UNITED STATES MARITIME COMMISSION

No. 446

PORT OF PHILADELPHIA OCEAN TRAFFIC BUREAU

v.

THE PHILADELPHIA PIERS, INC., ET AL.

Submitted January 5, 1938. Decided January 19, 1938

Wharfage charges at Philadelphia, Pa., piers on export and import freight not transported by railroad, found not unduly prejudicial to foreign commerce or to the Port of Philadelphia or otherwise unlawful. Complaint dismissed.

John F. Lent for complainant.

Windsor F. Cousins, *H. Merle Mulloy*, *Charles R. Webber*, *Howard Burtt*, and *William A. Schnader* for defendants.

D. Scrivanich, *Harold S. Shertz*, *E. S. Gubernator*, *R. J. Mahon*, *C. R. MacCarey*, *H. W. Stalberg*, *Philip F. Newman*, and *Alfred H. Caterson* for interveners.

G. Coe Farrier and *Edmund W. Kirby* as *amici curiae*.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions to the examiner's proposed report were filed by complainant and defendants, and defendants replied. The case was orally argued. Our findings are those recommended by the examiner.

By complaint filed May 13, 1937, as amended, complainant, Port of Philadelphia Ocean Traffic Bureau, a corporation formed to promote the commerce of the Port of Philadelphia, Pa., alleges that a wharfage charge of 50 cents per ton established by defendants on May 10, 1937, applicable to all import and export freight handled over defendants' piers at Philadelphia, not transported by railroad, subjects such freight to undue prejudice and disadvantage and the collection of the charge constitutes unjust and unreasonable regulations and practices in violation of sections 16 and 17, respectively of the Shipping Act,

1916. It is further alleged that the assailed regulations and practices are detrimental to the Port of Philadelphia in violation of section 8 of the Merchant Marine Act, 1920. Reparation on behalf of importers and exporters is sought. Defendants are The Philadelphia Piers, Inc., which operates piers owned by the United States under a lease from this Commission, and the Baltimore & Ohio Railroad Company, the Pennsylvania Railroad Company, and Reading Company, owners or operators of railroad piers.

D. Scrivanich & Company and Pennsylvania Motor Truck Association, Inc., intervened at the hearing in support of the complainant. Pennsylvania-Dixie Cement Corporation, Lone Star Cement Corporation, Hercules Cement Corporation, Nazareth Cement Company, and Lehigh Portland Cement Company, intervened in support of defendants without contesting our jurisdiction. William S. Scull Company intervened to oppose our jurisdiction. G. Coe Farrier, Navigation Commissioner of the Delaware River, a State officer, appeared for the same purpose.

Prior to December 1936 export and import freight moved over the defendants' piers free of any wharfage charges. At that time the railroad defendants issued tariffs to become effective February 1, 1937, naming wharfage charges and filed them with the Interstate Commerce Commission and the Pennsylvania Public Utility Commission. This led to protest before the Interstate Commerce Commission, followed by voluntary cancelation of the tariff, and litigation in the Pennsylvania courts, the Director of Wharves, Docks and Ferries of Philadelphia claiming jurisdiction. Because of this litigation, defendants reserve the point of jurisdiction. Defendants, to the extent they own or operate wharves and piers in connection with interstate or foreign water-borne commerce wholly exclusive of rail transportation, are "other persons" subject to the act as defined in section 1 thereof.

The wharfage charges in issue are for "top wharfage" described in Pennsylvania Railroad notice, dated May 6, 1937, as follows:

> On import and export freight placed on this pier on or after the effective date of this notice, a top wharfage charge of 2.5 cents per 100 pounds will be assessed when such freight is transported to or from the pier otherwise than in railroad service.
>
> The minimum charge will be 50 cents per shipment. The freight delivered to the pier by one shipper or received from the pier by one consignee in any one day will be considered a single shipment for the purpose of applying the minimum top wharfage charge.
>
> The provisions of this notice are effective beginning May 10, 1937, at 12:01 a. m.

Such notices were posted at defendants' piers on or about May 6, 1937. The act does not require operators of piers and wharves to file their rates and schedules with us, nor is there any statutory requirement governing the time of notice of their charges.

Complainant's testimony consists largely of a history of the assailed charges, description of the location and facilities of defendants' wharves, as well as all the other wharves and port facilities of Philadelphia, a review of the volume and kind of commodities moving in and out of the port for a period of years, and a summary of the steamship lines serving the port. It is testified that the Port of Philadelphia covers 38 miles on the west side of Delaware River and on both sides of the Schuylkill River, within which are 224 piers, wharves and bulkheads, with a total berthing capacity of about 196,000 lineal feet. The ownership of these docking facilities is said to be as follows: The city owns 40, including 9 at Hog Island; the United States owns 25, including 17 at the Navy Yard; railroads own or control 62; and 97 are privately owned or operated. About half of the piers are served by railroad facilities. The municipal piers make a wharfage charge of 10 cents per ton as well as a dockage charge. With the exception of Philadelphia Piers, Inc., defendants do not maintain dockage charges against vessels using their facilities and no wharfage is collected by defendants on coastwise and intercoastal traffic. The record indicates that steamship lines in foreign commerce do not pay defendants for wharfage and that their rates for transportation do not include terminal service, such as wharfage. According to reports made by certain steamship companies to complainant, about 72,056 tons of freight were charged the assailed wharfage rate by defendants between May 10 and August 1, 1937.

Complainants' case rests largely on the assertion that the assailed charges will drive import and export business away from Philadelphia in favor of competing ports, particularly New York, N. Y. A large importer of wool who is president of the Philadelphia Wool and Textile Association, testified that he has advised shippers at world ports to route shipments to Philadelphia through New York to save the wharfage charge if the transportation rate is not greater. He did not know the rate on wool from New York to Philadelphia. Witness for the S. S. White Dental Manufacturing Company, exporters from New York and Philadelphia, asserts that the wharfage charge causes shipments from Philadelphia to move through New York for export. However, the cost of transportation from Philadelphia to New York is admittedly higher than the cheapest available transportation from this company's plant in Philadelphia to the piers there plus wharfage charges. A steamship agent states that he has been advised by three companies, one in Trenton, N. J., and two in Philadelphia, that they will not use Philadelphia because of the wharfage charge. An importer of cement was obliged to cancel contracts and testified that he is exporting second-hand automobiles from Philadelphia through New York to avoid wharfage. This evidence is not persuasive that

the charges in issue result in appreciable diversion of traffic to the prejudice of the port of Philadelphia or to importers or exporters there.

The charges are further assailed on the ground that they discriminate between shippers by rail and those using other forms of transportation. This contention overlooks the fact that the rail rates include compensation for use of terminal facilities. General testimony to the effect that wharfage charges are a burden on foreign commerce is not proof of their unlawfulness. Neither does the fact that wharfage is charged on foreign and not on domestic freight constitute undue prejudice to the former in the absence of a showing of a competitive relation and an injurious effect on the traffic prejudiced and advantage to the traffic preferred. No such showing is made on this record.

Defendants maintain they are entitled to compensation for the use of their private piers and show that the average cost per ton of freight handled over their piers is 57 cents. They stress the fact that the wharves are specially built for railroad service, and have depressed tracks and other facilities not adaptable for truck use. In recent years the volume of motor vehicle transportation has increased to such an extent that about 60 percent of all freight handled over defendants' wharves moves by truck, causing congestion and interference to railroad operation, and necessitating increased policing of traffic on wharves. Defendants call attention to the fact that similar wharfage charges are in effect at other ports, such as Boston, Mass., and Baltimore, Md. The evidence as to wharfage charges at the port of New York is conflicting, but it is clear that the Pennsylvania maintains a wharfage charge of 5 cents per 100 pounds at its Jersey City pier on import and export freight transported otherwise than in rail service. None of the other defendants handles foreign shipments at New York.

We find that defendants' wharfage charges have not been shown to be unduly prejudicial, that the practice of making the charge is not unreasonable, and that the charges and practice assailed are not detrimental to the Port of Philadelphia. 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. 446

PORT OF PHILADELPHIA OCEAN TRAFFIC BUREAU

v.

THE PHILADELPHIA PIERS, INC., ET AL.

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 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. 437[1]

BUXTON LINES, INCORPORATED

v.

NORFOLK TIDEWATER TERMINALS, INCORPORATED, ET AL.

Submitted January 5, 1938. Decided January 19, 1938

Pier usage and handling charges at Port of Hampton Roads, Va., and regulations and practices in connection therewith not shown to be unduly prejudicial. Regulations and practices not shown to be unjust or unreasonable. Complaints dismissed.

Gerould M. Rumble and *Francis S. Thompson* for complainant in No. 437; *Edgar Watkins, Jr.*, and *A. C. Weaver* for complainant in No. 442.

Charles J. Kaufman, *W. N. McGehee*, *L. L. Oliver*, and *W. T. Turner* for defendants.

Edgar Watkins, Jr., for Transportation Corporation of Virginia, L. H. Bottoms Truck Line, Carolina-Norfolk Truck Line, D. D. Jones Transfer and Warehouse Company, Old Dominion Freight Line and Hampton Roads Transportation Company; *W. B. Jester* for Virginia-Carolina Peanut Association; *John F. Lent* for Port of Philadelphia Ocean Traffic Bureau; *D. Lynch Younger* for Norfolk & Western Railway Company; *M. Carter Hall* and *R. T. Wilson, Jr.* for Chesapeake & Ohio Railway Company and Virginian Railway Company; *Windsor F. Cousins* for Pennsylvania Railroad Company; *L. P. King* for Seaboard Air Line Railway Company; *John W. Oast, Jr.* for Norfolk, Baltimore & Carolina Line, Inc., interveners.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions to the examiner's report were filed by complainants and by defendant Southern Railway Company, and the cases were

[1] This report also embraces No. 442, Hampton Roads Transportation Company *v.* Norfolk Tidewater Terminals, Inc., et al.

orally argued. The findings recommended by the examiner are adopted herein. The two cases involve similar issues, were heard together, and will be disposed of in one report. Defendants [2] in both cases are the same except that Southgate Norfolk Pier, Incorporated, is not a defendant in No. 442.

Complainant in No. 437 is a common carrier by water operating between the Port of Hampton Roads, Virginia, and James River points in Virginia. Complainant in No. 442 is an interstate common carrier of property by motor vehicle. Defendants are engaged at the Port of Hampton Roads in the business of furnishing wharfage and other terminal facilities for traffic transported by railroad, river, canal, highway, and ocean carriers. Norfolk Tidewater Terminals, Inc., and Lambert's Point Terminal Corporation are agents for railroads serving Hampton Roads ports as respects rail traffic interchanged with ocean carriers over these defendants' terminals. The charges, regulations, and practices assailed relate to the transportation of traffic by water carriers subject to the Shipping Act, 1916, as amended, and are not in connection with traffic moving over joint water-and-truck routes.

Each defendant, except Southern Railway Company, admits that it is an "other person" as defined by Section 1 of the Shipping Act, 1916, and subject to regulatory provisions of that Act, as amended. Defendant Southern Railway Company contends that its terminal facilities are subject solely to the jurisdiction of the Interstate Commerce Commission. Section 1, paragraph 3, of the Interstate Commerce Act defines the term "railroad" to include, among other things, all terminals and terminal facilities of every kind used or necessary in the transportation of property designated in such Act. Defendant urges that Section 33 of the Shipping Act, 1916, which prohibits construction of any provision of the Shipping Act to affect the power or jurisdiction of the Interstate Commerce Commission, removes any basis upon which our jurisdiction might rest. Apart from providing terminal facilities for its rail traffic, defendant Southern Railway Company is engaged in the business of furnishing wharfage and other terminal facilities in connection with common carriers by water subject to the Shipping Act, 1916, as amended, on traffic transported exclusively by water or by water and truck. Defendant's business in relation to the latter traffic is separable from its function as a rail carrier, and in our view is not a matter as to which the mandate of Section 33 of the Shipping Act, 1916, is applicable.

Complainants allege that defendants' charges, regulations, and practices for and in connection with services incident to interchange

[2] Norfolk Tidewater Terminals, Inc., Lambert's Point Terminal Corporation, Southern Railway Company, Southgate Norfolk Pier, Inc.

of interstate and foreign traffic between their boats and trucks on the one hand and ocean carriers on the other subject them to undue prejudice in violation of Section 16 of the Shipping Act, 1916, as amended; and that said regulations and practices are unjust and unreasonable in violation of Section 17 of that statute. Prior notice by defendants of the changes in the assailed charges, regulations, and practices effective April 1, 1937, is indicated to have been furnished complainants and all others interested in such changes. Without passing here upon the adequacy of such notice, we desire to make the observation that ample notice should be given of rate changes by "other persons" subject to the Act. Charges will be stated in cents per 100 pounds.

The grievance of both complainants is that on certain rail-borne freight interchanged with ocean carriers over defendants' piers the defendants' charge for pier usage and for unloading out of or loading into railroad car is 1 cent, while on complainants' respective freights interchanged with ocean carriers the defendants exact higher charges for alleged less or comparable service; further, that longer free-time periods are accorded rail freight than are allowed complainants' freights. Additionally complaint is made in No. 442 that defendants' charge for service on its truck traffic is greater than their charge for service rendered in connection with river traffic of complainant in No. 437, and that defendants in effect refuse it the privilege of unloading and loading its trucks to reduce the amount of such charge.

Defendants' charges on rail traffic vary from 1 cent to 5 cents, depending upon the rail point of origin or destination and the nature of the freight. The charge is designed to compensate defendants for use of the pier, handling, and checking the freight, for responsibility for the freight while in defendants' custody, and for proportionate share of cost of upkeep of terminal property and of administration and supervision. The rail freight as to which the 1 cent charge applies originates at or moves to points on the Virginian Railway and Norfolk & Western Railway. It comprises less than 1 percent of the total tonnage of rail-borne freight interchanged with ocean carriers over defendants' piers. Such total tonnage greatly exceeds the tonnage of boat and truck traffic so interchanged.

On all freight received from or delivered to complainant Buxton Lines' boats, and boats of all other river and canal carriers, defendants assess a charge of 2 cents. The service for which this charge is exacted does not include unloading or loading the boat. Otherwise defendants' service and expense in connection with this boat traffic are in nature the same as those on rail traffic. On all freight received from or delivered to complainant Hampton Roads Transpor-

tation Company, and all other truck carriers, defendants assess a charge of 3.5 cents for pier usage and truck unloading or loading.

The service and expense involved are in nature the same as those on rail traffic. This charge of 3.5 cents applies whether or not defendants unload or load the truck. Accordingly, practically all of such handling is performed by defendants.

On behalf of complainant in No. 442, testimony of the Virginia-Carolina Peanut Association is that on shipments of peanuts by rail from Suffolk, Virginia, interchanged to ocean lines over defendants' piers, defendants' applicable charge is 1 cent, as compared with the charge of 3.5 cents which the association's members pay on their truck-borne shipments of that commodity from the same point of origin; further, that the higher charge is applied to its members' truck shipments notwithstanding the desire of such members to perform the truck unloading and thereby reduce the amount of such charge. The applicable rail rate plus defendants' 1 cent charge is 10.5 cents per 100 pounds. The association's members transport their shipments in their own trucks, and by unregulated contract motor carriers at privately negotiated rates. The highest of the contract truck rates referred to is 6 cents per 100 pounds, which, with defendants' charge, equals 9.5 cents. The association's witness affirms the superiority of the contract truck transportation of peanuts over any rail transportation thereof, in that trucks are available at all times for loading at the Suffolk plants, and the truck time of two hours to Norfolk is considerably less than the time required for rail transportation. No showing is made that competitors of the association's members use the rail transportation concerned, or that complainant Hampton Roads Transportation Company carries any of such members' shipments.

An exporter of logs testified that defendants' 3.5 cent charge on truck traffic resulted in loss of a contract of sale of logs in France, and caused diminished profits on other sales made by the witness. No showing is made that the logs of competitors of the witness ever moved or now move by rail to defendants' piers. Complainant Hampton Roads Transportation Company has never carried any of witness' shipments.

A witness for the Transportation Corporation of Virginia, a truck carrier, testified that defendants' 3.5 cent charge for truck unloading and pier usage has caused it to lose to rail carriers the transportation of export cigarettes from Winston-Salem, North Carolina, to the Port of Hampton Roads. Defendants' charge for car unloading and pier usage on export cigarettes from Winston-Salem when received from rail carrier is 3.5 cents.

Defendant Norfolk Tidewater Terminals leases the terminals it operates from the United States of America through this Commission. Complainant in No. 442 alleges breach by this defendant of its lease [3] in that at several terminals in Norfolk no truck loading or unloading charge is assessed. Defendant's breach of lease, if any, is not determinative of the issues in No. 442. Whether complainant uses the several terminals indicated, whether complainant's competitors do so, the manner of handling truck traffic at these terminals, and other details pertinent to such issues are not disclosed.

Defendants testify that, unlike rail freight in many instances, boat freight must be checked by the piece. In the case of many carload-lot commodities, a checker is estimated to check from five to ten times more rail than boat freight in a like period of time. On much bulk carload freight, such as wood pulp, no checking is required. Boat freight remains on defendants' piers a substantially longer time than rail freight, and defendants' responsibility for the former is accordingly greater. Unloading and loading of the boats of complainant Buxton Lines and other small vessel carriers is materially different from the unloading or loading of railroad cars. It involves a stevedoring rather than an ordinary handling operation, and the record indicates that it would be undesirable and impracticable for defendants to perform such service.

The average weight of freight discharged from or loaded into a truck is from 2½ to 3 tons, as compared with the average weight of freight discharged from or loaded into a railroad car or from 25 to 30 tons. Unloading or loading this greater volume of rail freight is a continuous and direct operation, as contrasted with the multiple operations for a similar amount of truck freight. Truck arrivals at defendants' piers are at all hours of the day and night, without notice to or control by defendants. This frequently necessitates rearrangement of defendants' gang schedules and the calling of workmen to whom 4 hours of wages must be guaranteed. No similar situation in this regard is shown as respects rail or boat traffic. More checking is required in connection with truck traffic than in relation to rail traffic. Pier wear and damage incident to truck traffic is greater than in connection with rail or boat traffic. Claims for damage to cargo are attributed to truck movements on piers. Defendants' men unload or load a truck in from 30 minutes to one hour. Prior to April 1, 1937, when defendants' charge on truck traffic was 1 cent and the truck driver or driver and helper performed the unloading and loading, this

[3] Article V, providing that "in all cases the rates for berthage, dockage and wharfage shall conform with rates charged for similar services at other docks, wharves or water terminals in the harbor of Norfolk."

handling time was from 2 hours to 3 hours. Unloading and loading by truckmen resulted in confusion and congestion on the piers, and impeded terminal operations. Since the date referred to, the number of claims for damage to pier cargo has decreased. Defendant Southern Railway Company does not permit trucks on its piers. Truck freight is received or delivered by this defendant on platform at inshore end of pier and conveyed by it between platform and shipside location, an average distance of 400 feet.

By the tariffs of the rail carriers serving the Port of Hampton Roads, free-time allowances on traffic interchanged in the port between them and ocean lines vary from 2 to 15 days, dependent upon origin or destination of the traffic. In most instances these free-time allowances are either 5 days or 7 days. All such allowances are fixed by the railroads in relation to competitive free-time conditions at North Atlantic ports. Rail traffic is switched by the railroads between their yards and defendants' piers upon defendants' orders and at defendants' convenience. As defendants thus have control of the time such traffic shall remain on their piers, no necessity exists for prescription by them of free-time allowance periods on that traffic. The actual time rail freight occupies their piers is frequently less than 1 day. On boat and truck traffic defendants have fixed a period of 5 days, exclusive of Sundays and holidays, during which such traffic is allowed to remain on their piers before storage charges are assessed. Whereas 48 hours is testified to be adequate for purposes of interchange, both boat and truck traffic use the greater portion of the 5 days' free time.

The circumstances and conditions attending defendants' terminal services on the rail, boat, and truck traffic concerned in these cases are substantially dissimilar. This dissimilarity warrants corresponding dissimilarity of charge, regulation, and practice. Complainants do not show that defendants' different charges, regulations, and practices assailed fail fairly to correspond to the different circumstances and conditions involved, or that defendants' regulations and practices in question are not appropriate and justified.

We find that defendants' charges, regulations, and practices have not been shown to subject complainants to undue prejudice in violation of Section 16 of the Shipping Act, 1916, as amended, and that defendants' regulations and practices have not been shown to be unjust or unreasonable in violation of Section 17 of that Act. An order dismissing the complaints 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. 437

BUXTON LINES, INCORPORATED

v.

NORFOLK TIDEWATER TERMINALS, INCORPORATED, ET AL.

No. 442

HAMPTON ROADS TRANSPORTATION COMPANY

v.

NORFOLK TIDEWATER TERMINALS, INCORPORATED, ET AL.

These cases being at issue upon complaints 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 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 complaints in these proceedings be, and they are hereby, dismissed.

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 414[1]

COMMONWEALTH OF MASSACHUSETTS AND BOSTON PORT AUTHORITY

v.

COLOMBIAN STEAMSHIP COMPANY, INC., ET AL.

Submitted September 13, 1937. Decided January 20, 1938

Defendants' rates on green coffee in bags from ports in Colombia, South America, to New York, N. Y., and Boston, Mass., found to be unduly preferential and prejudicial and unjustly discriminatory.

Defendants found to be operating under unapproved agreements for the transportation of green coffee in bags from ports in Colombia, South America, to New York, N. Y., and Boston, Mass., which are unduly preferential and prejudicial, unjustly discriminatory, unfair, and detrimental to the commerce of the United States to the extent that they make provision for the rates herein condemned.

Pooling agreement between members of the East Coast Colombian Steamship Lines Conference and O. S. K. Line found to be inoperative and ordered canceled.

Addendum to Association of West Coast Steamship Companies agreement disapproved as unjustly discriminatory, unfair, and detrimental to the commerce of the United States. Modification of the agreement approved.

Johnston B. Campbell, *Richard Parkhurst*, *Walter W. McCoubrey*, *Paul A. Dever*, *Maurice M. Goldman*, and *Raymond E. Sullivan* for complainants and protestants.

Frank S. Davis, *John J. Halloran*, *Samuel Silverman*, *Walter W. Ahrens*, *H. J. Wagner*, *S. H. Williams*, and *R. H. Horton* for various interveners.

Roscoe H. Hupper, *Burton H. White*, and *Kurt Lindenberg* for certain defendants.

[1] This report also embraces No. 94, Boston Port Authority *v.* Colombian Steamship Company, Inc., et al.; No. 183, Commonwealth of Massachusetts *v.* Same, and No. 422, In the Matter of Modification of and Addendum to Association of West Coast Steamship Companies Conference Agreement.

Report of the Commission

By the Commission:

Exceptions were filed to the report proposed by the examiner, and the cases were orally argued. Our conclusions differ in some respects from those recommended by the examiner.

Complainants in Nos. 94, 183, and 414 are protestants in No. 422, and defendants [2] in No. 414 include all defendants in Nos. 94 and 183 and applicants for approval of the modification and addendum in No. 422. The Maritime Association of the Boston Chamber of Commerce, Foreign Commerce Club of Boston, Inc., Boston Coffee Brokers Association, Dwinell-Wright Company, Economy Grocery Stores Corporation, Stanley W. Ferguson, Inc., Port of Philadelphia Ocean Traffic Bureau, Norfolk Port-Traffic Commission, Joint Executive Transportation Committee of Philadelphia Commercial Organizations, and the Port of New York Authority intervened.

Colombian Steamship Company, Inc., Panama Mail Steamship Company, and United Fruit Company comprise the membership of the East Coast Colombian Steamship Lines Conference, hereinafter called the East Coast Conference, which functions in the trade from Puerto Colombia and Cartagena, Colombia, South America, to United States North Atlantic ports. The remaining defendants, except Osaka Shosen Kabushiki Kaisha, hereinafter called O. S. K., Canadian Government Merchant Marine, Ltd., and Montreal Australia New Zealand Line, Ltd., hereinafter called the Manz Line, constitute the Association of West Coast Steamship Companies. This association, hereinafter called the West Coast Conference, functions in the trades from Pacific ports of Colombia to Atlantic, Gulf, and Pacific ports of the United States, and other destinations. Agreements of the members of these conferences have been filed and approved under section 15 of the Shipping Act, 1916.

Complainants allege that in addition to the approved conference agreements, there are other agreements or arrangements between defendants which have not been filed and approved; that defendants, pursuant to agreement, maintain contract rates on green coffee, in bags, from Colombian ports to Boston, Mass., which are $2.00 per net

[2] Colombian Steamship Co., Inc., Panama Mail Steamship Co. (Grace Line), United Fruit Co., Canadian Government Merchant Marine, Ltd. (Canadian National Steamships), Osaka Shosen Kabushiki Kaisha (O. S. K. Line), Montreal Australia New Zealand Line, Ltd., Grace Line, Inc. (Grace Line), Compania Chilena de Navegacion Interoceanica (Chilean North American Line), Compagnie Generale Transatlantique (French Line), Deutsche Dampfschiffahrts-Gesellschaft Kosmos (Kosmos Line), Elliot Shipping & Land Co., Inc. (Elliot Line), Hamburg-Amerikanische Packetfahrt Actien-Gesellschaft (Hamburg-American Line), Norddeutscher Lloyd (North German Lloyd), Pacific Steam Navigation Co., and Koninklijke Nederlandsche Stoomboot Maatschappij (Royal Netherlands Steamship Co.).

ton higher than those which they maintain on coffee from the same ports to New York, N. Y.; that said rates are unduly preferential and prejudicial and unjustly discriminatory, in violation of sections 16 and 17 of the Shipping Act, 1916; and that the agreements are unjustly discriminatory and unfair and operate to the detriment of the commerce of the United States. We are asked to require the defendants to remove the discrimination alleged. Except as otherwise specified, rates will be stated in amounts per net ton. Rates of the East Coast Conference are $9 to New York and $11 to Boston. Those of the West Coast Conference are $11 to New York and $13 to Boston.

New York has the direct service of East Coast Conference members from Puerto Colombia and Cartagena, hereinafter referred to as East Coast ports, and the direct service of Grace Line, Inc., from the Pacific Coast of Colombia, hereinafter called the West Coast. Also Grace Line, Inc., and other members of the West Coast Conference serve New York from the West Coast by transshipment to members of the East Coast Conference at Cristobal, C. Z., pursuant to arrangements made for through carriage.

Boston has no direct service from Colombia. In the latter part of 1931 and early 1932, vessels of the Canadian Government Merchant Marine, Ltd., lifted coffee at Buenaventura for Boston, as well as New York, but some time during 1932 discontinued loading at that port. Likewise, vessels of O. S. K., prior to June 1936, called at Puerto Colombia and took on coffee for both Boston and New York, but since then such service has not been operated. O. S. K. and the Manz Line, successor to the Canadian Government Merchant Marine, Ltd., now participate in the transportation of Colombian coffee as on-carriers from Cristobal, where vessels of the latter en route from Australia and New Zealand and vessels of the former en route from China and Japan receive it from conference members pursuant to arrangements made for through carriage to Boston.

On coffee to Boston, transshipped at Cristobal, $9 of the rate from the East Coast ports and transfer charges at Cristobal are divided equally between the originating and delivering carriers, and the differential of $2 per ton accrues to the latter. On coffee to Boston from the West Coast, out of $11 of the rate the originating carrier receives 66 percent or $7.26 and pays the transfer charges at the Canal, while the delivering carrier receives 34 percent or $3.74 and the differential of $2. It is due to the fact that the additional revenue represented by the amount of the differential accrues to the Manz Line and O. S. K. that they carry coffee to Boston. They do not transport coffee to New York because, according to the record, their share of the rates to New York would not be acceptable to them.

Complainants contend that the differential shuts coffee out of Boston which would normally move through that port.

Standard Brands, Inc., and Chase & Sanborn Coffee Company, Boston, import about 30,000 bags[3] of Colombian coffee annually, which is distributed to their coffee plants in the immediate vicinity of Boston. They testify that Colombian coffee imported for distribution to interior points moves through New York because of the $2 differential. Their Brazilian coffee shipped to the interior, on which the rate to Boston is the same as to New York, moves through the former port.

Reid, Murdoch & Company has its principal place of business in Chicago, and a branch at Somerville, Mass. It has no office or plant in New York. This firm imports between 4,000 and 5,000 bags of Colombian coffee through the port of Boston annually. Because of the $2 differential all Colombian coffee imported for delivery at Chicago is routed through New York. Its representative states that it would be a distinct advantage to the company to be able to import its Chicago coffee through Boston instead of New York because a part of a shipment could then be taken off at Boston and the remainder sent on to Chicago.

Dwinell-Wright Company, whose principal place of business is in Boston, imports about 20,000 bags of Colombian coffee per year, and is in competition with roasters at New York. Unless it sells at the same price as its competitors it does not make the sale. Without the differential, this company's representative states it would be in better position to meet the competition from New York and increase its business. Defendants emphasize the fact that Colombian coffee is used as a blend with Brazilian coffee, on which Boston enjoys a parity of rates with New York, and assert that the differential could not have any considerable effect on the sale of Colombian coffee landed at Boston. According to the record, however, a fraction of a cent per pound of coffee is a vital factor in determining whether there will be a profit or loss.

Stanley W. Ferguson, Inc., Boston, imports approximately 60 percent Brazilian and 40 percent Colombian coffee. It imported about 2,000 bags of Colombian coffee in 1934, and competes principally with New York jobbers. Its president testified that business cannot be done wherever there is a disparity of rates against his company's coffee, and that the differential limits the extent of the firm's jobbing territory.

Economy Grocery Stores Corporation, South Boston, has approximately 453 stores scattered throughout New England. It im-

[3] A bag of coffee weighs about 154 pounds.

ports about 18,000 bags of coffee per year, approximately 65 percent of which is Brazilian and 35 percent Colombian. Its competitors receive their coffee through New York. Its comptroller testified that the margin of profit on coffee is exceedingly small, and that it must either absorb the difference in freight rates or lose the business.

Gerard LaCentra, a broker, and president of the Boston Coffee Brokers Association, testified that the $2 differential limits the distribution of coffee from Boston, and that if there were a parity of rates as between Boston and New York many more shipments of Colombian coffee would move through the former port for the jobbing trade. Testimony of the vice president of C. H. Sprague & Son, Inc., operator of American Republics Line, of the director of the Massachusetts Warehousemen's Association and president of Merchants Warehouse Company, and of the agent at Boston for Dollar Steamship Line is that the differential prevents coffee from entering the port of Boston.

For the first 10 months of 1936 Colombian coffee imported through Boston amounted to 5,872 tons as against 99,803 tons imported through New York. However, Boston imports have steadily increased since 1932, as follows: 1932, 2,787; 1933, 5,639; 1934, 7,582; 1935, 8,485; and first ten months of 1936, 5,872 tons. The record warrants the conclusion that the rate of increase would probably have been higher were it not for the differential in question.

Defendants' position is that the differential is justified by transfer and handling charges at the Canal which on-carriers to New York must absorb because of competitive conditions which do not affect transportation to Boston; and the cost of transporting coffee from New York to Boston which is absorbed by such defendant carriers as land coffee at New York and forward it to Boston. The transfer and handling charges at the Canal exceed $2.50 per ton and the rate on coffee from New York to Boston is 21 cents per 100 pounds.

There is no transshipment of coffee from the East Coast ports destined to New York. Direct service, especially when more frequent and faster than transshipment service, ordinarily increases the value of the service to the shipper. When Boston had direct service by O. S. K. from Puerto Colombia, the East Coast Conference (which then as now fixed and controlled the rates of O. S. K. as well as its members) established a $2 differential Boston over New York. It is apparent that defendants' existing alignment in controversy fails adequately to reflect the value of the service from East Coast ports.

On coffee from the West Coast, defendants contend that the lower rate to New York than to Boston is due to "the competitive action of the transshipping lines meeting the direct service." As the direct service referred to is by Grace Line, Inc., that defendant is in the

anomalous position of claiming its transshipment rate is depressed because of its own action. Moreover, the members of the West Coast Conference have the power to initiate and enforce changes in rates applying over direct as well as transshipment routes. Defendants' first ground of defense is untenable.

Boston is a port of call of both O. S. K. and the Manz Line. The fact that carriers serving New York do not call at Boston does not justify requiring those carriers that do call at that port to make a higher charge. While there have been instances where O. S. K. has transshipped at New York Colombian coffee consigned to Boston, a witness in charge of its inward freight department testified that its recent practice has been to transship only in cases of emergency.

We find that the rates assailed are, and for the future will be, unduly preferential and prejudicial and unjustly discriminatory to the extent that they are, and for the future may be, higher to Boston than to New York.

We further find that Colombian coffee transshipped at Cristobal moves over through routes and at joint rates participated in by defendants pursuant to agreements within the purview of section 15 of the Shipping Act, 1916. Copies or memoranda of such agreements have not been filed and approved. Defendants argue that such filing and approval is not necessary inasmuch as the carriers forming the through routes do not compete with each other for the traffic to be moved thereover. They take the position that section 15 was not intended to embrace other than "matters that were really competitive." With this view we do not agree. Copies or memoranda of the agreements in question should have been filed. Therefore all action thereunder results in violation of section 15. To the extent that they make provision for the rates herein condemned they are found to be unduly preferential and prejudicial, unjustly discriminatory, unfair, and detrimental to the commerce of the United States.

On August 4, 1933, when O. S. K. was operating a direct service from Puerto Colombia to the North Atlantic, it entered into an agreement with members of the East Coast Conference under which it would receive a percentage of the earnings of the parties thereto from the coffee carried in the trade, and would cooperate with, and maintain the rates and regulations of the conference. This agreement was approved November 25, 1933, and was supplemented by an agreement approved June 5, 1934. Since vessels of O. S. K. stopped calling at Puerto Colombia the agreement of August 4, 1933, as supplemented, has been inoperative. No objection is made to its cancellation.

There remain for consideration a modification of, and an addendum to, the West Coast Conference agreement, which are the subject of the

proceeding in No. 422. The modification proposes to amend the language of the agreement describing the trades covered thereby and to change the wording of a provision in the agreement for arbitration. No evidence was directed against it, and apparently there is not now any objection to its approval. It will be approved.

The addendum has reference to paragraph 20 of the agreement, which reads, in part, as follows:

> 20. The Association shall agree as to the naming of Terminal and Post Terminal ports of the United States; also as to the naming of Co-carriers from Cristobal and/or Balboa to United States ports when business is transshiped at these ports, and shall also agree on the division of the through rates and arbitraries together with rules and regulations regarding transshipment charges at Cristobal and/or Balboa. * * *

The terminal ports named in the addendum are New York, on the Atlantic Coast; New Orleans, Galveston, and Houston, on the Gulf Coast; and Los Angeles Harbor and San Francisco, on the Pacific Coast. Boston, Baltimore, and Philadelphia are named as post-terminal ports on the Atlantic Coast, and San Diego, Astoria, Portland, Seattle, and Tacoma, on the Pacific Coast. On clean coffee from Buenaventura, however, San Diego, Portland, Seattle, and Tacoma would be accorded terminal rates. Arbitraries, which would accrue entirely to the delivering carriers, are provided for to the other post-terminal destinations.

The provision for terminal rates on coffee to post-terminal ports on the Pacific Coast is said to be due to direct-line competition from the East Coast of Colombia, coffee being the principal commodity and moving through ports on both the East and West Coasts of that country. In fixing rates to the Gulf, the chief consideration is direct service or the possibility thereof. There is no such service to New Orleans. There was at one time, and in the opinion of one of defendants' witnesses "the possibility of direct service being resumed is fairly active." Owing to this possibility the rate on coffee to New Orleans is no higher than to Galveston or Houston. We cannot say on this record that the establishment or resumption of direct service to Boston is not equally possible. Indeed, defendants assert that the direct service of O. S. K. from Puerto Colombia to Boston has been merely suspended.

The addendum further provides that through-billing arrangements shall be maintained by West Coast Conference members only with such other lines as are listed as recognized co-carriers to the Atlantic, Gulf, and Pacific Coasts of the United States. The purpose of the provision is said to be "to support those lines which have been in the trade and have maintained service during lean times." The effect, however, would be to exclude others entitled to participate in the

traffic. Although it is stated that there are not many other carriers docking at Cristobal and ordinarily interested in the trade, those that are in the trade are entitled to fair treatment.

Furthermore, the addendum would limit co-carriers, other than West Coast Conference members, to particular ports of destination. For instance, O. S. K. would no longer be permitted to participate in the traffic to Boston, being restricted to the ports of Baltimore and Philadelphia. A witness in charge of the inward freight department of O. S. K. asserted that it did not like to be limited to specific ports, that the restriction was not justified, and that O. S. K. would not consent to it. Members of the conference, according to the terms of the addendum, would at all times be recognized as accredited co-carriers to all ports.

There is a further provision that co-carriers shall guarantee that they will accept traffic at Balboa or Cristobal on through bills of lading issued at Colombian Pacific and Ecuadorian ports from member lines of the West Coast Conference only, and that they shall agree to accept traffic from nonconference lines as local cargo only from Canal Zone ports at recognized local tariff rates. To approve this provision would be to sanction control by the conference of traffic moving over routes in which none of its members participates.

We find that the addendum is unjustly discriminatory and unfair as between carriers and ports and, if carried into effect, would operate to the detriment of the commerce of the United States.

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 20th day of January, A. D. 1938

No. 94

BOSTON PORT AUTHORITY

v.

COLOMBIAN STEAMSHIP COMPANY, INC., ET AL.

No. 183

COMMONWEALTH OF MASSACHUSETTS

v.

COLOMBIAN STEAMSHIP COMPANY, INC., ET AL.

No. 414

COMMONWEALTH OF MASSACHUSETTS AND BOSTON PORT AUTHORITY

v.

COLOMBIAN STEAMSHIP COMPANY, INC., ET AL.

No. 422

IN THE MATTER OF MODIFICATION OF AND ADDENDUM TO ASSOCIATION OF WEST COAST STEAMSHIP COMPANIES CONFERENCE AGREEMENT

These cases being at issue upon complaints and answers on file with the Department of Commerce of the United States or having been instituted by the Commission on its own motion without formal pleading, 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, 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 herein, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before March 25, 1938, and thereafter to abstain, from publishing, demanding, or collecting for the transportation of green coffee in bags from points in Colombia, South America, to Boston, Massachusetts, rates which exceed those on like traffic from the same points of origin to New York, N. Y.;

It is further ordered, That the agreement dated August 4, 1933, and approved November 25, 1933, as Conference Agreement No. 126–3, as supplemented by Conference Agreement No. 126–5, approved June 5, 1934, be, and it is hereby, disapproved and canceled;

It is further ordered, That the modification dated March 18, 1936, of Association of West Coast Steamship Companies Agreement (Agreement No. 3302–1) be, and it is hereby, approved; and

It is further ordered, That the addendum dated March 18, 1936, to Association of West Coast Steamship Companies Agreement (Agreement No. 3302–2) be, and it is hereby, disapproved.

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 102

ARMSTRONG CORK COMPANY ET AL.

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY ET AL.

Submitted October 4, 1937. Decided March 4, 1938

Defendants' tariff provision for mixed-carload rates on shipments of floor coverings with roofing and building materials from California ports to ports in Oregon and Washington found unduly prejudicial and unreasonable, and ordered cancelled.

E. G. Siedle and *Frank M. Chandler* for certain complainants and intervener Bird & Son, Inc.

Joseph J. Geary for defendants.

A. W. Brown for intervener The Paraffine Companies, Inc.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed by complainants and an intervener to the examiner's report. Our conclusions differ from those recommended by the examiner.

Complainants [1] alleged by complaint, as amended, that defendants' [2] tariff provision,[3] permitting felt base floor coverings and linoleum floor coverings, described as "Floor Covering, asphalted (printed or not printed)," hereinafter called floor coverings, to be shipped from California ports to ports in the States of Oregon and

[1] Complainants are Armstrong Cork Company, Certain-teed Products Corporation, Congoleum-Nairn, Inc., Delaware Floor Products, Inc., El Rey Products Company, Johns-Manville Corporation, Pioneer Paper Company, Sandura Company, Inc., and Sloane-Blabon Corporation.

[2] Defendants are American-Hawaiian Steamship Company, Chamberlin Steamship Company, Ltd., Hammond Shipping Company, Christenson-Hammond Line, Luckenbach Steamship Company, Inc., Luckenbach Gulf Steamship Company, Inc., McCormick Steamship Company, Nelson Steamship Company, Pacific Steamship Lines, Ltd., and Williams Steamship Corporation. Nelson and Williams have discontinued operations.

[3] Item 1555 of Pacific Coastwise Freight Tariff Bureau Minimum Rate List No. 3.

Washington in mixed carloads with roofing and building materials, hereinafter called building materials, in quantities not exceeding fifteen percent of the total weight of the shipment or of the minimum carload weight when the minimum is greater than the actual weight, at the straight-carload rates applicable on building materials, is unduly preferential and prejudicial, allows transportation of property at less than defendants' regular rates, and is unjust and unreasonable, in violation of sections 16 and 18 of the Shipping Act, 1916. The principal issue, however, is whether the mixed-carload rates, used only by intervener The Paraffine Companies, Inc., are unduly preferential and prejudicial. Complainants seek an order requiring defendants to withdraw the above-mentioned mixing privilege, and to establish lawful rates, rules, and practices for the future. Rates will be stated in cents per 100 pounds.

Some of the complainants manufacture floor coverings and the others building materials. The Paraffine Companies, Inc., hereinafter referred to as Paraffine, and Bird & Son, Inc., interveners in support of defendants and complainants, respectively, make both lines of products. The plants of Paraffine and complainants manufacturing building materials are in California. Those of complainants manufacturing floor coverings are located on the Atlantic seaboard, whence their products are shipped in carload quantities to warehouses of their own, or to jobbers on the Pacific coast. There they are distributed in less-than-carload lots, chiefly from San Francisco, California, in competition with Paraffine's plant at Emeryville, California, located on the east side of San Francisco Bay, and with each other. A witness for Sloane-Blabon stated that they ship floor covering in less-than-carload lots on practically every vessel leaving San Francisco to Portland and Seattle. Certain-teed has a manufacturing plant at Richmond, Calif. During the four months' period, March through June 1937, that complainant shipped by water 837 tons or 64 carloads of building materials from San Francisco to Portland and Seattle, upon which the freight charges totaled $4,306.05. The volume shipped by other parties of record is not shown, but it is clear that there is a substantial and regular movement of floor coverings and building materials from San Francisco to Puget Sound and Columbia River ports. Paraffine alone is able to ship building materials and floor coverings in mixed-carload quantities from San Francisco under the assailed mixing provision.

Floor coverings and building materials are merchandized through different retail outlets, are used for different purposes, and are totally different in nature, except that there is a slight similarity in the process of manufacturing the base for felt base floor coverings and asphalt saturated building and roofing paper. The latter is less

susceptible to damage than the former, has a greater weight density, and is lower in value. According to figures of record, floor coverings weigh from 22 to 47 pounds per cubic foot, and have a value of from 10 cents to 20.8 cents per pound, whereas asphalt saturated felt paper weighs 60 pounds per cubic foot and has a value of 2.5 cents per pound. Other roofing and building papers and asphalt shingles weigh 50 pounds per cubic foot and have a value of 2 cents per pound. Wallboard weighs 35 pounds per cubic foot and has a value of 4.5 cents per pound. Floor coverings are rated fourth class, carload, minimum weight 30,000 pounds, and second class, less than carload, in western classification, whereas building materials are rated fifth class, class C and class D, carload, minimum 30,000, 36,000, and 40,000 pounds, and third and fourth class, less than carload.

Commodity rates apply on these materials in carload and less-than-carload quantities from San Francisco to Portland and Seattle. The carload rates on floor covering and building materials from San Francisco to Portland are 35 and 23 cents respectively. The less-than-carload rate on floor coverings from and to the same points is 60 cents. To Seattle they are uniformly 5 cents higher.

The privilege of shipping floor coverings in mixed carloads with building materials at the straight carload rates applicable on the latter is said to have had its origin in tariffs of carriers by water operating between San Francisco and southern California ports to meet unregulated truck competition. Prior to May 22, 1933, there was no limitation either in the tariffs of the intrastate carriers or of defendants on the quantity of floor coverings that might be mixed with building materials. On that date, the Railroad Commission of the State of California decided that intrastate carriers, in order to remove discrimination, should be required to restrict their building materials item so as to include not to exceed fifteen percent of floor coverings at the building materials rate. Defendants in the instant case thereupon put the restricted mixture privilege into effect, as did their railroad competitors.

As heretofore observed, complainants distributing floor coverings from San Francisco ship only in less-than-carload lots. They point out that the mixing provision enables Paraffine to use the weight of floor coverings to make up the required minimum weight for a carload of building materials and thereby secure for the transportation of floor coverings the 23-cent carload rate applicable on building materials from San Francisco to Portland, a lower rate than floor covering competitors can enjoy even if they shipped in carload quantities. They urge that this is in direct contravention of rule 10 of the governing classification which provides for mixed-carload shipments at the straight-carload rate applicable on the highest classed

or rated article contained in the mixed carload and the highest carload minimum weight provided for any article in the carload. They contend that such a rule should be observed if any mixture of these commodities is proper. An examination of the applicable tariff reveals that the specific mixture provision in issue is an exception to the general mixing rule published in the same tariff. The latter provides that when articles named in different rate items in the tariff are shipped in mixed carloads, the rates to be applied shall be the carload rates applicable to each article and the minimum carload weight will be the highest provided for any of the articles in the carload. This rule, which differs materially from Rule 10 of the Classification, would govern if the specific mixture rule in issue were to be cancelled.

Complainants testify that the mixing provision places them at a disadvantage with Paraffine, their competitor. For example, on 4,500 pounds of floor coverings, moving from San Francisco to Portland at the less-than-carload rate of 60 cents, the total transportation charge would be $27, whereas Paraffine, by mixing that quantity of floor coverings with building materials for the purpose of making a carload of 30,000 pounds, may move the floor coverings at a rate of 23 cents, amounting to $10.35. This means, according to complainants, that on a rug weighing 37 pounds and valued at $4.20 at San Francisco, Paraffine realizes a saving through the difference in transportation charge of about 14 cents per rug. The market price at Portland or Seattle is fixed by the trade on a zone basis and therefore the difference in transportation costs must be borne by complainants in the selling of the goods at prices observed by complainants and Paraffine in Oregon and Washington. According to complainants this freight rate saving amounts to added profit either to Paraffine or its distributors. One witness testified that, although no specific instance could be shown, complaints are being received from distributors in Oregon and Washington that Paraffine is underselling the market prices. Whether or not that is true, the rate situation opens the door to that possibility. Complainants shipping floor coverings do not object to paying higher rates on that commodity than those which apply on building materials. They maintain that the mixing provision assailed is without precedent in either coastwise or intercoastal trades and state they would be satisfied with a mixture subject to rule 10 of the classification.

However, complainant Certain-teed, manufacturing building materials at Richmond and shipping from San Francisco to Columbia River ports in competition with Paraffine and other shippers, objects to the mixture on any basis. Its witness states that the mixture of non-analogous and unrelated articles is unique and without

precedent in defendants' tariffs. Although Certain-teed and Paraffine ship building materials at the same rates, the former is required to ship 30,000 pounds whereas Paraffine can load only 25,500 pounds plus 4,500 pounds of higher rated floor coverings at the 23-cent carload rate, and at the same time effect a saving of 37 cents per 100 pounds on the floor coverings, that being the difference between the 60-cent less-than-carload rate on floor coverings and the 23-cent carload rate on building materials, San Francisco to Portland. This saving represents 24 percent of the $69 freight charge for a carload of building material. Reducing this figure to savings on roofing per carload shipped in this manner this complainant shows that Paraffine saves more than 6.5 cents per hundred pounds on the 25,500 pounds of roofing, thus reducing the transportation cost to 16.5 cents per 100 pounds.

Defendants offered no evidence in defense of the assailed mixture, but they called attention to the fact that competing rail carriers serving Pacific Coast ports, including San Francisco, Portland and Seattle, have a similar provision in effect through fourth section relief authorized by the Interstate Commerce Commission, and maintain that cancellation of the mixed-carload rates in question would place them at a disadvantage in competing for traffic unless their railroad competitors amended their tariffs so as not to reduce the existing differentials. As we understand the order in *Pacific Coast Fourth Section Applications*, 165 I. C. C. 373, as modified, the rail carriers were authorized to establish a rule similar to the one in question to meet water competition. Upon cancellation of the rule by defendants, the rail carriers would undoubtedly be required to take similar action.

Complainants do not ask for a reduction in their rates. They seek merely to have the preference removed under which Paraffine is enabled to ship the same commodities in the same quantities from and to the same points over the same carriers at substantially lower rates. There is no convincing evidence of record that the undue advantage in rates accorded Paraffine is justified when measured by transportation standards. That such advantage in rates results in distinct benefit to Paraffine can not be doubted. It affords that company an opportunity to gain success over and injure its competitors. And when its competitors are charged higher rates on like traffic for service of the same value they are being subjected to undue prejudice. The language of section 16 forbidding "any undue or unreasonable prejudice or disadvantage in any respect whatsoever" is specifically directed against undue preference and every other form of unjust discrimination against the shipping public.

The complaint alleges that the mixing rule and resulting rates constitute a violation of section 18 of the act. No evidence was presented with respect to the reasonableness of individual rates, but there remains for consideration the question of whether the mixing provision is an unreasonable regulation or results in an unreasonable practice. Tariff provisions should be responsive to the requirements of the general public. Complainants and interveners are the major producers of floor coverings and building materials in the United States. The evidence clearly shows that there is no general demand for the assailed tariff provision, one company alone using it. The general mixing provision contained in rule 10 of the governing classification originated in railroad transportation and has had the sanction of the Interstate Commerce Commission over a long period of years. The general rule of defendants also is of long standing. Where the specific provision differs from the general mixing rule maintained by defendants, special justification for it should be shown, particularly where, as here, the provision was established for the benefit of one shipper and results in rate disparity and disadvantages hereinbefore detailed. Such justification has not been shown.

We find that the assailed mixing provision is, and for the future will be, unduly prejudicial to complainants and unduly preferential of their competitors in violation of section 16 of the Shipping Act, 1916. We further find that the mixing provision constitutes an unjust and unreasonable tariff rule and results in an unreasonable practice in violation of section 18 of that act. An appropriate order will be entered.

ORDER

At a Session of the UNITED STATES MARITIME COMMISION, held at its office in Washington, D. C., on the 4th day of March A. D. 1938

No. 102

ARMSTRONG CORK COMPANY ET AL.

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, CHAMBERLIN STEAMSHIP COMPANY, LTD., HAMMOND SHIPPING COMPANY, CHRISTENSON-HAMMOND LINE, LUCKENBACH STEAMSHIP COMPANY, INC., LUCKENBACH GULF STEAMSHIP COMPANY, INC., MCCORMICK STEAMSHIP COMPANY, AND PACIFIC STEAMSHIP LINES, LTD.

This case being at issue upon complaint and answer on file with the United States Shipping Board, 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 be, and they are hereby, notified and required to cancel the mixing provision under which defendants permit less than carload quantities of floor coverings to be shipped from California ports to ports in the States of Oregon and Washington in mixed carloads with building materials at the rates applicable on building materials in carloads, effective on or before April 20, 1938, upon not less than 10 days' filing and posting in the manner required by law.

By the Commission

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

UNITED STATES MARITIME COMMISSION

No. 322

SEGREGATION PRACTICES AND CHARGES OF INTERCOASTAL CARRIERS

No. 459

EASTBOUND INTERCOASTAL SEGREGATION RULES AND CHARGES

Submitted January 24, 1938. Decided March 29, 1938

Common carriers by water not obligated to deliver shipments in parcel lots by sub-marks, or according to kind of commodity, or by size, brand, grade, or other designation. Such delivery is an extraordinary delivery privilege, or facility, granted or allowed in connection with transportation requiring publication in intercoastal tariffs. In respect to westbound shipments, and in connection with eastbound shipments in certain instances, respondents' practices found in violation of their tariff rules.

Practice of certain respondents in making deliveries by kind, size, brand, and grade without charge, while assessing a charge for parcel-lot deliveries by sub-mark was and is unduly preferential and prejudicial.

Provisions of so-called segregation rule for eastbound application published and filed by respondents, other than Shepard Steamship Company, requiring detailed declarations in shipping instructions and bills of lading found ambiguous in respect to sub-marked shipments and susceptible to misinterpretation, but such requirements when applicable alike to all classes of shipments not unlawful.

Assessment of a charge in addition to published transportation rate for piling shipments on carrier's pier according to detailed bill of lading designations when shippers or consignees do not request or receive parcel-lot delivery by sub-marks or by other designations found unreasonable.

Exceptions to the application of the charge on shipments routed to points beyond via a rail or water route delivered to the on-carrier as one lot under one general shipping mark found unduly preferential and prejudicial.

In respect to delivery privileges accorded, rule further found unduly preferential of mixed shipments and unduly prejudicial to straight shipments.

Just and reasonable rule for application to eastbound and westbound transportation recommended in lieu of present rules herein condemned.

Harry S. Brown and *M. G. de Quevedo* for respondents American-Hawaiian Steamship Company; (Arrow Line) Sudden & Christenson; (California-Eastern Line) States Steamship Company; Calmar Steamship Corporation; Dollar Steamship Lines Inc., Ltd.;

(Grace Line) Panama Mail Steamship Company; Luckenbach Gulf Steamship Company, Inc.; Luckenbach Steamship Company, Inc.; McCormick Steamship Company; Weyerhaeuser S. S. Co., Inc.; (Panama Pacific Line) American Line S. S. Corp., The Atlantic Transport Co. of West Virginia; and (Quaker Line) Pacific Atlantic Steamship Company. *Thomas F. Lynch* and *Charles S. Belsterling* for Isthmian Steamship Company. *Otis Shepard*, *E. J. Martin*, and *D. M. Dysart* for Shepard Steamship Company. *Joseph J. Geary* and *E. A. Read* for Swayne & Hoyt, Ltd., Managing Owners (Gulf Pacific Line), and Gulf Pacific Mail Line, Ltd.

L. Z. Whitbeck and *W. E. Aebischer* for The Great Atlantic and Pacific Tea Co.; *Irving F. Lyons* and *L. R. Keith* for California Packing Corporation; *Samuel D. Jones* and *Charles Pascarella* for Francis H. Leggett & Co.; *J. S. Bartley* for The Campbell Soup Co.; *George O. Tong* for Minnesota Valley Canning Company and Blue Mountain Canneries, Inc.; *Joseph A. Tapee* and *L. W. Bernhardt* for Austin, Nichols & Co., Inc.; *M. S. Griffin* for Seeman Brothers, Inc.; *DeWitt C. Reed* for New York Wholesale Grocers' Association; *E. E. Wilson* for General Foods Corporation; *Sanford Peters* for Transportation and Warehousing Service; *Edwin G. Wilcox* and *Irving F. Lyons* for Canners League of California and Dried Fruit Association of California; *John V. Gregg* for Kings County Packing Co.; *Roland Brierie* for Paul Brierie's Sons; *Emile L. Schoenmehl* for himself; *John Dupuy* for Dupuy Storage & Forwarding Corp.; *Daniel J. Sellen* for Backer & Green; *C. M. Fraering* for Fraering Brokerage Co. Inc.; *W. S. Hickerson, Jr.*, for Hickerson Importing Company.

Charles R. Seal for Baltimore Assn. of Commerce; *H. J. Wagner* for Norfolk Port Traffic Commission; *H. V. C. Wade* for Richmond Chamber of Commerce; *John M. Lent* for Port of Philadelphia Ocean Traffic Bureau; *E. H. Thornton* and *Louis A. Schwartz* for New Orleans Joint Traffic Bureau; *Edwin G. Wilcox* for San Francisco Chamber of Commerce; *T. G. Differding* for Oakland Chamber of Commerce; *C. O. Burgin* for Stockton Port District and Stockton Traffic Bureau; *W. G. Stone* for Sacramento Chamber of Commerce; *John P. Ventre* for Howard Terminal; *J. F. Vizzard* for Draymen's Association of San Francisco.

Report of the Commission

By the Commission:

No. 322 is an investigation into eastbound and westbound segregation practices of intercoastal carriers.

No. 459 is a proceeding initiated by our order entered October 14, 1937, suspending until February 17, 1938, the operation on eastbound

traffic of tariff rules, charges and practices with respect to segregation by carriers, other than Shepard Steamship Company, operating from Pacific to Atlantic and Gulf ports of the United States.

The two cases were heard together at New York, N. Y., New Orleans, La., and San Francisco, Calif. No. 459 will be considered first. The rules involved,[1] which are identical and for convenience referred to hereinafter as Rule 2 (g), Application of Rates, and Rule 54, Segregation Charges, are as follows:

RULE 2 (G), APPLICATION OF RATES

Except as otherwise provided for in this tariff, (1) rates named in this tariff apply only on shipments from one shipper forwarded on one ship, covered by one bill of lading, from one loading terminal at one loading port, consigned to one consignee at one discharging terminal at one discharging port; (2) not more than one arrival notice, one delivery order and one freight bill will be issued to cover each shipment; (3) each freight bill must be paid in full in a single payment by either the shipper or the consignee; (4) carriers will not act directly or indirectly as agents of shippers or consignees in the assembling or distribution of freight, by signing separate receipts for parts of a single shipment when such separate receipts are in the name of more than one shipper, or by any other means whatsoever.

RULE 54, SEGREGATION CHARGES

This rule shall apply only where specific reference is made hereto in any individual item of this tariff. When the carload rate is applied to a shipment of any commodity named in such rate item of this tariff and the shipment consists of (1) more than one commodity, or (2) one or more commodities bearing more than one brand, sub-mark, or other identifying mark, or (3) more than one grade, kind, size, or shape, or kind, size, or shape of package, shipper must indicate in shipping instructions and the carrier must indicate on the bill of lading each separate commodity, or brand, sub-mark or other identifying mark, grade, kind, size or shape, or kind, size, or shape of package, with the separate weights for each description. The shipment will be sorted and delivered by the carrier in accordance with the bill of lading, and there shall be assessed against the shipment the following additional charges (see Exception):

When shipment consists of—

2 of any of the above, add 1 cent per 100 pounds to the rate;
3 of any of the above, add 1½ cents per 100 pounds to the rate;
4 of any of the above, add 2 cents per 100 pounds to the rate;
5 of any of the above, add 2½ cents per 100 pounds to the rate;
6 of any of the above, add 3 cents per 100 pounds to the rate;
7 of any of the above, add 3½ cents per 100 pounds to the rate;
8 of any of the above, add 4 cents per 100 pounds to the rate;
9 of any of the above, add 4½ cents per 100 pounds to the rate;
10 or more of the above, add 5 cents per 100 pounds to the rate.

[1] Rules 2 (g) and 54 of Alternate Agent Joseph A. Wells' Tariff S. B. I. No. 7. Rule 19 of Calmar Steamship Corp. Tariff S. B. I. No. 6. Rules 2, 3d par. and 20A of Agent J. P. Williams' Tariff S. B. I, No. 3.

EXCEPTION.[2]—These additional charges do not apply when, in accordance with proper instructions in writing received prior to arrival of vessel at port of discharge, the carrier delivers the shipment as one lot, under one general shipping mark, to go forward via a route involving a rail haul, and no sorting by the carrier or at the carrier's expense is performed in order to effect such delivery and secure receipt therefor.

Rule 54 applies principally to canned goods, dried fruit and related articles which, with lumber and lumber products, constitute the bulk of the eastbound movement.

Prior to February 17, 1938, the eastbound rules, except those applicable to the Gulf, provided that rates applied only to shipments bearing a common shipping mark covered by one bill of lading from one consignor to one consignee. Segregation charges applied only for delivery by sub-marks: 5 cents per 100 pounds when notice was given prior to ship's arrival, and 10 cents thereafter. Due to encouragement by some of respondents, shippers, in a large measure, defeated the application of this rule through the device of describing their shipments by kind, size, brand, or grade rather than by sub-mark.

The eastbound tariff of Gulf Carriers provided that:

(*a*) Pool car shipments will be segregated and delivered in accordance with the bill of lading or riders.

(*b*) Bill of lading will show only one shipper and one consignee.

(*c*) Freight charges must be prepaid in full by the Billed Shipper or collected in full from the Billed Consignee; only one collection of freight charges will be made on any one carload shipment.

(*d*) Carriers will not act as forwarding agents. The forwarding of sublots to destination beyond the Port of Discharge must be arranged for by the Shipper, Consignee or their Agent.

(*e*) Carrier will, when requested by the shipper, indicate on the Bill of Lading or Riders the number of packages of each mark, brand, or size, and shipments will be segregated by the carrier and delivered accordingly.

Contentions of the various parties will serve to clarify the following discussion. Shippers do not always know in what manner consignees will request delivery. Respondents contend, therefore, that carriers must prepare for parcel-lot delivery by sorting and piling all shipments on the pier according to detailed designations. They also desire the protection afforded by detailed description of shipments in the adjustment of loss and damage claims on mixed shipments, since they assert that in the absence of such description, settlements are usually based on the highest valued article in the shipment. Furthermore it is stated that special delivery service requires additional pier space and extra labor for sorting, piling, and checking deliveries. Protestants do not object to payment of a reasonable charge when segregation is requested, but they contend that ordinary delivery should be made at the transportation rate.

[2] On Gulf intercoastal traffic, the additional charges do not apply on traffic forwarded via a connecting water or rail route beyond the Gulf.

Canned goods, dried fruit, and related articles move in (1) straight shipments of one kind, of only one size, brand, or grade; (2) mixed shipments of two or more kinds, with one or more brands, sizes, or grades of each kind; and (3) pool car shipments which may contain (*a*) individual lots for various buyers consigned as one shipment by a canner or a packer to a broker for distribution (the shipment may contain one or more kinds, and one or more sizes, brands, or grades) (*b*) individual lots for one buyer from more than one packer or canner, assembled and shipped by an agent of the buyer or a forwarder or a terminal which may or may not contain more than one kind and more than one size, brand, and grade of each kind; and (*c*) individual lots sub-marked for various buyers from various packers or canners assembled and shipped by a terminal or consolidator in its own name to an agent for distribution.

Prior to February 17, 1938, shipments were described in bills of lading in the following manner: (1) Total number of cases of canned goods or dried fruit, the weight, and a general shipping mark; (2) as just stated but with added sub-marks either on the bill of lading or on a rider attached thereto, and (3) with the number of packages of each kind, size, brand, and grade, on the bill of lading or on a rider attached, the total weight of the shipment, and a general shipping mark. In some instances bills of lading contained notations that no segregation is required. On shipments consigned to brokers wherein a sight draft is attached to the original bill of lading and sent to a bank for collection, notations appear which permitted inspection without surrender of the bill of lading. In compliance with buyers' demands this type of shipment was usually described in detail. Many consignees use the piers as warehouses from which they make distribution of orders to numerous buyers. This requires carriers to make delivery of shipments by kind, size, brand, grade, sub-mark, or other designation in parcel lots. Also shipments are removed to warehouses from which deliveries are made.

When a shipment arrives at a loading pier on the Pacific Coast, a delivery ticket describing the load or lot is presented, the cargo is checked, and a dock receipt is issued to the shipper by the carrier. A copy is retained for the preparation of the bill of lading, and another copy is placed on the shipment where it remains until the shipment is loaded. Each shipment is ordinarily piled in one place on the pier according to kind, size, brand, grade or sub-mark, but it is not unusual that large shipments are piled in several places. Shipments are also loaded direct to the vessel from cars, steamers, and barges. A loading chart is prepared prior to loading, showing where each shipment is to be stowed, a copy of which, when the ship sails, is forwarded to each port of discharge. Each shipment is stowed as a unit in one hatch whenever possible, but frequently large

shipments are stowed in two or more hatches. It often happens that even small shipments will become mixed in one hatch.

Copies of bills of lading and loading chart are received at ports of discharge before the vessel arrives. Notices of arrival, delivery orders, and sorting lists are then prepared, and a place on the pier is marked for each shipment. When the vessel is discharging a clerk in each hatch supervises the stevedores. At North Atlantic ports an attempt is made to sort by general shipping mark in the hatch, but complete sorting, even to this extent, is not always possible. Sorting by sizes, brand, grade, or sub-mark takes place upon the pier as cargo comes from the sling, but sometimes shipments are bunched in one pile by general shipping mark and sorted when discharging has been completed. When a shipment is discharged from more than one hatch portions may be placed in the loft or at one or more places on the lower deck and later assembled.

At New York, local consignees usually take delivery by truck. When the bill of lading calls for canned goods or dried fruit, the cargo is placed in one pile without sorting; but when described in detail it is sorted. Shipments loaded into rail cars for switching to a warehouse are not sorted. Local shipments are delivered to trucks and lighters at ship's side without sorting.

Shipments moving on by rail from New York usually are delivered to lighters moored on the opposite side of the pier across from the ship, or directly to rail cars. Ordinarily they are placed within one hundred feet of the lighter, but when discharge is from more than one hatch portions may be placed at several places on the pier, and either the different portions must be consolidated in one pile or the lighter moved nearer to each pile. Shipments delivered to lighters rarely are sorted and the tally is by number of cases and general shipping mark. This operation frequently takes place while the vessel is discharging. There is less congestion on the pier, less pier labor is required, and delivery is accomplished in a much shorter time than when made to trucks.

Shipments also move beyond a port by truck. When routing instructions are not received prior to discharge, freight is placed in one pile conveniently located for either truck or lighter delivery. Sorting may be performed later, but if not requested, delivery is made from one pile by general shipping mark. Transit time to some inland points is less than if shipments move by rail. It was said that, while the differential between the rail and truck rates does not warrant exclusive use of trucks, the addition of a 5-cent sorting charge to the truck rate would cause the discontinuance of truck routings.

It will be seen that respondents generally do not sort lighter deliveries; that shipments moving beyond by truck have not always

been sorted; and that local shipments have not been sorted if the bill of lading did not contain detailed designations. Shepard Steamship Company, not involved in No. 459, sorts its shipments irrespective of the manner of delivery. It stated that a shipment billed as "canned goods" and delivered by general mark need not be sorted and that detailed designations are not necessary in the ordinary course of business. All respondents state that sorting is necessary to effect delivery in parcel lots. Shepard finds it more economical to sort a shipment during discharging operations.

In certain mixed shipment of canned goods, as for instance powdered milk in barrels, kegs, and cans there is a natural separation of the various containers when they are placed upon the pier. In according mixture privileges carriers should, and according to Shepard, usually do consider the nature of the commodity, the size of packages in which shipments are ordinarily made, and also other pertinent factors.

At New Orleans shipments move beyond via rail, barge, and river steamer and deliveries generally are made by general shipping mark, but the greater number of shipments are for delivery to local consignees. At least 50 per cent of the latter are delivered in parcel lots and in some instances the number of deliveries in a single shipment have been greater than at New York. Sorting in the hatch other than by general shipping mark is performed, but in the interest of despatch, when cargo is moving rapidly shipments are dumped on the wharf by the general mark and sorted later according to bill of lading designations. Brokers and wholesale grocers at this port also use warehouses for sorting shipments, although in instances they have requested and received parcel lot delivery. Local brokers compete with brokers at inland points located on rail and water routes. Shipments to inland brokers are exempted from the payment of the charge which the rule imposes upon the local broker.

Protestants admit there have been numerous deliveries, but they contend that an excess of 10 deliveries of one shipment is unusual. Analysis of an exhibit introduced by respondents serving Atlantic ports shows that in 82.5 percent of a total of 400 shipments made during a 3-month period, there were no more than 10 deliveries of any shipment. Of 3,000 shipments of canned goods and 1,000 shipments of dried fruit transportated to Atlantic and Gulf ports during a 12-month period, 77 and 83 percent, respectively, required no more than 10 separations on the pier. Respondents testified that a shipment required as many separate piles as there were kinds, sizes, brands, grades, or sub-marks. However, the exhibit above mentioned shows that, while shipments contained as many as 48 different kinds,

sizes, brands, grades, or sub-marks, no shipment was placed in more than five piles on the pier, and only a few shipments were placed in more than three piles.

Respondents load eastbound cargo and discharge westbound cargo not only at piers at San Francisco, but also at East Bay terminals of the Board of Port Commissioners of the Port of Oakland, Howard Terminal, and Encinal Terminals. These terminals charge respondents dockage, and in addition a service charge which varies according to the commodity handled. In effect, the terminal acts as agent for carriers in the receipt and delivery of shipments, the services performed being identical with those which respondents perform for themselves at San Francisco.

The terminals also offer to shippers a pool shipment or forwarding service through which small shipments called "enclosures" are consolidated into carload quantities which then move from one consignor to one consignee at the carload rate. Bills of lading may be issued in the name of the terminal as both the shipper and the consignee or in the name of persons for whom it makes the consolidation. Such shipments from Howard Terminal are submarked, but shipments from Encinal to certain ports are described by kind, size, brand, or grade and consigned to its own agent at each port. When consigned to an agent notices of arrival are sent by the agent who handles other minor details in connection with the distribution. Shipments of Encinal to other ports have been consigned in care of the steamship company. Bill of lading description is by submark, and freight is partly prepaid, the balance being collected by the carrier. In addition to a fee for issuing enclosure receipts, the terminals collect car loading and car unloading charges, the California State toll, and on shipments to certain ports a charge of 5 cents per 100 pounds, said to be a sorting or segregation charge. On shipments to Atlantic Coast ports delivered by submark the charge is turned over to the carrier; on other shipments it is divided between the terminal and its local representative, but the extra sorting upon the pier and the service of parcel-lot delivery, when performed, is by the carrier.

Westbound segregation practices, involved in No. 322 will be considered next. Generally speaking, the rules of respondents provide that rates apply only when shipment is made by one shipper, on one bill of lading, under one shipping mark, to one consignee. Restrictions in the tariff of Gulf respondents permit application of rates to shipments received from not more than "two shippers" and/or from not more than "two shipping points." A charge of 10 cents per 100 pounds applies for deliveries by other than one shipping mark. Respondents engage in the practice of delivering shipments to more than one person in numerous parcel lots, by kind, size, brand, grade,

submark, or other designation. They fully recognize such service is without tariff authority, but state that consideration is being given to the publication of a rule for westbound application.

In contrast to eastbound traffic, which is confined to relatively few commodities moving in large volume, the traffic westbound is highly diversified and there is a greater volume of less than carload shipments. Shipments by forwarders usually include numerous small lots of articles such as toys, chain store goods, and general merchandise, submarked for individual buyers; and even though the bill of lading names only one consignee, delivery frequently is made by submark to the owner of each lot. Deliveries also are made to consignee and to others in parcel lots by submarks, and by kind, size, brand, grade, or other designation of commodities such as drugs and chemicals, canned goods, and tires and tubes.

Shipments moving beyond the port are not sorted at the transshipment point unless it is requested by the connecting carrier. At San Francisco consignees frequently refuse to take delivery unless shipments are sorted. Other consignees do not require such service. Practices in handling westbound cargo are not materially different from those hereinbefore discussed in the eastbound trade. Stowage problems generally are more difficult of solution, due in part to the varied nature of the shipments.

The practice of respondents operating between Atlantic and Pacific Coast ports prior to February 17, 1938, of making parcel-lot deliveries of eastbound shipments by kind, size, brand, or grade, or designations other than by sub-mark was prohibited by tariff rule and was unlawful. Shepard is still observing such practice. The same practice of Gulf respondents in respect to deliveries of eastbound shipments except those in pool-cars was unlawful for the reason stated above. A similar practice of all respondents now in effect in respect to westbound shipments whether delivery be by submark or other designation also is in contravention of their tariff and is unlawful.

The services performed by terminal companies on eastbound shipments for which a charge of 5 cents per 100 pounds is collected includes the mailing of arrival notices. The mailing of arrival notices to the consignee shown in the bill of lading is clearly a duty of the carrier for which an extra charge is not proper, and since the actual sorting and delivery of shipments upon which the charge is assessed is performed by the carrier there appears a lack of any service by these agencies which would warrant its collection. Other than for deliveries at Atlantic Coast ports by sub-marks, there is no tariff authority for such a charge. Under section 2 of the Intercoastal Shipping Act, 1933, the duty of publishing, filing, and posting all such charges rests upon respondents.

The practice of respondents operating to Atlantic Coast ports in making deliveries prior to February 17, 1938, by kind, size, brand, and grade, without charge, while at the same time collecting a charge for parcel-lot deliveries by sub-mark, was unduly preferential to consignees or other persons who received such deliveries by other than submark and unduly prejudicial to those who took delivery by sub-mark, in violation of section 16 of the Shipping Act, 1916. Respondents admit this, urging that Rule 54 will remove such unlawfulness as to eastbound transportation.

Requirements of carriers in respect to bill of lading descriptions must be of general application to all classes of shippers and shipments; otherwise, undue preference and prejudice will result. It apparently is the intent of respondents that all shipments must be similarly described, but the rule does not state whether the contents of each lot in a pool-car shipment sub-marked must also be described in detail. It is not clear whether each sub-marked lot must also be separated by kind, size, brand. or grade, and if so whether charges shall be assessed in accordance with the rule. For these reasons the rule is ambiguous, and therefore unlawful.

When delivery is made to a lighter, rail-car, barge, river steamer, or truck, for movement beyond the port, the shipment ordinarily is checked by the intercoastal carrier by number of cases or packages and general shipping mark, and there is no detailed sorting by any carrier other than by Shepard. A charge is imposed upon deliveries to trucks, but there is no charge when shipments are delivered to other conveyances. There is also a similarity of treatment in deliveries to a lighter whether for local delivery or for a rail haul, but the charge applies only upon the local delivery. In this respect the rule is unduly prejudicial and preferential.

The rule also requires the payment of charges by local consignees who perform their own sorting, or who employ warehouses to perform that service, at places other than the piers and who are willing to take delivery of their shipments by general shipping mark with reasonable despatch within free time. It forces those who have no need for and who do not request parcel-lot delivery to contribute to the expense incident to such delivery when it is requested and performed. In this respect the rule is unjust and unreasonable.

No charge will be assessed against a straight shipment of one kind, and which consists of only one size, brand, or grade; in fact, under Rule 2 (g) such a shipment could not lawfully be delivered in parcel-lots, either with or without charge. But, apparently, it is respondents' intention to continue parcel-lot deliveries for, as announced by counsel, upon the assessment of a charge under Rule 54 any number of parcel-lot deliveries of a single shipment will be made. To accord a

greater privilege to a mixed shipment than is accorded to a straight shipment would constitute undue preference and prejudice in violation of Section 16 of the Shipping Act, 1916. The conclusion, therefore, is inescapable that unlawfulness may result under the tariffs as they are now published.

The rule applies to shipments discharged at all Atlantic and Gulf ports. Respondents presented no testimony regarding operating conditions at ports of discharge other than New York and New Orleans. Protestants, however, presented testimony concerning conditions at other Atlantic and Gulf ports showing that in many instances the charge would apply on shipments that required no sorting, as for instance where deliveries are made in one lot by general shipping mark and where the cargo is transferred to local warehouses for sorting. It is reasonably clear from protestants' testimony that the rule as it is now published gives little, if any, consideration to the manner in which shipments are handled at the ports named above and that its operation will be unjust and unreasonable.

Protestants direct attention to court decisions which require merchandise to be placed on the pier properly separated so as to be open to inspection by the owner. That there is such an obligation upon a carrier is not open to question, but the service required is not the separation of individual shipments but a separation of each shipment from the general mass of cargo.

Respondents contend that to perform parcel-lot delivery in the most economical manner, requests for such delivery must be anticipated; and that additional work is performed at the port of loading and also in the hatch when discharge commences and in the placement at place of rest on the pier. But it was not stated what additional work was performed over and above that necessary in the ordinary handling of cargo. The record is not convincing that there is any substantial amount of additional labor performed until cargo is hoisted out of the ship to the pier.

Shipments are tallied when received from the shipper and are checked against the bill of lading when delivery is made at the port of discharge. This check is made for the carrier's protection as assurance that delivery is being made of the entire bill of lading quantity. Some sorting on the pier also is necessary to insure proper delivery of mixed shipments. These services, performed for the convenience of the carrier in effecting normal delivery, should be included in the published rate.

Subject to clarification to meet objections hereinbefore mentioned, requirements for uniformity and more detailed descriptions in shipping instructions and bills of lading do not appear unreasonable. Such detailed designations will unquestionably operate as an aid

to carriers in making proper delivery in accordance with their tariffs, and also as protection against unjust claims. Respondents have referred to the necessity of the rule to properly check lost and damaged goods that they may avoid settlements based on the highest valued article in a shipment. But in view of the manner in which shipments are delivered to lighters, barges, river steamers, rail cars, and trucks for movement beyond ports, difficulties in this respect will still continue. Designations of the nature required, of themselves, do not constitute either a request for special sorting on the pier or an indication of the manner in which consignee will take delivery. In this connection, provisions of the Harter Act, the Bills of Lading Act, and other statutes should be construed as imposing upon carriers minimum, not maximum, requirements.

A carrier may not be required to perform extra handling on the pier or extraordinary delivery of one shipment to numerous persons in parcel lots, but it may engage therein upon proper tariff authority and for reasonable compensation. Parcel-lot delivery may require somewhat different handling on the pier than is ordinarily the case, but it is improper to assess any part of the cost thereof against a consignee who does not request or receive extraordinary delivery.

No evidence was introduced in justification of the measure of the various charges. Gulf respondents referred to the constantly advancing wage scales for stevedores and for pier labor, but labor costs are incurred in ordinary loading and unloading operations, and it is not possible upon this record to determine what proportion may be properly applied to special sorting or extraordinary delivery services. A scale of charges for parcel-lot deliveries based upon pier labor alone is open to question; in fact, protestants claim that basis is unreasonable on the theory that the sorting service is not reasonably related to the service of delivery. There is some merit in that contention since for two sortings the charge would be 1 cent per 100 pounds or approximately 20 cents per ton. Yet any number of deliveries might be made without charge. At San Francisco it was testified that the extra cost of checking parcel-lot deliveries on westbound traffic was 30 cents per ton, and of piling canned goods on the pier by kinds, sizes, brand, grade, or sub-mark was 66 cents a ton. It is doubtful that costs in the Gulf or on the Atlantic seaboard are sufficiently lower to successfully defend even the minimum charge under the rule. Shippers of enclosures in pool shipments protest the sliding scale on the ground that buyers want to know their actual delivered costs. This is not possible when the total number of sortings which the entire shipment will require is unknown to either shipper or consignee. In general, we are of the opinion that all costs involved in the service should be reflected in the charge. But

since the principal justification for any charge lies in the special delivery facilities, the charge should be based on the service of delivery, and irrespective of the number of deliveries, a uniform charge should be made. No objection was interposed to the 5-cent charge in effect prior to February 17, 1938.

Little objection was offered to Rule 2 (g). The only shipper requesting its suspension withdrew its objection thereto at the New York hearing. This rule has not been shown to be unlawful.

For the reasons stated above we find (1) that Rule 2 (g) and rules similar thereto published by Calmar Steamship Corporation and on behalf of Gulf respondents are not unlawful; and (2) that Rule 54 and rules similar thereto published by Calmar Steamship Corporation and on behalf of Gulf respondents are unduly prejudicial and unduly preferential, and unreasonable in violation of sections 16 and 18 of the Shipping Act, 1916, respectively.

We further find (1) that the practice of respondents, as more fully described herein, in according segregation service in violation of their tariffs was and is unlawful; and (2) that the practice of respondents operating to Atlantic coast ports in making deliveries by kind, size, brand, and grade without charge, while assessing a charge for parcel-lot deliveries by sub-mark was and is unduly preferential and prejudicial in violation of section 16 of the aforementioned Act.

An order will be entered requiring respondents in No. 322 to cease and desist from the aforementioned practices found unlawful, and requiring respondents in No. 459 to cancel their rules with respect to segregation of eastbound shipments, referred to herein as Rule 54. We will not prescribe a rule at this time, but will leave the record open for a period of 60 days from the date of the order herein, to afford respondents an opportunity to publish and file a rule covering segregation of eastbound and westbound intercoastal shipments, which should read substantially as follows:

This rule shall apply only where specific reference is made thereto in any individual item of this tariff. The contents of all shipments must be declared by the shipper in detail in shipping instructions, and by the carrier on bills of lading, by stating:

(*a*) The number of packages or other unit in the shipment;

(*b*) The general shipping mark, and also the various sub-marks, if packages contain sub-marks;

(*c*) The weight of each commodity or kind; and

(*d*) If there are different commodities or kinds, sizes, brands, grades, or other identification of packages, the number of packages and the weight of each such commodity or kind, size, brand, grade, or other identification of package.

No charge, other than the published rate, will be assessed on shipments consigned to persons located at the port of discharge when delivery of the shipment, either in single or parcel lots, is made to one consignee by general shipping mark and number of packages or other unit. Upon specific request in writing received from the shipper or consignee, prior to the arrival of the vessel at port of discharge, delivery will be made to either one or more than one person in single or parcel lots by designations enumerated above other than general shipping mark and number of packages or other unit, in which event the shipment will be sorted and piled upon the pier according to the designations named in the request, and a charge of ____ cents per 100 pounds upon the entire billed weight of the shipment will be applied in addition to the transportation rate. (Note: A similar provision may be published to authorize single or parcel-lot delivery upon requests received subsequent to arrival of the vessel.)

No additional charge will be assessed on shipments moving beyond the port of discharge by truck, rail car, lighter, vessel, or other conveyance when delivery of the entire shipment is made to the on-carrier by general shipping mark and number of packages or other unit; provided, that upon specific request in writing from the shipper or consignee special delivery by other than general shipping mark and number of packages or other unit will be performed, in which event a charge of ____ cents per 100 pounds upon the entire billed weight of the shipment will be applied in addition to the transportation rate.

APPENDIX "A"

RESPONDENTS IN NO. 459

Alameda Transportation Co., Inc.
American-Hawaiian Steamship Company.
(Arrow Line) Sudden & Christenson.
*Babbidge & Holt, Inc.
Bay Cities Transportation Company.
The Border Line Transportation Company.
The California Transportation Company.
Calmar Steamship Corporation.
*Christenson-Hammond Line (Hammond Shipping Co., Ltd., Managing Agents).
*Coastwise Line, Columbia Basin Terminals.
*The Consolidated-Olympic Line (Consolidated Steamship Companies, Olympic Steamship Company, Inc.).
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.
Haviside Company.
Isthmian Steamship Company.
A. B. Johnson Lumber Company.
Luckenbach Gulf Steamship Company, Inc.
Luckenbach Steamship Company, Inc.
McCormick Steamship Company.
*Marine Service Corporation.
*Northland Transportation Company.
(Panama Pacific Line) (American Line Steamship Corporation and The Atlantic Transport Company of West Virginia).
Puget Sound Navigation Company.
Puget Sound Freight Lines.
(Quaker Line) Pacific-Atlantic Steamship Co.
Richmond Navigation & Improvement Co.
Roamer Tug & Lighterage Company.
*Sacramento & San Joaquin River Lines.
Schafer Bros. Steamship Lines.
Shaver Forwarding Company.
Skagit River Navigation & Trading Company.
States Steamship Company (California-Eastern Line).
Sudden & Christenson.
Swayne & Hoyt, Ltd., Managing Owners (Gulf Pacific Line).
Weyerhaeuser Steamship Company.

RESPONDENTS IN NO. 322

All respondents in No. 459 are respondents in No. 322 except those designated by asterisk (*) above. The following carriers are also respondents in No. 322.
Agwilines, Inc.
America Transportation Company.
American Foreign Steamship Corporation.
The Bull Steamship Line.

California Steamship Company.
Chamberlin Steamship Co.
Fay Transportation Company.
Hammond Shipping Company, Ltd., Managing Agents (Christenson-Hammond Line).
Hammond Steamship Company, Ltd.
Inland Waterways Corporation.
Jones Towboat Company.
Los Angeles-Long Beach Despatch Line.
Los Angeles Steamship Co.
Marine Service Corporation.
Merchants & Miners Transportation Company.
Mississippi Valley Barge Line Company.
Nelson Steamship Company.
New York & New Jersey Steamboat Company.
Pacific Coast Direct Line, Inc.
Pacific Steamship Lines, Ltd.
Sacramento Navigation Company.
Salem Navigation Company.
San Diego-San Francisco Steamship Co.
Shepard Steamship Company.
Williams Steamship Corporation (Dissolved).

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 29th day of March, A. D. 1938.

No. 322

SEGREGATION PRACTICES AND CHARGES OF INTERCOASTAL CARRIERS

No. 459

EASTBOUND INTERCOASTAL SEGREGATION RULES AND CHARGES

It appearing, That pursuant to orders dated October 28, 1935, and October 14, 1937, this Commission entered upon hearings concerning the lawfulness of segregation practices, rules, and charges of respondents named in Appendix "A" herein, having by the latter order, which involved the lawfulness of schedules enumerated and described therein, suspended the operation of said schedules until February 17, 1938;

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 report is hereby referred to and made a part hereof;

It is ordered, That the respondents in No. 322 be, and they are hereby, notified and required to cease and desist, on or before May 28, 1938, from practices herein found unlawful; and

It is further ordered, That the respondents in No. 459 be, and they are hereby, notified and required to cancel, effective on or before May 28, 1938, the schedules found unlawful herein 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.

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 182

IN THE MATTER OF FARES AND CHARGES FOR TRANSPORTATION BY WATER OF PASSENGERS AND BAGGAGE BETWEEN THE UNITED STATES AND PUERTO RICO AND PRACTICES RELATING THERETO

Submitted March 16, 1938. Decided April 5, 1938

Petition to discontinue proceeding granted

Roscoe H. Hupper, *Burton H. White*, *E. M. Bull*, *James E. Light*, *C. F. Heitmann*, *J. R. Maloney*, *James G. Barnward*, *J. P. Case*, *James H. Condon*, *R. F. Burley*, and *Joseph Mayper* for respondents.

William Cattron Rigby and *Hugh C. Smith* for Government of Puerto Rico.

REPORT OF THE COMMISSION

BY THE COMMISSION:

This investigation was instituted upon representations of the Government of Puerto Rico that passenger fares and baggage charges of respondents for transportation between the United States and Puerto Rico were unduly prejudicial and unreasonable, and that tours were conducted through agreements, understandings, or otherwise in such manner as to subject the ports of Puerto Rico and persons located therein to undue prejudice, in violation of the Shipping Act, 1916.

All carriers operating between continental ports of the United States and Puerto Rico in regular or cruise service were named respondents.[1] At the hearing it was disclosed that allegations of unlawfulness under section 18 of the act were directed primarily against the service to and from New York, N. Y., of the principal respondent, The New York and Porto Rico Steamship Company, in

[1] Aktiebolaget Svenska Amerika Linien, Anchor Line (Henderson Brothers), Limited, The Atlantic & Caribbean Steam Navigation Company, Baltimore Insular Line, Inc., Bull-Insular Line, Inc., Canadian Pacific Steamships, Limited, Compagnie Generale Transatlantique, Cosulich-Societa' Triestina di Navigazione, Cunard White Star Limited, Hamburg-Amerikanische Packetfahrt Actien Gesellschaft, Italia-Flotte Riunite Cosulich-Lloyd Sabaudo-Navigazione Generale, Lykes Bros. Steamship Co., Inc., McCormick Steamship Company, The New York and Porto Rico Steamship Company, N. V. Nederlandsche-Amerikaansche Stoomvaart-Maatschappij "Holland-Amerika Lijn", Norddeutscher Lloyd, United States Lines Company, and Waterman Steamship Corporation.

that the class of vessel operated, the accommodations, and service thereon generally, were inferior and inadequate when considered in relation to the fares charged. Failure to accord cruise fares to persons desiring to visit Puerto Rico only, whereas such fares were published covering cruises to Santo Domingo via San Juan, P. R., was advanced in support of the allegations under section 16 of the act.

Developments subsequent to hearings have resulted in a decision by The New York and Porto Rico Steamship Company to place an additional vessel in service. This vessel when placed in operation will substantially improve the character of the service offered to the public. In view of this, counsel for that respondent filed a petition that the proceeding be discontinued without prejudice, which was concurred in by counsel for the Government of Puerto Rico. An 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 5th day of April, A. D. 1938.

No. 182

IN THE MATTER OF FARES AND CHARGES FOR TRANSPORTATION BY WATER OF PASSENGERS AND BAGGAGE BETWEEN THE UNITED STATES AND PUERTO RICO AND PRACTICES RELATING THERETO

Hearings having been held in this proceeding, and subsequent thereto the principal respondent having filed a petition requesting that the case be discontinued, which was concurred in by counsel for the Government of Puerto Rico, 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 petition be, and it is hereby, granted without prejudice to any subsequent 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. 453

AMERICAN NORIT COMPANY

v.

AGWILINES, INC. (CLYDE-MALLORY LINES)

Submitted February 12, 1938. Decided April 19, 1938

Rates on activated carbon from Jacksonville, Fla., to New York, N. Y. found unreasonable. Reparation awarded.

S. S. Eisen for complainant.
J. T. Green and *H. L. Walker* for defendant.

REPORT OF THE COMMISSION

BY THE COMMISSION:

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

By complaint filed August 13, 1937, complainant corporation alleges defendant's rates charged on carload shipments of activated carbon moving from Jacksonville, Fla., to New York, N. Y., within two years next preceding filing of the complaint, were unreasonable in violation of section 18 of the Shipping Act, 1916. Reparation only is sought. Emergency charges assessed in addition to the freight rates were not assailed. Rates will be stated in cents per 100 pounds.

Activated carbon produced at complainant's plant at Jacksonville is a granulated and powdered processed charcoal, used for decolorizing, filtering, deodorizing, and purifying purposes, and as an absorbent. It is shipped in multiple-wall paper bags, burlap bags, and iron drums; it is not subject to pilferage; and no loss and damage claims in connection with its transportation have been made against defendant. Activated carbon in carload lots is valued at $85 per ton, F. O. B. Jacksonville, and competes with mineral earth blacks manufactured at and shipped from Marshall, Tex., activated charcoal from Marquette, Mich., activated charred wood pulp from Tyrone, Pa., and with similar commodities manufactured at various places throughout the United States.

The shipments here considered were made August 18, 1935, August 21, 1935, December 5, 1935, February 13, 1936, and April 23, 1936, respectively. They weighed 32,480 pounds, 35,525 pounds, 36,676 pounds, 30,450 pounds, and 34,510 pounds, respectively. Charges were collected in the sum of $803.82. Defendant's sixth-class rate, carload minimum 30,000 pounds, was applicable, it being 47 cents until March 2, 1936, when it was increased to 48 cents.[1] Complainant testified these rates seriously handicapped it in marketing its product in the principal consuming markets located in Official Classification territory, as its principal competition was from producers at Marshall, Tex., and Marquette, Mich., from which points the rail rates to the common markets were a much lower percentage of first class than the water rates from Jacksonville. Negotiations with defendant resulted in establishment of a specific commodity rate of 40 cents from Jacksonville to New York, effective July 1, 1936, to which basis complainant seeks reparation.

In addition to showing the voluntary rate reduction, and as support for its contention that rates on the full sixth-class basis were unreasonable, complainant compared the assailed rates with those contemporaneously maintained by defendant on other commodities subject to Southern Classification ratings of sixth-class or higher, but for which rates lower than sixth-class were provided between Jacksonville and New York. Its testimony that the movement of activated carbon compares favorably with the movement of the compared commodities was not disputed. The following table of rates is representative of the aforementioned comparisons:

Commodity	Rate	Value	Density	Revenue
	Cents	*Dollars per ton*	*Pounds per cubic foot*	*Per cubic foot*
Baking or yeast powder	34	360	37	$0.126
Blacking or shoe dressing	44	366–728	30	.132
Paper boxes, other than corrugated, K. D.	28½	73.80	7.86	.022
Candy or confectionery	38½	400–460	31–40	.137
Chicory	38½	160	34	.131
Coffee, roasted	44	256–426	26	.114
Iron and steel articles	28½	58–93	41	.117
Soap: soap powder; cleaning, scouring, or washing compounds, dry	29½	66–192	47	.139
Activated carbon	47	85	30	.141
	48			.144
	40			.120

On 13 of the compared commodities the value averaged $229.30 per ton and the revenue per cubic foot produced by the rate thereon averaged 9.9 cents.

[1] The rate of 48 cents was applied on the shipment made February 13, 1936. As this rate was not effective until March 2, 1936, the shipment was charged a rate in excess of the maximum rate filed with the Commission.

Defendant showed the history of the controversy resulting in establishment of the commodity rates and argues that as the present sixth-class all-rail rate from Jacksonville to New York and the present rail-water rate applicable via Norfolk, Va., are 80 cents and 72 cents, respectively, the rates of defendant for all-water movement are and were reasonable even under the sixth-class rate in effect prior to July 1, 1936.

The voluntary reduction of a rate without other supporting facts and circumstances does not warrant the inference that the rate prior to the reduction was unreasonable, but here complainant did not rely solely upon such reduction. The record discloses that the full sixth-class rates of 47 cents and 48 cents on activated carbon, a commodity with no disclosed undesirable transportation characteristics and valued at approximately 37 percent of the average of the 13 compared commodities referred to upon which lower rates applied, produced a revenue per cubic foot in excess of that from the rate on each of such commodities except one, and approximately 142 percent of the average revenue derived from such commodities.

We conclude and decide that the rates assailed were unreasonable to the extent they exceeded 40 cents. We find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged thereby in the amount of the difference between the charges paid, exclusive of emergency charges, and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of $125.26.

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 April A. D. 1938.

No. 453

American Norit Company

v.

Agwilines, Inc. (Clyde-Mallory Lines)

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 findings of fact, conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That defendant, Agwilines, Inc. (Clyde-Mallory Lines) be, and it is hereby, authorized and directed to pay unto complainant, American Norit Company, of Jacksonville, Fla., on or before 30 days from the date hereof, the sum of $125.26 as reparation on account of unreasonable transportation charges collected on five carload shipments of activated carbon from Jacksonville, Fla., to New York, N. Y., on or about August 18, 1935, August 21, 1935, December 5, 1935, February 13, 1936, and April 23, 1936, respectively.

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 457

IN RE LAWFULNESS OF PAYMENTS TO SHIPPERS BY WISCONSIN & MICHIGAN STEAMSHIP COMPANY THROUGH AUTOMOTIVE DEALERS' TRANSPORT COMPANY

Submitted March 28, 1938. Decided July 7, 1938

Payments to shippers of automobiles by Wisconsin & Michigan Steamship Company through Automotive Dealers' Transport Company found to be an unjust device to obtain transportation by water at less than the rate which would otherwise apply. As question is now moot, proceeding discontinued without prejudice to rights of parties in any subsequent proceeding.

Ralph H. Hallett and *Edward B. Hayes* for the Commission.

George H. Parker for Nicholson Universal Steamship Company, intervener.

T. H. Spence for respondents.

REPORT OF THE COMMISSION

BY THE COMMISSION:

This proceeding was instituted by the Commission on its own motion to determine: (1) the lawfulness under the Shipping Act, 1916, as amended, of payments made by respondents, Wisconsin & Michigan Steamship Company, hereinafter called W. and M., Automotive Dealers' Transport Company, hereinafter called A. D. T., and Michigan Dock Corporation to certain shippers of automobiles over the all-water route from Detroit, Mich., to Milwaukee, Wis., in consideration for the giving of all or a portion of such persons' shipments to W. and M., A. D. T., and Michigan Dock Corporation, in violation of sections 14 and 16 of the Shipping Act, 1916, as amended; (2) whether respondents have entered into an agreement or agreements and operated thereunder in violation of section 15 of that act; (3) and whether respondents are engaged in transportation without observing the provisions of section 18 of the act. Nicholson Universal Steamship Company intervened at the hearing in opposition to respondents.

W. and M., a common carrier by water in interstate commerce on the Great Lakes, has owned and operated vessels on Lake Michigan

for a number of years, transporting freight and passengers, including automobiles, motor trucks, and trailers between Muskegon, Mich., and Milwaukee. In 1935, it entered into arrangements with Great Lakes Transit Corporation and bulk cargo private vessels for the transportation at a specified compensation of automobiles over the all-water route from Detroit to Milwaukee on vessels operated by them. Prior to April 1, 1937, George W. Browne, traffic manager of the automotive division of W. and M., solicited transportation of automobiles for W. and M. at a salary of $7,500 a year plus commissions of about $3,900 on the 1936 business, the commissions representing 50 percent of the net carrier revenue on automobiles. In 1936, W. and M. handled 5,260 automobiles over the all-water route from Detroit to Milwaukee. Great Lakes Transit and Nicholson Universal compete with W. and M. for this business.

During January and February, 1937, Mark T. McKee, president of W. and M., and Browne conceived the idea of forming a corporation to increase the volume of automobile shipments over W. and M., the stock of which was to be owned in part by them and the balance sold to automobile dealers in or near Milwaukee, and on February 23, 1937, the A. D. T. was organized with authorized capital stock of 500 shares of 5 percent preferred stock, par value of $10 and 250 shares of common stock, par value $100. Preferred and common stock had equal voting power. Mark T. McKee, George W. Browne, A. J. Rettig, T. H. Spence, Harry Dahl, Frank J. Edwards, and Read E. Widrig were elected directors. McKee, Browne, Rettig, and Spence are connected with W. and M. in the respective capacities of president, traffic manager of the automotive division, treasurer, and attorney. The remaining three directors are automobile dealers in Milwaukee. McKee is also a director of respondent Michigan Dock Corporation, which operates a wharf at Detroit used by Great Lakes Transit, W. and M., and other water carriers. Michigan Dock Corporation subscribed to all of the preferred stock. The original subscriptions to common stock were as follows: McKee, 53 shares; Browne, 15 shares; Dahl, 10 shares; Edwards, 15 shares; Widrig, 4 shares; and Spence, Enright, and Dietrich 1 share each. Enright and Dietrich are clerks in Spence's law office and signed the articles of organization. Their shares were later taken by Widrig and Rettig. All but 15 shares of McKee's stock was to be sold to automobile dealers who had previously indicated a desire to become stockholders. Only 20 percent of the value of the subscriptions were called for payment. On March 16, 1937, the following were elected officers of the company by the board of directors: McKee, president; Browne, vice president; Spence, secretary; and Rettig, treasurer. The officers drew no salaries.

The board of directors immediately approved a form of contract to be entered into between A. D. T. and automobile dealers providing that (1) the shipper agrees to ship exclusively through the new corporation during the summer shipping seasons of 1937, 1938, and 1939, estimating the number of automobiles to be shipped in 1937; (2) the shipper reserves the right to use other means of transportation in any case where prompt service is desired and where A. D. T. is unable to provide such service within a reasonable time; (3) A. D. T. agrees to accept for shipment on standard bills of lading all automobiles offered for shipment by the shipper and to provide facilities for handling and transportation from Detroit to Milwaukee, to arrange for insurance against fire and theft, collision and the hazards of transportation, and to deliver all such shipments to the shipper or his order at Milwaukee; (4) the rates to be charged for transportation are to be the minimum going rates at the time of shipment; and (5) the contract is not to be subject to cancellation by either party except for breach of a material covenant by the opposite party.

Officers of the company were authorized to enter into this contract on behalf of the company and to negotiate with W. and M. for the handling of automobile shipments to Milwaukee by the all-water route from ports in Michigan, including terminal handling, insurance, and other incidents of transportation, with the understanding that a written contract with W. and M. would be submitted to the board of directors. No such contract in writing with W. and M. was made before operations began and, so far as the record shows, no agreement with W. and M. was ever approved by the board of directors.

Selling of A. D. T. stock to automobile dealers and solicitation of automobile transportation began at once. Every subscriber to stock was required to sign a contract providing for exclusive handling of shipments as herein described. The amount of stock issued to any one dealer was based on the probable number of automobiles which the dealer would ship. One share of stock in practically every instance was issued for every 200 automobiles estimated to be shipped in 1937, although witnesses for respondents deny that it was so planned. Certain dealers desired to buy more stock, but were denied that privilege. The plan was to have automobile dealers purchase stock since that would induce them through the payment of dividends to use the facilities of the company.

On May 21, 1937, a memorandum agreement between A. D. T. and W. and M. was executed in the form of a letter from Louis N. Biron, vice president and general manager of W. and M. to McKee who accepted it for A. D. T., acting as its president. It provided that A. D. T. was to receive fees from W. and M. for the solicitation of

automobile traffic on the basis of $3.25 per automobile when the rate is $12; $3.25 plus one-half of the amount of the rate in excess of $12; and $3.25 less one-half of the difference between the rate and $12, when the rate is less than $12. It provided that expenses incurred by W. and M. for dockage and storage charges at Milwaukee, for clerical hire, terminal expenses, telephone and telegraph, storage, insurance, solicitation, and other expenses, would be billed by W. and M. to A. D. T., which would reimburse W. and M. for its expenses. The arrangement also included provisions for the use of bulk freight steamers other than those of Great Lakes Transit Corporation. The fees of the A. D. T. in such cases were to be the net remaining balance between the applicable rate of $12 and the following deductions: $6 per automobile to be paid for charter; $1.17½ for dockage at Detroit; and 20 cents per $100 cargo insurance on insured value of automobile. Dockage and storage charges at Milwaukee on automobiles transported by bulk carriers were to be billed by W. and M. to A. D. T. which would reimburse W. and M. for such expenses. There is no evidence of record that Biron was authorized to make an agreement on behalf of bulk carriers. Testimony of record indicates that the agreement between W. and M. and the bulk carriers was in the nature of an oral general understanding. It was understood by the agreement between A. D. T. and W. and M. that disbursements incurred by W. and M. for diversions over other lines of automobile traffic solicited by A. D. T. would be billed by W. and M. to A. D. T. which would reimburse W. and M. for such disbursements. It was further understood and stipulated that claims for loss and damage paid by W. and M. on automobile traffic upon which A. D. T. receives fees would be billed by W. and M. to A. D. T. which would reimburse W. and M. for such disbursements.

It might be inferred from these agreements that A. D. T. performed or assumed common carrier service or obligations. On the contrary the evidence shows that its only activity was that of selling its own stock to automobile dealers and soliciting automobile traffic through Browne. It published no tariffs of rates as required by section 18 of the Shipping Act, 1916, owned no property, had no paid employees, and took no part in accepting, routing, carrying, or delivering shipments. Its activities were carried on in the offices of W. and M. or Spence. On the other hand, the W. and M. filed its rates with the Commission, issued its standard bills of lading to shippers, billed shippers for and collected the freight charges. Being so situated, A. D. T. required no capital upon which to start operations. The $5,000 paid for preferred stock by Michigan Dock Corporation through McKee was immediately invested in 5 percent bonds

of Sand Products Corporation of which McKee is vice president and Rettig, secretary.

Between April 16 and May 23, 1937, shipments of 1,389 automobiles on 19 vessels were made, netting A. D. T. about $3,223.36. This sum represented the difference between the $12 rate charged shippers by W. and M. for transportation and the charge of $8.65 per car paid to Great Lakes Transit for use of its vessels by W. and M. after deducting charges for wharfage, insurance, and other services, assumed by W. and M. On May 23, 1937, the board of directors authorized a dividend of $30 per share to be paid to stockholders of record as of June 1937, and the dividend was paid. Some of the dividend checks were photographed and displayed by Browne to prospective purchasers of stock as an inducement to buy stock and sign exclusive shipping contracts. On August 5, 1937, the board of directors had another meeting at which time it was reported that between May 24 and June 30, 1,072 cars had been handled upon which the company realized a profit of $1,432.54. Another dividend of $30 per share was immediately declared and paid.

The testimony of members of the board of directors, and stockholders of A. D. T. revealed a lack of knowledge as to the purposes and functions of A. D. T. and the relation between A. D. T. and W. and M. Some testified that the source of revenue was the difference between a so-called "wholesale rate" and retail rate. Others stated that the sole purpose of the corporation was to create competition in the carriage of automobiles between Detroit and Milwaukee, although it was admitted that the corporation did not cause other than existing steamship facilities to enter the trade. Others asserted that the purpose of the corporation was to maintain a contact with automobile shippers who, during the winter, patronized W. and M. in the service between Milwaukee and Muskegon.

It is admitted that W. and M. secured no revenue from the transportation of automobiles via the all-water route and that A. D. T. received fees on all automobiles shipped over that route on W. and M. bills of lading whether or not they were solicited by Browne. During Browne's illness for about two months, employees of W. and M. did the soliciting of automobiles although A. D. T. collected fees for the tonnage thus originated.

It is clear from the foregoing that A. D. T. was neither a common carrier, a forwarder, nor a bona fide soliciting agent. It was a dummy corporation promoted by officers and agents of W. and M. through which certain shippers who were owners of stock were given rebates in the form of stock dividends as an inducement to ship over W. and M. The practice enabled such shippers to secure transportation at rates less than the rates which would otherwise apply,

unjustly discriminated against shippers who were required to pay the regular tariff rate for the same service, and constituted unfair competition with other carriers engaged in the same trade.

On September 13, 1937, Great Lakes carriers, including a representative of W. and M., reached an understanding or agreement to increase the rate on automobiles from Detroit to Milwaukee from $12 to $15 per automobile. Although the increased rate went into effect on October 1, 1937, no agreement or understanding was filed with the Commission as required by section 15 of the Shipping Act, 1916.

According to affidavits filed by Spence after the hearing, A. D. T. has surrendered its charter, refunded all payments for stock, and all dividend payments have been returned by the stockholders to W. and M. It is urged, therefore, that, without admitting any violation of law, if the action of respondent should be deemed unlawful, the situation has been rectified by leaving all parties as though no corporation had been formed. While this action restores the status quo of all parties involved, it does not correct the injury to competing shippers or to competing steamship lines. The record is convincing that respondents' officers proceeded without due regard to the provisions of the Shipping Act, 1916. The Commission regards any such form or device by which any part of the freight rate paid for transportation is refunded to shippers as a violation of law which cannot be too strongly condemned.

We find that payments to shippers of automobiles by W. and M. through A. D. T. was an unjust device or means to obtain transportation of property by water at less than the rates or charges which would otherwise apply and was unduly preferential in violation of section 16 of the Shipping Act, 1916. We further find that this form of rebate is not a deferred rebate within the purview of section 14 of the act. We further find that failure to file for approval, pursuant to section 15, the agreement between W. and M. and Great Lakes Transit providing for the carriage of automobiles between Detroit and Milwaukee during 1935 and 1936, as well as the understanding or agreement arrived at by the Great Lakes carriers providing for increased rates on automobiles between Detroit and Milwaukee, effective October 1, 1937, resulted in a violation of that section.

Since the A. D. T. is no longer in existence, payments made for stock have been refunded, rebates made in the form of dividends have been repaid, and the practices found to be unlawful have been discontinued, orders for the future are unnecessary. An order discontinuing the proceeding will be entered without prejudice to rights of parties in any subsequent proceeding.

Order

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 7th day of July, A. D. 1938.

No. 457

In re Lawfulness of Payments to Shippers by Wisconsin & Michigan Steamship Company Through Automotive Dealers' Transport Company.

It appearing, That on October 1, 1937, the Commission entered an order in the above-entitled proceeding, instituting a proceeding of investigation into and concerning the lawfulness of respondents' payments, refunds, or remittances, to certain persons of their lawful rates and charges in consideration for the giving of all or a portion of such persons' shipments of automobiles to respondents, and assigning this proceeding for hearing;

It further appearing, That such investigation and hearing having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof;

It is ordered, That this proceeding be, and it is hereby discontinued, without prejudice to any decision or finding which may be made in any subsequent proceeding.

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 465

IN THE MATTER OF DOLLAR-MATSON AGREEMENTS NOS. 1253 AND 1253-1

Submitted July 13, 1938. Decided August 17, 1938

Agreement regulating competition found detrimental to the commerce of the United States.

Herman Phleger and *James S. Moore, Jr.*, for Matson Navigation Company, Matson Navigation Corporation, Ltd., and Oceanic Steamship Company.

Keith R. Ferguson for the Robert Dollar Company, Dollar Steamship Line, American Mail Line, Ltd., and Dollar Steamship Lines, Inc., Ltd.

Ralph H. Hallett and *David E. Scoll* for United States Maritime Commission.

REPORT OF THE COMMISSION

BY THE COMMISSION:

This proceeding was instituted to determine whether approval heretofore given, under Section 15 of the Shipping Act, 1916, to an agreement dated April 23, 1930, between the Dollar interests and the Matson interests, concerning their Hawaiian and trans-Pacific trade, should be continued. A proposed report was issued to which exceptions were filed by Matson and the case was orally argued. Our conclusions differ in some respects from those recommended in that report.

Under the terms of the agreement, Matson has agreed not to engage in service between mainland ports of the United States and ports in Asia, the Philippine Islands, or Guam, except for cruise ships to the Orient and the now discontinued Oceanic and Oriental service. It has also agreed not to act as agent for any steamship company operating to the Orient. Dollar has agreed that, while continuing Honolulu, T. H., as a way port of call on voyages to the Far East,

it would neither solicit Hawaiian traffic nor act as agent for any line in such service, and that it would not engage in service between Continental United States and Australia, New Zealand, Fiji, or Samoa. Dollar has further agreed to act as agent for Matson for all Hawaiian traffic carried in its vessels, except what it handles for Matson at its request, to observe Matson's tariffs, as minima, and to pay Matson 50 percent of its gross receipts on Hawaiian business. The agreement is to remain in effect until April 23, 1940, and thereafter until such time as a majority of arbiters appointed under it shall decide that the necessity therefor has ceased to exist. The parties also have agreed to assist each other in the respective trades in which they operate.

When this agreement was entered into, there were five American flag lines operating between Pacific coast ports of the United States and Hawaii: Matson's service to and from Puget Sound and California ports; the Los Angeles Steamship Company to and from California ports; the Oceanic Steamship Company, owned by Matson, calling at Hawaii en route to and from Australasian ports; the Oceanic and Oriental Navigation Company, in which Matson owned a one-half interest; and Dollar, which stopped at Honolulu in its trans-Pacific and round-the-world services. The vessels of the Canadian Australasian Line and the Canadian Pacific also stopped at Honolulu en route from Vancouver, B. C., to their respective foreign ports of destination.

In 1931, the Los Angeles Steamship Company was merged with Matson, and in 1937 the Oceanic and Oriental service was discontinued, so that, at the present time, excepting occasional tramp service, Dollar is Matson's only American flag competitor from the Pacific coast. The Canadian Australasian and Canadian Pacific lines are still in operation. These lines draw a part of their passenger traffic from points along the border in the United States. However, both of them together carried only 10,148 and 10,144 passengers, respectively, to and from Hawaii during the period from 1930 to 1936, inclusive.

The round-the-world service of Dollar was inaugurated in 1924 with fortnightly sailings westbound beginning and terminating at San Francisco. Dollar's trans-Pacific service between San Francisco and ports in Japan, China, and the Philippine Islands was inaugurated in 1926. Passenger vessels operated by Dollar's principal foreign-flag competitors stop at the Hawaiian Islands. Because the Islands are attractive to passengers, doubtless some of the long-haul business would be lost to Dollar if it did not make this stop. Naturally, it also accepts such traffic to and from Honolulu as is offered and for which space is available.

The Matson service between the Pacific coast and the Hawaiian Islands was inaugurated in 1891 by Captain Matson, first with sailing ships, and later with steamships. Since the establishment of the Matson Navigation Company in 1901, there has been no interruption of service to and from the Islands, and with each advance in facilities for ocean transportation, vessels operated on the route have been improved, or replaced by new vessels especially designed for the trade. Fifteen Island ports are served, with eight sailings from San Francisco and six from Los Angeles, each month, and a triweekly service from Puget Sound. Other sailings are made as required, particularly of lumber carriers, and sufficient suitable tonnage is available at all times to handle estimated peak demands. In addition, Matson has established direct and through transshipment services to Atlantic coast ports of the United States via the Panama Canal.

Matson carries over 98 percent of the freight to and from Hawaii and U. S. Pacific coast ports. Its dominant position in the trade has been fostered by extensive advertising, the establishment of modern hotels and recreational facilities on the Islands, and, in no small degree, by its intercorporate relations with the principal Island commercial interests who control the production and shipment of sugar and pineapples, the principal products of Hawaii. Directors of Matson are either directors or officers of other Hawaiian interests and vice versa.

During the first 11 months of 1937, Matson carried 18,446 persons to and 18,134 persons from the Islands. In the same period, it transported 806,164 tons of cargo westbound, including 200,878 tons of lumber; and 933,843 tons of cargo eastbound, including 545,237 tons of raw sugar, 7,045 tons of refined sugar, 249,165 tons of pineapples, and 82,927 tons of molasses in bulk. Dollar carries some traffic to and from the Islands, but in the seven years from June 1930 to October 1937 it carried only 11,107 passengers to Hawaii and 9,102 passengers on return voyages to the Pacific coast. In the same period, it carried 64,289 tons of cargo to the Islands from the mainland, and 6,347 back. It carried 98 passengers and 5,686 tons of cargo during this 7-year period at the request of Matson. The record does not show the amount of freight carried by the Canadian lines to and from Hawaii and Vancouver, but, according to Matson's own exhibits, the largest number of passengers carried by either of these lines in any one year was 3,220 passengers by the Canadian Australasian Line in 1936 and this appears to have been an unusually large number for this line.

In July 1929 Matson put into operation a direct San Francisco-Manila service which offered serious competition to Dollar's slower

service via Japan and China, for which the latter held an ocean-mail contract. In explanation of this competition, Matson's witness stated that the company was merely endeavoring to serve Hawaiian interests which had acquired an interest in sugar production in the Philippines, although no corroborative evidence was introduced to prove this assertion. Matson made application to have its direct route certified for an ocean-mail contract under title IV of the Merchant Marine Act, 1928. Certification was granted over the protest of Dollar who, to protect itself, inaugurated a parallel direct service. Before the final date for submitting ocean-mail bids, the agreement under consideration was entered into and the direct Manila service withdrawn. Neither of the parties submitted ocean-mail bids, and it is evident that such a service could not have been profitably operated without a subsidy. The events which surround the making of the agreement thus contradict Matson's subsequent explanation, and, under the circumstances, it would appear that Matson's direct Manila service was intended only as a threat to Dollar.

Matson admits that Dollar's payments of 50 percent of its gross revenues was designed to make the Hawaiian business unattractive, and this is further evidenced by the fact that while the freight and passenger rates established by Matson, which Dollar had to comply with under the agreement, have not been appreciably increased since the agreement went into effect, operating costs have gone up considerably. The rates on general cargo remained constant from 1926 to 1937, being changed in the latter year from $5.75 per ton to $6.75 per ton. Passenger fares were decreased from 1932 to 1935 and were then restored to the 1930 level. On the other hand, it was stated that since the maritime strike in 1934, operating costs of combination passenger and freight vessels in this trade have increased approximately 35 percent and stevedoring costs have increased 100 percent. These increases affected alike both Dollar and Matson.

While the agreement provides that Dollar shall not solicit passenger or freight traffic between Pacific coast ports and the Hawaiian Islands, Dollar, being primarily interested in the long-haul traffic to the Orient and beyond, rather than in Hawaiian business, has never solicited such traffic. On the other hand, the Hawaiian trade is Matson's primary interest. The natural diversion of their spheres of operations has tended, therefore, to diminish competition between them. The agreement is a far-reaching attempt to continue this noncompetitive status in perpetuity. Paragraph (7) provides that—

> This agreement shall remain in full force and effect for ten years from the date hereof, and thereafter until such time as a majority of the arbitrators

appointed as hereinabove provided, shall decide that the necessity therefor, or desirability of, this agreement, as measured by the conditions existing at the time it was made, shall have ceased to exist.

Both parties have thus signed away for all time their right to withdraw from the arrangement.

Agreements restricting competition should, of necessity, be of definite duration and for relatively short periods, so that the parties and the Commission may have an opportunity from time to time to observe the impact of changed conditions on their undertakings.

In the present instance, both the situation of the parties and the conditions in the trade have altered considerably since 1930. Section 605 (c) of the Merchant Marine Act, 1936, as amended, by imposing restraints against the duplication of services by subsidized lines, takes away from the the parties their opportunity to compete with one another in their respective foreign services, thus destroying the underlying consideration for the agreement. Matson, furthermore, absorbed the one remaining competitor beside Dollar which operated in the Hawaiian-California trade. It has entered into agreements with other carriers, stabilizing the service to other United States ports. It has extended its control of Hawaiian traffic by increasing the number of its contracts with Island shippers. By effective advertising and extensive development of Hawaiian attractions, it has linked its name with the Island in the minds of the traveling public.

At the time the agreement was made, Dollar received ocean-mail pay under its contract route F. O. M. 25 with the Postmaster General based upon the distance from San Francisco to Manila via Honolulu. The mileage payments for the distance from San Francisco to Honolulu which Dollar received from the Post Office Department constituted a subsidy to Dollar not enjoyed by those Matson ships which ran only in the Hawaiian trade. However, this subsidy was withdrawn when the ocean-mail contracts were terminated by the Merchant Marine Act, 1936, therefore the necessity of payments from Dollar to offset this advantage no longer exists. The present subsidy which Dollar receives specifically eliminates any compensation on the San Francisco-Honolulu portion of its trans-Pacific service, in accordance with the provision of the Merchant Marine Act, 1936.

As pointed out in another part of this report, Matson offers as its reason for inaugurating the direct Manila route that it wanted to serve Hawaiian interests who were then interested in Philippine sugar production. Since that time, the record shows that such Hawaiian interests in the Philippines have dimnished, and in addition, sugar imports from the Philippines have become restricted by

law, so that whatever opportunities of developing trade with the Philippines, which are allegedly given up by Matson in consideration for the agreement, have substantially disappeared.

As pointed out elsewhere, there is evidence from which the Commission may conclude that 50 percent of the gross tariffs which Dollar retains is not now compensatory for the Hawaiian voyage. As stated by the Department of Commerce in *Seas Shipping Co.* v. *American South African Line, Inc., et al.*, 1 U. S. S. B. B. 568, at 583:

> 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.

The evidence is conclusive and Matson admits that it has a monopoly of the United States Pacific coast-Hawaiian trade. In the regulation of Conference Agreements under section 15, the policy of both the United States Shipping Board and of the Department of Commerce was to discourage agreements which established a monopoly in favor of a competitor. *Eden Mining Company* v. *Bluefield Fruit & Steamship Co.*, 1 U. S. S. B. *B.* 41; *Intercoastal Rate on Silica Sand from Baltimore, Maryland*, 1 U. S. S. B. B. 373, 375; *Intercoastal Investigation*, 1935, 1 U. S. S. B. B. 400; *Gulf Intercoastal Contract Rates*, 1 U. S. S. B. B. 524, 529. As stated in *Intercoastal Investigation* 1935, 1 U. S. S. B. B. 400, at 456—

> The prohibition of discrimination means, among other things, that no difference or distinction shall be made in rates that coerce the public to employ one competitor to the exclusion of another, or deprive one competitor of business which under freedom of selection by the public would be given to it, and thus create a monopoly in favor of another competitor.

That section 15 confers authority to regulate competition between carriers in accordance with the needs of the service was stated by the U. S. Supreme Court in the case of *Swayne & Hoyt, Ltd., et al.* v. *United States*, 300 U. S. 297, 305:

> * * * We think there was evidence from which the Secretary could reasonably conclude that there was little need for a contract rate system to assure stability of service. * * * On the other hand, there was substantial evidence from which the Secretary could infer that the contract rate system would tend to give to the Conference carriers a monopoly by excluding competition from new lines.

The agreement under consideration produces an effect in the Hawaiian trade which is closely analogous to that which the Department of Commerce declared was unlawful when it disapproved contract rates in the intercoastal trade: *Gulf Intercoastal Contract Rates*, *supra*. In the latter case, the respondents endeavored to shut out certain competitors through the medium of contract rates. In this case, Matson seeks to discourage its only competitor by exacting 50 percent of that competitor's gross revenue. The distinction, if any, is one of degree only.

We view the exemption granted by section 15 as a means of regulating competition in order to eliminate rate-cutting and other abuses which are harmful to shipper and carrier alike. Nothing in the record indicates that either of the parties ever threatened such abuses. On the contrary, it appears that Matson dominates the trade sufficiently to be able to discourage competition from any source. The argument that Canadian competition threatens the stability of the U. S. Pacific coast-Hawaiian service is a specious one. If the Canadian lines are a real threat to Matson service, the remedy lies in an agreement with them, rather than the one under consideration. Under the circumstances, the maintenance of an adequate and reliable steamship service between Hawaii and the Pacific coast does not depend upon the continuance of this agreement in its present form.

Dollar's witnesses uttered certain general statements and conclusions to the effect that Dollar is satisfied with the agreement. Upon this basis, Matson urges that the Commission should not modify or disapprove it. The mere fact that the parties are satisfied with an agreement vests no right to a continuance of approval. Whenever it appears to the Commission that approval is contrary to the public interest, it will be withdrawn. Respondents err in assuming that there is a presumption in their favor arising from the fact of approval, which can only be rebutted by an overwhelmingly proof of wrong-doing. When the Commission finds sufficient evidence upon which to base a judgment that continued performance of the agreement would be contrary to the provisions of the Shipping Act, it has a duty under the statute to disapprove the agreement notwithstanding a previous approval. It is of no particular consequence that the facts upon which disapproval is based existed at the time the agreement was approved or came into being later. If it were otherwise, it would be impossible for a carrier, shipper or port to prove that an agreement which had been approved by the Commission violated the provisions of the Shipping Act unless changed conditions could be shown.

The Commission finds that the agreement is detrimental to the commerce of the United States and in violation of section 15 of the Shipping Act, 1916, as amended. This finding is without prejudice to the right of the parties to file an agreement consistent with this decision for approval under section 15. An order cancelling Agreement No. 1253 and forbidding the parties from making further payments thereunder will be entered.

MORAN, *Commissioner*, dissenting:

The majority find the agreement in question violative of section 15 of the Shipping Act, 1916. As I read that section, it is violated only when parties carry out an agreement before it is approved or after it is disapproved by the Commission. The agreement here has been approved.

Of the various grounds set out in section 15 upon which we are to base our disapproval of an agreement, the majority select only one, namely, a finding of detriment to our commerce. So we may assume that the agreement is not unjustly discriminatory or unfair as between carriers, shippers, or ports, nor in violation of the act. At least there is no basis of record for a different assumption. Matson wants the agreement continued and Dollar testified it was a beneficial arrangement. No passenger, shipper, or representative of any shipping interests complained of the agreement, doubtless on account of the adequate service at reasonable rates shown of record to have resulted from such agreement.

I find great difficulty in following the reasoning of the majority to the conslusion that the agreement is detrimental to commerce, but it seems to be, (1) that there never was any reason for the agreement in the first instance or now, (2) that it has given Matson a monopoly in its trade, and (3) that it results in the dissipation of Dollar's revenue.

It is said Matson's Manila service was inaugurated merely as a threat, and then the astonishing statement is made that it wouldn't have been profitable any way. This speculation totally ignores the fact of record, which is omitted from the report, that Matson had completed eight voyages and the gross revenue thereon had increased from $17,000 on the first voyage to $54,000 on the last. It should be emphasized in this connection that the major consideration moving from Matson, namely, its withdrawal from the Oriental trade, was rendered immediately, and its position in such trade, given up in reliance upon the agreement, cannot now be restored.

The majority conclude that the agreement establishes a monopoly in favor of Matson and therefore is detrimental to commerce. Matson's monopoly, if any, was there before the agreement was made, and disapproval of the agreement will not remove it. This so-called mo-

nopoly has none of the obnoxious features condemned in the cases cited in the report. There is no coercion of the public to employ Matson's services to the exclusion of those of Dollar. Furthermore, Dollar does not and has never solicited the Hawaiian trade. But there is no monopoly—Matson does not control all the traffic, and cannot so long as the competition of Canadian lines is present. Granting, however, there is—monopolies regulated under the shipping laws is one of the most important principles underlying section 15. Therefore the "monopoly" cannot be detrimental here.

Then, is the alleged dissipation of Dollar's revenue detrimental to commerce? Admittedly, noncompensatory rates are indirectly detrimental to our commerce, for they weaken the instrumentalities employed therein. The report, in stating that Dollar's share of the revenue is noncompensatory, brushes aside the unmentioned fact of record that the amount retained by Dollar from freight and passenger revenue respectively covers the cost of loading and unloading cargo, and the cost of carrying passengers. A pertinent question here is: How much did the consideration which Dollar received for this contribution of 50 percent strengthen it in the Oriental trade? The record shows, but the report does not reveal, that Dollar has received $33,133.57 on traffic carried at Matson's request, and $7,031.65 on account of local passengers to the Orient on Matson's cruise vessels. In addition, Dollar admits that, through Matson's influence, it has secured a passenger business between Manila and Honolulu said to have resulted in substantial amounts; also freight business attributed to cooperative acts on the part of Matson produces in excess of $100,000 annually. If speculation is in order: How much of this business could Matson deprive Dollar of if it chose to enter into transshipping agreements with foreign lines which it refrains from doing pursuant to the agreement? Certainly, the strength of Dollar's position in its trade would not have been enhanced if Matson had elected to remain therein as a competitor. Whether Dollar's position on the whole is better or worse for the agreement is one of those imponderable questions to which the record offers no accurate solution. Dollar's continued acquiescence in the agreement, and the undoubted advantages of the arrangement convince me that there are no grounds, at least upon this record, to condemn it as being detrimental to Dollar.

Far from being detrimental to our commerce, the agreement, in my judgment, has been beneficial. Commerce is best served by frequent, dependable, and adequate service at reasonable rates. The facts of record make it abundantly clear that the effect of the agreement has been the maintenance of an improved service, through the elimination of ruinous competition, in the respective trade areas served by

Dollar and Matson, and there is no complaint as to the reasonableness of their rates. It is to be assumed that when the agreement was approved in 1930 it was not detrimental to commerce. In the entire absence of any showing of substantially changed conditions or circumstances since then, and in the absence of complaint from any source regarding the propriety of the agreement, we are not justified now, in my opinion, in reaching a different conclusion.

I agree with the conclusion of the report in respect to paragraph (7) of the agreement.

I am authorized to state that COMMISSIONER WILEY concurs in this dissent.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 17th day of August A. D. 1938.

No. 465

IN THE MATTER OF DOLLAR-MATSON AGREEMENTS NOS. 1253 AND 1253–1

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 Agreement No. 1253, as amended, be, and it is hereby disapproved, and the parties thereto are hereby forbidden from making further payments thereunder.

By the Commission.

[SEAL] (Signed) RUTH GREENE,
Assistant Secretary.

UNITED STATES MARITIME COMMISSION

No. 485

INTERCOASTAL JOINT RATES VIA ON-CARRIERS

Submitted September 8, 1938. Decided September 9, 1938

Schedules proposing changes in application of through routes and joint rates for intercoastal transportation of freight from Atlantic to Pacific coast ports not justified. Suspended schedules ordered cancelled and proceeding discontinued, without prejudice to the filing of new schedules in conformity with the views expressed herein.

M. G. deQuevedo for Intercoastal Steamship Freight Association carriers, except Isthmian Steamship Company, and for Luckenbach Gulf Steamship Company, Inc.; *E. J. Karr* for Calmar Steamship Corporation; *F. E. Lovejoy* for Puget Sound Freight Lines, Puget Sound Navigation Company, Skagit River Trading & Transportation Company, and Border Line Transportation Company; *Allan P. Matthew* and *F. W. Mielke* for California Transportation Company and Sacramento & San Joaquin River Lines, Inc.; *W. G. Westman* for Crowley Launch & Tugboat Company; *C. L. Meek* for Bay Cities Transportation Company, respondents.

H. S. Brown and *W. M. Carney* for Intercoastal Steamship Freight Association; *William C. McCulloch* for Port of Vancouver, Wash.; *Ralph L. Sheperd* for Portland Traffic Association; *Markell C. Baer* for Board of Port Commissioners, Port of Oakland, Calif.; *W. G. Stone* for Sacramento Chamber of Commerce, interveners.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed by respondents, members of the Intercoastal Steamship Freight Association, other than Isthmian Steamship Company, to the report proposed by the examiner. The findings recommended by the examiner are adopted herein.

By schedules filed to become effective May 11, 1938, respondents [1] proposed to change by qualification their existing schedules governing the application of through routes and joint rates provided therein for the intercoastal transportation of freight from Atlantic to Pacific coast ports. By its order of May 10, 1938, the Commission suspended the operation of the proposed schedules until September 11, 1938.

Respondent canal lines transship Atlantic coast cargo destined to Pacific coast ports other than their principal Pacific coast terminal ports at such latter ports under through route and joint rate arrangements with river and other on-carriers. In some instances, cargo destined to an intercoastal terminal port is transshipped under like arrangement with an on-carrier. Both of the suspended schedules involving these transshipments [2] consist of a rule providing that—

> Joint through rates named in this tariff are applicable only when the route of the participating on-carrier is available. If such route is not available, charges will be collected on basis of the rate of the initial carrier to the port of transshipment, and cargo will be held at such port for disposition by consignor, consignee, or the owner of the goods, as the case may be. All charges accruing after discharge of the goods at the port of transshipment shall be for account of cargo.

Respondent canal lines concede that the wording of the rule is open to improvement for purposes of clarification. By the word "route" as used therein is meant service. They express willingness to amendment of the rule to definitely provide that on-carrier service will not be deemed unavailable without notice to that effect. They explain that in the event the rule is operative the charges which would be assessed and the rules and regulations determining the assessment of such charges would be those applicable under the tariff at the transshipment port as for cargo billed and destined thereto. These charges, rules and regulations might be different from those applicable at the original destination port. They assert that the proposed rule would not become operative in any instance until at least

[1] American-Hawaiian S. S. Co., (Arrow Line) Sudden & Christenson, Babbidge & Holt, Inc., Bay Cities Transportation Co., Berkeley Transportation Co., Border Line Transportation Co., California Eastern Line, Inc., California Transportation Co., Calmar S. S. Corporation, Christenson-Hammond Line, Coastwise Line, Consolidated-Olympic Line, Crowley Launch & Tugboat Co., Dollar S. S. Lines, Inc., Ltd., Erikson Navigation Co., Panama Mail S. S. Co., Isthmian S. S. Co., A. B. Johnson Lumber Co., Luckenbach Gulf S. S. Co., Inc., Luckenbach S. S. Co., Inc., McCormick S. S. Co., Marine Service Corporation, Northland Transportation Co., Pacific Coast Direct Line, Inc., Panama Pacific Line, Puget Sound Navigation Co., Puget Sound Freight Lines, Pacific-Atlantic S. S. Co., Richmond Navigation & Improvement Co., Roamer Tug & Lighterage Co., Sacramento & San Joaquin River Lines, Inc., Schafer Bros. S. S. Lines, Shaver Forwarding Co., Skagit River Navigation & Trading Co., States S. S. Co., Sudden & Christenson.

[2] Designated Joseph A. Wells', Alternate Agent, Third and Fourth Amended Pages No. 75 to SB–I No. 6, and Calmar Steamship Corporation Second Amended Page No. 112 to SB–I No. 5.

the expiration of the free-time period applicable at the transshipment port. This free-time period might be different from that applicable at the original destination port. Their position is that in the interest of shippers they intend the rule for application without free-time restriction, so that more than the free-time period applicable at the transshipment port could be extended by them in any given case which might seem to warrant extension.

These respondents explain that the purpose of the suspended schedules is to obviate loss of revenue by them and difficulties which they expect to encounter due to strikes and strike conditions, to on-carrier vessel accident or breakdown, abandonment of service by an on-carrier, or other similar on-carrier circumstance. Their position is that the schedules prescribe a rule for automatic rather than optional application, to be used by them in emergency situations only. They direct attention to provisions of somewhat similar import in the form of liability clauses contained in their bills of lading and in the bills of lading of other carriers, and to their inherent right of embargo. They show interruptions to various of the transshipment services involved, due to stevedore and other strikes, as having occurred from May 8 to July 28, 1934, December 1 to December 14, 1934, December 5, 1934 to January 2, 1935, on May 1, 1935, from July 2 to October 4, 1935, November 7 to December 10, 1935, December 3, 1935 to April 20, 1936, October 25, 1936 to February 8, 1937, and from October 29, 1936 to February 24, 1937. During these periods, and during additional interruptions due to strike conditions, Atlantic coast cargo was forwarded from the transshipment port to destination at the expense of the canal carrier by truck or rail at rates higher than the on-carrier division of the through joint rate. In some instances consignees took delivery of their cargo at the transshipment port. Through-route transportation of Atlantic coast cargo to San Diego by transshipment at Los Angeles Harbor was discontinued in 1936, due to labor difficulties of on-carriers. This discontinuance was effected by schedule cancellations pursuant to the Commission's tariff regulations.

At the hearing no opposition to the suspended schedules was presented. Chamber of Commerce representatives appearing as witnesses described them as unobjectionable, reasonable, and fair, considering emergency transshipment problems likely to be met. Further testimony of such representatives and on behalf of on-carriers was that no shipper objections thereto had come to their knowledge, and that through route and joint rate transportation in the qualified manner provided for by the schedules would be more desirable than if no through routes and joint rates existed. On brief the Port of Oakland, Calif., states the position that on-carriage of intercoastal

cargo to shallow-water ports, such as Sacramento, Calif., at the rate applicable to San Francisco is unlawful under the Intercoastal Shipping Act, and, as the suspended schedules are in effect amendatory of existing schedules providing such rates, they and the schedules they propose to modify should be ordered cancelled. This intervener states, however, that it offers no objection to the suspended schedules *per se*, and that as such they are meritorious. The lawfulness of on-carriage to shallow-water ports is not in issue in this proceeding.

The suspended schedules manifestly do not publish with desirable certainty the rates which under all circumstances would be applicable, in that in the event of interruption to on-carrier service the consignor's or consignee's transportation cost to the port of original destination would be more than the through joint rate provided for by the tariff. It is equally manifest, however, that the existing through routes and joint rates are to be accepted as beneficial to the shipping public, and that by the suspended schedules respondents are endeavoring to perserve the utmost of such service consistent with economy of management. Public hearing for the purpose, among other things, of recording reaction to the schedules by the shipping public which pays the transportation cost was duly conducted at Seattle, Wash., Portland, Ore., San Francisco and Los Angeles, Calif., and at New York, N. Y. Although the hearing at such places was widely publicized, as indicated above no objection to the schedules was voiced by anyone of the description referred to. Upon the instant record the continued maintenance of the through routes and joint rates concerned, subject to such interruptions as may be due to on-carrier strikes, vessel accident or breakdown, and other similar strictly emergency on-carrier situations, is in the public interest.

It does not follow, however, that the suspended schedules have been justified. They do not specify that the charges to be assessed and the rules and regulations determining such charges are those applicable at the port of transshipment. They contain no reference to free time, notwithstanding respondents' intention that periods comparable in character to free time are to elapse between arrival of the cargo at the transshipment port and assessment of storage or other terminal charges. In both of these respects the schedules fail to comply with the requirement of section 2 of the Intercoastal Shipping Act, 1933, that schedules shall specify all terminal or other charges, privileges allowed, and any rules or regulations which change, affect, or determine the charges or the value of the service rendered. Further, under respondents' interpretation of the schedules in connection with free time, the allowance of different periods

as between different consignees would effect inequality of treatment as between shippers and permit undue preference and prejudice in violation of section 16 of the Shipping Act, 1916. Additionally, under respondents' interpretation the schedules would be operative in the event of abandonment of on-carrier service for any reason, although such schedules are proposed to meet emergency situations. Testimony on behalf of canal respondents contains general assertions of "disappearance" of on-carriers "over-night," and assumptions that during the voyage of a canal carrier to the Pacific coast on-carriers "will decide to go out of business." Upon the record the reality as an emergency situation of discontinuance by an on-carrier of its business enterprise is not shown; nor is it apparent why such discontinuance, generally infrequent and foreknowledged, cannot be made by cancellation of the particular through route and joint rates in the normal manner prescribed by our tariff regulations. The schedules should provide for notice to consignee, or the person to whom notice of arrival would be issued in the event the goods were delivered at the billed destination, of interrupted on-carrier service due to on-carrier strike, vessel accident or breakdown, or other similar on-carrier emergency situation, and that the goods will be held for disposition by him at the transshipment port.

A revision of the rule concerned which would remove the objections instanced above and carry out, as far as may be, the purpose of respondents, is as follows:

Through joint rates named in this tariff are applicable except when service of the participating on-carrier has, due to strike, vessel accident or breakdown, or other similar emergency situation, been interrupted. In the event of such interruption the consignee, or the person to whom notice of arrival would be issued in the event the goods were delivered at the billed destination, will be mailed arrival notice in which specific reference will be made to the existence of the on-carrier emergency situation and to this rule, and upon expiration of the free-time period applicable to cargo billed to the transshipment port as final destination the goods will be held at the transshipment port for disposition by the consignee, consignor, or owner thereof, as the case may be. Rates, charges, rules and regulations applicable to such goods will be those applicable under this tariff to cargo billed to the transshipment port as final destination.

We find that the suspended schedules have not been justified. 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 9th day of September A. D. 1938

No. 485

INTERCOASTAL JOINT RATES VIA ON-CARRIERS

It appearing, That by order of May 10, 1938, 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 11, 1938;

It further appearing, That a full investigation of the matters and things involved has been had, 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 said schedules, on or before September 11, 1938, 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, as amended, and that this proceeding be discontinued.

By the Commission.

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

UNITED STATES MARITIME COMMISSION

No. 338

AMES HARRIS NEVILLE COMPANY ET AL.

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY ET AL.[1]

Submitted April 20, 1938. Decided August 5, 1938

Any-quantity rate on cotton piece goods and cotton factory products from Atlantic and Gulf ports to Pacific ports not shown to be unduly prejudicial or unreasonable. Complaint dismissed.

F. A. Jones, *V. O. Conaway*, and *Benjamin S. Cooper* for complainants and interveners except American Cotton Manufacturers Association and Cannon Mills Company.

Joseph J. Geary and *M. G. de Quevedo* for defendants except Isthmian Steamship Company and Nelson Steamship Company.

James A. Russell for Nelson Steamship Company.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Complainants' exceptions to the examiner's proposed report on further hearing were not seasonably filed and were rejected. Our conclusions are those recommended by the examiner in that report.

Complainants and interveners are dealers, manufacturers, jobbers, wholesalers, and distributors of cotton piece goods and cotton factory products.

The complaint alleges that defendants' any-quantity rate on cotton piece goods and cotton factory products, hereinafter referred to as cotton piece goods, from Atlantic and Gulf ports to Pacific ports is

[1]American Line Steamship Corporation, The Atlantic Transport Company of West Virginia, Calmar Steamship Corporation, Dollar Steamship Lines, Inc., Ltd., Gulf Pacific Mail Line, Ltd., Isthmian Steamship Company, Luckenbach Gulf Steamship Company, Inc., Luckenbach Steamship Company, Inc., McCormick Steamship Company, Nelson Steamship Company (not operating), Pacific-Atlantic Steamship Co. (Quaker Line), Panama Mail Steamship Company (Grace Line), States Steamship Co. (California-Eastern Line), Sudden & Christenson (Arrow Line), Swayne & Hoyt, Ltd. (Gulf Pacific Line), Weyerhaeuser Steamship Co. (Pacific Coast Direct Line, Inc.), Williams Steamship Corp. (now dissolved).

unduly prejudicial and unreasonable in violation of sections 16 and 18 of the Shipping Act, 1916, as amended. Rates will be stated in amounts per 100 pounds.

In lieu of the assailed any-quantity rate of 90 cents,[2] complainants originally sought a carload rate of 65 cents, minimum weight 24,000 pounds, and a less-than-carload rate of $1.15. In their brief on further hearing, they suggest a carload rate of 75 cents, preferably 70 cents, minimum weight 24,000 pounds, with a spread of not less than 25 cents below the contemporaneous less-than-carload rate. They do not contend that the assailed any-quantity rate when applied to less-than-carload shipments is unduly prejudicial or unreasonable.

In his proposed report on the original hearing, the examiner concluded that no undue prejudice had been shown to exist, to which no exception was taken by complainants. He also recommended that the any-quantity rate of 90 cents be found unreasonable, and that for the future, rates of 75 cents, carload minimum 24,000 pounds, and $1.15 for less-than-carload quantities be prescribed as reasonable maxima. American Cotton Manufacturers Association, representing a membership of more than 700 textile mills, and Cannon Mills Company, an operator of 20 plants, intervened and filed exceptions. Also, thirteen of the seventeen defendants excepted and petitioned for a further hearing which was granted.

From January 1, 1935, through October 2 of that year defendants' rates on cotton piece goods were on a carload and less-than-carload basis.[3] Complainants compare the increases on cotton piece goods on October 3, 1935, with the increases on other commodities which prior to that date were accorded the same less-than-carload rate of 87.5 cents. The average increase in the less-than-carload rates was 20 cents, and the carload rates 2.5 cents. The 90-cent any-quantity rate on cotton piece goods represents an increase of 16.13 percent over the former carload rate, and 2.85 percent over the former less-than-carload rate, whereas increases on 569 other rate items averaged 6.03 percent over the carload, and 15.04 percent over the less-than-carload rates. On all commodities accorded carload rates from 60 to 68 cents, minimum weight 24,000 pounds, the average increase in carload rates effective October 3, 1935, was 1.6 percent, and in less-than-carload rates, 22.2 percent, as compared with the 16.13 percent and 2.85 percent increases, respectively, on cotton piece goods.

The 50-cent spread between the carload rate of 65 cents, and less-than-carload rate of $1.15 originally sought by complainants, would provide a carload rate 56.5 percent of the less-than-carload rate.

[2] Increased to 95 cents, effective June 15, 1937.
[3] Carload 75 cents, minimum weight 10,000 pounds; less-than-carload 87.5 cents.

Complainants compare these rates and the difference of 50 cents with the average spread of 70.5 cents and the percentage relation of 47.6 percent between carload and less-than-carload rates on all items accorded carload rates ranging from 60 to 69 cents with the same minimum weight. A summary of all items with 24,000 pounds minimum shows an average spread of 68 cents between carload and less-than-carload rates and an average percentage, carload of less-than-carload rates, of 55.7 percent. Other evidence shows an average spread of 80 cents or a ratio of 53.8 percent between all carload and less-than-carload rates. The any-quantity rate of 90 cents is, with one exception, lower than each less-than-carload rate exhibited by complainant.

The measure of defendants' rate on cotton piece goods is dependent to a considerable extent upon those maintained by transcontinental rail lines having rail-and-water routes, as their competition is directly with those lines. All-rail rates from principal producing centers in New England and the South are $1.925, minimum weight 24,000 pounds, and $3.515 less-than-carload. The most important competitive rates are those of $1.63, same minimum, and $3.515 less-than-carload for water-rail service jointly maintained by the Morgan Line and the Southern Pacific Railroad Company and by the Clyde-Mallory Line in conjunction with the Atchison, Topeka & Santa Fe Railroad. The Morgan Line's service is approximately 10 and 11 days from New New York, and slightly less from South Atlantic ports, to Los Angeles and San Francisco as against 21 and 22 days via the intercoastal lines. Defendants also are in competition with several consolidators who maintain on cotton piece goods rates of $1.90 to Los Angeles and $2.00 to San Francisco from North and South Atlantic ports, including store-door delivery, marine insurance, and all terminal costs. The greater portion of the cotton piece goods which defendants carry originates at distances ranging from 150 to 300 miles from the ports, and must bear, in addition to their rates, the cost of transportation to the port, insurance, wharfage, and other charges. At defendants' calculation, the cost of shipping cotton piece goods from South Atlantic ports via intercoastal lines to store door in Los Angeles approximates $1.47.

Defendants' analysis of complainants' exhibit comparing the assailed rate with rates on various commodities shows the latter rates are depressed because of competitive conditions. When cost of transportation to and from the ports, insurance, wharfage, and other charges are added to the intercoastal rates, it is apparent the latter are intended to meet carrier competition or to enable shippers located near the ports to move their traffic in competition with producers closer to the consuming points.

The usual basis of rate publication in steamship operation is an amount per cubic foot or per 100 pounds, whichever produces the higher revenue to the carrier. Other than in the coastwise and intercoastal trades, no instance is disclosed where rates are published by steamship companies on the carload and less-than-carload basis. Defendants stress that in water transportation a shipper of a carload quantity of cotton piece goods does not load nor does the consignee discharge the cargo, as in railroad transportation where loading by the shipper and unloading by the consignee justify in part a difference between carload and less-than-carload rates. According to defendants, their stevedoring cost is on a per-ton basis and it makes no difference whether a shipment consists of 10 tons or 1 ton, so far as the carrier's stevedoring cost per ton is concerned.

Most of the cotton piece goods moving over defendants' lines is in small quantities. For example, during the first 9 months of 1935 the Atlantic defendants, except two lines, carried 50,274 shipments aggregating 28,377,877 pounds and averaging 564 pounds each; and 807 carload shipments, weighing 19,902,129 pounds, averaging 24,661 pounds each. In the same period in 1936 there were 67,203 shipments aggregating 44,227,396 pounds and averaging 658 pounds, as compared with 227 shipments, totalling 8,952,622 pounds, of more than 24,000 pounds each. The fact of this movement of cotton piece goods in small quantities is highly important in relation to complainants' exhaustive comparisons with commodities to which carload and less-than-carload rates apply. It is well established that on certain classes of traffic, where the prevailing shipping quantity is small, any-quantity rates rest upon sound public policy in that they counteract a tendency toward monopoly by enabling the small shipper to compete on equal terms with powerful competitors. Under such circumstances the Shipping Act does not require maintenance by carriers of rates predicated upon a quantity condition which most shippers are not prepared to meet, and the fact that carload quantities are offered for shipment does not furnish ground for attributing unlawfulness to the any-quantity rate applied thereto.

In addition to the undue prejudice which complainants allege results from defendants applying the same rate on large as on small consignments of cotton piece goods, complainants contend that such rate is unduly prejudicial when compared with defendants' carload rate of 65 cents, minimum weight 24,000 pounds, on paper towels and toweling. Their evidence on this point is addressed to showing that the use of cotton toweling in office buildings, railroad stations, and other public places is being steadily displaced by paper toweling.

The record is persuasive that the rate on paper toweling is influenced by rail competition; furthermore, that factors other than the cost of transportation, such as the relative cheapness of paper toweling, and restrictions on the use of the "common" towel may reasonably account for the substitution of cotton toweling by paper toweling.

Upon this record we find that the any-quantity rate assailed has not been shown to be unduly prejudicial in violation of section 16 of the Shipping Act, 1916, as amended, or unreasonable in violation of section 18 of that act. The complaint will be dismissed.

458342 O - 42 - 62

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 5th day of August, A. D. 1938

No. 338

AMES HARRIS NEVILLE COMPANY ET AL.

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY 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 complaint in this proceeding be, and it is hereby, dismissed.

By the Commission.

[SEAL] (Sgd.) RUTH GREENE,
Asst. Secretary.

UNITED STATES MARITIME COMMISSION

No. 476

WEST-BOUND INTERCOASTAL RATES—ATLANTIC PORTS TO VANCOUVER, WASHINGTON

Submitted August 27, 1938. Decided August 29, 1938.

Proposed cancellation of intercoastal through routes and joint rates to Vancouver, Wash. justified. Suspension orders vacated and proceeding discontinued.

M. G. deQuevedo for Intercoastal Steamship Freight Association carriers, except Isthmian Steamship Company, respondents.

Wm. C. McCulloch, T. A. MacComber, F. G. Pender, for Port of Vancouver, Wash., protestant.

Philip H. Carroll for Pacific Coast Association of Port Authorities; *Ernest Gribble* for Pacific Coast Association of Port Authorities and Northwest Rivers & Harbors Congress; *R. D. Lytle*, for North Pacific Millers' Association, and *Ralph L. Shepherd* for Portland Traffic Association, interveners.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions to the examiner's proposed report were filed by protestant Port of Vancouver, Wash. The findings recommended by the examiner are adopted herein. Protestant's request for oral argument before the Commission is denied.

By schedules filed to become effective April 30, 1938, and later, respondents [1] proposed to cancel their through routes and joint rates

[1] American Hawaiian S. S. Co. (Arrow Line) Sudden & Christenson, Babbidge & Holt, Inc., Bay Cities Transportation Co., Border Line Transportation Co., California Eastern Line, Inc., California Transportation Co., Calmar S. S. Corp., Christenson-Hammond Line Coastwise Line, Consolidated-Olympic Line, Crowley Launch & Tugboat Co., Dollar S. S. Lines, Inc., Ltd., Erikson Navigation Co., Freighters, Inc., Panama Mail S. S. Co., Isthmian S. S. Co., A. B. Johnson Lumber Co., Luckenbach Gulf S. S. Co., Inc., Luckenbach S. S. Co., Inc., McCormick S. S. Co., Marine Service Corp., Northland Transportation Co., Pacific Coast Direct Line, Inc., Panama-Pacific Line, Puget Sound Navigation Co., Puget Sound Freight Lines, Pacific-Atlantic S. S. Co., Richmond Navigation & Improvement Co., Roamer Tug & Lighterage Co., Sacramento & San Joaquin River Lines, Inc., Shafer Bros. S. S. Lines, Shaver Forwarding Co., Skagit River Navigation & Trading Co., States S. S. Co., Sudden & Christenson.

for transportation of freight from Atlantic coast ports to Vancouver, Wash. Upon protest by the Port of Vancouver, the operation of the schedules was suspended until August 30, 1938.

Under existing schedules on file, service to Vancouver is provided for by respondent canal carriers direct, or by respondent canal lines and respondent on-carriers by transshipment at Portland, Oreg., or other Pacific coast ports, at rates which are the same in amount as those applicable to Portland and other Pacific coast terminal ports. If the cancelations become effective, Vancouver cargo from Atlantic coast will be discharged by respondent canal lines at Portland and there held for further transportation to Vancouver at the expense of consignee, consignor, or owner of the cargo, as the case may be.

From January 1, 1936 through May 1938, 11 respondent canal lines carried a total of 1,212 tons of cargo from Atlantic coast destined Vancouver. Of this tonnage respondent American-Hawaiian carried 739 tons, of which approximately 206 tons transported on three different voyages were consigned to a paper bag company which has since removed from Vancouver. In the fiscal year ended June 30, 1937, a total of 13 tons of miscellaneous cargo was discharged by direct call of respondent canal lines at Vancouver. During the 6 months ended December 31, 1937, 377.4 tons of Atlantic coast cargo were transshipped on the Pacific coast to that port, or an average for the 10 transporting canal lines of 37.7 tons. The largest amount of this cargo on any one voyage was 91.2 tons transshipped at Portland on August 4, 1937, which was consigned to the paper bag company above referred to, and the smallest amount was 27 pounds. The volume of west-bound cargo to Vancouver from Atlantic coast does not warrant the shifting of canal vessels from Portland to that port, and practically all of such cargo is accordingly transshipped. Indication is that in the past some west-bound Vancouver cargo was transshipped by canal respondents at Pacific coast ports other than Portland. As of the present time, however, there is no evidence of any movement of transshipped Vancouver cargo except through Portland.

On direct calls on east-bound voyages during 1934, 1935, and 1936, the tonnages of cargo lifted by canal lines at Vancouver for Atlantic coast were 6,002, 28,359, and 19,463, respectively. For the fiscal year ended June 30, 1937, 27,997 tons were loaded by canal respondents at that port for Atlantic coast destinations. Some of these direct calls were at lumber wharves, a mile or more distant from the Vancouver general cargo terminals. Upon arrival of canal respondents' vessels at Portland west-bound cargo is discharged, whence their vessels proceed to Puget Sound ports where they are

completely discharged and east-bound loading is begun. They then return to Columbia River where east-bound loading is continued. This order of procedure and variations thereof, distinguishing between west-bound discharge and east-bound loading, are testified by all witnesses for respondent canal lines to be required by their schedules and by operating conditions, and to make it impracticable for them to discharge west-bound cargo at Vancouver at the time east-bound cargo is there loaded.

Transshipping arrangements between respondent canal lines and the respondent barge carriers operating out of Portland at through joint rates were first entered into in the latter part of 1934, at the request of the barge carriers, with the expectation of increased tonnage to Vancouver. During the last several years, however, the amount of such tonnage has declined and operating costs have steadily increased to the point where, according to one canal respondent, the transshipping cost has in many cases equaled the revenue received for the carriage from the Atlantic coast. The testimony of each of the witnesses of the canal respondents is to the effect that developments have proved the transshipping arrangements to have been ill-advised and unprofitable.

Numerous instances are shown where Vancouver consignees have elected to take delivery at Portland and transport their cargo by truck at their own expense to their places of business. Some have given standing orders that their shipments be delivered to them by the canal lines at Portland. The expense to consignee of this truck store-door delivery is slightly more than the expense of trucking the cargo from the Vancouver terminals, and the delay to their shipments incident to transshipment is obviated. This truck haul from Portland to Vancouver is approximately 8 miles as compared with the barge distance of from 14 to 16 miles. No Vancouver consignees appeared at the hearing.

The two barge on-carriers operating out of Portland [2] pick up and transport Vancouver cargo upon call of the canal respondents. A minimum of 20 tons of cargo is said to be necessary to make profitable the operation of a barge trip from Portland to Vancouver. Due to the small amount of west-bound Vancouver cargo, the barge operators rarely transport such cargo by barge. Practically all of it is forwarded by them in hired trucks at the barge lines' expense. The barge on-carriers' stevedore and boatmen expenses have doubled during the past 4 years, and wages paid by them to navigators and engine-room personnel have increased from 30 to 40 percent in the last 3 years. Both on-carriers are faced also

[2] Shaver Forwarding Co. and The Columbia Tugboat Co. (Roamer Tug & Lighthouse Co.).

with other increased operating costs since the transshipping arrangements with the canal lines were entered into, and demonstrate that in view of the Vancouver tonnage decline, the west-bound transshipment service is conducted by them at a loss.

Protestant port of Vancouver shows that it is a deep-water port with modern and ample marine terminal facilities. On intercoastal west-bound cargo moving over its wharves it collects a minimum wharfage charge of 50 cents per ton and other charges for transfer and storage. Protestant does not dispute that the west-bound intercoastal tonnage is insufficient to justify calls by the respondent canal lines at its terminals, nor any of the facts presented by respondents respecting the small volume of west-bound cargo as a whole, respondents' increased operating costs, and their lack of profit. Its position is that as respondents voluntarily established the existing through routes and joint rates to Vancouver they should not, because of unsatisfactory volume of cargo and lack of profit thereon, be permitted to discontinue the service. Its objection to the suspended schedules is in no particular predicated upon the fact that they propose discontinuance in one direction only. Discontinuance to Vancouver and continuance to other ports, protestant urges, would subject it to undue prejudice and unreasonableness in violation of sections 16 and 18 of the Shipping Act 1916, as amended. Cargo or other conditions at the other ports alluded to are not shown. Protestant's testimony is that Vancouver, although in another State, is really a suburb of Portland, and that in connection with west-bound intercoastal traffic it is not in any substantial competition with Portland; nor is any competition by Vancouver with any other port claimed. No facts bearing upon unreasonableness in the event the suspended schedules become effective are presented by protestant.

Protestant requests us to order permanent cancelation of the suspended schedules, without prejudice to filing by respondents of new schedules effecting horizontal increases in present rates to Vancouver, Portland, Seattle, San Francisco and other Pacific coast ports, together with appropriate pooling as between the canal respondents of existing traffic and services west-bound to Vancouver. No facts are furnished by it, however, as a basis for increased rates to the other ports referred to, or as respects the various origins of west-bound Vancouver cargo at Atlantic ports separately served by the respondent canal lines.

Upon brief the canal respondents question our jurisdiction under any circumstances to order cancelation of the suspended schedules involved in this proceeding. Their argument in this relation refers to the absence of any provision in the Shipping Act, 1916, as

amended, similar to paragraph 18 of section 1 of the Interstate Commerce Act.[3] Notwithstanding such absence, pertinent provisions of the Shipping Act to which respondents are amenable are absolute. For example, section 16 of that act forbids respondents, without qualification, to subject any locality or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. Whenever in a given case the facts show undue and unreasonable prejudice and disadvantage, it is our duty, under the act, to order its removal.

In the instant proceeding no facts are disclosed which tend to prove that the proposed discontinuance of rates or services will result in undue or unreasonable prejudice and disadvantage. The record amply supports respondents' position that cancelation of the through routes and joint rates to Vancouver concerned are justified.

We find that respondents' schedules have been justified. An order will be entered vacating the orders of suspension and discontinuing this proceeding.

[3] Making unlawful the abandonment of existing rail transportation service unless and until authorized by the Interstate Commerce Commission.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 29th day of August A. D. 1938

No. 476

WEST-BOUND INTERCOASTAL RATES—ATLANTIC PORTS TO VANCOUVER, WASHINGTON

It appearing, That by its orders of February 25, 1938, March 8, 1938, and April 26, 1938, the Commission entered upon a hearing concerning the lawfulness of regulations and practices enumerated and described in said orders, and suspended the operation of said schedules until August 30, 1938;

It further appearing, That a full investigation of the matters and things involved has been had and that the 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 been justified;

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 as of this date, 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. 495

IN THE MATTER OF AGREEMENT NO. 6510

Submitted August 22, 1938. Decided November 3, 1938

Agreement as submitted not true and complete as required by section 15. Approval withheld unless and until supplemented in accordance with views herein expressed.

M. G. deQuevedo for applicants, members of Intercoastal Steamship Freight Association and Luckenbach Gulf Steamship Co., Inc.; *J. P. O'Kelley* for applicants Swayne & Hoyt, Ltd. (Gulf Pacific Line) and Gulf Pacific Mail Line, Ltd.; *Harry C. Ames*, for Mississippi Valley Barge Line Co. and *W. G. Oliphant*, for Inland Waterways Corporation, interveners.

REPORT OF THE COMMISSION

BY THE COMMISSION:

This proceeding was instituted by the Commission on its own motion to determine whether Agreement No. 6510, dated June 17, 1938, between the members of the Intercoastal Steamship Freight Association, on the one hand, and members of the Gulf Intercoastal Conference, on the other, should be approved under section 15 of the Shipping Act, 1916. With minor exceptions, this agreement is identical with Agreement No. 5630 between the same parties, approved January 9, 1937, which expired July 9, 1938. A term of 1 year is provided, with privilege of renewal, such renewal to be approved under section 15.

Mississippi Valley Barge Line Co., and Inland Waterways Corporation intervened at the hearing.

The agreement establishes procedure for keeping each group of carriers informed of the changes which the other proposes to make in its rates, rules, and regulations. Objections may be filed by one group to changes proposed by the other, to be considered at joint

meetings of representatives of each group. The representatives of each group then report to their conference, and the group proposing the changes then takes such action as their judgment dictates, with like freedom in the opposing group to determine whether they will make similar changes. It is further provided that either group may request a meeting to consider matters of dispute involving the general policies of the two groups. The purpose of this arrangement is to maintain, wherever practicable, simultaneous publication of the same port-to-port rate by each group on all intercoastal traffic including such terminal practices, rules, and regulations at ports served by each group as will insure harmony of rates.

Under paragraph 7 an imaginary line is drawn beginning at Michigan City, Ind., and ending at Cincinnati, Ohio. Territory east of the line is deemed to be naturally tributary to ports served by the Atlantic port group, and territory west of the line is deemed to be naturally tributary to Gulf ports. Points on the line and, as to steel sheets only, Middletown, Ironton, and Portsmouth, Ohio, and Ashland, Ky., adjacent to the line, are designated as common to both groups. It is agreed that traffic originating south and southeast of Cincinnati shall flow through its natural port as determined by the applicable inland "rail-rate" structure. Applicants state this line depicts, generally, the line which, at the time the first agreement was entered into, represented a natural division of territory as between Atlantic and Gulf port groups because of the then existing inland rate structure; that from experience during the existence of Agreement No. 5630 the natural flow of traffic was not materially affected; and that under the subject agreement no reason exists to believe there will be a different effect in the future than in the past.

At a hearing held at New Orleans in May 1937 upon complaint of Inland Waterways Corporation regarding Agreement No. 5630, in which the Mississippi Valley Barge Line Co. intervened, stipulations as to the interpretation to be placed upon the agreement were entered into stating, in part, that—

(1) 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, 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.

The complaint was thereupon withdrawn, and the proceeding dismissed. *Inland Waterways Corporation* v. *Intercoastal Steamship*

Freight Association et al., 1 U. S. M. C. 653. Applicants state the subject agreement is to be interpreted in the same manner as the prior agreement.

Interveners are fearful the agreement as drawn will adversely affect their stated right to traffic to and from points naturally tributary to routes established by them; and that through the equalization of inland rates by the shrinkage of port-to-port rates by Atlantic port carriers it will operate to prevent their participation in traffic on through routes at joint rates established in connection with Gulf applicants. They also object to the concluding sentence of paragraph 7 relating to traffic south and southeast of Cincinnati, concerning which applicants agree the flow to the ports shall be governed by the applicable "rail-rate" structure, contending that consideration should be given to barge and rail-barge rates when maintained on the recognized standard differential basis under all-rail rates. Their objections, in effect, are that the agreement is not specific enough, and does not sufficiently restrict competition between the two groups of carriers. Applicants' witnesses take the position they were not authorized to change the language of the agreement in any respect. They state interveners should view the agreement in the light of what has transpired in the past and that in the absence of any showing that it has operated unfairly to them no reason exists which will warrant disapproval. There is nothing to prevent shippers from selecting the carrier they wish to patronize or the route by which their shipments shall move, irrespective of their location. Interveners present their objections solely through counsel with no factual evidence to show that the prior agreement has been or that the subject agreement, if approved, will be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters of the United States and their foreign competitors, or that it will operate to the detriment of the commerce of the United States, or otherwise be in violation of the act.

Paragraph 8 provides that—

> No rates, rules, or regulations shall be made by either party to this agreement to draw traffic originating from or destined to territory herein deemed to be tributary to the ports served by the other party.

By the above stipulation numbered (2) there is freedom in Gulf carriers to establish joint rates with inland carriers to meet transcontinental rail competition. It is conceivable that such competition may exist both to and from points east of the imaginary line and south of Cincinnati. The stipulation, therefore, operates as an exception to paragraph 8 and is in conflict therewith. The record also indicates, notwithstanding the first stipulation hereinbefore set forth, a reluctance on the part of applicants in respect to points south and

southeast of Cincinnati to accord equal recognition to rail, rail-barge, and barge rates, if such rates reflect established differentials, when considering port-to-port rate adjustments. A somewhat similar situation exists in respect to points in territory allotted to each group. The stipulation however is specifically stated to reflect the manner in which the agreement will be interpreted. The stipulation is thus in conflict with the agreement.

Under the circumstances here outlined, there appears little, if any, benefit to either group in the establishment of the imaginary line. An agreement for parity of rates with proper restrictions against reductions designed to equalize inland rates to and from competitive ports may have a stabilizing influence in that such agreements tend to prevent unwise and disastrous rate-cutting practices. But all such agreements should be complete, especially as to matters of substance, and the language used should be so clear as to eliminate all necessity for any interpretation as to the intent thereof.

We find that the agreement dated June 17, 1938, to which has been assigned Agreement No. 6510, does not reflect the true and complete agreement of the parties as required by section 15. It therefore will not be approved but the record will be held open for 60 days to permit the parties to file a new agreement which will record the complete agreement and intention of the parties.

UNITED STATES MARITIME COMMISSION

No. 469

LEATHER SUPPLY CO., INC., AND MAX SCHECHTER, DOING BUSINESS AS SUPREME STOOL COMPANY

v.

LUCKENBACH STEAMSHIP COMPANY, INC.

Submitted October 8, 1938. Decided November 10, 1938

Rate on artificial or imitation leather properly applied on pyroxylin coated cotton cloth finished to simulate leather. Complaint dismissed.

Arthur H. Glanz and *Clarence E. Avey* for complainants.

M. G. de Quevedo for defendant.

REPORT OF THE COMMISSION

BY THE COMMISSION:

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

By complaint filed December 30, 1937, it is alleged that between December 9, 1935, and September 21, 1936, on shipments of coated cotton fabrics from Philadelphia, Pa., to Los Angeles Harbor and San Francisco, Calif., defendant assessed the rate of $1.90 per 100 pounds applicable on artificial or imitation leather instead of the rate of 90 cents per 100 pounds applicable on pyroxylin coated cotton cloth, in violation of section 18 of the Shipping Act, 1916, and of section 2 of the Intercoastal Shipping Act, 1933. There is neither allegation nor proof that the rate of $1.90 was unreasonable or prejudicial. Reparation is asked. Rates will be stated in amounts per 100 pounds.

During the period referred to in the complaint, pyroxylin coated cotton cloth was one of a number of commodities classified as "Dry Goods" in Item 800 of defendant's tariff, the rate thereon being 90 cents. Contemporaneously, artificial or imitation leather, not rubberized or rubber coated fabric, was one of several commodities com-

prising Item 846 of the tariff, the rate thereon being $1.90. Effective December 20, 1936, pyroxylin coated cotton cloth was eliminated from Item 800 and transferred to Item 846 at the $1.90 rate.

The commodity which is the subject of this proceeding is cotton cloth coated with a chemical compound called pyroxylin. Metal plates are impressed onto the coating before it has hardened to produce the effect of leather grain. Known in the trade as leather fabric, it is obtainable in various colors, weights, and qualities, and competes with leather. Complainants' attorney admitted that the fabric looks like imitation leather, and samples introduced in evidence by him unmistakably have the appearance of leather. The bills of lading covering the shipments, prepared by defendant from information furnished by the shipper, describe the commodity as artificial leather. Samples of pyroxylin coated cotton cloth, used in the manufacture of luggage, were introduced in evidence by defendant to demonstrate the general type of material embraced within the tariff classification of that commodity. These samples differ materially from, and could not be confused with, artificial or imitation leather. Complainants' attorney recognizes "that shower curtains, tablecloths, window curtains, and a number of other commodities in everyday use are generally pyroxylin coated for waterproofing and various other purposes to increase their durability."

Generically, the material involved is pyroxylin coated cotton cloth, but the fact that it is further processed to give the effect of leather removes it from the general classification and subjects it to the rate applicable on artificial or imitation leather.

On this record complainants have failed to show that the commodity shipped was improperly classified. The complaint will be dismissed.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 10th day of November A. D. 1938

No. 469

LEATHER SUPPLY CO., INC., AND MAX SCHECHTER, DOING BUSINESS AS SUPREME STOOL COMPANY

v.

LUCKENBACH STEAMSHIP COMPANY, INC.

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 findings of fact, 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.) RUTH GREENE,
Assistant Secretary.

458342 O - 42 - 63

UNITED STATES MARITIME COMMISSION

No. 436

DANT & RUSSELL, INC.

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY ET AL.[1]

Submitted April 25, 1938. Decided November 10, 1938

Defendants' rates on pressed wood insulating board from Portland, Oreg., to Atlantic and Gulf ports of the United States found not unreasonable or unduly prejudicial. Complaint dismissed.

William P. Ellis for complainant.

M. G. de Quevedo and *W. M. Carney* for defendants other than Isthmian Steamship Company, Swayne & Hoyt, Ltd., and Gulf Pacific Mail Line, Ltd.

Joseph J. Geary for defendants Swayne & Hoyt, Ltd., and Gulf Pacific Mail Line, Ltd.

Thomas L. Philips for The Celotex Corporation, intervener.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed by defendants other than Isthmian Steamship Company and by intervener to the report proposed by the examiner; complainant replied, and the case was orally argued. Our conclusions differ from those recommended by the examiner.

By complaint filed April 19, 1937, complainant, a corporation selling wallboard, under the trade name "Fir-Tex," alleges that de-

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

fendants' owner's risk carload rates on pressed wood insulating board, hereinafter called wallboard, from Portland, Oreg., to Atlantic and Gulf ports of the United States of 60 cents and 62 cents per 100 pounds respectively, minimum 24,000 pounds, were and are unduly prejudicial and unreasonable in violation of sections 16 and 18, respectively, of the Shipping Act, 1916. A rate of 40 cents for the future and reparation are sought. The Celotex Corporation intervened after the hearing.

Complainant's wallboard is manufactured from wood pulp, the wood being sawmill refuse and second growth forest wood. It is marketed throughout the United States at $33 per thousand square feet of ½-inch board in competition with eastern wallboards, particularly wallboard from New Orleans, selling at the same prices. The eastern States are the heaviest consumers of wallboard. From 1934 to 1936, inclusive, shipments of wallboard from New Orleans to Atlantic ports ranged from 13,374 tons to 23,701 tons per year while, during the same period, complainant's shipments to the same ports were from 69 tons to 854 tons per year.

Complainant's evidence of unreasonableness is based on comparisons of the westbound intercoastal rates on wallboard and the eastbound intercoastal rate on wood pulp board from Portland to Atlantic ports. At the time of hearing defendants' westbound owner's risk carload rate on wallboard was 45 cents, minimum 40,000 pounds, and their carrier's risk rate was 50 cents, minimum 40,000 pounds. Complainant urges that there are no material differences in transportation of wallboard westbound compared with eastbound traffic, and, therefore, that the eastbound rate should be no higher than that westbound, stressing the point that the volume moving eastbound is greater than that westbound. There are no figures of record showing the westbound tonnage but it was shown that wallboard moves from New Orleans to the Pacific coast. Complainant also showed that defendants' tariffs provide for application of westbound rates on commodities moving eastbound where no eastbound rates are provided. It assails the publishing of rates on wallboard under the trade name "Fir-Tex", in the absence of which the westbound rate on wallboard would apply to the eastbound movement. It offered examples of various commodities regularly moving eastbound and westbound at the same rates. Transcontinental rail rates on wallboard moving east or west are the same except that to certain territories the eastbound rail rates are lower.

Defendants assert that the westbound rate was established for the movement of wallboard manufactured at Lockport, N. Y., which is not competitive with complainant's product, and also claim that the

westbound rate is depressed. It was testified by their witness that this rate is contained in the Pacific-Atlantic lines' roofing item, and that the rates in that item were originally made, and still are, on a competitive basis with the all-rail rate on roofing from Cincinnati, Ohio, which is 90 cents. They asserted that wallboard at one time was included in the all-rail roofing item and is there now for mixed-carload purposes, the straight-carload rate being 91 cents. They stated further that the low rate from New Orleans was established to meet an all-water rate from Cincinnati.

Comparison is made by defendants of the revenue yielded by the assailed rates with the revenue from the principal commodities moving from Portland to Atlantic and Gulf ports. These commodities are canned goods, hides and skins, wheat, flour, dried fruits, wool, lumber, and paper. The rates on these commodities, the minimum weights not appearing of record, range from 32.5 cents, free of in-and-out expense, for wheat, to $1.10 for wool. Stowage factors range from 41 cubic feet per net ton for wheat to 166 cubic feet per net ton for wool, and the revenue per cubic foot therefrom ranges from 11.6 cents per cubic foot on lumber to 26.6 cents per cubic foot on dried fruits. Wallboard stows from 119 to 122 cubic feet per ton and yields about 10 cents per cubic foot. The volume of movement of the commodities named by defendants for the fiscal year ended June 30, 1936, as shown in the record, ranged from 514 gross tons of canned fish to 210,898 gross tons of lumber and logs.

Recognizing the relatively low revenue yielded by the rates, particularly as compared with a revenue of 11.6 cents per cubic foot on lumber, and after giving due consideration to the comparability of the westbound 45-cent rate on wallboard, particularly the lack of an appreciable volume of movement thereunder and the influence of rail competition affecting its establishment, and upon the record as a whole, we are unable to find that the assailed rates are unreasonable.

The allegation of undue prejudice is not supported by any evidence that the lower westbound rates have injured complainant's business.

We find that the rates assailed have not been shown to be unreasonable or unduly prejudicial. An appropriate 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 10th day of November A. D. 1938

No. 436

DANT & RUSSELL, INC.

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY, ET AL.

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 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.) RUTH GREENE,
Assistant Secretary.

UNITED STATES MARITIME COMMISSION

No. 447

TRI-STATE WHEAT TRANSPORTATION COUNCIL AND FARM RATE COUNCIL

v.

ALAMEDA TRANSPORTATION CO., INC., ET AL.[1]

Submitted April 25, 1938. Decided November 10, 1938

Rate applicable to intercoastal transportation of bulk wheat found unreasonable but not unduly prejudicial or preferential. Reasonable maximum rate prescribed. Rules and regulations in connection with such transportation not shown to be unlawful.

Arthur M. Geary for complainants.
Ralph L. Shepherd and *William C. McCulloch* for interveners.
M. G. de Quevedo and *Joseph J. Geary* for defendants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions to the examiner's proposed report were filed by interveners and defendants and complainants replied. One intervener

[1] Alameda Transportation Co., Inc.; American-Hawaiian Steamship Company; America Transportation Co.; (Arrow Line) Sudden & Christenson; Babbidge & Holt, Inc.; Bay Cities Transportation Company; Border Line Transportation Company; California Steamship Company; The California Transportation Company; Chamberlin Steamship Co., Ltd.; Christenson-Hammond Line (Hammond Shipping Company, Ltd., Managing Agents); Crowley Launch & Tugboat Co.; Dollar Steamship Lines, Inc., Ltd.; Erikson Navigation Company; Freighters, Inc.; (Grace Line) Panama Mail Steamship Company; Haviside Company (eliminated from tariff); Isthmian Steamship Company; A. B. Johnson Lumber Co.; 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 S. S. Corp., The Atlantic Transport Co. of West Virginia; Puget Sound Freight Lines; Puget Sound Navigation Company; (Quaker Line) Pacific-Atlantic Steamship Co.; Richmond Navigation & Imp. Co.; Roamer Tug & Lighterage Company; Sacramento & San Joaquin River Lines, Inc.; Schafer Brothers Steamship Lines; Shaver Forwarding Company; San Diego-San Francisco Steamship Co.; Skagit River Navigation & Trading Company; States Steamship Company (California-Eastern Line); Sudden & Christenson; Weyerhaeuser S. S. Co., Inc.; Shepard Steamship Company; Calmar Steamship Corporation; Bulk Carriers Corporation (service discontinued); Gulf Pacific Mail Line, Ltd.; Los Angeles Steamship Company; Swayne & Hoyt, Ltd., Managing Owners (Gulf Pacific Line); The River Lines (Operated by the California Transportation Company and the Sacramento & San Joaquin River Lines, Inc.).

and defendants orally argued the case. Our conclusions differ in some respects from those recommended by the examiner.

Complainants, associations of wheat growers and shippers in Washington, Oregon, Idaho, and Montana, allege by complaint filed July 12, 1937, as amended, that defendants' rates, charges, rules and regulations on grain moving from Pacific ports to Atlantic and Gulf ports are unreasonable, in violation of section 18, unduly prejudicial to grain growers and shippers, and unduly preferential to flour and flour shippers, in violation of sections 16 and 17 of the Shipping Act, 1916, as amended. Lawful rates, charges, rules and regulations are sought. Section 17 concerns foreign commerce, and is without application in this proceeding.

North Pacific Millers' Association and Portland Traffic Association intervened in the interest of having the same rates prevail on wheat as on flour.

Wheat moves intercoastally in a large steady volume in individual shipments of as much as 2,500 tons. The total movement in the fiscal year 1936 amounted to approximately 100,000 tons from the Pacific Northwest to Atlantic and Gulf ports, 10 to 15 percent of which was sacked wheat sold as feed. Wheat is shipped both in bulk and in bags.

The time required for loading bulk wheat at Portland, Oreg., ranges from 200 to 600 tons per hour per hatch, in contrast with 22 tons an hour for general cargo including flour. The rate of discharge of bulk wheat at Atlantic ports ranges from 300 tons per day per hatch to 15,000 bushels an hour.

Generally, the assailed rates are $6.50 per net ton on bulk wheat, minimum 500 tons, and 41 cents per 100 pounds, on bagged wheat, minimum 50,000 pounds, effective in June 1937. After the complaint was filed Shepard increased its rates, which were then $5 on bulk wheat and 30 cents on bagged wheat, to $6.50 and 40 cents, respectively, effective July 17, 1937. Loading, trimming, and discharging expenses are for account of cargo, and the owner stands the risk of damage, shrinkage, deterioration, sweat, or decay. The shipper furnishes cloth if separation of bulk wheat is desired. The rate on bulk wheat is "free in and out," the shipper paying the cost of loading and unloading.

Complainants contend that because they are obliged to bear the expense of loading and unloading bulk wheat, the rate should be reduced sufficiently to reflect such expense. They urge that since the carrier bears such expense, estimated to be $1.80 per ton, in connection with flour, on which the rate is $6.60 per ton, the rate on bulk wheat should be $6.60 less $1.80, or $4.80. The reasonableness of the flour rate is demonstrated, according to complainant, by the fact

that it is not competitively depressed and is properly adjusted to the industry, having been applied on about 296,000 tons of flour shipped in the fiscal year 1936. Complaint points out that the increases on bulk wheat in June and July 1937 amounted to 18 percent, whereas those on flour amounted to only 10 percent.

Defendants urge that no reduction is justified by the fact that handling expenses are borne by the shipper inasmuch as they are more than offset by the extra costs of the special service accorded bulk wheat. The transportation is from private mills to private elevators, characterized by defendants as a service from and to shipper's and receiver's "own back yards." Extraordinary expenses incurred in the carriage of bulk wheat include cost of lining the hold of the vessel, shifting vessels between their regular berths and private elevators, which necessitates extra pilotage charges, overtime in handling general cargo to permit shifting, the shifting of other cargo to load wheat with due regard to the stability and safety of the vessel, loss of time at ports, cleaning the hold, and fumigation of vessels because of weevils. Losses are occasionally incurred by shippers' last-minute cancellation of options for space. The following tabulation illustrates the range of these items of expense, in so far as they appear of record, and their application to a minimum quantity of 500 tons of bulk wheat:

Lining hold (21–30 cents ton)	$105	$150
Pilotage ($10–$60)	10	60
Travel time grain gang	2	2
Running lines	10	10
Cleaning hold (16 cents ton)	80	80
Fumigating (16 cents ton)	--	80
Shifting and pilotage at destination ($10–$250)	10	250
	217	632

These costs, on a per ton basis, range from 43 cents to $1.26. Defendants, upon exceptions, refer to numerous other items of expense not shown of record, a few of which may be allocable to carriers' cost of transporting wheat, but most of which are also incurred in the carriage of general cargo. They submit that in view of the diversified operations of defendants it is difficult if not impossible to allocate, with any degree of certainty, the exact cost of performing the service accorded bulk wheat.

The following table is a comparison of the assailed rates with rates on principal commodities moving in volume in the eastbound intercoastal trade prepared from evidence submitted by the defendants from which they argue that the earnings on bulk wheat are too low when compared with the revenues yielded by the other commodities:

Commodity	Value [1]	Rate	Stevedoring (loading) [2]	Stowage factor	Gross revenue
	Per ton of 2,000 pounds	*Per ton of 2,000 pounds*		*Cubic feet per ton*	*Per cubic foot*
Wheat, bulk	$36.00	$6.50	([3])	42	$0.155
Wheat, sacked		8.20		50	.164
Lumber	23.50	9.32	$1.00	80	.1165
Wood pulp	34-57.00	6.50	1.25	50	.1300
Flour	57.84	[4] 6.60	1.00	50	.132
Wrapping paper	182.50	11.30	2.00	70	.161
Wool	556.00	[5] 23.60	2.00	145	.163
Printing paper	96.60	11.30	1.30	65	.174
Canned goods	153.52	11.40	1.25	55	.207
Dried beans		11.40	1.40	55	.207
Dried fruit		13.60	1.40	50	.272
Green hides	204.62	11.00	1.25	40	.275

[1] The value of wheat is the average of exhibited prices received by farmers at local markets in Washington, Oregon, Idaho, and Montana for the first 7 months of 1937. Values of other commodities are from complainants' exhibit of freight revenue and value of commodities transported on class 1 steam railways in the United States, calendar year 1933.
[2] Stevedoring rates for discharging not shown of record.
[3] Shippers' expense.
[4] Increased to $7.00 per net ton effective Aug. 31, 1938.
[5] Testified to be unduly depressed by rail competition.

In connection with defendants' contention that they offer a "special" service in the carriage of bulk wheat it should be noted that the private mills and elevators served are named in their tariffs, and thus are their regular berths for loading and discharging wheat. The shifting of defendants' vessels to pick up or unload general cargo is not an uncommon practice. (See Alternate Agent Wells' Eastbound Tariff SB–I, No. 7, page 158 ff.) Particularly, this is true as to lumber which is loaded at many berths in small quantities and discharged in like manner. *Eastbound Transportation of Lumber, etc.*, 1 U. S. M. C. 646.

Wheat is substantially less valuable than flour. While it is impossible to determine from the record the cost of the respective services accorded the two commodities, it appears reasonably certain that it costs less to transport bulk wheat than it does flour. Considering all the facts of record including the comparisons of other rates on principal commodities with somewhat similar transportation characteristics, moving in the eastbound trade, as illustrated in the above table, we conclude that a rate of $6 per net ton would be a maximum reasonable rate on bulk wheat in minimum quantities of 500 tons. In view of the recent increase in the rate on flour, and the fact that the reasonableness of the $6.60 rate on flour is not in issue, it should be understood that we are not here prescribing a differential of $.60 per net ton between bulk wheat and flour.

The basis of complainants' allegation that the existing relationship between the rates on flour and bulk wheat is prejudicial to the latter commodity is not clear. The extent of competition, if any, between the commodities is not demonstrated, and there is no proof that the rate situation has in any manner operated to complainants'

disadvantage in marketing wheat. Intervening flour interests contend that rates on wheat and flour should be on an exact parity because a lower rate on wheat would enable southeastern mills to secure northwestern wheat and market the flour at a price advantage over flour from the northwest. But, as stated in *Gulf Westbound Intercoastal Soya Bean Oil Meal Rates*, 1 U. S. S. B. B. 554, 560, we have no authority to adjust rates primarily to protect an industry from domestic competition.

There is relatively little evidence bearing upon the lawfulness of the rate on sacked wheat. Sacked wheat is not competitive with bulk wheat, and the volume of its movement is slight compared with that of flour and bulk wheat. We are not prepared on this record to condemn as unlawful the rate on sacked wheat.

Complainants on brief advocate no change in the present rules and regulations applicable on wheat, except for a suggested minor correction of Item 514 of Agent Williams' Eastbound Tariff SB–I, No. 3, which permits the vessel to unload on overtime at ship's discretion and shipper's expense. There is testimony that this creates uncertainties as to shipper's costs, and discrimination against bulk wheat, since "other commodities on the ship probably may and could be discharged on straight time." But there is no evidence that the rule operates to unduly prefer or prejudice any person, locality, or description of traffic.

We find that the assailed rules and regulations applicable to transportation of wheat and the assailed rate on sacked wheat have not been shown to be unlawful; that the rate assailed on bulk wheat is not unduly and unreasonably prejudicial and preferential in violation of section 16 of the Shipping Act, 1916, as amended, but is and will be unjust and unreasonable in violation of section 18 to the extent it exceeds or may exceed $6 per net ton, minimum 500 net tons. 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 10th day of November, A. D. 1938

No. 447

TRI-STATE WHEAT TRANSPORTATION COUNCIL AND FARM RATE COUNCIL

v.

ALAMEDA TRANSPORTATION CO., INC.; AMERICAN-HAWAIIAN STEAMSHIP COMPANY; AMERICA TRANSPORTATION CO.; (ARROW LINE) SUDDEN & CHRISTENSON; BABBIDGE & HOLT, INC.; BAY CITIES TRANSPORTATION COMPANY; BORDER LINE TRANSPORTATION COMPANY; CALIFORNIA STEAMSHIP COMPANY; THE CALIFORNIA TRANSPORTATION COMPANY; CHAMBERLIN STEAMSHIP CO., LTD.; CHRISTENSON-HAMMOND LINE (HAMMOND SHIPPING COMPANY, LTD., MANAGING AGENTS); CROWLEY LAUNCH & TUGBOAT CO.; DOLLAR STEAMSHIP LINES, INC., LTD.; ERIKSON NAVIGATION COMPANY; FREIGHTERS, INC.; (GRACE LINE) PANAMA MAIL STEAMSHIP COMPANY; ISTHMIAN STEAMSHIP COMPANY; A. B. JOHNSON LUMBER CO.; 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 S. S. CORP.; THE ATLANTIC TRANSPORT CO. OF WEST VIRGINIA; PUGET SOUND FREIGHT LINES; PUGET SOUND NAVIGATION COMPANY; (QUAKER LINE) PACIFIC-ATLANTIC STEAMSHIP CO.; RICHMOND NAVIGATION & IMP. CO.; ROAMER TUG & LIGHTERAGE COMPANY; SACRAMENTO & SAN JOAQUIN RIVER LINES, INC.; SCHAFER BROTHERS STEAMSHIP LINES; SHAVER FORWARDING COMPANY; SAN DIEGO-SAN FRANCISCO STEAMSHIP CO.; SKAGIT RIVER NAVIGATION & TRADING COMPANY; STATES STEAMSHIP COMPANY (CALIFORNIA-EASTERN LINE); SUDDEN & CHRISTENSON; WEYERHAEUSER S. S. CO. INC.; SHEPARD STEAMSHIP COMPANY; CALMAR STEAMSHIP CORPORATION; GULF PACIFIC MAIL LINE, LTD.; LOS ANGELES STEAMSHIP COMPANY; SWAYNE & HOYT, LTD., MANAGING OWNERS, (GULF PACIFIC LINE); THE RIVER LINES (OPERATED BY THE CALIFORNIA TRANSPORTATION COMPANY AND THE SACRAMENTO & SAN JOAQUIN RIVER LINES, INC.)

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 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 herein be, and they are hereby, notified and required to cease and desist, on or before December 31, 1938, and thereafter to abstain from publishing, demanding, or collecting for the transportation of wheat in bulk, minimum 500 net tons, from ports on the Pacific Coast of the United States to ports on the Gulf and Atlantic coasts of the United States, a rate in excess of $6.00 per net ton.

By the Commission.

[SEAL] (Sgd.) RUTH GREENE,
Assistant Secretary.

UNITED STATES MARITIME COMMISSION

No. 448

THE CELOTEX CORPORATION

v.

MOOREMACK GULF LINES, INC., AND PAN-ATLANTIC STEAMSHIP CORPORATION

Submitted July 20, 1938. Decided November 17, 1938

Rates on wallboard from New Orleans, La., to Atlantic ports found unreasonable but not otherwise unlawful. Rates for the future prescribed.

Rates on scrap paper from Atlantic ports to New Orleans found not unreasonable or otherwise unlawful.

Thomas L. Philips and *William V. Webb* for complainant.

S. D. Piper and *J. H. Rauhman* for interveners on behalf of complainant.

Robert E. Quirk for defendants.

Arthur E. D'Herete and *Harry McCall* for interveners on behalf of defendants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed by complainant and defendants to the report proposed by the examiner. Defendants replied and the case was orally argued. Our conclusions differ somewhat from those of the examiner.

Complainant manufactures wallboard at Merrero, La., within the switching district of New Orleans, La. It alleges that defendants' port-to-port rate between New Orleans and Atlantic ports of 37 cents per 100 pounds, minimum 36,000 pounds, on wallboard, northbound, and 27 cents per 100 pounds, minimum 24,000 pounds, on scrap paper, southbound, effective July 10, 1937, are unreasonable, and unduly prejudicial in violation of the Shipping Act, 1916, as amended; that such rates were published pursuant to an agreement not filed with the

Commission in violation of section 15 of the act; and that defendant Pan-Atlantic's split-delivery charge of 2.5 cents per 100 pounds, effective September 1, 1937, unreasonably increases the base rates under attack. Certain-teed Products Corporation and New Orleans Joint Traffic Bureau intervened in support of complainant. Seatrain Lines, Inc., and Southern Pacific Company (Southern Pacific Steamship Line-Morgan Line) intervened in support of defendants. No evidence was offered in support of the alleged violation of section 15. Rates will be stated per carload in amounts per 100 pounds.

Complainant's wallboard is manufactured from processed bagasse, or spent sugar cane, and scrap paper. The delivered price of wallboard at destination is $33 per 1,000 square feet. It stows from 98 to 112 cubic feet per ton, loss and damage claims are negligible, and the movement is regular, having increased from 7,195 tons in 1932 to 16,843 in the first eight months of 1937.

In *Commodity Rates Between Atlantic and Gulf Ports*, 1 U. S. M. C. 642, we approved certain rate increases on commodities transported between United States ports on the Gulf of Mexico and United States ports on the Atlantic Coast north of and including Norfolk, Virginia. The approved increases became effective July 10, 1937. The increases on wallboard northbound, and on scrap paper southbound were 31 and 8 percent, respectively. The average increase on all affected commodities was approximately 22.5 percent. Since the increases in that case involved both port-to-port rates and joint rail-and-water rates filed with the Interstate Commerce Commission, both Commissions heard the cases jointly on the same record. Approval by the Maritime Commission was based on carriers' evidence of rising costs of operation and the need for additional revenue, and was without prejudice to the rights of shippers to adduce further evidence of unreasonableness. This case was brought pursuant to that ruling.

As evidence of the unreasonableness of the 37-cent rate on wallboard, complainant showed that the ratio of the freight rate to the value of the commodity has increased from 4.8 percent, in 1927, to 8.42 percent at the present time, an increase of more than 60 percent. It also urges a comparison with defendants' 23-cent rate on pulpboard. However, as stated in *Fir-Tex Insulating Board Co.* v. *Luckenbach S. S. Co.*, 1 U. S. S. B. 258, insulating board, which is competitive with complainant's product, and pulpboard are not comparable.

The record shows that while defendants charged complainants 37 cents for shipments from New Orleans to Atlantic ports their rate was only 32 cents, minimum 50,000 pounds, on traffic originating at Laurel, Miss., 146 miles north of New Orleans, for shipments from New Orleans to the same destinations. Similarly, defendants charged a rate of 27

cents, minimum 50,000 pounds, on shipments originating at Laurel and destined to inland points beyond Atlantic ports, while the corresponding rate from New Orleans to the same destinations was 30 cents, minimum 36,000 pounds. The rail rate from Laurel to New Orleans is 13 cents.

After the hearing in this case, the rates on wallboard and scrap paper were further increased, effective April 4, 1938. The scrap paper rate was increased to 30 cents, minimum 24,000 pounds. The rate on wallboard for direct port-to-port movement was increased to 41 cents, minimum 36,000 pounds, and the rate to inland points beyond Atlantic ports was increased to 33 cents. Likewise, the port-to-port rate on wallboard originating at Laurel was increased to 35 cents, and the rate to inland points beyond Atlantic ports to 30 cents.

Defendants seek to draw favorable comparisons between the wallboard rate and their northbound rates on other commodities; such as a rate of 23 cents on pulpboard, which has a stowage factor of 98; 33 cents on cotton, stowage factor 132; 40 cents on green salted hides, stowage factor 48; and 41 cents on canned goods, stowage factor 54. Defendants absorb 3 cents of the charge for trucking wallboard from plant to dock, and a ¾ of a cent tollage charge. They point out also that wallboard requires twice as much time to unload as general cargo.

Scrap paper sold for prices ranging from $6.50 to $14.50 a ton during the period from January to September 1937. It is shipped in bales weighing about 1,000 pounds each and moves to complainant's plant in defendants' vessels in substantial volume, ranging from 6,398 tons in 1932 to 29,708 tons in the first 8 months of 1937.

Complainant's evidence intended to establish the unreasonableness of the 27-cent rate on scrap paper is limited substantially to a comparison with the northbound rate of 23 cents on pulpboard, wrapping paper, and paper bags. The stowage factors of the commodities thus compared are 98, 75, and 103, respectively, while for scrap paper it is 112. In answer, defendants compare the scrap paper rate with a number of other southbound rates ranging from 32½ cents on iron and steel to 41 cents on canned goods and roofing material.

The remainder of defendants' evidence as to the reasonableness of the scrap paper rate, except as to the need for more revenue, relates to absorptions, the service rendered the cargo, and its desirability. Defendants absorb a tollage charge at New Orleans of ¾ of a cent, a drayage charge of 4½ cents, and stacking and other charges amounting to $1\frac{1}{10}$ cents at New York. There are also other expenses, such as approximately 7 cents a ton for recoopering, cleaning ship after removal of paper, which averages 5 to 7 cents a ton on the total amount

carried, and the cost of weighing the bales. Defendants assist in unloading trucks at the wharf, provide board dunnage, and to avoid breakage and facilitate unloading, leave rope slings around the last bales loaded. Broken bales average from 1 to 1.5 percent of total shipments.

As in *Commodity Rates Between Atlantic and Gulf Ports, supra*, defendants rely principally on their need for additional revenue to justify the rates under consideration. From the time Pan-Atlantic started operation in September 1933, to December 31, 1934, it incurred a net loss of $92,228.82. In 1935 it earned a profit of $11,125.01; in 1936, a profit of $66,016.04; and in the first 6 months of 1937 showed a net loss of $3,677.87. It is urged that since 1933, crew's wages have increased approximately 20 percent, subsistence 16 percent, wages for wharf clerks about 48 percent, fuel oil 10 percent, repairs 10 percent, and charter hire 67 percent. Material costs have increased 35 percent since 1934, rope alone having increased 55 percent since 1933. The new social security tax is pointed out as another item which increases costs. Pan-Atlantic's vessels were built in 1918–20 and soon will be in need of major repairs. Mooremack showed a profit of $14,584.01 in 1933; a net loss of $18,576.99 in 1934; a net loss of $29,494.14 in 1935; a profit of $2,350.05 in 1936; and a net loss of $50,530.19 for the first 6 months of 1937. Its vessels were built in 1919 and 1920.

While the increases authorized in *Commodity Rates Between Atlantic and Gulf Ports, supra*, were granted in recognition of the carriers' revenue needs, such increased costs of operation must be fairly distributed over all cargo transported. The record shows that the disproportionate increase in wallboard rates is not justified. A rate of 35 cents, which defendants now charge for the same transportation of wallboard originating at Laurel, would more nearly harmonize with the increases of rates made on other commodities. The rate on scrap paper, on the other hand, is not shown to be unreasonable.

Complainant seeks to establish that the rates under consideration are unduly prejudicial by comparing the rate on wallboard with the 23-cent rate on pulpboard; and by pointing out that scrap paper bears the same rate as baled rags valued at $28 per ton. There is no proof that competition exists between the compared commodities, or that the allegedly preferential rates have had any injurious effect upon complainant's business.

The assailed split-delivery charge applies only upon request of shipper or consignee for split-delivery service. Complainant does not require the service and offered no evidence as to the lawfulness of the charge.

Upon this record we find that the port-to-port rate on wallboard from New Orleans to Atlantic ports is, and for the future will be,

unreasonable to the extent that it exceeds, or may exceed, 35 cents, but that it is not otherwise unlawful. We further find that the rate on scrap paper has not been shown to be unlawful.

As stated, the 37-cent rate on wallboard was increased after the hearing to 41 cents, or approximately 10 percent. Counsel for defendants stated at the argument they were unwilling that the issue as to the lawfulness of the increased rate be considered upon this record. Therefore, our findings are based strictly upon the record as made, and no opinion is expressed as to the propriety of the 10 percent increase.

An order will be issued herein prescribing a rate of 35 cents on wallboard for the future, without prejudice to defendants' right to file a petition to vacate the maintenance feature of the order should they desire to adjust the 35-cent rate in line with the increases made effective April 4, 1938.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 17th day of November, A. D. 1938

No. 448

THE CELOTEX CORPORATION

v.

MOOREMACK GULF LINES, INC., AND PAN-ATLANTIC STEAMSHIP CORPORATION

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 Commission, on the date hereof, having made and entered of record a report stating its findings of fact, conclusions, and decision thereon, which said 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 December 23, 1938, and thereafter to abstain from, publishing, demanding, or collecting for the transportation of wallboard from and to the points designated in the next succeeding paragraph hereof, rates which exceed those prescribed in said paragraph;

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby notified and required to establish, on or before December 23, 1938, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in the Intercoastal Shipping Act, 1933, as amended, and thereafter to maintain and apply to the port-to-port transportation of wallboard from New Orleans, La., to Atlantic ports, rates which shall not exceed 35 cents per 100 pounds.

By the Commission.

[SEAL] (Sgd.) RUTH GREENE,
Assistant Secretary.

UNITED STATES MARITIME COMMISSION

No. 474

RELIANCE MOTOR CAR COMPANY ET AL.

v.

GREAT LAKES TRANSIT CORPORATION

Submitted September 19, 1938. Decided November 22, 1938

Section 22 of the Shipping Act, 1916, as amended, requires that complaints which seek reparation be filed and sworn to within 2 years after the cause of action accrues. Such complaints not meeting this requirement barred. Complaint dismissed for lack of jurisdiction.

Edward F. Howrey for complainants.
Frank W. Sullivan for defendant.

REPORT OF THE COMMISSION

BY THE COMMISSION:

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

The complaint, as amended, filed February 16, 1938, alleges that the rate assessed and collected by defendant on shipments of automobiles from Detroit, Mich., to Duluth, Minn., is unjust and unreasonable in violation of section 18 of the Shipping Act, 1916, as amended. An award of reparation with interest is requested.

The shipments were delivered on various dates during 1923. Informal unverified complaints [1] covering them were filed in 1925 and were handled under the Rules of Practice in effect at that time. Neither the informal complaints nor the present formal complaint indicates the dates on which the charges in question were paid. Some of the informals were subsequently verified within 6 months after

[1] 458 to 470, inclusive; 473 to 476, inclusive; 478 to 484, inclusive; 487 to 494, inclusive; 503 to 507, inclusive; 515 to 518, inclusive.

informal adjustment was denied, but more than 2 years after cause of action accrued.

Defendant's answer to the complaint and its motion to dismiss, filed simultaneously, raise a question of jurisdiction which parties have submitted for determination on brief without an oral hearing.

The question presented is whether under section 22 of the Shipping Act, 1916, as amended, it is essential that complaints be sworn to within 2 years from the time cause of action accrues to vest jurisdiction in this Commission. Section 22 provides in part:

> That any person may file with the Board a sworn complaint setting forth any violation of this Act by a common carrier by water, or other person subject to this Act, and asking reparation for the injury, if any, caused thereby. * * * The Board, if the complaint is filed within two years after the cause of action accrued, may direct the payment, on or before a day named, of full reparation to the complainant for the injury caused by such violation.

On this question the complainants cite *U. S.* v. *Memphis Cotton Oil Co.*, 288 U. S. 62, and *Griffin* v. *United States*, 13 Ct. Cl. 257. The Memphis case involved a claim to recover overpayment of taxes. The statute named the period within which such claims must be filed, while the treasury regulations required that the facts in support thereof be filed under oath. The claim, although presented within the statutory period, was not verified in accordance with the treasury regulations. The allowance of the claim by the Court of Claims was upheld by the Supreme Court. The right of a governmental body to waive its rules and regulations differs materially from its right to waive provisions of an act conferring upon it jurisdiction of the subject matter. This distinction is clearly outlined by the court when it says:

> The line of division must be kept a sharp one between the function of a statute requiring the presentation of a claim within a given period of time, and the function of a regulation making provision as to form. The function of the statute, like that of limitations generally, is to give protection against stale demands. The function of the regulation is to facilitate research.

This holding was reaffirmed in *U. S.* v. *Garbutt Oil Co.*, 302 U. S. 528.

The Griffin case was an action in the Court of Claims filed within the statutory period, but not verified until after the expiration thereof. Objection was made that the petition was not verified as required by section 12 of the Act of March 3, 1863 (12 Stat. L. 765), which provided "That any petition filed under this act shall be verified by the affidavit of the claimant, * * *." This act was amendatory to the Act of February 24, 1855 (10 Stat. L. 612), which established the Court of Claims and conferred upon it general jurisdiction. It was held that verification after the expiration of 6 years did not defeat the jurisdiction of the court. The decision is based upon the fact

that the act of 1855 conferred general jurisdiction on the court and that of 1863 was not essential thereto. In this respect the act of 1863 differs from the Shipping Act, 1916, without which the Commission would have no jurisdiction in the premises. Further, the court held that the amendatory act did not specify the time within which verification should be made, stating that if it had required the verification of the petition before or at the time of its being filed there would be a better foundation for the objection. It is to be noted that the defendant filed a general traverse in this case and so waived the verification.

The Shipping Act, 1916, is one without which the Board, now the Commission, would have no jurisdiction in the premises. When such is the case requirements of the act must be strictly complied with. *E. B. of C. I.* v. *C. N. W. & U. S.*, 19 Ct. Cl. 35. The same holding is found in *Botany Mills* v. *U. S.*, 278 U. S. 282, citing *Raleigh & Gaston Railroad Co.* v. *Reid*, 13 Wall. 269, where it was held that "when a statute limits a thing to be done in a particular mode, it includes a negative of any other mode."

It is necessary for an administrative body to comply strictly with an act of Congress delegating to it jurisdiction over any given field. As a general rule, when jurisdiction is conferred by statute, every act necessary to such jurisdiction must affirmatively appear. If the statute is not complied with, jurisdiction does not exist. If one of the mandates of the statute is that complaints brought under it be sworn to when filed, one that is not so sworn to is not such a complaint as the statute requires, and is not, therefore, sufficient to give to the Commission jurisdiction of the subject matter. Section 22 clearly requires that a complaint be sworn to when filed, and the Commission has no power to waive this requirement. See *Muir-Smith Co., et al.* v. *Great Lakes Transit Corp.*, 1 U. S. S. B. 138.

The Rules of Practice of the United States Shipping Board in effect at the time the informal complaints were filed provided, in part, as follows:

> Claims for reparation filed with the Board more than 2 years after the freight charges have been paid on the shipment involved will be rejected as barred by the statute of limitations. Where a claim for reparation has been submitted to the Board informally, and the complainant has been notified that such claim can be determined only on the formal docket, formal complaint shall be filed within 6 months from the date of such notification, where the expiration of such period is more than 2 years subsequent to the date on which the cause of action accrued. Otherwise, the parties shall be deemed to have abandoned their claims and formal complaints thereafter will not be entertained.

Complainants urge that the second and third sentences of the above rule constituted authority by administrative sanction of a

6-months' period in addition to the 2-year period specified by the statute, and that, due to these sentences, those of the informal complaints which were verified and filed as formal complaints within such 6-months' additional period are to be considered as complying with the statute. Even though complainants' interpretation of the sentences referred to be accepted as correct, it is clear that any such extension was unauthorized and void. The Shipping Board manifestly had no authority to enlarge its statutory jurisdiction by adoption of a rule of the meaning contended for by complainants.

We find that section 22 of the Shipping Act, 1916, as amended, requires that complaints be sworn to when filed, which filing must occur within 2 years from the time the cause of action accrues in order to enter an award of reparation. Reparation on claims not meeting these requirements is barred; and, with respect to such claims, the complaint is dismissed for lack of jurisdiction. 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 22nd day of November A. D. 1938.

No. 474

RELIANCE MOTOR CAR COMPANY ET AL.

v.

GREAT LAKES TRANSIT CORPORATION

This case being at issue upon complaint and answer on file, and having been submitted for determination on brief without oral hearing, 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 findings of fact, conclusions, and decision thereon, which report is hereby referred to and made a part hereof:

It is ordered, That the complaint be dismissed with respect to all claims for reparation which have not been filed under oath within 2 years from the time the cause of action thereon accrued.

By the Commission.

[SEAL] (Sgd.) RUTH GREENE,
Assistant Secretary.

UNITED STATES MARITIME COMMISSION

No. 499

EASTBOUND INTERCOASTAL-GULF SUGAR RATE

Submitted November 1, 1938. Decided November 23, 1938

Respondents having filed schedules canceling those suspended herein, which schedules were accepted for filing, order of suspension vacated, and proceeding discontinued.

Ernest Holzborn and *Joseph J. Geary* for respondents.

W. C. Burger, *E. H. Burgess*, *Charles Clark*, *H. H. Larimore*, *R. S. Outlaw*, *M. G. Roberts*, *E. A. Smith*, *H. E. Spencer*, *C. R. Webber*, *Lawrence Chaffee*, *Harry Wilson*, *R. I. Miles*, *J. C. Kuebert*, *W. L. Taylor*, *William Oliphant*, *J. F. Girault*, *Edward Clemens*, *Harry C. Ames*, *E. B. de Villiers*, *R. D. Reeves*, *C. F. Dalberg*, *P. M. Ripley*, *L. F. Daspit*, *Rene A. Stiegler*, *W. L. Thornton, Jr.*, *M. G. de Quevedo*, *Nuel D. Belnap*, and *William A. Angus* for protestants.

Louis A. Schwartz, *C. A. Mitchell*, and *E. H. Thornton* for New Orleans Joint Traffic Bureau.

REPORT OF THE COMMISSION

BY THE COMMISSION:

By schedules filed to become effective September 20, 1938, respondents proposed to establish a rate on sugar in packages from United States Pacific coast ports to United States ports on the Gulf of Mexico of 22.5 cents per 100 pounds, minimum 500 tons.

Upon protests filed on behalf of numerous railroads, intercoastal steamship companies, Inland Waterways Corporation, Mississippi Valley Barge Line Company, and The Port of New York Authority, the operation of the proposed schedules was suspended until January 20, 1939.

The case was heard at New Orleans, La., on September 30, 1938. Neither respondents nor protestants offered any evidence. The New

Orleans Joint Traffic Bureau adduced evidence in support of its position that joint through rates and through routes should be established on sugar moving from the Pacific coast to interior points such as Chicago, Ill., and St. Louis, Mo., over intercoastal lines to New Orleans, thence barge, rail, and/or barge-rail lines based on differentials, prescribed by the Interstate Commerce Commission, under the prevailing transcontinental all-rail rates from the Pacific coast to the same destinations. In view of our conclusions herein, no discussion of this evidence is warranted. Respondents moved to adjourn the hearing for 30 days, but the motion was denied. On November 1, 1938, respondents filed schedules effective December 2, 1938, canceling the suspended rate, which schedules were accepted for filing. By the acceptance of such filing the question of lawfulness of the suspended schedules becomes moot. 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 23rd day of November, A. D. 1938.

No. 499

EASTBOUND INTERCOASTAL-GULF SUGAR RATE

It appearing, That by order dated September 16, 1938, this Commission entered upon a hearing concerning the lawfulness of the rates, charges, regulations, and practices in the schedules enumerated and described in said order, and suspended the operation of said schedules until January 20, 1939;

It further appearing, That investigation of the matters and things involved has been made and that said Commission on the date hereof has made and filed a report thereon which report is hereby referred to and made a part hereof, and has found that the issue as to the lawfulness of the schedules has become moot by the filing of schedules canceling the suspended schedules, which schedules were accepted for filing;

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 December 2, 1938, and that this proceeding be discontinued.

By the Commission.

[SEAL] (Sgd.) RUTH GREENE,
Assistant Secretary.

TABLE OF COMMODITIES

ALPACA HAIR. New York, N. Y., to and from Boston, Mass., 36.

ANIMAL FOOD, CANNED. Intercoastal rates, eastbound, 536.

ANNATTO SEED. Puerto Rico to New York and Europe, 369.

APPLIANCES, ELECTRICAL. New York, N. Y., to Los Angeles and San Francisco, Calif., and Portland, Oreg., 126.

AUTOMOBILES. Detroit, Mich., to Duluth, Minn., 138; 187; 308; 794. New York, N. Y., to Bilbao, Spain, 686. Detroit, Mich., to Milwaukee, Wis., 744. New York, N. Y., to Portland, Me., and Boston, Mass., to New York, N. Y., 158.

AUTOMOBILES, UNBOXED. North Atlantic ports of the U. S. to Belgium, Holland, and Germany, 504; 562.

BAGS, PAPER. U. S. Gulf ports to U. S. north Atlantic ports, 642.

BARRELS, WHISKEY. Savannah, Ga., to Los Angeles, Calif., 591.

BASKETS, BERRY, PULPBOARD. New York, N. Y., to Pacific ports, 692.

BEAN, SOYA, OIL MEAL. U. S. Gulf ports to U. S. Pacific ports, 554.

BOARD, PRESSED WOOD, INSULATING. Portland, Oreg., to Boston, Mass., New York, N. Y., and Philadelphia, Pa., 258. Portland, Oreg., to Atlantic and Gulf ports of the U. S., 781. See also Wallboard.

BONES AND BONE MEAL. U. S. Gulf ports to U. S. north Atlantic ports, 642.

BOXES, TILL, PULPBOARD. New York, N. Y., to Pacific coast ports, 692.

BOXES, SWITCH. New York, N. Y., to Los Angeles and San Francisco, Calif., and Portland, Oreg., 126.

BUILDING MATERIALS. California to Oregon and Washington, 719.

BURLAP, IMPORTED. Storage at north Atlantic ports, 676.

CAMEL HAIR. New York, N. Y., to and from Boston, Mass., 36.

CANNED GOODS. Intercoastal rates, eastbound, 536.
U. S. Gulf ports to U. S. north Atlantic ports, 642.

CANS, CIGAR, TIN. Baltimore, Md., to Savannah, Ga., 192.

CARBON, ACTIVATED. Jacksonville, Fla., to New York, N. Y., 741.

CARPET PAPER. Savannah, Ga., to Miami, Fla., 132.

CARPETING, FELT BASE. Intercoastal, eastbound, 628.

CASE OIL. Philadelphia, Pa., and New York, N. Y., to South Africa, 242; 531.

CHARCOAL. U. S. Gulf ports to U. S. north Atlantic ports, 642.

CIGARETTE PAPERS. Bordeaux and Havre, France, to New York, N. Y., 53; 97.

CIGARS. Philadelphia, Pa., to Pacific coast ports, 209.

CLOTH, COTTON, PYROXYLIN COATED. Philadelphia, Pa., to Los Angeles Harbor and San Francisco, Calif., 779.

COAL, BLACKSMITH. Anchorage to Juneau, Alaska, 1.

COFFEE, CANNED. Brooklyn, N. Y., to Pacific coast ports, 543.

COFFEE, GREEN, IN BAGS. Colombia, S. A., to New York, N. Y., and Boston, Mass., 711.

COFFEE, IMPORTED. Storage at north Atlantic ports, 676.

COTTON. U. S. Gulf ports to U. S. north Atlantic ports, 642. San Diego and Los Angeles, Calif., to the Orient, 661.
COTTON LINTERS AND COTTONSEED HULL FIBRE. Galveston, Tex., to New York, N. Y., and Houston, Tex., to Philadelphia, Pa., 145.
COTTON PIECE GOODS AND FACTORY PRODUCTS. Atlantic and Gulf ports to Pacific ports, 765.
COTTON WASTE, FILLING MATERIAL, AND WIPING WASTE. New York, N. Y., to San Juan and Aguadilla, P. R., 195.
DATES. Intercoastal, westbound, 352.
FACE CREAM. Intercoastal, westbound, 326.
FARM PRODUCTS. Anchorage to Juneau, Alaska, 1.
FIGS. Intercoastal, westbound, 352.
"FIR-TEX." Portland, Oreg., to Boston, Mass., New York, N. Y., and Philadelphia, Pa., 258. Portland, Oreg., to Atlantic and Gulf ports of the U. S., 781.
FLOOR COVERING, ROOFING, AND BUILDING MATERIALS. California to Oregon and Washington, 719.
FLOORING, HARDWOOD. Mobile, Ala., to Tampa, Fla., 134.
FLOUR. Atlantic and Pacific ports of the U. S. to the Orient, 264.
FRUITS, CANNED. Intercoastal rates, eastbound, 536.
FURNITURE. Savannah, Ga., to Miami, Fla., 132.
GOATSKINS. New York, N. Y., to Naples, Italy, 395.
GRAIN AND GRAIN PRODUCTS. U. S. Gulf ports to U. S. north Atlantic ports, 642. Pacific ports of the U. S. to Gulf and Atlantic ports of the U. S., 784.
GRAPEFRUIT AND GRAPEFRUIT JUICE, CANNED. Jacksonville and Tampa, Fla., to Pacific coast ports, 546.
GRAPEFRUIT, ORANGES, AND LEMONS. Intercoastal, eastbound, 326.
HAIR, ALPACA. New York, N. Y., to and from Boston, Mass., 36.
HAIR, CAMEL. New York, N. Y., to and from Boston, Mass., 36.
INGOTS, BRASS. Chicago, Ill., to Los Angeles Harbor, Calif., 630.
IRON AND STEEL AND ARTICLES OF IRON AND STEEL. Moving in intercoastal commerce, 326; 372.
IRON AND STEEL ARTICLES. North Atlantic ports to Lake Charles, La., and Beaumont, Texas, 674.
IRON, SCRAP. New York, N. Y., to Buenos Aires, Argentine Republic, S. A., 213.
JUICE, GRAPEFRUIT. Jacksonville and Tampa, Fla., to Pacific coast ports, 546.
JUNK. (Scrap radiators, etc.) U. S. Pacific ports to U. S. Gulf and Atlantic ports, 670.
LEATHER. Muskegon and Grand Haven, Mich., to Chicago, Ill., 101.
LEATHER, IMITATION. Philadelphia, Pa., to Los Angeles Harbor and San Francisco, Calif., 779.
LEMONS. Intercoastal, eastbound, 326.
LEMONS, IMPORTED. Storage at north Atlantic ports, 676.
LINEN. Antwerp, Belgium, to New York, N. Y., 232.
LINOLEUM, CARPETING, AND ACCESSORY COMMODITIES. Intercoastal, eastbound, 628.
LINTERS, COTTON, AND COTTONSEED HULL FIBRE. Galveston, Texas, to New York, N. Y., and Houston, Texas, to Philadelphia, Pa., 145.
LUMBER. U. S. Pacific coast ports to the Orient, 264; 314. Intercoastal, eastbound, 326; 596; 608; 646; 656.
LUMBER, HARDWOOD. Marginal track delivery at ports on Gulf of Mexico, 177; 234.
MAYONNAISE. Baltimore, Md., to Tampa, Fla., 169.
MEAL, SOYA BEAN OIL. U. S. Gulf ports to U. S. Pacific coast ports, 554.

MILK, CANNED. Mt. Vernon and Stanwood, Wash., to intercoastal destinations on the Atlantic coast, 360.
MILK OF MAGNESIA. Intercoastal, westbound, 326.
MOHAIR. See Wool and Related Articles.
OIL, CASE. Philadelphia, Pa., and New York, N. Y., to South Africa, 242; 531.
OIL, OLIVE. Italian ports to Philadelphia, Pa., 538.
ONIONS, IMPORTED. Storage at north Atlantic ports, 676.
ORANGES, LEMONS, AND GRAPEFRUIT. Intercoastal, eastbound, 326.
ORE, COPPER. Alaska to Puget Sound, 1.
PAILS, PULPBOARD. New York, N. Y., to Pacific ports, 692.
PAPER BAGS. U. S. Gulf ports to U. S. north Atlantic ports, 642.
PAPER, CARPET. Savannah, Ga., to Miami, Fla., 132.
PAPER, CIGARETTE. Bordeaux and Havre, France, to New York, N. Y., 53; 97.
PAPER, ROOFING. Baltimore, Md., to Miami, Fla., 74; 114.
PAPER, SCRAP OR WASTE. U. S. north Atlantic ports to U. S. Gulf ports, 642. Atlantic ports to New Orleans, La., 789.
PAPER TOWELS. New York, N. Y., to Cristobal, C. Z., 130.
PAPER, WRAPPING. U. S. Gulf ports to U. S. north Atlantic ports, 642.
PEANUTS. Norfolk, Va., to Baltimore, Md., Philadelphia, Pa., New York, N. Y., and Boston, Mass., 78; 90.
PEAS, CANNED. Mt. Vernon and Stanwood, Wash., to intercoastal destinations on the Atlantic coast, 360.
PEEL, CITRUS FRUIT. Intercoastal, westbound, 352.
PEPPER, BLACK LAMPONG. Netherlands E. Indies to New York, N. Y., and New Orleans, La., 285.
PETROLEUM PRODUCTS. Philadelphia, Pa., and New York, N. Y., to South Africa, 242; 531.
PIANOS. New York, N. Y., to Constantinople, Turkey, 188.
PILING. Everett and Tacoma, Wash., to Wilmington, Del., 624.
PIPE, CAST-IRON SOIL AND PRESSURE. Charleston, S. C., and Savannah, Ga., to Pacific ports, 376. Continental United States to Manila, P. I., 173.
PIPE, IRON. New York, N. Y., to Miami, Fla., 143. North Atlantic ports to Lake Charles, La., and Beaumont, Texas, 674.
PULPBOARD. See Board, Pressed Wood, Insulating.
RADIATORS, OLD BRASS. U. S. Pacific coast ports to U. S. Gulf and Atlantic coast ports, 670.
RICE. Lake Charles and New Orleans, La., to Puerto Rico, 154.
RIVETS, IRON AND STEEL. Boston, Mass., to New York, N. Y., 58.
ROOFING. Baltimore, Md., to Miami, Fla., 74; 114.
ROOFING MATERIALS. California to Oregon and Washington, 719.
ROPE, MANILA. Philippine Islands to United States, 585.
RUBBER, CRUDE, IMPORTED. Storage at north Atlantic ports, 676.
RUGS, FELTBASE. Intercoastal, eastbound, 628.
SAND, SILICA. Baltimore, Md., to Pacific ports, 373.
SEED, ANNATTO. Puerto Rico to New York and Europe, 369.
SEED, SQUASH. Intercoastal, eastbound, 355.
SHINGLES. Pacific ports to Atlantic ports of the U. S., 596.
SOAP AND SOAP PRODUCTS. Boston, Mass., to Los Angeles, San Francisco and Oakland, Calif., Portland, Oreg., Seattle and Tacoma, Wash., 349.
SODA ASH AND CAUSTIC SODA. New York, N. Y., to Los Angeles, San Francisco and Oakland, Calif., Portland, Oreg., Seattle and Tacoma, Wash., 349.
SOYA BEAN OIL MEAL. U. S. Gulf ports to U. S. Pacific ports, 554.
STEEL AND IRON. Moving in intercoastal commerce, 326; 372.

STEEL AND IRON ARTICLES. Moving in intercoastal commerce, 326; 372. North Atlantic ports to Lake Charles, La., and Beaumont, Tex., 674.

SUGAR. U. S. Pacific ports to U. S. Gulf ports, 798. Virgin Islands to United States, 695.

SWITCH BOXES. New York, N. Y., to Los Angeles and San Francisco, Calif., and Portland, Oreg., 126.

TAGS, LAUNDRY. Philadelphia, Pa., to Pacific coast ports, 519.

TOWELS, PAPER. New York, N. Y., to Cristobal, C. Z., 130.

TWINE, BINDER. U. S. Gulf ports to U. S. north Atlantic ports, 642.

VEGETABLES. Anchorage to Juneau, Alaska, 1.

WALLBOARD. New Orleans, La., to Atlantic ports, 789. Portland, Oreg,, to Atlantic and Gulf ports of the U. S., 781. U. S. Gulf ports to U. S. north Atlantic ports, 642.

WASTE, COTTON. New York, N. Y., to San Juan and Aguadilla, P. R., 195.

WASTE, PAPER. U. S. north Atlantic ports to U. S. Gulf ports, 642.

WHEAT IN BULK. Pacific ports to Gulf ports, 346. Pacific ports of the U. S. to Gulf and Atlantic ports of the U. S., 784.

WOODPULP, IMPORTED. Storage at north Atlantic ports, 676.

WOOL. Australia to Boston, Mass., 49; 86.

WOOL AND RELATED ARTICLES. Boston, Mass., to and from Philadelphia, Pa., 24; 32. Boston, Mass., to Philadelphia, Pa., 20. New York, N. Y., to and from Boston, Mass., 36.

WOOLEN, WORSTED AND WOOL MOHAIR MIXED YARNS. Atlantic ports to Pacific ports of the U. S., 651.

YARNS, WOOL MOHAIR MIXED. Atlantic ports to Pacific ports of the U. S., 651.

INDEX DIGEST

[Numbers in parentheses following citations indicate pages on which the particular subjects are considered]

ABSORPTIONS. *See also* FREE TIME; LOADING AND UNLOADING; TARIFFS; ALLOWANCES.

Absorptions of any charges whatsoever or the performance of any service of any nature, free of charge or otherwise, is not legal in connection with intercoastal transportation, unless and until proper provisions have been made in the carrier's tariff. Intercoastal Investigation, 1935, 400 (449).

Absorption by respondents is made of storage, wharfage, dockage, handling, lighterage, trucking, and toll charges; also they permit storage of property, load and unload lighters, rail cars, trucks, and handle property between such equipment and their vessels, without proper tariff authority. They also fail to collect charges for segregation, heavy lifts, or pool cars, in accordance with their tariff. Each of them should be required to cease and desist from such unlawful practices. Id. (462).

Absorptions intended to attract traffic, such as of charges for loading and unloading rail cars or lighters or for other services which are not the duty of the intercoastal carriers to perform, are not lawful. Id. (468).

Absorption of charges for loading or unloading rail cars or lighters or for any service which it is not the duty of intercoastal carriers to perform clearly results in unwarranted dissipation of revenue which is not sanctioned by law. Id. (435–436).

Refusal to absorb wharfage charges, state toll, and war tax, not shown to have been unlawful. Boston Wool Trade Association *v.* General Steamship Corporation, 49 (52).

Rules which do not disclose the cost of the service or the specific amount to be absorbed clearly open the gate to rebates, under preferences and prejudices prohibited by law. Intercoastal Rates of Nelson Steamship Company, 326 (340).

Rules which authorize services and facilities at no charge fail to recognize the definite relationship between service and compensation which characterizes the business of common carriers, and rules which do not disclose the specific amount absorbed, even if the charge is one that properly may be absorbed, defeat the legally established rate and unwittingly open the door to rebates. Intercoastal Investigation, 1935, 400 (414).

Terminal charges of another carrier absorbed for the purpose of establishing through rates for a through route is not provided for by law. Id. (440).

Terminal charges at Oakland, Calif., are absorbed whether or not respondent calls direct at Oakland; and if it elects to make delivery by barge at that port, it absorbs the cost thereof without specifying the amount. Also, no limit is placed upon the amount of car unloading at Philadelphia or top wharfage or car unloading at Baltimore, or on-carrying charges on shipments destined to Stockton or Sacramento absorbed by respondent. Respondent's rules in such connection are not in consonance with law. Id. (419).

ABSORPTIONS—Continued.

Unloading from rail cars, drayage, lighterage, and floatage are not services which fall upon respondents, for they have no through-route arrangements or joint through rates with rail carriers. This applies with equal force as to loading rail cars, use of such cars for which demurrage charges are imposed by rail carriers, and as to transfer of rail shipments from and to respondents' vessels. Id. (418).

ACCOUNTS.

The Board is not empowered to prescribe accounting rules and systems to be observed by the carriers subject to its jurisdiction. Increased Rates, 1920, 13 (15).

ADEQUACY OF SERVICE.

Service that will fully meet the needs of the shipping public required Id. (18).

Benefits to the shipping public arising from a more frequent and regular service must be given consideration. Atlantic Refining Company *v.* Ellerman & Bucknall Steamship Company, 242 (254).

Proposed amendments to agreement No. 2742 in essence required any party seeking admission to the conference to make a showing that the requirements of the trade justified the additional service of the type offered by the applicant. These proposed amendments were disapproved by the Department. Gulf Intercoastal Conference Agreement, 322 (324).

Need for regular services of the best type of ships for each particular trade was recognized by Congress in the preamble of the Merchant Marine Act, 1920, which states that it is necessary for the proper growth of its foreign and domestic commerce that the United States shall have a merchant marine of the best equipped and most suitable types of vessels. Section 7 of that act directs the Department to investigate and determine what steamship services shall be established and the type, size, speed, and other requirements of vessels to be employed in such service, and the frequency and regularity of their sailings, with a view to furnishing adequate, regular, certain, and permanent services. Section 19 Investigation, 1935, 470 (497).

Plea of redundancy of tonnage is not tenable under the provisions of law applicable in this case. American Caribbean Line, Inc. *v.* Compagnie Generale Transatlantique, 549 (551).

Reasonable service to the public is expected to be furnished by carriers maintaining through routes and joint rates. Gulf Intercoastal Rates To and From San Diego (No. 2), 600 (605).

ADMISSION OF UNLAWFULNESS.

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 the carrier. H. Kramer & Co. *v.* Inland Waterways Corporation, 630 (633).

ADVANTAGES. *See* PREJUDICE; PROFIT TO SHIPPERS.

ADVERTISEMENTS.

Advertisement of the minimum first-class fare by the carrier should avoid any statement that would be likely to lead prospective passengers to believe that the accommodations to be obtained are anything but what they actually are. Passenger Classifications and Fares American Line Steamship Corporation, 294 (303).

AGENTS.

Ticket agent's relation to its principal is of a fiduciary nature. As large sums of money are handled by these agents, the lines should be permitted all possible latitude in the appointment and supervision in order to ensure proper protection to themselves and to the public. No duty rests upon the lines to appoint all ticket sellers as their agents, and it does not appear that the public interest has suffered because of the lines' refusal to pay commissions to all licensees for tickets and orders purchased by them. The Shipping Act, 1916, was not intended as a substitute for the managerial judgment of carriers. Joseph Singer *v.* Trans-Atlantic Passenger Conference, 520 (523).

AGREEMENTS UNDER SECTION 14A. *See also* AGREEMENTS UNDER SECTION 15.

Complainant admitted to conference; proceeding discontinued. Dollar Steamship Lines *v.* P. & O. Steam Navigation Co., 262 (263).

Redundancy of tonnage pleaded is not tenable under the provisions of law applicable to this case. American Caribbean Line *v.* Compagnie Generale Transatlantique, 549 (551).

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 the proceeding. Id. (553).

Exclusion from admission upon equal terms with all other parties to the conference not shown. Id. (553).

Petition to withdraw complaint of United States Lines Company and to discontinue proceeding concerning agreement between Cunard White Star Limited, Bibby Line Limited, British & Burmese Steam Navigation Co. Ltd., and Burma Steamship Co. Ltd., which was alleged to be in violation of sections 14a and 15 of the Shipping Act, 1916, granted. United States Lines Company *v.* Cunard White Star Ltd., 598 (599).

AGREEMENTS UNDER SECTION 15. *See also* AGREEMENTS UNDER SECTION 14A; FOREIGN FLAG CARRIERS; NONCOMPENSATORY RATES.

In General:

When a rate or rule is once adopted and one party to conference agreement consistently and selfishly refuses to cast its consenting vote which would remove or change that rule or rate, the conference to all intents and purposes ceases to be voluntary. Port Utilities Commission of Charleston *v.* Carolina Co., 61 (72).

A too literal interpretation of the word "every" in section 15 to include routine operations relating to current rate changes and other day-to-day transactions between carriers under conference agreements would result in delays and inconvenience to both carriers and shippers. Section 15 Inquiry, 121 (125).

The usual though not invariable practice followed by conferences of sending the Board copies of minutes of their meetings and of circulars and tariffs as issued to members, which contain references only to routine arrangements for the carriers' record and guidance and

AGREEMENTS UNDER SECTION 15—Continued.
In General—Continued.
not imposed by section 15, is not to be regarded as a filing under section 15, but as information on conference activities. Id. (125).
Agreements arrived at by conference carriers providing for fixing or regulating transportation rates or fares and the other matters specified in section 15 and agreements modifying or canceling such agreements are to be distinguished from the routine of conference activities. Id. (124–125).
In writing section 15 into the statute, Congress gave sanction and encouragement to conferences, and the benefits that flow to shippers as a class from conferences are often as substantial as the benefits accruing to the carrier members themselves. It is the Board's function to afford relief from actual, not theoretical, wrongs, and it should not disturb conference relationships without compelling reasons and a reasonable certainty that any cancellation or modification of an agreement it might order under authority of section 15 would be of practical benefit. Rates in Canadian Currency, 264 (281).
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 fail to set forth precisely what the contemplated forwarding services are. Some of the services referred to in the record as sometimes falling within the accepted meaning of forwarding are of a character which properly cannot be performed by common carriers. Gulf Brokerage and Forwarding Agreements, 533 (534).
Both complainant and one of the defendants 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 the 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. Seas Shipping Co. *v.* American South African Line, 568 (583).
Competition:
The Commission does not agree with the view that section 15 of the Shipping Act, 1916, was not intended to embrace other than "matters that were really competitive." Commonwealth of Mass. *v.* Colombian S. S. Co., 711 (716).

AGREEMENTS UNDER SECTION 15—Continued.
Competition—Continued.
Agreements restricting competition should, of necessity, be of definite duration and for relatively short periods so that the parties and the Commission may have an opportunity from time to time to observe the impact of changed conditions on their undertakings. Dollar-Matson Agreements, 750 (754).
Section 605 (c) of the Merchant Marine Act, 1936, as amended, by imposing restraints against the duplication of services by subsidized lines, takes away from the parties their opportunity to compete with one another in their respective foreign services, thus destroying the underlying consideration for the agreement. Id. (754).
That section 15 confers authority to regulate competition between carriers in accordance with the needs of the service was stated by the U. S. Supreme Court in the case of Swayne & Hoyt, Ltd. et al. *v.* United States, 300 U. S. 297, 305: "* * * We think there was evidence from which the Secretary could reasonably conclude that there was little need for a contract rate system to assure stability of service. * * * On the other hand, there was substantial evidence from which the Secretary could infer that the contract rate system would tend to give to the Conference carriers a monopoly by excluding competition from new lines." Id. (755).
In the regulation of conference agreements under section 15, the policy of both the United States Shipping Board and the Department of Commerce was to discourage agreements which established a monopoly in favor of a competitor. Id. (755).
The agreement under consideration produces an effect in the Hawaiian trade which is closely analogous to that which the Department of Commerce declared was unlawful when it disapproved contract rates in the intercoastal trades: Gulf Intercoastal Contract Rates, 1 U. S. S. B. B. 524. In the latter case, the respondents endeavored to shut out certain competitors through the medium of contract rates. In this case, Matson seeks to discourage its only competitor by exacting 50 percent of that competitor's gross revenue. The distinction, if any, is one of degree only. Id. (756).
Conference Membership:
The membership of the North Atlantic conferences is predominantly foreign. This foreign membership, with votes outnumbering by far those of the American members, dominates the tripartite conference and the rates applicable to American commodities moving in American bottoms from American ports. The result is effective control by foreign lines of an extensive portion of the commerce and much of the shipping of the United States. Manifestly, in view of the responsibility imposed for the upbuilding of an American merchant marine, this situation calls for unequivocal action. Port Utilities Com. of Charleston *v.* Carolina Co., 61 (73).
The proposed amendments to agreement No. 2742 in essence required any party seeking admission to the conference to make a showing that the requirements of the trade justified the additional service of the type offered by the applicant. The proposed amendments were disapproved by the Department on May 22, 1934. Gulf Intercoastal Conference Agreement, 322 (324).

AGREEMENTS UNDER SECTION 15—Continued.
Conference Membership—Continued.
Atlantic and Gulf/West Coast of South America Conference agreement not shown to be unlawful, and an order by the Department requiring respondents to admit complainant to membership in the conference with a rate differential found not justified. Wessel, Duval & Co. *v.* Colombian S. S. Co., 390 (394).
The circumstances recited warrant treating Arnold Bernstein Line, Red Star Linie G. m. b. H., and Arnold Bernstein as one for the purposes of the case. Thus, to lend approval to the application of Red Star Linie G. m. b. H. for membership in the conference as long as Arnold Bernstein Line, or Arnold Bernstein, is a party to agreement No. 1456 would be sanctioning two agreements under section 15 in conflict with each other, contrary to public policy. Application of Red Star Linie for Conference Membership, 504 (508).
The application of Red Star Linie G. m. b. H. for membership in the conference was denied upon opposition by Black Diamond Lines and Compagnie Maritime Belge (Lloyd Royal) S. A., which urged the provisions of agreement No. 1456. For reasons set forth in the report, this position was justified. Disapproval of agreement 1456, however, removes this barrier. It is not apparent from the record whether Red Star Linie G. m. b. H. is willing to join the conference as now existing under the agreement approved on August 24, 1935. If so, there will exist after the order in the proceeding and upon the record before the Department no lawful reason for refusing its admission to membership. Id. (508–509).
Defendants in denying formally complainant's application for participation in the conference did not furnish complainant with any reason for such denial. Seas Shipping Co. *v.* American South African Line, 568 (581).
Defendants were justified in denying complainant's application for admission to the conference; unremunerative and noncompensatory rates are detrimental to the commerce of the United States; the existence of such rates in the trade involved is not the result of defendants' agreement No. 3578; and agreements Nos. 3578, 3578–A, and 3578–B, fixing rates, rotating sailings, and pooling, respectively, are not unjustly discriminatory or unfair as between carriers and do not operate to the detriment of the commerce of the United States. Id. (584).
The record discloses that, although the Fabre Line has not operated a vessel in the trade since June 1934, it has retained its membership 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. Phelps Bros. & Co. *v.* Cosulich-Societa Triestina di Navigazione, 634 (640–641).
Complainant found to be entitled to membership in the Adriatic, Black Sea, and Levant Conference on equal terms with each of the defendants, and the conference agreement and contracts found to result in unjust discrimination and to be unfair as between com-

AGREEMENTS UNDER SECTION 15—Continued.
Conference Membership—Continued.
plainant and defendants and to subject complainant to undue and unreasonable prejudice and disadvantage. Id. (641).
Since vessels of O. S. K. stopped calling at Puerto Colombia the agreement of August 4, 1933, as supplemented, has been inoperative. No objection is made to its cancellation. Commonwealth of Mass. *v.* Colombian SS. Co., 711 (716).
Rates Routes, Sailings, Pooling:
As the parties to the agreement are not in any way connected with, and do not exercise any control over, the terminals at which lower charges are assessed, no discrimination is attributable to them so long as they uniformly apply at their own terminals the charges covered by their agreement. Terminal Charges at Norfolk, Va., 357 (358).
As is required by section 15 of the Shipping Act, 1916, respondents have filed copy of agreement entered into by them, which has been approved, for the establishment of through routes to facilitate intercoastal commerce from and to the points involved and for the establishment of joint rates to apply thereon. Intercoastal Rates To and From Berkeley, Etc., 365 (367-368).
Respondents' rule, in observance of which their refusal to rebill and apply lower through rates on reshipping cargo is made, not shown to be violative of any provision of the Shipping Act, 1916, as amended, or to be unfair, or to operate to the detriment of commerce of the United States within the meaning of section 15 of that act. Pablo Calvet & Co. *v.* Baltimore Insular Line, Inc. 369 (371).
In the conference agreement as approved March 9, 1934, there was no provision for differential rates, but members were advised by the Department that the approval of the agreement without a provision for a rate differential in favor of slow cargo vessels maintaining direct service to ports covered by the agreement was without prejudice to any action that the Department might take in the event that a carrier operating such a service should seek admission to the conference. Wessel, Duval & Co. *v.* Colombia SS. Co., 390 (392).
Under the prior conference agreement, participated in by the complainant and most of the respondents in the proceeding, a rate differential of ten (10) percent was allowed in favor of vessels operated by complainant and certain other lines in the conference. The record shows that this differential was agreed to by the conference to avoid a rate war and to preserve stability in the trade. It is also shown that the Brazil River Plate and Havana Steamship conferences allow a differential as between cargo vessels and passenger vessels. The facts and circumstances under which these particular differentials came into existence are not shown, but, in any event, the establishment of a system of differential rates by voluntary action of these groups of steamship lines does not create a precedent insofar as the initiation of such a system by government decree is concerned. Furthermore, the establishment by the conference involved of different rates for transshipment lines does not necessarily require the establishment of the same or any differential as between vessels affording direct service. Id. (392).

AGREEMENTS UNDER SECTION 15—Continued.
Rates Routes, Sailings, Pooling—Continued.
The rate under attack was fixed by a group of carriers acting in conference relationship under an agreement which is lawful only when, and as long as, approved by the Department under authority of section 15 of the Shipping Act. An unreasonably high rate is clearly detrimental to the commerce of the United States, and, upon a showing that a conference rate in foreign commerce is unreasonably high, the Department will require its reduction to a proper level. If necessary, approval of the conference agreement will be withdrawn. Edmund Weil *v.* Italian Line, 395 (398).
The carriers have indicated their willingness to consider a reduction in the rate if the complainant or anyone else will submit data indicating a reasonable possibility of developing business. It is expected that conferences will at all times give careful consideration to such requests and supporting data. Id. (399).
Agreement between Ericsson Line, Inc., and Pan-Atlantic Steamship Corporation for establishment of through routes and joint rates on general cargo between Baltimore, Md., New Orleans, La., Mobile, Ala., and Panama City, Fla., transshiped at Philadelphia, Pa., or Camden, N. J., approved. Agreeemnt Ericsson Line and Pan-Atlantic SS. Corp., 513 (515).
Although 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-sailing 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. Seas Shipping Co. *v.* American South African Line, 568 (580).
Agreements providing for rotation of sailings, such as agreement No. 3578–A, are valuable to both carriers and shippers. 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. Id. (580).
Pooling agreement setting forth formula whereby the parties thereto apportion their combined revenue after certain specified deductions not shown to be 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. Id. (580).
Agreement providing for rotation of sailings not shown to be detrimental to commerce or otherwise within that class of agreements which section 15 of the Shipping Act authorizes the Department to cancel. Id. (581).
Colombian coffee transshipped at Cristobal found to move over through routes and at joint rates participated in by defendants pursuant to agreements within the purview of section 15 of the Shipping Act, 1916, copies or memoranda of which have not been filed and approved. Copies or memoranda of the agreements in question should have been filed. Therefore, all action thereunder results in violation of section 15. To the extent that they make provision for the rates condemned, they are found to be unduly preferential and prejudicial,

AGREEMENTS UNDER SECTION 15—Continued.
Rates Routes, Sailings, Pooling—Continued.
unjustly discriminatory, unfair, and deterimental to the commerce of the United States. Commonwealth of Mass. *v.* Colombian SS. Co., 711 (716).
Unlawful, Unfair, Detriment to United States Commerce:
Tripartite arrangement or agreement between North Atlantic, South Atlantic, and Gulf conferences and steamship lines operating from ports on the North Atlantic, South Atlantic, and Gulf coasts of the United States to foreign ports found unfair as between carriers and detrimental to the commerce of the United States. Port Utilities Commission of Charleston *v.* Carolina Co., 61 (73).
Withdrawal of approval of Gulf Intercoastal Conference agreement found not justified. Gulf Intercoastal Conference Agreement, 322 (325).
The record does not justify a finding by the Department that agreement No. 3488 is violative of any provision of the Shipping Act, 1916. Terminal Charges at Norfolk, Va., 357 (358).
Approval of agreement of respondents for the establishment and maintenance of assembling and distributing charge will be withdrawn. Assembling and Distributing Charge 380 (387).
The right of the Department to disapprove any conference agreement found detrimental to the commerce of the United States and the prohibition under section 17 of the Shipping Act of rates unjustly prejudicial to exporters of the United States as compared with foreign competitors afford protection against the maintenance by a conference of rates prejudicial to our exporters. Section 19 Investigation, 1935, 470 (492-493).
In the light of all the facts and circumstances of record, it is clear that agreement No. 1456 as approved by the Board does not reflect the present understanding of the parties. As stated, the agreement was modified by the parties on June 6, 1933, retroactive to January 1, 1933, without approval as required by section 15. Although it is contended section 15 has not been violated because actual money transfers have not been made in excess of the amounts which would be called for under the provisions of the unapproved modification, the fact remains that the agreement as approved is neither a true copy nor a true and complete memorandum of the agreement between the parties as it has existed since June 6, 1933. Shortly after hearing a communication was received by the department from Arnold Bernstein Line, requesting "that the attached minutes of the meeting of June 6, 1933, be filed with and approved by the Department of Commerce, United States Shipping Board Bureau." The meeting referred to is the one at which the modification was agreed to. Such a request filed by only one party to the agreement, however, is not a proper filing under the requirements of section 15. Under the circumstances, approval of agreement No. 1456 will be withdrawn. Application of Red Star Line for Conference Membership, 504 (508).
The West Coast of Italy and Sicilian Ports/North Atlantic Range Conference agreement not shown to be detrimental to the commerce of the United States or to be in violation of the Shipping Act, 1916. Philadelphia Ocean Traffic Bureau *v.* Export SS. Corporation, 538 (542).

AGREEMENTS UNDER SECTION 15—Continued.
Unlawful, Unfair, Detriment to United States Commerce—Continued.
Modification No. 3 of North Atlantic Continental Freight Conference agreement found to be unjustly discriminatory and unfair as between carriers and detrimental to the commerce of the United States. North Atlantic Continental Freight Conference Agreement, 562 (567).
The conference agreement may continue in effect only so long as it has the approval of the 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, the Commission 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. Phelps Bros. & Co. *v.* Coslich-Societa Triestina di Navigazione, 634 (636–637).
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. Id. (639).
Complaint alleging agreement between members of the Intercoastal Steamship Freight Association and Gulf Intercoastal Conference to be unduly and unreasonably preferential and prejudicial and unjust and unreasonable dismissed upon motion of complainant. Inland Waterways Corporation *v.* Intercoastal Steamship Freight Assoc., 653 (655).
Addendum naming terminal and postterminal ports, providing that through-billing arrangements shall be maintained by conference members only with such other lines as are listed as recognized cocarriers to the Atlantic, Gulf, and Pacific coasts of the United States, limiting cocarriers other than conference members to particular ports of destination, and providing that cocarriers shall guarantee that they will accept traffic at Balboa or Cristobal on through bills of lading issued at Colombia Pacific and Ecuadorian ports from member lines of the conference only and that they shall agree to accept traffic from nonconference lines as local cargo only from Canal Zone ports at recognized local tariff rates, found to be unjustly discriminatory and unfair as between carriers and ports and, if carried into effect, that it would operate to the detriment of the commerce of the United States. Commonwealth of Mass. *v.* Colombian SS. Co., 711 (718).
On September 13, 1937, Great Lakes carriers, including a representative of W. and M., reached an understanding or agreement to increase the rate on automobiles from Detroit to Milwaukee from $12 to $15 per automobile. Although the increased rate went into effect on October 1, 1937, no agreement or understanding was filed with the Commission as required by section 15 of the Shipping Act, 1916. Payments to Shippers by Wis. & Mich. SS. Co., 744 (749).
As stated by the Department of Commerce in Seas Shipping Co. *v.* American South African Line, Inc., et al., 1 U. S. S. B. B. 568, at 583: "If the existence of the agreement were the cause of the low rates the Department's course of action would be reasonably clear

AGREEMENTS UNDER SECTION 15—Continued.
Unlawful, Unfair, Detriment to United States Commerce—Continued.
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." Dollar-Matson Agreements, 750 (755).
When the Commission finds sufficient evidence upon which to base a judgment that continued performance of the agreement would be contrary to the provisions of the Shipping Act, it has a duty under the statute to disapprove the agreement notwithstanding a previous approval. Id. (756).
Agreement between members of the Intercoastal Steamship Freight Association, on one hand, and members of the Gulf Intercoastal Conference, on the other, found not to reflect the true and complete agreement of the parties as required by section 15. Agreement No. 6510, 755 (778).
Agreement between members of the Intercoastal Steamship Freight Association on one hand, and members of the Gulf Intercoastal Conferference, on the other, found not to reflect the true and complete agreement of the parties as required by section 15. Id. (778).
ALLOWANCES. *See also* ABSORPTIONS.
Protestants regard certain allowances and divisions granted by some of the respondents out of their 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. Eastbound Intercoastal Lumber, 608 (617).
Lumber-berth-quantity-allowance rules found to 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 to be unduly and unreasonably preferential of, and advantageous to, lumber shipped under the rules and shippers thereof and unduly and unreasonably prejudicial and disadvantageous to lumber moving over the lines of respondents which is not shipped under the rules and the shippers of such lumber, in violation of section 16 of the same act; and to be 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. Transportation of Lumber Through Panama Canal, 646 (650).
ANALOGY, RULE OF. *See* COMMODITY RATES.

ANY-QUANTITY RATES. *See also* PREJUDICE.

It is well established that on certain classes of traffic, where the prevailing shipping quantity is small, any-quantity rates rest upon sound public policy in that they counteract a tendency toward monopoly by enabling the small shipper to compete on equal terms with powerful competitors. Under such circumstances the Shipping Act does not require maintenance by carriers of rates predicated upon a quantity condition which most shippers are not prepared to meet, and the fact that carload quantities are offered for shipment does not furnish ground for attributing unlawfulness to the any-quantity rate applied thereto. Ames Harris Neville Co. *v.* American-Hawaiian, 765, (768).

ARRIVAL NOTICES.

The mailing of arrival notices to the consignee shown in the bill of lading is clearly a duty of the carrier for which an extra charge is not proper. Intercoastal Segregation Rules, 725 (733).

ASSEMBLING AND DISTRIBUTING. *See* DELIVERY; AGREEMENTS UNDER SECTION 15.

BANKRUPTCY. *See* PARTIES.

BERTHING. *See also* TERMINAL FACILITIES.

If a carrier cannot secure berthing at its own terminal dock, it may declare another dock at the same terminal port for a particular voyage. Cargo booked for the regular terminal docks is charged the tariff rates, but cargo originating at such temporary dock is charged an additional $1 per revenue ton. It is clear that under this rule the use of temporary docks is permitted for the convenience of the carrier, and there seems to be no persuasive reason that would authorize the carrier to maintain what is in fact two sets of rates from the same dock on the same commodity to the same destination. Such a situation results in undue and unreasonable preference and advantage to the shipper of the cargo specifically booked for the carrier's regular dock to the undue and unreasonable prejudice and disadvantage of the other shipper. Oakland Chamber of Commerce *v.* American Mail Line, 314 (316).

Carriers are permitted by the rule to call for and load freight in any quantity from one shipper or supplier at docks located in ports or places other than the terminal ports listed in clause "L". Each carrier is also permitted to make divisional rate arrangements equalizing direct loading at such ports or places by other conference members. All such shipments are stated to be "subject to additional rates in accordance with the regular recognized cost of transferring cargo from nonterminal port dock to the terminal dock of the carrier." The quoted matter is ambiguous and indefinite. How the "regular recognized cost" is to be determined is not stated. Between a given nonterminal port and a terminal dock there may be several methods of transportation with widely varying costs. Furthermore, a conference carrier may serve several terminal ports, and it is not indicated to which of the several terminal docks the "recognized cost" will be assessed. Id. (317).

Although the carriers under the rule may call direct at nonterminal ports for freight in any quantity from one shipper or supplier, it is provided that such cargo must be assessed on a minimum of 500 revenue freight tons or 500,000 revenue feet of lumber, bolts, cants, piling, poles and/or logs. No such restriction, however, is placed on cargo moving from nonterminal ports under the divisional rate agreements permitted under the rule to meet the competition of direct calls by conference members.

BERTHING—Continued.

Vessels handling cargo by direct call at nonterminal ports from one shipper or supplier, subject to the minimum rate requirement set forth above, "are permitted to accept any other additional cargo offering from the same docks in any quantity on the same terms, conditions and rates provided in (e) (1)." This provision of the rule is not free from ambiguity. It will be noted that, while acceptance of additional cargo is permitted, the words "same terms, conditions and rates" may mean that, for example, a shipper or supplier other than the shipper or supplier of the first lot if offering 50 tons is assessed freight charges on the basis of 500 tons. What has been stated in respect of the $1 extra on additional cargo from docks within conference terminal ports other than declared docks applies here with equal force. Id. (317–318).

BILLS OF LADING. *See also* THROUGH ROUTES AND THROUGH RATES.

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. Gulf Brokerage and Forwarding Agreements, 533 (534–535).

Requirements of carriers in respect to bill-of-lading descriptions must be of general application to all classes of shippers and shipments; otherwise, undue preference and prejudice will result. Intercoastal Segregation Rules, 725 (734).

Subject to clarification to meet objections mentioned, requirements for uniformity and more detailed descriptions in shipping instructions and bills of lading do not appear unreasonable. Such detailed designations will unquestionably operate as an aid to carriers in making proper delivery in accordance with their tariffs and, also, as protection against unjust claims. Respondents have referred to the necessity of the rule to properly check lost and damaged goods that they may avoid settlements based on the highest valued article in a shipment. But, in view of the manner in which shipments are delivered to lighters, barges, river steamers, rail cars, and trucks for movement beyond ports, difficulties in this respect will still continue. Designations of the nature required, of themselves, do not constitute either a request for special sorting on the pier or an indication of the manner in which consignee will take delivery. In this connection, provisions of the Harter Act, the Bills of Lading Act, and other statutes should be construed as imposing upon carriers minimum, not maximum, requirements. Id. (735–736).

BILLS OF LADING ACT.

Provisions of the Harter Act, the Bills of Lading Act, and other statutes should be construed as imposing upon carriers minimum, not maximum, requirements. Id. (736).

BROKERS AND BROKERAGE. *See also* AGREEMENTS UNDER SECTION 15.

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

BROKERS AND BROKERAGE—Continued.
certain provisions relating to brokerage, and any additional agreements on this subject should be filed as modifications to such conference agreements. Gulf Brokerage and Forwarding Agreements, 533 (534).
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. Id. (535).
The agreements between certain carriers by water in foreign commerce and other persons purporting to fix brokerage commissions and forwarding charges cannot be approved. Id. (535).
BULK. *See* REASONABLENESS.
BURDEN OF PROOF. *See also* EVIDENCE.
An allegation that a rate is unjust and unreasonable puts the burden of proving such unjustness and unreasonableness upon complainant. Bonnell Elec. Mfg. Co. *v.* Pacific SS. Co., 143. (144).
Where issue is raised as to the justness and reasonableness of rates and a violation of the regulatory statute is charged, the burden of proof manifestly rests upon the complainant. Atlas Waste Mfg. Co. *v.* N. Y. & P. R. SS. Co., 195 (197).
On binder twine, an increase of 35.48 percent 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 canceled. Commodity Rates Between Atlantic and Gulf Ports, 642 (645).
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. Sugar From Virgin Islands, 695 (697).
CARGO SPACE ACCOMMODATIONS.
Defendants found to have 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. Hernandez *v.* Bernstein, 686 (691).
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 Act. Sugar From Virgin Islands, 695 (698).
CARLOAD—LESS CARLOAD. *See* CONTRACTS WITH SHIPPERS.
CHARGES DEFINED. *See also* RATE DEFINED.
Charges are the segregated items of expense which are to be demanded by the carrier for any service in connection with transportation. Intercoastal Investigation, 1935, 400 (431).
CHARTER. *See* COMPETITION; CONTRACT CARRIER.
CIRCUMSTANCES AND CONDITIONS. *See* PROFIT TO SHIPPERS; SERVICE; SIMILARITY OF SERVICE.
COLLECT CHARGES. *See* PREPAYMENT OF CHARGES.

COMMERCE.

The fact that incidentally a part of the through transportation from a foreign country to a destination in United States was between ports in the United States did not change the character of that portion from foreign to interstate. Boston Wool Trade Assoc. *v.* Oceanic SS. Corporation, 86 (87).

If there is an original and continuing intention to ship goods by water from one State of the United States to another by way of the Panama Canal, the commerce is intercoastal, and its character, as such, is not changed by the mere accidents or incidents of billing or number of lines participating in the transportation. It is well settled that the intention of the shipper as to the ultimate destination at the time the cargo starts is the test of its character, though broken, transported by more than one carrier, or moving on through or local bills of lading. Intercoastal Investigation, 1935, 400 (440).

Our commerce embraces not only cargo moving but the instrumentalities employed in moving such cargo. Seas Shipping Co. *v.* American South African Line, 568 (583).

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. Johnson Pickett Rope Co. *v.* Dollar SS. Lines, 585 (585).

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. Gulf Intercoastal Rates To and From San Diego (No. 2), 600 (604).

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 the Department's jurisdiction unless it constitutes part of a through-route movement in interstate or foreign commerce. Id. (605).

As stated by the Department of Commerce in Seas Shipping Co. *v.* American South African Line, Inc., et al., 1 U. S. S. B. B. 568, at 583: "* * * our commerce embraces not only cargo moving but the instrumentalities employed in moving such cargo. * * *" Dollar-Matson Agreements, 750 (755).

COMMISSIONS. *See also* AGENTS.

Refusal by defendants to pay commissions to persons other than their authorized agents on passenger tickets and orders for transportation purchased for customers for passage on defendant lines between ports in the State of New York and foreign countries does not result in unreasonable or undue preference or prejudice to such persons under sections 14 and 16 of the Shipping Act, 1916. Joseph Singer *v.* Trans-Atlantic Passenger Conference, 520 (523).

COMMODITY RATES. *See also* CONSOLIDATED CLASSIFICATION; VOLUME OF TRAFFIC.

Ordinarily, taking article out of class-rate basis and assigning commodity rates to be charged thereon denotes a substantial movement of the commodity, and, generally, the commodity rate is somewhat lower than the class rate which it displaces. American Peanut Corporation *v.* M & M T., 78 (82).

Classification ratings are generally the highest which a particular article should bear under normal conditions, and it may be stated as a matter

COMMODITY RATES—Continued.
of accepted principle that to assign an article a commodity rate which is higher than its applicable class rate is indicative of some unusual circumstance or circumstances incident to the transportation of that article which specially justifies the increased rate. Id. (83).
The classification rule of analogy does not apply to commodity rates. Firtex Ins. Board Co. *v.* Luckenbach SS. Co., 258 (259).
Commodity rates must be applied strictly and are applicable only to such articles as are clearly embraced within the commodity-rate description. Id. (261).
COMMON OWNERSHIP OR CONTROL.
The circumstances recited warrant treating Arnold Bernstein Line, Red Star Linie G. m. b. H., and Arnold Bernstein as one for the purposes of the case. Application of Red Star Linie for Conference Membership, 504 (508).
COMPETITION. *See also* PROFIT TO SHIPPPERS; AGREEMENTS UNDER SECTION 15.
In General:
There is manifestly no provision of the Shipping Act which can be construed to forbid a carrier to meet competition or to enlarge the scope of its patronage and its volume of business if it can do so without unfairness to those whom it serves. Board of Commissioners, Lake Charles *v.* New York & Porto Rico SS. Co., 154 (156).
The circumstance that complainant has confined its shipments to respondents' lines and that at the moment there appear to be no carriers threatening the trade's rate stability gives no assurance to respondents that they may not at any time find a reverse situation confronting them. Operators of vessels in foreign commerce of the United States may at any time and without warning be subjected to severe competition by unregulated tramp vessels of any nation or by vessels chartered by shippers with large quantities of cargo to be transported. The exigencies of ocean transportation, and particularly in a long-voyage trade such as concerned in the instant case, too frequently approach such a vital character that they cannot be neglected by the vessel operator if he is to survive, nor treated as inconsequential by the Board in its determinations in complaint proceedings. W. T. Raleigh Co. *v.* Stoomvart, 285 (291–292).
In recent years the use of the practices set forth has become increasingly prevalent, due apparently to the growing realization by foreign-flag operators of the vulnerability of our conferences, which, by the Shipping Act, 1916, are prohibited from using the deferred-rebate system employed almost universally in the export trades of other countries as a protection against such competition. Section 19 Investigation, 1935, 470, (490).
The need for regular services of the best type of ships for each particular trade was recognized by Congress in the preamble of the Merchant Marine Act, 1920, which states that it is necessary for the proper growth of its foreign and domestic commerce that the United States shall have a merchant marine of the best equipped and most suitable types of vessels. Section 7 of that act directs the Department to investigate and determine what steamship services shall be established and the type, size, speed, and other requirements of vessels to be employed in such service, and the frequency and regularity of their sailings, with a view to furnishing adequate,

COMPETITION—Continued.
In General—Continued.
regular, certain, and permanent services. The American-flag lines who have asked the Department to establish rules and regulations under section 19 of the Merchant Marine Act were brought into existence as a result of this mandate of Congress. The ends sought by this legislation cannot be achieved and this policy will be defeated unless destructive methods of competition can be prevented. Id. (497).
The truck rates are described by protestant as being the result of "cutthroat" 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 cannot be considered maximum reasonable rates. Gulf Intercoastal Rates To and From San Diego, 600 (604).
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. Eastbound Intercoastal Lumber, 608 (621).
Passenger Fares:
There should be an effort to grade all fares so as to put them as nearly as possible on a fair competitive basis, considering the age, size, speed, and itinerary of the vessel, the character of the accommodations and service offered, the peculiar characteristics of the particular trade involved, and the needs of the carrier. Passenger Classifications and Fares, American Line SS. Corporation, 294 (304).
If the experience of the respondent, gained from more than five years' operation of its present vessels in the intercoastal trade, prompts that line to make changes in its passenger fares and classifications applicable to these vessels, the complaint of competing lines in the same trade that they will be forced to reduce their fares to the extent necessary to maintain the existing differentials does not make out even a prima facie case of unreasonableness or unlawfulness under the provisions of the Shipping Act, 1916. Id. (304).
Even though some passengers may be diverted from other lines in the same trade, that result in and of itself would not make the suspended tariff unlawful. Id. (304–305).
Respondent's ships involved in the proceeding are not in any way competing in the transpacific trade, and, therefore, the lawfulness of the suspended tariff should not be tested by unsupported forecasts of possible tumult and havoc in that trade. Id. (305).
Carrier:
Shippers need rate stability in order to conduct their business on sound principles. Destructive competition between carriers may afford a temporary benefit to some of the shippers particularly interested, but this does not compensate for its far-reaching and serious adverse effect upon the maintenance of an efficient merchant marine with which the Department is charged by law. The acts which the Department administers frown upon destructive carrier competition, and the greater the danger in this respect the greater

COMPETITION—Continued.

Carrier—Continued.

is the need for unswerving fidelity to the policy and primary purpose declared by law. Intercoastal Rates of Nelson SS. Co., 326 (336).

The Department should exercise all the powers at its command to prevent rate wars of the character evidenced and the bad effects upon our commerce and upon carriers and shippers alike that inhere in such wars. Id. (337).

Respondents generally compete with each other and with rail carriers. This competition, always intense and bitter, has not been conducted along lines of benefit to the general shipping public or to respondents themselves or to the maintenance of an adequate merchant marine. The trade is characterized by individualistic operations, and, in their struggle for traffic, respondents have gone beyond the limits permitted by law. Intercoastal Investigation, 1935, 400 (405).

The law does not interfere with competition between carriers when conducted along lawful lines, but there is a limit when the law will interfere and that is when competition becomes destructive and wasteful. Id. (430).

A modern, efficient, and economical intercoastal service is in the public interest, and any carrier offering it is entitled to all the protection of law. If the Department allows Shepard or any other carrier not offering that kind of service to set the standard of competition and permits it by means of tariff advantages, such as Shepard claims to itself, to undermine carriers attempting to offer that kind of service, it would inevitably lead to the gradual but sure destruction of such other carriers, which is inimical to the declared policy of the law. Id. (430–431).

The line between proper competition and improper competition must be drawn at some place. Id. (468).

The use of the cut-rate methods prevents stability. Furthermore, their effect is cumulative, and sooner or later they result in complete demoralization of shipping conditions in the trades in which they are used. Section 19 Investigation, 1935, 470, (491).

Certainly, the proper remedy for any unduly high rate is not cutthroat competition that wrecks the entire rate structure. Id. (493).

From the record in the investigation it is clear that there exist today and have existed in the past conditions unfavorable to shipping in the foreign trade arising out of and resulting from competitive methods employed by owners and/or operators of foreign countries and that the effects of the world-wide depression upon our export trade have been intensified by these competitive methods. The following practices are specifically condemned as unfair and detrimental to the commerce of the United States and the development of an adequate American merchant marine: 1. The solicitation or procurement of freight by offers to underquote any rate which another carrier or carriers may quote. 2. The use of rate cutting as a club to compel other carriers to adopt pooling agreements, rate differentials, spacing-of-sailing agreements, or other measures. Id. (498).

It is evident from the report and the Department finds, that foreign-flag nonconference carriers, by open or secret solicitation of freight on basis of rates lower by specific percentages or amounts than the

COMPETITION—Continued.
Carrier—Continued.
established rates of other carriers, American and foreign, or on basis of any rate that would attract business away from such other carriers, or by threatened rate reductions, compel, or seek to compel, such other carriers to adopt pooling, rate-differential, or spacing-of-sailing agreements on their own terms, and have thus created conditions unfavorable to such other lines and to shipping in the foreign trade. These methods and practices of foreign-flag, nonconference carriers the Department condemns as unfair. Id. (501).
The rate, established under the competitive pressure mentioned, would afford no criterion of a maximum reasonable rate for the services in question. Gulf Westbound Intercoastal Soya Bean Oil Meal Rates, 554 (559).
The Shipping Act 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. Seas Shipping Co. *v.* American South African Lines 568 (579).
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. Id. (584).
However disastrous to all concerned a rate war in our foreign commerce may prove, the Congress has not given the Department the power to terminate it. Id. (584).
On coffee from the West Coast, defendants contend that the lower rate to New York than to Boston is due to "the competitive action of the transshipping lines meeting the direct service." As the direct service referred to is by Grace Line, Inc., that defendant is in the anomalous position of claiming its transshipment rate is depressed because of its own action. Moreover, the members of the West Coast Conference have the power to initiate and enforce changes in rates applying over direct as well as transshipment routes. Commonwealth of Mass. *v.* Colombian SS. Co., 711 (715–716).
Section 605 (c) of the Merchant Marine Act, 1936, as amended, by imposing restraints against the duplication of services by subsidized lines, takes away from the parties their opportunity to compete with one another in their respective foreign services, thus destroying the underlying consideration for the agreement. Dollar-Matson Agreements, 750 (754).
Section 15 confers authority to regulate competition between carriers in accordance with the needs of the service. Id. (755).
We view the exemption granted by section 15 as a means of regulating competition in order to eliminate rate cutting and other abuses which are harmful to shipper and carrier alike. Id. (755).
Prejudice; Commodities; Ports:
It is manifest of record that no competition exists between wool and boots and shoes, cotton piece goods, and iron and steel articles.

COMPETITION—Continued.
Prejudice; Commodities; Ports—Continued.
It is, therefore, recognized that the rates on wool cannot be prejudiced by the rates on the latter commodities. Boston Wool Trade Asso. *v.* M & M T., 24 (30).
There being no competition of importance between peanuts shipped from two ports, further consideration of claim of unjust prejudice must be denied. American Peanut Corporation *v.* M & M T., 78 (79).
Regarding the issue of undue and unreasonable prejudice and disadvantage, the evidence of complainant's witness as to whether Sheboygan and Milwaukee tanneries compete with complainant is in direct conflict. Upon the record, therefore, the allegation as respects section 16 is not sustained. Eagle-Ottawa Leather Co. *v.* Goodrich Transit Co. 101 (102).
Contention that arbitraries on cargo transshipped subject ports to undue and unreasonable disadvantage is not supported in view of slight amount of such cargo and practical competitive conditions which respondents have to meet in order to participate in carriage of the traffic. Everett Chamber of Commerce *v.* Luckenbach SS. Co., 149, (152–153).
Carrier's practice to name tariff rates and charges lower by fixed percentages than those of its competitors for like transportation in intercoastal commerce between points on the Atlantic coast and points on the Pacific coast results in undue and unreasonable advantage to it and in undue and unreasonable prejudice and disadvantage to the carriers named and is unjust and unreasonable. Intercoastal Investigation, 1935, 400 (462).
The competition which a shipper faces is not limited to shipments moving on the same vessel with his shipment, and the possibilities of discriminations, preferences, and prejudices are not removed by giving the same rates to all shippers of the same commodity on the same vessel. Section 19 Investigation, 1935, 470 (495).
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. Gulf Westbound Intercoastal Soya Bean Oil Meal Rates, 554 (560).
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. Johnson Pickett Rope Co. *v.* Dollar SS. Lines, 585 (587).
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. Eastbound Intercoastal Lumber, 608 (620–621).

COMPETITION—Continued.
Prejudice; Commodities; Ports—Continued.
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. Paraffine Companies *v.* American-Hawaiian SS. Co., 628 (629).
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. H. Kramer & Co. *v.* Inland Waterways Corp., 630 (633).
In order to establish undue 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 shipper. Phelps Bros. Co. *v.* Cosulich, 634 (638).
The basis of complainants' allegation that the existing relationship between the rates on flour and bulk wheat is prejudicial to the latter commodity is not clear. The extent of competition, if any, between the commodities is not demonstrated, and there is no proof that the rate situation has in any manner operated to complainants' disadvantage in marketing wheat. Intervening flour interests contend that rates on wheat and flour should be on an exact parity because a lower rate on wheat would enable southeastern mills to secure northwestern wheat and market the flour at a price advantage over flour from the northwest. But the Commission has no authority to adjust rates primarily to protect an industry from domestic competition. Tri-State Wheat Transp. Council *v.* Alameda Transp. Co. 784 (787–788).
Complainant seeks to establish that the rates under consideration are unduly prejudicial by comparing the rate on wallboard with the 23-cent rate on pulpboard; and by pointing out that scrap paper bears the same rate as baled rags valued at $28 per ton. There is no proof that competition exists between the compared commodities or that the allegedly preferential rates have had any injurious effect upon complainant's business. Celotex Corp. *v.* Mooremack Gulf Lines, 789 (792).
COMPLAINTS. *See* SHIPPING ACT, 1916; REPARATION; SEAL OF NOTARY PUBLIC.
CONFERENCE. *See* AGREEMENTS UNDER SECTION 15.
CONFISCATION.
Unfavorable financial returns upon respondent's operations as a whole cannot justify rates on leather if they are unreasonable, and reduction of such rates, if by the usual tests they are found unreasonable, is not confiscation but is a proper exercise of the regulatory function. Eagle-Ottawa Leather Co. *v.* Goodrich Transit Co., 101 (106).

CONGRESSIONAL DEBATES.

Although senatorial discussions are, perhaps, not the approved source of information from which to determine the meaning of the language of the statute, review of legislative expressions has been felt desirable in view of importance of conclusions. American Peanut Corporation *v.* M. & M. T. 90 (94).

CONSOLIDATED CLASSIFICATION. *See also* COMMODITY RATES.

Classification ratings are generally the highest which a particular article should bear under normal conditions, and it may be stated as a matter of accepted principle that to assign an article a commodity rate which is higher than its applicable class rate is indicative of some unusual circumstance or circumstances incident to the transportation of that article which specially justifies the increased rate. American Peanut Corporation *v.* M. & M. T. 78 (83).

By its express provision rule 34 of the official classification related to shipments "loaded in or on cars." In and of itself it was, therefore, in no respect applicable to port-to-port shipments by water. Muir-Smith Co. *v.* G. L. T. Corporation 138 (141).

The Board found, 1 U. S. S. B. 138, that rule 34 of the classification did not apply to all-water shipments. Oakland Motor Car Co. *v.* G. L. T. Corporation 308 (309).

The general mixing provision contained in rule 10 of the governing classification originated in railroad transportation and has had the sanction of the Interstate Commerce Commission over a long period of years. Armstrong Cork Co. *v.* American-Hawaiian, 719 (724).

CONSTITUTION OF THE UNITED STATES.

Decisions of the United States Supreme Court demonstrate the fallacy of the contention that, should continuance of differentials be countenanced, such action would be in contravention of article 9, section 1, of the Constitution of the United States, which prohibits preferring a port in one State over a port in another State. Port Utilities Commission of Charleston *v.* Carolina Co., 61 (70).

CONTRACT CARRIERS. *See also* SHIPPING ACT 1916.

Although the act does not define contract carriers, this term includes every carrier by water which under a charter, contract, agreement, arrangement, or understanding operates an entire ship, or some principal part thereof, for the specified purposes of the charterer during a specific term, or for a specified voyage, in consideration of a certain sum of money, generally per unit of time, or weight, or both, or for the whole period or adventure described. Intercoastal Investigation, 1935, 400 (458).

It is hardly necessary to state that the provisions of the Intercoastal Shipping Act, 1933, and those provisions of the Shipping Act, 1916, governing common carriers by water in intercoastal commerce also apply to contract carriers in intercoastal commerce. Such provisions of law the Department may not waive. Id. (458).

The Intercoastal Shipping Act, 1933, does not differentiate contract from common carriers. Both are the same for all of its purposes. It prohibits one and the other from engaging or participating in intercoastal transportation unless all the rates, charges, rules, and regulations have been published and filed with the Department. It cannot too strongly be stressed that failure of a carrier, whether contract or common, to properly publish and file its rates is as serious a violation of the act

CONTRACT CARRIERS—Continued.
as its failure to observe such rates after they have been published and filed. Id. (461).
Respondents have engaged, or are engaged, in transportation each as a contract carrier by water in intercoastal commerce without proper tariffs on file with the Department, in violation of section 2 of the Intercoastal Shipping Act, 1933. Id. (463–464).
The filing requirement on contract carriers is imposed by the Intercoastal Shipping Act, 1933, which states that the term "common carrier by water in intercoastal commerce" for the purposes of the act shall include every common and contract carrier by water engaged in the transportation for hire of passengers or property between one State of the United States and any other State of the United States by way of the Panama Canal. The words "contract carrier" as there used have a meaning. In the absence of statutory definition, a particular meaning has been placed upon them by the report. As to each case as it arises, the question, one of fact, is whether the operations of the carrier fall within the meaning given the words "contract carrier." From the charter between The Union Sulphur Company and A. C. Dutton Lumber Corporation it is clear that in transporting the cargo of the latter company The Union Sulphur Company falls within the meaning of such words. To follow the exceptions of The Union Sulphur Company and San Francisco Chamber of Commerce would be the equivalent of saying that such words are meaningless. As long as they remain in the statute, it is the duty of every contract carrier to file tariffs as contemplated by the act. The filing of copy of the charter by the charterer does not satisfy such filing requirement. Id. (468).
CONTRACTS WITH SHIPPERS.
In General:
Whether an agreement was entered into, its terms, and other matters looking to a determination of the contractual relations and rights of the parties pursuant to it are clearly not within Board's jurisdiction to consider. Boston Wool Trade Assoc. *v.* Oceanic SS. Co., 86 (89).
Apparently, if there is liability under the contract of affreightment for failure of defendants to furnish cargo space within the time agreed upon, any recourse of complainant is before a court of competent jurisdiction. Pacific Lumber & Shipping Co. *v.* Pacific-Atlantic SS. Co., 624 (627).
To order cancellation of existing cannery contracts or the alteration of the method of serving canneries was not deemed necessary or expedient where approximately 50 percent of the Southeastern Alaska business handled by the carriers was cannery business, many of the canneries were located at out-of-the-way points, and steamers frequently made a detour of more than 20 miles waste. Alaska Rate Investigation, 1 (12).
Tariffs:
The law prohibits special arrangements between shippers and carriers unless the terms thereof are fully disclosed in the tariff. Intercoastal Rate Investigation, 1935, 400 (416).
In paragraph 6, it is stated that the rate and carload minimum weight shall not in any event exceed the rate and carload minimum weight specified in the contract. Such clause at law is deemed to have been agreed to in contemplation of the powers of Congress to legislate

CONTRACTS WITH SHIPPERS—Continued.
Tariffs—Continued.
and of the Department to enforce the law. The rate and minimum weight in the tariff afford the only legal basis upon which freight charges may be collected, and any agreement to the contrary cannot be sanctioned by the Department. Id. (455).
As the Intercoastal Shipping Act, 1933, requires the publication and filing of all the rates, charges, rules, and regulations for or in connection with intercoastal transportation, from which a carrier may not depart except after notice and in the manner prescribed by that statute, which affords shippers an opportunity to protest any such change and as the Shipping Act, 1916, prohibits all unreasonable rates, charges, rules, and regulations and condemns discriminations that would give an undue preference or disadvantage, there is no need for a shipper to make a special contract with a carrier in order to entitle himself to intercoastal transportation for his goods at the same rates and charges and under the same terms and conditions as the goods of his competitor are transported. Id. (456).
Nothing in the acts has deprived carriers of the right to contract, and, subject to the prohibitions mentioned, they are free to make special contracts looking to a legitimate increase of their business. If such contract is entered, at law the parties may be taken to have done so subject to possible changes in the published rates, charges, rules, and regulations in the manner fixed by the statute, to which they must conform. Id. (456).
It cannot too strongly be stressed that the terms and conditions of the tariff may not be waived or changed by private agreements with shippers. Id. (456).
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. C. W. Spence *v.* Pacific-Atlantic SS. Co., 624 (626).
Lumber-berth-quantity-allowance rules found to 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. Transportation of Lumber Through Panama Canal, 646 (650).
Exclusive Patronage:
The benefits which accrue to a common carrier if it may make lower rates to those who ship by it exclusively are plain, and that such a policy may be advantageous to the carrier which practices it may be granted, but it has long since been recognized that those who conduct a public employment must forego many methods of obtaining business and holding it which are permissible in private enterprise. Eden Mining Co. *v.* Bluefields Fruit & SS. Co., 41 (44).
In Menacho et al. *v.* Ward et al., 27 Fed. 529, the status of the common law with respect to exclusive-patronage contracts by common carrier is fairly represented. It pronounces the common-law doctrine that such contracts are lawful only in the event that they are made with a view that in return for the lower rate the carrier shall receive from the shipper regular consignments of freight, or a given number of ship-

CONTRACTS WITH SHIPPERS—Continued.
Exclusive Patronage—Continued.
ments, or a certain quantity of merchandise for transportation. Id. (44).
Applicable to the case in hand is the language used in W. U. Tel. Co. *v.* Call Pub. Co., 181 U. S. 92, where the court said: "All individuals have equal rights both in respect to service and charges. Of course such equality of right does not prevent differences in the modes and kinds of service and different charges based thereon. But that principle of equality does forbid any difference in charge which is not based upon difference in service, and even when based upon difference of service must have some reasonable relation to the amount of difference and cannot be so great as to produce an unjust discrimination." Id. (45).
The contention that the substantial equality of treatment contemplated by sections 16 and 17 of the Shipping Act, 1916, was accorded since complainants were extended full opportunity to avail themselves of the lower rates by agreeing to the same condition which contract shippers had accepted, is as unconvincing here as when used in support of other kinds of unjust discrimination resulting from unfair conditions imposed by carriers upon shippers. Under the statute, the complainants, as members of the shipping public, were entitled to have their shipments carried at the same rates as other patrons who received identical service. This right attached to each individual transportation transaction as such and was not to be predicated upon any condition imposed by respondent restricting complainants' freedom of choice as to what carrier or carriers they should elect to patronize in connection with subsequent shipments. Id (46).
United States *v.* Prince Line, Ltd., et al., 220 Fed. 230, distinguished from Eden Mining Co. *v.* Bluefields Fruit & Steamship Co., 1 U. S. S. B. 41. Id. (46).
Case of Rawleigh *v.* Stoomvaart, et al., 1 U. S. S. B. 285, distinguished from Eden Mining Co., et al. *v.* Bluefields Fruit & Steamship Co., 1 U. S. S. B. 41; Rawleigh *v.* Stoomvaart, 285 (290–291).
Contracts in Atlantic Refining Co. *v.* Ellerman & Bucknall SS. Co., 1 U. S. S. B. 242, distinguished from contract in the Eden Mining case, 1 U. S. S. B. 41. Atlantic Ref. Co. *v.* Ellerman & Bucknall SS. Co., 242 (252–253).
Complainant has been and is receiving frequent and satisfactory transportation service maintained with heavy investment by respondents in a long-distance trade with the unqualified support of practically all other shippers than complainant through the use of the contract-rate system in its simple form. Complainant, except as to rate, is accorded every advantage of such service similarly as are such other shippers, although it has the liberty of at any time patronizing any competition destructive of the stability and regularity of such service. In return for the rate disadvantage which it incurs in the capacity of a noncontract shipper, there must, in fairness, be considered the prospect not only of recoupment by complainant but of its obtaining through the exercise of such liberty advantages in rates over those shippers who have agreed to confine their shipments to the respondents. Rawleigh *v.* Stoomvaart, 285 (292).

CONTRACTS WITH SHIPPERS—Continued.

Exclusive Patronage—Continued.

The contract-rate practice as a practice is not new, and by implication it must be said to have received approbative attention at the hands of a committee of Congress after a lengthy and painstaking investigation of combinations and practices of carriers by water. It has presently almost universal practical application, being used in multitudinous daily transactions by carriers the world over. Like the method of charging rates upon a weight or measurement basis and, in interstate trades, the carload-less carload mode of rate making, it is a system of rate application which finds acknowledged adaptability in ocean transportation. An important attribute of it is equality of rate treatment as between large and small shippers. By contracting with a group of lines under the contract system prevailing in this trade, the small shipper is assured of adequacy of service and of receiving the same rate as that charged the large shipper of the same commodity. Id. (292-293).

The Shipping Act, which closely parallels the recommendations of the legislative committee, does not forbid the contract-rate practice as such. Id. (293).

It is not persuasive that respondents' practice is unlawful because of absence of materially different service before and since inauguration of such practice by them. Manifestly, a basic reason for the inauguration of the contract-rate practice was to secure protection to the carriers of the established services, maintenance of which required heavy capital and overhead expenditures. These considerations, it would appear, justified adoption by the respondents of every reasonable measure, such as the contract-rate practice per se, to assure the stability of competitive conditions necessary for the continuance of the regularity and frequency of service required by shippers in the trade and which, except for introduction of such practice, might well have become impossible. Id. (293).

Rates assessed under contract-noncontract-rate system on black Lampong pepper from the Netherlands East Indies to New York, N. Y., and New Orleans, La., not shown to be in violation of section 14, 16, or 17 of the Shipping Act, 1916. Id. (293).

The contract contained in the schedule under suspension excludes carriers from participating in the transportation under consideration and creates a monopoly in favor of a competitor, which is unlawful. Although contract rates may have served a useful purpose in the past, when intercoastal carriers freely engaged in rate wars, their need for intercoastal transportation is no longer apparent in the light of the Intercoastal Shipping Act, 1933. Intercoastal Rates on Silica Sand From Baltimore, Md., 373 (375).

It is said the contract-rate system was adopted to obtain some degree of stability in the rates. Undoubtedly this was one of its effects, at least as to the rates on shipments of contracting shippers, but another effect of this practice is to exclude other carriers as may offer from participating in the transportation of the contracted tonnage. In the Eden Mining case, it was held that the exaction of higher rates from complainants than from shippers who had agreed to give the respondent their exclusive patronage subjected complainants to undue and unreasonable prejudice and disadvantage, and

CONTRACTS WITH SHIPPERS—Continued.
Exclusive Patronage—Continued.
constituted unjust discrimination between shippers. It is true only one carrier was there involved, but to permit the members of the Gulf conference to publish and charge rates depending upon the execution of exclusive-patronage contracts would be permitting them to do collectively what carriers individually are prohibited from doing. Two carriers were involved in the Menacho case and in principle the situation as to the Gulf carriers cannot be distinguished from the one there involved. Intercoastal Investigation, 400 (452).
Contracts of the character in question do not constitute a transportation condition as to warrant a difference in transportation rates. Id. (452).
It is clear that, when intercoastal carriers were not required to file the rates charged shippers, but only their maximum rates, and carriers freely engaged in rate wars, the contract-rate system served a useful purpose, but conditions have been changed by the Intercoastal Shipping Act, 1933, which requires that, unless specifically authorized by the Department, rates may not be changed on less than thirty days' notice to the public and also authorizes the Department, either upon complaint or upon its own initiative, to suspend proposed changes in the rates and enter upon hearings concerning the lawfulness thereof. Id. (454).
It will be noted that, under paragraph 1 of the form of agreement, Calmar reserves the right to fix the maximum quantity to be carried on any of its vessels and that, under paragraphs 3 and 6 thereof, the shipper obligates itself to tender a certain minimum number of carloads or tons. In these respects, the contracting shippers are placed at a disanvantage as compared with noncontracting shippers, for it is the right of shippers to ship in any quantity they choose and the obligation of carriers to carry the quantity tendered to them, due regard being had for the proper loading of the vessel and the available tonnage, and such matter cannot be the subject of contracts. Id. (454–455).
The practice of members of Gulf Intercoastal Conference to exact higher rates and charges from shippers who have not executed so-called rate contracts with them than from shippers who have done so, for like intercoastal transportation, is unlawful, in violation of sections 16 and 18 of the Shipping Act, 1916. Id. (463).
The contract-rate systems of Calmar and Shepard are in violation of section 2 of the Intercoastal Shipping Act, 1933, and sections 16 and 18 of the Shipping Act, 1916. Id. (463).
The Rawleigh case involved transportation in foreign commerce; the issues there are distinguishable from the issues here, and that decision should have no controlling effect on intercoastal transportation. Id. (467).
Rawleigh *v.* Stoomvaart et al., 1 U. S. S. B. 285, and Gulf Intercoastal Contract Rates, 1 U. S. S. B. B. 524, as distinguished. Gulf Intercoastal Contract Rates, 524 (529–530).
It is clear that the real purpose of the suspended rates and rule is to prevent shippers from using the lines of other carriers and to discourage all others from attempting to engage in intercoastal transportation from and to the Gulf. Id. (530).

CONTRACTS WITH SHIPPERS—Continued.
Exclusive Patronage—Continued.
It should be understood that the Department is not sanctioning all 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. Id. (530).
The Department finds the contract system provided for in the schedules under suspension not justified by transportation conditions in the trade involved and unduly and unreasonably preferential and prejudicial, in violation of section 16 of the Shipping Act, 1916. Id. (530).
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. Phelps Bros. & Co. *v.* Consulich, 684 (689).
As stated in Gulf Intercoastal 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. Id. (639).
Complainant found to be entitled to membership in the Adriatic, Black Sea, and Levant Conference on equal terms with each of the defendants, and the conference agreement and contracts 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. Id. (641).
That section 15 confers authority to regulate competition between carriers in accordance with the needs of the service was stated by the U. S. Supreme Court in the case of Swayne & Hoyt, Ltd., et al. *v.* United States, 300 U. S. 297, 305: "* * * We think there was evidence from which the Secretary could reasonably conclude that there was little need for a contract-rate system to assure stability of service. * * * On the other hand, there was substantial evidence from which the Secretary could infer that the contract-rate system would tend to give to the Conference carriers a monopoly by excluding competition from new lines." Dollar-Matson Agreements. 750 (755).
COST OF SERVICE. *See also* VALUE OF COMMODITY; VALUE OF SERVICE; VOLUME OF TRAFFIC.
Obviously, there is objection to the application of data which are based upon the cost of service of water carriers at large to the cost of service rendered by the Metropolitan Steamship Line, and the probative force of evidence on this point is weakened by its generality. Boston Wool Trade Assoc. *v.* Eastern SS. Lines, 36 (37).
Greater cost of service due to more sailings would seem to be gross and to be dissipated by greater tonnage carried. American Peanut Corp. *v.* M. & M. T., 78 (81).
The probative value of conclusion concerning cost is necessarily impaired by absence of facts upon which it is based. Eagle-Ottawa Leather Co. *v.* Goodrich Transit Co., 101 (105).
Value is an important element of rate making, but cost of service is also a factor, and, hence, it is often true that charges for transporting a cheap article are greater in proportion to its value than charges for transporting a high-grade article. Atlas Waste Mfg. Co. *v.* Ny. P. R. SS. Co., 195 (196–197).

COST OF SERVICE—Continued.

Depreciation in a country's currency is often followed by a compensating increase in domestic prices and the general expenses of doing business, and, had the carriers encountered such an increase in cost of services furnished by them to the Canadian shipper, there would exist one of the main reasons by which carriers can justify exacting increased compensation from shippers, Rates in Canadian Currency, 264 (277).

The lack of evidence on the point does not warrant the assumption that there is no difference in the cost of services to New York and Philadelphia. Philadelphia Ocean Traffic Bureau *v.* Export SS. Corporation, 538 (542).

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. Gulf Westbound Intercoastal Soya Bean Oil Meal Rates, 554 (560).

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. Id. (560).

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. Eastbound Intercoastal Lumber, 608 (621–622).

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. Sugar From Virginia Islands, 695 (699).

While the increases authorized in Commodity Rates Between Atlantic and Gulf Ports, 1 U. S. M. C. 642, were granted in recognition of the carriers' revenue needs, such costs of operation must be fairly distributed over all cargo transported. Celotex Corporation v. Mooremack Gulf Lines, 789 (792).

CURRENCY. *See* PREJUDICE.

DAMAGES. *See* REPARATION.

DEFERRED REBATES.

In recent years, the use of the practices set forth has become increasingly prevalent, due apparently to the growing realization by foreign-flag operators of the vulnerability of our conferences, which, by the Shipping Act, 1916, are prohibited from using the deferred-rebate system employed almost universally in the export trades of other countries as a protection against such competition. Section 19 Investigation, 1935, 470 (490).

Payments to shippers of automobiles by W. and M. through A. D. T. found to have been an unjust device or means to obtain transportation of property by water at less than the rates or charges which would otherwise apply and to have been unduly preferential, in violation of section 16 of the Shipping Act, 1916, but not to have been deferred rebates within the purview of section 14 of the act. Payments to Shippers by W. & M. SS. Co., 744 (749).

DELIVERY.

The carrier's undertaking is not only to transport but also to deliver cargo to consignees because transportation, as the United States Supreme Court often has said, is not completed until the shipment arrives at the point of destination and is there delivered. Assembling and Distributing Charge, 380 (384).

Although respondents admit it is their obligation to make proper delivery of the cargo, they urge that delivery beyond ship's side is a separate operation, the cost of which should be borne by the cargo. This view conflicts with that of the United States Supreme Court as expressed in Brittan *v.* Barnaby, 62 U. S. 527, 533, 535. Id. (384).

If the shipper pays for delivery at ship's tackle and does not receive it but, instead, is obliged by the steamship companies to take delivery from place of rest on dock, which delivery costs the carriers not more but less, he may not be compelled to pay an additional charge upon the assumption that he has received an additional service. The United States Supreme Court has held that a carrier may not charge the shipper for the use of its general-freight depot in merely delivering his goods for shipment, nor charge the consignee of such goods for its use in merely receiving them there within a reasonable time after they are unloaded. It is not within the power of the carriers by agreement in any form to burden shippers with charges for services they are bound to render without any other compensation than the customary charges for transportation. Id. (385).

The record shows that it is impracticable for carriers to accept possession or make delivery of general cargo at ship's hook, and, if, as used in the rule, "ship's tackle" means ship's hook, the expense of moving such cargo from and to point of rest on the dock when that service is performed for the convenience of respondents should be included in the intercoastal rate. Intercoastal Investigation, 1935, 400 (416–417).

When delivery is made to a lighter, rail car, barge, river steamer, or truck for movement beyond the port, the shipment ordinarily is checked by the intercoastal carrier by number of cases or packages and general shipping mark, and there is no detailed sorting by any carrier other than by Shepard. A charge is imposed upon deliveries to trucks, but there is no charge when shipments are delivered to other conveyances. There is also a similarity of treatment in deliveries to a lighter whether for local delivery or for a rail haul, but the charge applies only upon the local de-

DELIVERY—Continued.
livery. In this respect, the rule is unduly prejudicial and preferential. Intercoastal Segregation Rules, 725 (734).
The rule requires the payment of charges by local consignees who perform their own sorting, or who employ warehouses to perform that service at places other than the piers and who are willing to take delivery of their shipments by general shipping mark with reasonable despatch within free time. It forces those who have no need for and who do not request parcel-lot delivery to contribute to the expense incident to such delivery when it is requested and performed. In this respect, the rule is unjust and unreasonable. Id. (734).
Shipments are tallied when received from the shipper and are checked against the bill of lading when delivery is made at the port of discharge. This check is made for the carrier's protection as assurance that delivery is being made of the entire bill-of-lading quantity. Some sorting on the pier also is necessary to insure proper delivery of mixed shipments. These services, performed for the convenience of the carrier in effecting normal delivery, should be included in the published rate. Id. (735).
The rule applies to shipments discharged at all Atlantic and Gulf ports. Respondents presented no testimony regarding operating conditions at ports of discharge other than New York and New Orleans. Protestants, however, presented testimony concerning conditions at other Atlantic and Gulf ports, showing that in many instances the charge would apply on shipments that required no sorting, as, for instance, where deliveries are made in one lot by general shipping mark and where the cargo is transferred to local warehouses for sorting. It is reasonably clear from protestants' testimony that the rule as it is now published gives little, if any, consideration to the manner in which shipments are handled at the ports named above and that its operation will be unjust and unreasonable. Id. (735).
A carrier may not be required to perform extra handling on the pier or extraordinary delivery of one shipment to numerous persons in parcel lots, but it may engage therein upon proper tariff authority and for reasonable compensation. Parcel-lot delivery may require somewhat different handling on the pier than is ordinarily the case, but it is improper to assess any part of the cost thereof against a consignee who does not request or receive extraordinary delivery. Id. (736).
Gulf respondents referred to the constantly advancing wage scales for stevedores and for pier labor, but labor costs are incurred in ordinary loading and unloading operations, and it is not possible upon the record to determine what proportion may be properly applied to special sorting or extraordinary delivery services. A scale of charges for parcel-lot deliveries based upon pier labor alone is open to question; in fact, protestants claim that basis is unreasonable on the theory that the sorting service is not reasonably related to the service of delivery. There is some merit in that contention since for two sortings the charge would be 1 cent per 100 pounds or approximately 20 cents per ton. Yet, any number of deliveries might be made without charge. At San Francisco, it was testified that the extra cost of checking parcel-lot deliveries on westbound traffic was 30 cents per ton and of piling canned goods on the pier by kinds, sizes, brand, grade, or submark was 66 cents a ton. It is doubtful that costs in the Gulf or on the Atlantic seaboard are sufficiently lower to

458342 O - 42 - 67

DELIVERY—Continued.
successfully defend even the minimum charge under the rule. Shippers of enclosures in pool shipments protest the sliding scale on the ground that buyers want to know their actual delivered costs. This is not possible when the total number of sortings which the entire shipment will require is unknown to either shipper or consignee. In general, the Commission is of the opinion that all costs involved in the service should be reflected in the charge. But, since the principal justification for any charge lies in the special delivery facilities, the charge should be based on the service of delivery, and, irrespective of the number of deliveries, a uniform charge should be made. Id. (736–737).
Practice of respondents operating to Atlantic coast ports in making deliveries by kind, size, brand, and grade without charge while assessing a charge for parcel-lot deliveries by submark found unduly preferential and prejudicial. Id. (737).
Split-delivery:
Measure of adjustment necessary to effect removal of the undue prejudice and preference determined. Associated Jobbers of Los Angeles *v.* American-Hawaiian SS. Co., 198 (207–208).
The according to carload shipments which are split-delivered at two or more ports the same rates and/or charges as are assessed similar carload shipments delivered solid at one port will constitute undue and unreasonable preference and undue and unreasonable prejudice as between persons and descriptions of traffic. Associated Jobbers of Los Angeles *v.* American-Hawaiian SS. Co., 161 (168).
Refusal of defendants to provide split-delivery service Atlantic coast ports while providing such service in connection with the same commodities at Pacific coast ports not shown to be violation of sections 16 and 18. Paraffine Cos. *v.* American-Hawaiian SS. Co., 628 (629).
No charge will be assessed against a straight shipment of one kind and which consists of only one size, brand, or grade; in fact, under rule 2 (g) such a shipment could not lawfully be delivered in parcel lots either with or without charge. But, apparently, it is respondents' intention to continue parcel-lot deliveries, for, as announced by counsel, upon the assessment of a charge under rule 54, any number of parcel-lot deliveries of a single shipment will be made. To accord a greater privilege to a mixed shipment than is accorded to a straight shipment would constitute undue preference and prejudice, in violation of section 16 of the Shipping Act, 1916. The conclusion, therefore, is inescapable that unlawfulness may result under the tariffs as they are now published. Intercoastal Segregation Rules, 725 (734–735).
The practice of respondents operating to Atlantic-coast ports in making deliveries prior to February 17, 1938, by kind, size, brand, and grade, without charge while at the same time collecting a charge for parcel-lot deliveries by submark was unduly preferential to consignees or other persons who received such deliveries by other than submark and unduly prejudicial to those who took delivery by submark, in violation of section 16 of the Shipping Act, 1916. Id. (734).
DEPRESSED RATES. *See* COMPETITION.

DESIRABILITY OF TRAFFIC.

A large volume of port-to-port traffic consisting of a commodity which is uniform in package, adaptable and convenient for stowage, desirable from a labor standpoint, low in value, and entailing minor risk undoubtedly requires the most substantial reasons to justify the higher rates projected by the suspended tariff. Wool Rates From Boston to Philadelphia, 20 (23).

Wool is shipped in uniform bags or bales, requires no special equipment and only a minimum amount of attention in handling, and is readily adaptable for stowage with other shipments. These facts are indicative of its greater desirability as traffic from the standpoint of liability assumed by the carrier for loss or damage. Boston Wool Trade Asso. *v.* M. & M. T., 24 (29).

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. Sugar From Virgin Islands, 695 (698).

DETRIMENT TO COMMERCE. *See* AGREEMENTS UNDER SECTION 15; COMPETITION; NONCOMPENSATORY RATES.

DEVELOPMENT RATES:

The carriers have indicated their willingness to consider a reduction in the rate if the complainant or anyone else will submit data indicating a reasonable possibility of developing business. It is expected that conferences will at all times give careful consideration to such requests and supporting data. Edmond Weil *v.* Italian Line, 395 (399).

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. Eastbound Intercoastal Lumber, 608 (620).

DEVICES TO DEFEAT APPLICABLE RATES.

The issuance by respondents of through bills and according through rates for the two local transportation movements concerned in the proceeding is prohibited by section 16 of the Shipping Act, which makes unlawful the furnishing by subject carriers of transportation at less than their regular rates through false billing or by other unfair device or means. Pablo Calvet & Co. *v.* Baltimore Insular Line, 369 (371).

Respondents publish carload and less-than-carload rates. However, some of them consolidate less-than-carload shipments of some shippers and make up what is known as pool cars, which are split to effect delivery. This is an unlawful device for the purpose of defeating the less-than-carload rate, not only without proper tariff rate or rule, but repugnant to a rule to the contrary contained in their own tariffs. Intercoastal Investigation, 400 (449).

It is clear that A. D. T. was neither a common carrier, a forwarder, nor a bona fide soliciting agent. It was a dummy corporation promoted by officers and agents of W. and M. through which certain shippers who were owners of stock were given rebates in the form of stock dividends as an inducement to ship over W. and M. The practice enabled such shippers to secure transportation at less than the rates which would otherwise apply, unjustly discriminated against shippers who were required to pay the

DEVICES TO DEFEAT APPLICABLE RATES—Continued.
regular tariff rate for the same service, and constituted unfair competition with other carriers engaged in the same trade. Payments To Shippers by W. & M. SS. Co. 744 (748-749).
The Commission regards any such form or device by which any part of the freight rate paid for transportation is refunded to shippers as a violation of law which cannot be too strongly condemned. Id. (749).
Payments to shippers of automobiles by W. and M. through A. D. T. found to have been an unjust device or means to obtain transportation of property by water at less than the rates or charges which would otherwise apply. Id. (749).
DIFFERENTIALS. *See also* RATE STRUCTURE.
The theory that a carrier is justified in burdening a port with a differential for the sole and only reason that the cost of operation from that port is greater than from some other port is not concurred in; it is obvious that many elements, such as volume of traffic, competition, distance, advantages of location, character of traffic, frequency of service, and others are properly to be considered in arriving at adjustment of rates as between ports. Port Utilities Commission of Charleston *v.* Carolina Co., 61 (69).
Decisions of the United States Supreme Court demonstrate the fallacy of the contention that, should continuance of differentials be countenanced, such action would be in contravention of article 9, section 1, of the Constitution of the United States, which prohibits preferring a port in one State over a port in another State. Id. (70).
In the conference agreement as approved March 9, 1934, there was no provision for differential rates, but members were advised by the Department that the approval of the agreement without a provision for a rate differential in favor of slow cargo vessels maintaining direct service to ports covered by the agreement was without prejudice to any action that the Department might take in the event that a carrier operating such a service should seek admission to the conference. Wessel, Duval & Co. *v.* Colombian SS. Co. 390 (392).
Under the prior conference agreement, participated in by the complainant and most of the respondents in the proceeding, a rate differential of ten (10) percent was allowed in favor of vessels operated by complainant and certain other lines in the conference. The record shows that this differential was agreed to by the conference to avoid a rate war to preserve stability in the trade. It is also shown that the Brazil River Plate and Havana Steamship Conferences allow a differential as between cargo vessels and passenger vessels. The facts and circumstances under which these particular differentials came into existence are not shown, but, in any event, the establishment of a system of differential rates by voluntary action of these groups of steamship lines does not create a precedent in so far as the initiation of such a system by government decree is concerned. Furthermore, the establishment by the conference involved of different rates for transshipment lines does not necessarily require the establishment of the same or any differential as between vessels affording direct service. Id. (392).
Atlantic and Gulf/West Coast of South America Conference Agreement not shown to be unlawful, and an order by the Department requiring respondents to admit complainant to membership in the conference with a rate differential found not justified. Id. (394).
DIRECTION. *See* REASONABLENESS.

DISCONTINUANCE OF SERVICE.

Upon the record the reality as an emergency situation of discontinuance by an on-carrier of its business enterprise is not shown; nor is it apparent why such discontinuance, generally infrequent and foreknowledged, cannot be made by cancellation of the particular through route and joint rates in the normal manner prescribed by the Commission's tariff regulations. The schedules should provide for notice to consignee, or the person to whom notice of arrival would be issued in the event the goods were delivered at the billed destination of interrupted on-carrier service due to on-carrier strike, vessel accident or breakdown, or other similar on-carrier emergency situation and that the goods will be held for disposition by him at the transshipment port. A revision of the rule concerned which would remove the objections instanced and carry out, as far as may be, the purpose of respondents is as follows: Through joint rates named in this tariff are applicable except when service of the participating on-carrier, has, due to strike, vessel accident or breakdown, or other similar emergency situation, been interrupted. In the event of such interruption, the consignee, or the person to whom notice of arrival would be issued in the event the goods were delivered at the billed destination, will be mailed arrival notice in which specific reference will be made to the existence of the on-carrier emergency situation and to this rule, and upon expiration of the free-time period applicable to cargo billed to the transshipment port as final destination the goods will be held at the transshipment port for disposition by the consignee, consignor, or owner thereof, as the case may be. Rates, charges, rules and regulations applicable to such goods will be those applicable under this tariff to cargo billed to the transshipment port as final destination. Intercoastal Joint Rates Via On-Carriers, 760 (764).

Upon brief the canal respondents question the Commission's jurisdiction under any circumstances to order cancellation of the suspended schedules involved in the proceeding. Their argument in this relation refers to the absence of any provision in the Shipping Act, 1916, as amended, similar to paragraph 18 of section 1 of the Interstate Commerce Act. Notwithstanding such absence, pertinent provisions of the Shipping Act to which respondents are amenable are absolute. For example, section 16 of that act forbids respondents, without qualification, to subject any locality or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. Whenever in a given case the facts show undue and unreasonable prejudice and disadvantage, it is the Commission's duty, under the act, to order its removal. In the instant proceeding, no facts are disclosed which tend to prove that the proposed discontinuance of rates or services will result in undue or unreasonable prejudice and disadvantage. The record amply supports respondents' position that cancellation of the through routes and joint rates to Vancouver concerned are justified. Westbound Intercoastal Rates to Vancouver, Wash., 770 (773–774).

DISCRIMINATION. *See also* PREJUDICE; REASONABLENESS; CONTRACTS WITH SHIPPERS; CARGO SPACE ACCOMMODATIONS.

Rates on used pianos from New York, N. Y., to Constantinople, Beirut, and other Levantine ports not shown to be violative of section 17 of the Shipping Act, 1916. Eastern Guide Trading Co. *v.* Cyprian Fabre, 188 (191).

DISCRIMINATION—Continued.

Section 17 of the statute is inapplicable to common carriers by water in interstate commerce. Fir-Tex Inc. Board Co. *v.* Luckenbach S. S. Co., 258 (258); Johnson Pickett Rope Co. *v.* Dollar S. S. Lines, 585 (586); Macon Cooperage Co. *v.* Arrow Line, 591 (591).

Rule concerning declaration of terminal docks and acceptance of cargo by carriers found unjustly discriminatory, unfair, and ambiguous. Oakland Chamber of Commerce *v.* American Mail Line, 314 (318).

As the parties to the agreement are not in any way connected with and do not exercise any control over the terminals at which lower charges are assessed, no discrimination is attributable to them so long as they uniformly apply at their own terminals the charges covered by their agreement. Terminal Charges at Norfolk, 357 (358).

What constitutes discrimination is a question of fact to be determined in each particular instance. Eastbound Intercoastal Rates From Mt. Vernon, 360 (362).

A connecting carrier may not discriminate against another connection when conditions are alike. Otherwise, it would coerce the public to employ one competitor to the exclusion of another or deprive one competitor of business which under freedom of selection by the public would be given to it; and it is a violation of law for an on-carrier to charge more on traffic interchanged with one connection than with another when the service rendered is substantially the same. Intercoastal Investigation, 1935, 400 (440–441).

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. Philadelphia Ocean Traffic Bureau *v.* Export S. S. Corp., 538 (541); H. Kramer *v.* Inland Waterways Corporation, 630 (633).

Section 17 of the Shipping Act, 1916, applies only to common carriers by water in foreign commerce. Id. (631); Tri-State Wheat Transp. Council *v.* Alameda Transp. Co., 784 (785).

Defendants found to have 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. Hernandez *v.* Bernstein, 686 (691).

DISMISSAL ON MOTION.

Upon complainant's petition, proceeding involving alleged unlawful rates on linen goods from Antwerp, Belgium, to New York, N. Y., discontinued. Lesem Bach & Co. *v.* I. M. M., 232 (233).

Carrier admitted to conference; proceeding discontinued. Dollar S. S. Lines *v.* P. & O., 262 (263).

Complainant joined with defendants in a petition 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 render unnecessary further action by the Department. Atlantic Refining Co. *v.* Ellerman & Bucknall S. S. Co., 531 (532).

Petition to withdraw complaint and discontinue proceeding concerning agreement between Cunard White Star Limited, Bibby Line Limited, British & Burmese Steam Navigation Company Limited, and Burma Steamship Company Limited, granted. U. S. Lines Co. *v.* Cunard, 598 (599).

Complaint alleging that rates on woolen, worsted, and wool mohair mixed yarns from Atlantic to Pacific ports were and are unreasonable dismissed upon motion of complainant and intervener. Colorcraft Corporation *v.* American-Hawaiian S. S. Co., 651 (652).

DISMISSAL ON MOTION—Continued.
Complaint alleging agreement between members of the Intercoastal Steamship Freight Association and Gulf Intercoastal Conference to be unduly and unreasonably preferential and prejudicial and unjust and unreasonable dismissed upon motion of complainant. Inland Waterways Corp. *v.* Intercoastal S. S. Freight Asso., 653 (655).
After the investigation was instituted, upon petition of complainants, the complaints were dismissed. Storage of Import Property, 676 (677).
Proceeding instituted upon representations of the Government of Puerto Rico that passenger fares and baggage charges of respondents for transportation between the United States and Puerto Rico were unduly prejudicial and unreasonable and that tours were conducted through agreements, understandings, or otherwise in such manner as to subject the ports of Puerto Rico and persons located therein to undue prejudice, discontinued without prejudice upon petition of counsel for respondents, which was concurred in by counsel for the Government of Puerto Rico. Puerto Rican Passenger Fares and Baggage Charges, 739 (740).
DISTANCE. *See also* EARNINGS.
The distance from Anchorage to Juneau, Alaska, is 1,051 miles and from Seattle, Wash., to Juneau is 880 miles, but the rates from Anchorage to Juneau are between 40 and 50 percent higher than from Seattle to Juneau. On routes of this great distance a difference of 171 miles of itself is not regarded as sufficient justification for this disparity in rates. Alaskan Rate Investigation, 1 (11).
Evidence tending to show that in different trades distance to a large extent is disregarded in rate making, while admissible, may or may not have considerable probative force. Failure to show similarity of conditions in the trades in respect of cost of operation, character of cargoes, competition, and other matters derogates greatly from the value of evidence. Port Utilities Commission of Charleston *v.* Carolina Co., 61 (70–71).
While often unimportant, distance is nevertheless a definite factor for consideration in determining the reasonableness of water rates. Eagle-Ottawa Leather Co. *v.* Goodrich Transit Co., 101 (103).
Distance does not figure prominently as a factor in rates for water transportation. Eastbound Intercoastal Lumber, 608 (622).
DIVERSION OF TRAFFIC.
Even though some passengers may be diverted from other lines in the same trade, that result in and of itself would not make the suspended tariff unlawful. Passenger Classifications and Fares, American Line S. S. Co., 294 (304–305).
Statements of record as to threatened diversion or the probability of future diversions of traffic if the charges remain effective do not justify a finding that the agreement is unlawful. Terminal Charges at Norfolk, 357 (358).
DIVIDENDS. *See also* EARNINGS.
Whether carrier earns dividends on its operations as a whole affords little light upon the question as to the reasonableness of a rate on a particular commodity. Indeed, the rates on particular commodities may be unreasonably high and yet the carrier fail to realize a fair return from its entire operations. Eagle-Ottawa Leather Co. *v.* Goodrich Transit Co., 101 (106).
DIVISIONS OF RATES.
The reasonableness of the truck rates between San Diego and Los Angeles is a matter within the jurisdiction of the Railroad Commission of the

DIVISIONS OF RATES—Continued.

State of California, and the findings of that Commission cannot be anticipated by the Department. Furthermore, such rates have little, if any, bearing on the reasonableness of rates subject to the jurisdiction of the 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. Gulf Intercoastal Rates To and From San Diego (No. 2), 600 (604).

Protestants regard certain allowances and divisions granted by some of the respondents out of their 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 reduction 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. Eastbound Intercoastal Lumber, 608 (617).

DRAYAGE. *See* LOADING AND UNLOADING.

DUMMY CORPORATION. *See* DEVICES TO DEFEAT APPLICABLE RATES.

EARNINGS. *See also* FAIR RETURN.

Disparity in ton-mile earnings over and above that sanctioned by the principle that such earnings should be more for a shorter than for a longer distance should be explained. American Peanut Corp. *v.* M. & M. T., 78 (81).

Ordinarily, ton-mile earnings from properly aligned rates decrease as distance increases. Eagle-Ottawa Leather Co. *v.* Goodrich Transit Co., 101 (103).

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. Eastbound Intercoastal Rates, 608 (622).

The comparative earnings of the rates in issue form an instructive guide in determining their reasonableness. Id. (622).

EMBARGOES.

It is desirable that close cooperation be maintained between the carriers and the shippers, with a view, at all times, to acquainting the latter with the fact of proposed embargoes, as in this way only is it possible to prevent unnecessary movement of freight to wharves and terminals. Increased Rates, 1920, 13 (18).

The right of a common carrier to declare an embargo when the circumstances warrant such action is established as is also the fact that the necessity for placing embargoes is a matter to be determined in the first instance by the carrier. On the other hand, an embargo is an emergency measure to be resorted to only where there is congestion of traffic or when it is impossible to transport the freight offered because of physical limitations of the carrier. Boston Wool Trade Assoc. *v.* M. & M. T., 32 (33).

During the existence of the embargo, the common-carrier obligations of the transportation company are suspended insofar as the embargo has application, and the reality of a situation sufficient to justify this suspension of obligations is requisite if the embargo is to be justified. Id. (33).

EMBARGOES—Continued.
During period of embargo, common-carrier status of respondent, as respects direct Savannah-Miami service, was nonexistent, and tariff covering such service was correspondingly inapplicable. I. C. Helmly Furniture Co. *v.* M. & M. T., 132 (133).
Establishment of embargo on iron and steel articles consigned to Lake Charles, La., and Beaumont, Tex., found justified. Embargo on Iron and Steel, 674 (675).
EQUALIZATION. *See* REASONABLENESS; RAIL AND WATER RATES; TARIFFS.
EVIDENCE. *See also* BURDEN OF PROOF; FINDINGS IN FORMER CASES; GENERAL INVESTIGATIONS; RECORD AS BASIS OF FINDINGS; RECORD IN OTHER PROCEEDINGS; SIMILARITY OF TRAFFIC, ETC.; ADMISSIONS OF UNLAWFULNESS.
If the tariff condition subjected complainant to undue discrimination, his knowledge or lack of knowledge of such condition is plainly immaterial. American Tobacco Co. *v.* C. G. T., 53 (56).
A conclusion by the Board that the statute has been violated must be predicated upon evidence that is concrete and directly pertinent to the issues raised. Rates in Canadian Currency, 264 (275).
It is possible for practices long lawful to become unlawful due to changed conditions, but a showing of unlawfulness must be conclusive and definite. Id. (281).
The principal witness for Nelson thinks the proposed rates are compensatory, but such opinion testimony without any supporting data is of little value. Intercoastal Rates of Nelson SS. Co., 326 (335).
It may be that the 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. Philadelphia Ocean Traffic Bureau *v.* Export SS. Corporation, 538 (541).
EXCLUSIVE PATRONAGE. *See* CONTRACTS WITH SHIPPERS.
FAIR RETURN. *See also* EARNINGS.
The reasonableness of the rates depends largely upon whether they yield a fair return upon the value of the carriers' property devoted to the public service. Alaskan Rate Investigation, 1 (4).
Howsoever important to individual shippers, testimony directed toward specific situations conceived to be discriminatory or detrimental to their respective interests is not illuminative in determining whether or not proposed advances in rates as a whole are reasonable and will yield a fair return, or more than a fair return, upon the value of the property of the carriers devoted to the public service. Increased Rates, 1920, 13 (14).
While the evidence submitted by the transportation company to the effect that its common carrier operations as a whole were unprofitable is admittedly of value, obviously this is not a controlling determinant of the reasonableness of the particular rates in question. Indeed, rates on particular commodities may be unreasonably high and yet the carrier fail to realize a fair return from its entire operations. Wool Rates From Boston to Philadelphia, 20 (21).
Whether carrier earns dividends on its operations as a whole affords little light upon the question as to the reasonableness of a rate on a particular commodity. Indeed, the rates on particular commodities may be unreasonably high and yet the carrier fail to realize a fair return from its entire operations. Eagle-Ottawa Leather Co. *v.* Goodrich Transit Co., 101 (106).

FAIR RETURN—Continued.

The interest of the public demands that the carriers shall receive revenues which will enable them to keep their fleets in good repair and maintain efficient service. Intercoastal Rates of Nelson SS. Co., 326 (336).

FIGHTING SHIPS.

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. Seas Shipping Co. *v.* American South African Line, 568 (578).

The Shipping Act 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. Id. (579).

Defendants not shown to have resorted to any device that involved the operation of a fighting ship. Id. (579).

Defendants 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. Id. (584).

FINDINGS IN FORMER CASES.

The Board cannot agree that conclusions arrived at in one case must be accepted as constituting a precedent necessarily to be followed as of binding authority in a subsequent proceeding where dissimilar facts are presented. Manifestly, each complaint must stand on the facts disclosed on its own record. Rawleigh *v.* Stoomvaart, 285 (291).

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. Phelps Bros. *v.* Cosulich, 634 (641).

FLOATAGE. *See* LOADING AND UNLOADING.

FOREIGN-FLAG CARRIERS.

The membership of the North Atlantic conferences is predominantly foreign. This foreign membership, with votes outnumbering by far those of the American members, dominates the tripartite conference and the rates applicable to American commodities moving in American bottoms from American ports. The result is effective control by foreign lines of an extensive portion of the commerce and much of the shipping of the United States. Manifestly, in view of the responsibility imposed for the upbuilding of an American merchant marine, this situation calls for unequivocal action. Port Utilities Commission of Charleston *v.* Carolina Line, 61 (73).

In recent years the use of the practices set forth has become increasingly prevalent, due apparently to the growing realization by foreign-flag operators of the vulnerability of our conferences, which, by the Shipping Act, 1916, are prohibited from using the deferred-rebate system employed al-

FOREIGN-FLAG CARRIERS—Continued.
most universally in the export trades of other countries as a protection against such competition. Section 19 Investigation, 1935, 470 (490).
From the record in the investigation it is clear that there exist today and have existed in the past conditions unfavorable to shipping in the foreign trade arising out of and resulting from competitive methods employed by owners and/or operators of vessels of foreign countries and that the effects of the world-wide depression upon our export trade have been intensified by these competitive methods. Id. (498).
As a result of the investigation the Department finds, in accordance with the report, that conditions unfavorable to shipping in the foreign trade exist arising out of and resulting from competitive methods and practices employed by owners and operators of foreign-flag ships. Id. (499).
It is evident from the report, and the Department finds, that foreign-flag, nonconference carriers, by open or secret solicitation of freight on basis of rates lower by specific percentages or amounts than the established rates of other carriers, American and foreign, or on basis of any rate that would attract business away from such other carriers, or by threatened rate reductions compel, or seek to compel, such other carriers to adopt pooling, rate-differential, or spacing-of-sailing agreements on their own terms, and have thus created conditions unfavorable to such other lines and to shipping in the foreign trade. These methods and practices of foreign-flag, nonconference carriers the Department condemns as unfair. Id. (501).

FORWARDERS AND FORWARDING. *See also* AGREEMENTS UNDER SECTION 15.
Forwarders are subject to the Shipping Act, 1916, and consequently, agreements between carriers and forwarders fall within the purview of section 15 thereof. Gulf Brokerage and Forwarding Agreements, 533 (534).
Agreements regulating charges made for forwarding 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. Id. (534–535).
The agreements between certain carriers by water in foreign commerce and other persons purporting to fix brokerage commissions and forwarding charges cannot be approved. Id. (535).
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. Id. (535).

FREE SERVICES. *See* ABSORPTIONS; FREE TIME.

FREE TIME. *See also* ABSORPTIONS.
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 clerk, 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. Storage of Import Property, 676 (680–681).

FREE TIME—Continued.

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. Id. (682).

Free time allowed by respondents on import property at the port of New York should not exceed 10 days, exclusive of Sundays and legal holidays. Id. (683).

Respondents found to be 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, but 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 the proceeding. Id. (683).

Under respondents' interpretation of the schedules in connection with free time, the allowance of different periods as between different consignees would effect inequality of treatment as between shippers and permit undue preference and prejudice, in violation of section 16 of the Shipping Act, 1916. Intercoastal Joint Rates of On-Carriers, 760 (763–764).

FREQUENCY OF SERVICE.

Contention that ports are subjected to undue and unreasonable disadvantage when vessels discharge direct is not persuasive in view of infrequency of direct discharge and negligible amount of cargo so delivered. Everett Chamber of Commerce *v.* Luckenbach, 149 (152).

Some weight must be given by the Board to the resultant benefits to the shipping public arising from a more frequent and regular service. Atlantic Refining Co. *v.* Ellerman & Bucknall SS. Co., 242 (254).

A difference in the price of intercoastal transportation attracts traffic to the line naming the lowest rate. This would be accomplished by the suggestions that rates be graduated according to frequency of sailing and time in transit. Such thing, in effect, would be placing a premium on infrequent and slow service and a penalty on the line that would give the service contemplated by law. The incentive for investment in a line that would give a modern, efficient, and economical service would be little, if any, and the result would be calamitous. Furthermore, restrictions as to time in transit from last point of loading to first port of discharge utterly ignore the rights of shippers and receivers of goods located elsewhere. Intercoastal Investigation, 1935, 400 (428–429).

The need for regular services of the best type of ships for each particular trade was recognized by Congress in the preamble of the Merchant Marine Act, 1920, which states that it is necessary for the proper growth of its foreign and domestic commerce that the United States shall have a merchant marine of the best equipped and most suitable types of vessels. Section 7 of that act directs the Department to investigate and determine what steamship services shall be established and the type, size, speed, and other requirements of vessels to be employed in such services, and the frequency and regularity of their sailings, with a view to furnishing adequate, regular, certain, and permanent services. Section 15 Investigation, 1935, 470 (497).

GENERAL INVESTIGATIONS.

In a general investigation into the rates, regulations, and practices of common carriers by water engaged in the transportation of property between ports in the State of Washington and ports in Alaska, testimony relating to specific rates and localities would have been of little assistance in arriving at a proper conclusion as to the reasonableness of the rate schedules as a whole. Alaskan Rate Investigation 1 (8).

Howsoever important to individual shippers, testimony directed toward specific situations conceived to be discriminatory or detrimental to their respective interests is not illuminative in determining whether or not proposed advances in rates as a whole are reasonable and will yield a fair return, or more than a fair return, upon the value of the property of the carriers devoted to the public service. Increased Rates, 1920, 13 (14).

GRADUATED RATES. *See* FREQUENCY OF SERVICE.

GROUPS AND GROUP RATES.

Practice of limiting port-to-port rates from pier to pier and refusing to group, on one hand, all receiving and delivery points within the so-called Metropolitan Boston Switching District, and, on the other hand, all receiving and delivering points within the free-lighterage limits and waterfront locations of Philadelphia and to apply port-to-port rates to and from such points in connection with Boston-Philadelphia traffic, found not unreasonable or unduly prejudicial. Boston Wool Trade Assoc. *v.* M. & M. T., 24 (31).

The inevitable resultant of any grouping system is that there is always some disparity between the distance from the various points in a group to a common market. Port Utilities Commission of Charleston *v.* Carolina Co., 61 (66).

It is natural and consistent with recognized principles of rate structures that the carriers should have in some manner grouped the ports on the Atlantic and Gulf coasts of the United States. Id. (66).

Port groupings which have prevailed for a considerable length of time and to which business has accustomed itself should not be disturbed except for very strong and compelling reasons. Id. (67).

Grouping of ports on the Atlantic and Gulf coasts of the United States not shown to be unduly discriminatory or otherwise in violation of the statute. Id. (67).

As to the allegation that the rates in issue are unreasonable, it should be sufficient to state that the rates of intercoastal carriers, including Calmar and Shepard, are grouped in such manner that generally the same rate, whether a terminal or joint rate, applies between any point on the Atlantic coast and any point on the Pacific coast. Intercoastal Investigation, 1935, 400 (444).

HANDICAP RATES. *See* RATE STRUCTURE.

HARTER ACT.

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. Gulf Brokerage and Forwarding Agreements, 533 (534).

Provisions of the Harter Act, the Bills of Lading Act, and other statutes should be construed as imposing upon carriers minimum, not maximum, requirements. Intercoastal Segregation Rules, 725 (736).

HEARING. *See also* RECORD AS BASIS OF FINDINGS; RECORD IN OTHER PROCEEDINGS; DISMISSAL ON MOTION; PROPOSED REPORTS.

The Port Differential case, 1 U. S. S. B. 61, has been referred to in an evident effort to establish precedent for section 15 action by the Board in the case before it. It is obvious that the two cases are not parallel. The Board cannot predicate upon the present record either a disapproval of existing agreements or a finding of lack of merit in complainant's attack against them. Not only respondents, but the other member of the conference, and not only complainant, but all other shippers in the trade, and all ports which might be affected must first be accorded a full and unmistakable opportunity to be heard upon the specific questions involved. Atlantic Refining Co. *v.* Ellerman & Bucknall SS. Co., 242 (257).

No representative of complainant appeared at the hearing. As the statute gives the right to a full hearing, which includes the right to cross-examine witnesses and at the same time imposes the duty of deciding in accordance with the facts established by proper evidence, the complaint will be dismissed for lack of prosecution. Tagit Co. *v.* Luckenbach, 519 (519).

Rates on some of the 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. Commodity Rates Between Atlantic and Gulf Ports, 642 (643).

Inasmuch as the 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. San Diego Harbor Commission *v.* American Mail Line, 661 (662).

HEAVY LIFT CHARGES. *See* ABSORPTIONS.

HIGH SEAS.

An examination of court decisions and authorities reveals that the term high seas has been variously interpreted. In some instances, it has been construed to apply only to the open ocean capable of international commercial use and in others to embrace rivers, its meaning being determined by the purpose to be accomplished by some particular statute. Bearing in mind that one of the primary purposes of the shipping act is to regulate port-to-port transportation between States and that in describing the waters upon which such transportation should be regulated Congress went so far as to include the Great Lakes, it is clear that Chesapeake Bay is to be regarded as "high seas" within the meaning of the act. American Peanut Corporation *v.* M. & M. T., 78 (79); American Peanut Corporation *v.* M. & M. T., 90 (96).

Federal and State decisions directly involving the character of Long Island Sound under different statutes expressly hold that body of water to be high seas. Thames River Line, 217 (218).

Applying the criterion enunciated by the United States Supreme Court in U. S. *v.* Rodgers, 150 U. S. 249, that "bodies of water of an extent which cannot be measured by the unaided vision, and which are navigable at all times in all directions, and border on different nations or States or

HIGH SEAS—Continued.

people, and find their outlet in the ocean as in the present case, are seas in fact, however they may be designated," and that "the term (high seas), in the eye of reason, is applicable to the open, unenclosed portion of all large bodies of navigable waters, whose extent cannot be measured by one's vision, and the navigation of which is free to all nations and people on their borders, by whatever names those bodies may be locally designated," the attributes of Long Island Sound unmistakably identify it as high seas. Id. (220).

In every connection and for every purpose the regulatory provisions of the Shipping Act are as applicable to the carrier engaged in transportation over the waters of Long Island Sound as they are to other interstate carriers operating elsewhere on coastwise waters. Upon the decided cases and in reason we consider that in every respect such an extensive and important body of water as Long Island Sound is properly high seas within the meaning of section 1 of that act. Id. (220).

ILLEGAL RATES. *See also* MAXIMUM RATES; SHIPPING ACT, 1916; INTERCOASTAL SHIPPING ACT, 1933.

Rates on automobiles from Detroit, Mich., to Duluth, Minn., found to have exceeded maximum rates on file. Muir-Smith Motor Co. *v.* Great Lakes Transit Co., 138 (141–142).

Rate applied on shipments of mayonnaise from Baltimore, Md., to Tampa, Fla., found to have been in excess of maximum rate on file. Gelfand Mfg. Co. *v.* Bull S. S. Line, 169 (171–172).

Charges exacted on shipments of tin cans from Baltimore, Md., to Savannah, Ga., found to have been in excess of maximum rate on file. Lee Roy Myers *v.* M. & M. T., 192 (194).

Rates charged for transportation of automobiles from Detroit, Mich., to Duluth, Minn., found inapplicable. Oakland Motor Car Co. *v.* G. L. T. Co., 308 (312).

Rates on oak liquor barrels from Savannah, Ga., to Los Angeles, Calif., not shown to be inapplicable, unreasonable, or otherwise unlawful. Macon Cooperage Co. *v.* Arrow Line, 591 (595).

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. C. W. Spence *v.* Pacific-Atlantic S. S. Co., 624 (625).

Rate on piling from Everett and Tacoma, Wash., to Wilmington, Del., found applicable. Id. (626).

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, and undercharges found outstanding on certain shipments. Bloomer Bros. Co. *v.* Luckenbach, 692 (694).

Coated cotton cloth not shown to have been improperly classified. Leather Supply Co. *v.* Luckenbach 779 (780).

INDUSTRY, PROTECTION OF. *See* COMPETITION.

INJURY. *See* REPARATION.

INSPECTION OF PROPERTY. *See also* DELIVERY.

Protestants direct attention to court decisions which require merchandise to be placed on the pier properly separated so as to be open to inspection by the owner. That there is such an obligation upon a carrier is not

INSPECTION OF PROPERTY—Continued.
open to question, but the service required is not the separation of individual shipments but a separation of each shipment from the general mass of cargo. Intercoastal Segregation Rules, 725 (735).
INTENTION OF SHIPPER. *See* COMMERCE.
INTERCOASTAL SHIPPING ACT, 1933.
Carriers Subject:
The term "common carrier by water in intercoastal commerce" for the purposes of the Intercoastal Shipping Act, 1933, includes every common and contract carrier by water engaged in the transportation for hire of passengers or property between one State of the United States and any other State of the United States by way of the Panama Canal. The on-carriers are common carriers by water engaged for hire in the transportation of property. Intercoastal Investigation, 400 (445).
Girdwood Shipping Company not shown to be a common carrier by water in intercoastal commerce subject to the Intercoastal Shipping Act, 1933. Schedules of Girdwood Shipping Co., 306 (307).
The record establishes clearly that Hammond Shipping Co., Ltd., is not engaged in intercoastal commerce. It, therefore, is not a common or contract carrier 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. Intercoastal Schedules of Hammond Shipping Co., 606 (607).
Hammond Shipping Company, Ltd., found not to be a common or contract carrier in intercoastal commerce. Id. (607).
Tariffs:
The Intercoastal Shipping Act, 1933, requires that schedules shall show all the rates and charges for or in connection with transportation and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such rates or charges or the value of the service rendered to the consignor or consignee. No changes therein may be made except by the publication, filing, and posting of new schedules plainly showing the changes proposed to be made. The law directs the Department by regulations to prescribe the form and manner in which schedules shall be published, filed, and posted and to reject any schedule filed with it which is not in consonance with law and such regulations. Regulations have been issued pursuant to this mandate. Intercoastal Rates of Nelson SS. Co., 326 (337).
A motion was made that the suspension order be vacated on the ground that it deprives shippers of rates and services which are not in violation of any provision of law which the Department is empowered to correct. A motion to vacate the suspension order was also made based on the ground that "the rates and rules contained in the suspended tariff are lawful in that the same have been permitted to the competitors of this respondent, that the denial of the right of respondent to quote such rates and rules is unduly discriminatory and is beyond the powers of the Bureau and in violation of the Shipping Act, of 1916 and acts amendatory thereto." The powers of the Department to suspend the operation of any schedules filed with it stating a new individual or joint rate, charge, classification, regulation, or practice

INTERCOASTAL SHIPPING ACT, 1933—Continued.
Tariffs—Continued.
affecting any rate or charge, and to enter, either upon complaint or upon its own initiative without complaint, upon a hearing concerning the lawfulness of such rate, charge, classification, regulation, or practice are made clear by section 3 of the Intercoastal Shipping Act, 1933, and the motions are denied. Id. (340).
It is the policy of the law that every intercoastal route regardless of how constituted and every service for or in connection with intercoastal transportation shall have a published rate on file with the Department. Intercoastal Rates To and From Berkeley, Calif., 365 (367).
While under the Intercoastal Shipping Act, 1933, no change may be made in the published rates for intercoastal transportation earlier than thirty days after date of posting and filing of the new rate with the Department, unless otherwise authorized by the Department, this does not mean that intercoastal rates are changed every thirty days. Intercoastal Rate on Silica Sand From Baltimore, 373 (374–375).
Language could not have made clearer the intent of the legislature than as set forth in section 2 of the Intercoastal Shipping Act, 1933. This section imposes a positive duty on respondents. As one of the principal aims of the law is uniformity in treatment, the requirement of publication is to enable the shipper not only to ascertain from examination of the tariff what the exact rates and charges are to him, but also to his competitor. Intercoastal Investigation, 1935, 400 (421).
Every route must have a published rate on file with the Department. Id. (440).
It is a requirement of law that every carrier engaged in intercoastal transportation shall publish, post, and file with the Department its rates and charges for or in connection with such transportation. For this reason, an understanding between carriers for interchange of traffic does not and cannot make the line of one carrier to the understanding a mere continuation, extension, or agency of the other. To permit this would tend to defeat the purpose of the act that carriers not otherwise subject to the act shall, when participating in intercoastal transportation, become subject to the act. Id. (440).
The requirement of prior notice as regards publication of reductions in rates appears for the first time in the Intercoastal Shipping Act, 1933. Id. (444).
The requirement that intercoastal carriers publish each terminal or other charge, privilege, or facility, granted or allowed, and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of the rates or charges, or the value of the service rendered to the consignor or consignee is contained in section 2 of the Intercoastal Shipping Act, 1933. Unless complied with, the shipper will be deprived of the paramount right the statute gives to him to know the price of transportation and services for or in connection therewith to him and his competitors. Id. (465).
The law at present in effect not only requires such carriers to file the rates which they charge for transportation, from which they are prohibited to depart, but also prescribes an orderly manner for changing the rates. This includes thirty days' notice to the public,

INTERCOASTAL SHIPPING ACT, 1933—Continued.
Tariffs—Continued.
and this department is given the power to suspend, upon complaint or upon its own initiative without complaint, any proposed change pending a hearing concerning its lawfulness. Gulf Intercoastal Contract Rates, 524 (528–529).
INTRASTATE. *See* THROUGH ROUTES AND THROUGH RATES; SHIPPING ACT, 1916; INTERCOASTAL SHIPPING ACT, 1933.
JOINT RATES. *See* THROUGH ROUTES AND THROUGH RATES.
JURISDICTION. *See* SHIPPING ACT, 1916; WAIVER OF REGULATIONS AND STATUTORY PROVISIONS; REPARATION; TARIFFS.
LEASES.
Defendant Norfolk Tidewater Terminals leases the terminals it operates from the United States of America through the Commission. Complainant in No. 442 alleges breach by defendant of its lease in that at several terminals in Norfolk no truck loading or unloading charge is assessed. Defendant's breach of lease, if any, is not determinative of the issues in No. 442. Whether complainant uses the several terminals indicated, whether complainant's competitors do so, the manner of handling truck traffic at these terminals, and other details pertinent to such issues are not disclosed. Buxton Lines *v.* Norfolk Tidewater Terminals, 705 (709).
LEGAL RATES. *See* ILLEGAL.
LIGHTERAGE. *See* LOADING AND UNLOADING.
LIMITATION OF ACTIONS. *See* REPARATION; WAIVER OF REGULATIONS AND STATUTORY PROVISIONS.
LOADING AND UNLOADING. *See also* ABSORPTIONS; TARIFFS.
Failure of carriers to adopt marginal track loading of hardwood lumber at New Orleans, or in lieu thereof to assume shippers' expense of unloading not shown to subject the Port of New Orleans to undue prejudice or to give to the ports of Mobile, Gulfport, and Lake Charles undue preference, or to constitute an unjust and unreasonable regulation or practice. Foreign Trade Bureau, New Orleans *v.* Bank Line, 177 (185–186).
Unloading from rail cars, drayage, lighterage, and floatage, such as are provided for by Rules 4 and 5, are not services that fall upon respondents, for they have no through route arrangements or joint through rates with rail carriers. Such expenses are incurred by them in their struggle to attract traffic to their lines, but such wasteful practices are not sanctioned by law. Intercoastal Investigation, 1935, 400 (414).
That unloading from rail cars, drayage, lighterage, and floatage are not services that fall upon respondents applies with equal force as to loading rail cars, use of such cars, and to transfer of rail shipments from and to vessels of respondent. Id. (418).
No limit is placed upon the amount of car unloading at Philadelphia or top wharfage or car unloading at Baltimore or on-carrying charges on shipments destined to Stockton or Sacramento absorbed by respondent. Also, whether respondent calls direct or not at Oakland, it there absorbs terminal charges of 50 cents per ton and, if it elects to make delivery by barge at such place, it absorbs the cost thereof without specifying such amount. Such rules are not in consonance with law. Id. (419).
MAIL-CONTRACT PAYMENTS.
Neither the flag flown by a carrier nor the circumstance that it receives financial benefits from mail contracts tends in any way to prove or disprove that such carrier has been violating the regulatory provisions of the Shipping Act. Rates in Canadian Currency, 264 (275).

MANAGEMENT. *See also* COMPETITION.

It is to be presumed that all carriers operate both prudently and with a keen eye for net profits. Atlantic Refining Co. *v.* Ellerman & Bucknall SS. Co., 242 (250).

The Shipping Act, 1916, was not intended as a substitute for the managerial judgment of carriers. Joseph Singer *v.* Trans-Atlantic Passenger Conference, 520 (523).

MANAGERIAL DISCRETION. *See* MANAGEMENT; DEVELOPMENT RATES.

MAXIMUM RATES.

A maximum rate is a carrier's highest compensation for the performance of a transportation service. Intercoastal Rate Investigation, 108 (111). Report and order rescinded. Intercoastal Rate Investigation, 120 (120).

Charges of intercoastal carriers held not to be maximum rates within meaning of section 18 of Shipping Act, 1916, and schedules of the charges held not to be tariffs of maximum rates within meaning of tariff regulations. Intercoastal Rate Investigation, 108 (112). Report and order rescinded. Intercoastal Rate Investigation, 120 (120).

The requirement of prior notice as regards publication of reductions in rates appears for the first time in the Intercoastal Shipping Act, 1933. Prior to that act, no obligation rested upon carriers to give public notice of such reductions. The law only required the filing of maximum rates, fares, and charges, and prohibited carriers from demanding, charging, or collecting a greater compensation except with the approval of the Board and with 10 days' public notice, which requirement the Board had the power to waive for good cause shown. Intercoastal Investigation, 1935, 400 (444).

At the time referred to by the witness, carriers engaged in intercoastal transportation were only required to file their maximum rates. Nothing in the law then in force prevented them from collecting compensation for their services lower than such maximum rates. Gulf Intercoastal Contract Rates, 524 (528–529).

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. Gulf Westbound Intercoastal Soya Bean Meal Oil Rates, 554 (560).

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. Eastbound Intercoastal Lumber, 608 (620).

MEASUREMENT. *See* WEIGHT OR MEASUREMENT.

MERCHANT MARINE ACTS.

The underlying purpose of the Merchant Marine Act, 1920, and Merchant Marine Act, 1928, as well as of the loans authorized thereby, is to promote the public interest by affording aid in such manner as to result in modern, efficient, and economical transportation service by water. Such service is a public necessity, and anything to promote it is in the public interest. Intercoastal Investigation, 1935, 400 (428).

MERCHANT MARINE ACTS—Continued.

The need for regular services of the best type of ships for each particular trade was recognized by Congress in the preamble of the Merchant Marine Act, 1920, which states that it is necessary for the proper growth of its foreign and domestic commerce that the United States shall have a merchant marine of the best equipped and most suitable types of vessels. Section 7 of that act directs the Department to investigate and determine what steamship services shall be established and the type, size, speed, and other requirements of vessels to be employed in such service, and the frequency and regularity of their sailings, with a view to furnishing adequate, regular, certain, and permanent service. The American-flag lines who have asked the Department to establish rules and regulations under section 19 of the Merchant Marine Act were brought into existence as a result of this mandate of Congress. The ends sought by this legislation cannot be achieved and this policy will be defeated unless destructive methods of competition can be prevented. Section 19 Investigation, 1935, 470 (497).

To meet the conditions described, the Department "is authorized and directed" under section 19 of the Merchant Marine Act "to make rules and regulations affecting shipping in the foreign trade." Id. (498).

Section 1 of the Shipping Act, 1916, excludes from the regulatory provisions of that act every "cargo boat commonly called an ocean tramp." This exemption of tramps from the regulatory provisions of the 1916 act does not place any limitation upon the Department in its promulgation of rules and regulations under section 19 of the Merchant Marine Act, 1920. Id. (498).

Exceptions filed refer to Panama Refining Company *v.* Ryan, 293 U. S. 388, decided January 7, 1935, and urge, in substance, that, as Congress has not set up any restrictions or standard, the delegation of powers under section 19 of the Merchant Marine Act, 1920, transcends constitutional limits. Other exceptions filed urge that, as the Shipping Act, 1916, does not specifically confer powers to require carriers by water in foreign commerce to file tariffs and adhere to them, such requirement cannot be imposed by this Department in the guise of a rule or regulation. Exceptions filed by Board of Commissioners of the Port of New Orleans refer to legislation pending in Congress granting additional powers over common carriers by water in foreign commerce and urge that, as the proposed legislation would amend section 19 by writing into the statute the rules recommended in the proposed report, no action should be taken in this proceeding until such legislation has been disposed of. Some of the exceptions filed urge that the proposed rules, if adopted, will unduly interfere with tramp operations and will bring about an unduly rigid rate structure to the detriment of our commerce in markets where this country competes with other countries. In view of the points raised in these exceptions, the rules and regulations recommended in the report of the United States Shipping Board Bureau issued on January 22nd will not be promulgated at this time. Id. (500–501).

Both complainant and one of the defendants 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

MERCHANT MARINE ACTS—Continued.
adequate privately owned merchant marine. Seas Shipping Co. *v.* American South African Line, 568 (583).
As stated by the Department of Commerce in Seas Shipping Co. *v.* American South African Line, Inc., et al., 1 U. S. S. B. B. 568, at 583: "* * * 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." Dollar-Matson Agreements, 750 (755).
MINIMUM WEIGHTS.
Carriers are permitted under the rule to call and accept freight in any quantity from one shipper or supplier at docks located within conference terminal ports other than the declared docks listed in clause "L" of the rule. The same rates apply from the undeclared as from the declared docks, but from the undeclared docks charges are assessed on a minimum of 500 revenue freight tons or 500,000 revenue feet of lumber, bolts, cants, piling, poles and/or logs. On any additional cargo taken for another shipper or supplier from the same undeclared dock in quantities less than the specified minimum, an additional $1 per revenue ton is charged. In the northern district, by exception, carriers are permitted to load at such undeclared docks or make divisional rate arrangements on quantities less than the specified minima, provided an additional charge of $1.50 per revenue ton over the tariff rate is assessed. These provisions of the rule open the door to discrimination; furthermore, on the face of it, there is no justification for the extra charge of $1 on additional shipments taken at the same undeclared dock since freight charges based on the specified minima are evidently considered sufficient to compensate respondents for the call. Oakland Chamber of Commerce *v.* American Mail Line, 314 (317).
Although the carriers under the rule may call direct at nonterminal ports for freight in any quantity from one shipper or supplier, it is provided that such cargo must be assessed on a minimum of 500 revenue freight tons or 500,000 revenue feet of lumber, bolts, cants, piling, poles and/or logs. No such restriction, however, is placed on cargo moving from nonterminal ports under the divisional rate agreements permitted under the rule to meet the competition of direct calls by conference members. Vessels handling cargo by direct call at nonterminal ports from one shipper or supplier, subject to the minimum rate requirement set forth above, "are permitted to accept any other additional cargo offering from the same dock in any quantity on the same terms, conditions and rates provided in (e) (1)." This provision of the rule is not free from ambiguity. It will be noted that, while acceptance of additional cargo is permitted, the words "same terms, conditions and rates" may mean that, for example, a shipper or supplier other than the shipper or supplier of the first lot if offering 50 tons is assessed freight charges on the basis of 500 tons. What has been stated in respect of the $1 extra on additional cargo from docks within conference terminal ports other than declared docks applies here with equal force. Id. (317-318).
Rates based on a minimum weight so large as to be available only to one shipper are not in consonance with section 16 of the Shipping Act, 1916, which makes it unlawful for common carriers by water to make or give

MINIMUM WEIGHTS—Continued.
any undue or unreasonable preference or advantage to any particular person or description of traffic in any respect whatsoever. Intercoastal Rates of American-Hawaiian SS. Co., 349 (351).
If the suspended schedules are allowed to become effective, there would exist conflicting rates of 60 cents, minimum 24,000 pounds, and 87.5 cents, minimum 40,000 pounds, for the same transportation. Normally, when rates are published, based on different minimum weights, the higher rate is made applicable in connection with the lower minimum weight. Westbound Intercoastal Rates on Dates, Figs, Etc., 352 (354).
Rates based on a minimum weight so high as to be available only to one shipper have been found to violate section 16 of the Shipping Act, 1916. Intercoastal Rates of American-Hawaiian SS. Co., et al., 1 U. S. S. B. B. 349. However, the record does not disclose that there are shippers, other than the shipper hereinbefore referred to, making intercoastal shipments of silica sand for manufacture of glass and glassware to points on the Pacific coast or that 500 net tons is too high a minimum on such commodity. Intercoastal Rate on Silica Sand From Baltimore, 373 (375).
It will be noted that, under paragraph 1 of the form of agreement, Calmar reserves the right to fix the maximum quantity to be carried on any of its vessels and that, under paragraphs 3 and 6 thereof, the shipper obligates itself to tender a certain minimum number of carloads or tons. In these respects, the contracting shippers are placed at a disadvantage as compared with noncontracting shippers, for it is the right of shippers to ship in any quantity they choose and the obligation of carriers to carry the quantity tendered to them, due regard being had for the proper loading of the vessel and the available tonnage, and such matter cannot be the subject of contracts. Intercoastal Investigation, 1935, 400 (454-455).
MISQUOTATION OF RATES. *See* ILLEGAL RATES.
MIXED SHIPMENTS. *See also* DELIVERY.
The general mixing provision contained in rule 10 of the governing classification originated in railroad transportation and has had the sanction of the Interstate Commerce Commission over a long period of years. Armstrong Cork Co. *v.* American-Hawaiian SS. Co., 719 (724).
Provision for mixed-carload rates on shipments of floor coverings with roofing and building materials from California ports to ports in Oregon and Washington found unduly prejudicial and unreasonable. Id. (724).
In according mixture privileges carriers should consider the nature of the commodity, the size of packages in which shipments are ordinarily made, and also other pertinent factors. Intercoastal Segregation Rules, 725 (731).
No charge will be assessed against a straight shipment of one kind and which consists of only one size, brand, or grade; in fact, under rule 2 (g) such a shipment could not lawfully be delivered in parcel lots either with or without charge. But, apparently, it is respondents' intention to continue parcel-lot deliveries, for, as announced by counsel, upon the assessment of a charge under rule 54, any number of parcel-lot deliveries of a single shipment will be made. To accord a greater privilege to a mixed shipment than is accorded to a straight shipment would constitute undue preference and prejudice in violation of section 16 of the Shipping Act, 1916. The conclusion, therefore, is inescapable that unlawfulness may result under the tariffs as they are now published. Id. (734).

MONOPOLIES. *See also* CONTRACTS WITH SHIPPERS; AGREEMENTS UNDER SECTION 15.

By contracting with a group of lines under the contract system prevailing in the trade and at issue, the small shipper is assured of adequacy of service and of receiving the same rate as that charged the large shipper of the same commodity. So far from manifesting monopoly, this arrangement is the very antithesis of monopoly. W. T. Rawleigh Co. *v.* Stoomvaart, 285 (292–293).

The contract contained in the schedule under suspension excludes carriers from participating in the transportation under consideration and creates a monopoly in favor of a competitor, which is unlawful. Intercoastal Rate on Silica Sand From Baltimore, 373 (375).

Respondent Grace Line, Inc., is the only conference line furnishing a direct through service to ports on the west coast of South America, but the other six conference lines furnish frequent and regular service from Atlantic and Gulf ports with transshipment at the Panama Canal under through-route and joint-rate arrangements with lines serving the west coast of South America. During the year 1933 and the first 6 months of 1934, these transshipment lines carried 65,148 tons of cargo destined to ports on the west coast of South America, which represented 30.66 percent of the entire movement by all conference lines during that period. The conference agreement has since been amended to allow the transshipment lines a rate differential, and under the provisions of the conference contract shippers have the option of selecting the vessels of any carrier which at time of shipment is a member of the conference. It is not apparent that the conference agreement confers a monopoly on respondent Grace Line, Inc. Wessel, Duval & Co. *v.* Colombian SS. Co., 390 (394).

Carriers are not justified in attempting to restrict traffic to move over their lines. As stated in Menacho *v.* Ward, 27 Fed. 529, involving a substantially similar situation, cited in Eden Mining Co. *v.* Bluefields Fruit & SS. Co., 1 U. S. S. B. 41 "The vice of discrimination here is that it is calculated to coerce all those who have occasion to employ common carriers * * * from employing such agencies as may offer. * * * If it is tolerated it will result practically in giving the defendants a monopoly of the carrying trade between these places. Manifestly it is enforced by the defendants in order to discourage all others from attempting to serve the public as carriers between these places. Such discrimination is not only unreasonable, but is odious." Intercoastal Investigation, 1935, 400 (452).

The prohibition of discrimination means, among other things, that no difference or distinction shall be made in rates that coerce the public to employ one competitor to the exclusion of another or deprive one competitor of business which under freedom of selection by the public would be given to it and thus create a monopoly in favor of another competitor. Id. (456).

As stated in Intercoastal Investigation, 1935, 1 U. S. S. B. B. 400: "* * * Furthermore carriers are not justified in attempting to restrict traffic to move over their lines. * * * The prohibition of discrimination means, among other things, that no difference or distinction shall be made in rates that coerce the public to employ one competitor to the exclusion of another, or deprive one competitor of business which under freedom of selection by the public would be given to it, and thus

MONOPOLIES—Continued.

create a monopoly in favor of another competitor." Gulf Intercoastal Contract Rates, 524 (529).

In the regulation of conference agreements under section 15, the policy of both the United States Shipping Board and the Department of Commerce was to discourage agreements which established a monopoly in favor of a competitor. As stated in Intercoastal Investigation, 1935, 1 U. S. S. B. B. 400, at 456—"The prohibition of discrimination means, among other things, that no difference or distinction shall be made in rates that coerce the public to employ one competitor to the exclusion of another, or deprive one competitor of business which under freedom of selection by the public would be given to it, and thus create a monopoly in favor of another competitor." Dollar-Matson Agreements, 750 (755).

MOOT CASES.

The Pennsylvania Co. *v.* L., N. A. & C. R. Co., 3 I. C. C. 223, and other cases are of one accord in reference to issues which have become moot, and the United States Supreme Court in U. S. *v.* Hamburg American, 239 U. S. 466, enunciates the established rule and pronounces the disposition applicable in the proceeding before the Board. Marginal Track Delivery, 234 (238).

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. Canners League of Calif. *v.* Alameda Transp. Co., 536 (537).

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 canceled its tariffs, and the proceeding was discontinued. The questions here presented, therefore, have become moot. Argonant SS. Line *v.* American Tankers Corporation, 596 (597).

Respondents filed schedules canceling the suspended rate, which schedules were accepted for filing. By the acceptance of such filing the question of lawfulness of the suspended schedules becomes moot. Eastbound Intercoastal Gulf Sugar Rate, 798, (799).

NATIONALITY OF CARRIERS.

Neither the flag flown by a carrier nor the circumstance that it receives financial benefits from mail contracts tends in any way to prove or disprove that such carrier has been violating the regulatory provisions of the Shipping Act. Rates in Canadian Currency, 264 (275).

NATURAL ADVANTAGES AND DISADVANTAGES. *See* PREJUDICE; PROFIT TO SHIPPERS.

NONCOMPENSATORY RATES. *See also* AGREEMENTS UNDER SECTION 15.

The Shipping Act 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. Seas Shipping Co. *v.* American South African Line, 568 (579).

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. Id. (583).

NONCOMPENSATORY RATES—Continued.

Unremunerative and noncompensatory rates are detrimental to the commerce of the United States. Id. (584).

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. Id. (584).

As stated by the Department of Commerce in Seas Shipping Co. *v.* American South African Line, Inc., et al., 1 U. S. S. B. B. 568, at 583: "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." Dollar-Matson Agreements, 750, (755).

NOTICE OF CHANGES. *See* TARIFFS; SHIPPING ACT, 1916.

ON-CARRIER. *See* SHIPPING ACT, 1916; DISCONTINUANCE OF SERVICE; TARIFFS.

ON-CARRYING CHARGES. *See* LOADING AND UNLOADING.

OPERATION.

Transshipment is a matter of practical necessity in order that the westbound operation may be completed before the eastbound operation begins. It is, of course, normally an important consideration to the carriers to have their vessels bare of cargo before starting to load for the eastbound voyage. Everett Chamber of Commerce *v.* Luckenbach SS. Co., 149 (152).

ORAL ARGUMENT. *See* HEARING.

ORDERS.

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 the 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 the proceeding will be expected to conform their practices to the principles announced in the report. Storage of Import Property, 676 (683).

It is 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 the Commission may not in advance impute to respondents a desire to defeat the order through subterfuge. Id. (683).

OTHER PERSONS. *See* SHIPPING ACT, 1916; TERMINAL FACILITIES; AGREEMENTS UNDER SECTION 15; TARIFFS.

PARTIES.

The record discloses that the Oakland Motor Car Co. and Gray Motor Car Co. are trade names under which Martin Rosendahl and Duluth Auto Exchange, Inc., respectively, operated, and that freight charges in Docket No. 100 were paid by Martin Rosendahl and in Docket No. 101 by Duluth Auto Exchange, Inc. The filing of a claim in the trade name of an individual or a corporation is a filing by the individual or the corporation that operates thereunder. Oakland Motor Car Co. *v.* Great Lakes Transit Corp., 308 (310).

PARTIES—Continued.

The claim was filed with the United States Shipping Board prior to the institution of bankruptcy proceedings. A trustee in bankruptcy may prosecute a suit commenced by a bankrupt prior to adjudication either by the institution of a new action or by intervening in the proceeding commenced by the bankrupt. If, however, the trustee neither sues nor intervenes, there is no reason why the bankrupt himself should not continue the proceeding. If the trustee will not sue and the bankrupt cannot sue, it might result in the bankrupt's debtor being discharged of an actual liability. It is believed that the law does not contemplate such a result. Hearing upon complaints filed with the Board discloses the assessment and collection of illegal charges in violation of section 18 of the Shipping Act, 1916. Section 22 of that act authorizes an award of reparation to the party injured. Martin Rosendahl was injured the moment he paid the charges and was the person directly damaged by the collection in 1923 of the illegal rates. His claim accrued at once, and the law administered by the Department does not inquire into later events. Id. (310–311).

PASSENGER. *See* COMPETITION; UNIFORMITY OF RATES, ETC.

PERCENTAGE OF INCREASE IN RATES.

The reasonableness of rates cannot be determined by considering only the amount of the percentage of increase, which may indicate that the former rates were too low rather than that the present rates are excessive. Alaska Rate Investigation, 1 (6).

The fundamental question is whether the proposed rate is reasonable regardless of the amount of the advance. Gulf Westbound Intercoastal Soya Bean Oil Meal Rates, 554 (560).

PHILIPPINE ISLANDS.

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. Johnson Pickett Rope Co. *v.* Dollar SS. Lines, 585 (585).

PILOTAGE. *See* LOADING AND UNLOADING.

POLICY. *See* AGREEMENTS UNDER SECTION 15.

POOL CARS. *See* DEVICES TO DEFEAT APPLICABLE RATES.

PORT DIFFERENTIALS. *See* DIFFERENTIALS.

PORT PREFERENCE. *See* CONSTITUTION OF UNITED STATES.

PRACTICE. *See also* UNREASONABLENESS; PREJUDICE.

Practice of routing shipments via water from port of transhipment to destination, charging of same through rates thereon as for shipments moving via rail from said transshipment port, and refusal to absorb wharfage charges, State toll, and war tax, not shown to have been unlawful. Intercoastal Rates of Nelson SS. Co., 326 (340).

Owing to its wide and variable connotations, a practice, which, unless restricted, ordinarily means an often repeated and customary action, is deemed to apply only to acts or things belonging to the same class as those meant by the words of the law that are associated with it. In section 18 the term "practices" is associated with various words, including "rates," "charges," and "tariffs." Intercoastal Investigation, 1935, 400 (432).

PREJUDICE. *See also* REASONABLENESS; DISCRIMINATION: CONTRACTS WITH SHIPPERS; AGREEMENTS UNDER SECTION 15.

In General:

The manifest purpose of the provision of section 16 prohibiting undue or unreasonable preference or advantage and undue or unreasonable prejudice or disadvantage and the provision of section 17 prohibiting unjust discrimination between shippers is to require common carriers subject to the statute to accord like treatment to all shippers who apply for and receive the same service. American Tobacco Co. *v.* C. G. T., 53 (56).

The discrimination inhibited by sections 16 and 17 is that which is undue, unreasonable, or unjust. Port Utilities Commission of Charleston *v.* Carolina Co., 61 (65).

Issue of unjust prejudice would necessarily be confined to rates of carrier serving both ports involved in rate comparison. American Peanut Corp. *v.* M. & M. T., 78 (79).

The standard by which to determine when an advantage to one or a prejudice to some other is undue or unreasonable is not difficult to determine. Whenever it is sufficient in amount to be substantial and of importance to either the one receiving the advantage or to the one suffering the prejudice, it must be held to be undue or unreasonable. Assoc. Jobbers of Los Angeles *v.* American-Hawaiian SS. Co., 161 (167-168).

Sections 16 and 17 of the act do not forbid all discriminatory, preferential, or prejudicial treatment, nor does section 14 declare unlawful all contracts based on the volume of freight offered. To bring a difference in rates within the prohibition of these sections it must be shown that such a difference is not justified by the cost of the respective services, by their values, or by other transportation conditions. Atlantic Refining Co. *v.* Ellerman & Bucknall SS. Co., 242 (250).

Not all preferences and advantages are condemned by law, but only those that are undue or unreasonble. Intercoastal Investigation, 1935, 400 (444).

The record does not show that the preference or advantage to the Sacramento shippers or the prejudice and disadvantage to shippers using complainant's terminals, if any, resulting from the rates under consideration is of the character condemned by law. Undoubtedly, an effect of the rates in issue was to deprive complainants of revenue they formerly received from the handling of the traffic involved at their terminals, but this alone does not constitute a violation of the law the Department enforces. Id. (444).

The Shipping Act, 1916, prohibits unjustly discriminatory rates between shippers and the giving to any particular person of any undue or unreasonable preference or advantage or the subjecting of any particular person to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. Section 19 Investigation, 1935, 470 (495).

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

PREJUDICE—Continued.
In General—Continued.
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. H. Kramer & Co. *v.* Inland Waterways Corp., 630 (633).
An underlying purpose of the Shipping Act, 1916, is to prevent every form of favoritism based upon the relations of the shipper with the carrier as a customer and to place all shippers, the large and small, the steady and occasional, upon a plane of equality in the right to service. For this reason, that act condemns and makes unlawful every regulation, device, or subterfuge which undertakes to give to anyone an advantage based upon conditions other than those inhering in the transportation itself and alone. Intercoastal Investigation, 1935, 400 (451–452).
Section 16 of the Shipping Act, 1916, prohibits any common carrier by water, either alone or in conjunction with any other person, directly or indirectly, from allowing any person to obtain transportation for property at less than the regular rates then established and enforced on the line of such carrier by means of false billing, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means. That section also prohibits any such carrier from making or giving any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever or subjecting any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. Section 17 of that act prohibits carriers in foreign commerce from demanding, charging, or collecting any rate or charge which is unjustly discriminatory between shippers or ports and requires every such carrier to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property. These provisions of law place an obligation on every common carrier by water in foreign commerce to make its rates public and available on equal terms to all shippers. Section 19 Investigation, 1935, 470 (501–502).
In view of the competitive situation, the cancellation of the joint rates involved would result in undue and unreasonable preference and advantage to Oakland and Richmond and shippers there located and undue and unreasonable prejudice and disadvantage to Berkeley and Emeryville and shippers there located, in violation of section 16 of the Shipping Act, 1916. Intercoastal Rates To and From Berkeley, Calif. (No. 2), 510 (512).
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

PREJUDICE—Continued.
In General—Continued.
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. Philadelphia Ocean Traffic Bureau *v.* Export SS. Corp., 538 (541).
Prejudice to one shipper to be undue must ordinarily be such that it shall be a source of positive advantage to another. California Pkg. Corp. *v.* American-Hawaiian SS. Co., 543 (545).
The language of section 16 forbidding "any undue or unreasonable prejudice or disadvantage in any respect whatsoever" is specifically directed against undue preference and every other form of unjust discrimination against the shipping public. Armstrong Cork Co. *v.* Hawaiian SS. Co., 719 (723).
Practices:
Practice in apportioning available space in vessels not shown to be unduly prejudicial to shippers of wool and related articles or unduly preferential of shippers of other commodities. Boston Wool Trade Assoc. *v.* M. & M. T., 32 (35).
It is evident that the purpose of Congress in enacting the provision of section 16 prohibiting undue or unreasonable preference or advantage and undue or unreasonable prejudice or disadvantage and the provision of section 17 prohibiting unjust discrimination between shippers was to impose upon common carriers within the purview thereof the duty of charging uniform rates to all shippers receiving a similar transportation service. Eden Mining Co. *v.* Bluefields Fruit & SS. Co., 41 (45).
The exaction of higher rates from complainants than from other shippers for like service subjected complainants to undue and unreasonable prejudice and disadvantage and constituted unjust discrimination between shippers. Id. (48).
Charges exacted for transportation of collect shipments found unduly prejudicial and unjustly discriminatory to extent they exceeded prepaid charges on like shipments from and to same ports plus such additional costs as respondent was compelled to absorb over and above those accruing in connection with prepaid shipments. American Tobacco Co. *v.* C. G. T., 53 (57).
Rate adjustment on traffic from North Atlantic, South Atlantic, and Gulf ports to foreign destinations not shown to be unduly prejudicial or unjustly discriminatory. Port Utilities Commission of Charleston *v.* Carolina Co., 61 (71).
Rule applying arbitraries to Everett, Bellingham, and Olympia, Wash., and Astoria, Oreg., not shown to subject those ports to undue and unreasonable disadvantage. Everett Chamber of Commerce *v.* Luckenbach SS. Co., 149 (153).
Issuance of an order requiring change in the currency practices of carriers not warranted. Rates in Canadian Currency, 264 (281).
The imposition of the 30-cent charge at Los Angeles, which is not imposed at San Francisco, measured by the transportation standards as referred to in the Illinois Central Railroad case, falls squarely within

PREJUDICE—Continued.
Practices—Continued.
the type of preference and prejudice which section 16 of the Shipping Act condemns. Assembling and Distributing Charge, 380 (387).
Schedule of proposed changes in classification of passenger accommodations and fares on vessels operating between New York, N. Y., and San Francisco, Calif., not shown to be unduly preferential and prejudicial or unjust and unreasonable. Passenger Classification and Fares, American Line SS. Corp., 294 (305).
Refusal by defendants to pay commissions to persons other than their authorized agents on passenger tickets and orders for transportation purchased for customers for passage on defendant lines not undue preference or prejudice. Joseph Singer *v.* Trans-Atlantic Passenger Conference, 520 (523).
The uniformity of treatment contemplated by the Shipping Act is a relative equality based on transportation conditions only. Philadelphia Ocean Traffic Bureau *v.* Export SS. Corp., 538 (541).
Rates from San Diego, Calif., to the Orient and rules, regulations, and practices with respect thereto found unduly prejudicial. San Diego Harbor Commission *v.* American Mail Lines, 661 (669).
Rules pertaining to segregation of cargo by intercoastal carriers in Pacific-Atlantic or Pacific-Gulf of Mexico trade found unduly prejudicial and preferential and unreasonable. Intercoastal Segregation Rules, 725 (737).
Rates; Commodities; Service:
Rates on cigars from Philadelphia, Pa., to Pacific-coast ports not shown to be violative of section 16 or 18 of the Shipping Act, 1916, as alleged. York County Cigar Mfrs. Assoc. *v.* American-Hawaiian SS. Co., 209 (212). The maintenance of rates on blacksmith coal and farm products from Puget Sound ports to Juneau, Alaska, lower than rates from Anchorage, Alaska, to Juneau is unduly preferential to Puget Sound ports and unduly prejudicial to Anchorage. Alaska Rate Investigation, 1 (11–12).
Rates on green coffee from Colombia, South America, to New York, N. Y., and Boston, Mass., found unduly preferential and prejudicial and unjustly discriminatory. Commonwealth of Mass. *v.* Colombian SS. Co., 711 (716). Fact that western packers are awarded a lower rate on eastbound canned coffee than complainant pays on like shipments westbound is not sufficient to sustain allegation of undue prejudice. Calif. Pkg. Corp. *v.* American-Hawaiian SS. Co., 543 (545).
Rates on cotton linters and cottonseed-hull fiber or shavings from Galveston, Tex., to New York, N. Y., and from Houston, Tex., to Philadelphia, Pa., not shown to be in violation of section 16 or 18 of the Shipping Act, 1916. Thomas G. Crowe *v.* Southern SS. Co., 145 (148).
Any-quantity rate on cotton piece goods and cotton factory products from Atlantic and Gulf ports to Pacific ports not shown to be unduly prejudicial or unreasonable. Ames Harris Neville Co. *v.* American-Hawaiian SS. Co., 765 (769).
Rate on Fir-Tex from Portland, Oreg., to Boston, Mass., New York, N. Y., and Philadelphia, Pa., not shown to be unreasonably prejudicial or unjust or unreasonable. Fir-Tex Ins. Board Co. *v.* Luckenbach SS. Co., 258 (261).

PREJUDICE—Continued.
Rates; Commodities; Service—Continued.
Rates on leather from Montague, Muskegon, and Grand Haven, Mich., to Chicago, Ill., not shown to be unduly prejudicial. Eagle-Ottawa Leather Co. *v.* Goodrich Transit Co., 101 (106).
Schedules proposing to change effective-date rule in connection with east-bound intercoastal lumber rates found unduly prejudicial. Intercoastal Lumber Rate Changes, 656 (660).
Rates on shipments of case oil from United States to South African ports not shown to be unduly or unreasonably prejudicial or unjustly discriminatory. Atlantic Refining Co. *v.* Ellerman & Bucknall SS. Co., 242 (255–256).
Rates on olive oil and general cargo from Italy to Philadelphia, Pa., not shown to be unduly preferential or prejudicial or unjustly discriminatory. Philadelphia Ocean Traffic Bureau *v.* Export SS. Corp., 538 (542).
Rate on prepared roofing paper from Baltimore to Miami not shown to be unduly or unreasonably prejudicial. Continental Roofing & Mfg. Co. *v.* B. & C. SS. Co., 74 (77).
Rates on peanuts from Norfolk, Va., to Baltimore, Md., Philadelphia, Pa., New York, N. Y., and Boston, Mass., not shown to be unduly prejudicial. American Peanut Corp. *v.* M. & M. T., 78 (84).
Carrier's practice in establishing and maintaining rates from New Orleans on clean rice originating at interior Louisiana points and destined to Puerto Rico designed to extend to such traffic the same or lower through rate as for transportation of clean rice via Lake Charles and thence by other carriers to Puerto Rico, not shown to be violative of section 16 or 18 of the Shipping Act, 1916, as alleged. Lake Charles Board of Commissioners *v.* N. Y. & P. R. S. S. Co., 154 (157).
Rate on scrap iron from New York, N. Y., to Buenos Aires, Argentina, not shown to be unjustly prejudicial to exporter from United States as compared with foreign competitors. R. A. Ascher & Co. *v.* Int. Freighting Corp., 213 (216).
The record shows no undue or unreasonable prejudice or disadvantage to complainant or unjust discrimination of the Shipping Act on its shipment of goatskins to Italy. Edmond Weil, Inc. *v.* Italian Line, 395 (398).
The Virgin Islands Company contends that the maintenance of a lower rate from Puerto Rico than from Virgin Islands is unduly prejudicial to it and other shippers. However, the only carriers transporting sugar from Virgin Islands do not operate in the Puerto Rican trade, and there is no evidence that they control the rates from Puerto Rico. Sugar From Virgin Islands, 695 (699).
Rate on wheat, in bulk, in lots of 500 tons or more from Pacific ports to Gulf ports not shown to be violative of section 16 or 18 of the Shipping Act, 1916. New Orleans Board of Trade *v.* Luckenbach S. S. Co., 346 (348).
Rates on wool, mohair, camel hair, and alpaca hair between Boston, Mass., and New York, N. Y., found unjust and unreasonable for the future, but not in the past, and not unduly preferential or unduly prejudicial. Boston Wool Trade Assoc. *v.* Eastern S. S. Lines, 36 (39).

PREJUDICE—Continued.
Rates; Commodities; Service—Continued.
Rates on wool and related articles and local carload rates on all commodities between Boston, Mass., and Philadelphia, Pa., found not unduly prejudicial. Boston Wool Trade Assoc. *v.* M. & M. T., 24 (30).
Undue prejudice is not shown when the carriers serving the alleged preferred point do not serve or participate in routes from the alleged prejudiced point. Calif. Pkg. Corp. *v.* States S. S. Co., 546 (547).
The duty which the law places upon every common carrier to serve all members of the public upon equal terms has been evaded by many carriers subject to the Department's jurisdiction. Seas Shipping Co. *v.* American South African Line, 568 (580).
PREPAYMENT OF CHARGES.
It was respondent's fundamental right to demand and receive payment of freight charges as a condition precedent to transportation. American Tobacco Co. *v.* C. G. T., 53 (55).
PROFIT TO SHIPPERS. *See also* REASONABLENESS.
While the testimony of witnesses concerning their probable net profits under increased rates is admittedly of value, the effect upon the shipper's business is not conclusive as to the reasonableness of rates. Alaska Rate Investigation, 1, (7).
Reasonableness of rates is not to be gauged by the ability or inability of shippers to market their products with profit. Atlas Waste Mfg. Co. *v.* N. Y. & P. R. SS. Co., 195 (196).
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 that 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. Calif. Pkg. Corp. *v.* American-Hawaiian SS. Co. 543 (545).
The Commission's 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. It 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 because the profits of his business have shrunk to a point where they are no longer sufficient. Eastbound Intercoastal Lumber, 608 (623).
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

PROFIT TO SHIPPERS—Continued.
showing the freight rate to be unreasonable. Eastbound Intercoastal Lumber, 608 (623).
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. Paraffine Companies *v.* American-Hawaiian SS. Co., 628 (629).
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. Intercoastal Lumber Rate Changes, 656 (659).
PROMOTIONAL RATES. *See* DEVELOPMENT RATES.
PROPORTIONAL RATES.
If the instant increases should be denied, the carriers would be confronted with the unnatural and objectionable situation of having port-to-port rates which would be lower than their proportional water rates between the same ports on traffic handled in connection with rail lines. Increased Rates, 1920, 13 (17).
While recognition is given to the fact that the cost of handling local traffic is generally greater than the cost of handling through traffic and due weight is accorded statements that the proportional rates are maintained for competitive reasons and do not afford a profit over and above the cost of service rendered, they fall short of furnishing a satisfactory explanation of the great excess of the local over the proportional rates. Further, in regard to statements that the proportional rates on wool are not remunerative, it should be observed that the disparity between such rates and those alleged to be unreasonable strongly indicates that unduly high rates are exacted for the transportation of local traffic for the benefit of through interstate traffic. Boston Wool Trade Assoc. *v.* Eastern SS. Lines, 36 (38–39).
While recognizing that comparison of local port-to-port rate with water component of through rail-and-water rate is of some value, yet it is also recognized that, standing alone, a difference between such rates cannot be considered as determinative of lawfulness or unlawfulness of local rate. Manifestly, widely dissimilar conditions enter into establishment and maintenance of these two classes of rates. Continental Roofing & Mfg. Co. *v.* B. & C. SS. Co., 74 (76–77).
Proportional of 41 cents as compared with 55-cent port-to-port rate and in connection with other factors has bearing upon the reasonableness of latter rate, considering that the services rendered in regard to both are necessarily similar in many respects. Continental Roofing & Mfg. Co. *v.* B. & C. SS. Co., 114 (118).
The fact that the tariff rules of the Department specifically permit the publication of proportional rates supports respondent's view that the publication of such rates is permissible. But this in no way relieves respondent from the mandate of the law that its rates for transportation must not be violative of the Shipping Acts. Proportional Westbound Intercoastal Rates on Cast Iron Pipe, 376 (378).
PROPOSED REPORTS.
After hearing and subsequent to service of tentative report, dismissal without prejudice is precluded by the provision of section 24 requiring

458342 O - 42 - 69

PROPOSED REPORTS—Continued.
entry of report stating conclusions, decision, and order in every investigation in which a hearing has been held. New Orleans Assoc. of Commerce *v.* Bank Line, 177 (186).
Exceptions to examiner's proposed report were received by the Department seven days after time for filing exceptions provided for by Rules of Procedure. Accordingly rejected. Gulf Intercoastal Rates To and From San Diego (No. 2), 600, (600).
Complainants' exceptions to examiners proposed report on further hearing not seasonably filed and rejected. Ames Harris Neville Co. *v.* American-Hawaiian SS. Co., 765 (765).
RAIL AND RAIL-WATER RATES.
There is such a manifest difference between transportation via rail and via water that rail rates cannot be regarded as a proper criterion or measure of water rates. Wool Rates From Boston to Philadelphia, 20 (21); Boston Wool Trade Assoc. *v.* M. & M. T., 24 (29).
The conditions compelling absorption by respondent of terminal charges at Boston and Philadelphia in connection with through rail-and-water traffic do not apply with equal force to its local traffic. Boston Wool Trade Assoc. *v.* M. & M. T., 24 (30).
The equalization of rail-and-water rates from central freight association territory to foreign destinations through various ports is manifestly a matter beyond the scope of the Board's jurisdiction. Port Utilities Commission of Charleston *v.* Carolina Co., 61 (71).
That rail rates are not to be regarded as a criterion or measure of water rates has been affirmed. American Peanut Corp. *v.* M. & M. T., 78 (84).
There is a tendency for complainants in regulatory proceedings before the Board to so rely upon decisions of the Interstate Commerce Commission as to give too little consideration to the fundamental differences between transportation by rail and transportation by water. The unit of transportation by rail is a car with a capacity of a relatively few thousand pounds. The unit of transportation by water is a ship, and the ships involved have an average cargo capacity of around 7,500 tons. The comparative ease with which a railroad by dropping or adding cars can adjust its operations to slight fluctuations in tonnage moving is obvious. Moreover, railroads are semimonopolistic in character and in any given competitive field relatively few in number while operators of vessels in foreign commerce of the United States may at any time and without warning be subjected to most severe competition by tramp vessels of any nation or by vessels chartered by shippers with large quantities of cargo to be transported. The exigencies of ocean transportation are many and largely peculiar unto such transportation. They cannot be neglected by the steamship operator if he is to survive, nor can the Board in arriving at its decisions fail to consider them. Atlantic Refining Co. *v.* Ellerman & Bucknall SS. Co., 242 (253).
The joint rail-and-ocean rates and rail-barge-ocean rates are not under the control of the Department. Intercoastal Investigation, 1935, 400 (456).
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 de-

RAIL AND RAIL-WATER RATES—Continued.
scribed above, and respondents' position is that, since none of the proposed rates exceeds such prescribed rates or rates related thereto, the proposed rates before this Commission do not exceed maximum reasonable rates. While this argument may be persuasive, it is not controlling. Commodity Rates Between Atlantic and Gulf Ports, 642 (644).
The Commission has no jurisdiction over the rail-and-water rates. Id. (645).
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. Intercoastal Lumber Rate Changes, 656 (659).
RATE COMPARISONS. *See* REASONABLENESS; PREJUDICE; UNIFORMITY OF RATES; VALUE OF COMMODITY.
RATE DEFINED. *See also* CHARGES DEFINED.
A rate is a carrier's compensation for the performance of a transportation service. Intercoastal Rate Investigation, 108 (111).
A rate is the net amount the carrier receives from the shipper and retains. Intercoastal Investigation, 1935, 400 (431).
RATE DIFFERENTIALS. *See* DIFFERENTIALS.
RATES PRESCRIBED BY INTERSTATE COMMERCE COMMISSION.
The Interstate Commerce Commission has prescribed rates of the types described, and respondents' position is that, since none of the proposed rates exceeds such prescribed rates or rates related thereto, the proposed rates before this Commission do not exceed maximum reasonable rates. While this argument may be persuasive, it is not controlling. Commodity Rates Between Atlantic and Gulf Ports, 642 (644).
RATE STRUCTURE.
In the great public interest, it would seem obvious that rate structures should be so made as to permit the flow of traffic to pass through as many ports as the economies of transportation and distribution will allow. Port Utilities Commission of Charleston *v.* Carolina Co., 61 (71).
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. The rates of Shepard and Calmar were made with relation to the conference rates and are equally defective. Intercoastal Investigation, 1935, 400 (411).
The handicap list, which only appears from a study of individual items in Agent Thackara's tariff SB–I No. 4, embraces commodities as to which, after several months of trading and by way of compromise, it was agreed the "B" lines would charge 2.5 cents per 100 pounds less than the "A" lines. Such understanding and the further understanding that the "A" lines would not operate south of Philadelphia, Pa., are said to have effected a fairly even distribution of cargo volume between the two classes of lines. In arriving at such understandings, no consideration whatsoever was given to the rights of shippers or ports. For instance, shippers of commodities in the handicap list have alternative rates while this privilege is denied shippers of related or analogous commodities not in the list; ports south of Philadelphia and shippers from such ports are denied "A" line services and alternative rates on commodities named in the list; and on eastbound transportation the same rate is charged from all ports on the Pacific coast on commodities named in the list regardless of the line performing the service. Id. (412).

RATE STRUCTURE—Continued.

In the making of the tariffs, consideration should be given, among other things, to the cost of service, rights of shippers, and transportation and traffic conditions. Id. (463).

The practices condemned in the report as unfair not only prevent the maintenance of a reasonable and stable rate structure, vital to the welfare of American shippers and American-flag carriers, but they also open the door to violations of the regulatory provisions of the Shipping Act. Section 19 Investigation, 1935, 470 (500).

Neither the 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. Commodity Rates Between Atlantic and Gulf Ports, 642 (644).

REASONABLENESS. *See also* PREJUDICE; DISCRIMINATION; FAIR RETURN; PROFIT TO SHIPPERS; DIVISIONS OF RATES; PERCENTAGE OF INCREASE IN RATES; SIMILARITY OF TRAFFIC, ETC.; UNIFORMITY OF RATES, ETC.; TARIFFS; NONCOMPENSATORY RATES.

In General:

The fundamental obligation of carriers under the Shipping Act is to charge only such rates as are just and reasonable. Alaska Rate Investigation, 1 (4).

As section 18 relates to carriers in interstate commerce exclusively, its requirements have no application for (foreign) respondents. Boston Wool Trade Assoc. *v.* General SS. Corp., 49 (51).

Section 18 applies to interstate rates, charges, and practices of common carriers by water as distinguished from rates, charges, and practices in connection with the transportation of freight from ports in the United States to ports in foreign countries. Port Util. Com. of Charleston *v.* Carolina Co., 61 (65).

As section 18 of the statute concerns carriers engaged in interstate commerce exclusively, its inhibitions regarding unjust and unreasonable rates and charges have no application to carriers engaged in through transportation from foreign countries to destinations in the United States, notwithstanding part of the through transportation was between ports in the United States. Boston W. T. Assoc. *v.* Oceanic SS. Corp., 86 (87).

Section 18 has application to carriers in interstate commerce only. W. T. Rawleigh Co. *v.* Stoomvaart, 285 (286).

Where the issue as to the justness and reasonableness of rates attacked is pitched upon a comparison of such rates with the rates on another commodity, the complainant to prevail must establish that the rates on such other commodity are themselves reasonable and fair. York County Cigar Mfgrs. Assoc. *v.* Am. Haw. SS. Co., 209 (210).

Section 18 of the Shipping Act imposes upon carriers the obligation of establishing and observing just and reasonable rates and tariffs. Although the acts which the Department administers do not define just and reasonable rates and tariffs, it is well established that a rate may be so low as to be unreasonable, and thus unlawful. The proposed tariffs do not meet the requirements imposed by the statutes and are unlawful. Intercoastal Rates of Nelson SS. Co., 326 (336-337).

REASONABLENESS—Continued.
In General—Continued.
The complaint alleges a violation of section 18 of the Shipping Act, but that section does not cover foreign commerce. Edmond Weil *v.* Italian Line, 395 (398).
Ordinarily, the voluntary establishment of a rate raises presumption of its reasonableness, but such inference does not necessarily follow when there is no movement under such rate. Gulf WB. Intercoastal Soya Bean Oil Meal Rates, 554 (560).
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. Eastbound Intercoastal Lumber, 608 (620).
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 that it exceeded the subsequently established rate. H. Kramer & Co. *v.* Inland Waterways Corp., 630 (632). Whatever the cause of the delay in making the reduction, it does not relieve defendants from their obligation under section 18 to establish, observe, and enforce just and reasonable charges. Id. (633).
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. Sugar from Virgin Islands, 695 (697).
The voluntary reduction of a rate without other supporting facts and circumstances does not warrant the inference that the rate prior to the reduction was unreasonable; but complainant did not rely solely upon such reduction. Amn. Norit Co. *v.* Agwilines, 741 (743).
Section 18 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. Sugar from Virgin Islands, 695 (700).
Rates; Factors; Commodities; Suspension; Service:
The bulk of a commodity is one of the principal factors for consideration in constructing a rate for transportation by water, and great weight should be attached to this factor in a determination of the reasonableness or unreasonableness of such a rate. It is manifest, however, that additional factors, such as value, revenue, and others, are to be considered, which may negative the presumption of reasonableness arising from a calculation based upon the element of bulk alone. Boston W. T. Assoc. *v.* M. & M. T., 24 (26).
Manifestly, the element of bulk as between two classes of peanuts is entitled to consideration. Amn. Peanut Corp. *v.* M. & M. T., 78 (83).
Space is an important factor which carriers by water may properly take into consideration in fixing their rates. Isaac S. Heller *v.* Eastern, 158 (160).
Rates found to be unjust and unreasonable for the future, but not in the past. The period during which the assailed rates were applicable was one of rapidly changing values and costs and of varying commercial and transportation conditions. Boston Wool Trade Assoc. *v.* M. & M. T., 24 (30).

REASONABLENESS—Continued.

Rates; Factors; Commodities; Suspension; Service—Continued.

The mere fact that the rate in the reverse direction is substantially lower does not justify a finding that the rate under attack is unreasonable or in any other way detrimental to our commerce. Edmond Weil *v.* Italian Line, 395 (399).

Rates on automobiles accompanied by passengers from New York, N. Y., to Portland, Maine, and from Boston, Mass., to New York, N. Y., not shown to be unjust or unreasonable. Isaac S. Heller *v.* Eastern, 158 (160).

Rate on brass ingots from Chicago to Los Angeles Harbor found applicable but unjust and unreasonable. H. Kramer *v.* Inland Waterways Corp., 630 (633).

Canned goods include goods in glass containers. Gelfand *v.* Bull, 169 (170).

Rates on activated carbon from Jacksonville to New York found unreasonable. Amn. Norit Co. *v.* Agwilines, 741 (743).

Rate on ground roasted coffee from Brooklyn to Pacific coast ports not shown to be unreasonable or unduly prejudicial. Calif. Pkg. Corp. *v.* Am. Haw., 543 (545).

Rates on cotton waste from New York, N. Y., to San Juan and Aguadilla, P. R., not shown to be unjust and unreasonable. Atlas Waste Mfg. Co. *v.* N. Y. & P. R. SS. Co., 195 (197).

Rates on hardwood flooring from Mobile, Ala., to Tampa, Fla., not shown to be unjust or unreasonable. Biltmore Flooring Co. *v.* Lake Giltedge SS. Co., 134 (137).

Rates on furniture and carpet paper from Savannah, Ga., to Miami, Fla., not shown to have been unjust or unreasonable. I. C. Helmly Furn. Co. *v.* M. & M. T., 132 (133).

Rates on grapefruit and grapefruit juice from Jacksonville and Tampa, Fla., to Pacific coast ports not shown to be in violation of the Shipping Act, 1916. California Pkg. Corp. *v.* States SS. Co., 546 (548).

Rates on iron and steel rivets from Boston, Mass., to New York, N. Y., found unreasonable. Judson L. Thomson Mfg. Co. *v.* Eastern SS. Lines, 58 (59–60). Rates on leather from Montague, Muskegon, and Grand Haven, Mich., to Chicago, Ill., found unjust and unreasonable. Eagle-Ottawa Leather Co. *v.* Goodrich Transit Co., 101 (106).

Generically, the material involved is pyroxylin coated cotton cloth, but the fact that it is further processed to give the effect of leather removes it from the general classification and subjects it to the rate applicable on artificial or imitation leather. Leather Supply Co. *v.* Luckenbach SS. Co., 779 (780).

Rate on paper towels from New York, N. Y. to Cristobal, C. Z., not shown to be unjust or unreasonable. Dobler & Mudge *v.* Panama R. R. SS. Line, 130 (131).

Rate on scrap paper from Atlantic ports to New Orleans not shown to be unlawful. Celotex Corp. *v.* Mooremack Gulf Lines, 789 (793).

Rates on peanuts from Norfolk, Vo., to Baltimore, Md., Philadelphia, Pa., New York, N. Y., and Boston, Mass., in certain instances, found unjust and unreasonable. American Peanut Corp. *v.* M. & M. T., 78 (84).

REASONABLENESS—Continued.
Rates; Factors; Commodities; Suspension; Service—Continued.
Rate on iron pipe and elbows from New York, N. Y., to Miami, Fla., not shown to have been unjust or unreasonable. Bonnell Elec. Mfg. Co. *v.* Pacific SS. Co., 143 (144).
Rate on roofing and building materials from Baltimore, Md., to Miami, Fla., found unjust and unreasonable prior, but not subsequent, to June 1, 1925. Continental Roofing & Mfg. Co. *v.* B. & C. SS. Co., 114 (119).
Rates on Manila rope from the Philippine Islands to the United States not shown to be unreasonable or unduly prejudicial. Johnson Pickett Rope Co. *v.* Dollar SS. Lines, 585 (590).
A 56-percent increase in the rate on sugar has not been justified and the increased rate is unjust and unreasonable. Sugar From Virgin Islands, 695 (699).
Rate on raw sugar from the Virgin Islands to the United States found unjust and unreasonable, but not unduly preferential or prejudical. Id. (700).
Rates on switch boxes with interior fittings from New York, N. Y., to Los Angeles and San Francisco, Calif., and Portland, Oreg., not shown to have been unjust or unreasonable. Trumbull-Vanderpoel *v.* Luckenbach SS. Co., 126 (129).
Rate on wallboard from New Orleans to Atlantic ports found unreasonable. Celotex Corp. *v.* Mooremack Gulf Lines, 789 (792–793).
Rate on bulk wheat from Pacific ports to Atlantic and Gulf ports found not unduly and unreasonably prejudicial and preferential but unjust and unreasonable. Rate on sacked wheat from Pacific ports to Atlantic and Gulf ports not shown to be unlawful. Rules and regulations applicable to transportation of wheat from Pacific ports to Atlantic and Gulf ports not shown to be unlawful. Tri-State Wheat Transp. Council *v.* Alameda Transp. Co., 784 (788).
Rates on pressed wood insulating board from Portland, Oreg., to Atlantic and Gulf ports of the United States not shown to be unreasonable or unduly prejudicial. Dant & Russell *v.* American-Hawaiian SS. Co., 781 (783).
Rates, fares, and charges of carriers operating between Norfolk, Va., and Atlantic-coast ports north thereof, between Norfolk and New Orleans, La., between New Orleans and the Mexican border, between ports on the Great Lakes, between New York and the Canal Zone, between New York and the Virgin Islands, and between New York and Puerto Rico authorized to be increased. Increased Rates, 1920, 13 (18).
Schedules proposing reductions in rates between Atlantic and Pacific ports found not justified. Intercoastal Rates of Nelson SS. Co., 326 (341).
Schedules proposing increases and reductions in westbound intercoastal rates, with certain exceptions, found justified. Id. (343).
Schedules proposing to cancel so-called terminal rates from Mount Vernon and Stanwood, Wash., to intercoastal destinations on the Atlantic coast found justified. Intercoastal Rates From Mount Vernon, 360 (363).
Schedules proposing joint rates for transportation of property between Berkeley or Emeryville, Calif., and points on the Atlantic coast with

REASONABLENESS—Continued.

Rates; Factors; Commodities; Suspension; Service—Continued.

trans-shipment at San Francisco, Calif., found justified. Intercoastal Rates To and From Berkeley, 365 (368).

Schedules proposing to make certain changes in the rates for through transportation between San Diego, Calif., and ports on the Gulf of Mexico found justified. Gulf Intercoastal Rates To and From San Diego, 516 (518).

Schedules proposing to cancel through routes and joint rates for transportation of freight from Atlantic-coast ports to Vancouver, Wash., found justified. Westbound Intercoastal Rates to Vancouver, Wash., 770 (774).

The Commission, acting under authority of section 18 of the Shipping Act, 1916, withheld approval of schedules proposing to increase rates on cotton, grain and grain products, paper bags, wrapping paper, pulpboard, wallboard, canned goods, binder twine, charcoal, bones and bone meal from United States ports on the Gulf of Mexico to North Atlantic ports of the United States and on scrap or waste paper from North Atlantic ports of the United States to United States ports on the Gulf of Mexico. Commodity Rates Between Atlantic and Gulf Ports, 642 (642).

Schedule proposing reductions in eastbound intercoastal rates on oranges, lemons, and grapefruit not justified. Intercoastal Rates of Nelson SS. Co., 326 (345).

Schedules proposing to reduce westbound intercoastal rate on dates, figs, and peel of citron, grapefruit, lemon or orange, found not justified. Westbound Intercoastal Rates on Dates, Etc., 352 (354).

Schedules proposing to increase rates on lumber and products thereof from United States Pacific-coast ports to United States ports on the Gulf and Atlantic coast not shown to be unlawful. Eastbound Intercoastal Lumber, 608 (623).

Proposed rates on commodities from United States ports on the Gulf of Mexico to North Atlantic ports of the United States and on scrap paper from North Atlantic ports of the United States to United States ports on the Gulf of Mexico found justified. Commodity Rates Between Atlantic and Gulf Ports, 642 (645).

Schedules proposing proportional rates from Charleston, S. C., and Savannah, Ga., to Pacific coast ports on cast-iron soil and pressure pipe originating at Birmingham, Ala., and other designated inland points in the Birmingham District, not shown to violate any provision of the Shipping Act, 1916. Proportional Westbound Intercoastal Rates on Cast Iron Pipe, 376 (379).

Schedules proposing to increase rates on old brass radiators from United States Pacific coast ports to United States Gulf and Atlantic coast ports found unreasonable. Old Brass Radiators—Eastbound, 670 (673).

Schedule proposing to reduce rate for transportation from Baltimore to Alameda, Los Angeles Harbor, Oakland, and San Francisco, Portland, and Seattle and Tacoma, of silica sand, in bulk, in lots of not less than 500 net tons, for manufacture of glass and glassware, not justified. Intercoastal Rate on Silica Sand From Baltimore, Md., 373 (375).

REASONABLENESS—Continued.

Rates; Factors; Commodities; Suspension; Service—Continued.

Proposed schedules containing optional discharge provision on shipments of soap and soap products from Boston, Mass., to Pacific coast ports found not justified. Intercoastal Rates of American-Hawaiian SS. Co., 349 (351).

Schedules proposing rate for transportation from New York Harbor to Pacific coast ports on soda ash and caustic soda, minimum weight 1,500 net tons, originating at Wyandotte, Mich., and moving as a unit by water to New York Harbor, found not justified. Id. (351)

Schedules proposing to increase the rate on soya bean oil meal from United States Gulf ports to United States Pacific coast ports found justified. Gulf Westbound Intercoastal Soya Bean Oil Meal Rates, 554 (561).

Proposed rate on binder twine from United States ports on the Gulf of Mexico to North Atlantic ports of the United States and proposed rate with respect to the effective date of rate changes on grain milled in transit have not been justified. Commodity Rates Between Atlantic and Gulf Ports, 642 (645).

Proposed advances in rates on wool and related articles from Boston, Mass., to Philadelphia, Pa., not shown to be reasonable and not justified. Wool Rates From Boston to Philadelphia, 20 (23).

No duty rested upon respondent under section 18 to protect direct-service rates shown in tariff as against higher joint rates via its line and Clyde Steamship Company. I. C. Helmly Furniture Co. *v.* M. & M. T., 132 (133).

Rates and charges for intercoastal transportation from and to Sacramento, California, equal to those contemporaneously maintained for intercoastal transportation from and to terminals at Oakland, Alameda, and Richmond, Calif., not shown to be unreasonable, unduly preferential or prejudicial, or otherwise unlawful. Intercoastal Investigation, 1935, 400 (463).

Schedules proposing to cancel all rates for through intercoastal transportation of freight between San Diego and United States ports on the Gulf of Mexico, transshipped at Los Angeles Harbor, Calif., and to San Diego from points on the Mississippi River and other inland points transshipped at New Orleans and at Los Angeles, found not unlawful. Gulf Intercoastal Rates To and From San Diego (No. 2), 600 (605).

Schedules proposing to change by qualification existing schedules governing the application of through routes and joint rates provided therein for the transportation of freight from Atlantic to Pacific coast ports found not justified. Intercoastal Joint Rates Via On-Carriers, 760 (764).

Practices:

Practice of accepting only as less-than-carload traffic and applying less-than-carload rates to shipments of wool and related articles not shown to be unjust or unreasonable. Boston Wool Trade Assoc. *v.* M. & M. T., 32 (35).

Method of measurement of cast-iron pipe or rate charged on shipments thereof from ports in continental United States to Manila, P. I., not shown to have been unreasonable. U. S. Pipe & Foundry Co. *v.* Tampa Inter-Ocean SS. Co., 173 (176).

REASONABLENESS—Continued.
Practices—Continued.
Rates, regulations, and practices of common carriers by water engaged in the transportation of property between ports in the State of Washington and ports in Alaska not shown to be unreasonable Alaskan Rate Investigation, 1 (7, 12).
Rule that, except as otherwise provided in tariff, (1) rates named in tariff apply only on shipments from one shipper, forwarded on one ship, covered by one bill of lading, from one loading terminal at one loading port, consigned to one consignee at one discharging terminal at one discharging port; (2) not more than one arrival notice, one delivery order and one freight bill will be issued to cover each shipment; (3) each freight bill must be paid in full in a single payment by either shipper or consignee; (4) carriers will not act directly or indirectly as agents of shippers or consignees in the assembling or distribution of freight by signing separate receipts for parts of a single shipment when such separate receipts are in the name of more than one shipper or by any other means whatsoever, not shown to be unlawful. Intercoastal Segregation Rules, 725 (737).
Schedule proposing changes in intercoastal port-equalization rule found not justified. Intercoastal Rates of Nelson SS. Co., 326 (345).
The fact that carriers serving New York do not call at Boston does not justify requiring those carriers that do call at that port to make a higher charge. Commonwealth of Mass. *v.* Colombian SS. Co., 711 (716).
RECORD AS BASIS OF FINDINGS. *See also* HEARING.
Following hearings where all parties have had full opportunity of presenting all relevant facts, consideration must, as a matter of fairness and expediency, be restricted to testimony and exhibits produced of record by the parties at the hearing. Additional statements and figures contained in exceptions must, therefore, be excluded. Eastern Guide Trading Co. *v.* Cyprian Fabre, 188 (191).
The 37-cent rate on wallboard was increased after the hearing to 41 cents, or approximately 10 percent. Counsel for defendants stated at the argument that they were unwilling that the issue as to the lawfulness of the increased rate be considered upon this record. Therefore, the Commission's findings are based strictly upon the record as made, and no opinion is expressed as to the propriety of the 10-percent increase. Celotex Corp. *v.* Mooremack Gulf Lines, 789 (793).
RECORD IN OTHER PROCEEDINGS.
Record of testimony taken at hearing may be available for every appropriate use in any future related proceeding brought upon complaint or initiated by Board. Marginal Track Delivery, 234 (239).
REGULATIONS OF OTHER FEDERAL AGENCIES.
Manifestly, the Board, in administering the regulatory provisions of the Shipping Act applicable to carriers engaged in interstate commerce, is not bound by regulations promulgated by other Federal agencies having distinctly different functions to perform. Thames River Line, 217 (219).
REPARATION.
Denied. Boston Wool Trade Assoc. *v.* M. & M. T., 24 (31).
Complaint dismissed. Boston Wool Trade Assoc. *v.* M. & M. T., 32 (35).
Denied. Boston Wool Trade Assoc. *v.* Eastern SS. Lines, 36 (40).

REPARATION—Continued.

As was said in Pennsylvania Railroad Co. *v.* International Coal Mining Co., 230 U. S. 184, which involved reparation under a practically identical statute: "The statute gives a right of action for damages to the injured party, and by the use of these legal terms clearly indicated that the damages recoverable were those known to the law and intended as compensation for the injury sustained. It is elementary that in a suit at law both the fact and the amount of damage must be proved. And although the plaintiff insists that in all cases like this the fact and amount of pecuniary loss is a matter of law, yet this contention is not sustained by the language of the act, nor is it well founded in actual experience." Eden Mining *v.* Bluefields Fruit & SS. Co., 41 (47).

It cannot be inferred from the language used in section 22 that compensation for other than the actual damage incurred is to be granted. Id. (47).

While the fact of discrimination in violation of provisions of the Shipping Act may be proved and found accordingly, in respect to awarding reparation under section 22 of the act for injury alleged to have been caused by such discrimination, the fact of injury and the exact amount of pecuniary damage must be shown by further and other proof before relief may be extended. Proof of unlawful discrimination within the meaning of the act, by showing the charging of different rates from shippers receiving the same service, does not, as a matter of course, establish the fact of injury and the amount of damage to which the complainant may be entitled by way of reparation. Id. (47–48).

Complaint dismissed. Id. (48).

Carriers not shown to have agreed to absorb wharfage charge. However, there was an agreement to absorb insurance which was not carried out, and, up to the time of hearing, reimbursement for premiums paid by consignees had not been made. In the circumstances, if the amounts referred to have not been refunded, appropriate claim should be presented to carriers, who should thereupon adjust the matter promptly. Boston Wool Trade Assoc. *v.* General SS. Corp., 49 (52).

Found due. Judson L. Thomson Mfg. Co. *v.* Eastern SS. Lines, 58 (60).

Found due. American Tobacco Co. *v.* C. G. T., 97 (100).

Found due. Eagle-Ottawa Leather Co. *v.* Goodrich Transit Co., 101 (107).

Found due. Continental Roofing & Mfg. Co. *v.* B. & C. SS. Co., 114 (119).

Complaint dismissed. Trumbull-Vanderpoel Elec. Mfg. Co. *v.* Luckenbach SS. Co., 126 (129).

Complaint dismissed. I. C. Helmly Furn. Co. *v.* M. & M. T., 132 (133).

Complaint dismissed. Biltmore Flooring Co. *v.* Lake Giltedge SS. Co., 134 (137).

Found due. Muir-Smith Motor Co. *v.* G. L. T. C., 138 (142); Russell S. Sherman *v.* G. L. T. C., 187 (187).

Complaint dismissed. Bonnell Elec. Mfg. Co. *v.* Pacific SS. Co., 143 (144)

Complaint dismissed. Issac S. Heller *v.* Eastern SS. Lines, 158 (160).

Found due. Gelfand Mfg. Co. *v.* Bull SS. Line, 169 (172).

Found due. Lee Roy Myers Co. *v.* M. & M. T., 192 (194).

Complaint dismissed. R. A. Ascher & Co. *v.* International Freighting Corp., 213 (216).

Complaint dismissed. Atlantic Refining Co. *v.* Ellerman & Bucknall SS. Co., 242, (256).

REPARATION—Continued.
Complaint dismissed. Fir-Tex Ins. Board Co. *v.* Luckenbach SS. Co., 258 (261).
Complaint dismissed. W. T. Rawleigh Co. *v.* Stoomvaart, 285 (293).
The shipments were received at Duluth, Minn., on October 12, 19, and 24, 1923. The record does not disclose the dates charges on the respective shipments were paid. Parties, however, have stipulated that the date of receipt of each shipment was substantially a few days prior to the date charges on each such shipment were paid. By this stipulation respondent has admitted that the informal complaints were filed within the statutory period prescribed by section 22 of the Shipping Act, 1916. Oakland Motor Car Co. *v.* G. L. T. C., 308 (309–310).
Hearing upon complaints filed with the Board discloses the assessment and collection of illegal charges, in violation of section 18 of the Shipping Act, 1916. Section 22 of that Act authorizes an award of reparation to the party injured. Martin Rosendahl was injured the moment he paid the charges and was the person directly damaged by the collection in 1923 of the illegal rates. His claim accrued at once, and the law administered by the Department does not inquire into later events. Id. (310–311).
Respondent contends that, inasmuch as it has not been proved that complainant bore the charges on the shipments involved, an award of reparation is not in order. A showing of payment of the charges by complainant is sufficient. Id. (311).
The record does not show the exact dates the charges on the respective shipments were paid, and it appears parties are unable to definitely determine such dates. In view of the stipulation entered into that shipments were received a few days prior to the date charges on each shipment were paid, it is found that interest shall be computed from the first of the month next succeeding the date the shipments were received. Id. (312).
It is found that complaints sufficiently verified to warrant recognition as "sworn complaints" within the purposes of the statute were filed within the statutory period and that the claims presented therein are properly before the Department for action. Id. (312).
Found due. Id. (312).
Complaint dismissed. Edmond Weil *v.* Italian Line, 395 (399).
Complaint dismissed. California Pkg. Corp. *v.* American-Hawaiian SS. Co., 543 (545).
Inasmuch as there is no evidence that the Shipping Act has been violated, no grounds exist upon which to base an award of reparation. Seas Shipping Co. *v.* South African Line, 568 (579).
Complaint dismissed. Id. (584).
Complaint dismissed. Johnson Pickett Rope Co. *v.* Dollar SS. Lines, 585 (590).
Complaint dismissed. Macon Cooperage Co. *v.* Arrow Line, 591 (595).
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 high 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. C. W. Spence *v.* Pacific-Atlantic SS. Co., 624 (627).
Complaint dismissed. Id. (627).

REPARATION—Continued.

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. H. Kramer & Co. *v.* Inland Waterways Corp., 630 (633).

Found due. Id. (633).

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. Hernandez *v.* Bernstein, 686 (691).

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, this has not been shown. Bloomer Bros. Co. *v.* Luckenbach SS. Co., 692 (693).

Found due. American Norit Co. *v.* Agwilines, 741 (743).

Complaint dismissed. Leather Supply Co. *v.* Luckenbach SS. Co., 779 (780).

The right of a governmental body to waive its rules and regulations differs materially from the right to waive provisions of an act conferring upon it jurisdiction of the subject matter. This distinction is clearly outlined by the court when it says: "The line of division must be kept a sharp one between the function of a statute requiring the presentation of a claim within a given period of time, and the function of a regulation making provision as to form. The function of the statute, like that of limitations generally, is to give protection against stale demands. The function of the regulation is to facilitate research." This holding was reaffirmed in U. S. *v.* Garbutt Oil Co., 302 U. S., 528. Reliance Motor Car Co. *v.* G. L. T. C., 794 (795).

Section 22 clearly requires that a complaint be sworn to when filed, and the Commission has no power to waive this requirement. Reliance Motor Car Co. *v.* G. L. T. C., 794 (796).

Section 22 of the Shipping Act, 1916, as amended, requires that complaints be sworn to when filed, which filing must occur within two years from the time the cause of action accrues in order to enter an award of reparation. Reparation on claims not meeting these requirements is barred, and with respect to such claims, the complaint is dismissed for lack of jurisdiction. Id. 797).

RESHIPMENT. *See also* THROUGH ROUTES AND THROUGH RATES.

As illustrated by the consignment of annato seed, the contract of carriage was completed at New York, and any further carriage of complainant's shipments involved a new and independent transportation transaction. The advantages complainant seeks are manifestly not in any respect demandable of respondents as a matter of right. It follows that respondents' refusal to rebill and apply lower through rates on the reshipped cargo concerned cannot be considered to deprive complainant of any right or privilege to which it is entitled. Moreover, the issuance by respondents of through bills and according through rates for the two local transportation movements concerned in this proceeding is prohibited by section 16 of the Shipping Act, which makes unlawful the furnishing by subject carriers of transportation at less than their

RESHIPMENT—Continued.
regular rates through false billing or by other unfair device or means. Pablo Calvet & Co. *v.* Baltimore Insular Line, 369 (371).
RISK.
Wool is shipped in uniform bags or bales, requires no special equipment and only a minimum amount of attention in handling, and is readily adaptable for stowage with other shipments. These facts are indicative of its greater desirability as traffic from the standpoint of liability assumed by the carrier for loss or damage. Boston Wool Trade Assoc. *v.* M. & M. T., 24 (29).
Data indicating that the amount paid in settlement of claims for loss and damage to shipments of wool exceeded that paid with respect to claims for loss and damage to shipments of boots and shoes and cotton piece goods must be viewed in the light of the vastly greater volume of wool handled. Id. (29).
RIVER CARRIERS. *See* INTERCOASTAL SHIPPING ACT, 1933.
ROUTING.
Carriers not shown to have been obligated to forward via rail from port of transshipment shipments covered by bills of lading which did not specifically provide for rail routing. Boston Wool Trade Assoc. *v.* General SS. Corp., 49, (50–51).
Manifestly, the rule that a shipper is required to pay only the rate chargeable via the route which his goods are transported is predicated upon the existence of alternative routes with differences in through rates. Id. (51).
SEAL OF NOTARY PUBLIC.
If the absence of the seal is fatal, complainant's claims are barred, and the carrier will be permitted to retain the amount of the overcharge collected, to which it is not justly entitled. Under the circumstances of these cases, such a ruling would result in a miscarriage of justice and is believed to be unwarranted. Oakland Motor Car Co. *v.* G. L. T. C., 308 (311).
SEGREGATION CHARGES. *See* ABSORPTIONS.
SERVICE. *See also* CONTRACTS WITH SHIPPERS; MERCHANT MARINE ACTS; DISCONTINUANCE OF SERVICE; STABILITY OF RATES AND SERVICES; ABSORPTIONS.
Expeditious service is an element of weight bearing upon value of service. Eagle-Ottawa Leather Co. *v.* Goodrich Transit Co., 101 (105).
The carrier's undertaking is not only to transport but also to deliver cargo to consignees because transportation, as the United States Supreme Court has said, is not completed until the shipment arrives at the point of destination and is there delivered. Assembling and Distributing Charge, 380 (384).
It is not within the power of the carriers by agreement in any form to burden shippers with charges for services that they are bound to render without any other compensation than the customary charges for transportation. Id. (385).
A difference in the price of intercoastal transportation attracts traffic to the line naming the lowest rate. This would be accomplished by the suggestions that rates be graduated according to frequency of sailing and time in transit. Such thing in effect would be placing a premium on infrequent and slow service and a penalty on the line that would give the service contemplated by law. The incentive for investment in a line that would give a modern, efficient, and economical service would be little, if any, and the result would be calamitous. Furthermore, restrictions as to time in transit from last point of loading to first port of discharge utterly ignore the rights of shippers and receivers of goods located elsewhere. Intercoastal Investigation, 1935, 400 (428–429).

SERVICE—Continued
Some weight must be given to the resultant benefits to the shipping public arising from a more frequent and regular service. Atl. Ref. Co. *v.* Ellerman & B. SS. Co., 242 (254).
The need for regular services of the best type of ships for each particular trade was recognized by Congress in the preamble of the Merchant Marine Act, 1920. Section 19 Investigation, 1935, 470 (497).
SHALLOW-WATER POINTS.
The act makes no distinction whatsoever between points on deep water and points on shallow water. Intercoastal Rates To and From Berkeley, 365 (367).
It is the duty of carriers to establish rates between points that they serve. For this purpose, the law does not distinguish points on shallow water from points on deep water, and the amount of the rate can not be measured by the depth of the water. Intercoastal Investigation, 1935, 400 (444).
The law draws no distinction between shallow-water points and deep-water points. Id. (445).
SHIPPING ACT, 1916. *See also* HIGH SEAS; ILLEGAL RATES; INTERCOASTAL SHIPPING ACT, 1933; MERCHANT MARINE ACTS; NATIONALITY OF CARRIER; PHILIPPINE ISLANDS.
Interpretation; Jurisdiction:
Carriers, for traffic and business reasons, may do many things which they can not legally be compelled to do. Port Util. Com. of Charleston *v.* Carolina Co., 61 (71); Atl. Ref. Co. *v.* Ellerman & B. SS. Co., 242 (255).
The Board has no power to compel carriers operating out of Canada to quote in sterling, and it is at least questionable whether the Board could compel carriers operating out of the United States to quote rates in the currency of any other country than the United States. Rates in Canadian Currency, 264 (278).
It is recognized as a general rule that remedial and procedural statutes are to be construed liberally with a view to the effective administration of justice. Oakland Motor Car Co. *v.* G. L. T. C., 308 (311–312).
There is clearly much need for stability in rates and shipping conditions in our foreign trade and for more adequate machinery to aid in enforcing the various regulatory provisions of the 1916 act. Section 19 Investigation, 1935, 470 (502).
At the original hearing, allegations of unlawfulness were made with respect to agreements filed by defendants and approved by the Board. Since the complaint contained no reference to the agreements, the Board held that issue was not properly before it for determination. Atl. Ref. Co. *v.* Ellerman & B. S. S. Co., 531 (532).
The Shipping Act 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 injur-

SHIPPING ACT, 1916—Continued.

Interpretation; Jurisdiction—Continued.

ing 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 rate 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. Seas Shipping Co. *v.* American South African Line, 568 (579).

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. Id. (579).

However disastrous to all concerned a rate war in our foreign commerce may prove, the Congress has not given the Department the power to terminate it. Id. (584).

Any movement between points within the same State is not subject to the Department's jurisdiction unless it constitutes part of a through-route movement in interstate or foreign commerce. Gulf Intercoastal Rates To and From San Diego (No. 2), 600 (605).

The Commission's jurisdiction extends only to local port-to-port transportation. Commodity Rates Between Atlantic and Gulf Ports, 642 (645).

Upon brief, the canal respondents question the Commission's jurisdiction under any circumstances to order cancellation of the suspended schedules involved in the proceeding. Their argument in this relation refers to the absence of any provision in the Shipping Act, 1916, as amended, similar to paragraph 18 of section 1 of the Interstate Commerce Act. Notwithstanding such absence, pertinent provisions of the Shipping Act to which respondents are amenable are absolute. For example, section 16 of that act forbids respondents, without qualification, to subject any locality or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. Whenever in a given case the facts show undue and unreasonable prejudice and disadvantage, it is the Commission's duty, under the act, to order its removal. Westbound Intercoastal Rates to Vancouver, Wash., 770 (773–774).

It is necessary for an administrative body to comply strictly with an act of Congress delegating to it jurisdiction over any given field. As a general rule, when jurisdiction is conferred by statute, every act necessary to such jurisdiction must affirmatively appear. If the statute is not complied with, jurisdiction does not exist. If one of the mandates of the statute is that complaints brought under it be

SHIPPING ACT, 1916—Continued.
Interpretation; Jurisdiction—Continued.
sworn to when filed, one that is not so sworn to is not such a complaint as the statute requires and is not, therefore, sufficient to give to the Commission jurisdiction of the subject matter. Section 22 clearly requires that a complaint be sworn to when filed, and the Commission has no power to waive this requirement. Complaint dismissed. Reliance Motor Car Co. *v.* G. L. T. C., 794 (796).
Parties Subject; Requirements. *See also* BROKERS AND BROKERAGE; CONTRACT CARRIERS; FORWARDERS AND FORWARDING; TERMINAL FACILITIES; TRAMPS.
Regulatory provisions of the act apply to Baltimore-New York steamship Co., a common carrier by water engaged in the transportation of property between Baltimore and New York. Baltimore-New York SS. Co., 222 (223).
Regulatory provisions of the act apply to Bayside Steamship Co., a common carrier by water engaged in the transportation of property between Los Angeles Harbor and San Francisco on the one hand, and Puget Sound ports on the other. Bayside SS. Co., 224 (225).
Regulatory provisions of the act apply to North Pacific Steamship Line, a common carrier by water engaged in the transportation of property from San Francisco to Aberdeen and Hoquiam, Wash. North Pacific SS. Line, 227 (229).
Regulatory provisions of the act applied to Coast Steamship Co., engaged in transportation between San Francisco and Portland, Oreg., and Coos Bay. Coast SS Co., 230 (231).
There is nothing in the law or elsewhere that would prevent carrier at present from operating fourteen vessels and thereby maintain more frequent sailings. Intercoastal Rates of Nelson SS. Co., 326 (334–335).
The right to initiate rates inheres in the carriers. Such rates may be changed by them unless in doing so they violate the law. Intercoastal Rates From Mount Vernon, 360 (362).
There is no requirement in the Shipping Act that rates and practices of carriers engaged in any particular trade shall be those which carriers in another trade must observe, and therefore, the fact that respondent observes a practice respecting returned cargo different from that of carriers in other trades in and of itself does not establish a violation of the Shipping Act. Edmond Weil *v.* Italian Line, 395 (396).
Persons engaged in the business of furnishing wharfage, docks, warehouse or other terminal facilities in connection with a common carrier by water are subject to the Shipping Act, 1916. Section 16 thereof makes it unlawful for any such person to subject any particular person, which term includes a common carrier by water in intercoastal commerce, or any particular locality, or description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. Section 17 of that act imposes upon such persons the obligation of observing just and reasonable practices relating to or connected with the receiving, handling, storing, or delivering of property. Intercoastal Investigation, 1935, 400 (436).
It is the right of shippers to ship in any quantity they choose and the obligation of carriers to carry the quantity tendered to them, due

SHIPPING ACT, 1916—Continued.
Parties Subject; Requirements—Continued.
regard being had for the proper loading of the vessel and the available tonnage. Id. (454–455).
The act does not require operators of piers and wharves to file their rates and schedules with the Commission, nor is there any statutory requirement governing the time of notice of their changes. Philadelphia Ocean Traffic Bureau *v.* Philadelphia Piers, 701 (702).
Defendants, to the extent they own or operate wharves and piers in connection with interstate or foreign water-borne commerce wholly exclusive of rail transportation, are "other persons" subject to the act as defined in section 1 thereof. Id. (702).
Defendant Southern Railway Company contends that its terminal facilities are subject solely to the jurisdiction of the Interstate Commerce Commission. Section 1, paragraph 3, of the Interstate Commerce Act defines the term "railroad" to include, among other things, all terminals and terminal facilities of every kind used or necessary in the transportation of property designated in such act. Defendant urges that section 33 of the Shipping Act, 1916, which prohibits construction of any provision of the Shipping Act to affect the power or jurisdiction of the Interstate Commerce Commission, removes any basis upon which our jurisdiction might rest. Apart from providing terminal facilities for its rail traffic, defendant Southern Railway Company is engaged in the business of furnishing wharfage and other terminal facilities in connection with common carriers by water subject to the Shipping Act, 1916, as amended, on traffic transported exclusively by water or by water and truck. Defendant's business in relation to the latter traffic is separable from its function as a rail carrier, and, in our view, is not a matter as to which the mandate of section 33 of the Shipping Act, 1916, is applicable. Buxton Lines *v.* Norfolk Tidewater Terminals, 705 (706).
Prior notice by defendants of the changes in the assailed charges, regulations, and practices effective April 1, 1937, is indicated to have been furnished complainants and all others interested in such changes. Without passing upon the adequacy of such notice, the Commission desires to make the observation that ample notice should be given of rate changes by "other persons" subject to the act. Id. (707).
SHIPPING INSTRUCTIONS. *See* BILLS OF LADING.
SIMILARITY OF TRAFFIC, SERVICES, CIRCUMSTANCES, AND CONDITIONS.
The probative force of evidence regarding revenues on wool and other commodities, such as shoes and cotton piece goods, is considerably impaired because of the dissimilarity of these commodities from a transportation standpoint. Wool Rates From Boston To Philadelphia, 20 (21).
The fallacy of basing rates solely upon relative bulk and weight when the commodities are greatly dissimilar in other important respects is apparent. Evidence in justification of increases in rates ranging from 8 to 81 percent upon the ground of the relatively greater displacement of space by wool and mohair than by articles which are products of a high degree of manufacture, of much higher value, and which require far greater care in handling, is not convincing. Id. (22–23).

SIMILARITY OF TRAFFIC—Continued.

Prejudice to shippers and receivers of wool cannot be predicated upon the charges for transporting other products which differ essentially in character from wool and supply widely dissimilar demands. Boston Wool Trade *v.* M. & M. T., 24 (30).

To determine questions of undue and unreasonable prejudice and disadvantage and unjust discrimination, it is pertinent to consider whether the services furnished differed. American Tobacco Co. *v.* C. G. T., 53 (56).

Unless conditions incident to handling and transportation warranted higher charges, discrimination within the contemplation of the statute is established. Conversely, such conditions, to justify higher charges, must have resulted in some detriment to carrier comparable in degree to amount of higher charges. Id. (56).

Rates in particular trade may not be required to be adjusted on basis obtaining in other trades in which there may be present entirely different circumstances and conditions with regard to cost of operation, character of cargoes, competition, and other matters. Port Utilities Commission of Charleston *v.* Carolina Co., 61 (70).

Totally different conditions arising in water transportation as compared with railroad transportation should not be lost sight of in considering question of responsibility for discrimination where common carriers by water, possessing ability, among other things, to shift vessels from one port to another, voluntarily meet and enter into definite agreement that differentials against certain ports shall be such and such and that none of the carriers, no matter from which ports they operate, shall depart from those differentials while a party to such agreement. Id. (70).

Evidence tending to show that in different trades distance to a large extent is disregarded in rate making, while admissible, may or may not have considerable probative force. Failure to show similarity of conditions in the trades in respect of cost of operation, character of cargoes, competition, and other matters derogates greatly from value of evidence. Id. (70–71).

Contention, on one hand, that, because parity rates from different ports are accorded certain commodities, carriers should be compelled to grant parities on other commodities, and contention, on the other hand, that carriers should eliminate all parities, overlook the great difference in circumstances surrounding parity and non-parity commodities and different operating conditions with respect to the districts involved. Id. (71).

Carriers' custom of separating for rate-making purposes their westbound from their eastbound operations is defensible in view of recognized dissimilarity of operating conditions in eastbound and westbound trades. Everett Chamber of Commerce *v.* Luckenbach S. S. Co., 149 (153).

There being nothing tending to show that the circumstances surrounding the trades and the carriers engaged therein are comparable, the probative value of the evidence is essentially impaired. Atlas Waste Mfg. Co. *v.* New York & Porto Rico S. S. Co., 195 (196).

Controlling circumstances vary in different trades: The number of loading ports, the number of discharging ports, the types of cargo and the proportions of each type to the differnt ports of loading and discharge, et cetera. Atlas Waste Mfg. Co. *v.* N. Y. & P. R. S. S. Co., 195 (196).

SIMILARITY OF TRAFFIC—Continued.

There is no evidence that the returned bales of goatskins are representative of the type which are exported from the United States, thus precluding adequate comparison of respondent's westbound weight rate with its eastbound measurement rate. Edmond Weil *v.* Italian Line, 395 (397).

The competition which a shipper faces is not limited to shipments moving on the same vessel with his shipment, and the possibilities of discriminations, preferences, and prejudices are not removed by giving the same rates to all shippers of the same commodity on the same vessel. Section 19 Investigation, 1935, 470 (495).

Protestants contend that on Gulf traffic the rate factors added to make through rates from and to outports adjacent to San Francisco, Calif., Seattle, Wash., and other ports located on the Pacific coast are less than the rate factors added to make through rates from and to San Diego. No evidence was submitted with respect to operating conditions at such other outports, and the record will not support a finding with respect thereto. Gulf Intercoastal Rates To and From San Diego, 516 (518).

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. Philadelphia Ocean Traffic Bureau *v.* Export SS. Corp., 538 (541–542).

Reference to the rates without a showing of similarity of transportation conditions does not prove unreasonableness of the higher rate on canned coffee. Id. (542).

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. California Pkg. Corp. *v.* States SS. Co., 546 (548).

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. Gulf Westbound Intercoastal Soya Bean Oil Meal Rates, 554 (559).

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. Johnson Picket Rope Co. *v.* Dollar SS. Lines, 585 (589).

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. Id. (589).

Reference is 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 in issue in the absence of a showing of similarity of trana-

SIMILARITY OF TRAFFIC—Continued.
portation conditions and the circumstances under which they were made. Eastbound Intercoastal Lumber, 608 (617).
Loading conditions at the respective ports are 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 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. Sugar From Virgin Islands, 695 (697).
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 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 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. Id. (699).
The circumstances and conditions attending defendants' terminal services on the rail, boat, and truck traffic concerned are substantially dissimilar. This dissimilarity warrants corresponding dissimilarity of charge, regulation, and practice. Buxton Lines *v.* Norfolk Tidewater Terminals, 705 (710).
SPACE. *See* REASONABLENESS; CARGO SPACE ACCOMMODATIONS.
SPLIT-DELIVERIES. *See* DELIVERY.
STABILITY OF RATES AND SERVICES. *See also* AGREEMENTS UNDER SECTION 15; CONTRACTS WITH SHIPPERS.
Shippers need rate stability in order to conduct their business on sound principles. Intercoastal Rates of Nelson SS. Co., 326 (336).
It is said the contract-rate system was adopted to obtain some degree of stability in the rates. Undoubtedly this was one of its effects, at least as to the rates on shipments of contracting shippers, but another effect of this practice is to exclude other carriers as may offer from participating in the transportation of the contracted tonnage. Intercoastal Investigation, 1935, 400 (452).
Stability of rates and services is of vital importance to exporters in making quotations for our export markets. Section 19 Investigation, 1935, 470 (491).
The use of the cut-rate methods prevents stability. Furthermore, their effect is cumulative and sooner or later they result in complete demoralization of shipping conditions in the trades in which they are used. Id. (491).
In order to protect the buyer, c. i. f. prices must be maintained over a period of time. They cannot be revised to correspond with the fluctuations in freight rates which exist under the conditions described in the report. Id. (493).

STABILITY OF RATES AND SERVICES—Continued.

It is the history of merchant marines that, where stability of rates exists, services become more regular and frequent and faster ships are introduced with special equipment to serve the peculiar needs of individual trades. The testimony of shippers shows that such services are necessary to fill the needs of modern trade, but, to make these improvements and maintain regular services, carriers must be able to count on a steady flow of commerce at stabilized rates. In the absence of these two closely related factors, carriers cannot afford to schedule sailings for definite dates in advance and at frequent and regular intervals. Id. (496–497).

There is clearly much need for stability in rates and shipping conditions in our foreign trade. Id. (502).

By law, intercoastal carriers are forbidden to make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. The Department is given the power, either upon complaint or upon its own initiative without complaint, to enter upon a hearing concerning the lawfulness of any schedule stating a new individual or joint rate, or charge, or any new individual or joint classification, regulation, or practice affecting any rate or charge, and to suspend the operation of any such schedule for a period not longer than four months. Such provisions of law afford to shippers reasonable rate stability. Gulf Intercoastal Contract Rates, 524 (530).

STATE TOLL, DEFINED.

State toll is not a transportation charge, but a charge upon cargo levied by State authorities to provide revenue for the maintenance of wharves. Boston Wool Trade Assoc. *v.* General S. S. Corp., 49 (52).

STORAGE. *See* FREE TIME; ABSORPTIONS.

STOWAGE. *See* EARNINGS.

SUBSIDIZED LINES. *See* MAIL-CONTRACT PAYMENTS.

SUSPENSION. *See* INTERCOASTAL SHIPPING ACT, 1933.

TARIFF REGULATIONS. *See also* TARIFFS.

The law directs the Department by regulations to prescribe the form and manner in which schedules shall be published, filed, and posted and to reject any schedule filed with it which is not in consonance with law and such regulations. Regulations have been issued pursuant to this mandate. Intercoastal Rates of Nelson S. S. Co., 326 (337).

The fact that the tariff rules of the Department specifically permit the publication of proportional rates supports respondent's view that the publication of such rates is permissible. But this in no way relieves respondent from the mandate of the law that its rates for transportation must not be violative of the Shipping Acts. Proportional Westbound Intercoastal Rates on Cast Iron Pipe, 376 (378).

TARIFFS.

In General. *See also* TRANSIT; ILLEGAL RATES; ABSORPTIONS.

A tariff is a system of rates and charges. Intercoastal Investigation, 1935, 400 (431).

That tariffs are but forms of words and that in the exercise of its powers to administer the shipping acts the Department can look beyond the forms to what caused them and what they are intended to cause and do cause is well established. Id. (432).

TARIFFS—Continued.
In General—Continued.
The usual basis of rate publication in steamship operation is an amount per cubic foot or per 100 pounds, whichever produces the higher revenue to the carrier. Other than in the coastwise and intercoastal trades no instance is disclosed where rates are published by steamship companies on the carload and less-than-carload basis. Ames Harris Neville Co. *v.* American-Hawaiian SS. Co., 765 (768).
It should be clear that there cannot be a "maximum" tariff any more than there can be a "maximum" practice, as such terms are used in the section under consideration. Intercoastal Investigation, 1935, 400 (432).
The issuance of an order terminating the secrecy which surrounds the rates of carriers will enable shippers and others injured by the violations to make more effective use of the remedial procedure established by the Shipping Act and the Rules of Practice. Section 19 Investigation, 1935, 470 (500).
By alternative note of respondent's tariffs, S. B. 12 and S. B. 19, reading "Wherever the official classification basis makes a lower charge than on basis of commodity rates, class rates will apply," calculation of charges upon official-classification basis correctly interpreted made class rates as applied to entire weight of shipment the maximum rates on file. Muir-Smith Motor Co. *v.* G. L. T. C., 138 (141).
The Intercoastal Shipping Act, 1933, requires that schedules shall show all the rates and charges for or in connection with transportation and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such rates or charges or the value of the service rendered to the consignor or consignee. The purpose of the law is the publication of rates, charges, rules and regulations in such manner as to enable the consignor, or consignee to see for himself the exact price of transportation. No changes therein may be made except by the publication, filing, and posting of new schedules plainly showing the changes proposed to be made. The law directs the Department by regulations to prescribe the form and manner in which schedules shall be published, filed, and posted and to reject any schedule filed with it which is not in consonance with law and such regulations. Regulations have been issued pursuant to this mandate. The suspended tariffs fail to meet the requirements of law and such regulations in material respects. Intercoastal Rates of Nelson SS. Co., 326 (337).
Shepard's tariff SB–I No. 1 contains a port-equalization rule in principle the same as other such rules hereinbefore condemned. This carrier does not separately state each terminal charge. Its terminal rules, like the rules in the other tariffs under consideration, are limited to absorptions of, or allowances for, terminal and other services performed by others. Intercoastal Investigation, 1935, 400 (418).
No limit is placed upon the amount of car unloading at Philadelphia or top wharfage or car unloading at Baltimore, or on-carrying charges on shipments destined to Stockton or Sacramento absorbed by respondent. Also, whether respondent calls direct or not at Oakland, Calif., it there absorbs terminal charges in the amount of 50 cents per ton and, if it elects to make delivery by barge at such

TARIFFS—Continued.
In General—Continued.
place, it absorbs the cost thereof without specifying such amount. Such rules are not in consonance with law. Id. (419).
Respondents permit storage of property; load and unload lighters, rail cars, or trucks; handle property between such equipment and their own vessels; absorb storage, wharfage, dockage, handling, lighterage, trucking, and toll charges without proper tariff authority; or fail to collect charges for segregation, heavy lifts, or pool cars in accordance with their tariffs, in violation of section 2 of the Intercoastal Shipping Act, 1933. Id. (462).
The so-called port-equalization rules contained in the tariffs of respondents are unlawful, in violation of section 2 of the Intercoastal Shipping Act, 1933. Id. (463).
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) 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 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 in issue. Since such a provision does not appear in the tariff of defendants on file with the 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. H. Kramer & Co. *v.* Inland Waterways Corp., 630 (631).
In connection with defendants' contention that they offer a "special" service in the carriage of bulk wheat, it should be noted that the private mills and elevators served are named in their tariffs and, thus, are regular berths for loading and discharging wheat. Tri-State Wheat Transp. Council *v.* Alameda Transp. Co., 784 (787).
Parties Subject; Filing; Notice; Service:
The filing requirement of section 18 of the act is not applicable to an "other person subject to this act." Thames River Line, 217 (220).
The act does not require operators of piers and wharves to file their rates and schedules with the Commission, nor is there any statutory requirement governing the time of notice of their charges. Philadelphia Ocean Traffic Bureau *v.* Philadelphia Piers, 701 (702).
Respondents have engaged, or are engaged, in transportation each as a contract carrier by water in intercoastal commerce without proper tariffs on file with the Department, in violation of section 2 of the Intercoastal Shipping Act, 1933. Intercoastal Investigation, 1935, 400 (463–464).
Respondent not shown to be a common carrier by water in intercoastal commerce subject to the Intercoastal Shipping Act, 1933.

TARIFFS—Continued.

Parties Subject; Filing; Notice; Service.—Continued.

An order will be entered striking the suspended tariffs from the Department's file. Schedules of Girdwood SS. Co., 306 (307).

It cannot too strongly be stressed that failure of a carrier, whether contract or common, to properly publish and file its rates is as serious a violation of the act as its failure to observe such rates after they have been published and filed. Intercoastal Investigation, 1935, 400 (461).

As long as the words "contract carrier" remain in the statute, it is the duty of every contract carrier to file tariffs as contemplated by the act. The filing of copy of the charter by the charterer does not satisfy such filing requirement. Id. (468).

Rules requiring the filing of schedules of export rates by common carriers by water in foreign commerce prescribed. Section 19 Investigation, 1935, 470 (502–503).

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 the proceeding without prejudice to the filing of schedules at such future time as respondent may enter intercoastal commerce. Intercoastal Schedules of Hammond Shipping Co., 606 (607).

The record establishes clearly that Hammond Shipping Company, Ltd., is not engaged in intercoastal commerce. It, therefore, is not a common or contract carrier 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. Id. (607).

As reference to paragraph 3 of section 18 shows, the ten-day notice is not applicable to reductions in rates; nor is such notice in any case required by the Board. Thames River Line, 217 (221).

Until revised tariff was filed, respondent, in so far as it engaged in transportation of property at class rates, did not comply with paragraph 2 of section 18 of the Shipping Act and rule 15 of the Board's tariff regulations. North Pacific SS. Line, 227 (229).

A tariff, which purports to publish through routes but does not show as participating therein a carrier which forms a necessary link, is in direct contravention of the provisions of the statute. Intercoastal Rates From Mount Vernon, Wash., 360 (362).

Language could not have made clearer the intent of the legislature than as set forth in section 2 of the Intercoastal Shipping Act, 1933. This section imposes a positive duty on respondents. As one of the principal aims of the law is uniformity in treatment, the requirement of publication is to enable the shipper not only to ascertain from examination of the tariff what the exact rates and charges are to him, but also to his competitor, and failure of a carrier to properly publish, file, and post all of its rates and charges for or in connection with intercoastal transportation and the rules which in anywise change, affect, or determine any part of such rates or charges is as serious a violation of law as its failure to

TARIFFS—Continued.

Parties Subject; Filing; Notice; Service.—Continued.

observe strictly such rates, charges, and rules after they have been properly published and filed. Intercoastal Investigation, 1935, 400 (421).

If, in connection with intercoastal transportation, a terminal or other charge is made, or a privilege or facility is granted or allowed or a rule or regulation in anywise changes, affects, or determines any part or the aggregate of the rates, fares, or charges, or the value of the service to the passenger or shipper, it must be stated separately in the tariff of the carrier regardless of who makes the charge, grants or allows the privilege or facility, or applies the rule or regulation. Id. (434).

The failure of respondents to comply with the obligation imposed upon them by section 2 of the Intercoastal Shipping Act, 1933, to publish every charge and absorption of the character mentioned materially affects the integrity of the published rates for transportation. Id. (435).

Every route must have a published rate on file with the Department. Id. (440).

The requirement of prior notice as regards publication of reductions in rates appears for the first time in the Intercoastal Shipping Act, 1933. Prior to that act, no obligation rested upon carriers to give public notice of such reductions. The law only required the filing of maximum rates, fares, and charges and prohibited carriers from demanding, charging, or collecting a greater compensation except with the approval of the Board and with ten days public notice, which requirement the Board had the power to waive for good cause shown. Id. (444).

The tariffs containing the rates under consideration were filed within the time limit prescribed by law, and the rates and charges therein contained are the only rates and charges which the two respondents may legally charge or collect. Id. (445).

It cannot too strongly be stressed that every transportation service, or service in connection therewith, must be clearly shown in the tariff before a carrier may lawfully engage therein, and this applies with equal force to services for which a charge is made as well as to services for which no charge is made; and that failure to properly publish, file, and post all the rates and charges for or in connection with transportation and the rules which in anywise change, affect, or determine any part of such rates or charges is as serious a violation of law as the failure to observe strictly such rates and charges after they have been properly published and filed. A penalty is prescribed by law as heavy for one violation as for the other. Id. (447–448).

It should be clearly understood that respondents may not legally absorb charges of any character whatsoever or perform any service of any nature, free of charge or otherwise, for or in connection with intercoastal transportation unless and until proper provisions have been made in the tariff. Id. (449).

The rates, charges, rules, and regulations which every common carrier by water in intercoastal commerce is required to file and post are those "between intercoastal points on its own route; and, * * *

TARIFFS—Continued.
Parties Subject; Filing; Notice; Service.—Continued.
between intercoastal points on its own route and points on the route of any other carrier by water." Calmar is not a common carrier by water engaged in intercoastal transportation from and to Gulf ports. Such ports are not on its own route; nor has it established through routes for intercoastal transportation with any other carrier by water from and to such ports. The filing of such rates, charges, rules, and regulations in issue are not those contemplated by the act, and respondent should be required to cancel them. Id. (450).
"A" carriers formerly members of the United States Intercoastal Conference obligated themselves not to participate in intercoastal transportation from or to points south of Philadelphia. However, they are parties to Agent Thackara's tariffs which published, without routing restrictions, rates and charges from and to such points. The record shows that they are not engaged in such transportation, and each such carrier should be required to cancel the rates and charges between points not on its route or on the route of any other carrier by water with which it has not established through routes. Id. (450).
The filing of rates and charges by carrier for transportation of property between all ports on the Gulf of Mexico from Tampa, Fla., to Corpus Christi, Tex., both inclusive, and ports on the Pacific coast, and similar rates and charges named by other carriers between intercoastal points as to which no transportation service is maintained, is not in consonance with section 2 of the Intercoastal Shipping Act, 1933. Id. (463).
At the time referred to by the witness, carriers engaged in intercoastal transportation were only required to file their maximum rates. Nothing in the law then in force prevented them from collecting compensation for their services lower than such maximum rates. Gulf Intercoastal Contract Rates, 524 (528–529).
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 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. C. W. Spence *v.* Pacific-Atlantic SS. Co., 624 (626).
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. Sugar From Virgin Islands, 695 (698).
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 the 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. Id. (700).

TARIFFS—Continued.
Parties Subject; Filing; Notice; Service.—Continued.
Prior notice by defendants of the changes in the assailed charges, regulations, and practices effective April 1, 1937, is indicated to have been furnished complainants and all others interested in such changes. Without passing upon the adequacy of such notice, the Commission desires to make the observation that ample notice should be given of rate changes by "other persons" subject to the act. Buxton Lines *v.* Norfolk Tidewater Terminals, 705 (707).
The services performed by terminal companies on eastbound shipments for which a charge of 5 cents per 100 pounds is collected includes the mailing of arrival notices. The mailing of arrival notices to the consignee shown in the bill of lading is clearly a duty of the carrier for which an extra charge is not proper, and, since the actual sorting and delivery of shipments upon which the charge is assessed is performed by the carrier, there appears a lack of any service by these agencies which would warrant its collection. Other than for deliveries at Atlantic-coast ports by submarks, there is no tariff authority for such a charge. Under section 2 of the Intercoastal Shipping Act, 1933, the duty of publishing, filing, and posting all such charges rests upon respondents. Intercoastal Segregation Rules, 725 (733).
Other Carriers—Rates of:
To hold that a shipper must look beyond the tariffs of the carrier offering him a service to ascertain the rate would be to put the shipper under an onerous obligation not imposed upon him by law. The inclusion of any provision in a tariff which makes the amount of the charge dependent upon the measure of a rate published in tariffs of some other carrier, and more so when such tariffs are not filed with this Department, cannot too strongly be condemned. Intercoastal Rates of Nelson S. S. Co., 326 (339).
The record makes it clear that the rule is impossible of application unless the rates from the point of origin to the port of exit and to other Atlantic ports served by intercoastal carriers are first determined. From point of origin to port of exit, shipments generally move by rail or truck. The rates of rail or truck carriers are not a part of the tariff in question nor are otherwise filed with the Department. As stated in Intercoastal Rates of Nelson Steamship Co., 1 U. S. S. B. B. 326, dealing with a similar rule, "To hold that a shipper must look beyond the tariffs of the carrier offering him a service to ascertain the rate would be to put the shipper under an onerous obligation not imposed upon him by law. The inclusion of any provision in a tariff which makes the amount of the charge depend upon the measure of a rate published in tariffs of some other carrier, and more so when such tariffs are not filed with this department, cannot too strongly be condemned." Intercoastal Investigation, 1935, 400 (415–416).
The inclusion of any provision in a tariff which makes the amount of the charge dependent upon the measure of a rate published in tariffs of some other carrier cannot too strongly be condemned. Id. (447).
Agreements; With Shippers; With Other Carriers:
The law prohibits special arrangements between shippers and carriers unless the terms thereof are fully disclosed in the tariff. Id. (416).

TARIFFS—Continued.
Agreements; With Shippers; With Other Carriers—Continued.
The rate and minimum weight in the tariff afford the only legal basis upon which freight charges may be collected, and any agreement to the contrary cannot be sanctioned by the Department. Id. (455).
It cannot too strongly be stressed that the terms and conditions of the tariff may not be waived or changed by private agreement with shippers. Id. (456).
It is a requirement of law that every carrier engaged in intercoastal transportation shall publish, post, and file with the Department its rates and charges for or in connection with such transportation. For this reason, an understanding between carriers for interchange of traffic does not and cannot make the line of one carrier to the understanding a mere continuation, extension, or agency of the other. To permit this would tend to defeat the purpose of the act that carriers not otherwise subject to the act shall, when participating in intercoastal transportation, become subject to the act. Id. (440).
In Intercoastal Investigation, 1935, 1 U. S. S. B. B. 400, 455, it was found that under the provisions of the Intercoastal Shipping Act, 1933, the rate in the effective tariff affords the only legal basis upon which freight charges may be collected, any agreement to the contrary notwithstanding. C. W. Spence *v.* Pacific-Atlantic S. S. Co., 624 (626).
Ambiguity; Uncertainty; Conflict:
It is true that tariffs must be construed strictly and that wherever they are ambiguous the doubt should be resolved against carrier. Nevertheless, a fair and reasonable construction must be given. The terms in question must be construed in the sense in which they are generally understood and accepted commercially. Shippers cannot be permitted to avail themselves of a strained and unnatural construction. Thomas G. Crowe *v.* Southern S. S. Co., 145 (147).
A principle of tariff construction is that tariffs should be specific and plain. The Board's tariff regulations throughout direct the carriers to this end and provide that tariffs filed and kept open to public inspection in compliance with section 18 of the statute shall be explicit. Gelfand Mfg. Co. *v.* Bull S. S. Line, 169 (170).
Where a question of tariff interpretation is in issue, indefiniteness and ambiguity of tariff provisions, which in reasonableness permit of misunderstanding and doubt by shippers, require interpretation of such provisions against the carrier. Id. (170–171).
Carriers are permitted by the rule to call for and load freight in any quantity from one shipper or supplier at docks located in ports or places other than the terminal ports listed in clause "L." Each carrier is also permitted to make divisional rate arrangements equalizing direct loading at such ports or places by other conference members. All such shipments are stated to be "subject to additional rates in accordance with the regular recognized cost of transferring cargo from nonterminal port dock to the terminal dock of the carrier." The quoted matter is ambiguous and indefinite. How the "regular recognized cost" is to be determined is not stated. Between a given nonterminal port and a terminal dock there may be several methods of transportation with widely varying costs. Furthermore, a conference carrier may serve several terminal ports, and it is not indi-

TARIFFS—Continued.
Ambiguity; Uncertainty; Conflict—Continued.
cated to which of the several terminal docks the "recognized cost" will be assessed. Oakland Chamber of Commerce *v.* American Mail Line, 314 (317).
Although the carriers under the rule may call direct at nonterminal ports for freight in any quantity from one shipper or supplier, it is provided that such cargo must be assessed on a minimum of 500 revenue freight tons or 500,000 revenue feet of lumber, bolts, cants, piling, poles, and/or logs. No such restriction, however, is placed on cargo moving from nonterminal ports under the divisional rate agreements permitted under the rule to meet the competition of direct calls by conference members. Vessels handling cargo by direct call at nonterminal ports from one shipper or supplier, subject to the minimum rate requirement set forth above, "are permitted to accept any other additional cargo offering from the same dock in any quantity on the same terms, conditions, and rates provided in (e)(1)." This provision of the rule is not free from ambiguity. It will be noted that, while acceptance of additional cargo is permitted, the words "same terms, conditions, and rates" may mean that, for example, a shipper or supplier other than the shipper or supplier of the first lot if offering 50 tons is assessed freight charges on the basis of 500 tons. What has been stated in respect of the $1 extra on additional cargo from docks with conference terminal ports other than declared docks applies here with equal force. Id. (317–318).
Rules which do not disclose the cost of the service or the specific amount to be absorbed clearly open the gate to rebates, undue preferences and prejudices prohibited by law. Intercoastal Rates of Nelson SS. Co. 326 (340).
The suspended schedules would have the effect of naming three conflicting rates, 51, 43, and 40 cents, on a minmum weight of 30,000 pounds. Under a familiar rule of construction, the lowest of such rates would be legally applicable. Such legally applicable rate would be in excess of 27 percent under the lowest competitive rate. Tariff conflicts of the character here described should be avoided. Id. (343).
From the rule or exceptions, or proposed exceptions, or from the remainder of the tariff, it is impossible to ascertain the legally applicable rates. The Department would not be warranted in permitting to become effective exceptions to the rule the purpose of which is to multiply the defect, which has been condemned hereinbefore. Id. (345).
Respondents admit that the proposed exceptions may lead them into difficult complications but direct attention to the fact that they "have it in at carrier's option." This means that the carrier would be the sole arbiter of the application of the proposed exception. The exception as proposed would create uncertainty on the part of competing shippers and lend itself to practices condemned by law. Intercoastal Rates of American-Hawaiian SS. Co., 349 (351).
If the suspended schedules are allowed to become effective, there would exist conflicting rates of 60 cents, minimum 24,000 pounds and 87.5 cents, minimum 40,000 pounds, for the same transportation. Normally, when rates are published, based on different minimum weights, the higher rate is made applicable in connection with the lower mini-

TARIFFS—Continued.
Ambiguity; Uncertainty; Conflict—Continued.
mum weight. The record presents no justification for the reversal of this rate-making plan. Conflicts of this character should be avoided. In such circumstances, the rate which results in the lower charge applies, and the higher rate based on the higher minimum weight would never be applied. It, therefore, has no place in the tariff. The Department cannot lend approval to such conflicts in rates. Westbound Intercoastal Rates on Dates, Etc., 352 (354).
It is the purpose of carriers to continue the rate of 113.5 cents on the grade of seed used for planting purposes and to establish the new rate of 55 cents on the grade of seed used for human consumption. Inasmuch as the application of the proposed rate is also unrestricted and would govern on a carload of any grade of seed offered for shipment if allowed to become effective an anomalous tariff situation would be created which the Department is not warranted in permitting. Eastbound Intercoastal Rates on Squash Seed, Carloads, 355 (356).
In spite of the provisions of section 2 of the Intercoastal Shipping Act, rule 2 of Agent Thackara's tariff SB–I No. 4 provides "Except as otherwise provided herein, rates named herein apply from ship's tackle at Intercoastal loading port to ship's tackle at delivering carriers' discharging port via routes set forth herein, and do not include Tolls, Wharfage, or other Accessorial or Terminal charges." Nowhere in the tariff is the term "ship's tackle" defined. The record shows that at some points this expression means the end of the ship's hook while at other points it means place where goods rest on the dock. Whether a charge for the movement of goods between ship's hook and point of rest is collected from the shipper or absorbed by the carrier it is governed by local meaning of that term. Intercoastal Investigation, 1935, 400 (413).
The tariff does not specify the "established" loading or receiving terminals. As some of the ports embrace a considerable shore line where numerous terminals are located, from the tariff it is impossible for the shipper to determine the exact place at which the transportation begins or ends. Furthermore, a tariff rule such as contained in paragraph (b), which does not specifically disclose the particular requirements a shipper must meet that the written agreement there contemplated be executed, inevitably leads to inequality between shippers Id. (413–414).
From the tariff the shipper knows the minimum charge for the service in question, but the maximum charge does not appear therefrom. Id. (414).
Rules which do not disclose the specific amount absorbed even if the charge is one that properly may be absorbed, defeat the legally established rate and unwittingly open the door to rebates. Id. (414).
The tariff does not define the term "ship's tackle." Inferentially, it may be gathered from the rules that "ship's tackle" is the same as ship's hook, but, because of the confusion this term has created, the law will be best served by making its meaning clear in the tariff. Id. (416).

TARIFFS—Continued.

Ambiguity; Uncertainty; Conflict—Continued.

From the exceptions to the rule it will be observed an absorption in excess of 3 cents per 100 pounds is permitted at Chester, Pa., but the tariff does not indicate the limit to such absorption. At New York, Dollar and Panama Pacific, and at Philadelphia, Grace, apply a maximum equalization of 6 cents per 100 pounds up to 250 net tons on iron and steel articles. In the case of a shipment in excess of that quantity, the shipper will be charged 6 cents per 100 pounds less on the first 250 net tons than on the remainder of the weight of the shipment, and, should two shippers make two separate shipments aggregating in excess of 250 net tons neither one could tell what the charges would be to him. Id. (416).

Paragraph (e) of the rule provides for port equalization in principle the same as provided for in rule 9 of Agent Thackara's tariff SB–1 No. 4. Port equalization is also practiced by respondent on eastbound traffic, rule 3 (e) of its SB–I tariff No. 2. From these rules, it is not possible for a shipper to state what the rates or charges will be, and what was stated in respect of the port-equalization rule in Agent Thackara's tariff applies here with equal force. Id. (417).

Another rule contained in Shepard's tariff which fails to meet the requirements of law is that contained in first amended page 70 reading as follows: "Ports marked '#' are not regular ports of loading. Cargo will be accepted for loading at such ports only when accompanied by permit issued by carrier or carrier's agents. Application for permit may be made to any office of the carrier or carrier's agents. Permit, if issued, will be in the form shown below." This rule does not disclose the requirements a shipper must meet before a permit is issued to him. Such rule lends itself to defeating the law which makes it unlawful for any carrier to make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. Id. (420).

Members of the Gulf conference publish what are termed "tariff rates" and "contract rates." As both rates are published in the same tariff, these terms are misleading. Id. (451).

The tariffs filed by each respondent fail to show plainly the places between which freight is carried; or to name all the rates and charges for or in connection with transportation between intercoastal points on its own route, or between intercoastal points on its own route and points on the routes of other carriers by water with which it has established through routes for intercoastal transportation; or to state separately each terminal or other charge, privilege, or facility, granted or allowed, or the rules and regulations which change, affect, or determine such aforesaid rates or charges, or the aggregate of such aforesaid rates or charges, or the value of the service rendered to the consignor or consignee, in violation of section 2 of the Intercoastal Shipping Act, 1933. Each respondent should be required to amend its tariffs as to show plainly, among other things, (a) all the rates for the transportation between points on its own

TARIFFS—Continued.
Ambiguity; Uncertainty; Conflict—Continued.
route, or between points on its own route and points on the route of each carrier by water with which it has established through routes for intercoastal transportation; (b) the specific terminals between which each rate applies; (c) each service, such as storage, handling, piling of lumber, wharfage, lighterage, barging, segregation, stenciling, pool cars, and heavy lifts, rendered to the consignor or consignee; (d) the charge for each such service; (e) each absorption or allowance made specifying the service for which it is made, entire amount for such service, and precise portion thereof absorbed or allowed. Id. (461–462).
The exception is based on the ground, in substance, that requiring publication of specific terminals between which the rates apply will result in loss of revenue to respondents. At present intercoastal rates apply from or to such indefinite places as "San Francisco Bay," "Los Angeles Harbor," or "New York Harbor." These terms are too broad, cover many miles of shore line, and include many terminals not accessible to ocean carriers. From the tariffs shippers cannot state the particular point at which their cargo is received or delivered by the carrier. The requirement referred to is contemplated by law for the protection of the shipper as well as the carrier. As respondents are free to designate in their tariffs as many terminals, public or private, as they wish, the contention does not appear to be well founded. Id. (465).
A further criticism of the rule is that it results in an undisclosed rate to the shipper. 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. Transportation of Lumber Through Panama Canal, 646 (649–650).
Lumber-berth-quantity-allowance rules found to violate 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. Id. (650).
Tariff rules which are indefinite and ambiguous are unlawful under section 2 of the Intercoastal Shipping Act, 1933. Intercoastal Lumber Rate Changes, 656 (658).
Tariff provisions should be responsive to the requirements of the general public. Armstrong Cork Co., et al. *v.* American-Hawaiian SS. Co., et al., 719 (724).
Where the specific provision differs from the general mixing rule maintained by defendants, special justification for it should be shown, particularly where, as here, the provision was established for the benefit of one shipper and results in rated disparity and disadvantages detailed. Id. (724).
Requirements of carriers in respect to bill-of-lading descriptions must be of general application to all classes of shippers and shipments; otherwise, undue preference and prejudice will result. It apparently is the intent of respondent that all shipments must be similarly described, but the rule does not state whether the contents of each lot in a pool-car shipment submarked must also be described in detail. It is not clear whether each submarked lot must also be

TARIFFS—Continued.
Ambiguity; Uncertainty; Conflict—Continued.
separated by kind, size, brand, or grade, and, if so, whether charges shall be assessed in accordance with the rule. For these reasons, the rule is ambiguous and, therefore, unlawful. Intercoastal Segregation Rules, 725 (734).
The suspended schedules do not specify that the charges to be assessed and the rules and regulations determining such charges are those applicable at the port of transshipment. They contain no reference to free time, notwithstanding respondents' intention that periods comparable in character to free time are to elapse between arrival of the cargo at the transshipment port and assessment of storage or other terminal charges. In both of these respects the schedules fail to comply with the requirement of section 2 of the Intercoastal Shipping Act, 1933, that schedules shall specify all terminal or other charges, privileges allowed, and any rules or regulations which change, affect, or determine the charges or the value of the service rendered. Furthermore, under respondents' interpretation of the schedules in connection with free time, the allowance of different periods as between different consignees would effect inequality of treatment as between shippers and permit undue preference and prejudice, in violation of section 16 of the Shipping Act, 1916. Intercoastal Rates via On-Carriers, 760 (763–764).
Complainants on brief advocate no change in the present rules and regulations applicable on wheat except for a suggested minor correction of Item 514 of Agent Williams' eastbound SB–I No. 3, which permits the vessel to unload on overtime at ship's discretion and shipper's expense. There is testimony that this creates uncertainties as to shipper's costs and discrimination against bulk wheat, since "other commodities on the ship probably may and could be discharged on straight time." But there is no evidence that the rule operates to unduly prefer or prejudice any person, locality, or description of traffic. Tri-State Wheat Transp. Council *v.* Alameda Transp. Co., 784 (788).
TERMINAL FACILITIES. *See also* BERTHING.
It is the duty of carriers to provide adequate terminal facilities, and, as any shipper is entitled to make use of the rates from and to Emeryville, respondents are expected immediately to meet this obligation at that place. Intercoastal Rates To and From Berkeley, 365 (368).
Requiring every common carrier by water in intercoastal commerce to publish, post, and file schedules showing all the rates, fares, and charges "for or in connection with transportation," stating "separately each terminal or other charge, privilege, or facility, granted or allowed, and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, or charges, or the value of the service rendered to the passenger, consignor, or consignee" is in contemplation of the obligation that rests upon each such carrier serving a point to provide adequate terminal facilities. This obligation is one that may be fulfilled by the carrier itself or through an agency. Intercoastal Investigation, 1935, 400 (435).
Persons engaged in the business of furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water are subject to the Shipping Act, 1916. Section 16 thereof makes it un-

TERMINAL FACILITIES—Continued.
lawful for any such person to subject any particular person, which term includes a common carrier by water in intercoastal commerce, or any particular locality, or description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. Section 17 of that act imposes upon such persons the obligation of observing just and reasonable practices relating to or connected with the receiving, handling, storing, or delivering of property. Although such persons are not included in the order instituting the investigation, it is not amiss to mention the fact of record that Cilco Terminal Co., Inc., the only terminal facility at Bridgeport, Conn., is owned by the City Lumber Co., a receiver of lumber at that place. Although the terminal company accepts and handles all commodities, it refuses to accept or handle lumber consigned to the competitors of its parent organization. This results in a violation of law. Id. (436).
In procuring terminal facilities, carriers should make proper arrangements to safeguard the obligations imposed upon them by law. Such obligations the Department does not have the power to waive. Id. (465).
In connection with defendants' contention that they offer a "special" service in the carriage of bulk wheat, it should be noted that the private mills and elevators served are named in their tariffs and, thus, are regular berths for loading and discharging wheat. Tri-State Wheat Transp. Council *v.* Alameda Transp. Co., 784 (787).
TERMINAL RATE, DEFINED.
A "terminal rate" is that between two intercoastal points when the entire transportation service is performed by a single carrier. Intercoastal Rates To and From Berkeley and Emeryville, Calif., 365 (367).
If single carrier performs the entire transportation service between two points, the rate is a "terminal rate." Intercoastal Investigation, 1935, 400 (440).
THROUGH ROUTES AND THROUGH RATES. *See also* COMMERCE.
Respondents operating beyond Seattle assume the rates for transportation of Skagit River Navigation & Trading Co. as part of their operating expenses. In addition Panama Mail Steamship Co. and States Steamship Co. assume as an operating expense the rates for transportation of the line performing the service from Seattle to San Francisco. This is done on the theory that if the transportation service were performed by them directly the cost thereof would be charged to operations. The through bills of lading, which are issued by respondents operating beyond Seattle, only show the name of the issuing carrier and do not disclose the name of any other carrier participating in the transportation. This method of constructing through rates is not sanctioned by the Department. Intercoastal Rates From Mount Vernon, Wash., 360 (362).
A through route contemplates a through rate, which may be the sum of separately established factors or an amount jointly published by all the carriers participating in the transportation. The cancellation of a joint rate does not in and of itself cancel the through route. If the established through routes from Mount Vernon or Stanwood to intercoastal destinations on the Atlantic coast are to be continued, the carriers participating therein must comply with the requirements of section 2 of the Intercoastal Shipping Act, 1933. Id. (363).

THROUGH ROUTES AND THROUGH RATES—Continued.

If a through route has been established by two or more carriers, the law contemplates the establishment of "through rates," which may be the sum of separately established factors or an amount jointly published by all the carriers participating in the transportation. Intercoastal Rates To and From Berkeley, 365 (367).

The act makes no distinction whatsoever between points on deep water and points on shallow water. The Berkeley Transportation Co. is a common carrier by water. It is true its operations are limited to points on San Francisco Bay, but, by joining in through routes and through rates for intercoastal transportation, as proposed, it becomes subject to the act. Id. (367).

The issuance by respondents of through bills and according through rates for the two local transportation movements concerned in the proceeding is prohibited by section 16 of the Shipping Act, which makes unlawful the furnishing by subject carriers of transportation at less than their regular rates through false billing or by other unfair device or means. Pablo Calvet & Co. *v.* Baltimore Insular Line, 369 (371).

If a through route has been established and two or more carriers perform the transportation service, the rate is a "through rate," which may be the sum of separately established factors or an amount jointly published by all the participating carriers. Intercostal Investigation, 1935, 400 (440).

There is no provision in the law for the establishment of through rates by absorbing the terminal rates of another carrier for the purpose of establishing through rates for a through route composed of two or more carriers over which route no joint through rate has been fixed by agreement. Id. (440).

A "through route" is an arrangement, express or implied, between connecting carriers for the continuous carriage of goods from the originating point on the line of one carrier to destination on the line of another. Through carriage implies a "through rate." This "through rate" is not necessarily a "joint rate." It may be merely an aggregation of separate rates fixed independently by the several carriers forming the "through rate," as where the "through rate" is "the sum of the locals" of the several connecting lines or is the sum of lower rates otherwise separately established by them for through transportation. Ordinarily, "through rates" lower than "the sum of the locals" are joint rates. Id. (445–446).

Carriers are not required to establish joint through rates for intercoastal transportation, but, when they voluntarily do so, their cancellation depends upon whether or not such action violates any provision of law. Intercoastal Rates To and From Berkeley (No. 2), 510 (512).

In view of the competitive situation, the cancellation of the joint rates involved would result in undue and unreasonable preference and advantage to Oakland and Richmond and shippers there located and undue and unreasonable prejudice and disadvantage to Berkeley and Emeryville and shippers there located, in violation of section 16 of the Shipping Act, 1916. Id. (512).

It is desirable to point out that carriers maintaining through routes and joint rates are expected to furnish reasonable service to the public. Gulf Intercoastal Rates To and From San Diego (No. 2), 600 (605).

In the absence of a through route, a movement on local bills of lading between Los Angeles and San Diego becomes intrastate. Any movement

THROUGH ROUTES AND THROUGH RATES—Continued.
between points within the same state is not subject to the Department's jurisdiction unless it constitutes part of a through-route movement in interstate or foreign commerce. Id. (605).
Schedules proposing to change by qualification existing schedules governing the application of through routes and joint rates provided therein for the transportation of freight from Atlantic to Pacific coast ports found not justified. Intercoastal Rates via On-Carriers, 760 (764).
Schedules proposing to cancel through routes and joint rates for transportation of freight from Atlantic coast ports to Vancouver, Wash., found justified. Westbound Intercoastal Rates to Vancouver, Wash., 770 (774).
TIME IN TRANSIT. *See* SERVICE.
TRAMPS.
Section 1 of the Shipping Act, 1916, excludes from the regulatory provisions of the act every "cargo boat commonly called an ocean tramp." This exemption of tramps from the regulatory provisions of the 1916 act does not place any limitation upon the Department in its promulgation of rules and regulations under section 19 of the Merchant Marine Act, 1920. As defined earlier in the report, a tramp is a carrier transporting on any one voyage cargo supplied by a single shipper only under a single charter party or contract of affreightment. The best example of such a carrier is the tanker. The rules and regulations proposed under section 19 of the Merchant Marine Act, 1920, exempt, for the present, the tramp as so defined for the reason that the evidence of record in the investigation does not show that competitive methods employed by such carriers in our export trades have produced conditions unfavorable to shipping. Much of the cargo lifted by these tramps is in bulk; therefore, the proposed rules and regulations exempt transportation of cargo loaded and carried in bulk without mark or count. Section 19 Investigation, 1935, 470 (498–499).
TRANSIT.
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. The Commission's 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. Commodity Rates Between Atlantic and Gulf Ports, 642 (645).
Proposed rule providing that, as to flour milled in transit, the rate will be that in effect on date of forwarding the flour from the transit point, irrespective of the date of shipment into the transit point, is not approved and should be cancelled. Id. (645).
Proposed rule with respect to the effective date of rate changes on grain milled in transit has not been justified. (Id. 645).
TRANSPORTATION. *See* SERVICE.
TRANSSHIPMENT. *See* OPERATION.
TRUCK RATES.
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 the Department. Furthermore, such rates have little, if any, bearing on the reasonableness of rates subject to the jurisdiction

TRUCK RATES—Continued.
of the Department. Gulf Intercoastal Rates To and From San Diego (No. 2), 600 (604).

UNIFORMITY OF RATES, ETC.
Unjustness and unreasonableness of a given rate is not proved by merely showing that a lower rate existed over the line of another carrier. Bonnell Elec. Mfg. Co. *v.* Pacific SS Co., 143 (144).
While it appears to be fairly well established that rooms located in the stern of a ship are generally rated lower than first class, there are exceptions to this general practice, and it may be fairly stated that there has been a long existing lack of uniformity in classification as between passenger vessels and likewise as between passenger accommodations on the same vessels. The particular classification under which a passenger travels is based on more than location and type of stateroom; it includes as a very important element the character and extent of the service in connection with the stateroom accommodations and the service on the ship generally, including the extent to which a passenger may enjoy the freedom of the ship. Passenger Classifications and Fares, American Line SS. Corp., 294 (302).
Although it is true that under the proposed tariff some rooms that may be compared with rooms on the new Grace Line ships are reduced in price, whereas under the existing tariff the price of these particular rooms is approximately the same as similar rooms on the Grace Line ships, this difference in price does not necessarily make improper the rating of these rooms by either line. The difference may very well be compensated for by difference in ships, appointments, service, length of trip, as well as other considerations. For instance, it is admitted that the Grace Line ships are newer and more modern than respondent's ships, and the Grace Line itinerary is longer and more attractive. Id. (303).
An order by the Department requiring respondents to admit complainant to membership in the conference with a rate differential found not justified. Wessel, Duval & Co. *v.* Colombian SS. Co., 390 (394).
It is in the public interest that respondents operating between points on the Atlantic coast and points on the Pacific coast establish and maintain uniform rates and charges for intercoastal transportation between such points. Intercoastal Investigation, 1935, 400 (462).
Although the proposed conclusion is that uniformity in the rates and charges is in the public interest, there is nothing in the report compelling respondents to observe uniform rates and charges. Id. (466).

VALUE OF COMMODITY. *See also* COST OF SERVICE; VALUE OF SERVICE.
A scale of rates on Alaskan copper ore graduated according to the values of the ore is recommended to carriers for their earnest and early consideration. Alaskan Rate Investigation, 1 (8, 9).
Value is a factor properly to be considered by carriers in the determination of rates for their service, but, where two commodities are practically identical in transportation characteristics and are directly competitive, any difference in the values of such commodities should be appreciable and substantial in order to justify the application of higher rates on the one than on the other. Thomson Mfg. Co. *v.* Eastern S. S. Co., 58 (59).

VALUE OF COMMODITY—Continued.
While one of the factors for use in the consideration of the justness and reasonableness of a given rate, value when standing alone is not determinative. Dobler & Mudge *v.* Panama R. R. S. S. Co., 130 (131).
Value is an important element of rate making, but cost of service is also a factor, and, hence, it is often true that charges for transporting a cheap article are greater in proportion to its value than charges for transporting a high-grade article. Atlas Waste Mfg. Co. *v.* N. Y. & P. R. S. S. Co., 195 (196–197).
The 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. Gulf Intercoastal Rates To and From San Diego (No. 2), 600 (604).
VALUE OF SERVICE. *See also* COST OF SERVICE; VALUE OF COMMODITY, SERVICE.
Expeditious service is an element of weight bearing upon value of service. Eagle-Ottawa Leather Co. *v.* Goodrich Transit Co., 101 (105).
Value of service to a shipper is, of course, one of the recognized factors for consideration. Assoc. Jobbers & Mfrs. *v.* American-Hawaiian S. S. Co., 198 (207).
Value of service is, of course, one of the elements the Board must consider in any rate proceeding. Atlantic Refining Co. *v.* Ellerman & Bucknall S. S. Co., 242 (252).
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. Philadelphia Ocean Traffic Bureau *v.* Export S. S. Corp., 538 (542).
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. Gulf Westbound Intercoastal Soya Bean Oil Meal Rates, 554 (560).
The value of the service to the shipper in a general sense is the ability to reach a market at a profit. Id. (560).
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. Id. (560).
The 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. Gulf Intercoastal Rates To and From San Diego (No. 2), 600 (604).
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 the industry concerned, 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. Eastbound Intercoastal Lumber, 608 (620).
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

VALUE OF SERVICE—Continued.
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. Id. (620–621).
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. Id. (621).
Direct service, especially when more frequent and faster than transshipment service, ordinarily increases the value of the service to the shipper. Commonwealth of Mass. *v.* Colombian SS. Co., 711 (715).
VERIFICATION OF COMPLAINTS. *See* REPARATION; SHIPPING ACT, 1916.
VOLUME OF TRAFFIC.
The record does not disclose any justification for requiring the carriers to reduce the minimum amount of tonnage for which a ship will move to a private dock below the present minimum of 25 tons. Alaskan Rate Investigation, 1 (10).
Manifestly, it costs more to handle several small shipments, issue separate shipping receipts, make separate waybills and expense bills, and separate entries in accounts than it costs to handle one large shipment of the same commodity shipped by one consignor to one consignee. Id. (10).
It appears that, if the 25-ton minimum for which a ship will move to a private dock were reduced, the ships would be seriously delayed by calling at various landing places for small shipments, necessitating more circuitous routes of travel and resulting in decreased efficiency of operation. Id. (11).
The large and regular movement of wool by the carrier from Boston to Philadelphia is of importance in a consideration of the reasonableness of the rates proposed over those now in effect. Wool Rates From Boston to Philadelphia, 20 (23).
The volume of movement or any other single factor should not dominate other factors necessarily entering into a determination of what is a reasonable rate to be applied for the transportation of a particular commodity. Boston Wool Trade Assoc. *v.* M. & M. T., 24 (27).
Volume of movement is an important consideration in connection with commodity rates. Trumbull-Vanderpoel Elec. Mfg. Co. *v.* Luckenbach SS. Co., 126 (128).
Volume of Traffic is undeniably a prime factor in constructing water-transportation rates. Everett Chamber of Commerce *v.* Luckenbach SS. Co., 149 (152).
Contention that ports are subjected to undue and unreasonable disadvantage when vessels discharge direct is not persuasive in view of infrequency of direct discharge and negligible amount of cargo so delivered. Id. (152).
Contention that arbitraries on cargo transshipped subject ports to undue and unreasonable disadvantage is not supported, in view of slight amount of such cargo and practical competitive conditions which carriers have to meet in order to participate in carriage of the traffic. Id. (152–153).
Carriers are permitted under the rule to call and accept freight in any quantity from one shipper or supplier at docks located within conference terminal ports other than the declared docks listed in clause "L" of the rule. The same rates apply from the undeclared as from the de-

VOLUME OF TRAFFIC—Continued.

clared docks, but from the undeclared docks charges are assessed on a minimum of 500 revenue freight tons or 500,000 revenue feet of lumber, bolts, cants, piling, poles and/or logs. On any additional cargo taken for another shipper or supplier from the same undeclared dock in quantities less than the specified minimum, an additional $1 per revenue ton is charged. In the northern district, by exception, carriers are permitted to load at such undeclared docks or make divisional rate arrangements on quantities less than the specified minima, provided an additional charge of $1.50 per revenue ton over the tariff rate is assessed. These provisions of the rule open the door to discrimination; furthermore, on the face of it, there is no justification for the extra charge of $1 on additional shipments taken at the same undeclared dock since freight charges based on the specified minima are evidently considered sufficient to compensate respondents for the call. Oakland Chamber of Commerce v. American Mail Line, 314 (317).

Although the carriers under the rule may call direct at nonterminal ports for freight in any quantity from one shipper or supplier, it is provided that such cargo must be assessed on a minimum of 500 revenue freight tons or 500,000 revenue feet of lumber, bolts, cants, piling, poles and/or logs. No such restriction, however, is placed on cargo moving from nonterminal ports under the divisional rate agreements permitted under the rule to meet the competition of direct calls by conference members. Vessels handling cargo by direct call at nonterminal ports from one shipper or supplier, subject to the minimum rate requirement set forth above, "are permitted to accept any other additional cargo offering from the same dock in any quantity on the same terms, conditions and rates provided in (e) (1)." This provision of the rule is not free from ambiguity. It will be noted that while acceptance of additional cargo is permitted, the words "same terms, conditions and rates" may mean that, for example, a shipper or supplier other than the shipper or supplier of the first lot if offering 50 tons is assessed freight charges on the basis of 500 tons. What has been stated in respect of the $1 extra on additional cargo from docks within conference terminal ports other than declared docks applies here with equal force. Id. (317–318).

It will be noted that, under paragraph 1 of the form of agreement, Calmar reserves the right to fix the maximum quantity to be carried on any of its vessels and that, under paragraphs 3 and 6 thereof, the shipper obligates itself to tender a certain minimum number of carloads or tons. In these respects, the contracting shippers are placed at a disadvantage as compared with noncontracting shippers, for it is the right of shippers to ship in any quantity they choose and the obligation of carriers to carry the quantity tendered to them, due regard being had for the proper loading of the vessel and the available tonnage, and such matter cannot be the subject of contracts. Intercoastal Investigation, 1935, 400 (454–455).

From an exhibit introduced by respondent it appears that no intercoastal shipments moved under the rates involved between March 9 and April 8, 1935, and that shipments moving thereunder between the last-mentioned date and June 8, 1935, aggregated only 219 tons. But the persuasive force of this exhibit is greatly lessened by the fact that McCormick Steamship Co. asked interested shippers not to use its line, it having announced its intention to cancel its rates with Berkeley Transportation Co. Intercoastal Rates To and From Berkeley, 510 (512).

VOLUME OF TRAFFIC—Continued.

The 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. Intercoastal Rates To and From San Diego (No. 2), 600 (604).

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. San Diego Harbor Commission *v.* American Mail Line, 661 (669).

VOLUNTARY RATES. *See* REASONABLENESS.

WAIVER OF REGULATIONS AND STATUTORY PROVISIONS. *See also* SHIPPING ACT, 1916.

The requirement of prior notice as regards publication of reductions in rates appears for the first time in the Intercoastal Shipping Act, 1933. Prior to that act, no obligation rested upon carriers to give public notice of such reductions. The law only required the filing of maximum rates, fares, and charges and prohibited carriers from demanding, charging, or collecting a greater compensation except with the approval of the Board and with 10 days' public notice, which requirement the Board had the power to waive for good cause shown. Intercoastal Investigation, 1935, 400 (444).

It is hardly necessary to state that the provisions of the Intercoastal Shipping Act, 1933, and those provisions of the Shipping Act, 1916, governing common carriers by water in intercoastal commerce also apply to contract carriers in intercoastal commerce. Such provisions of law the Department may not waive. Id. (458).

In procuring terminal facilities, carriers should make proper arrangements to safeguard the obligations imposed upon them by law. Such obligations the Department does not have the power to waive. Id. (465).

The right of a governmental body to waive its rules and regulations differs materially from the right to waive provisions of an act conferring upon it jurisdiction of the subject matter. This distinction is clearly outlined by the court when it says: "The line of division must be kept a sharp one between the function of a statute requiring the presentation of a claim within a given period of time, and the function of a regulation making provision as to form. The function of the statute, like that of limitations generally, is to give protection against stale demands. The function of the regulation is to facilitate research." This holding was reaffirmed in U. S. *v.* Garbutt Oil Co., 302 U. S. 528. Reliance Motor Car Co. *v.* G. L. T. C., 794 (795).

Section 22 clearly requires that a complaint be sworn to when filed, and the Commission has no power to waive this requirement. Id. (796).

Complainants urge that the second and third sentences of the rule constituted authority by administrative sanction of a 6-month period in addition to the 2-year period specified by the statute and that, due to these sentences, those of the informal complaints which were verified and filed as

WAIVER OF OF REGULATIONS AND STATUTORY PROVISIONS—Con.
formal complaints within such 6-month additional period are to be considered as complying with the statute. Even though complainants' interpretation of the sentences referred to be accepted as correct, it is clear that any such extension was unauthorized and void. The Shipping Board manifestly had no authority to enlarge its statutory jurisdiction by adoption of a rule of the meaning contended for by complainants. Id. (796–797).

WAR, RATE. *See* COMPETITION.

WAR TAX.

War tax on shipments is not a transportation charge. It is levied upon the transportation charge as such, and section 501 of the Federal revenue act specifically provides that it "shall be paid by the person paying for the services or facilities rendered." Boston Wool Trade Assoc. *v.* General SS. Corp., 49 (52).

WASTEFUL PRACTICES. *See* ABSORPTIONS.

WEIGHT-OR-MEASUREMENT.

The record does not justify a conclusion or decision that the practice of assessing freight charges on the weight-or-measurement basis is unjust or unreasonable or that the application of an exclusive weight basis, even if practicable on the Alaskan routes, would be more equitable or satisfactory to shippers generally. Alaskan Rate Investigation, 1 (10, 12).

The widely established practice of water carriers in charging for transportation of bulky articles upon measurement rather than upon weight basis is set forth by respondent. Dobler & Mudge *v.* Panama R. R. SS. Line, 130 (131).

The manner of expressing rate is not seen to have affected the reasonableness thereof. Isaac S. Heller *v.* Eastern SS. Lines, 158 (160).

The usual basis of rate publication in steamship operation is an amount per cubic foot or per 100 pounds, whichever produces the higher revenue to the carrier. Ames Harris Neville Co. *v.* American-Hawaiian SS. Co., 765 (768).

WHARFAGE. *See also* ABSORPTIONS.

No limit is placed upon the amount of car unloading at Philadelphia, or top wharfage or car unloading at Baltimore or on-carrying charges on shipments destined to Stockton or Sacramento absorbed by respondent. Whether respondent calls direct or not at Oakland, Calif., it there absorbs terminal charges in the amount of 50 cents per ton and, if it elects to make delivery by barge at such place, it absorbs the cost thereof without specifying such amount. Such rules are not in consonance with law. Intercoastal Investigation, 1935, 400 (419).

General testimony to the effect that wharfage charges are a burden on foreign commerce is not proof of their unlawfulness. Philadelphia Ocean Traffic Bureau *v.* Philadelphia Piers, 701 (704).

Pier usage and handling charges at Hampton Roads, and regulations and practices in connection therewith, not shown to be unduly prejudicial, and regulations and practices not shown to be unreasonable. Buxton Lines *v.* Norfolk Tidewater Terminals, 705 (710).