides that the members shall publish, wherever practicable, the same port-to-port rates on all commodities. Other articles of the agreement provide for a cooperative working arrangement whereby rates may be established to insure the rate harmony sought by the agreement.

At the hearing the parties entered into a stipulation regarding the interpretation to be placed upon the agreement by them, stating, (1) that there should be a parity of rates, wherever practicable, as between Gulf and Atlantic ports, and that there should be no adjustment of defendants' port-to-port rates which would disturb the flow of merchandise through the cheapest gateway considering the rail rates, or the rail-barge or barge rates from and to Gulf ports, so long as the latter rates are maintained on the customary relation to corresponding all-rail rates; (2) Gulf lines may establish rail-barge-ocean or barge-ocean rates necessary to meet transcontinental rail competition when there is a bona fide movement to or from the territory naturally tributary to Gulf ports, notwithstanding such rates might incidentally draw tonnage from a territory declared to be naturally tributary to Atlantic ports; (3) the inland water carriers here concerned should be invited to conferences regarding future agreements respecting the division of territory as between Atlantic and Gulf ports; and (4) that in the event any differential relation to rail rates in the affected territory is to be changed by the inland water carriers, defendants should be invited to comment upon the propriety of such changes.

Upon the submission of this stipulation, complainants moved to dismiss the complaint. The motion to dismiss is granted without prejudice to any other regulatory proceeding upon complaint or otherwise involving the same or related issues. An appropriate order will be entered.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 25th day of August, A. D. 1937

No. 429

INLAND WATERWAYS CORPORATION

v.

INTERCOASTAL STEAMSHIP FREIGHT ASSOCIATION ET AL.

This case being at issue upon complaint on file, and having been set down for hearing, at which time complainant filed a motion to dismiss said complaint, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the motion be, and it is hereby, granted without prejudice to any other regulatory proceeding upon complaint or otherwise involving the same or related issues, and that this proceeding be, and it is hereby, discontinued.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, JR.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 440

Effective Date Rule—Intercoastal Lumber Rate Changes

Submitted August 19, 1937. Decided September 13, 1937

Schedules proposing changes in effective date rules in connection with eastbound intercoastal lumber rates found unduly prejudicial, but without prejudice to the filing of new schedules in conformity with the views expressed herein. Suspended schedules ordered canceled and proceeding discontinued.

M. G. de Quevedo, *Russell T. Mount*, and *Thomas F. Lynch* for respondents.

William C. McCulloch and *K. C. Batchelder* for protestant.

H. J. Wagner and *R. T. Titus* for other interested parties.

Report of the Commission

By the Commission:

Exceptions to the examiner's proposed report were filed by protestant and respondents replied. Our findings are substantially those recommended by the examiner.

By schedules [1] filed to become effective May 10, 1937, respondents [2] propose to change their effective date rule in connection with east-

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[1] Alternate Agent Wells' United States Intercoastal Tariff, Twelfth Amended Page No. 116 of SB–I No. 7.

Calmer Steamship Corporation's First Amended Page No. 8 of SB–I No. 7.

[2] Alameda Transportation Co. Inc., American-Hawaiian Steamship Company, America Transportation Co. Inc. (Arrow Line), Sudden & Christenson, Babbidge & Holt, Inc., Bay Cities Transportation Company, The Border Line Transportation Company, The California Transportation Company, Calmar Steamship Corporation, Chamberlin Steamship Co., Ltd., Christenson-Hammond Line, Crowley Launch & Tugboat Co., Dollar Steamship Lines Inc., Ltd., Erikson Navigation Company, Freighters Inc., (Grace Line) Panama Mail Steamship Company, The Harkins Transportation Company, Haviside Company, Isthmian Steamship Company, A. B. Johnson Lumber Company, Jones Towboat Company, Luckenbach Gulf Steamship Company, Inc., Luckenbach Steamship Company, Inc., McCormick Steamship Company, Marine Service Corporation, Northland Transportation Company, Pacific Steamship Lines, Ltd. (The Admiral Line), American Line Steamship Corporation and The Atlantic Transport Company of West Virginia (Panama Pacific Line), Puget Sound Freight Lines, Puget Sound Navigation Company, (Quaker Line) Pacific-Atlantic Steamship Co., Richmond Navigation & Improvement Co., Roamer Tug & Lighterage Company, Sacramento & San Joaquin River Lines, Inc., Schafer Bros. Steamship Line, Shaver Forwarding Company, Skagit River Navigation & Trading Company, States Steamship Company (California-Eastern Line), Sudden & Christenson, and Weyerhauser Steamship Company.

bound intercoastal lumber rates. Upon protest filed on behalf of West Coast Lumbermen's Association, the operation of the proposed schedules was suspended until September 10, 1937, and voluntarily postponed until October 10, 1937.

Typical ports where west coast lumber is loaded are Bellingham, Everett, Seattle, Tacoma, and Olympia, Wash., on Puget Sound; Aberdeen, Wash., in Grays Harbor; Raymond, Wash., on Willapa Bay; and Longview, Wash., and Astoria and Portland, Ore., on Columbia River. In the Puget Sound area the distances between the ports named range from 25 to 127 nautical miles. From Olympia to Grays Harbor and Portland it is 283 and 405 miles respectively; and from Seattle to Portland it is 356 miles. Vessels may, on a single voyage, load on Columbia River, then Puget Sound and sometimes shift back to Columbia River.

The time consumed in loading a full cargo of lumber varies, depending upon the quantity loaded and the method of operation employed. Loading line-ups of record indicate that a vessel may be scheduled for loading both in Puget Sound and Columbia River on itineraries ranging from 6 to 15 days. Testimony as to actual time required for loading indicates a range from 13 to 21 days.

The proposed rule as published by Alternate Agent Wells, which is substantially the same as the proposed Calmar rule, reads as follows:

> This rate applies on all cargo loaded on board the intercoastal vessel on and after the date on which this rate becomes effective.

Under this rule the applicable rate is that in effect when the cargo is loaded on the vessel.

The present Wells rule reads:

> This rate will also apply on such cargo booked and confirmed in writing to be loaded on steamers scheduled to commence loading during this period, but if by reason of force majeure to steamer such loading is prevented, this rate will apply at the time cargo is actually loaded.

The applicable rate, according to this rule, is the rate in force when the cargo is booked in the manner specified.

The present Calmar rule reads:

> The rate to apply will be the rate in effect upon the date on which cargo is delivered to the dock for, or is delivered alongside vessel by floating equipment for, or rail carrier's arrival notice is received covering cargo moving to the dock by rail for, or the date on which cargo held on dock is released by shipper, owner, or consignee for, intercoastal shipment on the next available vessel.

This rule contemplates that the applicable rate shall be that in effect when delivery is made by the shipper.

Respondents contend that the present rules are too liberal in extending the applicability of a rate after the date on which it would otherwise be superseded by a new rate. For instance, the rate on eastbound intercoastal lumber was increased on November 1, 1936, from $12.50 to $13.00 per 1,000 net board feet. Due to strike conditions respondents' ships were idle in November and December 1936, and January 1937, and as a consequence, 30,922,000 feet of lumber which, prior to November 1, had been booked under the Wells rule or delivered under the Calmar rule at the $12.50 rate, was shipped at that rate during February 1937. Similarly, 33,878,000 feet were shipped after April 15, 1937, at the $13.00 rate notwithstanding the rate was increased to $14.00 on that date. The proposed rule making applicable the rate in effect on date of loading would have insured to respondents the benefit of the above-mentioned increases.

Respondents desire to discard the old rules for the further reason that they obligate the carrier to apply a given rate before the cargo comes completely under their control. Many of the docks at which west coast lumber is loaded are privately owned mill docks. According to their testimony, respondents do not maintain receiving clerks or watchmen at these docks and must therefore take constructive delivery and rely upon the shipper's word to determine the date of delivery and the quantity delivered. Under the proposed rule the rate does not attach until actual possession on board is secured.

Respondents admit that the Wells rule is ambiguous, pointing out the vagueness of the word "also", and the expression "during this period", and particularly the unsettled meaning of the term "*force majeure.*" Tariff rules which are indefinite and ambiguous are unlawful under Section 2 of the Intercoastal Shipping Act, 1933.

Protestant's primary objection to the proposed rule is based upon the contention that its application would create marketing uncertainty and perhaps cause a diversion of business to other competing species of lumber. Lumber is customarily sold from 30 to 45 days in advance of shipment when the market is quiet, and from 45 to 60 days in advance when it is active. Bookings are made from one to 90 days in advance of contemplated date of loading. The prevailing freight rate is a part of the c. i. f. price. It is testified that in no case is the seller safe in making a sale unless he has the steamer space definitely protected at a given rate, since in the lumber industry changes in rates are for the account of the seller. Under the present Wells rule and the rule [3] suggested by protestant, a shipper can contract for space at a fixed rate on a scheduled vessel; and under the present Calmar rule he is reasonably certain of obtaining the prevailing rate by effecting timely delivery of his cargo. In short, the shipper may safely take for granted the amount of the rate that

[3] All rate changes become effective on the published scheduled arrival date of vessel at first loading port in the Oregon and Washington range on and after the published effective date.

enters into his selling price. But the reverse would be true under the proposed rule: the carrier would determine the rate when it elected to load the cargo. This factor of uncertainty, coupled with the possibility of resulting discrimination as between shippers by virtue of the carrier's option as to the order in which it may load shipments, would, according to protestants, interfere with the orderly marketing of lumber.

Protestant also contends that the rule established on lumber should not be less favorable than that accorded other cargo. Agent Wells' and Shepard Steamship Company's tariffs provide that on eastbound cargo, except lumber, rate changes become effective on vessels scheduled to sail from loading port on or after the effective date. Protestant's rule closely follows this provision and therefore takes no account of carriers' problems in accepting delivery of lumber and of maintaining their schedules. On all cargo westbound the abovementioned tariffs, and those of Gulf intercoastal lines as to all cargo in both directions, publish a rule providing that rate changes will be governed by date of dock receipt or tender of delivery by rail carrier for clearance on the next vessel. Calmar's present rule on lumber also applies on all cargo both eastbound and westbound. The record indicates that respondents maintain a receiving clerk at terminals where general cargo is loaded. Presumably these are not private terminals. But some of this cargo such as canned goods, flour, and grain, which moves eastbound in heavy volume, is loaded at private docks. The record is silent as to how these shipments are received.

In rail transportation the date a car is delivered for transportation determines the rate to be charged. Since delays in securing equipment for rail carriage are negligible as compared with those encountered in water transportation, there is no necessity for an effective date rule in connection with rail rates.

It is generally conceded that many difficulties attend the formulation of a satisfactory effective date rule on lumber. To be reasonable the rule should, as far as possible, meet the commercial necessities of the shipper as well as recognize the operating problems of the carrier, but neither should be controlling. The shipper has certain contractual rights against the carrier for its failure or delay in the performance of the booking agreement. Also, save in exceptional instances he receives thirty days' statutory notice of rate changes during which time he may invoke the Commission's power of suspension. It is believed that if the shipper were given thirty days' additional notice he would be in position to protect himself in the matter of engaging cargo space.

The possibility of discriminatory application of the proposed rule would be largely removed if it were revised so as to provide that all lumber cargo transported on the same vessel would secure the same rate if the vessel begins loading lumber during the effective period of a given rate. The rule so revised would read as follows:

This rate applies on all lumber cargo loaded on any vessel which begins loading lumber during the effective period of this rate.

Such a rule would definitely cut off the applicability of a rate at date of change except in those instances where discrimination results. As to substantially all of the traffic affected, it would afford a definite and practical method for determining when delivery to the carrier is made. Furthermore, the suggested rule would accomplish most of what seems to be respondents' chief objective: freedom from the obligation to transport large quantities of cargo at rates which have expired before the cargo is loaded.

We find that the suspended schedules are unduly prejudicial. An order will be entered requiring their cancellation and discontinuing this proceeding, without prejudice to the filing of new schedules in conformity with the views expressed herein.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 13th day of September A. D. 1937

No. 440

EFFECTIVE DATE RULE—INTERCOASTAL LUMBER RATE CHANGES

It appearing, That by order dated May 6, 1937, the Commission entered upon a hearing concerning the lawfulness of the regulations and practices stated in the schedules enumerated and described in said order, and suspended the operation of said schedules until September 10, 1937;

It further appearing, That the operation of said schedules has been voluntarily postponed by respondents until October 10, 1937;

It further appearing, That a full investigation of the matters and things involved has been had, and that said Commission, on the date hereof, has made and filed a report containing its conclusions and decision thereon, which said report is hereby referred to and made a part hereof;

It is ordered, That the respondents herein be, and they are hereby, notified and required to cancel said schedules, on or before October 10, 1937, upon notice to this Commission and to the general public by not less than one day's filing and posting in the manner prescribed in section 2 of the Intercoastal Shipping Act, 1933, and that this proceeding be discontinued.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, JR.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 106

HARBOR COMMISSION OF THE CITY OF SAN DIEGO ET AL.

v.

AMERICAN MAIL LINE, LTD., ET AL.

Submitted August 27, 1936. Decided September 23, 1937

Rates on cotton and other cargo from San Diego, Calif., higher by an arbitrary of $2.50 per ton than rates from Los Angeles Harbor, Calif., on like freight to destinations in the Orient found unduly prejudicial but not otherwise unlawful. Undue prejudice ordered removed, and nonprejudicial basis of rates prescribed for the future.

C. F. Reynolds, Charles H. Forward, H. B. Daniel, and *J. W. Brennan* for complainants.

H. J. Bischoff for Coast Truck Line, intervener.

H. R. Kelly and *J. Arthur Olson* for defendants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed by complainants to the report proposed by the examiner. Our conclusions differ from those recommended by the examiner.

Complainants are the Harbor Commission of The City of San Diego, Calif., the San Diego Chamber of Commerce, Ltd., and various manufacturers and shippers in or near San Diego. They allege by complaint filed June 27, 1933, as amended, that rates maintained by defendants on cotton and other general cargo from San Diego higher by an arbitrary rate of $2.50 per ton than rates from Los Angeles Harbor, Calif., hereinafter called Los Angeles, and other Pacific coast ports, on like freight to Japan, Korea, Formosa, Manchuria, China, Hongkong, Indo-China, Siam, Straits Settlements, India, the East Indies, and the Philippine and Hawaiian

Islands, hereinafter called the Orient, are unfair, unjustly discriminatory, unduly prejudicial, and unreasonable in violation of sections 15, 16, 17, and 18 of the Shipping Act, 1916. The same allegations are made with respect to defendants' charges for loading and unloading of cars and for handling service in connection with deliveries to or from trucks, barges, or vessels at San Diego. Since the hearing, held in September 1933, handling charges have been made uniform on cargo from all California ports, and the complaint as to such charges will not be considered further. Defendants' rules, regulations, and practices are likewise assailed. Lawful rates, charges, rules, regulations, and practices for the future are sought. Coast Truck Line, a motor carrier operating between San Diego and points in California and Arizona, intervened in support of the complaint. Inasmuch as this case was not submitted until three years after the hearing, the parties were requested to express their attitude toward the desirability of a further hearing for the purpose of bringing the record down to date. In reply they indicated their willingness to stand on the record as made.

Defendants are thirteen common carriers by water[1] which comprised, at time of the hearing, the membership of Pacific Westbound Conference, hereinafter called the Conference, and which are engaged in the transpacific trade between North America and certain ports in the Orient; the "K" Line (Kawasaki Kisen Kaisha), Bank Line, Ltd., Barber Steamship Lines, Inc., and Prince Line, Ltd., carriers engaged in the Oriental trade; and Los Angeles Steamship Company, McCormick Steamship Company, Pacific Steamship Lines, Ltd., and San Diego-San Francisco Steamship Company, carriers serving San Diego in the coastwise trade at time of hearing.

The port of San Diego, situated about 92 nautical miles south of Los Angeles, has a natural, land-locked, deep-water harbor. It is equipped with modern piers, warehouses, and other port facilities, accommodates deep-water vessels, and has ample room for industrial expansion and port development. The population of San Diego in 1930 was 147,995 and of San Diego county, 209,659. San Diego is served by the Atchison, Topeka & Santa Fe railroad, and by the San Diego and Arizona Eastern Railway Company, part of Southern

[1] American Mail Line, Ltd.; The China Mutual Steam Navigation Company, Ltd., and The Ocean Steam Ship Company, Ltd. (Blue Funnel Line); Canadian Pacific Steamships, Ltd.; Dollar Steamship Lines Inc., Ltd.; General Steamship Corporation, Ltd.; Kerr Steamship Company, Inc.; Klaveness Line (A. F. Klaveness & Company, A/S); Nippon Yusen Kabushiki Kaisha (Nippon Yusen Kaisha); Oceanic & Oriental Navigation Company; Osaka Shosen Kabushiki Kaisha (Osaka Shosen Kaisha); Pacific-Java-Bengal Line (N. V. Stoomvaart Maatschappij and N. V. Rotterdamsche L'oyd); States Steamship Company; and Tacoma Oriental Steamship Company. These conference lines serve Japan, Korea, Formosa, Manchuria, China, Hongkong, Indo-China and the Philippine Islands.

Pacific lines. Modern highways run from San Diego into the interior, including the Imperial Valley.

The Conference requires a two-thirds vote to determine the rates to be observed by its member lines. According to the record, nonconference defendants observe conference rates under approved agreements. The Conference designated San Francisco and Los Angeles, Calif., Portland and Astoria, Ore., Seattle and Tacoma, Wash., and Vancouver and Victoria, B. C., as "terminal ports" at which members would call for cargo, and "terminal rates" were established from those ports to certain ports in the Orient. The same rate applies from terminal ports whether cargo moves direct or is transshipped from one to another such port before the transpacific movement begins.

Effective October 27, 1931, the Conference established a rate from San Diego reflecting an arbitrary of $2.50 per ton over the terminal rate, to apply on all commodities except gypsum rock, whether loaded direct or transshipped. Vessels were permitted to call at San Diego for a minimum quantity of 500 tons of gypsum rock. On June 16, 1933, the arbitrary was removed from scrap steel in 500-ton quantities. Effective October 30, 1933, the arbitrary of $2.50 per ton was made effective on all commodities except cargo moving under "open" rates. From other non-terminal ports rates are made by adding the coastwise rates to the terminal rates. Where a vessel loads at a dock within a terminal port other than a declared terminal dock, an extra charge of $1.50 per ton is made in certain cases.

At present the arbitrary applies on cargo from San Diego except gypsum rock, minimum weight 500 tons, and articles taking the open rate basis, such as scrap iron and steel. Generally the same minimum weight requirements apply as from terminal ports.

Inasmuch as no substantial evidence was offered on the issue of reasonableness, the primary question presented is whether the $2.50 arbitrary and defendants' rules, regulations, and practices in respect thereto, constitute undue prejudice or unjust discrimination against San Diego and undue preference of the terminal ports. Specifically, San Diego seeks rate equality with the terminal ports, both as to direct call and transshipment service to the Orient, but it does not object to a minimum of 500 tons, and does not ask for service unless there is sufficient cargo to yield a fair revenue. Defendants contend that the small volume of tonnage originating at San Diego does not warrant rate equality with terminal ports, that low volume increases the cost per ton for service therefrom, and that the arbitrary is necessary to maintain the rate structure.

The evidence submitted by complainants consists largely of a showing of estimated volume of scrap iron and steel, canned fish, manufactured articles, cotton, and other products of agriculture which would originate at or be handled through San Diego if the arbitrary were removed; and a showing of the competitive relation between complainants and shippers at Los Angeles and other terminal ports.

Cotton exported from San Diego to Japan during the period June 30, 1929, to June 30, 1932, amounted to 9,516 bales, or 2,379 tons, and from San Diego to Europe and Mexico, 77,492 bales. None of the cotton exported to the Orient was subject to the arbitrary since most of it moved on non-conference vessels; and the Conference waived the arbitrary on the remainder which moved via a Conference vessel. During the same period cotton exported from Los Angeles to the Orient ranged in volume from 99,037 bales in 1929 to 182,272 bales in 1932. Only 4,084 bales were shipped from Los Angeles to the Orient in 1926.

One complainant testified to having acquired a vast acreage of land in Lower California, Mexico, which he estimated would produce, when developed, 100 thousand bales of cotton for movement through San Diego. A cotton buyer and exporter located at Phoenix, Ariz., who handles between 18 thousand and 20 thousand bales a year, 60 per cent of which goes to the Orient, stated he would like to have the opportunity to ship through San Diego with the arbitrary removed. It is an overnight haul from Phoenix to San Diego, and rail rates to San Diego and Los Angeles are the same. This witness represents Japan Cotton Company, Dallas, Tex., and testified that in one instance negotiations were started to move a quantity of cotton from Dallas to the Orient through San Diego, but that, when it was found the arbitrary would apply, such negotiations were dropped. The American Cotton Cooperative Association, Bakersfield, Calif., ships about 80 percent of its cotton to the Orient through Los Angeles, Oakland, and San Francisco. It takes the position that there should be more than one open port in southern California and calls attention to the fact that warehousing costs at San Diego are lower than those at Los Angeles. Other cotton growers and shippers representing interests in California, Arizona, and Mexico testified to the same effect.

The traffic manager of the Arizona Eastern stated that if the arbitrary were removed the railroad would solicit cotton for export to the Orient in lots ranging from 50 to 200 tons per month from points on its line. It can deliver cotton from Yuma, Ariz., at San Diego in 9 hours, whereas it takes 24 hours to deliver at Los Angeles from that point.

The record is clear that cotton cannot move from San Diego to the Orient at a rate of $2.50 per ton more than the Los Angeles rate. The arbitrary amounts to 60 or 62 cents per bale, whereas, at the time of hearing, cotton shippers considered 50 cents per bale as a fair margin of profit. Undoubtedly, if adequate service were maintained, much of the cotton now moving to the Orient from Los Angeles would move through San Diego if the two ports were on an ocean rate parity.

Various complainants and witnesses exporting scrap metals, old rubber, newspapers, and junk point to the growing demand for such articles in Japan and state that while San Diego can originate substantial quantities, they are obliged to ship these materials, with the exception of scrap iron, through other ports. Due to the low value of these articles and intensive competition in the trade, quantities in and near San Diego fail to move at all since shippers are unable to absorb the transportation cost to Los Angeles. The ocean rate on scrap iron from terminal ports to Yokohama, at time of hearing, was $2.50 per ton. Competitors at Los Angeles are able to ship to the Orient at that rate without any minimum weight requirement. These witnesses stress the fact that although a conference vessel may be loading scrap iron at San Diego, it will not accept other scrap material without charging the arbitrary applicable on those articles. Dealers testified that they could ship 500 to 1,000 tons of scrap and 500 bales of newspapers per month from San Diego to the Orient if the arbitrary were removed. They stated that by mixing scrap metals, newspapers, and old rubber, they could easily comply with a minimum weight of 500 tons. These witnesses were apparently unaware of the fact that, since August 30, 1933, minimum weight restrictions have been removed from shipments of scrap iron and steel.

The Western Salt Company, located about 10 miles from San Diego, producing between 35 thousand and 40 thousand tons of coarse salt per year, cannot sell to Japan in competition with San Francisco shippers. A representative of that firm asserts that it has 10 thousand tons of salt for export yearly, which when marketed would move through San Diego if the arbitrary were removed. The president of complainant Ingle Manufacturing Company, located at San Diego, exporting ranges, furnaces, hot water heaters, ventilating and kitchen equipment to the Hawaiian and Philippine Islands, China, and other world ports, states that he is obliged to ship through Los Angeles and San Francisco in competition with exporters located there and at Seattle, and that he must absorb the arbitrary or pay the coastwise freight of 45 cents per 100 pounds to Los Angeles. He testified that his company would ship through San Diego if a fortnightly service were provided. This concern exported about 1,000 tons the year prior to hearing, about 80 percent of which went to the Orient.

The Southwest Onyx & Marble Company, a complainant located at San Diego, quarries onyx in Mexico, transports it to San Diego by its own motor ships, and prepares the stone for sale in block and slab form. This complainant has shipped to Kobe and Yokohama, Japan, and is seeking a greater market there and in China. Its witness testified that, due to competition of European marble and the arbitrary, it is at a disadvantage in the Oriental market.

The Citrus Soap Company, a San Diego firm manufacturing soap, washing powder, and crude glycerine, was, at the time of the hearing, preparing to market its products in the Orient, particularly in the Hawaiian Islands. Its competitors are the Los Angeles Soap Company, the Procter & Gamble plant at Long Beach, and the Colgate-Palmolive Peet Company, Berkeley, Calif., which sells large quantities of soap in the Hawaiian Islands. Citrus Soap Company urges that a fair competitive relation requires that San Diego enjoy rate parity with the other ports.

Complainant Marine Products Company, of San Diego, sell about 100 tons of canned sea food per month to exporters for shipment to the Orient. Due to the arbitrary this company is obliged to truck its products to Los Angeles for shipment abroad. Other San Diego packers and canners of fish testify they are unable to compete with San Francisco and Los Angeles shippers to the Orient because of the difference in freight charges. One such company, Westgate Sea Products Company, gave up its sardine business as a result of that competition, but would attempt to re-enter the Oriental market if the freight charges were equalized. There are large canneries at Los Angeles packing tuna, sardines, and mackerel.

The Standard Sanitary Manufacturing Company, of Campo, San Diego County, Calif., is compelled to move shipments of filter rock to the Hawaiian Islands through Los Angeles. Its witness testified that while there are other demands in the Orient for its products, sales are turned down because of its inability to meet European prices, which average about $3.50 per ton less in the Orient. The rate charged by Los Angeles Steamship Company on filter rock from San Diego to Los Angeles is $2.00 per ton. Movement of feldspar from San Diego direct to the Orient is prohibited by the arbitrary, and the freight to terminal ports for shipment beyond is too high for the shipper to absorb. The potential market for feldspar in Japan is estimated to be 2,000 tons per year. This witness testified that the Standard Sanitary Company could secure one-third of this business if San Diego were on a parity with other Pacific coast ports. A San Diego candy manufacturer, shipping about 5 tons of candy per week to the Hawaiian Islands in competition with Los Angeles and San Francisco shippers, pays 15 cents per 100 pounds freight to Los Angeles for export in addition to the ocean rate from Los Angeles.

A county agricultural commissioner, representing San Diego County, stated there are about 118 thousand acres now developed for production of grain, hay, lima beans, and other farm produce. There are about 50 thousand acres yet undeveloped, but productive acreage is increasing 2 thousand acres per year. In addition to the agricultural possibilities of San Diego County, minerals, consisting of limestone, gypsum, feldspar, silica, bentonite, and granite, are deposited there. Witnesses from the Imperial Valley point to the agricultural production of that territory and stress the fact that San Diego is the natural gateway for export from that region since it has a mileage advantage over Los Angeles, and the highways to San Diego do not encounter the heavy grades and curves met on the Los Angeles route. In addition to cotton and other products of the soil, the Imperial Valley produces butter, cream, powdered milk, honey, and hides.

Intervener, Coast Truck Line, operates 100 trucks and trailers between points in California and Arizona. It operates regular service between San Diego, Imperial Valley points, and Yuma, Ariz. Its witness compares the distance by highway from Imperial Valley to San Diego and Los Angeles. For example, the distance from El Centro to San Diego is 121.5 miles, while it is 220.5 miles, El Centro to Los Angeles city, which is about 25 miles from Los Angeles Harbor. It stated that if the arbitrary were removed it could haul cotton from Imperial Valley to San Diego for export to the Orient. Cotton from Imperial Valley now moves through Los Angeles.

Defendants' witnesses assert that if general cargo were available at San Diego in sufficient volume to warrant calling for it, they would be willing to pick it up and observe terminal rates to the Orient. The secretary of the Conference stated that 500 tons of cargo is regarded as sufficient to warrant shifting of vessels for it. Defendants take the position that complainants' testimony showing prospective tonnage available at San Diego is speculative and that they cannot be expected to grant terminal rates from that port based upon predictions of future cargo which may or may not materialize. The secretary of the Conference also testified that it is the policy of the Conference to recognize only one port for a given area, but admits that Seattle, Tacoma, Portland, and Astoria are in the same region, are competitive, and that each enjoys the terminal rate. Although defendants maintain that they view the rivalry of the ports of Los Angeles and San Diego from an impartial point of view, their testimony reflects a strong desire to compel cargo to move through Los Angeles. For example, they testify that if 1,500 tons of cotton were available at Phoenix for movement through San Diego they would not call at San Diego for that cargo because the shipper could deliver the cotton at Los Angeles at no greater expense than at San Diego.

Defendants support the arbitrary as necessary to cover the added transportation costs of placing vessels in San Diego. However, facts presented in support of this contention are meager and fragmentary. No cost studies worthy of serious consideration are of record. The only evidence showing greater costs at San Diego than at Los Angeles is a statement that one company furnishing stevedore and longshoremen services pays labor 10 cents per hour more than the Los Angeles scale. However, the record shows that the stevedore rates paid at Los Angeles vary according to the terms of separate contracts with individual steamship lines. The cost of opening hatches, rigging booms, handling lines, and making ships fast are not shown to be greater at San Diego than at any other port. It is testified that loading at San Diego as the first port of loading requires more shifting of cargo than loading at Los Angeles as the first port of call because of the small volume offered at San Diego compared to that taken at Los Angeles. The fact that vessels must deviate from their course to reach San Diego is also advanced as a cost factor. Defendants overlook the fact that all these considerations apply with equal force to such a port as Astoria, for example. A shipper at Astoria may, under the Conference rules, ship cargo in any quantity lots out of Los Angeles at the terminal rate without paying additional freight charges for the coastwise transportation from Astoria to Los Angeles.

Defendants' testimony to the effect that the arbitrary is necessary to maintain the rate structure is not supported by facts. It is not shown how rates from terminal ports would be affected by placing San Diego rates on the same basis.

Defendants rely upon *Everett Chamber of Commerce* v. *Luckenbach S. S. Co.*, 1 U. S. S. B. 149, wherein the United States Shipping Board found that arbitraries, applicable on intercoastal cargo to Everett and Bellingham, Wash., over the rates to Seattle and Tacoma did not constitute undue disadvantage in violation of section 16 of the Shipping Act, 1916. The arbitraries there considered were found not to influence the volume of tonnage to the four ports under consideration, and there was no evidence of injury to complainants.

The evidence of record shows that transportation conditions and circumstances at San Diego on traffic to the Orient are not substantially different from those at Los Angeles; that complainants at San Diego are charged higher rates to the Orient than the rates on like traffic accorded competitors at Los Angeles; that competition is so keen that various complainants find themselves deprived of sales at points in the Orient to which their competitors can ship at the lower rates; that defendants are a common source of the discrimination, effectively participating in and controlling rates from San Diego as well as Los Angeles; and that the arbitrary is not warranted. In the light of these facts the conclusion is inescapable that the rates assailed are unduly prejudicial in violation of the statute.

With respect to the element of low volume of tonnage available at San Diego, relied upon strongly by defendants, it would appear that the presence of the arbitrary has been an influential factor in discouraging the flow of traffic therefrom, and that the establishment of a minimum of 500 tons applicable to San Diego cargo would assure sufficient volume to warrant the removal of the arbitrary. Defendants acknowledge that 500 tons is a reasonable quantity for which to shift a vessel, and complainants have no objection to the observance of that minimum. However, such a minimum should be based on the volume of all cargo offered. It should not be restricted to apply to one shipper or to one item of cargo.

Upon this record we find that the ocean rates assailed and defendants' rules, regulations, and practices with respect thereto were, are, and for the future will be, unduly prejudicial to complainants and unduly preferential of their competitors to the extent that they were, are, and for the future may be, less favorable to San Diego than to Los Angeles, subject to the proviso that observance of terminal rates from San Diego may be conditioned upon cargo offerings at that port in direct call service of not less than 500 tons in the aggregate. An order requiring the removal of the undue prejudice will be entered.

We further find that the rates assailed and defendants' rules, regulations, and practices with respect thereto, are not shown to be otherwise unlawful.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 23rd day of September, A. D. 1937

No. 106

HARBOR COMMISSION OF THE CITY OF SAN DIEGO ET AL.

v.

AMERICAN MAIL LINE, LTD.; THE CHINA MUTUAL STEAM NAVIGATION COMPANY, LTD., AND THE OCEAN STEAM SHIP COMPANY (BLUE FUNNEL LINE); CANADIAN PACIFIC STEAMSHIPS, LTD.; DOLLAR STEAMSHIP LINES, INC., LTD.; GENERAL STEAMSHIP CORPORATION, LTD.; KERR STEAMSHIP COMPANY, INC.; KLAVENESS LINE (A. F. KLAVENESS & COMPANY, A/S); NIPPON YUSEN KABUSHIKI KAISHA (NIPPON YUSEN KAISHA); OCEANIC & ORIENTAL NAVIGATION COMPANY; OSAKA SHOSEN KABUSHIKI KAISHA (OSAKA SHOSEN KAISHA); PACIFIC-JAVA-BENGAL LINE (N. V. STOOMVAART MAATSCHAPPIJ AND N. V. ROTTERDAMSCHE LLOYD); STATES STEAMSHIP COMPANY; TACOMA ORIENTAL STEAMSHIP COMPANY; "K" LINE (KAWASAKI KISEN KAISHA); BANK LINE, LTD.; BARBER STEAMSHIP LINES, INC.; PRINCE LINE; LOS ANGELES STEAMSHIP COMPANY; McCORMICK STEAMSHIP COMPANY; PACIFIC STEAMSHIP LINES, LTD.; AND SAN DIEGO-SAN FRANCISCO STEAMSHIP COMPANY

This case being at issue upon complaint and answers on file with the Department of Commerce of the United States, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had; and this Commission, pursuant to the authority vested in it by the Merchant Marine Act, 1936, having taken over the powers and functions theretofore exercised by the Department of Commerce as the successor to the powers and functions of the United States Shipping Board; and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the above-named defendants, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before November 23, 1937, and thereafter to abstain, from publishing, demanding, or collecting for the transportation of property from San Diego, Calif., to points in Japan, Korea, Formosa, Manchuria, China, Hongkong, Indo-China, Siam, Straits Settlements, India, the East Indies, and the Philippine and Hawaiian Islands, rates which exceed those on like traffic from Los Angeles, Calif., to the same destinations, either in direct call or transshipping service: *Provided*, That rates from San Diego may be made subject to a minimum of 500 tons in the aggregate for direct call service.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, JR.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 441

OLD BRASS RADIATORS—EASTBOUND

Submitted September 10, 1937. Decided October 15, 1937

Proposed increased rates on old brass radiators from United States Pacific coast ports to United States Gulf and Atlantic coast ports found unreasonable, but without prejudice to the filing of new schedules not inconsistent with the views expressed herein. Suspended schedules ordered cancelled and proceeding discontinued.

E. J. Karr, *R. H. Specker*, *M. G. de Quevedo*, and *W. M. Carney* for respondents.

A. J. Bien, *F. E. Marik*, *George W. Reid*, *M. Weil*, and *J. Glant* for protestants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions to the examiner's proposed report were filed by respondents. The findings recommended by the examiner are adopted herein.

By schedules filed to become effective June 1, 1937, respondents [1]

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[1] Alameda Transportation Co., Inc., American-Hawaiian Steamship Company, America Transportation Co., Inc., (Arrow Line) Sudden & Christenson, Babbidge & Holt, Inc., Bay Cities Transportation Company, The Border Line Transportation Company, The California Transportation Company, Calmar Steamship Corporation, Chamberlin Steamship Co., Ltd., Christenson-Hammond Line (Hammond Shipping Co., Ltd., Mang. Agents), Crowley Launch & Tugboat Co., Dollar Steamship Lines, Inc., Ltd., Erikson Navigation Company, Freighters, Inc., (Grace Line) Panama Mail Steamship Company, Gulf Pacific Mail Line, Ltd., The Harkins Transportation Company, Haviside Company, Isthmian Steamship Company, A. B. Johnson Lumber Company, Jones Towboat Company, Luckenbach Gulf Steamship Company, Inc., Luckenbach Steamship Company, Inc., McCormick Steamship Company, Marine Service Corporation, Northland Transportation Company, Pacific Steamship Lines, Ltd. (The Admiral Line), (Panama Pacific Line) American Line Steamship Corporation, The Atlantic Transport Company of West Virginia, Puget Sound Freight Lines, Puget Sound Navigation Company, (Quaker Line) Pacific-Atlantic Steamship Co., Richmond Navigation & Improvement Co., Roamer Tug & Lighterage Company, Sacramento & San Joaquin River Lines, Inc., Schafer Bros. Steamship Lines, Shaver Forwarding Company, San Diego-San Francisco Steamship Co., Skagit River Navigation & Trading Company, States Steamship Company (California-Eastern Line), Sudden & Christenson, Swayne & Hoyt, Ltd., Managing Owners (Gulf Pacific Line), Weyerhaeuser Steamship Company.

propose to increase their rates on old brass radiators, automobile or aeroplane, loose or in packages, hereinafter referred to as scrap radiators, from United States Pacific coast ports to United States Gulf and Atlantic coast ports by way of the Panama Canal. Upon the filing of protests the proposed schedules were suspended until October 1, 1937.

Scrap radiators sell for approximately 8 cents a pound delivered and apparently have a minimum stowage factor of about 120 cubic feet to the ton, although the evidence as to stowage is conflicting. The eastbound movement of this commoditity ranges from 5,000 to 10,000 tons annually. Scrap radiators fall within a group of commodities which comprise the item JUNK in respondents' tariffs. The present rates are as follows:

Tariff	C. L., minimum 24,000 pounds	L. C. L.	Specification
Agent Wells and Calmar Steamship Corporation.	36	56½	Up to 30 cubic feet measurement and $100 value per net ton.
	46½	72	Over 30 cubic feet measurement and $100 value per net ton.
Agent Miller	46½	67	No qualification.

The rates proposed are $1.00 carload, minimum 24,000 pounds, and $1.75 less-than-carload, loose or in packages, with no qualification as to density or value. In this report the rates applicable on higher cubic density and value will be used, and will be stated in amounts per 100 pounds unless otherwise specified.

In support of the proposed advance respondents point out that the rates on scrap radiators have not been increased since their tariffs were first filed pursuant to the Intercoastal Shipping Act, 1933, that the commodity is being handled at practically less than out-of-pocket cost, that respondents' expenses of operation have increased approximately 15% over the same period of 1936, and that scrap radiators are not desirable cargo.

The proposed increases amount to approximately 115 per cent carload and 143 per cent and 161 per cent less-than-carload, while according to protestants' evidence, the average increase in rates on June 1, 1937, amounted to about 11 per cent. The rate on many of the other commodities in the item JUNK, which formerly took the same rate as scrap radiators, including brass scrap and copper scrap, when in packages, was increased from 46½ cents to 57½ cents carload, and from 72 cents to 90 cents less-than-carload,[2] or approximately 25 per

[2] Subject to penalty of 35%, maximum 25 cents per 100 pounds, when shipped loose.

cent. Protestants concede that some increase is justified, but urge that it should not exceed 25 per cent.

The revenue per cubic foot, on basis of a stowage factor of 120, produced by the present rate of 46½ cents, the rate sought of 57½ cents, and the proposed rate of $1.00, is 7.7 cents, 9.5 cents, and 16.6 cents, respectively. Respondents compare these earnings with the returns on such articles as canned milk, canned salmon, canned fish, fish and products N. O. S., of 20.7 cents per cubic foot, hides and skins, of 25 cents, grain, flour, vegetables and their products, dried fruits, canned fruits, nuts, and copper, ranging from 14.6 cents to 31.8 cents, all except one of which move in considerably greater volume than scrap radiators.

It was testified that one of respondents recently sought to charter a vessel of 8,750 dead-weight tons and 400,000 cubic feet capacity, that being a vessel of the usual type employed in the intercoastal trade, and it was estimated that a return of approximately 18 cents per cubic foot would be necessary to cover the actual operating costs of the vessel. This testimony is speculative and of little value in demonstrating the actual cost of operation of respondents' vessels.

Scrap radiators are not considered desirable cargo, and longshoremen receive 10 cents per man per hour more for handling it than general cargo. The rates on most of the commodities in the item JUNK apply only when the articles are packaged, which method of shipment makes for easier handling and stowing. On the other hand, iron or steel scrap, also included in the item JUNK, has no package restrictions, though less-than-carload quantities are subject to a penalty of 35%, maximum 25 cents per 100 pounds, when shipped loose. There is no evidence as to whether iron or steel scrap is placed in the penalty class by longshoremen.

Protestants' witnesses were of the unanimous opinion that the proposed rate would shut off all intercoastal shipments from the North Pacific ports in favor of mid-western markets. One of these witnesses testified that the total transportation costs of this commodity by water from Portland, Ore., to his refinery at Carteret, N. J., based upon the proposed rate, would exceed the all-rail rate by $5.16 a ton. It was also testified that the rate would encourage direct shipments from the Pacific coast to such foreign countries as Japan and Germany, which enjoy lower rates, and thus effectively prevent the Atlantic coast smelters and refiners from selling in those markets the copper which is refined from the radiators. The eastbound all-rail transcontinental carload rate on scrap radiators is 92 cents, minimum 60,000 pounds. Protestants are currently receiving shipments by the rail-Gulf route from San Francisco and Los Angeles at a rate of 62 cents, minimum 60,000 pounds.

Our conclusion from the evidence is that the proposed increases are not warranted. This is without prejudice, however, to the establishment of increased rates property aligned with the present rates on similar commodities in the junk list. It is not possible to determine from the record what the precise relation should be, but clearly, the rates on scrap radiators, loose or in packages, should be no lower, and perhaps somewhat higher, than the present rates applying on such items in the junk list as brass scrap and copper scrap.

Upon this record we find that the suspended schedules are unreasonable. An order will be entered requiring their cancellation and discontinuing this proceeding, without prejudice to the filing of new schedules not inconsistent with the views expressed herein.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 15th day of October, A. D. 1937

No. 441

OLD BRASS RADIATORS—EASTBOUND

It appearing, That by order dated May 28, 1937, the Commission entered upon a hearing concerning the lawfulness of the rates, charges, regulations, and practices stated in the schedules enumerated and described in said order, and suspended the operation of said schedules until October 1, 1937;

It further appearing, That a full investigation of the matters and things involved has been made, and that the Commission, on the date hereof, has made and filed a report containing its conclusions and decision thereon, which said report is hereby referred to and made a part hereof;

It is ordered, That the respondents herein be, and they are hereby, notified and required to cancel the said schedules, on or before November 25, 1937, upon notice to this Commission and to the general public by not less than one day's filing and posting in the manner prescribed in section 2 of the Intercoastal Shipping Act, 1933, and that this proceeding be discontinued.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 439

IN THE MATTER OF EMBARGO ON IRON AND STEEL ARTICLES TO LAKE CHARLES, LOUISIANA, AND BEAUMONT, TEXAS

Submitted June 5, 1937. Decided November 1, 1937

Embargo by Bull Steamship Line on iron and steel articles to Lake Charles, La., and Beaumont, Tex., found justified. Proceeding discontinued.

Robert E. Quirk for respondent.
C. D. Arnold and *Doss H. Berry* for interveners.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Upon complaint of port organizations of Lake Charles, La., and Beaumont, Tex., we ordered respondent, Bull Steamship Line, to show cause why an order should not be entered directing it to cancel an embargo placed April 22, 1937, on iron and steel articles consigned to the above-mentioned ports. The complaints alleged the embargo, would cause loss to shippers, constituted an unjust discrimination in favor of Corpus Christi, Tex., and was unlawful retaliation against Lake Charles for requesting suspension of certain proposed rates. Respondent cancelled the embargo prior to the hearing.

Respondent maintains a regular service between North Atlantic ports and Corpus Christi, Beaumont, and Lake Charles, calling at the latter ports in the order named. Northbound, the vessels also call at several South Atlantic ports. The major portion of the southbound tonnage is destined to Corpus Christi, about 20 percent of the total movement being iron pipe. Beaumont and Lake Charles supply the larger part of the northbound tonnage. At Gulf ports the vessels ordinarily discharge and load simultaneously, which necessitates but a single call at each port. Baltimore is the principal port for loading pipe, which moves in by rail from the Pittsburgh district. Cargo is loaded at Baltimore in reverse order to the ports of call on the Gulf, which is one of the reasons for embargoing the last ports of call and not the first, namely, Corpus Christi. At Baltimore, all cargo coming by rail must be lightered to the vessel. When shipments of pipe are normal the loading is free from congestion, which permits the vessels to call at the Gulf ports in their scheduled order.

In 1936 and 1937 unprecedented oil well drillings in the Beaumont and Lake Charles districts, together with threatened price increases, caused pipe to move in large quantities through Baltimore to Gulf ports, so that when the embargo was placed, 70 percent of the cargo was pipe. This congested the port of Baltimore, caused other cargo to be shut out, and delayed the sailings. The Gulf ports involved in this proceeding are served by rail and truck lines, and adjacent ports by water lines, making it imperative that respondent observe regular schedules in order to maintain its competitive position. Congestion became so great at Baltimore that out of 55 sailings only 7 were on schedule. The heavy shipments necessitated dual calls at all Gulf ports inasmuch as stowage requirements did not permit simultaneous discharging and loading.

Respondent sought unsuccessfully to remedy the situation by securing additional tonnage. Then it attempted, without success, to secure advance notice from the steel mills of prospective shipments so that proper arrangements could be made to handle it. Respondent does not make firm bookings, but accepts all cargo offered, and therefore has to pay demurrage on barges if it is unable to lift the cargo. All sailings during the period of the embargo were on schedule.

We find that respondent has justified the establishment of the embargo. An appropriate order discontinuing the proceeding will be entered.

Order

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 1st day of November A. D. 1937

No. 439

In the Matter of Embargo on Iron and Steel Articles to Lake Charles, Louisiana, and Beaumont, Texas

It appearing, That by order dated May 11, 1937, the Commission entered upon a hearing concerning the lawfulness of an embargo as described in said order;

It further appearing, That a full investigation of the matters and things involved has been had, and that said Commission, on the date hereof, has made and filed a report containing its conclusions and decision thereon, which said report is hereby referred to and made a part hereof;

It is ordered, That this proceeding be discontinued.

By the Commission.

[SEAL] (Sgd.) W. C. Peet, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 221

STORAGE OF IMPORT PROPERTY

Submitted June 16, 1937. Decided November 16, 1937

Respondents' practice of allowing excessive free storage of import property at the Port of New York found to be unreasonable, in violation of section 17 of the Shipping Act, 1916.

As a reasonable regulation for the future, respondents required to limit the free time allowed on import property at the Port of New York to a maximum period of ten days, Sundays and legal holidays excepted.

Respondents not shown to be engaged in unlawful practices in connection with the storage or delivery of import property at the other North Atlantic ports involved in this proceeding.

J. Sinclair, *J. P. Deane*, *J. F. Andrews*, *Harry Partridge*, *Luke D. Stapleton, Jr.*, *James A. Farrell, Jr.*, *Thomas J. Sartor*, *W. B. Phillips*, *George L. Holt*, *H. W. Proom*, *James B. Young*, *J. W. O. Von Herbulis*, *W. McDougall*, *Roger Siddall*, *F. J. Tracy*, *J. E. Light*, *J. H. Threadgill*, *T. Eckert*, *P. J. McManus*, *E. C. Hastings*, *W. J. Raeburn*, *John H. Walker*, *A. Z. Gardiner*, *M. E. Knabe*, *D. H. Andrews*, *C. W. Kenick*, *A. V. Perrin*, *E. H. Gibson*, *W. E. Stewardson*, *E. H. Smith*, *Joseph Donadio*, *G. J. Moraillon*, *William W. Nash*, *William J. Rountree*, *F. Rothe*, *J. H. Welling*, *James J. Ryan*, *R. E. Corbett*, *Thorvald Tonnesen*, *F. W. Hartman*, *A. A. Alexander*, *C. L. Davis*, *L. B. Ilgen*, *Edward Walmsley*, *William H. Dausey*, *James E. Magner*, *C. Krebs*, *John P. Hanley*, *B. F. Gaede*, *Frank N. Bowers*, *Robert E. Quirk*, *M. S. Crinkley*, *Charles S. Belsterling*, *Thomas F. Lynch*, *R. A. Murphy*, *William Goepfert*, *W. J. Tracy*, *H. S. Muller*, *J. McGuinness*, *J. V. Lyon*, *A. Kearney*, *M. A. Coyle*, *J. P. Zuurmond*, *William Imlay*, *Robert Wardle*, *Robert A. Condy*, *C. W. Barrett*, *W. L. Bird*, *Maurice Storch*, *T. S. Sprague*, *John G. Keating*, *W. J. Mathey*, *J. J. Halloran*, *D. E. Bordner*, *Edward J. Neary*, *J. W. Praesent*, *Harry Haas*, and *K. Martinsen*, for various respondents.

Charles R. Seal, *Henry E. Foley*, *Walter W. McCoubrey*, *Rudolph Robinson*, *Maurice M. Goldman*, *H. J. Wagner*, *S. H. Williams*, *H. W. Wills*, *Charles B. Roeder*, *R. H. Horton*, *Julius Henry Cohen*, *Wilbur La Roe, Jr.*, *Frederick E. Brown*, *W. P. Hedden*, *W. H. Connell*, *W. H. Chandler*, *W. H. Brusche*, *C. S. Nelson*, *C. J. Fagg*, *Harry H. Snider*, *Morris S. Rosenthal*, *A. Lane Cricher*, *S. J. Steers*, *L. N. Larsen*, and *W. W. Weller*, for various interveners.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions to the examiners' proposed report were filed on behalf of many of the respondent carriers and interveners, and the issues were orally argued. The findings adopted herein are substantially those recommended by the examiners.

This is an investigation of the lawfulness of the charges, regulations, and practices of common carriers by water in foreign commerce relating to storage of import property at the ports of Boston, Mass., New York, N. Y., Philadelphia, Pa., Baltimore, Md., and Norfolk, Va. Originally, formal complaints were filed by interests at these ports, except New York, alleging that the carriers named defendants therein permit import commodities to remain on their piers at the port of New York for excessive time without charge, whereas, at the former ports penalty storage charges are assessed after expiration of free time, and that such practices violate sections 16 and 17 of the Shipping Act, 1916. After this investigation was instituted, upon petition of complainants, these complaints were dismissed.

Respondents [1] submitted at the hearing, in writing, information called for by a questionnaire relating to: trade routes; pier facilities; principal commodities transported; rules, regulations, practices, and charges maintained by respondents or affiliates, applicable to storage of import property at the ports named; the costs to respondents in connection with handling import property at the piers; and import property held in storage by respondents or at their expense for more than ten days after discharge from vessel during a test period of five months in 1935. Respondents also furnished copies of bills of lading used by them in the import trade, arrival notices, and other forms pertaining to the arrival and delivery of import goods, which, with the replies to the questionnaire, were made a part of the record. This evidence was supplemented by testimony on behalf of respondents and various North Atlantic port and terminal interests, warehousemen, importers, manufacturers, and shippers.

Respondents, with a few exceptions, maintain regular services in the import trades to one or more of the North Atlantic ports cov-

[1] See Appendix A.

ered by this proceeding. The regular services include 55 lines serving New York and one or more of the other North Atlantic ports, 33 lines serving New York alone, and 4 lines that do not serve New York. These services cover many different trade routes and involve the transportation of a wide variety of commodities.

At North Atlantic ports involved, other than New York, rules and regulations governing free time and storage charges on import cargo are enforced by the terminal operators. The free time generally allowed at Boston is six (6) days, and at Philadelphia, Baltimore, and Norfolk five (5) days, beginning with the day following complete discharge of vessel. At Boston wood-pulp is allowed fifteen (15) days and at the other three ports both wood-pulp and crude rubber are usually allowed fifteen (15) days, primarily to conform to railroad practices and regulations. At these ports respondents, as a general rule, do not lease or otherwise control the pier facilities or space used by them, but are assigned berthing space, usually called dockage, and space on the pier to discharge cargo. At railroad piers and at some of the other piers, free dockage is given. Wharf demurrage or storage charges are assessed against the cargo at all these facilities after expiration of free time. In some instances ocean carriers retain control of import property on the pier until delivery, and collect storage charges for the terminal operator; in other instances control is relinquished to the terminal operator after free time, or the property is delivered to the terminal operator immediately upon discharge from vessel. There is no showing that respondents are engaged in unlawful practices in connection with the storage or delivery of import property at the ports of Boston, Philadelphia, Baltimore, or Norfolk.

At the port of New York respondents provide pier facilities, usually at considerable expense, by lease or other arrangement under which they obtain exclusive or partial use of such facilities or space to accommodate cargo discharged, with practically no restriction of free time. They retain control of the property until delivered, and permit consignees or owners thereof to take delivery at their convenience, either by complete or partial lot. The additional pier expenses are absorbed by respondents, notwithstanding definite provisions in their bills of lading and arrival notices requiring consignees or owners to take delivery immediately upon discharge or within a limited time thereafter. Also, the right is reserved to send the merchandise to storage at the risk and expense of owner or consignee, or, in some cases, to assess wharfage or storage charges. Respondents frankly admit they do not enforce these provisions and do not maintain or enforce general rules or regulations governing free time, primarily because it is not the custom of the port or the practice of competing carriers to limit the period of free time or to make any charge for storage. They state that competition between carriers prevents the limitation of free time by voluntary action, the fear being expressed by some that such action would result in loss of business to competing lines and possibly to competing ports.

Eastern Steamship Lines, Inc., limits the free time on import property at both New York and Boston to six days. Seatrain Lines, Inc., at New York, delivers import property to Hoboken Manufacturers Railroad, which in turn holds the goods in railroad cars subject to a free time allowance of seven days as provided in its tariff. This free time period is applied by Seatrain to all its import traffic except refined sugar on which it allows more time and absorbs the charges for the time beyond seven days.

Competing carriers limit the period of free time at New York on crude rubber from the Far East, coffee from Colombia, and onions and lemons from the Mediterranean, by special agreement. Effective December 1, 1933, carriers engaged in the rubber trade limited the free time period to fourteen calendar days after completion of vessel's discharge. Rubber not removed within the time specified may, at option of carrier, be placed in public storage at risk and expense of the goods. Sundays and legal holidays were excluded, effective February 7, 1934. Agreement No. 4444, approved March 26, 1936, contains the rules fixing the free time on this commodity. Witnesses testified that the reason for the rubber agreement was the heavy movement of this commodity and congestion due to failure to move it out promptly, and that the effect of the charges has been the removal of most of the rubber from the piers within the free time period. There is no showing that the rule on rubber has adversely affected the commodity or diverted any rubber from New York. The record indicates that New York is the principal distributing point for rubber and that there is little competition with other North Atlantic ports for this traffic.

In September 1933, the carriers engaged in the Colombian coffee trade, in agreement with the Green Coffee Association of New York City, Inc., limited the free time on green coffee to 18 calendar days, Sundays and holidays included, starting at 8 A. M. following the complete discharge of the coffee cargo. The steamship companies were to notify consignees of the expiration date of free time, and any coffee remaining on steamship pier or property beyond the agreed free time was to be removed immediately to a warehouse without further notice, at the expense and risk of consignee or cargo. This agreement does not apply to Brazilian coffee on which there is no limitation of free time at respondents' New York piers.

The steamship lines subscribing to this agreement are the Compania Chilena de Navegacion Interoceanica, Colombian Steamship Company, Inc., Grace Line, Inc., Panama Mail Steamship Company, Panama Rail Road Company, Osaka Shosen Kabushiki Kaisha, and United Fruit Company, all named respondents in this proceeding. Neither this agreement, nor any memorandum thereof has been filed for approval as required under the provisions of section 15 of the Shipping Act, 1916.

The port of New Orleans is not included in this proceeding and the record does not contain sufficient evidence of regulations or practices at that port to afford a basis of comparison in respect of coffee or any other commodity. There is testimony that Brazilian coffee is allowed twenty consecutive days at New Orleans and that Colombian coffee is allowed five days, but it is not shown whether free time begins before or after completion of vessel's discharge, or that the period of free time at New Orleans has been affected by competition with New York. The record indicates that the movement of coffee through New Orleans is influenced primarily by the cost of transportation to interior points.

Carriers engaged in carrying onions and lemons from the Mediterranean have an approved agreement, which has been in existence since 1927, providing for wharfage or storage charges on these commodities at New York. Onions from Spain are allowed four (4) days' free time after discharge from vessel, Sundays and holidays excepted, after which wharfage charges are assessed; and on lemons and other fruit from Italy wharfage charges are assessed from the day the steamer commences discharging.

It is generally admitted that no great effort is made by respondents to compel removal of import cargo until the pier space is urgently needed. Hence consignees use the piers as warehouses until it is convenient for them to take delivery or sell the property. Considerable import cargo has been allowed to remain on the piers at New York in excess of the time generally regarded as reasonably necessary to complete delivery thereof. Answers to questionnaires submitted by approximately one-half of respondent carriers show that during the first five months of 1935, import property was held on their piers for more than ten days after discharge as follows: after 10 days 286,639 tons; after 15 days, 114,918 tons; after 20 days, 64,803 tons; after 25 days, 36,319 tons; and after 30 days, 22,851 tons. The property held on the piers beyond ten days amounted approximately to thirty (30) percent of the total cargo discharged by the same carriers during the period referred to.

The record is clear that certain respondents incur additional expense by granting excessive free time. This added cost results mainly from extra tiering of cargo, rehandling of shipments, extra hire for clerks, and additional pier rental. But some respondents testified that the privilege is accorded at no additional expense. The absorption by respondents of the extra cost of this service is a valuable concession to those who are advantaged by it, and an unreasonable burden on respondents' transportation revenue.

The practice in question has at times caused congestion on the piers at New York, necessitating the shifting of cargo to make room for incoming cargo. It is said that with limitation of free time ships could be loaded and discharged more expeditiously than at present. A representative of the trucking interests at New York testified that the congestion creates unreasonable expense in connection with the trucking of import merchandise, and makes it difficult to handle export freight.

Representatives of warehousemen at New York testified that the allowance of excessive free time by respondents deprives them of business, and jeopardizes their investment of approximately $150,000,000 in the merchandise warehousing business; which is devoted to furnishing services required in foreign and domestic trade. Philadelphia and Boston warehousemen represent that the practice diverts merchandise which would normally come to their warehouses. Limitation of free time on import traffic at New York would place the other North Atlantic ports in a better position with relation to competitive traffic, and any increase of import traffic to such ports would naturally result in increased business for the warehousemen.

Evidence was submitted on behalf of the Boston Port Authority that the free time practice at New York results in the diversion of import traffic from competing North Atlantic ports at which the free time is limited. A typical illustration is shown with reference to import tonnage of burlap as follows:

Burlap imports

	Boston		New York			Boston		New York	
	Tons	Percent	Tons	Percent		Tons	Percent	Tons	Percent
1922	46,041	42.6	60,453	55.9	1932	6,570	9.2	51,018	71.1
1923	64,828	42.2	80,586	52.4	1933	6,459	9.0	49,304	68.4
1924	79,053	35.8	128,828	57.9	1934	4,885	7.3	48,702	73.1
1925	52,037	31.4	106,646	64.4	1935 (6 months)	1,693	4.2	29,858	74.3
1931	11,918	12.2	66,092	67.4					

NOTE.—Percentage computations are based on total shipments to all 5 North Atlantic ports.

These figures show a substantial reduction in the volume of burlap imports at New York, as well as at Boston. The fact that New York increased its percentage of the total burlap tonnage moving to North

Atlantic ports was offered as evidence of the diversion of traffic from Boston to New York. In view of the admission that considerable burlap traffic has been lost by all North Atlantic ports to New Orleans, this conclusion is only partly justified. The witness also testified that during his investigation of the competitive situation he called on various large receivers of burlap, crude rubber, sisal, hemp, tapioca flour, cocoa beans, tin, coffee, and other commodities, and in practically every case the reason assigned for not using the port of Boston for their traffic moving to New England and Central Freight Association Territory was the free storage allowed at New York for periods as long as three or four months. While the record fails to show quantitatively actual diversion of traffic from other ports to New York as a result of the situation complained of, it supports the conclusion that the free storage allowed at New York is a valuable concession and a competitive factor of sufficient importance to influence the movement of import traffic.

The record indicates that respondents do not treat all shippers or consignees alike. The restrictions on coffee and other commodities have been mentioned. As to commodities other than those named, the privilege of unlimited free storage is forced by stress of competition between carriers and the record indicates that the amount of free time allowed is influenced in large measure by the demands of particular shippers or consignees. The manner of providing this exceptional facility opens the door to unlawful discriminations and abuses.

Section 17 of the Shipping Act, 1916, provides that every common carrier by water in foreign commerce and every other person subject to the Act shall establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property. From the foregoing discussion it is obvious that respondents are not complying with this section. The furnishing of valuable free storage facilities to certain shippers and consignees beyond a reasonable period results in substantial inequality of service as between different shippers of import traffic, and is beyond the recognized functions of a common carrier. As a proper part of their transportation service respondents should allow only such free time as may be reasonably required for the removal of import property from their premises, based on transportation necessity and not on commercial convenience.

Respondents are practically unanimous in favoring a reasonable limitation of free time on import property at New York. They generally suggest that New York should not be placed at a disadvantage with competing ports, and that some commodities may require special consideration because of difficulties encountered in the sale or other disposition thereof, or because, in instances, the commodities are not of sufficient value to bear the cost of warehousing or pier storage. It is generally admitted that for most import commodities a period of ten days after completion of vessel's discharge would afford ample opportunity for removal from steamship piers at New York. The suggestion that a few commodities may require longer time is based primarily on merchandising problems and commercial convenience, and not on transportation necessity. The allowance of more than ten days on such commodities, including woodpulp, crude rubber, and coffee, is not justified as a proper part of the transportation service. The record does not indicate that the fixing of ten days as a reasonable maximum period of free time on import property would place New York at a disadvantage with competing North Atlantic ports, or that New York requires more than ten days by virtue of practices at ports not included in this proceeding.

We find that respondents are engaged in unreasonable practices in connection with the free storage of import property at the port of New York, in violation of Section 17 of the Shipping Act, 1916. We further find that the free time allowed by respondents on import property at the port of New York should not exceed ten (10) days, exclusive of Sundays and legal holidays.

We further find that respondents have not been shown to be engaged in unlawful practices in connection with the storage or delivery of import property at the other north Atlantic ports involved in this proceeding.

In some of the exceptions to the proposed report it is stated that there are carriers serving New York who have entered the import trade since this proceeding was initiated and it is suggested that they may not be subject to the order entered herein. All persons subject to the Shipping Act, 1916, whose operations come within the scope of this proceeding will be expected to conform their practices to the principles announced in this report. It is also intimated by certain interveners that respondents may, in effect, nullify the order by assessing merely nominal charges for storage after free time. This of course would plainly violate the spirit of the order, but we may not in advance impute to respondents a desire to defeat the order through subterfuge.

An appropriate order will be entered.

APPENDIX A

List of Respondents

American Caribbean Line, Inc.
American Diamond Lines, Inc.
American Scantic Line, Inc.
American Scantic Line, Inc. (West Indies Division).
American South African Line, Inc.

American West African Line, Inc.
Anchor Line (1935) Ltd.
Atlantic & Caribbean Steam Navigation Co.
Atlantic Transport Co., Ltd.
American Line Steamship Corporation and The Atlantic Transport Co. of West Virginia (Panama Pacific Line).
Baltimore Insular Line, Inc.
The Baltimore Mail Steamship Co.
The Bank Line, Ltd.
Barber Steamship Lines, Inc.
Bermuda & West Indies Steamship Co., Ltd.
Arnold Bernstein Schiffahrtsgesellschaft m. b. H.
The Booth Steamship Co., Ltd.
Bristol City Line of Steamships, Ltd.
Thos. & John Brocklebank, Ltd.
Bull Insular Line, Inc.
Canadian Government Merchant Marine, Ltd. (Canadian National Steamships).
Canadian National (West Indies) Steamships, Ltd.
The China Mutual Steam Navigation Co., Ltd.
The Clan Line Steamers, Ltd.
Colombian Steamship Co., Inc.
Commonwealth & Dominion Line, Ltd.
Compagnie Generale de Navigation a vapeur, Cyp. Fabre.
Compagnie Generale Transatlantique.
Compagnie Maritime Belge (Lloyd Royal), S. A.
Compania Chilena de Navegacion Interoceanica.
Compania Espanola de Navegacion Maritima, S. A.
Companhia de Navegacao Lloyd Brasileiro.
"Compania Trasatlantica de Barcelona" (successor to Compania Trasatlantica).
Cosmopolitan Shipping Co., Inc.
Cosulich Societa Triestina di Navigazione.
Cunard White Star, Ltd.
Den Norske Amerikalinje A/S Oslo.
Det Forenede Dampskibs-Selskab Akt.
Deutsche Dampfschifffahrts Gesellschaft "Hansa."
Dollar Steamship Lines Inc., Ltd.
Eastern Steamship Lines, Inc.
Elder Dempster Lines, Ltd.
Ellerman & Bucknall Steamship Co., Ltd. (American Australian Line, American & African Steamship Line, American & Indian Line and American & Manchurian Line).
Ellerman's Wilson Line New York, Inc.
The Export Steamship Corporation.
Furness, Withy & Co., Ltd.
Grace Line, Inc.
Gdynia-America Shipping Lines, Ltd. (successor to Polish Transatlantic Shipping Co., Ltd.).
Hamburg-Amerikanische Packetfahrt Actien Gesellschaft.
Houston Line (London) Ltd.
International Freighting Corporation, Inc.
Isbrandtsen-Moller Company, Inc.
Isthmian Steamship Company.
"Italia" Societa' Anonima di Navigazione.

Italia Flotte Riunite Cosulich-Lloyd Sabaudo-Navigazione Generale.
Johnston Line (Liverpool), Ltd.
Johnston Warren Lines Ltd. (successor to Johnston Line (Liverpool) Ltd.-Warren Line Liverpool Ltd.
Kellogg Steamship Corporation.
Kerr Steamship Company, Inc.
Kokusai Kisen Kabushiki Kaisha.
Koninklijke Nederlandsche Stoomboot Mij., N. V.
Lamport & Holt Line, Ltd.
Lancashire Shipping Company, Ltd.
Linea Sud Americana, Inc.
Manchester Liners, Ltd.
Mitsui Bussan Kaisha Ltd.
Moore & McCormack Co., Inc., and Mooremack Lines, Inc.
Munson Steamship Line (Edward P. Farley and Morton L. Feary, Trustees).
National Steam Navigation Company, Ltd., of Greece.
Navigazione Libera Triestina, S. A.
Nederlandsch-Amerikaansche Stoomvaart Mij., N. V.
Nederlandsche Stoomvaart Mij. Oceaan, N. V.
New York & Cuba Mail Steamship Co.
The New York & Porto Rico Steamship Co.
Nippon Yusen Kabushiki Kaisha.
Norddeutscher Lloyd.
North Atlantic & Gulf Steamship Co., Inc.
Norton, Lilly & Co.
Ocean Dominion Steamship Corporation.
Osaka Shosen Kabushiki Kaisha.
Panama Mail Steamship Co.
Panama Rail Road Co.
Prince Line, Ltd.
Red Star Linie, G. m. b. H.
Rederi A/B Svenska Lloyd.
Rederi A/B Transatlantic.
Rotterdamsche Lloyd, N. V.
Roosevelt Steamship Co., Inc.
Seatrain Lines, Inc.
Silver Line, Ltd.
Southgate Nelson Corporation.
C. H. Sprague & Son, Inc.
Standard Fruit & Steamship Co.
Stoomvaart Mij. Nederland, N .V.
Strick Line (1923) Ltd.
Svenska Amerika Linien Akt.
Svenska Amerika Mexiko Linien Akt.
Tatsuuma Kisen Kabushiki Kaisha.
The Union Castle Mail Steamship Co., Ltd.
United Fruit Company.
United States Lines Company.
United States Navigation Co., Inc.
Warren Line (Liverpool) Ltd.
Andrew Weir & Co.
Wessel, Duval & Co., Inc.
Wilhelm Wilhelmsen.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 16th day of November A. D. 1937

No. 221

STORAGE OF IMPORT PROPERTY

This case, instituted by the Department of Commerce of the United States under section 22 of the Shipping Act, 1916, having been duly heard, and full investigation of the matters and things involved having been had; and this Commission, pursuant to the authority vested in it by the Merchant Marine Act, 1936, having taken over the powers and functions theretofore exercised by the Department of Commerce as the successor to the powers and functions of the United States Shipping Board; and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which said report is hereby referred to and made a part hereof;

It is ordered, That the respondents named in Appendix A of said report be, and they are hereby, notified and required to cease and desist, on or before January 21, 1938, from allowing more than ten (10) days' free time (exclusive of Sundays and legal holidays) on import property at the port of New York.

By the Commission.

(SEAL) (Sgd.) W. C. PEET, Jr.
Secretary.

UNITED STATES MARITIME COMMISSION

No. 215

ROBERTO HERNANDEZ, INC.

v.

ARNOLD BERNSTEIN SCHIFFAHRTSGESELLSCHAFT, M. B. H., ET AL.

Submitted September 14, 1937. Decided December 20, 1937

Complainant unfairly treated and unjustly discriminated against in violation of Shipping Act, 1916. Complainant injured. Further hearing ordered as to measure of complainant's injury.

Joseph K. Inness and *Herbert J. Williams* for complainant.
J. A. Barrett for defendants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed by defendants to the report proposed by the examiner, and the case was orally argued. The findings recommended by the examiner are adopted herein.

Complainant is a New York corporation, engaged in buying and exporting automobiles. Defendants [1] are common carriers by water in foreign commerce subject to the Shipping Act, 1916, as amended.

The complaint filed June 27, 1935, as amended, alleges that from July 1, 1934, to March 31, 1935, inclusive, defendants refused complainant bookings for transportation of automobiles from New York, N. Y., to Bilbao, Spain, stating no space was available; that said statements were false and said refusals were in violation of paragraph

[1] Arnold Bernstein Schiffahrtsgesellschaft, M. B. H., Compania Espanola de Navegacion Maritima S. A., and Compagnie Generale de Navigation a Vapeur Cyprian Fabre, hereinafter called Bernstein Line, Gardiaz Line, and Fabre Line, respectively. The allegations of the amended complaint as respects Arnold Bernstein Steamship Company, Inc., Garcia & Diaz, and James W. Elwell and Co., Inc., described as agents for the respective defendant carriers, were abandoned at the hearing.

4 of section 14 of the Shipping Act, 1916. Reparation for alleged injury is requested.

In New York on June 24, 1934, complainant and J. T. de Bareno, an automobile dealer, of Bilbao, Spain, made an oral agreement under which complainant was to ship automobiles of General Motors and Chrysler manufacture from New York to de Bareno at Bilbao. The agreement covered a period of seven months from June to December, 1934, during which complainant was to ship an average of $25,000 worth of automobiles[2] per month, f. o. b. New York, exclusive of complainant's commission of 15 per cent. Complainant was to purchase the automobiles at 17½ per cent off factory retail price. Any deficiency in any month's allotment of $25,000 worth of cars was to be made up during succeeding months of the agreement. An initial letter of credit for $14,200 in connection with the agreement was opened by de Bareno in complainant's favor on July 2, 1934, to expire August 2, and later extended to October 2, 1934.

Complainant's evidence is that applications for bookings to ship unboxed automobiles under the above agreement were made to defendants' agents in New York City for every sailing of each defendant during the agreement period. Admission by defendants of some of these applications is accompanied by testimony that booking was refused because of lack of space on the particular vessel or succeeding vessel or vessels, that application was too far in advance of sailing date, that application was made on a different date than asserted by complainant's witnesses, that application was for no particular space, or that booking was made and complainant failed to deliver the automobiles for shipment. The record shows that applications for bookings were made to Bernstein Line's agent in early July 1934. on August 2 or 5, and on or about August 25, September 14, October 23 and November 26, 1934; to Gardiaz Line's agent in July 1934, on or about August 10, September 10, in late September, and on or about October 10, November 10 and December 10, 1934, and to Fabre Line's agent in early July 1934, on August 22 or 23, on or about September 5, on September 6 or 10, and on or about September 22, October 5 and December 10, 1934, and that other applications were made on intermediate dates not remembered by witnesses. All applications were made by the representative of Seven Seas Mercantile Transport Company, employed by complainant to procure bookings, and by complainant's president. Complainant's president undertook to engage space after efforts of Seven Seas representative were unsuccessful, informing each defendant's agent of the de Bareno agreement. These applications were made at visits of these persons

[2] Pleasure automobiles, trucks, and chassis.

at the offices of defendants' agents and by telephone. They were for bookings of cars in lots of 10, 20, 22 or 23, 12 or 15, from 4 to 10, 25, from 20 to 30, from 1 to 20, and for any number from 1 to 100, and were in effect for any space on any sailing.

During the seven-month period of complainant's agreement with de Bareno, Bernstein Line carried one unboxed Dodge sedan [3] for complainant to Bilbao. This automobile was booked on or about August 25, 1934, by and in the name of a vice-consul of a foreign country located in New York City, as an act of friendship on his part for complainant's president. Booking for this car had previously been refused complainant's agent Seven Seas and complainant's president. This carrier had sailings to Bilbao on or about July 18, July 30, September 3, September 12, September 27, October 23, and November 27, and unoccupied space for from 15 to 25 unboxed automobiles was available on the September 12 sailing, for probably 30 to 40 on the October 23 sailing, and for 160 on the November 27 sailing. The vessels sailing July 18, September 12, October 23, and November 27, carried 201, 209, 154, and 66 unboxed automobiles, respectively.

Defendant Gardiaz Line carried one shipment of 4 unboxed truck chassis for complainant to Bilbao during the seven-month period referred to. This shipment was on sailing of July 10. Other sailings of this defendant were on or about July 25, August 10, October 11, and December 13. To support its defense of lack of space, this defendant submitted in evidence stowage plans of its vessels sailing October 11 and December 13. These plans indicate that unboxed automobile space in such vessels, except in their lower holds where unboxed automobiles could sometimes be stowed, was fully occupied. Defendant's witness was without information as to why stowage plans covering sailings of July 10, July 25, and August 10 were not also submitted. The general traffic manager of this defendant's agent testified that about "the middle of 1934" he refused space for complainant's cars to Bilbao, his "real reason" being to force payment of a debt of complainant's president for $93.75 in connection with transportation to South America. Such debt was paid in full on September 19, 1934. Complainant urges this testimony as showing space was available at time of such refusal; also that such debt was not the reason for denial of transportation, as indicated by continued refusals to book after payment thereof, and by a statement of this general traffic manager during his testimony that "I told Seven Seas we would not carry any automobiles for Hernandez, even if Hernandez paid his bill."

[3] Chrysler product.

Automobiles of complainant carried by Fabre Line to Bilbao during the seven-month period June–December 1934, consisted of one shipment of 4 boxed truck chassis on sailing of October 8, and one shipment of 3 boxed truck chassis on sailing of November 5. According to the evidence these automobiles were booked by Seven Seas as "Reos and Whites," being thus described to Seven Seas by complainant's president because as stated by him "if I said they were Chrysler products or General Motors products they (defendants) would not take them." Other sailings of this defendant to Bilbao were on or about August 7, September 7, and December 10. Unoccupied space for unboxed automobiles was available on the sailings of August 7, September 7, October 8, and December 10. A witness for this defendant testified to acceptances by him on August 21 of applications for bookings by complainant and complainant's failure to furnish the automobiles for shipment. These acceptances are stated to have been made by telephone to unidentified persons located in the office of Seven Seas and in the office of complainant. Denial is made by complainant's witnesses, including Seven Seas, of the telephone acceptances referred to. Defendant's witness admits one of the shipments he refers to may not have been complainant's.

Defendant carriers and Compania Trasatlantica comprised the membership of the North Atlantic Spanish Conference during the period of complaint. No service was available from New York to Bilbao except via these conference lines. Application for booking to Compania Trasatlantica was refused with statement of such carrier's agent that it had space but complainant's automobiles could not be accepted because their wheel base exceeded a length of 115 inches.

Complainant's practice in exporting unboxed automobiles is to secure steamship booking and then purchase the automobiles therefor. It maintains contacts with representatives in automobile manufacturing centers from which automobiles covered by previously made bookings are shipped to it at New York. It rarely has automobiles on hand in New York at time of booking. This method of conducting business has been followed by complainant in exporting automobiles throughout the world since its incorporation in 1932. At times during the period of its efforts to obtain bookings from defendants, complainant had small lots of automobiles available in New York City ready to ship to Bilbao.

Complainant's delivered price in Spain of automobiles it desired to ship to de Bareno was less than the delivered price of similar cars received by manufacturers' distributors in Spain. Testimony of complainant's witnesses is that when applying for space they were told by agent of Bernstein Line that a distributor in Spain gave such line more business and would be protected, that such carrier was not interested in complainant's cars, and that complainant had no chance in the world to get space during that month (August), the following month, or ever; by Gardiaz Line's agent that it was pressed by a distributor in Spain not to carry complainant's cars, and (in August) that it could not accept any Chrysler or General Motors cars from complainant but would take any others, and by Fabre Line's agent that none of the conference lines would accept complainant's cars because of requests from Spain and from General Motors and Chrysler people in the United States. Further testimony on behalf of complainant is that pressure by manufacturers in the United States and by distributors in Spain upon defendants to prevent shipment of automobiles by "independents," such as complainant, was a matter of common knowledge in shipping circles. J. T. de Bareno testified by deposition that during his visit to the United States in May and June, 1934, the agent for defendant Gardiaz Line informed him that Gardiaz Line was "obliged by larger shippers" to refuse his cars.

Except for partial admission by one witness upon cross examination, defendants' witnesses deny the fact or any knowledge of any pressure by manufacturers, their agents, or distributors. To refute these denials, and to corroborate its evidence of the fact of such pressure and that such pressure was the real reason for defendants' refusals to book its cars, complainant exhibits copy of minutes of meeting of defendants' conference of July 14, 1934. Therein defendants and Compania Trasatlantica authorized dispatch of a joint reply to cables to them from an automobile distributor in Spain. These cables are acknowledged by Gardiaz Line's witness to have related to complainant shipping automobiles to Spain in competition with such distributor. Defendants' reply cable expressed a wish to cooperate with such distributor, stated the conference could not refuse shipments of independents, and that "up to present no cars shipped." [4] Except for the four shipments of complainant's automobiles hereinbefore referred to, defendants' witnesses could point to no General Motors or Chrysler cars carried by any defendant to Bilbao from June 1 to December 31, 1934, inclusive, for other than manufacturers and their agents.

Respecting the first three months of 1935, included in the period of complaint, testimony on complainant's behalf is that after expiration of the de Bareno agreement on December 31, 1934, it had only "a few stragglers—four or five that were shipped in early May." No showing is made of refusals by defendants of applications for bookings during these three months.

[4] Conceded by Gardiaz Line witness to refer to automobiles of independents, as distinguished from automobiles of manufacturers or their agents.

Throughout the period July 1 to December 31, 1934, defendants held themselves out as common carriers of unboxed automobiles from New York to Bilbao. Bernstein Line vessels were so constructed that this commodity could be stowed in practically all of their cargo space. Space for unboxed cars in Gardiaz Line and Fabre Line vessels was more limited, the proper loading of such vessels for navigation requiring base cargo of grain or other weight commodities. Their capacity for transporting unboxed automobiles was nevertheless substantial. Complainant's evidence establishes the fact of its agreement with de Bareno, and the fact of complainant's ability to obtain cars for shipment in the quantities and under the terms of such agreement. The weight of the evidence is that defendants' agents were informed of complainant's agreement with de Bareno. Complainant's applications for bookings were continuous from early July to practically the end of the agreement period, and were in fact standing importunities upon defendants to furnish transportation for any number of cars up to the limits of the requirements of such agreement. Complainant establishes that certain of defendants' vessels sailing during this continuing request for bookings had unoccupied space in which some or perhaps all of the cars it desired to ship under its agreement with de Bareno could have been carried, and that such undetermined number of cars was not carried solely because of defendants' subservience to manufacturers and distributors with whom complainant was in competition.

We find that defendants unfairly treated and unjustly discriminated against complainant in the matter of cargo space accommodations, due regard being had for the proper loading of the vessels and the available tonnage, in violation of paragraph "Fourth" of Section 14 of the Shipping Act, 1916, and that complainant was injured by such violation.

Complainant requests reparation in the amount of $25,050. Such sum is arrived at by calculating complainant's commission of 15 percent upon $25,000 per month for seven months, or $175,000, less $8,000 stated to be f. o. b. New York value of cars shipped. There is no showing, however, that all of the cars represented by the $167,000 upon which the reparation requested is based could have been carried by defendants; or of the amount of space which was available and value of the cars which could have been carried in such available space. Accordingly, complainant fails to establish the extent of its injury. An order will be entered assigning the case for further hearing solely with respect to the measure of complainant's injury.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 20th day of December, A. D. 1937

No. 215

ROBERTO HERNANDEZ, INC.

v.

ARNOLD BERNSTEIN SCHIFFAHRTSGESELLSCHAFT, M. B. H., ET AL.

This case being at issue upon complaint and answers on file with the Department of Commerce of the United States, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had; and this Commission, pursuant to the authority vested in it by the Merchant Marine Act, 1936, having taken over the powers and functions theretofore exercised by the Department of Commerce as the successor to the powers and functions of the United States Shipping Board; and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That this case be, and it is hereby, assigned for further hearing solely with respect to the measure of complainant's injury, said hearing to be conducted at such times and places as the Commission may hereafter determine.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 431

BLOOMER BROS. COMPANY, INC.

v.

LUCKENBACH STEAMSHIP COMPANY, INC., ET AL.[1]

Submitted January 19, 1938. Decided January 19, 1938

Rate on pulpboard boxes, pails, and berry baskets, in mixed carloads from New York, N. Y., to Pacific Coast ports found inapplicable in certain instances but not unjust and unreasonable. Undercharges found outstanding on certain shipments. Complaint dismissed.

E. T. Foxenbergh for complainant.

M. G. de Quevedo for defendants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Complainant filed exceptions to the report proposed by the examiners and requested oral argument, which is hereby denied.

By complaint filed March 17, 1937, as amended, complainant corporation alleges defendants' rate in effect between October 3, 1935, and July 5, 1936, on mixed carloads of pulpboard boxes, knocked down, other than corrugated, pulpboard pails, nested, and pulpboard berry baskets or till boxes, nested, from New York, N. Y., to Pacific Coast ports on shipments originating at Newark, N. Y., was unjust and unreasonable. Reparation only is sought. An informal complaint containing the same allegation was filed by this complainant on October 27, 1936, and closed on January 13, 1937. Rates will be stated in cents per 100 pounds.

Mixed carload shipments of pulpboard boxes, knocked down, pulpboard pails, nested, and pulpboard berry baskets or till boxes, transported for complainant during the foregoing period were charged a rate of 75 cents published in Item 2724 of Alternate Agent Joseph A. Wells' Tariff S. B. I. No. 6, effective October 3, 1935. In April 1934, complainant had made and subsequently continued, an application to defendant carriers for a rate of 50 cents on mixed carload

[1] American-Hawaiian Steamship Company, Dollar Steamship Lines, Inc., Ltd., American Line Steamship Corporation, The Atlantic Transport Company of West Virginia (Panama Pacific Line), and Panama Mail Steamship Company (Grace Line).

quantities. Item 2728 of defendants' tariff as revised effective October 3, 1935, embraced pulpboard boxes, egg cases, and other specified commodities, but did not include either pails or berry baskets. That item was published as recommended by the carriers' Neutral Rate Committee and approved by the lines, with rates of 72, 56.5, and 51.5 cents, on minimum carloads of 24,000, 36,000, and 60,000 pounds, respectively, and 140 cents less carload. A member of the Rate Committee testified for defendants that the failure to include pulpboard pails and berry baskets was not an error as it was not the recommendation of that committee nor was it the intention of that group to include those commodities in the new item, and that there was no authorization in that item for the mixture of fibreboard or strawboard boxes other than corrugated, knocked down, flat, or egg cases folded flat, with berry baskets or till boxes. When complainant's traffic manager became aware that pails and berry baskets were not included, immediate application was made to defendant Luckenbach Steamship Company, Inc., for their inclusion in order that mixed carloads could be shipped. Item 2728, however, was not revised until July 5, 1936, when the rates were made applicable on pulpboard boxes other than corrugated, knocked down, pulpboard pails, nested, and pulpboard berry baskets or till boxes, nested.

Complainant's contention "is simply that during the time between October 3, 1935, and the date the effective rate was put in on mixed carloads, we were injured to the extent of the difference between 56.5 cents and 75 cents. Now we contend that the rate of 75 cents applicable on the three mentioned commodities was and still is unreasonable for a minimum of 36,000 pounds, which is the minimum governed by the rate of 56.5 cents." Except for mentioning that the all rail rate was 130 cents, complainant offered no comparisons of rates nor any other evidence supporting its contention that the assailed rate was unreasonable, because its witness "did not think it was necessary" and because "I think the defendant carriers * * * partly agree with me." A reparation basis is not to be found in the expectation or promise that a reduced rate would be established or in the carriers' subsequent voluntary reduction of a rate, and a mere reduction raises no presumption that the former rate was unreasonable. While a voluntary reduction does not preclude an award of reparation if the prior rate was unreasonable, here this has not been shown.

The rate charged of 75 cents, in Item 2724, was a proportional rate on berry baskets or till boxes, cups, dishes, pails, trays, carton egg case fillers, cake boxes, and suit boxes, as described, "applicable only when shipments originate at points named and has moved as a carload by railroad or other carrier to Atlantic loading port from each interior point named." Newark is one of the named points. Except as noted, the minimum carload weight was 30,000 pounds and by Note 1 "paper pails as described herein may be shipped in straight carloads at a carload minimum weight of 24,000 pounds." Complainant's witness testified that the 75 cent rate under Item 2724 did not always cover the specific boxes "that we might have at that time" and testimony on behalf of defendants was that pulpboard boxes, as such, were not included in this item. Notwithstanding this, paid freight bills show this rate to have been charged on shipments of "PULPBOARD BXS NOT CORRUGATED KDF & PAILS NESTED;" "PULPBD PAILS NOIBN SU NSTD SOLID—BXS PULPBD NOT CORR KDF"; "PULPBOARD BOXES KDF O/T CORR AND PULPBOARD PAILS NSTD"; "PULPBOARD BOXES"; and "PULPBOARD BOXES NOT CORR KDF." Freight bills of Luckenbach Steamship Company, Inc., bear the notation "Item 2724 CL" following the description of the commodities, including instances where the particular consignment was solely of "Ctns pulpboard boxes kdf."

As shown by this record, the rate of 75 cents in Item 2724 was not applicable on pulpboard boxes. In a number of shipments the weights shown are aggregates of boxes and pails, and the volume of pulpboard boxes on which the 75-cent rate was charged cannot be determined. However, the shipping papers reveal that the amount of pulpboard boxes included in some of the mixed carload shipments were in less-than-carload quantities on which the applicable rate was 140 cents. Furthermore, undercharges apparently result from the fact that certain shipments do not weigh the required minimum after deduction of the weight of the pulpboard boxes included in the mixture.

We find that the assailed rate has not been shown to have been unjust and unreasonable, but was inapplicable on shipments of pulpboard boxes. We further find that the application of the assailed rate on less-than-carload quantities of pulpboard boxes and on shipments of pulpboard pails and berry baskets weighing less than the applicable minimum weight resulted in undercharges. An order will be entered dismissing the complaint.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 19th day of January, A. D. 1938

No. 431

BLOOMER BROS. COMPANY, INC.

v.

LUCKENBACH STEAMSHIP COMPANY, INC., ET AL

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, Jr.

Secretary.

UNITED STATES MARITIME COMMISSION

No. 444

In the Matter of Rates, Charges, Regulations, and Practices of Carriers Engaged in Transportation of Sugar From Virgin Islands to the United States

Submitted November 18, 1937. Decided January 19, 1938

Rate on raw sugar from the Virgin Islands to the United States found unjust and unreasonable, but not unduly prejudicial. Reasonable maximum rate prescribed.

Ocean Dominion Steamship Corporation, not operating between Virgin Islands and United States ports, ordered to cancel tariffs relating to such service. Tariff of American Caribbean Line, Inc., ordered revised to comply with the Shipping Act.

George S. Robinson and *Leslie F. Huntt* for the Department of the Interior and Virgin Islands Company, intervener.

J. E. Light for Bull Insular Line, Inc., and Baltimore Insular Line, Inc.; *W. H. Griffin* and *R. D. Weeks* for Ocean Dominion Steamship Corporation and American Caribbean Line, Inc.; *James F. Butler* for Bermuda & West Indies Steamship Company.

REPORT OF THE COMMISSION

By the Commission:

No exceptions were filed to the report proposed by the examiner. His findings are adopted herein.

Upon allegations of the Department of the Interior on behalf of The Virgin Islands Company that the rate on raw sugar of 25 cents per 100 pounds from the Virgin Islands to the United States is excessive and unfair, we instituted this investigation to determine whether such rate, and the charges, regulations, and practices in connection therewith are unreasonable or unduly prejudicial. Unless otherwise designated, rates stated are in cents per 100 pounds.

Regular direct line service to the United States from the Virgin Islands is maintained by the Bermuda and West Indies Steamship

Company and the American Caribbean Line, Inc. The Baltimore Insular Line, Inc., and the Bull Insular Line, Inc., also maintain regular transshipment service via San Juan, P. R., in conjunction with a local service of the latter company between San Juan and the Virgin Islands. Respondent Ocean Dominion Steamship Corporation does not operate between the Virgin Islands and United States ports.

The rate on sugar from the Virgin Islands during 1935, 1936, and until April 1937, was 16 cents; prior thereto it was less than 16 cents. The American Caribbean Line in April 1937, and shortly thereafter, the Bermuda and West Indies Steamship Company, advanced the rate to 25 cents. Bull Insular and Baltimore Insular Lines have not transported or quoted rates on sugar from the Virgin Islands since 1929.

The Virgin Islands Company, a Government-owned corporation, has 1,600 acres of land devoted to the cultivation of sugar-cane and purchases the cane of approximately 700 squatters, tenant farmers, and homesteaders. The price of sugar-cane at St. Croix, Virgin Islands, is related to the New York market quotation on sugar, less freight, handling, bagging, and other costs. The effect of the rate increase was to reduce the price of sugar-cane $0.0054 per 100 pounds or $3.24 on the average production per acre.

Raw sugar is the principal commodity shipped from the Virgin Islands. Shipments during 1934, 1935, and 1936 amounted to 5,187, 2,493, and 3,737 short tons, respectively. Approximately 1,000 tons were ready for marketing at the time of hearing, which if shipped, filled the island quota of 5,462 tons for 1937. Other commodities exported are turtles, hides and skins, tomatoes, rum, bay rum, and angostura bitters, on which the rates have not been increased.

Virgin Islands sugar is marketed in the United States in competition with that produced in Puerto Rico, Haiti, Jamaica, and Cuba. Distances from principal ports in those islands to New York, N. Y., are 1,465, 1,399, 1,372, 1,474, and 1,227 nautical miles, respectively. The following statement shows rate increases made by respondents on sugar and other commodities in the northbound trade:

Commodity	Origin	Amount of increase	Percentage of increase	Rates from competitive points				
				Haiti	Jamaica	Dominican Republic	San Juan	Havana
Sugar	Virgin Islands	[1] 16 to 25	56	Open	20	----------	15	Open
Cocoa beans	Trinidad	[1] 40 to 50	25	45	50	53	50	50
Banak logs	Paramaribo	[2] 16 to 21	32	------	------	----------	------	------
Molasses	Barbados	[3] 150 and 175 to 200 and 215	23 to 33⅓	195	390	227	130	235

[1] Cents per 100 pounds. [2] Cents per cubic foot. [3] Cents per barrel of 650 pounds.

Increases in southbound rates range from 15 to 25 percent. Sugar shipped from Puerto Rico exceeds 800,000 tons per year, and moves at a contract rate of 14.5 cents, the noncontract rate being 15 cents. The rate on refined sugar is 15.75 cents. The volume from Cuba exceeds 1,750,000 tons annually and is shipped in chartered vessels. Respondents Ocean Dominion Steamship Corporation and American Caribbean Line participate in this movement. Early in 1937 the rate on Cuban sugar was as high as 28 cents, but more recently fixtures have been made at 20 cents. The rate stated to apply from main ports in Venezuela served by American Caribbean, is approximately 24.5 cents, but the distances are greater than from ports in the islands mentioned.

Loading facilities at Puerto Rican ports permit vessels to load with despatch. At docks in San Juan it is not uncommon to load 4,600 tons per day. At Fajarda, a principal sugar outport, from 750 to 850 tons may be loaded from lighters. At St. Croix ports where sugar is lightered to the vessel, carriers have never loaded 1,000 tons in less than 1½ days and frequently it has taken 3½ days. However, loading conditions at the respective ports are now not materially different from conditions which existed at the time the 16-cent rate was in effect, and in the absence of evidence that despatch in Puerto Rican ports has improved over 1936 or that facilities at St. Croix are now not so favorable as in that year, the difference in loading conditions, of itself, does not warrant an increase in the rate. The 16-cent rate, voluntarily established and maintained for a period of time exceeding two years, was prima facie reasonable, and a 56 percent increase therein must be justified.

Respondents rely principally upon increased operating costs. Statements submitted by the Bermuda and West Indies Steamship Company indicate that on a voyage of its S. S. *Nerissa* in April 1937, expense incurred, exclusive of overhead depreciation, or interest on investment, increased 53 percent over similar expenses of a comparable voyage of the same vessel in May 1936. That company also claims that on a shipment of 1,315 tons transported during September-October 1936 via the S. S. *Primo*, then under time charter, a loss of $125.56 resulted. Revenue on that shipment, after deducting loading and discharging costs, charter hire, cost of fuel, and other expenses while actually loading and discharging, amounted to $896.23, whereas charter hire, fuel cost, and other expenses incurred while en route from the Virgin Islands to New York, claimed by respondent to be properly chargeable to that cargo, amounted to $1,021.79. In like manner, a loss of $1,037.44 is claimed on a shipment of 900 tons of sugar transported at a 25-cent rate on the S. S. *Nerissa* in May 1937. The vessels served regular itinerary ports beyond St.

Croix, and since expense incident to the vessels' return to New York would have accrued in any event, it may be that other cargo should bear a greater proportion of that expense than has been allocated thereto. In fact, the revenue obtained from this shipment may have decreased the loss that would have otherwise resulted.

Time charter rates paid by the American Caribbean Line, Inc., on comparable vessels operated on regular itineraries during 1936 and 1937 reflect increases exceeding 100 percent per deadweight ton and approximately 83 percent in per day charter cost. Increased cost of fuel per day was 26 percent, and total operating costs show an average per-day increase of 63 percent in 1937 over 1936. Voyages completed in 1937 of vessels operated on bare-boat charter basis, show an increase in per day cost of approximately 30 percent over a comparable period in 1936.

The American Caribbean Line stated if it handled sugar from St. Croix, it would have to shut out something else in the lower islands which usually pays a much higher rate. In May 1937, that line transported a 1,349-ton shipment for Virgin Islands Company to Philadelphia, Pa. No space was available on vessels regularly operated northbound, and the S. S. *Thyra*, a vessel of 2,300 tons deadweight, was diverted from a Gulf port to handle the shipment. No other cargo was transported, and a loss of $2,412.12 resulted. It was admitted that this was perhaps an isolated instance. Under the circumstances, a loss could hardly have been avoided. In view of the limited tonnage available generally at Virgin Islands ports, respondent unquestionably contemplated that its service from such ports would be via vessels operating on its regular route. That a loss resulted in this instance is not convincing that a loss would be incurred in the future on such vessels. The publication and filing of a tariff imposes an obligation upon a carrier to serve the ports or places named therein, and a refusal to book cargo, if at the time space is available, for the sole reason that more profitable bookings are available elsewhere, is not sanctioned by the Shipping Acts.

An exhibit of the American Caribbean Line purporting to reflect the major commodity movement northbound to New York shows that during the first 6 months of 1937, 5,460 tons of cargo was transported. That exhibit did not include bauxite, a mineral used in the manufacture of aluminum, which it was stated moved in quantities of approximately 2,500 tons a month. Apparently bauxite is the principal commodity transported by the American Caribbean Line. It should, therefore, bear a substantial part of the increased operating cost. Neither the rate charged on bauxite nor the manner in which that commodity bears its share of increased operating cost was shown.

It must be recognized that operating costs have advanced and that increased revenues to meet such costs are perhaps necessary. But all cargo carried should contribute its proper share, and the burden imposed upon interstate transportation should not be greater than that imposed on traffic moving in foreign trade. Apart from the increase on Virgin Islands sugar, there has been no increase in any rate in excess of 33⅓ percent, and increases have been imposed upon only 4 of the 15 commodities transported northbound during the period January 1 to June 30, 1937. Respondents state that competitive rates on cocoa beans and molasses prevented a larger percentage of increase on those commodities. The rate table herein set forth discloses that respondents' rates on those commodities are not out of line with those charged from the majority of the competitive points shown. The low rate on molasses from San Juan may be accounted for by the fact that ordinarily the movement is in tankers. Regarding sugar, respondents show a similar competitive situation, but their 25-cent rate is materially higher than that charged from the majority of the competitive points. The record contains no satisfactory explanation why other northbound commodities have not contributed to the increased cost of operation. The increase in the rate on sugar, the only commodity moving in volume from the Virgin Islands, is 22⅔ percent higher than the increase on any other commodity. It is not shown that cost incurred in serving the Virgin Islands is greater in proportion to that incurred at other ports served. A 56 percent increase in the rate on sugar has not been justified and the increased rate is unjust and unreasonable. Under the circumstances shown, in the absence of a general rate adjustment on all northbound traffic, a reasonable maximum rate for future application should not exceed an advance of 33⅓ percent above the rate in effect prior to April 1937.

The Virgin Islands Company contends that the maintenance of a lower rate from Puerto Rico than from the Virgin Islands is unduly prejudicial to it and other shippers, in violation of section 16 of the Shipping Act, 1916. However, respondents American Caribbean Line, Inc., and Bermuda and West Indies Steamship Company, Ltd., the only carriers now transporting sugar from the Virgin Islands, do not operate in the Puerto Rican trade and there is no evidence that they control the rates from Puerto Rico. While, as stated, the Ocean Dominion Steamship Corporation and American Caribbean Line carry sugar from Cuba, transportation conditions in that trade are different from those existing in the Virgin Islands trade. Consequently, there is no basis for a finding of undue prejudice.

The Ocean Dominion Steamship Corporation has of record section 18 tariffs which name rates for transportation between the

Virgin Islands and the United States, in which service it does not engage. The tariff of the American Caribbean Line, Inc., names rates for transportation from St. Thomas and St. Croix, V. I., to New York, N. Y., and Norfolk, Va. It has been shown that this carrier transported a quantity of sugar from St. Croix to Philadelphia, Pa., a port not named in its tariff. In addition, its tariff contains no rules or regulations governing the application of the rates or the conditions under which service will be accorded. Section 18 of the Shipping Act, 1916, contemplates that tariffs filed pursuant thereto shall serve as information to shippers and others interested regarding available all-water routes between interstate ports as well as rates or charges for or in connection with transportation over such routes. Tariffs naming rates for service which does not exist are meaningless and the filing thereof amounts to false representation contrary to the letter and spirit of the law. *Intercoastal Schedules of Hammond Shipping Company, Ltd.*, 1 U. S. S. B. B. 606.

We find that the rate complained of is unjust and unreasonable to the extent it exceeds a rate of 21 cents, but that it is not unduly preferential or prejudicial. We further find that tariffs of Ocean Dominion Steamship Corporation, Ltd., should be canceled and that the tariff of American Caribbean Line, Ltd., covering northbound transportation should be amended in accordance with the views expressed herein. An appropriate order will be entered.

Order

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 19th day of January A. D. 1938

No. 444

In the Matter of Rates, Charges, Regulations, and Practices of Carriers Engaged in Transportation of Sugar From Virgin Islands to the United States

This case, instituted under Section 22 of the Shipping Act, 1916, having been duly heard, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That respondents, The Bermuda and West Indies Steamship Company and American Caribbean Line, Inc., be, and they are hereby, notified and required to cease and desist, on or before March 15, 1938, and thereafter to abstain from publishing, demanding, or collecting for the transportation of raw sugar from the Virgin Islands to the United States a rate which exceeds that prescribed in the next succeeding paragraph hereof;

It is further ordered, That said respondents be, and they are hereby, notified and required to establish, on or before March 15, 1938, by filing and posting in accordance with Section 18 of the Shipping Act, 1916, and thereafter to maintain and apply to the transportation of raw sugar from the Virgin Islands to the United States a rate which shall not exceed 21 cents per 100 pounds; and

It is further ordered, That, on or before March 15, 1938, the tariff of respondent American Caribbean Line, Inc., be amended to conform with the views expressed herein, and that the tariffs of respondent Ocean Dominion Steamship Corporation be canceled.

By the Commission.

[SEAL]

(Sgd.) W. C. Peet, Jr.,
Secretary.