DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

DOCKET No. 111

THE NEW ORLEANS BOARD OF TRADE, LTD., v. LUCKENBACH GULF STEAMSHIP COMPANY, INC., AND GULF PACIFIC LINE

Submitted October 1, 1934. Decided December 4, 1934

Rate on bulk wheat Pacific Coast to Gulf ports not shown to be violative of Section 16 or Section 18 of Shipping Act, 1916. Complaint Dismissed.

W. B. Fox and *G. P. Gaiennie* for complainant.

Frank Lyon, *C. W. Cook*, and *Ernest Holzborn* for respondents.

W. N. McGehee and *G. M. Nolen* for Southern Railway Company; *Frank Wallace* for Illinois Central R. R., Yazoo & Mississippi Valley R. R. Company, and Gulf & Ship Island R. R. Company; *Gustave Breaux* for Southeastern Millers' Association; *A. F. Vandergrift* for Louisville Board of Trade, Interior Grain & Milling Conference, and Southeastern Millers' Association; *Joseph G. Kerr* for Louisville & Nashville R. R. Company, interveners.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

No exceptions were filed to the report proposed by the examiner.

Complainant is a Louisiana corporation. Included in its membership are persons, firms, and corporations engaged in the purchase, merchandising, sale, and shipment of grain. Respondents are common carriers by water in intercoastal commerce subject to the Shipping Act, 1916, as amended. All interveners are in opposition to the complaint.

By complaint filed August 18, 1933, it is alleged that respondents' rate of $5 [1] per ton plus 3% surcharge for the transportation of wheat in bulk in lots of 500 tons or more from Pacific Coast ports to Gulf ports is unjust and unreasonable in violation of section 18 of the Shipping Act, 1916, and unduly prejudicial to such wheat and

[1] Surcharge discontinued June 30, 1934, and rate itself increased to $5.15.

shippers thereof and unduly preferential of grain moving in the reverse direction and shippers thereof, in violation of Section 16 of that act.

Complainant shows that prior to January 1, 1934, respondents' rate on wheat in bulk in lots of 500 tons or more from Gulf to Pacific Coast ports was $2.75 per ton plus surcharge of 3%. On that date, subsequent to the filing of the complaint, this rate was increased to $5 plus 3% surcharge [1]. The Pacific Northwest is a heavy production area for wheat. Wheat sells cheaper on the Pacific than on the Gulf Coast. Accordingly, wheat does not move westbound in the Gulf intercoastal trade. Respondents' rate of $2.75 was established to induce movement. However, none ever moved via respondents' lines during the approximately 2½ years this rate was in effect. None has moved at respondents' rates later established.

Complainant shows that respondents' rate on corn in bulk in lots of 500 tons or more from Gulf to Pacific Coast ports is $2.50 per ton. Prior to the fall of 1931 respondents' rate on this commodity was $5 per ton. Respondents' witness testified that this $5 rate attracted tramp competition which threatened the entire westbound rate structure, and that reductions in the rate on this commodity were made from time to time to meet such competition. A rail rate reduction on corn to 50 cents per 100 pounds from points of origin west of the Mississippi River contributed to the necessity for these reductions. Respondents' present rate of $2.50 was established late in 1931. They have since carried a heavy westbound tonnage of corn. Upon the record continued maintenance by respondents of this depressed rate is necessary to meet tramp and rail competition and to preserve their westbound rate structure. No facts are of record that this rate has any effect upon the amount of the eastbound rate on wheat under attack or upon any of complainant's members.

As in the case of respondents' rates on westbound wheat and corn, their eastbound wheat rate here in issue is net to ship, cargo paying cost of loading, trimming, and unloading. It is less than the average rate of all eastbound commodities, exclusive of cost of stevedoring and other charges.

During the period October 1933 through January 1934 one of complainant's members shipped 3,000 tons of wheat from Pacific Coast to Gulf via respondents' lines at the rate of $5 plus 3% surcharge. None has been carried by respondents since that period. During the period July 1933 to March 1934, 56,000 tons of bulk wheat were shipped in chartered steamers from Pacific Coast to Gulf by a com-

[1] Surcharge discontinued June 30, 1934, and rate itself increased to $5.15.

petitor of one of complainant's members. Since that time the eastbound bulk wheat movement by charter has been unsteady. One small cargo moved during a period of six weeks preceding the hearing.

In December 1933 respondent Gulf Pacific Line chartered one of its laid-up vessels for the carriage of a full cargo of wheat from Pacific Coast to Gulf. Based on the number of tons of wheat carried, the cost to cargo for this particular charter movement was approximately $4.35 per ton. Complainant's position is that respondents' rate under attack is unreasonable because "the rate by charter vessel is lower—it is so much lower for a full cargo that this rate is unreasonable * * * it should be on a parity with the full cargo rate * * * it should bear a relationship or be approximately the full cargo rate." Complainant presents nothing, however, to show why the full cargo charter cost per ton should be the criterion for the manifestly different kind of service of respondents in transporting 500-ton lots in liner vessels.

Complainant shows that rate for transportation of wheat in lots of 500 tons or more from Pacific Coast ports to North Atlantic and South Atlantic ports, a greater distance than to Gulf ports, is $5.15 per ton. Respondents do not operate to any North Atlantic or South Atlantic port, and no facts as to the circumstances of such transportation to North and South Atlantic ports are presented.

The department finds that respondents' rate complained of has not been shown to be violative of section 18 of the Shipping Act, 1916, or of section 16 of that act. An order dismissing the complaint will be entered.

DEPARTMENT OF COMMERCE

UNITED STATES SHIPPING BOARD BUREAU

DOCKET No. 142

INTERCOASTAL RATES OF AMERICAN-HAWAIIAN STEAMSHIP COMPANY AND WILLIAMS STEAMSHIP CORPORATION

Submitted September 24, 1934. Decided December 10, 1934

Proposed schedules containing optional discharge provision on shipments of soap and soap products from Boston, Mass., to specified Pacific coast ports and naming rate of $5 per 2,000 pounds, minimum weight 1,500 net tons, on soda ash and caustic soda from New York Harbor, N. Y., to such specified destinations on shipments originating at Wyandotte, Mich., and moving via water to New York Harbor as a unit, found not justified. Suspended schedules ordered canceled and proceeding discontinued.

Frank Lyon and *W. S. McPherson* for respondents.

Harold S. Deming and *E. J. Martin* for Shepard Steamship Company; *R. T. Mount*, *H. W. Warley*, and *E. J. Karr* for Calmar Steamship Corporation; *Edward B. Long, Jr.*, and *F. W. S. Locke* for Nelson Steamship Company; *H. E. Manghum* for Richmond, Va., Chamber of Commerce and Sacramento Chamber of Commerce; and *George O. Griffith* for Sterling Products Company, Inc., and National Industrial Traffic League.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

Respondents are parties to Agent R. C. Thackara's Tariff SB-I No. 4. Items 3185 in section 2 and 6061 in section 6 thereof name rates of 46.5 and 37.5 cents per 100 pounds, minimum weight 24,000 pounds, respectively, for the westbound intercoastal transportation of soap and soap products in straight or mixed carloads from any of their Atlantic coast ports of loading, including Boston, Mass., to any of their Pacific coast ports of discharge. Rule 49 of the tariff provides that whenever there appear in sections 2 and 6 two or more rates on the same commodity the lowest will apply, and the 37.5-cent rate is legally applicable.

Rule 22 of the tariff reads:

Where specific reference to this rule is made in individual rate items of this tariff, carrier may issue one bill of lading to cover minimum lots as described therein, from one loading port on one ship for discharge at one or more Pacific Coast Port or Ports, subject to shipper's option of discharge, which must be exercised not less than twenty-four (24) hours prior to arrival of ship at ship's first Pacific Coast Port of Discharge. No back haul will be permitted under this rule.

Item 3185 and item 6061 do not refer to this rule, and therefore the optional discharge provision does not apply on shipments of soap or soap products embraced by these items.

By schedules filed to become effective August 27, 1934, the operation of which was suspended until December 27, 1934, respondents proposed to establish on shipments from Boston to Los Angeles Harbor, San Francisco and Oakland, Calif., Portland, Oreg., and Seattle and Tacoma, Wash., the following exception to rule 22 and items 3185 and 6061:

Individual lots of 40,000 pounds or more of soap, soap chips, soap powder, and/or washing powder, as provided for in items 3185 and 6061 of Agent R. C. Thackara's SB–I No. 4, will, when requested by shipper, be accorded the optional discharge privilege, as described in rule 22 thereof, when operating conditions and/or available stowage space permit; however, when this privilege is availed of, split delivery—as described in rule 17–D thereof—will not be permitted.

The proposed exception was published at the request of a manufacturer with plants at Hammond, Ind., and Boston. It was testified the products of this manufacturer move to Pacific coast destinations by rail from Hammond and by water from Boston. If the suspended schedules become effective, the optional discharge provision there contained will result in financial saving to the shipper in connection with warehouse charges at Pacific coast ports, a saving which it is said would induce this shipper to continue making shipments from Boston by water.

The optional discharge provision as contained in rule 22 applies on shipments of such commodities as barytes, clay, coal, ammoniated phosphate, gravel, sand, slag, and stone from any port of loading to any port of discharge. As contained in the proposed exception it would apply on soap and soap products there named in lots of 40,000 pounds instead of on lots of 24,000 pounds, which is the minimum weight applicable in connection with the 37.5-cent rate but only "when operating conditions and/or available stowage space permit." One of respondents starts loading at Boston. It is its intention to stow shipments of the shipper at whose request the proposed exception was published in such manner as to permit discharge at destinations without difficulty. Shipments of the commodities involved

from other points of loading could not be so easily stowed and unloaded. Respondents admit the proposed exception 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 by respondents which are condemned by law.

By the schedules under suspension respondents also proposed to establish a rate of $5 per 2,000 pounds, minimum weight 1,500 net tons, for the transportation of soda ash, in bags, and caustic soda, in iron or steel drums, from ship's tackle (hook) at New York Harbor to ship's tackle at the Pacific coast ports of discharge hereinbefore named on shipments originating at Wyandotte, Mich., and moving as a unit by water to ship's side of respondents' vessels in New York Harbor.

At present respondents publish rates of 46.5 cents per 100 pounds on soda ash, in bags or barrels, or caustic soda, in cans, boxed, and/or in metal drums; and 30 cents per 100 pounds on soda ash or caustic soda without any packing restrictions. A minimum weight of 24,000 pounds is applicable in connection with these rates, which apply in straight or mixed carloads from any point of loading on the Atlantic coast to any point of discharge on the Pacific coast. As these rates are contained in section 2 of the tariff, rule 49 thereof does not apply. Nevertheless, under accepted rules of construction the 30-cent rate applies regardless of how the commodity is packed for shipment.

The record is clear that only one shipper located at Wyandotte, under contract for delivery of soda ash on the Pacific coast in large quantities, is in position to ship that commodity in lots of 1,500 tons. Although respondents regard the 30-cent rate with a minimum of 24,000 pounds as too low, the proposed rate is in the nature of a special rate to move part of the tonnage mentioned. 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 any undue or unreasonable preference or advantage to any particular person or description of traffic in any respect whatsoever.

The department finds that the suspended schedules have not been justified. An order will be entered requiring its cancelation and discontinuing this proceeding.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

DOCKET No. 149

WESTBOUND INTERCOASTAL RATES ON DATES, FIGS, AND CITRUS FRUIT PEEL

Submitted October 3, 1934. Decided January 8, 1935

Proposed schedules naming rate for westbound intercoastal transportation of dates, figs, and citrus fruit peel, in straight or mixed carloads, found not justified, but without prejudice to the filing of a new schedule in conformity with the views expressed herein. Suspended schedules ordered canceled and proceeding discontinued.

Oliver P. Caldwell, *Godfrey MacDonald*, *W. S. McPherson*, and *George E. Talmage, Jr.*, for respondents.

E. B. Long, Jr., and *F. W. S. Locke* for Nelson Steamship Company.

H. W. Warley for Calmar Steamship Corporation.

George Shapro for Hill Brothers Company.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

Respondents are parties to Agent R. C. Thackara's Tariff SB–I No. 4 naming westbound intercoastal rates. By schedules filed to become effective on September 29, October 1, and October 12, 1934, the operation of which has been suspended until January 29, 1935, Agent Thackara proposed to reduce the westbound intercoastal rate of 92½ cents per 100 pounds, minimum weight 24,000 pounds, on dates, figs, and peel of citron, grapefruit, lemon or orange, in straight or mixed carloads, to 60 cents per 100 pounds, minimum weight 24,000 pounds, when shipped from Atlantic ports on vessels of the American-Hawaiian Steamship Company, (Grace Line) Panama Mail Steamship Company, Luckenbach Steamship Company, Inc., and (Panama Pacific Line) American Line Steamship Corporation. No change was proposed in the rate on these commodities shipped from Atlantic ports on vessels of other intercoastal carriers. Rates are stated in cents per 100 pounds.

The record deals principally with citron peel produced in Italy and dates produced in Persia. Both commodities are shipped loose in wooden boxes over foreign flag lines to New York, N. Y., direct. They are there repacked by jobbers and some reshipped over the lines of respondents to points on the Pacific coast of the United States. These commodities also move loose in wooden boxes to California and other Pacific coast destinations, the citron peel by Italian steamers direct, and the dates on Japanese steamers by way of the eastern route direct or on other foreign flag steamers by way of European ports to Atlantic ports of the United States thence over intercoastal lines, including those of respondents.

The department is here concerned only with rates applicable on these commodities as repacked and reshipped from New York to California and other destinations on the Pacific coast. The movement of dates to such destinations is considerably larger than that of citron peel. It was testified that one jobber of dates shipped more than 1,000,000 pounds in 1931, and approximately 707,000 pounds in 1932 and 362,000 pounds in 1933. The decrease is attributed in large part to increased competition offered by jobbers located on the Pacific coast.

Tariffs containing the rates applicable on the transportation of these commodities from points of origin to New York, or to Pacific coast destinations whether shipped direct or by transhipment at European ports, are not filed with the department. Such rates are quoted in foreign currencies and apparently apply on any quantity. On dates by way of European ports the rate approximates 64 cents to New York and 83 cents to Pacific coast destinations. The rate to Pacific coast destinations over the eastern route is said to be lower than by way of European ports. On citron peel the rate from Italy approximates 73 cents to New York and $1.12 to Pacific coast destinations. The present combination of rates to Pacific coast destinations by way of New York therefore approximates $1.565, minimum 24,000 pounds, on dates from Persia; and $1.655, minimum 24,000 pounds, on citrus peel from Italy.

The proposed intercoastal rate of 60 cents is intended principally to meet competition by direct steamers. It is compared with a rate of 56.5 cents, minimum 30,000 pounds, maintained by respondents for the eastbound intercoastal transportation of dried fruit and vegetables. A witness for one of respondents testified that shipments of dates from New York were largely confined to the four intercoastal carriers named herein. Other intercoastal carriers did not appear in opposition to the proposed change. Upon this record and subject to the exception hereinafter noted the proposed reduc-

tion in the rate from 92.5 cents to 60 cents per 100 pounds has been justified.

In addition to the 92.5-cent rate, which respondents seek to reduce, the tariff contains on these commodities a rate of 87.5 cents, minimum 40,000 pounds, in straight or mixed carloads to Pacific coast destinations. 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. 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.

The department finds that the suspended schedules have not been justified. This finding is without prejudice to the filing of a new schedule in conformity with the views expressed herein. An order will be entered requiring the cancelation of the suspended schedules and discontinuing this proceeding.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

DOCKET NO. 150

EASTBOUND INTERCOASTAL RATES ON SQUASH SEED, CARLOADS

Submitted October 3, 1934. Decided January 18, 1935

Proposed rate for eastbound intercoastal transportation of squash seed, in bags, in carloads, found not justified. Suspended schedules ordered canceled and proceeding discontinued.

W. S. McPherson, *Godfrey MacDonald*, and *Oliver P. Caldwell* for respondents.

E. B. Long, Jr. and *F. W. S. Locke* for Nelson Steamship Company.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

By schedules filed by Agent R. C. Thackara on behalf of American-Hawaiian Steamship Company and Williams Steamship Corporation to become effective October 1, 1934, of Panama Mail Steamship Company to become effective October 11, 1934, and of Luckenbach Steamship Company to become effective October 15, 1934, it is proposed to establish a carload rate of 55 cents per 100 pounds for the eastbound intercoastal transportation of squash seed, in bags, minimum weight 24,000 pounds, via or in connection with the line of each such carrier, respondent herein. The operation of the first two schedules was suspended until February 1 and of the last schedule until February 15, 1935.

Squash is canned in large quantities on the Pacific Coast. The marketing of the seed of the canned squash, practically a waste product, for human consumption is in process of development. The volume of traffic to Atlantic Coast destinations for that purpose is said to depend upon a rate that would permit a low sale price.

Item 1025 of Agent Thackara's Tariff SB–I No. 5, in which respondents and other carriers participate, names a rate of 113.5 cents per 100 pounds applicable on squash seed, in bags, in straight or mixed carloads, minimum weight 24,000 pounds. The application of this rate is not restricted. It governs regardless of the quality or

use to which the seed is applied, and applies on the transportation here involved. It is the purpose of respondents to continue this rate 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.

An order will be entered requiring the cancellation of the suspended schedules and discontinuing this proceeding.

DEPARTMENT OF COMMERCE

UNITED STATES SHIPPING BOARD BUREAU

DOCKET No. 173

TERMINAL CHARGES AT NORFOLK, VIRGINIA

AGREEMENT NO. 3488

Submitted January 29, 1935. Decided February 23, 1935.

Agreement covering charges for terminal services on traffic moving by small boat and truck found not to be unlawful. Agreement canceled as to two of the signatory terminal companies which filed notice of withdrawal.

Charles L. Kaufman for parties signatory to Agreement No. 3488. *Braden Vandeventer* for Roosevelt Steamship Company, Dichmann, Wright & Pugh, Inc., and Norton & Ellis, Inc.; *Charles B. Godwin, Jr.*, for T. H. Rash, Inc., and Hampton Roads Transportation Company; *John W. Oast, Jr.*, for Norfolk, Baltimore & Carolina Line, Inc.; *H. H. Rumble* for Buxton Lines, Inc.; *W. A. Cox* for State Port Authority of Virginia; *H. E. Manghum* for Richmond Chamber of Commerce; *H. E. Boyd* for Wilmington Terminal Warehouse Company; *W. T. Turner* and *C. L. Candler* for Southern Railway Company; *J. W. Perrin* for Atlantic Coast Line Railroad.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

By its order dated November 16, 1934, the Department approved an agreement between Norfolk Tidewater Terminals, Incorporated, Jones Cold Storage and Terminal Corporation, Security Storage and Safe Deposit Company, Incorporated, H. B. Rogers, Incorporated, and Southgate Norfolk Pier, Incorporated, filed pursuant to the provisions of Section 15 of the Shipping Act, 1916, covering charges to be assessed and collected at their respective piers and terminals in Norfolk and Portsmouth, Virginia, on all cargo traffic other

than that received from or delivered to any railroad. This agreement was given No. 3488 and the charges specified therein were made effective by the parties thereto on December 15, 1934. Similar charges were simultaneously announced by the railroads for application at their terminals at Norfolk.

Subsequent to the issuance of the order of approval, a formal petition was filed by Norton and Ellis, Incorporated, requesting that the Department's action be set aside and a new hearing granted, and alleging, in substance, that the agreement is unjustly discriminatory or unfair as between carriers and shippers, and unjustly discriminates against the port of Norfolk because similar charges have not been made effective at competing ports on the Atlantic Coast. A number of informal protests were also received alleging serious injury to the port of Norfolk by diversion of traffic to other ports as a result of the charges made effective under the agreement. A hearing was duly held at which all interested parties were accorded full opportunity to present facts in support of the allegations that Agreement No. 3488 is violative of provisions of the Shipping Act, 1916.

The testimony of record indicates some diversion of traffic to other terminals within the port of Norfolk in order to avoid the payment of higher charges at the terminals subscribing to the agreement, but with the exception of a shipment of 53 tons of cotton waste for export to Sweden which it is testified was diverted from Norfolk to Charleston, South Carolina, the record contains no evidence of actual diversion of traffic to other ports. 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.

The record contains no evidence of discrimination between shippers based on actual shipments handled at any of the terminals under the agreement. In support of the allegation that the agreement is unjustly discriminatory as between carriers, it is shown that, because of the limited accommodations afforded by other terminals within the port at which lower charges are assessed, a number of vessels must continue to use the terminals which subscribe to the agreement and perhaps suffer the loss of traffic diverted to such other terminals. 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.

The record does not justify a finding by the Department that Agreement No. 3488 is violative of any provision of the Shipping Act, 1916.

By notice dated January 19, 1935, received January 24, 1935, Norfolk Tidewater Terminals, Incorporated, advised the Department that it desired to withdraw from and be relieved of the obligations imposed in said agreement, and requested the Department's approval thereof. Application for permission to withdraw from the agreement was also submitted by Security Storage and Safe Deposit Company, Incorporated, by letter dated January 26, 1935, received January 28, 1935. In view of these notices of withdrawal, an order modifying Agreement No. 3488 by the elimination of such parties will be entered.

DEPARTMENT OF COMMERCE

UNITED STATES SHIPPING BOARD BUREAU

Docket No. 161

EASTBOUND INTERCOASTAL RATES FROM MOUNT VERNON AND STANWOOD, WASHINGTON

Submitted December 28, 1934. Decided February 25, 1935

Cancellation of so-called terminal rates from Mount Vernon and Stanwood, Wash., to intercoastal destinations on the Atlantic Coast found justified.

Carriers participating in through routes for the transportation of property by water from Mount Vernon or Stanwood, Wash., to intercoastal destinations on the Atlantic Coast required to file schedules with the department showing all the rates and charges for or in connection with such transportation and agreements relating thereto.

Joseph J. Geary for respondents operating beyond Seattle, Wash., and interveners.

Anna Grimison for Skagit River Navigation & Trading Company.

C. S. Connolly and *H. O. Malsbury* for protestants.

Report of the Department

By the Secretary of Commerce:

By schedules filed to become effective October 31 or November 1, 1934, American-Hawaiian Steamship Company, Luckenbach Steamship Company, Inc., McCormick Steamship Company, Nelson Steamship Company, Weyerhaeuser Steamship Company, Pacific-Atlantic Steamship Co., Williams Steamship Corporation, Panama Mail Steamship Company, and States Steamship Company, hereinafter collectively referred to as respondents operating beyond Seattle, proposed to cancel so-called terminal rates from Mount Vernon and Stanwood, Wash., to intercoastal destinations on the Atlantic Coast. Upon protests of Carnation Company and others the operation of the schedules was suspended until February 28, 1935. The record in No. 126, *Intercoastal Investigation*, is stipulated into the record.

Mount Vernon, on the Skagit River about 11 miles from the mouth of the North Fork; and Stanwood, at the mouth of the Stillaguamish River where the West Pass and the South Pass join, by water are approximately 71 miles and 51 miles, respectively, north of Seattle, Wash. Because of shallow water and other unfavorable navigation conditions it is not possible for vessels of respondents operating beyond Seattle to call at either point. Skagit River Navigation & Trading Company, hereinafter referred to as "Skagit River", which operates vessels of shallow draft, stern-wheel, river type is the only respondent calling at those points.

Protestants are the principal shippers by water from Mount Vernon and Stanwood to intercoastal destinations on the Atlantic Coast. During the 12 months ended November 1, 1934, their shipments consisting principally of canned peas and canned milk, aggregated about 8,110 tons, of which 5,215 tons were shipped by one protestant. The movement of canned peas by water to the intercoastal destinations involved is generally between the latter part of July and the end of March. Canned milk moves only to supply occasional demands.

Prior to August 18, 1934, neither Mount Vernon nor Stanwood was shown in any tariff filed with the department and therefore respondents did not have legal rates in force for application therefrom. Between that date and September 14, 1934, respondents operating beyond Seattle extended the application of their eastbound rates to include Mount Vernon and Stanwood to meet similar rates applicable since September 30, 1933, via Calmar Steamship Corporation. These are the rates sought to be canceled. They are contained in Agent R. C. Thackara's tariff SB-I No. 5 and are published for application direct via the line of each respondent operating beyond Seattle, even though their vessels cannot call at Mount Vernon or Stanwood, or for application in conjunction with Skagit River, except in the case of Panama Mail Steamship Company where they are published for application via Skagit River to Seattle thence via McCormick Steamship Company, Nelson Steamship Company, Pacific Steamship Lines, Ltd., or Chamberlin Steamship Company Ltd., to San Francisco, Cal., and Panama Mail Steamship Company to final destinations, and in the case of States Steamship Company where they are published for application via that line direct or in conjunction with Chamberlin Steamship Company, Ltd., Schafer Brothers Steamship Lines, Pacific Steamship Lines, Ltd., or Sudden & Christenson to San Francisco thence via States Steamship Company to final destinations. Skagit River, the only respondent calling at Mount Vernon or Stanwood, is not named in the through route via which the rates of States Steamship Company apply.

Respondents operating beyond Seattle assume the rates for transportation of Skagit River as part of their operating expenses. In addition Panama Mail Steamship Company and States Steamship Company 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.

Protestants claim that intercoastal shippers located at Mount Vernon and Stanwood compete with similar shippers located at Sacramento, Cal. They compare navigation conditions from Mount Vernon and Stanwood with those from Sacramento, and as respondents operating beyond Seattle apply so-called " terminal rates " from Sacramento, where their vessels do not call, they urge on brief that " the Department can not altogether with fairness and justice deny terminal rates to Mount Vernon-Stanwood until such time as the propriety of terminal rates from other outports is disposed of. * * * Until such time as these intercoastal carriers confine their terminal rates to ports which they actually serve direct with their own ships they cannot, without unduly discriminating against Mount Vernon-Stanwood, charge higher than the terminal rates from the latter points." What constitutes discrimination is a question of fact to be determined in each particular instance and protestants have failed to establish the essential facts in this case. The lawfulness of extending the application of terminal rates generally, and to Sacramento in particular, is under consideration in No. 126 and in No. 119, *Howard Terminal et al.* v. *Calmar Steamship Corporation et al.* The right to initiate rates inheres in the carriers. Such rates may be changed by them unless in doing so they violate the law. No such violation is here shown.

As to the traffic moving via States Steamship Company it should be stated that 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.

Section 15 of the Shipping Act, 1916, imposes upon every common carrier by water the obligation of immediately filing with the department a true copy, or, if oral, a true and complete memorandum, of every agreement with another such carrier, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, among other things, fixing or regulating transportation

rates; giving or receiving special rates or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; or in any manner providing for an exclusive, preferential, or cooperative working arrangement. The term "agreement" as used in this section includes understandings, conferences, and other arrangements. All such agreements, modifications, or cancellations are lawful only when and as long as approved by the department, and before approval or after disapproval, it is unlawful to carry out, in whole or in part, directly or indirectly, any such agreement, modification, or cancellation.

A search of the files of the department fails to disclose copy of any agreement for the transportation of shipments from Mount Vernon or Stanwood via the through routes composed of Skagit River and American-Hawaiian Steamship Company or Williams Steamship Corporation; or of Skagit River and McCormick Steamship Company, Nelson Steamship Company, Pacific Steamship Lines, Ltd., or Chamberlin Steamship Company, Ltd., and Panama Mail Steamship Company; or of Skagit River and Chamberlin Steamship Company, Ltd., Schafer Brothers Steamship Lines, Pacific Steamship Lines, Ltd., or Sudden & Christenson and States Steamship Company.

Section 2 of the Intercoastal Shipping Act, 1933, requires 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 between intercoastal points on its own route; and, if a through route has been established, all the rates, fares, and charges for or in connection with transportation between intercoastal points on its own route and points on the route of any other carrier by water. 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.

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

In view of the positive obligations imposed by Sections 2 of the Intercoastal Shipping Act, 1933, and 15 of the Shipping Act, 1916,

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upon respondents and Chamberlin Steamship Company, Ltd., Schafer Brothers Steamship Lines, Pacific Steamship Lines, Ltd., and Sudden & Christenson, which are not named in the suspension order, no order relating to the filing of schedules or agreements regarding through transportation from Mount Vernon and Stanwood to intercoastal destinations on the Atlantic Coast is deemed necessary.

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DEPARTMENT OF COMMERCE

UNITED STATES SHIPPING BOARD BUREAU

DOCKET No. 162

INTERCOASTAL RATES TO AND FROM BERKELEY AND EMERYVILLE, CALIFORNIA

Submitted January 15, 1935. Decided March 5, 1935

Establishment of joint rates for intercoastal transportation of property between Berkeley or Emeryville, Cal., and points on the Atlantic Coast found justified.

Raymond F. Burley and *John M. Atthowe* for respondents.

Allan P. Matthew, *John O. Moran*, *Markell C. Baer*, *Robert M. Ford*, *W. R. Jones*, *Edwin G. Wilcox*, *T. G. Differding*, *Joseph J. Geary*, and *Frank M. Chandler* for protestants.

Gwyn H. Baker, *H. M. Wade*, *Fred C. Hutchison*, and *A. W. Brown* for interveners.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

By schedules filed to become effective November 9, 1934, the operation of which has been suspended until March 9, 1935, respondents, McCormick Steamship Company and Berkeley Transportation Company, proposed to establish joint rates for intercoastal transportation of property between Berkeley or Emeryville, Cal., and points on the Atlantic Coast with transshipment at San Francisco, Cal.

Berkeley, on the eastern shore of San Francisco Bay between Oakland and Richmond, Cal., is approximately 7 miles by water northeast of San Francisco. The only dock there available to shippers generally, known as the Berkeley Municipal Wharf, is leased by the City of Berkeley to Berkeley Port Terminal, Inc., a private organization. It is about 1.5 miles from Outer Harbor Municipal Terminals at Oakland and approximately 4 miles from Richmond. Emeryville, also on the eastern shore of San Francisco Bay, is between Berkeley and Oakland. The only dock at this point, known as

Emeryville Wharf, is owned by The Paraffine Companies, Inc., and is not available to other shippers. The water in front of these points is shallow. Soundings taken one week before the hearing showed the depth at Berkeley Municipal Wharf at low tide ranged from 5.4 to 8.3 feet, and at Emeryville Wharf at low tide from .3 to 2.4 feet.

Outbound shipments from Berkeley or Emeryville to points on the Atlantic Coast are switched or trucked to Oakland, or move by barges of Berkeley Transportation Company to San Francisco, at which points they are delivered to intercoastal carriers, including McCormick Steamship Company, for transportation beyond. There are no through arrangements or rates on shipments barged to San Francisco. These operations are reversed on inbound shipments. Inbound shipments also move to Berkeley by rail from San Francisco.

Industries located at Berkeley compete with industries at Oakland. The Paraffine Companies, Inc., manufactures paints, roofing, linoleum, and felt base floor covering at its plant at Emeryville. Its principal competitor in the distribution of its products in this general territory, except linoleum, is the Certain-teed Products Corporation with a plant at Richmond. Some of the raw materials used by both competitors are obtained from points on the Atlantic Coast. The Paraffine Companies, Inc., sells linoleum and other floor covering on the Atlantic Coast in competition with eastern manufacturers. Its inbound shipments of raw materials aggregate from 300 to 400 tons and its outbound shipments to eastern markets aggregate from 600 to 1,000 tons per month. The inbound shipments generally move through Oakland. When urgently needed they are barged direct from San Francisco. The outbound shipments are generally barged direct to that point. McCormick Steamship Company maintains intercoastal terminal rates from and to San Francisco, Oakland, and Richmond. It also participates in joint intercoastal rates from and to these points with certain San Francisco Bay carriers. Interchange of traffic with these carriers is made at San Francisco. The rates, whether terminal or joint, are the same from and to all these points. Under the proposed schedules joint intercoastal rates similar in amounts to those from and to these other points would apply from and to Berkeley or Emeryville.

Protestants urge that if the proposed rates become effective they will result in undue and unreasonable preference and advantage to Berkeley and Emeryville and shippers and receivers of intercoastal freight located there to the prejudice and disadvantage of Oakland and Richmond and shippers and receivers of intercoastal freight located there. This is based on the fact that at present the rail rate

from or to the Oakland wharf and the charges for car loading or unloading there, or the truck charges from or to that point, are the same regardless of whether the traffic originates in or is destined to the Oakland, Berkeley, or Emeryville switching districts, and under the proposed schedules the only charge of that character would be for trucking from or to the pier at Berkeley. Thus while under the proposed schedules shippers at Berkeley or Emeryville would pay the same intercoastal rate as shippers at Oakland or Richmond, they would pay less in the aggregate if consideration is given to the additional charges of the character described. However this does not constitute preference or advantage of the character condemned by the Shipping Act of 1916.

Protestants further urge that Berkeley and Emeryville are shallow-water points and are not entitled to intercoastal "terminal rates." Also that the department has no jurisdiction over Berkeley Transportation Company and the proposed tariffs are illegal. The term "common carrier by water in intercoastal commerce" as used in 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. Every such common carrier is enjoined to publish, post, and file with this department all the rates, fares, and charges for or in connection with transportation between intercoastal points on its own route; and, if a through route has been established, all the rates, fares, and charges for or in connection with transportation between intercoastal points on its own route and points on the route of any other carrier by water. The act makes no distinction whatsoever between points on deep water and points on shallow water. The Berkeley Transportation Company 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 here proposed, it becomes subject to the act. 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. A "terminal rate" is that between two intercoastal points when the entire transportation service is performed by a single carrier. 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. As is required by section 15 of the Shipping Act, 1916, respondents have filed copy of agreement entered into by them, which has been ap-

proved, for the establishment of through routes to facilitate intercoastal commerce from and to the points here involved and for the establishment of joint rates to apply thereon. The proposed schedules, filed in furtherance of this agreement, plainly indicate that the rates are joint and not terminal rates. The record does not indicate that such rates are in violation of law.

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

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.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

DOCKET NO. 143

PABLO CALVET & COMPANY

v.

BALTIMORE INSULAR LINE, INC., BULL INSULAR LINE, INC., LYKES BROTHERS STEAMSHIP COMPANY, INC., MOBILE, MIAMI & GULF STEAMSHIP COMPANY, AND ATLANTIC AND CARIBBEAN STEAM NAVIGATION COMPANY

Submitted March 6, 1935. Decided March 26, 1935

Respondents' conference rule not shown to be violative of any provision of Shipping Act, or to be unfair, or to operate to detriment of commerce of the United States. Complaint dismissed.

A. P. Calvet for complainant.

James E. Light for Bull Insular Line, Inc., and *J. P. Case* for Waterman Steamship Corporation (Mobile, Miami & Gulf Steamship Company).

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

Complainant is a partnership located in New York City. It is engaged in the business of importing and exporting raw materials.

Respondents are common carriers by water operating between Atlantic and Gulf ports of the United States on the one hand and Puerto Rican ports on the other, and comprise the membership of the United States Atlantic and Gulf/Puerto Rico Conference, a cooperative organization which functions pursuant to a conference agreement approved under Section 15 of the Shipping Act.

Under individual through billing arrangements with various transatlantic carriers, respondents accept shipments from Puerto Rico to European ports, transshipping them to the transatlantic carriers at their Atlantic and Gulf ports. Under these through billing ar-

rangements, the carriers party thereto assess through rates lower than the combination of the local rate Puerto Rico to the United States and the local rate from the United States to Europe. Complainant alleges that refusal by respondents under a conference rule to issue new bills of lading at their Atlantic and Gulf ports on shipments made locally from Puerto Rico to such Atlantic and Gulf ports, the new bills of lading to show through transportation and through rates from Puerto Rico to European ports, is detrimental to its business and to commerce of the United States.[1] Using in illustration a shipment of annatto seed transported by Bull Insular Line on a local bill of lading from Aguadilla to New York, the complaint is that—

> Complainant offered to surrender full set of local bill of lading from Puerto Rico to New York in exchange for a new bill of lading showing the European terminal port (Copenhagen) desired. Complainant further requested the carrier to make out the new bill showing complainant as shippers, the complainant wishing to keep secret to their European consignees the name of the original shippers in Puerto Rico. Complainant offered to pay the through freight as per established through rate. The carrier refused to comply with this request, alleging that this request was against respondent's conference rules. This was confirmed by said conference. This rule of respondent's conference is in detriment of complainant's business and of the commerce of the United States.

Generally the rates under the through billing arrangements are the same as those of direct line carriers from Puerto Rico to Europe, and complainant must secure such rates in order to sell Puerto Rican commodities in the European markets. Because of a refusal by respondent Bull Insular Line to furnish new bill of lading as requested, complainant lost a sale of annatto seed in Copenhagen. Other sales under similar circumstances have also been lost by complainant due to similar refusals.

The shipment of annatto seed used by complainant for illustration was, through exchange of cables, purchased by complainant from a dealer in Aguadilla, Puerto Rico, f. o. b. that port. It was carried for complainant to New York on Bull Insular Line local bill of lading. Complainant's request for new bill of lading was first conveyed to respondent two days after vessel's arrival in New York and after discharge had been completely effected. Complainant admits respondent fulfilled its bill of lading obligation in effecting delivery of the shipment in New York.

The question presented for determination is whether after respondents have completely fulfilled every obligation of their bill

[1] By Section 15 of the Shipping Act the Department is empowered to disapprove, cancel, or modify any agreement within the purview of that section, whether or not previously approved by it, which it finds, among other things, to be unfair as between shippers, exporters, or importers, to operate to the detriment of commerce of the United States, or to be in violation of the Shipping Act.

of lading contracts with complainant to furnish transportation of shipments from Puerto Rico to United States ports they shall be required, as to such of those shipments as complainant may sell abroad, to contract further and differently. The advantages which would result to complainant under such requirement would be—time after local transportation transaction has been consummated within which to effect sale abroad, use of respondents' docks pending such sale, and a lower charge than is applicable for the two local transportation services actually received.

As illustrated by the consignment of annatto 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 regular rates through false billing or by other unfair device or means.

The Department finds that respondents' rule, in observance of which their refusal to rebill and apply lower through rates on reshipping cargo is made, has not been 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. An order dismissing the complaint will be entered.

DEPARTMENT OF COMMERCE

UNITED STATES SHIPPING BOARD BUREAU

DOCKET No. 176

PHILADELPHIA PORT EQUALIZATION

Submitted March 26, 1935. Decided April 25, 1935

Schedule cancelling port equalization rule at Philadelphia, Pa., and establishment of identical rule at New York, N. Y., on iron and steel moving in intercoastal commerce cancelled by respondent, and proceeding discontinued.

Carleton T. Hepting for respondent.
F. W. S. Locke for Nelson Steamship Company, protestant.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

Under exception to rule 9 of Agent R. C. Thackara's tariff SB–I no. 4, Panama Mail Steamship Company shrinks its rate for intercoastal transportation of iron and steel from Philadelphia, Pa., as to equalize the cost to the shipper for the overland transportation of the first 250 tons from inland points of origin to any Atlantic coast port served by an intercoastal carrier, when the overland rate is 9 cents per 100 pounds or more. By schedule filed to become effective February 10, 1935, the operation of which was suspended until June 10, 1935, respondent proposed to cancel such exception and establish an identical rule for application at New York, N. Y.

Subsequent to hearing, under special permission granted by the department, respondent filed a supplement to the tariff, effective March 28, 1935, canceling the proposed rule.

The lawfulness of rule 9 is presented for determination in no. 126, Intercoastal Investigation, undecided. In view of respondent's action, an order will be entered vacating the suspension order and discontinuing this proceeding.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

DOCKET No. 177

INTERCOASTAL RATE ON SILICA SAND FROM BALTIMORE, MD.

Submitted April 12, 1935. Decided May 1, 1935

Proposed schedule naming reduced rate for intercoastal transportation from Baltimore, Md., to certain Pacific coast destinations of silica sand, in bulk, in lots of not less than 500 net tons, for manufacture of glass and glassware, found not justified, but without prejudice to filing of new schedule in conformity with views expressed herein. Suspended schedule ordered canceled and proceeding discontinued.

F. W. S. Locke for respondent.
Roscoe H. Hupper for protestants.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

By schedule filed to become effective February 10, 1935, the operation of which has been suspended until June 10, 1935, Nelson Steamship Company proposed to reduce its rate of $2.73 per net ton to $2.50 per net ton for intercoastal transportation from Baltimore, Md., to Alameda, Los Angeles Harbor, Oakland and San Francisco, Cal., Portland, Ore., and Seattle and Tacoma, Wash., of silica sand, in bulk, in lots of not less than 500 net tons, for manufacture of glass and glassware.

The proposed rate, to expire July 31, 1935, is for application only when a contract has been executed by shipper or consignee in a form, also contained in the proposed schedule, reading in part as follows:

1. THE SHIPPER, in consideration of the agreement of the CARRIER hereinafter set forth, agrees to ship by steamers of the Nelson Steamship Company, operating from the port of Baltimore, Md., all of the SILICA SAND shipments which the SHIPPER shall make between the date hereof and July 31, 1935, inclusive, from the aforementioned port to the following * * * terminal ports: * * * quantities being estimated at approximately carloads of net tons.

The shipments contemplated in this clause shall include not only any such shipments made directly by the SHIPPER and in its name, but also any such shipments, however and by whomsoever made, if for the benefit and on behalf of the SHIPPER.

2. In consideration of said agreement of the SHIPPER, the CARRIER agrees to transport * * *, at the following rate * * * : * * *

Minimum lots of five hundred (500) net tons from one shipper * * *, on one steamer for optional discharge at one or more Pacific Coast ports enumerated in Article 1 of this agreement, which shall provide that at any individual port the amount to be discharged shall not be less than two hundred and fifty (250) net tons; the option to be declared forty-eight hours prior to expected arrival of steamer at Los Angeles Harbor, California.

Subject to prior booking arrangements.

The SAND named in this item to be delivered into the steamer's hold over a loading tipple, cost of such loading, trimming and leveling for account of shipper. Entire parcel to be available for steamer on twenty-four hours notice to shipper of steamer's readiness.

The entire quantity to be delivered continuously until completed and delivery to be made as fast as steamer can receive.

Cost of discharging account of steamer, and receivers to accept as fast as steamer can discharge.

3. If the SHIPPER shall make any shipments in violation hereof, this agreement shall immediately become null and void as to all future shipments, and thereupon the SHIPPER shall be liable to the transporting CARRIER for payment of additional freight on all quantities theretofore shipped with the CARRIER since the execution of this agreement, in the amount of the difference between the rate named hereon, and the "B" line rate named in R. C. Thackara's Westbound Freight Tariff 1-B, SB-I No. 4, supplements or reissues thereof, Item 3102-A, at the time of such shipments.

The record indicates the purpose of the suspended schedule is to enable one producer of silica sand with plants in West Virginia, Pennsylvania, and New Jersey to meet the competition of producers located in Belgium who are said to be able to deliver silica sand at the Pacific coast destinations named at about $5.22 a net ton. This amount includes not only the price of the sand and the ocean rate but also the import duty and cost of loading it into rail equipment at the port of entry. The record also shows no silica sand adapted to the manufacture of glass such as that produced in West Virginia, Pennsylvania, New Jersey, or Belgium, is produced on the Pacific coast.

On behalf of the shipper in question it was testified it shipped approximately 3,000 tons in 1933 and 6,000 tons in 1934 of sand from its plants to Pacific coast destinations; and that "with a 30-day cancellation clause in the tariff, we are at a disability that we would never overcome, even though we could undersell Belgium, for the simple reason that the agents for the European sand make great capital of the fact that we are unable to say to a buyer, 'This cost will be firm to you over a period of months.' * * * With one single exception, in our opinion, that argument has kept us from getting the business."

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. The particular rate sought to be reduced has been continuously in effect since June 1, 1933, if consideration is given to a 3 percent surcharge rule cancelled March 21, 1934.

Protestants are American-Hawaiian Steamship Company and nine other common carriers by water engaged in intercoastal transportation in competition with respondent. The contract contained in the schedule under suspension excludes such carriers from participating in the transportation under consideration and creates a monopoly in favor of a competitor, which is unlawful, *Menacho* v. *Ward*, 27 Fed. 529, *Eden Mining Co.* v. *Bluefields Fruit & S. S. Co.*, 1 U. S. S. B. 41. 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.

Furthermore it will have been observed that if the shipper violates the contract it shall be liable to respondent for payment of additional freight on all quantities theretofore shipped since the execution of the contract in the amount of the difference between the proposed rate " and the ' B ' line rate named in R. C. Thackara's Westbound Freight Tariff 1–B, SB–I No. 4, supplements or reissues thereof, Item 3102–A, at the time of such shipments." The so-called " B " line rates contained in Agent Thackara's tariff, to which respondent is a party, were adopted and published as the result of an agreement which no longer exists. Should other " B " lines, as respondent is now attempting to do, change their rate on silica sand from Baltimore to the destinations involved, it would be confusing, if not impossible, to state the rate upon basis of which the shipper would have to make restitution to respondent.

The department finds that the suspended schedule has not been justified. Rates based on a minmium 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 Amer.-Hawaiian S. S. Co. et al.*, 1 U. S. S. B. B. 349. However, the record does not disclose 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, and this finding is without prejudice to the filing of a new schedule naming the proposed rate in such manner as to make its application free from execution of contracts with shippers.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 170

PROPORTIONAL WESTBOUND INTERCOASTAL RATES ON CAST-IRON PIPE

Submitted March 22, 1935. Decided May 9, 1935

Proposed proportional rates on cast-iron soil and pressure pipe from Charleston, S. C., and Savannah, Ga., to Pacific coast ports found justified.

F. W. S. Locke and *George C. Stern* for Nelson Steamship Company.

Walter Smith for Strachan Shipping Company.

J. A. Von Dohlen for J. A. Von Dohlen Steamship Company.

Elisha Hanson for Swayne & Hoyt, Ltd. (Gulf Pacific Line) and Luckenbach Gulf Steamship Company, Inc.

W. P. Rudrow for Arrow Line.

Oliver P. Caldwell for Luckenbach Steamship Company, Inc., and Luckenbach Gulf Steamship Company, Inc.

J. D. Patterson for Savannah Traffic Bureau and Savannah Chamber of Commerce.

S. P. Gaillard, Jr., for Alabama State Docks Commission, Mobile Chamber of Commerce, Pensacola Chamber of Commerce, and Gulf, Mobile & Northern Railroad.

W. N. Pendleton for Waterman Steamship Corporation.

H. H. Simms for Atlanta & St. Andrews Bay Railway Company.

J. A. Bywater for Louisville & Nashville Railroad.

Rene A. Stiegler for Board of Commissioners of the Port of New Orleans.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

By schedules filed to become effective January 15, 1935, Nelson Steamship Company, through its Agent R. C. Thackara, proposed to establish proportional rates on cast-iron soil and pressure pipe

from Charleston, S. C., and Savannah, Ga., to Pacific coast ports, applicable on shipments originating at Birmingham, Ala., and other designated inland points in the Birmingham District. Upon protests of the Mobile Chamber of Commerce, Alabama State Docks Commission, the Board of Commissioners of the port of New Orleans, Gulf Pacific Line, and Luckenbach Gulf Steamship Company, Inc., the operation of the proposed schedules was suspended by the Department until May 15, 1935.

At the hearing various interests intervened, some not offering any testimony, others testifying for or against the proposed schedules.

The proposed proportional rates were established to meet competition via the port of Mobile. Using pipe not exceeding 20 feet in length and not exceeding 12 inches in diameter, for purposes of illustration, local and proposed proportional carload rates in cents per ton of 2,000 pounds from Charleston and Savannah to Pacific coast ports and rates from Mobile and New Orleans to Pacific coast ports are shown below:

	From Charleston and Savannah		From Mobile and New Orleans	
	Local	Proposed proportional	Noncontract	Contract
CAST IRON PRESSURE PIPE				
Other than owner's risk	810	596	859	659
Owner's risk	670	452	715	515
CAST IRON SOIL PIPE				
Other than owner's risk	760	697	760	----------
Owner's risk	620	557	620	----------

An exhibit of record shows that the rail carload rates from Birmingham on cast iron soil and pressure pipe are to Mobile $2.45, to Charleston and Savannah $3.08 and to New Orleans $2.95 per ton of 2,000 pounds. It will be noted that the rail rate from Birmingham to Charleston or Savannah, plus the proposed proportional rates beyond in each instance equals the rail rate from Birmingham to Mobile, plus the lowest available port-to-port rate, contract or noncontract, from Mobile to Pacific coast ports.

Protestants contend that the proportional rates are intended to equalize total transportation charges via Mobile, and that port equalization rules were condemned by the Department in its decision in *Intercoastal Rates of Nelson S. S. Co.*, 1 U. S. S. B. B. 326. Respondent admits that the proportional rates are intended to meet the rates via Mobile, but contends that they are specific rates and therefore do not violate the principle announced in the case cited. Respondent also calls attention to the fact that rule 3 (c) of Tariff Circular No. 2 au-

thorizes the publication of proportional rates, and cites numerous proportional rates to intercoastal destinations, applicable via the Mississippi Valley Barge Line to New Orleans and Gulf intercoastal carriers beyond, and from Atlantic coast ports to the same destinations applicable via respondent and other intercoastal carriers, all of which are lower than the rates on the same commodities applicable on local port-to-port traffic. Respondent also shows that Gulf intercoastal lines maintain a joint proportional rate of $1 per 100 pounds on second-hand cash registers from Los Angeles, Calif., and other Pacific coast ports to Cincinnati, Ohio, in connection with the Mississippi Valley Barge Line beyond New Orleans applicable on shipments destined beyond Cincinnati, while contemporaneously maintaining a local carload rate of $1.135 to New Orleans.

The Department heretofore has not formally considered the question of whether the publication of proportional rates lower than the rates applicable on shipments originating at or destined to the same ports is proper or lawful. The fact, however, 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.

The two intercoastal lines which provide weekly sailings from Mobile to the Pacific coast object to the proposed rates on the ground that the service which they have built up will be undermined; that they will be deprived of a traffic from inland origin territory to which by geographic position they are naturally entitled; and that approval of the proposed rates will open the way for the gradual inroad by all carriers into those territories from which they now draw their traffic. Since the approximate distance from Birmingham to Mobile is 275 miles, whereas the approximate distance from Birmingham to Charleston is 475 miles, the port of Mobile and the Alabama State Docks Commission contend that they will be deprived of those natural advantages which result from the proximity of Mobile to the Birmingham area.

A representative of the largest manufacturer of cast iron pressure pipe in the Birmingham area testified that it is essential to his business that there be a regular and dependable service at a stable rate, and that the Gulf lines do furnish such service at the present time. The railroads afford an overnight delivery from Birmingham to Mobile, whereas there is a fourth morning delivery from Birmingham to Charleston or Savannah. This witness feared that the present satisfactory service of the lines out of Mobile would be curtailed by the diversion of traffic to Charleston or Savannah, and

that such curtailment would result in the industries of Alabama being called upon to pay higher taxes because of the fact that the docks at Mobile are owned by the State. The interest of shippers in the welfare of the public docks at Mobile, while commendable, has no bearing on the lawfulness of the proposed rates from Charleston and Savannah. With respect to the protest of the port of New Orleans, it seems sufficient to state that the present through charges via New Orleans are 50 cents per ton of 2,000 pounds higher than charges via Mobile and that any injury which may result to New Orleans from the establishment of the same through charges via Charleston or Savannah as now apply through Mobile is purely speculative.

Protestants submitted no facts whatsoever to support their contention that the establishment of the proposed rates would lessen the service or sailings from Mobile, nor does the record support a finding that the proposed rates in any way violate any provision of the Shipping Act, 1916. An appropriate order vacating the suspension and discontinuing the proceeding will be entered.

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DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 96 [1]

IN RE ASSEMBLING AND DISTRIBUTING CHARGE

Submitted December 12, 1934. Decided May 13, 1935

Collection of separate charge for assembling and distributing intercoastal general cargo at Los Angeles and Long Beach, Calif., found unjust, unreasonable, unduly and unreasonably preferential and prejudicial. Approval of agreement to establish and maintain such charge withdrawn.

H. R. Kelly and *J. A. Olson* for respondents.

Emuel J. Forman, *T. A. L. Loretz*, *F. W. Turcotte*, and *John J. Seid* for Los Angeles Traffic Managers Conference; *H. R. Brashear* for Los Angeles Chamber of Commerce; *James F. Collins*, *C. E. Barry* and *Charles A. Bland* for Board of Harbor Commissioners of the City of Long Beach; *Karl D. Loos*, *L. A. Strause*, and *R. C. Neill* for California Citrus League; *R. S. Sawyer* for Associated Jobbers & Manufacturers; *F. W. Turcotte* and *B. H. Carmichael* for Asbury Transportation Company and Belyea Truck Company; *L. H. Stewart* for American Cotton Cooperative Association and T. J. West Company, Limited; *C. F. Reynolds* for San Diego Chamber of Commerce and San Diego Harbor Commission; *Clyde M. Leach* and *Harrison Cassell* for Board of Harbor Commissioners of the City of Los Angeles; *J. J. Seid* for Zellerbach Paper Company, Western Waxed Paper Company, and Crown Zellerbach Corporation; *John G. Beaver* for California Milling Corporation, Los Angeles Chemical Company, and Charles R. Hadley Company.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

Exceptions were filed by respondents to the examiner's proposed report.

[1] This report embraces No. 98, In Re Assembling and Distributing Charge—Foreign and Offshore Commerce.

On February 1, 1933, the United States Shipping Board approved an agreement for the establishment and maintenance of an assembling charge upon all intercoastal "general cargo" loaded into, and a distributing charge on all intercoastal "general cargo" discharged from, vessels owned, operated, represented, or controlled by respondents [2] at the ports of Los Angeles and Long Beach, Calif., except bulk cargo handled directly between ship and cars placed on the "high line", the name given railroad tracks so located on a wharf as to enable the placing of cars alongside the ship. This agreement was given Bureau of Regulation and Traffic No. 2224. On February 10, 1933, effective March 10, 1933, as a result of this agreement the following tariff was published by the Los Angeles Steamship Association, in which all respondents hold membership:

LOS ANGELES STEAMSHIP ASSOCIATION TERMINAL TARIFF

No. 2-AD

ASSEMBLING AND DISTRIBUTING CHARGE APPLYING AT LOS ANGELES AND LONG BEACH, CALIF., ON INTERCOASTAL COMMERCE

Except on cargo handled direct to or from open railroad car with ship's tackle, on bulk oil moving direct between ship and railroad tank car or pipe line and on bulk grain moving direct from ship to railroad car by gravity or otherwise through hopper built into car door, a charge of 30¢ per ton of 2,000 lbs., will be assessed against cargo for use of terminal facilities, equipment, and labor incident to handling between ship's tackle and pile on dock, including ordinary sorting, piling, and breaking down.

The minimum charge for any single shipment will be one cent (1¢).

This tariff was not filed with the Shipping Board pursuant to Section 18 of the Shipping Act. Filings made pursuant to that section and the Intercoastal Shipping Act, 1933, will be dealt with later in this report.

Upon petition of Los Angeles Traffic Managers Conference, an association of freight traffic managers representing industrial and manufacturing concerns of Los Angeles and vicinity, this investigation was instituted for the purpose of determining the lawfulness of the thirty-cent charge put into effect March 10, 1933, on intercoastal traffic, and whether the approval given to Agreement No. 2224 should be withdrawn.

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[2] American Line Steamship Corporation (Panama Pacific Line), Isthmian Steamship Company, Argonaut Steamship Line, Inc., Nelson Steamship Company, Pacific-Atlantic Steamship Company (Quaker Line), Luckenbach Gulf Steamship Company, Inc., Luckenbach Steamship Company, Inc., Panama Mail Steamship Company (Grace Line), Dollar Steamship Lines, Inc., Ltd., McCormick Steamship Company, American-Hawaiian Steamship Company, Williams Steamship Corporation, Swayne & Hoyt, Ltd. (Gulf Pacific Line), Shepard Steamship Company, Sudden & Christenson and Los Angeles Steamship Company (Arrow Line), and Calmar Steamship Corporation.

Docket No. 98 is an investigation predicated upon petition of Los Angeles Traffic Managers Conference, attacking an alleged assembling and distributing charge of American & Manchurian Line and others at Los Angeles and Long Beach on foreign and offshore commerce. No evidence was presented and an order will be entered discontinuing the proceeding.

Most of the general cargo wharves at Los Angeles were constructed and are owned by the city, and are operated by the Los Angeles Board of Harbor Commissioners. On October 3, 1932, the Board of Harbor Commissioners increased the dockage charges against ships and the charges for use of space on the wharves not devoted exclusively to the handling and moving of cargo, such as office space and rest rooms. The Board of Harbor Commissioners customarily assigns wharves either under preferential assignments, secondary assignments or temporary assignments. Prior to October 3, 1932, no charge was made in connection with these assignments for the use of space devoted exclusively to the handling and movement of cargo. On that date, however, for all preferentially assigned space the Board of Harbor Commissioners put into effect charges of one-half cent per square foot per month for shedded wharves " including apron wharf and rear loading platform the length of the shed "; and one-quarter cent per square foot per month for " second story floors in transit sheds or outside areas at ends of sheds ", and one-quarter cent per square foot per month for open wharves. On the same date another new charge known as a cargo handling permit fee of one-half cent per ton of cargo, minimum $25.00 per month or fraction thereof, was made to be paid on all cargo handled between ship's tackle and pile on dock. The stevedoring companies ordinarily perform such handling for the carriers and this fee would ultimately be paid by the carriers. Respondents claim, however, that their preferential assignments of space include the right to assemble and distribute cargo on the wharf and have refused to pay this charge.

The volume of intercoastal traffic declined sharply at Los Angeles during the period between July 1929 and June 1932. During that period there also was a drift of cargo from rail to truck adversely affecting the revenue obtained by respondents from loading and unloading railroad cars. These facts and the new and increased charges by the Board of Harbor Commissioners are stated by respondents to be largely responsible for their establishment of the " assembling and distributing charge " under attack.

Long Beach Harbor is east of and adjacent to Los Angeles Harbor, with which it is connected by Cerritos Channel. Terminals at Long Beach are not preferentially assigned and there is no shed rental. The only charge against respondents is for dockage, at rates similar to

those in effect at Los Angeles Harbor prior to October 3, 1932. The tariff of the Board of Harbor Commissioners of Long Beach has not been changed since its issuance in 1925. The "assembling and distributing charge" was made applicable at Long Beach by respondents in order to establish uniform practices at both ports.

In unloading vessels, sling loads of cargo are lowered to trucks on the wharf at ship's side provided by the stevedore, who then removes the cargo to the sheds or other place of rest, where it is set up in piles. In a sling load of general cargo there are likely to be a number of different commodities for various consignees, and even for a number of different ultimate destinations, which necessitates a certain amount of sorting. Similarly, in loading a vessel the carriers frequently assemble in a single sling load cargo delivered to the wharf by several shippers. Respondents insist that their transportation rates are for service from and to ship's side only, but the record is clear that they refuse either to accept cargo for transportation or to make delivery to the consignee at such point. As stated by a witness for respondents "an attempt to deliver general merchandise to these consignees at ship's side from the various hatches as fast as unhooked from the tackle or to reverse the operation in loading would be physically impossible in the space available. It would neither be in the interest of the cargo owner or the shipowner because it would create an example of inefficiency that would be nothing short of a spectacle."[1] Ship's side delivery to motor trucks "would run up the cost to not only the vessel owner but the receiver of merchandise and would delay the receipt of merchandise if an attempt was made to deliver all of it to trucks at the high line." While the carriers argue that the movement between ship's tackle and pile on dock, including any necessary sorting or assembling, "obviously involves additional services and costs", the record here is that the stevedore is paid by the carriers a single amount for his various services, including the sorting, assembling, and handling service in question, and although respondents attempted to allocate the cost of this service, not only do the stevedoring contracts of record fail to provide for any lower charge to the respondents in the event cargo should be delivered at ship's side, but the carriers admit that the method of receipt and delivery actually employed by them is less expensive, more efficient, and causes less delay. Stevedoring charges are shown to have been reduced in December 1932.

At Portland, Seattle, and Tacoma, cargo is handled between ship's tackle and pile on dock by agencies separate from the steamship companies, but the charge for this service is absorbed by the intercoastal carriers. At San Francisco, as at Los Angeles and Long Beach, the stevedores perform this service as a part of their stevedoring contracts with the carriers. Rates for intercoastal transportation are

the same between Atlantic ports and Los Angeles, Long Beach, San Francisco, Portland, Seattle, and Tacoma, and the same form of bill of lading is used for consignments to and from Los Angeles and Long Beach as is used by each carrier for consignments to and from the other ports. According to respondents the transportation rate does not contemplate delivery at point of rest on the wharf beyond ship's tackle, but in the case of San Francisco the carriers feel justified in not assessing a charge for the movement between ship's tackle and point of rest due to alleged lower costs to them at that port. No specific reason is given by respondents for the absorption at Portland, Seattle, and Tacoma of the charge for handling cargo between ship's tackle and point of rest.

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. *Danciger* v. *Cooley*, 248 U. S. 319; *Rhodes* v. *Iowa*, 170 U. S. 412, 415, 420; *Vance* v. *Vandercook Co.*, 170 U. S. 438, 451; *Louisville & Nashville R. R. Co.* v. *Cook Brewing Co.*, 223 U. S. 70, 82; *Kirmeyer* v. *Kansas*, 236 U. S. 568, 572; *Rosenberger* v. *Pacific Express Co.*, 241 U. S. 48, 50. 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:

> The word freight, when not used in a sense to imply the burden or loading of the ship, or the cargo which she has on board, is the hire agreed upon between the owner or master for the carriage of goods from one port or place to another. That hire, without a different stipulation by the parties, is only payable when the merchandise is in readiness to be delivered to the person having the right to receive it. Then the freight must be paid before an actual delivery can be called for. In other words, the rule is, in the absence of any agreement to the contrary of it, that freight, under an ordinary bill of lading, is only demandable by the owner, master, or consignee of the ship, when they are ready to deliver the goods in the like good order as they were when they were received on board of the ship. * * * The general rule is, that the delivery of the goods at the place of destination, according to the bill of lading, is necessary to entitle the ship to freight. The conveyance and delivery is a condition precedent, and must be fulfilled (3 Kent 218).

What constitutes valid delivery is well settled by decisions of the courts. It is necessary to show that the goods were landed on the wharf, that the different consignments were properly separated from the general mass of cargo discharged so as to be open to inspection and so placed as to be conveniently accessible to their respective owners, that notice was given of their arrival and a reasonable time allowed for their removal. If, after being so discharged and separated,

the goods are not accepted by the consignee, the carrier should not leave them exposed on the wharf but should store them in a place of safety and so notify the consignee, whereupon the carrier is no longer liable on his contract of affreightment, *Southern Pacific Co.* v. *Van Hoosear*, 72 Fed. (2d) 903; *Clifford* v. *Merritt-Chapman & Scott Corporation*, 57 Fed. (2d) 1021; "*The Eddy*", 72 U. S. 481; "*The Titania*", 131 Fed. 229. A mere discharge of cargo is not delivery and until the goods are so placed and tendered for delivery it is impossible for the consignees to receive and remove them. The service for which the assembling and distributing charge under consideration applies is necessary to effect orderly and expeditious delivery. It promotes the despatch of vessels, minimizes congestion and confusion at ship's side and thus aids in the handling of a larger volume of cargo than could be adequately and economically handled at ship's side. 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 reasonaable 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. *Covington Stock Yards Co.* v. *Keith*, 139 U. S. 128, 135, 136.

Respondents contend that the inauguration of the assembling and distributing charge was merely the equivalent of increasing their transportation rates to offset their own increased expenses. This theory is negatived by the fact that this charge has not been assessed on cargo received or delivered at the "high line", although the increased expenses of the carriers referred to were not such as to justify any such differentiation between "high line" and other cargo. Moreover, the assembling and distributing charge actually assessed has yielded revenue greatly in excess of the total increase in expenses relied upon. Figures of record show that increased payments made by the carriers by reason of these increased expenses amounted to approximately $82,162 for the ten-month period October 1932 through July 1933, whereas figures also submitted by respondents disclose that collections of the assembling and distributing charge on intercoastal traffic amounted to approximately $86,967 in the five-month period March–July 1933.

No cogent reason was advanced by respondents for the inauguration of an assembling and distributing charge at Long Beach, where port charges paid by the carriers have remained stable since 1925. For the reasons set forth above, the increase in port expenses incurred by the carriers at Los Angeles does not justify the establishment of a separate charge for service necessary to complete transportation. The assembling and distributing charge is therefore found to be unjust and unreasonable in violation of Section 18 of the Shipping Act, 1916.

On behalf of petitioners, witnesses testified to competition existing between receivers of intercoastal cargo at Los Angeles and Long Beach and receivers of intercoastal cargo at San Francisco. In illustration, one corporation whose plant is within the switching limits of Los Angeles, engaged in the fabrication of structural steel for buildings, bridges, and tanks and in manufacturing boilers and various classes of machinery, is in direct competition with fabricators and manufacturers in the San Francisco Bay territory, particularly at points intermediate between Los Angeles and San Francisco. Practically all of its intercoastal business is the movement from the Atlantic coast of unfabricated steel plates, shapes, bars, beams, channels, angles, and a number of miscellaneous commodities to the ports of Los Angeles and Long Beach. The 30-cent assembling and distributing charge assessed against its inbound shipments has to be absorbed by it before it can market its products in such competitive territory because of the fact that no such charge is collected at San Francisco, to which port the intercoastal rates are the same as to Los Angeles.

On behalf of petitioners, witnesses also testified to competition on eastbound intercoastal shipments between shippers at San Francisco and shippers at Los Angeles. For example, fish canners at Los Angeles compete with canners at Monterey, Calif., who forward their products through San Francisco. The same prices are customarily quoted f. o. b. steamer at Los Angeles as are quoted f. o. b. steamer at San Francisco, and the shipper from Los Angeles absorbs the 30-cent assembling and distributing charge which its competitor does not have to meet at San Francisco.

In defense of their position that these and other similar instances of record do not constitute unlawful preference and prejudice, respondents have cited the decision of the United States Supreme Court in *United States* v. *Illinois Central R. R.*, 263 U. S. 515, wherein the court said:

> It is true that the law does not attempt to equalize opportunities among localities and that the advantage which comes to a shipper merely as a result of the position of his plant does not constitute an illegal preference. To bring

a difference in rates within the prohibition of Section 3,[8] it must be shown that the discrimination practiced is unjust when measured by the transportation standard. In other words, the difference in rates cannot be held illegal, unless it is shown that it is not justified by the cost of the respective services, by their values, or by other transportation conditions.

The record shows that notwithstanding the distance between Atlantic coast points and San Francisco is substantially greater than that between those points and Los Angeles, San Francisco enjoys the same intercoastal transportation rates as Los Angeles. There is no showing that the carriers incur any expense at Los Angeles or Long Beach not incurred by them at San Francisco. The same wages are paid stevedores at all three ports. A number of the stevedoring contracts submitted in evidence cover San Francisco as well as Los Angeles and Long Beach operations, and show that the rates charged the carriers by the contracting stevedoring companies are the same at each of the three ports. Therefore 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* cited, falls squarely within the type of preference and prejudice which Section 16 of the Shipping Act condemns.

The assessment by respondents of the assembling and distributing charge at Los Angeles and Long Beach is found to give undue and unreasonable preference and advantage to San Francisco and to shippers and receivers of intercoastal cargo through that port and subjects Los Angeles and Long Beach and shippers and receivers of intercoastal cargo through those ports to undue and unreasonable prejudice and disadvantage in violation of Section 16 of the statute.

The second paragraph of Section 15 of the Shipping Act, 1916, provides for the disapproval, cancellation, or modification of any agreement, whether or not previously approved, that is found to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or to be in violation of that act. Paragraph 3 thereof provides that it shall be unlawful to carry out any agreement or any portion thereof so disapproved. For the reasons stated herein, the approval of agreement of respondents for the establishment and maintenance of the assembling and distributing charge under consideration will be withdrawn.

Section 18 of the Shipping Act, 1916, the tariff-filing provisions of which applied to intercoastal carriers at the time this proceeding was instituted, requires the filing of maximum interstate rates, fares, and charges within the time prescribed by the board, and the tariff regulations, as amended, prescribe that time as not later than the day

[8] Of the Act to regulate commerce, which declares unlawful with respect to transportation by rail "any undue or unreasonable preference or advantage" or "any undue or unreasonable prejudice or disadvantage."

on which the transportation to which such maximum rates, fares, and charges relate is begun. On March 6, 1933, the Los Angeles Steamship Association filed with the Board its Terminal Tariff No. X, naming a maximum assembling and distributing charge of 60 cents per ton to apply at Los Angeles and Long Beach on intercoastal commerce to become effective March 10, 1933. Because of defects in the tariff, notably the omission of the names of the carriers by whom or on whose behalf it was filed, the association was notified that its tariff was insufficient to constitute a filing under Section 18 and the tariff regulations. On April 3, 1933, a tariff naming the same maximum assembling and distributing charge at Los Angeles and Long Beach and complying with the requirements was filed by Agent H. C. Cantelow. This tariff, S. B. No. 1, effective that date, was filed on behalf of all respondents except Calmar Steamship Corporation, whose separate Maximum Terminal Tariff No. 1, S. B. No. 5, effective March 24, 1933, had already been filed, naming a maximum assembling and distributing charge of 60 cents per ton at Los Angeles and Long Beach. This carrier first collected an assembling and distributing charge on cargo discharged at Los Angeles from a vessel arriving there on March 31, 1933. Respondents other than Calmar Steamship Corporation collected the assembling and distributing charge between March 10, 1933, and April 3, 1933, without any tariff authority, in violation of law.

The Intercoastal Shipping Act, 1933, was approved March 3, 1933. Section 2 thereof provides in part as follows:

> From and after ninety days following enactment hereof no person shall engage in transportation as a common carrier by water in intercoastal commerce unless and until its schedules as provided by this section have been duly and properly filed and posted; nor shall any common carrier by water in intercoastal commerce charge or demand or collect or receive a greater or less or different compensation for the transportation of passengers or property or for any service in connection therewith than the rates, fares, and/or charges which are specified in its schedules filed with the board and duly posted and in effect at the time; nor shall any such carrier refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified, nor extend or deny to any person any privilege or facility, except in accordance with such schedules.

Eastbound and westbound tariffs of Calmar Steamship Corporation, effective June 1, 1933, filed pursuant to this section, named an assembling and distributing charge of 30 cents per ton applicable only at Los Angeles Harbor. Those of American Line Steamship Corporation (Panama Pacific Line), Isthmian Steamship Company, Argonaut Steamship Line, Inc., Nelson Steamship Company, Pacific-Atlantic Steamship Company (Quaker Line), Luckenbach Steamship Company, Inc., Panama Mail Steamship Company

(Grace Line), Dollar Steamship Lines, Inc., Ltd., McCormick Steamship Company, American-Hawaiian Steamship Company, Williams Steamship Corporation and Sudden & Christenson and Los Angeles Steamship Company (Arrow Line), issued by Agent Thackara, were supplemented by naming an assembling and distributing charge of 30 cents per ton applicable at Los Angeles Harbor, effective June 29, 1933. A like charge applicable at Long Beach on westbound traffic was contained in a supplement to tariffs of the last-mentioned carriers effective July 26, 1933. No tariffs of these carriers filed with the Department pursuant to Section 2 of the Intercoastal Shipping Act, 1933, except those of Calmar Steamship Corporation, name eastbound intercoastal rates from Long Beach. Eastbound tariffs of Swayne & Hoyt, Ltd. (Gulf Pacific Line) and Luckenbach Gulf Steamship Company, Inc., issued by Agent J. P. Williams, were supplemented by naming the charge involved at Los Angeles Harbor effective July 20, 1933. Westbound tariffs of these two carriers, issued by Agent C. Y. Roberts, were similarly supplemented, effective August 1, 1933. Neither the eastbound nor westbound tariffs of these latter carriers name rates from or to Long Beach. Tariffs of Shepard Steamship Company do not name an assembling and distributing charge at Los Angeles Harbor or Long Beach. Its eastbound rates do not apply from Long Beach. All collections of the assembling and distributing charge at Los Angeles Harbor and Long Beach during the periods in which tariffs on file with the Department failed to name such charge are in violation of Section 2 of the Intercoastal Shipping Act, 1933.

Appropriate orders will be entered discontinuing the proceeding in Docket No. 98, withdrawing approval of Agreement No. 2224, and ordering respondents in Docket No. 96 to cancel the assembling and distributing charge on intercoastal cargo at Los Angeles and Long Beach. Such cancellations may be made by tariff publications filed on not less than one day's notice by noting thereon reference to this decision.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 147

WESSEL, DUVAL & CO., INC.
v.
COLOMBIAN STEAMSHIP CO., INC., ET AL.

Submitted March 8, 1935. Decided June 7, 1935

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. Complaint dismissed.

Wood, Molloy & France for complainant.
William F. Cogswell for Grace Line, Inc., and Panama Mail Steamship Co.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

Exceptions were filed by complainant to the report proposed by the examiner, and respondents replied.

Complainant, a corporation, organized on January 1, 1932, under the Laws of the State of New York, is successor to the partnership of Wessel, Duval & Company which had for a number of years operated ships in the trade routes between New York, N. Y., and ports on the west coast of South America, under the trade name West Coast Line. Respondents are common carriers by water and comprise the membership (with the exception of the Panama Railroad Steamship Line, which was not named as a party respondent in this proceeding) of the Atlantic and Gulf/West Coast of South America Conference, a voluntary association to promote southbound commerce from Atlantic and/or Gulf ports of the United States to ports on the west coast of South America, either for direct movement or for transshipment via Cristobal and/or Balboa, Canal Zone, under U. S. Shipping Board Bureau Agreement No. 2744, approved March 9, 1934, and addenda thereto.

Complainant's predecessor was a member of a former conference [1] covering the trade here involved, although it made only four sailings in 1930 and none in 1931, and the complainant corporation continued as a member of that conference although it operated only one ship in the trade during 1932 and none in 1933. Complainant was asked to resign from that conference, and upon its refusal to do so the other members who are respondents in this proceeding resigned and thereafter formed the present conference.

Section 8 of the existing conference agreement provides that—

> Any other common carrier by water engaged in the transportation of cargo in the southbound trade from Atlantic and/or Gulf ports of the United States of America to West Coast ports of Colombia, Ecuador, Peru, and Chile, either for direct movement or for transshipment at Cristobal and/or Balboa, Canal Zone, who shall be willing to be bound by this agreement may apply for membership. Applicants * * * may be admitted by a majority vote of all the members present at a subsequent regular or special meeting * * * provided, however, no such applicant shall be denied admission except for just and reasonable cause.

By letter dated May 1, 1934, complainant advised the conference secretary that it intended to reestablish the service to west coast ports of South America theretofore maintained by the West Coast Line, and asked for admission to membership in the conference, agreeing to the terms and conditions thereof with the understanding, however, that its freight steamers would be given a freight differential of ten (10) percent as against shipments by passenger vessels. In that letter complainant stated its intention to have at least four sailings during the remainder of the year, commencing in late May or early June. This application for membership in the conference with allowance of differential rates was denied by letter to complainant dated May 21, 1934, on the ground that the organic agreement does not provide "for any preferential treatment or discrimination in relation to any member lines."

Complainant alleges, in substance, that the conference agreement here involved is unlawful because it gives a monopoly to respondent Grace Line, Inc., which is the only conference line maintaining a direct service between the ports which the conference assumes to cover; that respondents have unlawfully refused to admit the complainant to the conference with allowance of differential rates for its slow cargo vessels, and that unless complainant is admitted to said conference and allowed a rate differential, it will be barred and prevented from reinstating and carrying on the former West Coast Line service, because shippers signing the conference freight agree-

[1] U. S. Atlantic and Gulf/West Coast of Mexico, Central and South America Conference Agreement, Bureau of Regulation Conference Agreement No. 121, approved February 5, 1929; canceled March 9, 1934, upon approval of Agreement No. 2744.

ment will lose the advantages conferred thereby if they ship by complainant's line. Complainant asks that the said conference agreement be cancelled or, in the alternative, that it be modified by the inclusion therein of a provision for a rate differential in favor of slow cargo vessels maintaining direct service to ports covered by said agreement, and that the respondents be directed to admit the complainant to membership in the conference under such amended agreement.

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 the Department might take in the event a carrier operating such a service should seek admission to the conference. By a modification approved October 1, 1934, the Panama Railroad Steamship Line was added to the conference membership as a transshipment line and a provision was inserted in the agreement that rates on cargo transshipped at the Canal Zone would be ten (10) percent less than those for direct shipment. The record indicates that this action of the conference was due to competition between the Panama Railroad Steamship Line and the other transshipment lines.

Under the prior conference agreement, participated in by the complainant and most of the respondents in this 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 here involved of different rates for the transshipment lines does not necessarily require the establishment of the same or any differential as between vessels affording direct service.

At the time complainant applied for admission to the conference there was no evidence that it was operating a regular service in the trade. There had been two sailings, one in February and one in April of 1934, with vessels placed on the berth by complainant as

agent, but complainant says they were limited to two or three ports and that the service was not actually inaugurated until June 1934. The sailings offered as evidence of the reinstatement of the former West Coast Line service were as follows:

Vessel:	*Sailing date*
Nyhaug	June 18, 1934.
Stella	July 7, 1934.
Nordhval	July 28, 1934.
Stella	Sept. 10, 1934.
Nordlys	Sept. 27, 1934.
Paula	Oct. 15, 1934.

The above-mentioned vessels were all foreign owned and under foreign flag. The *Nyhaug*, *Nordhval*, and *Nordlys* were under time form of charter to complainant for one voyage, and the *Stella* and *Paula* were placed on berth by complainant as agent for J. Lauritzen, the Danish owner. Under the agency agreement, the owner pays the operating expenses and the complainant, as agent for the southbound voyage, arranges the berths, fixes the rates, books the cargo and accounts to the owner for the freight revenue. This agency agreement is terminable at the option of the owner, so that complainant has no assurance of being able to furnish any future service with vessels from this source.

Complainant does not own any vessels but its witness testified at the hearing that it had four foreign flag vessels under time form of charter for one voyage each and that it expected to furnish at least one sailing a month with these or other vessels under similar form of charter, supplemented from time to time by vessels placed on berth as agent. Complainant has not shown that it is equipped to furnish any service in this trade beyond the four sailings which it expected to provide with the four vessels under time form of charter for one voyage each as noted above.

In support of its demand for a ten (10) percent differential in rates, complainant shows that: At the Panama Canal passenger vessels have preference over cargo vessels, irrespective of the time of arrival, "under certain circumstances"; at all the ports along the west coast of South America passenger vessels are received by the authorities in preference to freight vessels and passenger vessels also have preference in the assignment of lighters to discharge cargo; and the insurance rate for regular passenger vessels is from twenty to forty percent lower than the rate for freighters. Granting that such handicaps might reasonably influence or compel the operator of cargo vessels to maintain rates lower than those of other lines operating faster passenger vessels in order to successfully compete with such other lines, complainant has not demonstrated that ten (10) percent would be a proper differential in any case, and no legal

basis has been established to support a finding by this Department that any vessels operated or to be operated by complainant are entitled to a ten (10) percent differential or, in fact, any differential.

Complainant bases its demand for differential rates, in part, on the difference in time of transit between the slow cargo vessel and the faster passenger vessel, and offers as supporting evidence the record of four southbound voyages completed during the year 1934. Valparaiso, Chile, was a port of call for all four sailings but the intermediate ports of call were varied. The elapsed time to common ports of call was different in practically every instance and no proper basis for fixing differential rates could be established by comparison with the elapsed time of passenger vessels operated on a regular schedule. Furthermore, there is no assurance that the same vessels will be used by complainant in the contemplated service. The elapsed time of the vessels used will vary according to the speed of the vessels operated, the number of ports of call and the time spent at each port. Beyond the four voyages for which complainant had vessels under time charter, it is not known what vessels complainant will use and the vessel speed is, therefore, an unknown factor. The other factors mentioned will be subject to change in accordance with the requirements of each particular voyage.

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 six 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.

The Department finds that the Atlantic and Gulf/West Coast of South America conference agreement of respondents is not shown to be unlawful; and that an order by the Department requiring respondents to admit complainant to membership in the conference with a rate differential is not justified. An order dismissing the complaint will be entered.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 153

EDMOND WEIL, INC.
v.
ITALIAN LINE, "ITALIA" (FLOTTE RIUNITE COSULICH, LLOYD SABAUDO, NAVIGAZIONE GENERALE)

Submitted April 12, 1935. Decided June 8, 1935

Respondent's eastbound rate on goatskins not shown to be violative of sections 14, 14a, 15, 16, 17, or 18 of the Shipping Act, 1916, as alleged. Complaint dismissed.

Charles A. Weil for complainant.
William J. Dean for respondent.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

Exceptions were filed by complainant to the examiner's proposed report.

Complainant, a corporation, is engaged at New York City in importing and exporting hides and skins. Respondent is a common carrier engaged in transportation by water between New York and Italy.

On a returned shipment of five bales of dry goatskins moving August 18, 1934, on respondent's vessel *Rex* from New York to Naples, Italy, freight charges of $70.35, at the rate of 41¢ per cubic foot, were prepaid by complainant, although on the same shipment arriving at New York on respondent's vessel *Conte di Savoia* on July 4, 1934, from Naples, freight charges of $39.44 had been prepaid at the alleged rate of $21.75 per 1,000 kilos. Complainant alleges that by collecting a rate for the eastbound transportation of a re-

turned shipment which is higher than that for the original westbound transportation, "respondent unjustly and arbitrarily discriminates against complainant, shippers, exporters, importers, the goatskin trade, and the port of New York; violates provisions of law relative to unfair practice; is unjustly discriminatory and/or unfair to complainant as between shippers, exporters, importers, and/or between exporters from the United States and their foreign competitors, operating to the detriment of the commerce of the United States; gives undue and unreasonable preferences to the undue and unreasonable prejudice or disadvantage of complainant, the goatskin trade, the port of New York, and exporters in general of the United States, and violates custom and usage which have the force of law; illegally restrains trade; and further alleges that the rate complained of is unjust and unreasonable and in other respects violates sections 14, 14a, 15, 16, 17, and 18 under the Shipping Act, 1916." The Department is asked to effect discontinuance of the alleged violations and to award reparation.

Respondent is a member of the North Atlantic/West Coast of Italy Conference, an association of carriers operating vessels from North Atlantic ports of the United States to ports on the west coast of Italy, which functions under an agreement approved pursuant to section 15 of the Shipping Act, 1916. Rates for eastbound transportation, together with rules governing their application, are contained in a tariff issued by the conference and are binding upon all members. One of such rules provides:

RETURNED GOODS. Rates as per tariff to be applied.

and is testified to have uniform application to movements of returned goods. It is not disputed that the 41-cent rate charged was the rate in the tariff applicable to goatskins which respondent was under obligation to charge and collect.

Complainant asserts that on foreign goods returned to original port of shipment, other steamship lines apply the same rate for the return movement as had been charged by them for transportation to the United States. Two instances in which complainant paid inward rates to other carriers on returned shipments were shown but neither involved shipments from or to Italian ports. 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.

According to complainant, New York City is probably the most important goatskin center in the world, large lots being sent there

on consignment from Brazil, Mexico, and China and either utilized in the United States or shipped to other countries wherever there may be a call for them. Respondent's rate from New York to Italy is testified to be in excess of that to Continental ports such as Havre, Antwerp, and Rotterdam. In the words of the president of the complainant "different types of skins that come into New York might very conceivably go to Italy, were it not for the fact that the charges and freight rates are so exorbitant as to prevent it and compel these goods to go from Mexico and South American ports to Europe, either directly or indirectly, or give the buyers in France, Belgium, and Germany an advantage in bidding for the goods that might from time to time go to Italy." This witness also testified that he was "not saying that the Italian Line charges us more than they charge anybody else, but I do say that the Italian Line charges us a rate which shuts us out and shuts the port of New York out from doing business in Italy, as a result of which such business on skins going to Italy as may be done is done through some other port, either directly from South America or Central America to Italy, or via Havre, Bordeaux, or some other ports in Europe." Complainant's position is that respondent, by charging an eastbound rate which is higher than its westbound rate, prefers the merchants doing business in Havre, Bordeaux, Antwerp, and other European ports to the disadvantage of complainant, although to the knowledge of complaining witness the Italian Line does not serve those ports, and there is no evidence that the Italian Line operates from South or Central America or from Mexico to Italy. No evidence was produced by complainant of the rates of any carrier operating from Mexico, Central, or South America to Italy, or of the rates of any carrier operating either from those countries or from New York to European ports at which goatskins may be transshipped to Italian destinations, or that if respondent's rate from New York to Italy were the same as the westbound rate, shippers from the United States would be in a competitive position with shippers from Mexico, Central America, or South America or that the eastbound rate of respondent is unjustly prejudicial to exporters of the United States as compared with their foreign competitors. Nor is there any 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.

Respondent's witness testified that in making rates consideration is given to the weight, measurement, and value of the package, competitive conditions, the kind of service required, and the very important factor of volume of traffic. The greater the volume the

more likely the rate will be a lower rate per unit. The movement of goatskins from the United States to Italy is described as relatively small compared with the movement from Italy to the United States, and the traffic manager of respondent refers to this condition as the reason for a difference between westbound and eastbound rates. To the recollection of this witness, during the entire year 1934, his line carried no goatskins from New York to Italy other than the shipment of complainant under discussion, and he did not remember ever having been asked before for a rate on such skins to Italy. Substantiating this is the testimony on behalf of complainant that there are relatively few American goatskins, and the returned shipment of August 18, 1934, was the only shipment complainant ever made from New York to Italy which its traffic representative could recall. When making eastbound rates no consideration has ever been given to the effect upon the trade in goatskins with Italy that would result from a more favorable freight rate, because there has never been any request made for space for any quantity of goatskins. Questioned whether he could say definitely that a more substantial volume of goatskins would be offered by complainant and others for transportation if the eastbound rate of the Italian Line were lowered, complainant's president replied: "I would say, given equal conditions, 'yes.' That is dependent entirely upon market conditions, but I think with a market available I would say there would be from time to time a fair movement of goods to Italy, where there is a large glove industry already in existence and developing, and where there is a very large leather industry being fostered." Of bearing in this relation is the statement of respondent's traffic manager that "if the shipper can at any time put anything of interest before us, it will be considered fairly."

The record shows no undue or unreasonable prejudice or disadvantage to complainant under section 16 or any unjust discrimination under section 17 of the Shipping Act on its shipment to Italy as it was charged the tariff rate required to be exacted of all shippers.

The complaint also alleges a violation of section 18 of the Shipping Act, but that section does not cover foreign commerce. In this instance, however, 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 this 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. The shipment on which reparation is sought in this

proceeding, however, was an isolated one, and there is no evidence to justify a conclusion that the present rate is preventing tonnage from moving. 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. The carriers have indicated their willingness to consider a reduction in the rate if the complainant or any one 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.

No testimony was offered in support of the alleged violations by respondent of sections 14 and 14a relative to deferred rebates, fighting ships, retaliation against shippers, unfair or unjustly dicriminatory contracts, or unfair treatment of shippers.

The Department finds that no violation of the Shipping Act, as alleged, has been established. An order dismissing the complaint will be entered.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 126[1]

INTERCOASTAL INVESTIGATION, 1935

Submitted May 25, 1935. Decided July 3, 1935

1. Respondents' tariffs fail to show plainly the places between which freight is carried; or to name all rates and charges for or in connection with transportation between intercoastal points on their own routes, or between intercoastal points on their own routes and points on the routes of other carriers by water with which they have 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 rates or charges, or the aggregate of such rates or charges, or the value of the service rendered to consignors or consignees, in violation of section 2 of Intercoastal Shipping Act, 1933, and each respondent required to amend its tariffs in the manner indicated.
2. Performance by respondents formerly members of United States Intercoastal Conference, Calmar Steamship Corporation, and Shepard Steamship Company of certain services for or in connection with intercoastal transportation without proper tariff authority; or their failure to collect tariff charges for certain such services, found to be in violation of section 2 of Intercoastal Shipping Act, 1933.
3. Practice of Shepard Steamship Company to name tariff rates and charges lower by fixed percentages than those of its competitors for like intercoastal transportation results in undue and unreasonable advantage to it, undue and unreasonable prejudice and disadvantage to its competitors, and is unjust and unreasonable, in violation of sections 16 and 18 of Shipping Act, 1916, and respondent required to cease and desist from such unlawful practice.
4. Establishment and maintenance by respondents formerly members of United States Intercoastal Conference, Calmar Steamship Corporation, and Shepard Steamship Company of uniform rates and charges for inter-

[1] This report includes Nos. 114, *Luckenbach Steamship Company, Inc.* v. *Calmar Steamship Corporation;* 119, *Howard Terminal et al.* v. *same;* 121, *American-Hawaiian Steamship Company et al. v. same;* 152, (*Arrow Line*) *Sudden and Christenson et al. v. Shepard Steamship Company; and* 154, *American-Hawaiian Steamship Company et al.* v. *same.*

coastal transportation between points on the Atlantic Coast and points on the Pacific Coast found to be in the public interest. Suggestions to obtain rate stability made.

5. "Through routes" and "through rates" defined, and all common carriers by water parties thereto for intercoastal transportation required to file proper tariffs with the department.
6. Rates and charges for intercoastal transportation from and to Sacramento, Cal., not shown to be unreasonable, unduly preferential or prejudicial, or otherwise unlawful, and complaint in No. 119 dismissed.
7. So-caled port equalization rules contained in tariffs of respondents formerly members of United States Intercoastal Conference, Calmar Steamship Corporation, and Shepard Steamship Company are unlawful in violation of section 2 of Intercoastal Shiping Act, 1933, and should be cancelled.
8. Filing of rates and charges between intercoastal points as to which no transportation service is maintained not required by law, and should be cancelled.
9. Practice of members of Gulf Intercoastal Conference to exact higher rates and charges from shippers who have not executed rate contracts than from shippers who have done so, for like intercoastal transportation, found unlawful in violation of sections 16 and 18 of Shipping Act, 1916, and respondents required to cease and desist from said unlawful practice.
10. Contract rate systems of Calmar Steamship Corporation and Shepard Steamship Company found in violation of section 2 of Intercoastal Shipping Act, 1933, and sections 16 and 18 of Shipping Act, 1916, and respondents required to cease and desist from said violations of law.
11. "Contract carriers" defined and all such carriers by water engaging in intercoastal commerce required to file proper tariffs with the department.

Roscoe H. Hupper, *R. C. Thackara*, *Frank Lyon*, *T. F. Lynch*, *R. F. Burley*, *T. S. Burton*, *Oliver P. Caldwell*, *John W. Chapman*, *W. F. Cogswell*, *G. A. Dundon*, *James A. Farrell, Jr.*, *R. A. Lauckhardt*, *F. W. S. Locke*, *Edward B. Long*, *Godfrey MacDonald*, *Walter S. McPherson*, *A. J. Mouris*, *R. A. Nicol*, *W. W. Nottingham*, *W. P. Rudrow*, *J. F. Schumacher*, *Luke D. Stapleton, Jr.*, *J. C. Strittmatter*, and *Donald Watson* for carriers formerly members of United States Intercoastal Conference and States Steamship Company.

R. T. Mount, *W. H. Warley*, and *F. A. Bull* for Calmar Steamship Corporation; *Harold S. Deming*, *Otis N. Shepard*, and *A. L. Burbank* for Shepard Steamship Company.

Elisha Hanson, *Frank Lyon*, *C. W. Cook*, *E. Holzborn*, and *C. Y. Roberts* for carriers members of Gulf Intercoastal Conference.

R. J. Acheson for Border Line Transportation Company and Puget Sound Navigation Company; *C. H. Carlander* and *F. E. Lovejoy* for Puget Sound Freight Lines; *A. Grimison* for Skagit River Navigation & Trading Company; *G. H. Baker* and *H. M. Wade* for California Inland Water Carriers' Conference; *Frank V. Barns* for Atlantic & Great Lakes Steamship Corporation; *C. E. Becker*, *Lawrence Chaffe*, *H. J. Niemann*, and *W. G. Oliphant* for Inland Waterways Corporation; *M. W. Howe* for Mississippi Valley Barge Line

Company; *W. L. Bird* and *C. B. Kellogg* for Munson Steamship Line; *F. Riker Clark* for American Foreign Steamship Corporation; *T. J. Kehoe* for Pacific Steamship Lines, Ltd.; *T. H. Kidd* for South Atlantic Steamship Line; *F. J. Larkin* for Larkin Transportation Company; *L. J. McKim* and *J. C. Stone* for The California Transportation Company, Sacramento Navigation Company, and Fay Transportation Company; *C. L. Meek* and *Arthur B. Wellington* for Bay Cities Transportation Company and Erikson Navigation Company; *Melville J. Mendel* for Respess Transport Corporation; *John J. Seid* for Crown Zellerbach Corporation and Western Transportation Company; *D. G. Sissons* for California Steamship Company and Los Angeles Steamship Company; and *E. Holzborn* for Coast Transportation Company.

Wilbur LaRoe, Jr., *Randolph Paul*, and *Herbert A. Tighe* for The Union Sulphur Company.

Fayette B. Dow, *Harry S. Elkins*, *Allan P. Matthew*, *John O. Moran*, and *T. G. Differding* for Howard Terminal, Encinal Terminals, and Parr-Richmond Terminal Corporation; *Markell C. Baer* and *Robert M. Ford* for Port of Oakland; *Edwin G. Wilcox* for Oakland Chamber of Commerce; *Hal Remington* for San Francisco Chamber of Commerce; *B. C. Allin* for Stockton Port District; *H. E. Manghum* and *W. G. Stone* for Sacramento Chamber of Commerce; *Hugh R. Bradford* for City of Sacramento; and *Ralph H. Cowing* for County of Sacramento, Calif.

J. C. Albert, *B. M. Angell*, *M. M. Ansley*, *C. D. Arnold*, *J. M. Arnold*, *A. J. Bacon*, *K. L. Baird*, *Gustave Breaux*, *Fred R. Brown*, *W. H. Brusche*, *F. A. Burke*, *B. H. Carmichael*, *Philip H. Carroll*, *Alfred H. Caterson, Jr.*, *Frank M. Chandler*, *M. A. Clark*, *E. M. Cole*, *W. H. Connell*, *Allen R. Cornelius*, *Geo. B. Cromwell*, *T. C. Crouch*, *Frank S. Davis*, *R. A. Ellison*, *W. Elstrott*, *Charles J. Fagg*, *C. S. Foster*, *W. B. Fox*, *H. M. Frazer*, *S. P. Gaillard, Jr.*, *Carl Giessow*, *Wm. H. Gilbert, Jr.*, *Benjamin S. Greenfield*, *Ernest Gribble*, *Geo. O. Griffith*, *E. K. Heap*, *Walter P. Hedden*, *H. R. Higgins*, *C. L. Hilleary*, *J. K. Hiltner*, *R. F. Hobby*, *P. L. Hollingsworth*, *R. H. Horton*, *Geo. T. Jenkisson*, *R. C. Johnston*, *Wilbur LaRoe, Jr.*, *Clyde M. Leach*, *A. G. Linnemann*, *F. W. S. Locke*, *Wm. A. Lockyer*, *R. D. Lytle*, *M. J. McCarthy*, *Walter W. McCoubrey*, *Wm. McCuen*, *E. W. McKay*, *M. J. McMahon*, *H. E. Manghum*, *Mason Manghum*, *F. W. Manson*, *A. V. Mattingly*, *J. F. Meyer*, *A. E. Mockler*, *W. M. Moor*, *Cecil A. Morse*, *Edgar Moulton*, *John D. Mummert*, *C. S. Nelson*, *Rex M. Nielson*, *Frank A. Parker*, *N. O. Pedrick*, *G. H. Pouder*, *W. F. Price*, *C. F. Reynolds*, *A. J. Ribe*, *Frank Rich*, *H. G. Schad*, *Joseph Scott*, *Chas. R. Seal*, *E. G. Siedle*, *Jas. A. Shirras*, *Chas. A. Skeen*, *C. M. Smith*, *Stuart J. Steers*, *Rene A. Stiegler*, *A. C. Teal*, *W. C.*

Thies, *Osborn Van Brunt*, *A. F. Vandegrift*, *H. J. Wagner*, *W. D. Hall*, *F. E. Wallace*, *Dabney T. Waring*, *Carl A. Welsh*, *J. R. West*, *Arthur T. White*, *A. J. Whitman*, *S. H. Williams*, *E. E. Williamson*, *H. W. Wills* and *Alex Zeeve* for shippers, receivers, terminals, rail carriers, and civic and commercial organizations.

REPORT OF THE DEPARTMENT

This proceeding, instituted by the department upon representations that common carriers by water in intercoastal commerce are not fully complying with the provisions of law, is an investigation into and concerning the lawfulness of the practices, services, and charges of such carriers relating to or concerning (a) classification of vessels or lines for rate-making purposes and resulting rate differences; (b) pooling of revenues and effect thereof on rates; (c) receipt, handling, storing, and delivery of property at terminals within port districts; (d) holding out to perform transportation services, or services in connection therewith, by themselves when such services are, in whole or in part, performed by another carrier, and absorptions of the charges of such other carriers; (e) performance of transportation services, or services in connection therewith, in an agency or other capacity allegedly to be other than as common carriers by water in intercoastal commerce as such term is defined in the Intercoastal Shipping Act, 1933; (f) extension of their services to additional ports and rates to and from such additional ports; (g) removal, in whole or in part, of differences in the aggregate of rail and water rates and other charges through different ports; (h) performance of transportation services, or services in connection therewith, without proper tariff authority; (i) nonperformance of services which by proper tariff provisions or otherwise they hold themselves out to perform; (j) observance of the rates, classifications, rules, and regulations contained in tariffs properly filed with the department; (k) performance of transportation services, or services in connection therewith, under private contracts with shippers; and (l) competition between members of the Gulf Intercoastal Conference and the United States Intercoastal Conference.

All common carriers by water parties to tariffs on file with the department naming rates for transportation of property in intercoastal commerce were made respondents [2] in the proceeding. Pub-

[2] Alameda Transportation Company; American Foreign Steamship Corporation; American-Hawaiian Steamship Company; American Line Steamship Corporation (Panama Pacific Line); American Tankers Corporation; Argonaut Steamship Line, Inc.; Atlantic & Great Lakes Steamship Corporation; Baltimore and Carolina Line, Inc.; Bay Cities Transportation Company; Border Line Transportation Company; California Steamship Company; The California Transportation Company; Calmar Steamship Corporation; Chamberlin Steamship Company, Ltd.; Coast Transportation Company, Inc.; Crowley

lic hearings were held in New York, N. Y., San Francisco, Cal., and New Orleans, La. Testimony was given by many witnesses, including representatives of respondents, shippers, manufacturers, terminal companies, port authorities, chambers of commerce, and traffic associations. The records in Nos. 114, 119, 131, 139, 141, 144, 148, 152, 154, 161, and 162 involving related subjects are stipulated into the record. The evidence, which includes returns to questionnaires calling for financial and statistical information not practicable of development in oral form, has been generally frank and full and the record fairly presents the existing situation as to each of the subjects of investigation. Information was also developed of record regarding the chartering of vessels to shippers for the intercoastal transportation of property.

GENERAL SITUATION

The term "common carrier by water in intercoastal commerce" as used in the Intercoastal Shipping Act, 1933, includes every common and contract carrier by water engaged in the transportation for hire of property between one state of the United States and any other state of the United States by way of the Panama Canal. Although transportation by water between points on the Atlantic and points on the Pacific coasts of the United States is not of recent origin, intercoastal commerce as known at present owes its development to the building of the Panama Canal. However, not until after a large fleet built by the government during the war period was made available to private operators in 1920, and a subsequent decrease in foreign commerce, did vessels in large number enter and remain in the intercoastal trade. The table below shows the num-

Launch & Tugboat Company; Dollar Steamship Lines Inc., Ltd.; Erikson Navigation Company; Fay Transportation Company; Gulf Pacific Mail Line, Ltd.; Hammond Shipping Company, Ltd. (Christenson-Hammond Line); The Harkins Transportation Company; W. E. Hedger Transportation Co.; Hosford Transportation Company; Inland Waterways Corporation; Isthmian Steamship Company; Larkin Transportation Company; Los Angeles-Long Beach Despatch Line; Los Angeles-San Francisco Navigation Company, Ltd.; Los Angeles Steamship Company; Luckenbach Gulf Steamship Company, Inc.; Luckenbach Steamship Company, Inc.; McCormick Steamship Company; Merchants & Miners Transportation Company; Mississippi Valley Barge Line Company; Mobjack Bay Line; Munson Steamship Line; Napa Transportation & Navigation Company; National Motorship Corporation; Nelson Steamship Company; Pacific Atlantic Steamship Company (Quaker Line); Pacific Coast Direct Line, Inc.; Pacific Steamship Line, Ltd. (The Admiral Line); Panama Mail Steamship Company (Grace Line); Puget Sound Freight Lines; Puget Sound Navigation Company; E. V. Rideout Company; Richmond Navigation & Imp. Company; Sacramento Navigation Company; San Diego-San Francisco Steamship Company; Seaboard-Great Lakes Corporation; Shaver Forwarding Company; Shepard Steamship Company (Shepard Line); Skagit River Navigation & Trading Company; South Coast Steamship Company; States Steamship Company; Sudden & Christenson (Arrow Line); Sudden Steamship Company; Swayne & Hoyt, Ltd. (Gulf Pacific Line); The Union Sulphur Company; Weyerhaeuser Steamship Company; Williams Steamship Corporation.

ber of vessels and their deadweight tonnage operated or available for operation in the intercoastal trade at July 12, 1934, by American-Hawaiian Steamship Company [3] and other respondents which maintain direct service between points on the Atlantic Coast or Gulf of Mexico and points on the Pacific Coast. It does not include vessels of on-carriers, that is, respondents interchanging freight in intercoastal commerce but the vessels of which do not go through the Panama Canal.

Name	Number of vessels	Aggregate dead-weight tonnage	Name	Number of vessels	Aggregate dead-weight tonnage
American-Hawaiian	22	207,032	Nelson	14	86,904
Panama Pacific	5	79,440	Quaker	17	153,798
Argonaut	8	74,646	Pacific Coast Direct	4	47,000
Calmar	12	109,114	Grace	8	51,490
Dollar	16	207,100	Shepard	4	34,781
Gulf Pacific	10	66,890	Arrow	6	51,682
Gulf Pacific Mail	4	25,968	Weyerhaeuser	4	47,000
Isthmian	28	265,589	Williams	7	67,763
Luckenbach Gulf	6	60,968			
Luckenbach	22	253,635	Total	204	1,855,402
McCormick	7	64,602			

Pacific Coast Direct only operates westbound and Weyerhaeuser in the opposite direction. The 4 vessels operated by one westbound are the same vessels operated by the other eastbound. This reduces the total number of vessels shown in the table to 200 and the aggregate dead-weight tonnage to 1,808,402. Two of the vessels of American-Hawaiian are motorships.

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, as hereinafter will be shown, in their struggle for traffic respondents have gone beyond the limits permitted by law. This investigation was instituted with a view to making such corrections as might be deemed desirable.

[3] Hereafter called American-Hawaiian. Other shortened terms in this report are Panama Pacific for American Line Steamship Corporation; Argonaut for Argonaut Steamship Line, Inc.; Calmar for Calmar Steamship Corporation; Dollar for Dollar Steamship Lines Inc., Ltd.; Gulf Pacific for Swayne & Hoyt, Ltd.; Gulf Pacific Mail for Gulf Pacific Mail Line, Ltd.; Isthmian for Isthmian Steamship Company; Luckenbach Gulf for Luckenback Gulf Steamship Company, Inc.; Luckenbach for Luckenbach Steamship Company, Inc.; McCormick for McCormick Steamship Company; Nelson for Nelson Steamship Company; Quaker for Pacific-Atlantic Steamship Co.; Pacific Coast Direct for Pacific Coast Direct Line, Inc.; Grace for Panama Mail Steamship Company; Shepard for Shepard Steamship Company; Arrow for Sudden & Christenson; Weyerhaeuser for Weyerhaeuser Steamship Company; and Williams for Williams Steamship Corporation.

When the intercoastal trade assumed larger proportions, to stop if possible the existing demoralization and to obtain some degree of stability in the rates, much demanded by shippers and carriers alike, some of the principal carriers in the trade voluntarily associated themselves in two groups or conferences, permitted by section 15 of the Shipping Act, 1916. These groups seem to have followed geographical lines. One, known as United States Intercoastal Conference, was organized in 1920 by carriers operating between Atlantic and Pacific coast points. The other, known as Gulf Intercoastal Conference, was organized about 1923 by carriers operating between Gulf of Mexico and Pacific Coast points.

United States Intercoastal Conference.—The troubles besetting this conference were always deep-rooted and the conference never attained much success. The invariable results were collapses of the conference followed by severe rate wars, heavy losses, uncertainty on the part of shippers as to what their competitors were being charged, a repetition of the process of organizing the conference to fall apart in a short time. A brief history of this conference is contained in *Intercoastal Rates of Nelson Steamship Company*, 1 U. S. S. B. B. 326, 328, decided November 27, 1934. It is there said:

> Water transportation between Atlantic and Pacific Coast points is characterized by carrier competition increasing in bitterness and intensity. The conference, intended as a stabilizer of rates, was never able to enroll or keep within its fold all the carriers operating in this trade and otherwise it did not have a happy existence. It was organized on August 5, 1920, and functioned until June 1922. This period was followed by a severe rate war lasting until the conference was again organized on August 1, 1923. From that date it continued, as stated by a witness, "in a somewhat hit-and-miss fashion" until July 31, 1927. Reorganized on August 1, 1927, it fell apart on February 13, 1931, when a "pretty savage" rate war ensued during which each line made its own "quotations." Organized once more it functioned for only seven months, or from March 1 to September 30, 1932. A new agreement became effective on October 1, 1932, and in modified form the conference continued from time to time until last disbanded on July 31, 1934.

The conference has not been reorganized. A notable characteristic of the various agreements governing this conference was that they generally were for specific periods of short duration. At the time the conference disbanded on July 31, 1934, its membership consisted of American-Hawaiian, Panama Pacific, Argonaut, Dollar, Isthmian, Luckenbach, McCormick, Nelson, Quaker, Grace, Arrow, Williams, Pacific Coast Direct, and Weyerhaeuser. The last two lines were treated as one member. It did not include States Steam-

ship Company, a new line in this trade, Shepard or Calmar. Classification of lines for rate purposes, pooling of revenues, and port equalization were features of the conference worthy of note. These matters will be dealt with more fully hereinafter.

Gulf Intercoastal Conference.—The history of this conference is not very clear. It seems that Pacific Caribbean Gulf Line was the first to operate in the Gulf-Pacific Branch of the intercoastal trade. It commenced operations about August 1920. American-Hawaiian followed shortly thereafter but for a brief period. Luckenbach, in 1921, was the next line to enter that service. Contemporaneously Luckenbach was a member of United States Intercoastal Conference and cooperated with Pacific Caribbean Gulf Line to maintain from and to the Gulf approximately the rate level maintained by that conference. This situation existed until the two lines organized the Gulf Intercoastal Conference about August 1923. The unsettled rate situation existing in the Atlantic-Pacific branch of the intercoastal trade made itself felt in the Gulf, and for that reason and others of its own the Gulf conference collapsed about April 1925. This collapse was followed by chaotic rate conditions lasting until the conference was again organized by agreement of August 15, 1927, between Gulf Pacific, successor to Pacific Caribbean Gulf Line, Luckenbach, Redwood Steamship Company and Transmarine Corporation. The withdrawal of Redwood Steamship Company on March 1, 1928, and its subsequent "rate cutting tactics" brought about the second collapse of the conference. The record shows that thereupon "a very vicious rate war resulted which greatly depleted the treasuries of all the four lines operating in the trade." This rate war continued until February 8, 1929, when the conference was again organized by all the carriers except Redwood Steamship Company. The organic agreement was amended on September 27, 1929, so as to permit the withdrawal of Luckenbach and the membership in the conference of Luckenbach Gulf. Transmarine Corporation ceased operations late in January or early in February 1930. On October 29, 1930, Redwood Steamship Company again entered the conference. Shortly thereafter that line was taken over by Gulf Pacific. This is said to have put a stop to the general rate cutting practices in the Gulf. The agreement was further amended on April 16, 1932, so as to permit admission of Gulf Pacific Mail in the conference. Thus constituted by Gulf Pacific, Luckenbach Gulf, and Gulf Pacific Mail but under a new agreement filed with the department on January 22, 1934, amended February 20, 1934, the conference has continued in existence. Gulf Pacific Mail has no vote in the conference. It operates under a mail contract, Route No. 55 from Seattle, Wash., to Tampico, Mexico. Its vessels return to

Pacific Coast under charter to Gulf Pacific. Unlike carriers in the United States Intercoastal Conference, carriers in the Gulf conference have always maintained uniform rates, have never provided for pooling of their revenues, nor for port equalization. Some time ago Gulf Pacific and Luckenbach entered into an agreement whereby the sailings of the two lines are staggered and thus maintain coordinated weekly service from the principal Gulf ports.

The various subjects of the investigation and the chartering of vessels to shippers for the intercoastal transportation of property will now be taken up in the order stated. The complaint and answer cases included in this report relate to some of the subjects of the investigation and each will be disposed of with the subject to which it relates.

(*a*) *Classification of vessels or lines for rate-making purposes and resulting rate differences*

Nos. 152 and 154

This subject pertains only to respondents operating in the Atlantic-Pacific branch of the intercoastal trade. Hearings in this case commenced on February 26, 1934. The conference was dissolved on July 31, 1934, and additional evidence was received of record on this subject at hearings held subsequent to the dissolution of the conference. The complaints in Nos. 152 and 154 were heard together on November 16, 1934, and that record was stipulated into the record here.

Prior to the enactment of the Intercoastal Shipping Act, 1933, carriers operating between points on the Atlantic and points on the Pacific coasts via The Panama Canal were only required to file their maximum rates. Whether such rates were the same over the various lines is of no interest, for the carriers never observed them. What is of interest is that because of larger volume of traffic moving eastbound than west-bound no controversy has ever arisen between carriers on east-bound traffic, that on west-bound traffic the tariffs filed under the Shipping Act, 1916, named rates considerably higher than those charged the shippers, that as hereinafter indicated, the rates charged the shippers have not always been the same over the various lines, and that the many collapses of the conference and rate wars so freely engaged in by the carriers resulted from their failure to reach a satisfactory understanding in respect of west-bound rates.

On west-bound traffic tariffs naming uniform rates were maintained by carriers members of the conference from August 5, 1920, until June 1922. This conference period was followed by a severe rate war that lasted until the conference was again organized on

August 1, 1923. The conference then functioned until July 31, 1927, and during this period carriers operating vessels not more frequently than once every 14 days, designated class "B" lines, charged on all commodities, except iron or steel articles, 5 percent, maximum 7.5 cents per 100 pounds, less than the other members of the conference, designated class "A." The conference was again organized on August 1, 1927, and from this date until its collapse on February 13, 1931, tariffs naming uniform rates were maintained by all carriers except on certain commodities as to which the "A" lines charged 5 cents per 100 pounds more than the "B" lines. As hereinbefore shown, the collapse of the conference was followed by a "pretty savage" rate war during which each line made its own "quotations." Some of the lines had executed rate contracts with shippers. The conference as reorganized on March 1, 1932, functioned but for 7 months, or until September 30, 1932. This conference period was as notable as it was brief. From the agreement then in force it appears that the "B" line contract rates in effect February 1, 1931, or the tariff rates where no contract rates existed, became the basis for the tariffs adopted by the conference carriers. It was also during this period that for the first time the conference recognized a carrier claiming itself entitled to charge rates lower than the "B" line rates. That carrier was Shepard and according to the conference agreement became a "C" line. The following is taken from the agreement in question:

FIFTH. (a) All lines agree to abide by tariffs east-bound and west-bound to be immediately published and made effective March 1, 1932, in which tariff carload rates shall be fixed at "B" line contract rates in effect February 1, 1931, or tariff rates where no contract rates existed.

* * * * * * *

SEVENTH. Lines sailing not more frequently than every fourteen days with advertised transit time of twenty-one days from north of Hatteras and twenty days from Hampton Roads shall be considered as "B" lines and shall quote "B" line rates.

* * * * * * *

EIGHTH. Lines sailing not more frequently than an average of 22-day intervals, with the same transit restrictions as provided in Paragraph Seventh, shall be considered as "C" lines and shall be permitted to quote:

5 percent under "B" lines up to and including items rated at 40 cents, exception iron and steel.

7½ percent under "B" lines on items over 40 cents with a limit of 15 cents per 100 lbs., excepting iron and steel; * * *.

NINTH. Lines not falling within the description stated in either Paragraph Seventh or Paragraph Eighth shall be considered as "A" lines and on items stated in amended handicap list of which copy is appended hereto and made a part hereof, said lines shall quote rates 50 cents per ton higher than the rates quoted by the "B" lines under Paragraph Seventh hereof, on such items; Quaker Line to quote same rates as "A" lines from Delaware River ports.

The record makes it clear that after considerable trading Shepard was admitted in the conference at its own terms to prevent it from naming rates much lower than those it was willing to name as a member of the conference. The collapse of the conference as reorganized on March 1, 1932, was precipitated by the fact that three weeks thereafter practically all the "B" lines reduced their sailings and became "C" lines under the terms of the agreement.

The conference as reorganized on October 1, 1932, consisted only of "A" and "B" lines. "B" lines were those sailing not more frequently than an average of 10 days with advertised transit time of 21 days from last loading port north of Cape Hatteras, or 20 days from Hampton Roads, to the first port of discharge on the Pacific Coast. All others were "A" lines. Following the custom of the trade, tariffs naming uniform rates were adopted by the "A" and "B" lines on east-bound traffic. On west-bound traffic the "B" lines charged, and still charge, 2.5 cents per 100 pounds on both carload and less-than-carload lots less than the "A" lines on commodities included in the so-called handicap list, which is said to represent approximately 15 percent of the tariff items.

The tariffs naming westbound rates filed by Calmar in compliance with the filing requirements of the Intercoastal Shipping Act, 1933, were made 10 percent below what it at the time supposed the conference "A" line rates would be. Calmar had executed contracts with shippers as to some of its rates. The lawfulness of its contract rate system is in issue in No. 121. Subsequent to the filing of tariffs under the statute mentioned an understanding was reached whereby Calmar would increase its noncontract rates to the level of the "B" rates and the conference members, if they so desired, would reduce their rates to meet the Calmar contract rates. This understanding was being carried out when the conference disbanded on July 31, 1934. At present the level of the westbound and eastbound rates of Calmar approximates that of the "B" line rates.

To raise revenue for a pool provided by the agreement governing the conference as reorganized on October 1, 1932, the conference carriers imposed a surcharge of 3 percent over the prevailing eastbound and westbound rates except on refrigerator cargo, baggage, and passenger automobiles. A similar surcharge was contemporaneously imposed by Shepard over its rates, thus maintaining the existing uniformity on the eastbound rates. Effective March 21, 1934, the conference rates were increased by 3 percent and the surcharge rule was eliminated. About the same time Shepard eliminated its surcharge rule, but its rates were not similarly increased, with the result that its eastbound rates became and still are approximately 3 percent lower than the conference rates on all commodities except lumber, on

which the rates are the same. On the ground that it does not operate as many vessels and that its vessels are not as fast as those of some of the other carriers, on westbound traffic Shepard has always considered itself entitled to name rates 5 percent, when the rate is 40 cents per 100 pounds or less, and 7.5 percent when the rate is more, lower than the lowest competitive rate in existence. As in its opinion the surcharge should not have been made part of the conference rates, in arriving at the differentials to which it claims itself entitled it disregarded 3 percent of the competitive rate when named by the conference carriers. Thus when the lowest competitive rate was that of a former "B" line member of the conference the Shepard tariff generally names westbound rates approximately 8 percent when the rate is 40 cents per 100 pounds or less, and 10.5 percent when the rate is more, lower than such "B" line rate except on specific commodities as to which Shepard has filed rates to conform to the 5 and 7.5 percent differentials. As on commodities in the handicap list the "A" line rates are 2.5 cents per 100 pounds higher than the "B" line rates, on such commodities the Shepard differentials are greater by that amount under the "A" line rates than under the "B" line rates. The lawfulness of Shepard's practice to name rates lower than those maintained by its competitors is involved in Nos. 152 and 154.

States Steamship Company observes the class "B" rates.

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. No uniform system of accounting is used by respondents. Some of them engage in intercoastal transportation of passengers or in trades other than intercoastal and do not segregate their figures. However of the sixteen affected respondents for 1933 eleven showed a gross operating profit of $3,535,881.73 and five a gross operating loss of $608,828.90 before interest, depreciation, and taxes, except in one case in which these items were deducted. At December 31, 1933, the net worth of the floating equipment, land, buildings and other property and equipment ashore of thirteen of these respondents aggregated slightly over $50,000,000. For that year seven of such carriers showed a net operating profit aggregating approximately $1,806,000 and six a net operating loss aggregating approximately $2,546,000, or a net operating loss of about $740,000 for the group. Many of them owe large sums to the government on ship purchases and construction loans. The record is devoid of information regarding efficiency of the management, but

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the conclusion is inescapable that this branch of the intercoastal trade is not in a healthy financial condition.

In addition to the fundamental defect just pointed out, Agent Thackara's tariff SB–I No. 4, filed on behalf of the conference carriers, Calmar's tariff SB–I No. 1, and Shepard's tariff SB–I No. 1, naming the westbound rates, charges, and rules now in effect, are defective in many material respects. This is also true of the tariffs of all other respondents. A few illustrations will make this clear.

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.

Section 2, Intercoastal Shipping Act, provides—

> That every common carrier by water in intercoastal commerce shall file with the United States Shipping Board and keep open to public inspection schedule showing all the rates, fares, and charges for or in connection with transportation between intercoastal points on its own route; and, if a through route has been established, all the rates, fares, and charges for or in connection with transportation between intercoastal points on its own route and points on the route of any other carrier by water. The schedules filed and kept open to public inspection as aforesaid by any such carrier shall plainly show the places between which * * * freight will be carried, * * * and shall also state 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 * * * consignor, or consignee. * * * Such schedules shall be plainly printed, and copies shall be kept posted in a public and conspicuous place at every wharf, dock, and office of such carrier where * * * or freight are received for transportation, in such manner that they shall be readily accessible to the public and can be conveniently inspected.
>
> * * * * * * *
>
> From and after ninety days following enactment hereof no person shall engage in transportation as a common carrier by water in intercoastal com-

merce unless and until its schedules as provided by this section have been duly and properly filed and posted; nor shall any common carrier by water in intercoastal commerce charge or demand or collect or receive a greater or less or different compensation for the transportation of * * * property or for any service in connection therewith than the rates, * * * charges which are specified in its schedules filed with the board and duly posted and in effect at the time; nor shall any such carrier refund or remit in any manner or by any device any portion of the rates, * * * or charges so specified, nor extend or deny to any person any privilege or facility, except in accordance with such schedules.

In spite of the above provisions of law, 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 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 is governed by local meaning of that term.

Carriers parties to this tariff do not state separately each terminal or other charge, privilege, or facility, granted or allowed by them, as required by the above section of law. This subject is more fully discussed hereinafter.

Rule 3 of the tariff in question states in part—

(a) Except as otherwise provided, the rates set forth in Sections 1, 2, and 6 of this tariff apply via route or routes shown in the individual line's routing instructions as set forth in Section 5 of this tariff from the established loading terminals of each line at the ports named on Page No. 3 of this Tariff except New York Harbor; and, except as otherwise provided in Notes 1 and 2 hereof, from New York Harbor the rates named will only apply from the established loading or receiving terminal of each line in the following subdistricts: * * *

(b) Where reference is made to this Rule in connection with individual carrier's routes as set forth in Section 5 of this tariff, rates named herein apply when steamer calls direct and then only upon agreement in writing with individual carrier.

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 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 contem-

plated be executed, inevitably leads to inequality between shippers.

In Rule 4 it is provided—

(a) Except as otherwise provided for herein (see Notes 1 and 2 hereof), straight carloads of cargo delivered by rail direct to New York Harbor Loading Piers will be charged a minimum of 2½¢ per 100 pounds for the unloading thereof, which charge will be in addition to the applicable carload rate thereon.

(b) Except as otherwise provided for herein (see Note 2 hereof), trap or ferry cars containing less carload shipments, when delivered by rail direct to New York Harbor loading piers, will be charged a minimum of 5¢ per 100 pounds for unloading thereof, which charge will be in addition to the applicable less carload rate thereon.

* * * * * * *

NOTE 2.—Cargo of extraordinary weight and/or length, moving as carload or less carload shipments, delivered by rail direct to New York Harbor loading piers, may be subject to higher charges than those prescribed in this Rule.

From the tariff the shipper knows the minimum charge for the service in question, but the maximum charge does not appear therefrom.

Rule 5 of the tariff provides, at Philadelphia—

The American-Hawaiian Steamship Company will receive westbound less carload freight ex rail at its Municipal discharging pier and dray same at its own expense to its loading pier.

On less carload shipments arriving in Philadelphia, Pa., by railroad, carriers party hereto will assume out of the rates published herein the drayage charges on such shipments from the local freight station or stations of the railroads to the loading pier at which the cargo is loaded into steamers, when such loading pier is located on a railroad other than that via which said less carload shipments originally arrive in Philadelphia, Pa.

Carriers party hereto will absorb at Philadelphia, Pa., unloading charges on carload freight delivered by railroad, where said carload has originated at a point from which the railroad carload rate to Philadelphia loading piers of carriers party hereto is nine cents (9¢) per 100 pounds or less.

Carriers party hereto loading at piers in Philadelphia, Pa., when such piers are not equipped with string-piece track, will absorb the lighterage or floatage charges of delivering rail carriers on iron and steel from the delivering railroad to alongside carrier's ship.

Unloading from rail cars, drayage, lighterage, and floatage, such as 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. 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.

Rule 9 of the tariff provides—

Port Equalization will be permitted on carloads only by all lines on westbound tariff Items bearing the designation "P. E." in connection with the number thereof. No Port Equalization will be permitted on L. C. L. shipments.

Port Equalization is not to be applied however, unless the rate from point of origin into the port of exit equals or exceeds nine cents (9¢) per 100 pounds and is not to exceed the actual difference in like kinds of transportation from the point of origin to the port of exit subject to a maximum equalization of three cents (3¢) per 100 pounds.

EXCEPTIONS.—In respect of Chester, Pennsylvania, it is permitted to equalize carload rail traffic at Philadelphia, Pennsylvania, as an exception to the nine cent (9¢) limit rule and exceeding the three cent (3¢) maximum aforesaid.

Dollar Steamship Lines, Inc., Ltd.—Up to 250 net tons of iron or steel, handicap or nonhandicap items, per steamer from New York on "A" rate basis.

(Panama Pacific Line) American Lines Steamship Corporation.—Up to 250 net tons or iron or steel, handicap or nonhandicap items, per steamer from New York on "A" rate basis.

(Grace Line) Panama Mail Steamship Company.—Up to 250 net tons iron or steel out of handicap list per steamer from Philadelphia on "A" rate basis.

Specific equalization privileges on the quantities of iron and steel per steamer mentioned above are noncumulative, but the measure of port equalization allowed in these specific privileges on iron and steel mentioned above may be the actual difference between the rail rates from point of origin to port of exit, subject to a maximum of six cents (6¢) per 100 pounds.

Port Equalization is not permitted of any difference in the charges assessed or claimed, for delivery of freight by private, public, or Government-owned dray, truck, or similar conveyance; nor is port equalization permitted to any extent of charges assessed or claimed for transportation of vehicles or parts thereof, moving under their own power or through the medium of some other form of transportation on the public highways.

Port Equalization is not permitted in connection with traffic originating locally at another port from which service is maintained by any other Conference line.

Port Equalization shall not be used to offset any disabilities existing between carriers in the same port, and no equalization shall be made in respect of transfer, cartage, lighterage, wharfage, or unloading charges in the same port.

The record makes it clear this 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. It is not unusual for the intercoastal carrier to call the office of the rail carrier transporting the shipment from point of origin to ascertain the rail rate. As stated in *Intercoastal Rates of Nelson Steamship Company*, *supra*, 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.

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.

Rule 18 of the tariff, of general application and not restricted to New York Harbor as Rule 4, in essence provides that pieces or packages over 80,000 pounds or in excess of 40 feet in length will be accepted for transportation subject to special arrangements with individual carriers parties to the tariff. The law prohibits special arrangements between shippers and carriers unless the terms thereof are fully disclosed in the tariff.

Calmar's tariff SB–I No. 1 seems to have been patterned after Agent Thackara's tariff SB–I No. 4 and is not free from vices of the character affecting that tariff. For instance in Rule 3 it is provided:

(a) Except as otherwise provided for in this tariff, rates named in this tariff apply from end of ship's tackle at loading port to end of ship's tackle at port of discharge and will include acceptance of cargo at tailboard of truck and/or place of rest on dock, including loading from lighters, barges and/or similar equipment direct to vessel at port of loading, and at port of discharge rate will include delivery to place of rest on dock and/or to tailboard of truck and/or direct from vessel to lighters, barges, and/or similar equipment. Rates do not include tolls, car loading, or car unloading, handling, wharfage, lighterage, transfer charges, or any other expense beyond ship's tackle except as otherwise provided for in this tariff.

The tariff does not define the term "ship's tackle." Inferentially it may be gathered from this rule 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. The record shows it is impracticable for carriers, including Calmar, to accept possession or make delivery of general cargo at ship's hook, and if as used in this 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.

Paragraph (b) of the rule in question provides that rates named in the tariff apply on cargo loaded on any vessel scheduled for direct call at ports on the Gulf of Mexico from Tampa, Fla., to Corpus Christi, Tex., but it is notorious this carrier does not serve those ports. This matter is presented for determination in No. 114.

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–I No. 4. Port equalization is also practiced by this respondent on east-bound 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.

The tariff fails to state separately each terminal charge. It only shows terminal rules for application at Baltimore, Philadelphia, and Los Angeles Harbor. Those applicable at Baltimore are as follows:

1. When railroads do not unload or absorb cost of unloading shipments from railroad equipment, or pay the cost of unloading, Calmar Steamship Corporation will absorb the cost of such car unloading, when the cargo is loaded into Calmar Steamship Corporation's vessel.

2. When the cost of railroad switching, barging, and/or lighterage to the pier at which shipment is loaded into Calmar Steamship Corporation's vessel exceeds the cost of railroad switching, barging, and/or lighterage to the nearest pier at which such cargo could be loaded for intercoastal shipment into an intercoastal vessel, the difference between such costs will be absorbed by Calmar Steamship Corporation, subject to a maximum absorption of Five cents (5¢) per One Hundred (100) pounds.

3. When railroads do not deliver or pay the expense for delivery of less-than-carload shipments from their freight stations or terminals to Calmar Steamship Corporation's dock, Calmar Steamship Corporation will absorb such delivery cost, when such less carload shipments are loaded into vessel, subject to a maximum absorption of Ten cents (10¢) per One Hundred (100) pounds.

4. When car demurrage and/or storage accrues between the time shipments arrive at railroad terminal and/or Calmar Steamship Corporation's dock, and the time such shipments are actually loaded into the vessel, such car demurrage and/or storage will be absorbed by Calmar Steamship Corporation, subject to a maximum absorption of Three cents (3¢) per One Hundred (100) pounds.

5. For operating convenience, when Calmar Steamship Corporation's vessel does not call or complete loading at Calmar Steamship Corporation's regular dock at Baltimore, but is loaded at Sparrows Point, Maryland, and shipments have been delivered to Calmar Steamship Corporation's regular dock at Baltimore and transferred from there to the dock at which the vessel is loading at Sparrows Point, and there loaded into the vessel, Calmar Steamship Corporation will absorb all costs of such transfer, including loading of lighters, barges, cars, and/or trucks and other like costs.

Identical rules apply at Philadelphia except that in Rule 5 the word "Philadelphia" is substituted in the place of the word "Balti-

more " and the words " at some other dock in the port of Philadelphia and/or Camden, New Jersey ", are substituted in the place of the words " at Sparrows Point, Maryland." In addition, at Philadelphia it is provided that when Calmar's vessel loads at " piers which are not equipped with string piece track ", Calmar " will absorb the lighterage or floatage charges of delivering rail carriers on iron and steel from the delivering railroad to alongside Calmar Steamship Corporation's vessel."

As to Rules 4 and 5 of Agent Thackara's tariff SB–I No. 4 it was stated that unloading from rail cars, drayage, lighterage, and floatage, are not services that fall upon respondents for they have no through route arrangements or joint through rates with rail carriers. What was there stated applies here 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 vessels of this respondent.

Only two terminal rules apply at Los Angeles Harbor, one of which, relating to assembling and distributing charges, has been condemned in No. 96, *In Re Assembling and Distributing Charge*, proposed report form. The terminal rules applicable at other points served by this respondent are not contained in the tariff.

For the reason stated in connection with Rule 18 of Agent Thackara's tariff SB–I No. 4, a similar rule contained in the Calmar tariff, Rule 20, applicable to heavy or long pieces or packages does not meet the requirements of law.

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. Rule 3 of the terminal section of the tariff provides—

Terminal or other charges, privileges or facilities granted or allowed:

(a) New York Albany	When shipments of soda ash complying with conditions specified in tariff item 3207 A are delivered to carriers, carrier will effect discharge of soda ash from delivering craft at carrier's expense.
(b) Albany	Car unloading and top wharfage will be absorbed by carrier only when cost of delivery from point of origin to carrier's pier at Albany exceeds cost of delivery from point of origin to other regular ports of loading of intercoastal carriers but in no event shall such absorption exceed 3¢ per 100 lbs.

(c) Philadelphia ——— Carrier will absorb car unloading charge whenever rail freight charges from point of origin to port of exit does not exceed 9¢ per 100 lbs. Carrier may at its option shift to railroad pier for loading or absorb cost of lighterage or floatage from delivering railroad to alongside steamer.

(e) Baltimore——— Carrier will absorb top wharfage where top wharfage is assessed by terminals at which vessel loads. Carrier will absorb car unloading charge whenever rail freight charges from point of origin to port of exit does not exceed 9¢ per 100 lbs.

(f) Oakland——— Carrier has option of delivering direct at Oakland or affecting delivery by barge from its regular berth at San Francisco. If carrier elects to deliver by barge, cost thereof will be absorbed by vessel. Carrier will absorb Oakland terminal charge of 50¢ per net ton whether calls direct or not.

(g) Stockton——— Carrier has option of delivering direct at Stockton or effecting delivery by transshipping river carrier from San Francisco. If carrier elects to deliver by transshipping river carrier, all on-carrying charges pursuant to delivery at Stockton will be absorbed by carrier. On all shipments to Stockton carrier will absorb State tolls of 15 cents per ton but will not absorb Stockton wharfage of 15 cents per ton.

(h) Sacramento——— Carrier has option of delivering direct at Sacramento or effecting delivery by transshipping river carrier from San Francisco. If carrier elects to deliver by transshipping river carrier, all on-carrying charges pursuant to delivery at Sacramento will be absorbed by carrier. On all shipments to Sacramento carrier will absorb State tolls of 15 cents per ton but will not absorb Sacramento wharfage of 20 cents per ton.

(i) Portland——— Carrier will absorb terminal handling charges of 50¢ per net ton.

(j) Seattle——— Carrier will absorb terminal handling charges of 50¢ per net ton.

It will be observed 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. It will be also observed that whether respondent calls direct or not at Oakland, Cal., it there absorbs terminal charges in the amount of 50 cents per ton and that if it elects to make delivery by barge at such place, it absorbs the cost thereof without specifying such amount. For the reasons hereinbefore stated such rules are not in consonance with law.

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.

We are here concerned with vices that permeate the tariffs and not with defective individual rates. For this reason no attempt will be made to set forth in this report numerous such rates contained in the tariffs under consideration.

The law provides that no person shall engage in transportation as a common carrier by water in intercoastal commerce unless and until its schedules have been duly and properly filed and posted; that no common carrier in intercoastal commerce shall receive a greater or less or different compensation for transportation of property or for any service in connection therewith than the rates and charges which are specified in its schedules and in effect at the time; and that no such carrier shall refund or remit in any manner or by any device any portion of the rates or charges so specified, or extend or deny to any person any privilege or facility, except in accordance with such schedules. The schedules, as has been seen, must show all the rates and charges for or in connection with transportation between intercoastal points on the route of the carrier; and, if a through route has been established, all the rates and charges for or in connection with transportation between intercoastal points on its own route and points on the route of any other common carrier by water. They must also state 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 or charges, or the value of the service rendered to the shipper. Copies of such schedules must be kept posted in a public and conspicuous place at every wharf, dock, and office of the carrier, in such manner that they shall be readily accessible to the public and can be conveniently inspected. Any violation of any of these provisions of law is punishable by a fine of not less than $1,000, not more than $5,000, for each act of violation and/or for each day such violation continues.

Language could not have made clearer the intent of the legislator 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 ascercertain 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 observe strictly such rates, charges and rules after they have been properly published and filed. The tariffs under consideration fall short of accomplishing the purpose of the law. Good faith might be urged in defense of past violations, but obviously could not be so urged in respect of violations after the act has been construed by the department.

For a long time affected respondents have keenly felt the need of a solution to their controversies on westbound traffic as would insure stability in the rates and permit them to operate without the constant threat of a rate war. This need is also greatly felt by the shippers, vitally interested in rate stability and dependable service that their business may be conducted along sound and serious lines. Inability of some of the affected respondents, due to their own equipment, to make as frequent sailings and as fast time in transit as other competing respondents has been the only source of disputes that have led to rate wars and trade demoralization. Such devices as grouping of lines for naming rates, pooling of revenue, port allocation and port equalization resorted to by these respondents after considerable trading and bargaining to overcome such equipment inferiority served only to arrest destructive rate wars and never afforded a satisfactory solution. The history of the conference vividly depicts the futility of efforts made by the affected respondents. In the circumstances they unanimously look to the department for permanent settlement of their difficulties.

The following table shows the number of vessels operated or available for operation at July 12, 1934, by each carrier then member of the conference, Calmar and Shepard, grouped according to designed speed in knots.

	Number of vessels	Designed speed in knots																
		9	9.5	10	10.25	10.5	10.75	11	11.5	12	12.5	12.8	13	13.5	14.5	15	16	18	20
American-Hawaiian	22									22									
Panama Pacific	5					2												3	
Argonaut	8			5						3									
Dollar	16														7	2	5		2
Isthmian	28			2		3		23											
Luckenbach	22		1	1				1	2		5	3	2	7					
McCormick	7			3		1		2		1									
Nelson	14			14															
Quaker	17		2	13		2													
Pacific Coast Direct	4			4															
Grace	8												4					4	
Arrow	6	6																	
Weyerhaeuser	4			4															
Williams	7			3		3			1										
Calmar	12			1	6	4	1												
Shepard	4			3				1											

The fastest vessels are the two shown opposite Dollar with speed each of 20 knots. They are not now being operated in this trade. Although these and other vessels of Dollar carry freight they are designed or have been remodeled to carry large numbers of passengers. For this reason they are better known as passenger vessels. Other such passenger vessels are the three shown opposite Panama Pacific with speed each of 18 knots and all of the eight shown opposite Grace. Although disparity exists in the designed speed of vessels, approximately 72 percent of the vessels shown in the table, excluding the two 20-knot vessels and the four shown opposite Weyerhaeuser, which are the same as those operated by Pacific Coast Direct, have speed ranging only between 10 and 12 knots. Only seven of the vessels shown, which are passenger vessels, are under ten years of age. No freighters have been built since 1922, when American-Hawaiian built its two motorships. The average age of the vessels shown in the table, mostly built by the government during the war period, is nearly sixteen years. On the whole they are practically obsolete.

It will be remembered that during the last period of the conference, "B" lines were those sailing not more frequently than an average of 10 days with advertised time in transit from last loading port north of Hatteras of 21 days, or 20 days from Hampton Roads, to the first port of discharge on the Pacific Coast, and that all others were "A" lines. Although the number of vessels operated or available for operation by Panama Pacific was not sufficient to maintain sailings more frequently than on an average of 10 days, some of its vessels were capable of making better than the advertised transit time prescribed for the "B" lines. It was placed in the "A" group. Included in this group were also American-Hawaiian, Dollar, Luckenbach, and Grace. The number of vessels available for operation by Nelson was sufficient to observe the sailing frequency prescribed for

the "A" lines, but it chose to operate only four of its fourteen vessels and qualified as a "B" line. Other lines in this group were Argonaut, Isthmian, McCormick, Quaker, Pacific Coast Direct-Weyerhaeuser, Arrow, and Williams.

The table below contrasts the number of voyages, average number of days per voyage, and average number of nautical miles steamed per voyage from last port of loading on the Atlantic Coast to first port of discharge on the Pacific Coast during 1933 and first half of 1934.

Name		Number of voyages	Last port loading to first port discharge	
			Average number days per voyage	Average number nautical miles steamed per voyage
American-Hawaiian	1933	99	17.5	4,930
	1934 [1]	46	17.5	4,930
Panama Pacific	1933	25	13	4,860
	1934 [1]	12	13	4,860
Argonaut	1933	12	20	4,765
	1934 [1]	6	20	4,741
Dollar	1933	52	16	5,116
	1934 [1]	26	15	5,116
Isthmian	1933	39	19	4,834
	1934 [1]	21	19	4,833
Luckenbach	1933	59	15.5	4,935
	1934 [1]	29	15.5	4,935
McCormick	1933	28	21	4,800
	1934 [1]	15	21	4,790
Nelson	1933	12	20.5	4,472
	1934 [1]	6	20.3	4,472
Quaker	1933	34	20	4,803
	1934 [1]	15	19	4,718
Pacific Coast Direct	1933	8	20	4,746
	1934 [1]	8	20	4,746
Grace	1933	46	18	5,415
	1934 [1]	22	18.5	5,408
Arrow	1933	20	19	4,462
	1934 [1]	11	19	4,462
Williams	1933	24	18.5	4,450
	1934 [1]	13	18.5	4,450
Calmar	1933	25	20.8	4,902
	1934 [1]	14	20.5	4,902
Shepard	1933	15	19.5	4,695
	1934 [1]	6	17.5	4,607

[1] First half.

The value of similar comparative data submitted regarding first port of loading to last port of discharge was impaired by strike conditions prevailing at San Francisco during May, June, and July 1934. Under average number of days per voyage Dollar showed "16 & 17" for 1933 and "15 & 17" for the first half of 1934 without any accompanying explanation. Only the lower of the two figures in each case has been shown in the table. The table makes it evident that some of the lines did not adhere to the limitation imposed on advertised time in transit by the agreements in force during the last period of

the conference, which commenced October 1, 1932. For instance Isthmian only consumed an average of 19 days in transit for all the voyages shown. Similar average time was consumed by Quaker for the voyages made by it during the first half of 1934, and by Arrow during the entire period indicated. This performance by Arrow is significant in view of the fact that all of its vessels are shown to have designed speed of only 9 knots, the lowest of all vessels in this branch of the intercoastal service. Williams only consumed an average of 18.5 days for all the trips made by it during 1933 and the first half of 1934. The other " B " lines and Calmar appear to have adjusted their time in transit to conform to the conference restrictions. The average number of days in transit shown opposite Shepard for the first half of 1934, 17.5 days, is the same as that shown opposite American-Hawaiian and better than that shown opposite Grace for the same period. American-Hawaiian and Grace were class "A" lines and under the conference agreements could not operate south of Philadelphia. Shepard was not a member of the conference and its last port of loading was Philadelphia, Norfolk, Va., or Charleston, S. C. Even so, the difference in the average number of nautical miles steamed per voyage by American-Hawaiian and Shepard is not material if consideration is given to the distance involved.

The following table contrasts the number of westward voyages and payable tons of 2,000 pounds carried for the years therein indicated.

	1930			1931			1932			1933			First half 1934			Total voyages	Total payable tons	Grand average payable tons per voyage
	Number of voyages	Payable tons	Average payable tons per voyage	Number of voyages	Payable tons	Average payable tons per voyage	Number of voyages	Payable tons	Average payable tons per voyage	Number of voyages	Payable tons	Average payable tons per voyage	Number of voyages	Payable tons	Average payable tons per voyage			
American-Hawaiian	105	332,983	3,171	105	286,613	2,730	96	243,567	2,537	99	225,061	2,273	46	100,356	2,182	451	1,188,580	2,635
Panama Pacific	25	76,570	3,067	26	73,877	2,841	25	66,243	2,650	25	58,786	2,351	12	26,767	2,231	113	302,343	2,676
Argonaut	29	232,291	8,010	19	127,658	6,719	14	64,326	4,595	12	29,919	2,493	6	19,750	3,292	80	473,944	5,924
Dollar	26	53,693	2,065	44	70,475	1,602	52	77,315	1,487	52	85,120	1,637	26	46,391	1,784	200	332,994	1,665
Isthmian	64	494,932	7,733	53	280,951	5,301	48	182,884	3,810	39	149,311	3,828	21	135,812	6,457	225	1,243,890	5,528
Luckenbach	51	226,048	4,432	53	212,798	4,015	55	189,533	3,446	59	170,297	2,886	29	82,531	2,501	247	881,207	3,568
McCormick	26	115,853	4,456	25	104,604	4,184	27	87,537	3,242	28	85,006	3,036	15	56,658	3,777	121	449,658	3,716
Nelson	45	133,699	2,971	30	80,383	2,679	14	57,419	4,101	12	43,364	3,614	6	25,550	4,258	107	340,415	3,181
Quaker	55	175,843	3,192	56	162,108	2,895	35	81,637	2,332	34	95,127	2,798	15	40,695	2,713	195	555,110	2,847
Pacific Coast Direct [1]										8	12,687	1,573	8	11,170	1,396	16	23,757	1,485
Grace	26	14,157	545	26	21,096	811	27	41,020	1,519	46	85,429	1,857	22	40,581	1,849	147	202,383	1,377
Arrow	32	110,229	3,445	28	86,913	3,104	18	57,550	3,197	20	57,396	2,870	11	29,242	2,658	109	341,330	3,131
Williams	32	72,437	2,264	28	94,781	3,385	23	72,563	3,155	24	54,138	2,256	13	31,064	2,390	120	324,983	2,708
Calmar	32	217,884	6,809	29	164,494	5,672	20	94,688	4,734	25	165,007	6,600	14	88,497	6,321	120	730,570	6,088
Shepard	11	40,651	3,696	13	37,265	2,867	13	40,986	3,153	15	45,354	3,024	6	35,262	5,877	58	199,518	3,440

[1] Started operations in June 1933, and figures represent voyages made to end of June 1934.

As hereinbefore indicated Panama Pacific, Dollar, and Grace are known as passenger lines. They only transported slightly over 11 percent of the total number of payable tons carried during the period of the table. During that period the "A" lines transported an average approximating 2,511, and the "B" lines approximating 3,859, payable tons per voyage. However, because of faster and more frequent service, shippers preferred the "A" lines to the "B" lines, particularly in the transportation of high grade commodities not included in the handicap list, with the result that the revenue per payable ton of those lines was higher than that of the other lines. But large amounts of their revenue were contributed to the conference pool set up to benefit the "B" lines.

Several suggestions for a permanent settlement of carrier controversies were made of record. Pacific Coast Direct and Weyerhaeuser suggest that lines be arbitrarily grouped into class "A" and "B" according to frequency of sailings and time in transit with rates for the "B" lines 10 percent under the rates for the "A" lines. McCormick offered a similar suggestion except that in its opinion grouping of lines should rest entirely on time in transit. The suggestion of Shepard is that lines be arbitrarily divided into "A", "B", and "C" groups based on elapsed time arrived at by dividing by two the average number of days between sailings of each line and adding the quotient to the transit time, with no pooling of revenue except as strictly necessary to rectify errors which may result from arbitrary differentials to be put into effect. Argonaut and Shippers' Conference of Greater New York suggest groups "A", "B", and "C" based on frequency of sailings and time in transit. In the opinion of Argonaut rate differentials should not be less than 7.5 percent for the "B" lines and 12.5 percent for the "C" lines under the "A" line rates. In the opinion of Shippers' Conference of Greater New York it would be fair "to experiment" with differentials of 7.5 percent for the "B" lines and 15 percent for the "C" lines. All these suggestions relate only to west-bound traffic. The suggestion of Calmar is that carriers be arbitrarily divided into "A" and "B" groups based entirely on time in transit with differential of 10 percent to be observed by the "A" lines over the "B" line rates on both east-bound and west-bound traffic. They all agree that a line in a lower group should increase its rates as its service is improved. American-Hawaiian and Williams, its subsidiary, Panama Pacific, Dollar, Grace, and Luckenbach suggest all carriers be required to observe uniform rates.

Advocates of line groups for naming westbound rates point to precedents set by the conference and showings thereunder by the various lines, but the data of record does not support such contention.

For instance from the table appearing at page 425 it will be noted that Argonaut, which suggests a group "C" of lines with differentials of 7.5 and 12.5 percent under the rates for the "B" and "A" lines, respectively, in which group it hopes to be placed, by far exceeded any other conference line in average number of payable tons transported westward during the four and one-half years of the table; that Shepard, which also suggests a group "C" of lines, in which it hopes to be placed, in 1933 transported an average of 3,024 payable tons per westbound voyage as compared with an average of 2,726 payable tons for all other carriers shown in the table, and with an average of 2,514 for all carriers formerly in the conference; and that while for the first half of 1934 the average number of payable tons per voyage of Shepard increased to 5,877, or approximately 94 percent, the average number of payable tons of all other lines increased only to 3,013, or slightly over 10 percent. Furthermore, the circumstances under which the results disclosed by the table were obtained, hereinbefore fully described, were such as not to afford an intelligent basis for disposing of the subject under consideration.

Reference was made to certain differentials existing in rail rates and also in water rates. The department has no jurisdiction over rail rates. Furthermore the circumstances under which differentials in rail rates were established in the few instances mentioned do not appear of record. An examination of the conference agreements approved by the department relating to water transportation shows that out of 100 agreements at present in effect only 6 involve rate differentials. In all other instances rate uniformity is observed by the carriers. It should also be remembered that in this branch of the intercoastal trade there exist no differentials in the eastbound rates, except as hereinbefore indicated in the case of Shepard, and that in the Gulf-Pacific branch of the trade no differentials whatsoever exist in either westbound or eastbound rates. It was testified the cost of performing the Atlantic-Pacific voyage is about the same as that of performing the voyage in the reversed direction. Three groups of lines such as advocated by Shepard, Argonaut and Shippers' Conference of Greater New York existed before in this particular branch of the trade with undesirable results. This was during the period following the reorganization of the conference on March 1, 1932. The short duration of that conference period, the reason for its collapse, and the origin of the "C" group as there recognized, have been set forth hereinbefore and need not be repeated. Many carriers fear lines in "B" group would not be able to stand the pace of competition should a "C" group be recognized with the result, they claim, that in the course of time all "B" would qualify as "C" lines, as happened before. As to the suggestion of Calmar it should be stated

no sound reason appears of record for differentials on eastbound traffic.

Inferiority in equipment is a factor too changeable to afford a satisfactory basis for a permanent solution. The power to overcome such inferiority lies entirely within the control of the carrier. This applies with special force to Argonaut, Nelson, McCormick, Pacific Coast Direct, Arrow, Williams, Panama Pacific, and Grace, the equipment of which is chartered in whole or in part.

Section 1 of the Merchant Marine Act, 1920 provides—

> That it is necessary for the national defense and 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 sufficient to carry the greater portion of its commerce and serve as a naval or military auxiliary in time of war or national emergency, ultimately to be owned and operated privately by citizens of the United States; and it is hereby declared to be the policy of the United States to do whatever may be necessary to develop and encourage the maintenance of such a merchant marine, and, in so far as may not be inconsistent with the express provisions of this Act, the United States Shipping Board shall, in the disposition of vessels and shipping property as hereinafter provided, in the making of rules and regulations, and in the administration of the shipping laws keep always in view this purpose and object as the primary end to be obtained.

This policy and declared purpose were confirmed by section 1 of the Merchant Marine Act, 1928. In order to accomplish the declared purpose and to carry out the declared policy, those two acts, after providing for disposal of government-owned vessels, which has been done under liberal terms, provided for the setting aside of a considerable amount of money to be used in making loans to aid citizens of the United States in the construction or outfitting by them of vessels, with the condition that only the most modern, the most efficient and the most economical engines, machinery, and commercial appliances be used. The underlying purpose of those acts, 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. 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 dis-

charge utterly ignore the rights of shippers and receivers of goods located elsewhere.

Shepard admits its practice of naming rates since it came into this trade in 1929 lower than the lowest competitive rate has been deliberate in order to attract traffic which it would not otherwise attract. Clearly its rates were not intended to create new traffic but to divert to its line a share of the volume available for transportation. It further admits its practice has been of some benefit to it, but the estimated cash invested in its four vessels was roughly placed at $1,000,000 and for 1933, after deducting depreciation, interest, and a bad debt amounting to $1,014.90, it showed a net operating profit of only $22,526.72. This does not take into consideration other property devoted by this respondent to the public service. The record shows the cost of fuel, labor, and other items of operation increased in 1934 over the prices prevailing in 1933.

Nos. 152 and 154.—The complaints, in No. 152 filed by Arrow, Calmar, Dollar, Grace, Luckenbach, McCormick, Panama Pacific, and Quaker; and in No. 154, filed by American-Hawaiian and Williams, in substance allege that Shepard's rates were made substantially lower than those maintained by complainants for the purpose of securing, in competition with complainants, an undue proportion of the freight available for transportation; that such rates hinder the upbuilding of the trade and the maintenance of proper service as contemplated by law; and that in making such reduced rates and securing cargo on basis thereof, Shepard avails itself unduly of the protection of a stabilized rate structure provided by complainants, all contrary to the true intent of the various shipping acts and the interests of the intercoastal trade and to the general public interest. They request Shepard's tariffs, SB–I No. 1 naming westbound rates and SB–I No. 2 naming eastbound rates, be found unlawful and cancelled, and that for the future the rates and charges filed by said carrier be held to be unduly prejudicial and unreasonable to the extent that they are lower than the rates contemporaneously charged by complainants.

On behalf of American-Hawaiian it was testified its vessels cost $17,000,000. One of these vessels cleared from New York on September 22, 1934, with 2,465 tons of cargo destined to points on the Pacific Coast after having called at Boston, Mass., and Philadelphia. The gross revenue derived from this sailing was $39,490.79. On basis of the Shepard rates the gross revenue would have been $34,669.08, or a difference approximating $1.95 per ton. During the first six months of 1934 this complainant transported 100,356 payable tons westbound and had an operating profit of $203,191 before interest, depreciation, income tax, and strike expenses. On basis of the Shep-

ard rates such operating profit would have been only $7,496.80. Each of the complainants in No. 152 selected a manifest of one of its steamers sailing recently from the Atlantic to the Pacific Coast. These manifests are said to give a fair cross section of complainants' operations. The difference between the revenue obtained and that which the Shepard rates would have yielded, lower in each instance, would have varied between $1,498.98, in the case of McCormick, and $7,105.01, in the case of Luckenbach.

It was further stated on behalf of American-Hawaiian and Williams they have decided to reduce their rates to the level of the Shepard rates but that such move being of transcendental importance to all the lines and the future of the trade, they prefer to appeal to the department to prevent the demoralization which inevitably will follow. This seems to be the general attitude of other carriers. When the conference disbanded on July 31, 1934, Nelson, Argonaut, Pacific Coast Direct, and Weyerhaeuser, which did not join in the complaints, attempted to meet the competition of Shepard by filing schedules naming rates the same or lower than those contemporaneously maintained by Shepard. Such proposed schedules were found not justified, *Intercoastal Rates of Nelson Steamship Company, supra.*

No evidence was introduced on behalf of Shepard in No. 152 or No. 154. However, the record makes it clear Shepard has no objection to an increase in the level of its rates provided a corresponding increase is made in those of lines operating a service superior to its own, and that should such lines reduce their rates Shepard feels its own rates should be further reduced so as to maintain the differentials to which it claims itself entitled.

At the time carriers were bound by a conference agreement they could not depart from the conference rates unless unanimous consent was obtained. They were thus prevented from individually meeting the competition of Shepard. The conference agreement has been dissolved and the situation has changed. Shepard has no greater rights than any of its competitors, but it is clear that the rights of Shepard and its competitors must be exercised in such manner as not to result in a violation of law. 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, as is here the case, becomes destructive and wasteful. 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.

In section 1, Merchant Marine Act, 1920, after expressing the need of the country for a merchant marine of the best equipped and most suitable types of vessels and the policy of the United States to do whatever may be necessary to develop and encourage the maintenance of such merchant marine, Congress enjoined the United States Shipping Board, the functions of which have been taken over by the Department of Commerce under Executive Order No. 6166 of June 10, 1933, in the making of rules and regulations and in the administration of the shipping laws, to keep always in view such purpose and object as the primary end to be obtained. It has been shown hereinbefore that either because of their failure to disclose all the rates and charges for or in connection with transportation or because of vicious rules permeating their tariffs affected respondents are now engaging in intercoastal transportation in violation of express provisions of section 2 of the Intercoastal Shipping Act, 1933. The provisions of the Shipping Act, 1916, also apply to these respondents. It is there provided that it is unlawful for any carrier to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever, section 16; that carriers shall establish, observe, and enforce just and reasonable rates, charges, classifications, and tariffs and just and reasonable regulations and practices relating thereto, and that whenever the board finds that any rate, charge, classification, tariff, regulation, or practice demanded, charged, collected, or observed by any such carrier is unjust or unreasonable, it may determine, prescribe, and order enforced a just and reasonable maximum rate, fare, or charge or a just and reasonable classification, tariff, regulation, or practice, section 18; and that either upon complaint, or upon its own motion, the board may investigate any violation of that act in such manner and by such means, and make such order as it deems proper, section 22.

The terms "rates", "charges", "tariffs", and "practices" as used in transportation have received judicial interpretation. A rate is the net amount the carrier receives from the shipper and retains, *Chicago & A. Ry. Co.* v. *United States*, 156 Fed. 558, affirmed *Chicago & A. Ry. Co.* v. *United States*, 212 U. S. 563, 53 L. ed. 653, 29 Sup. Ct. Rep. 689. Charges are the segregated items of expense which are to be demanded by the carrier for any service in connection with transportation, *Detroit G. H. & M. Ry. Co.* v. *Interstate Commerc Commission*, 74 Fed. 803, affirmed, *Interstate Commerce Commission* v. *Detroit G. H. & M. Ry. Co.*, 167 U. S. 633, 42 L. ed. 306, 17 Sup. Ct. Rep. 986. A tariff is a system of rates and charges, *Pacific S. S.*

Co. v. *Cackette*, 8 F. (2d) 259. 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, *Baltimore and O. R. Co.* v. *United States*, 277 U. S. 291, 300, cited in *Missouri Pacific R. Co.* v. *Norwood*, 283 U. S. 249, 257. In section 18 the term "practices" is associated with various words, including "rates", "charges", and "tariffs." From the foregoing 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. If a tariff or practice of an intercoastal carrier is found unjust or unreasonable the department may determine, prescribe, or order enforced a tariff or practice that would correct the evil. The only condition imposed by law is that the practice or tariff determined, prescribed, or ordered enforced be just and reasonable. 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 by *Int. Com. Comm.* v. *Balt. & Ohio R. R.*, 225 U. S. 326, 345.

(*b*) *Pooling of revenues by carriers and effect thereof on rates*

The agreement governing the United States Intercoastal Conference at the time this investigation was instituted provided, among other things,

23. (a) Effective January 1, 1934, a pool is hereby established to the extent of three per cent of the intercoastal ocean freights, eastbound and westbound, according to the steamer's manifests or bills of lading (excluding arbitraries and accessorial charges) of the several member lines, to be computed on the extended ocean freights, which moneys shall be paid into the Conference by the several members monthly for distribution as below provided; however, that the pool shall not include refrigerator cargo, passenger fares and baggage, passengers' automobiles, or cargo to or from Hawaiian Islands or foreign transshipment cargo handled on through bills of lading or revenue derived from handling mail.

(b) Payments into the Conference on both eastbound and westbound ships shall be made unconditionally on or before the thirtieth day after sailing (January 1, 1934, or later) of each steamer from final port of loading.

(c) Out of the moneys so received by the Conference up to eightly thousand dollars ($80,000.00) per month there shall be apportioned and paid to each "B" member line a share in accordance with the relationship or proportion which each "B" member line's sailing frequency bears to the "frequency days" of all the "B" member lines added together.

(d) In the event that the pool moneys received by the Conference in any month exceed Eighty thousand dollars ($80,000.00) then the excess over that sum shall be divided between the "A" line group and the "B" line group on the basis of the total frequency of the two groups so that the "A" lines

shall receive such proportion of such excess as the total frequency days of the several "A" lines added together bears to the total frequency days of both the "A" lines and the "B" lines, and the "B" lines shall receive the balance of such excess. The "B" lines' proportion of such excess shall be divided between the "B" lines and according to frequency on the principle set forth in paragraph (c), and the "A" lines' proportion shall be divided among them equally, share and share alike, subject, however, to the right of any "A" line after three months to require an adjustment of the division within the "A" group.

(e) Thirty (30) days' frequency shall be the lowest frequency to be taken into calculation, but it is a condition, that any line participating in the "B" pool distribution must maintain a minmum of three sailings per quarter (force majeure excepted) to be entitled to participate in the distribution.

(f) Final pool distribution to member lines shall be made on a quarterly basis, but provisional payments to the extent of approximately seventy-five (75) percent will be made on a monthly basis. The amount of moneys payable to the Conference for distribution shall be certified by a sworn statement of an executive officer of each line at the end of each quarter to enable closing of the pool account for such quarter.

Effective March 21, 1934, the conference members increased their freight rates by 3 percent and eliminated the surcharge rule. The conference disbanded on July 31, 1934, and the conference agreement is no longer in force. In the circumstances a further discussion of this subject will accomplish no useful purpose.

(c) *Receipt, handling, storing, and delivery of property at terminals within port districts*

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. The record discloses that in some places the terminal facilities are operated by respondents themselves and in others by private organizations, at times shippers, or by common carriers by rail, municipalities, or states. 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. This obligation is not being fully carried out by respondents. While there is no uniformity in the terms used to designate the various terminal services and the terminal practices vary even within the same port district, the situation as to the various respondents is not materially different and one illustration should suffice.

Luckenbach is shown as calling at Boston, Providence, R. I., New York, Philadelphia, Los Angeles, San Francisco, Alameda, Richmond, Oakland, and Stockton, Cal., Portland, Ore. Seattle and Tacoma, Wash. It operates terminal facilities at New York, Philadelphia, Los Angeles, San Francisco, Portland, and Seattle. Its tariffs show the rates for transportation between all these places and certain charges and penalties not here necessary to mention, but they do not show that at these places there are certain charges in connection with transportation, such as wharfage, dockage, storage, handling, and others which the shipper must pay or are absorbed by respondent. Without purporting to mention every instance developed of record, the tariffs of Luckenbach do not show that—

At Boston.—There is a free storage period after which respondent collects a storage charge for account of the owner of the pier or absorbs on shipments held over for movement on one of its vessels; or a wharfage charge, which varies according to the commodity, particular method of delivery to the pier, and point of origin of the shipments; or the amounts of such charges; or that instead of shifting its vessels, respondent absorbs the charge for trucking from Commonwealth Pier to Mystic Pier on shipments destined thereto but unloaded at the first point.

At Providence.—There are storage rules and charges or a wharfage charge, or the amounts of such charges.

At New York.—There are storage charges; or that respondent makes a charge for unloading from its vessels into lighters or for loading from lighters into its vessels, which varies according to the commodity and the manner of packing; or the amounts of such charges.

At Philadelphia.—Respondent makes a charge for loading or unloading rail cars on cargo from or to its vessels, unless the rail rate is less than 9 cents per 100 pounds, in which event these services are performed free of charge; or that it makes a charge on lumber piled on the pier or on lumber loaded from lighters into its vessels; or the amounts of such charges; or the storage rules and charges.

At Los Angeles.—Respondent makes a charge, which varies according to the commodity, for handling shipments between open rail

cars by ship's tackle and its own vessels; or that there is a wharfage charge, which also varies according to the commodity; or a truck tonnage tax; or the amounts of such charges or tax; or the storage rules and charges.

At San Francisco.—There is a charge for loading or unloading rail cars on cargo from or to its vessels; or a charge for handling between ship's hook and point of rest on the dock, which respondent absorbs; or a wharfage charge; or a toll tax; or the amounts of such charges or tax; or that segregation of shipments is performed by it free of charge; or the storage rules and charges.

At Alameda, Richmond, or Oakland.—There is a charge for loading or unloading rail cars on cargo from or to its vessels; or a charge for handling shipments between ship's hook and point of rest on the dock, which respondent absorbs; or a wharfage charge; or a toll charge; or the amounts of such charges; or the storage rules and charges.

At Stockton.—There is a toll tax, or the amount of such tax; or the storage rules and charges.

At Portland.—Respondent makes a charge for loading or unloading rail cars on cargo from or to its vessels; or for unloading from trucks lumber for movement by its vessels; or that it loads lighters from its vessels or loads its vessels from lighters at "half wharfage"; or that there is a wharfage charge; or the amounts of such charges; or the storage rules and charges.

At Seattle.—Respondent makes a charge for loading or unloading rail cars on cargo from or to its vessels; or that there is a charge for handling shipments between ship's hook and point of rest, which it absorbs; or a wharfage charge; or the amounts of such charges; or that it handles free of charge cargo between lighters and its vessels; or that it absorbs certain lighterage charges; or the storage rules and charges.

At Tacoma.—There is a charge for loading or unloading rail cars on cargo from or to its vessels; or a charge for handling shipments between ship's hook and point of rest, which it absorbs; or a wharfage charge; or the amounts of such charges; or the storage rules and charges.

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. Although the record does not contain sufficient information upon which to make findings as to whether or not absorption of charges at some places and not at others are in violation of law, absorption of charges for loading or unloading rail cars or lighters, or for any

service which is not the duty of intercoastal carriers to perform, clearly results in unwarranted dissipation of revenue which is not sanctioned by law.

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 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. Although such persons are not included in the order instituting this investigation, it is not amiss to mention the fact of record that Cilco Terminal Company, Inc., the only terminal facility at Bridgeport, Conn., is owned by the City Lumber Company, 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.

(d) *Holding out to perform transportation services, or services in connection therewith, by themselves when such services are, in whole or in part, performed by another carrier, and absorptions of the charges of such other carrier.*

(e) *Performance of transportation services, or services in connection therewith, in an agency or other capacity allegedly to be other than as common carriers by water in intercoastal commerce as such term is defined in the Intercoastal Shipping Act, 1933.*

(f) *Extension of common-carrier services to additional ports and rates to and from such additional ports.*

No. 119

At the time this investigation was instituted it was a notorious practice for respondents, the vessels of which go through the Panama Canal, individually to publish rates, erroneously termed "terminal rates," from or to intercoastal points at which their vessels could not or did not call, for another carrier by water not named in the tariff to perform part of the transportation service, but not involving the haul through the Panama Canal, and for the publishing carrier to absorb the rates and charges of such other carrier on the theory that such other carrier, generally termed an on-carrier, was merely performing an agency service and was not engaging in common-

carrier operations. For instance, Grace had rates between New York and Olympia, Wash., in spite of the fact it did not operate north of San Francisco. It would accept shipments destined to Olympia and transport them to San Francisco where they would be transshipped to any of four available on-carriers for movement to Seattle, where the shipments would again be transshipped to any of four other available on-carriers for movement to final destination. The absorption of the rates and charges of the on-carriers was accomplished by means of tariff publications, of which Rule 4 in Agent R. C. Thackara's tariff SB–I No. 5, still in effect, is illustrative. Under this rule the publishing carrier reserves the right—

(1) to call direct at any of the ports on its route * * * or

(2) to move via water carrier or water carriers cargo offered at such ports to its own port of call.

(3) If the carrier elects to move cargo as prescribed in (2) above, the carrier will * * * assume the transfer charges on such cargo from the originating port to the port at which the cargo is loaded into intercoastal vessels.

Such movements were covered by through bills of lading showing only the name of the carrier publishing the rate. Recently under concurrence the on-carriers generally became parties to the tariffs and their names are now shown in the routing sheets.

Numerous other instances were developed of record in which the on-carriers, particularly those operating on the Atlantic Coast, participate in intercoastal transportation on basis of rates and charges which they collect from shippers, but which the on-carriers have failed to file with the department. For instance, each respondent was requested to list the names of all carriers by water with which it interchanges freight in intercoastal transportation, showing (a) reasons for each interchange, (b) points at which interchange is made, (c) each service necessary to effect interchange, (d) party performing each such service, (e) charge and tariff authority for each service, (f) absorptions made by respondent, and (g) tariff authority for each such absorption. The reply of American-Hawaiian, typical of those received of record, was as follows:

ATLANTIC COAST

I. BOSTON, MASS.:

(a) Requested by shipper and/or consignee:

Eastern Steamship Lines, Inc.

(b) We interchange traffic with this line at Boston, Mass.

(c) We employ truckman to take east-bound cargo from place of rest on our pier to "Eastern's" pier, and west-bound cargo from "Eastern's" pier to place of rest on our pier;

(d) Per "(c)" above;

I. BOSTON, MASS.—Continued.

Eastern Steampship Lines, Inc.—Continued.

(e) Our tariffs provide that rates named therein do not include transfer charges in instances like this; therefore the truckman's charge of 8 cents per 100 pounds is billed against the consignee in all instances;

(f) We make no absorptions under this interchange;

(g) None.

II. NEW YORK, N. Y.:

(a) Requested by shipper and/or consignee:

Group 1—(West-bound)

Hudson River Steamboat Co.	Middlesex Transportation Co.
Hudson River Navigation Co.	Central Vermont Railway.
Central Hudson Steamboat Co.	Colonial Line.
Starin New Haven Line.	N. Y. & N. J. Steamboat Co.

These lines deliver carloads and less carloads, respectively by lighters and trucks in their employ, to place of rest on our dock; they make no charge as their rates include this delivery service;

Group 2—(West-bound)

Catskill Evening Line. Eastern Steamship Lines, Inc.
New England Steamship Company.

These lines deliver carloads, by lighters in their employ, to place of rest on our dock and make no charge as their carload rates include this delivery service. Less carload shipments are picked up, by our truckman, at the piers of these lines and delivered to place of rest on our dock, for which service his charge of 12 cents per 100 pounds is billed against consignee;

Group 3—(West-bound)

Thames River Line. Newark Terminal & Transportation Co.
Ben Franklin Transportation Co.

These lines deliver carloads, by trucks or lighters in their employ, and less carloads, by trucks in their employ, to place of rest on our dock, as their rates include this delivery service, and no charge is made;

Group 4—(West-bound)

Seaboard Great Lakes Corp. National Motorship Corporation.

These lines deliver carloads (less carloads not involved), by lighters in their employ, to place of rest on our dock, as their rates include this delivery service, and no charge is made. The Seaboard Great Lakes Corp. occasionally calls their motorships direct at our pier to deliver cargo; in those instances their rates do not include the cost of unloading the motorships, which service our stevedore performs and the shipper or consignee is billed for that expense;

Group 5—(West-bound)

N. Y. & Hastings Steamboat Co.

This line delivers carloads (less carloads not involved) by lighters in their employ, to place of rest on our dock, as their rates include that delivery service, and no charge is made;

Group 6—(West-bound)

Old Colony Forwarding Co.

This line delivers carloads and less carloads by trucks in their employ to place of rest on our dock, as their rates include that delivery service, and no charge is made;

* * * * * * *

Group 1—(East-bound)

Hudson River Steamboat Co.	Starin New Haven Line
Catskill Evening Line	Middlesex Transportation Co.
Central Hudson Steamboat Co.	Hudson River Navigation Co.
Thames River Line	Newark Terminal & Transportation Co.

These lines pick up carloads and less carloads, by trucks and lighters in their employ, at our dock and make no charge for transferring them to their own piers as their rates include this pick-up service.

Group 2—(East-bound)

Eastern Steamship Lines, Inc.	N. Y. & N. J. Steamboat Co.
New England Steamship Co.	Seaboard Great Lakes Corp.
Central Vermont Railway	W. E. Hedger Transportation Co.
Ben Franklin Transportation Co.	National Motorship Corp.
Colonial Line	N. Y. & Hastings Steamboat Co.

These lines pick up carloads, by lighters in their employ, at our dock and make no charge for transferring them to their own piers as their rates include this pick-up service. Our truckman transfers less carload shipments from our pier to these connecting carriers' piers and the expense (12 cents per 100 pounds) for that service is billed against the consignee.

(f) No absorptions involved.

(g) None.

III. PHILADELPHIA, PA.:

(a) Requested by shippers and/or consignees:

Philadelphia & Norfolk Steamship Company.
Merchants & Miners Transportation Company.
Wilson Line, Inc.
Baltimore & Carolina Line (A. H. Bull & Co.).
*Ericsson Line, Inc. (A. H. Bull & Co.).

On both carload and less carload shipments these lines take delivery at our pier and deliver to our pier, by trucks in their employ, and as their rates include this pick-up and delivery service no charge is made;

(f) No absorptions involved.

(g) None.

*Ericsson Line also calls their boat at our pier in lieu of the pick-up and delivery services mentioned above.

IV. NORFOLK, VA.:

(a) Requested by shipper and/or consignee;

Buxton Lines, Inc.
Norfolk, Baltimore and Carolina Line.

These lines call their boats at our pier to take delivery of carloads and less carloads from place of rest on our dock. Their rates in-

VI. NORFOLK, Va.—Continued.

Buxton Lines, Inc., and Norfolk, Baltimore and Carolina Line—Continued.

clude this pick-up service and no charge is made; Norfolk and Washington, D. C. Steamboat Company.

This line picks up carloads and less carloads, by trucks in their employ, from place of rest on our dock and as their rates include this pick-up service no charge is made.

(f) No absorptions involved.

(g) None.

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, as appears to be here the case, 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, *United States* v. *Illinois Central R. Co.*, 230 Fed. 940; *Baltimore & O. S. W. R. Co.* v. *Settle*, 260 U. S. 166.

As has been shown hereinbefore, 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. Every route must have a published rate on file with the department. If a single carrier performs the entire transportation service between two points the rate is a "terminal rate." However, if a through route has been established and two or more carriers perform the transportation service, as is here the case, 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. 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.

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.

From the reply of American-Hawaiian it is apparent that the carriers therein named, and others shown of record as performing similar services, are common carriers by water participating in intercoastal transportation. The files of the department do not indicate any such carrier has complied with the requirements of section 2 of the Intercoastal Shipping Act, 1933.

There has been considerable confusion regarding that portion of section 2 which, after requiring carriers participating in intercoastal transportation to publish, post, and file their rates and charges for or in connection with such transportation, states as follows:

> Such carriers in establishing and fixing rates, fares, or charges may make equal rates, fares, or charges for similar service between all ports of origin and all ports of destination, and it shall be unlawful for any such carrier, either directly or indirectly, through the medium of any agreement, conference, association, understanding, or otherwise, to prevent or attempt to prevent any such carrier from extending service to any publicly owned terminal located on any improvement project authorized by the Congress at the same rates which it charges at its nearest regular port of call.

The confusion is due largely to the failure of carriers to understand what a terminal rate is, and the manner of extending the application of such rates to points at which, because of navigation conditions, their vessels cannot call. It has been shown hereinbefore that in the past respondents the vessels of which go through the Panama Canal on their own responsibility have published rates from or to intercoastal points at which their vessels could not or did not call, treating as their agent the on-carrier necessary to perform the entire haul. Such rates, even to places other than a publicly owned terminal on an improvement project authorized by Congress, have generally become effective upon notice to the department under the mistaken belief they came under that provision of section 2 which provides that schedules or changes providing for extension of actual service to additional ports at rates already in effect for similar service at the nearest port of call to said additional ports shall become effective immediately upon notice to the department. An illustration of this entire situation is presented by No. 119, which will now be disposed of.

No. 119.—The complaint, filed by owners and operators of terminals at Oakland, Alameda, and Richmond, as amended, in essence alleges that the maintenance by Shepard and Calmar of rates and charges for intercoastal transportation from and to Sacramento, Cal., equal to those contemporaneously maintained by them for int-

coastal transportation from and to their terminals gives an undue and unreasonable preference and advantage to Sacramento and shippers located there and an undue and unreasonable prejudice and disadvantage to complainants and persons shipping or traffic shipped via their terminals, that such rates and charges are unreasonable, and that the tariffs containing them were published and filed with the department on less than 30 days' notice as required by section 2 of the Intercoastal Shipping Act, 1933, and are illegal and in violation of said act.

Sacramento, the center of an important agricultural region, is on the Sacramento River approximately 92 nautical miles from San Francisco. Fruit canning and preserving and rice milling are its principal industries. Sacramento is also an important wholesale center. In 1933 approximately 6,000 tons moved monthly from and to this point in intercoastal commerce. It is said that in addition approximately 2,000 tons moved monthly to San Francisco and Oakland for subsequent movement in either intercoastal or foreign commerce. Large amounts have been spent by the city in providing terminal facilities and by the Federal Government in improving the river channel. In addition to the municipal wharf, which is said to be capable of accommodating large vessels, there are privately owned and operated wharves at Sacramento. Not long ago a vessel of one of the respondents called at that place, but from the circumstances attending that voyage, fully described of record, it is clear that navigation conditions are such as to make it hazardous and expensive for the vessels of respondents to call there, even if they can do so lightly loaded and when the river is at its greatest depth. It cannot be said that Sacramento is a "deep-water" port. No other vessel of respondents has ever called at that place.

Sacramento was shown as a terminal point in the east-bound and west-bound tariffs filed by Calmar and Shepard following the enactment of the Intercoastal Shipping Act, 1933, in spite of the fact that no direct service was maintained by them from or to that point. The west-bound tariff filed by Calmar also showed an arbitrary to be added to the San Francisco rate on traffic moving in conjunction with California Transportation Company, Fay Transportation Company, or Sacramento Navigation Company. Its east-bound tariff was amended on May 10 and September 27, 1934, by showing for the first time Sacramento Navigation Company and Larkin Transportation Company, respectively, as participating in through routes and joint rates from Sacramento. On August 1, 1933, the west-bound tariff filed by Shepard was amended by showing Sacramento Navigation Company and California Transportation Company as parties to the tariff, but the tariff failed to show any specific routing. However,

effective July 5, 1934, the tariff was further amended by showing routings in conjunction with these two carriers with alternative application of the rates direct via Shepard. Similar changes were made on its east-bound tariff effective July 26, 1934. As neither the vessels of Calmar nor Shepard, except as noted, call at Sacramento, these respondents, under tariff publication, in essence similar to that which has been shown hereinbefore, absorbed the rates and charges of the on-carriers on all traffic moving on basis of the rates intended for local application, erroneously considered by them to be their "terminal rates." This situation existed until the tariffs were amended by showing the on-carriers as parties to the through routes and joint rates. The situation with respect of the rates maintained by Calmar and Shepard from and to complainants' terminals is not materially different from that described, except that no arbitraries are added to the rates of Calmar on traffic moving west-bound in conjunction with on-carriers from San Francisco to such terminals, and except also that from Shepard's east-bound tariff it is not clear the rates therein named apply in conjunction with any on-carrier from such points.

Complainants are in competition with each other in the handling of cargo originating at or destined to central California territory, including the Sacramento district. Prior to the establishment of the rates under consideration, cargo originating in that district for movement to intercoastal destinations would move by barge, rail, or truck to complainants' terminals, where it would be picked up by an intercoastal carrier, or would be barged from their terminals to San Francisco for movement beyond by an intercoastal carrier. This operation was reversed on intercostal cargo destined to the Sacramento district. The shipper would pay the cost of such additional transportation, except for barging between complainants' terminals and San Francisco, the cost of which was absorbed by the intercoastal carrier. Complainants would collect their charges for handling and other services at their terminals from the shipper or the intercoastal carrier. As the Shepard tariffs name rates from or to San Francisco equal to those from or to complainants' terminals, which is also true of the Calmar tariffs, except as has been indicated, intercoastal cargo moving via Calmar or Shepard is now barged direct between Sacramento and San Francisco, depriving complainants of the revenue for services formerly performed by them in connection therewith. Complainants fear similar extension of rates on cargo from or to other shallow-water points on the Sacramento River and San Francisco Bay, which is now handled through their terminals, will deprive them of the revenue they now receive on such other cargo.

Oakland, Alameda, and Richmond are on the east side of the Bay, opposite San Francisco, approximately 7 miles therefrom. Intercoastal carriers, including Calmar and Shepard, generally call there. For their convenience at times they prefer to load or unload their vessels at San Francisco, in which event cargo moving from or to those points is barged to or from San Francisco, as the case may be, and they absorb the charges for that service. Complainant's urge that shippers at shallow-water points, such as Sacramento, should not be placed on a rate parity with shippers at places where intercoastal carriers call direct. To do this they state deprives shippers at deep-water points of the natural advantages of their location resulting in undue and unreasonable preference and advantage to shippers at shallow-water points and undue and unreasonable prejudice and disadvantage to shippers at deep-water points. However, as has been fully explained hereinbefore, it is the duty of carriers to establish rates between points 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 cannot be measured by the depth of the water. Not all preferences and advantages are condemned by law, but only those that are undue or unreasonable. The record does not show that the preference or advantage to the Sacramento shippers, or the prejudice and disadvantage to shippers using complainants' 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. 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.

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. The Intercoastal Shipping Act, 1933, was approved March 3, 1933. From and after ninety days following the enactment thereof, all persons were prohibited from engaging in trans-

portation as common carriers by water in intercoastal commerce unless and until schedules as provided by section 2 thereof are duly and properly filed and posted. 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 these two respondents may legally charge or collect. The act of 1933 prohibits carriers from changing the rates, fares, or charges which have been filed with the department, except by the publication, filing, and posting of a new schedule or schedules which shall become effective not earlier than thirty days after date of filing thereof with the department, with the proviso that schedules or changes which provide for extension of actual service to additional ports at rates of the carrier already in effect for similar service at the nearest port of call to said additional port shall become effective immediately upon notice to the department. Complainants contend the publication of "terminal rates" for application at a shallow water point is unauthorized and unlawful and the provision for immediate effectiveness of tariffs upon notice to the department can have no application in this instance. But, as has been stated, the law draws no distinction between shallow water points and deep water points. Furthermore the real rates involved, or the rates applicable in conjunction with on-carriers, are not terminal rates.

Complainants further contend that jurisdiction of inland water carriers has not been conferred upon the department and that tariffs naming joint rates with such carriers are illegal upon their face. 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 in this instance are common carriers by water engaged for hire in the transportation of property. It is true their activities are limited to the Sacramento River and San Francisco Bay, but, as has been pointed out, by transporting in part shipments the undoubted character of which is intercoastal they subject themselves to the act.

One other contention of complainants is that, irrespective of whether the on-carriers in this instance are subject to the act, joint rates with such carriers are unauthorized and illegal. In support of this contention they mention the fact that no reference is made in either the Intercoastal Shipping Act, 1933, or in the Shipping Act, 1916, to joint rates, but merely to through routes "contemplating, of course, a combination of local rates." This contention is untenable. 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", *St. Louis S. W. Ry. Co.* v. *United States*, 245 U. S. 136, 139, affirming 234 Fed. 668.

(g) *Removal, in whole or in part, of differences in the aggregate of rail and water rates and other charges through different ports*

The agreement governing the United States Intercoastal Conference at the time this investigation was instituted provided in part—

9. (a) Port equalization will be permitted all lines on westbound tariff items covered by the so-called "Port Equalization List", which shall be in Tariff referred to in paragraph (8). Port equalization is not to be applied unless the rates from point of origin into the port of exit equals or exceeds nine cents (9¢) per 100 pounds and is not to exceed the actual difference in like kinds of transportation from the point of origin to the port of exit subject to a maximum equalization of three cents (3¢) per 100 pounds, except in the application of this rule to Chester, Pennsylvania, as below indicated. (See "b.") Equalization is not permitted of any difference in the charges assessed or claimed, for delivery of freight by private, public, or Government-owned dray, truck, or similar conveyance; nor is equalization permitted to any extent of charges assessed or claimed for transportation of vehicles or parts thereof, moving under their own power or through the medium of some other form of transportation on the public highways. Said list may be amended from time to time by unanimous vote.

(b) In respect to Chester, Pennsylvania, it is permitted to equalize carload rail traffic at Philadelphia as an exception to the nine-cent limit rule and exceeding the three-cent maximum, aforesaid. (See "a.")

(c) No port equalization shall be applied by any line within the list of handicap items, with the following specific exceptions:

(1) Dollar Line—up to 250 net tons of iron or steel, handicap or nonhandicap items per steamer from New York on "A" rate basis.

(2) Panama Pacific Line—up to 250 net tons of iron or steel, handicap or nonhandicap items, per steamer from New York on "A" rate basis.

(3) Grace Line—up to 250 net tons iron or steel out of handicap list per steamer from Philadelphia on "A" rate basis.

(4) Specific equalization privileges on the quantities of iron and steel per steamer mentioned in Nos. 1–3 above are noncumulative, but the measure of port equalization allowed in these specific privileges on iron and steel mentioned in Nos. 1 and 2 above may be the actual difference between the rail rates from point of origin to port of exit, subject to a maximum of six cents (6¢) per 100 pounds, without prejudice to section "a" foregoing.

(5) All lines reserve the right to fully equalize on the Pacific coast with lines engaged in intercoastal traffic who also operate Pacific coastwise services, and with intercoastal lines engaged in Pacific coastwise service on traffic destined beyond.

(d) No carrier shall apply port equalization in connection with traffic originating locally at another port from which service is maintained by any other Conference line, with the exception of Chester, Pennsylvania, as above provided for. (See "b".)

(e) The right of equalization shall not be used to offset any disabilities existing between carriers in the same port, except in respect of receiving and delivering stations agreed on in New York Harbor, (See Paragraph 10), and no equalization shall be made in respect of transfer, cartage, lighterage, wharfage, or unloading charges, in the same port, except as provided by tariff rules and regulations.

(f) There shall be no port equalization on east-bound cargo.

Rule 9 of Agent Thackara's tariff SB–I No. 4, appearing hereinbefore, was adopted in furtherance of this provision of the conference agreement. Calmar and Shepard publish similar rules in their tariffs. All such rules have here been condemned for reasons already stated. Their unlawfulness has also been made clear by the department in *Intercoastal Rates of Nelson Steamship Company*, *supra*, involving a similar port equalization rule. It should suffice to repeat what was there stated, that 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. In view of that decision and of the fact that the conference no longer exists, a discussion of the merits of shrinking the intercoastal rates for the purpose of equalizing rail or truck rates and charges on cargo moving in intercoastal commerce through different ports will only be of academic value, and this subject merits no further consideration.

(*h*) *Performance of transportation services, or services in connection therewith, without proper tariff authority.*

(*i*) *Nonperformance of services which by proper tariff provisions or otherwise they hold themselves out to perform.*

(*j*) *Observance of the rates, classifications, rules, and regulations contained in tariffs properly filed with the Department.*

No. 114

These three subjects and case are related and will be disposed of together. 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 con-

nection 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. This advertence is necessary in view of the fact that the record shows some respondents consider themselves at liberty to act most freely when no rate, charge, or rule is contained in the tariff. An outstanding example of this is presented by Luckenbach and American-Hawaiian, which the record shows handle the greater number of intercoastal shipments moving to or from Philadelphia. Both respondents operate terminal facilities at that place. Without any provision in the tariff, originally they would allow five days free for the storage of property. To meet the competition of each other, this free storage period has been increased from time to time until at present it ranges from five to at least ninety days. The time allowed is the subject of trading with each shipper. The storage situation at Portland is not dissimilar from that at Philadelphia. Another outstanding example is presented by the fact that on-carriers operating in the Puget Sound not infrequently consolidate less-than-carload shipments in order to insure the application of carload rates. In doing this an additional haul over their lines is necessary. Although the tariffs are silent, apparently this service and haul are performed without charge. A witness on behalf of Puget Sound Navigation Company and Border Line Transportation Company, carriers by water operating in Puget Sound, testified in part as follows:

We usually receive an order from the broker, canner, or whoever it might be, that is making the shipment, telling us there will be a hundred cases at Pier 40 at Seattle, which is the salmon terminal; there will be 500 cases at Bellingham. We will pick the hundred cases up from Pier 40 and take it to Bellingham and consolidate them and bring the 600 back for reshipment intercoastally at Seattle, and secure our revenue on the 600 cases. In other words, frankly, we take a hundred cases for a joy ride. * * *

Q. What makes it necessary to take this hundred cases out for a joy ride, as you call it?

A. To make the consolidation. In other words, we have a steamer loading at a terminal in Seattle that is not the salmon terminal. We could pick up the 500 cases from Bellingham and deliver them to that terminal for the steamship line. However, we have an eight-cent rate, for instance, from Bellingham, on carload quantities and a 10-cent rate on less than carload quantities. Therefore, the 500 cases might not make the carload and would be penalized. Not only that, the shipper would have to arrange the consolidation with the hundred cases after they have arrived in Seattle. Now, we can handle it on our northbound trip without any additional expense, other than probably 15 cents worth of fuel oil, and we can handle it on our inbound trip the same way. However, I say a hundred cases. It might be the exact reverse. It could be worked. I don't think it is; but the shipper might have 500 cases

in Seattle and 100 cases in Bellingham, and in order to get our eight cents from Bellingham to Seattle, we would haul the 500 equally for a sight-seeing trip, to connect with the hundred.

In addition to the specific instances hereinbefore shown where respondents fail to adhere to the published rates, charges and rules, the record shows that even though respondents the vessels of which go through the Panama Canal publish "heavy lift" and "segregation" charges in their tariffs, these services are often rendered by them and the shipper is never billed therefor. These 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.

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.

No. 114.—The complaint in this case, filed by Luckenbach, alleges that Calmar's tariffs SB–I Nos. 1 and 2 contain class and commodity rates and rules and regulations for the intercoastal transportation of property between all ports on the Gulf of Mexico from Tampa to Corpus Christi, both inclusive, and ports on the Pacific Coast; that Calmar does not now nor has it since March 3, 1933, operated any steamships between such ports; that the Intercoastal Shipping Act, 1933, requires the filing only of tariffs naming rates, charges, rules, and regulations between points as to which service is maintained; and that, therefore, the filing of such tariffs was in violation of law. The prayer is that respondent be required to amend its tariffs and eliminate therefrom all rates, rules, and regulations for the transportation of property between Gulf and Pacific Coast ports.

The tariffs in question were published, effective June 1, 1933, principally to enable respondent to place in service vessels laid up on the Pacific Coast, particularly in the transportation of grain to points on the Gulf of Mexico if a favorable opportunity presented itself. The record does not disclose that Calmar has ever maintained service between points on the Gulf of Mexico and Pacific Coast.

Rule 3 (b) in Calmar's tariff SB–I No. 1 is as follows:

> Except as otherwise provided for in this tariff, rates named in this tariff shall apply on cargo loaded on any vessel scheduled by Calmar Steamship Corporation for direct call at ports * * * the Gulf of Mexico from Tampa,

Florida, to Corpus Christi, Texas, both inclusive, and/or United States waters adjacent or tributary thereto, as named on Page No. 7 of this tariff, via Panama Canal, to all safe port or ports at which such Calmar Steamship Corporation's vessel is scheduled to call direct to discharge cargo on the Pacific Coast of the United States * * * as named on Page No. 8 of this tariff, or via the carriers and routes specified on Pages Nos. 8 and 9 of this tariff.

Page 7 of the tariff names, among others, the ports on the Gulf of Mexico. A similar rule is contained in Calmar's tariff SB–I No. 2, applicable on east-bound traffic. From these rules it is impossible to state the circumtsances under which respondent would schedule its vessels from or to points on the Gulf. 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, * * * 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.

As has been pointed out, "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 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.

(*k*) *Performance of transportation services, or services in connection therewith, under private contracts with shippers*

No. 121

The record does not show carriers formerly members of the United States Intercoastal Conference maintain contracts with shippers in respect of their rates. The contract rate system was adopted by members of the Gulf conference, Calmar and Shepard prior to the passage of the Intercoastal Shipping Act, 1933, when intercoastal carriers were only required to file their maximum rates and the rates charged the shippers, which frequently changed, were not the

same as the published rates. Such practice only prevails in respect of west-bound rates. 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. The contract rate invariably is lower than the noncontract rate. At the time of hearing there was no uniformity in the difference between such rates. The applicable tariff has been amended, and at present the contract rates are uniformly 10 cents per 100 pounds, or $2 per ton, less than the noncontract rates. Westbound traffic from the Gulf moves under through all-water rates with barge lines, rail-ocean rates, rail-barge-ocean rates, and port-to-port or terminal rates. Contract rates are contained only in the port-to-port tariff, SB–I No. 2, filed by Agent C. Y. Roberts on behalf of Gulf Pacific, Gulf Pacific Mail and Luckenbach Gulf, and only on commodities moving with regularity and in large volume. It is estimated that from 65 to 70 percent of such westbound tonnage moves on basis of contract rates.

In addition to the contract rate the tariff contains the form of the contract, which in part reads as follows:

1. THE SHIPPER, * * * agrees to ship by steamers of the Gulf Intercoastal Conference lines, * * * all of the water-borne shipments, which the SHIPPER shall make between the date hereof and ----------, inclusive, * * * of the commodities hereinafter described, quantities being estimated at approximately ---------- carloads of ---------- net tons.

The shipments contemplated in this clause shall include not only any such shipments made directly by the SHIPPER and in its name, but also any such shipments, however, and by whomsoever made, if for the benefit and on behalf of the SHIPPER * * *

4. If the SHIPPER shall make any shipments in violation hereof, this agreement shall immediately become null and void as to all future shipments, and thereupon the SHIPPER shall be liable to the transporting CARRIERS for payment of additional freight on all commodities theretofore shipped with such CARRIERS since the execution of this agreement, in the amount of the difference between the tariff contract rate or rates and the tariff noncontract rate or rates of the transporting carriers in force on such commodities at the time of such shipments.

6. * * *

For and on behalf of the CARRIERS:

GULF PACIFIC LINE
GULF PACIFIC MAIL LINE, LTD.
LUCKENBACH GULF STEAMSHIP COMPANY, INC.
By GULF INTERCOASTAL CONFERENCE
By ----------

The contracts, executed generally for 6 months or one year, are renewed upon expiration. The tariff shows the present contract rates and contract items to expire June 30, 1935.

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. Contracts of the character in question do not constitute a transportation condition as to warrant a difference in transportation rates. Furthermore 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 & S. S. 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.

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 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.

No. 121.—The complaint in this case was filed December 12, 1933, by carriers then members of the United States Intercoastal Conference excepting Nelson. It alleges, in substance, that complainants and respondent, Calmar, are in competition with each other in the intercoastal trade; that respondent has entered into contracts with certain shippers for intercoastal transportation of all shipments for periods extending to three, and in some instances, to five years, at rates different from, and which are or may be lower than, the rates collected by respondent from other shippers who do not enter into

such contracts; that by means of such contracts shippers are required to patronize respondent to the exclusion of complainants or other competing carriers; that said contracts are without lawful consideration; that respondent has not included in its tariff, as required by the Intercoastal Shipping Act, 1933, the rates and terms of said contracts; that said contract rate system constitutes unjust discrimination between shippers and creates undue and unreasonable prejudice and disadvantage both as to complainants and shippers in violation of sections 14, 16, and 18 of the Shipping Act, 1916. It prays an order be made terminating and canceling said contracts and requiring respondent to cease and desist from the aforesaid violations of the shipping acts.

The form of the contract is, in part, as follows:

1. SHIPPER agrees to ship or cause to be shipped, and CARRIER agrees to carry, * * *, subject to CARRIER'S right to fix the maximum quantity of SHIPPER'S cargo to be carried on any vessel, the waterborne shipments of the commodities as described below which SHIPPER and its Subsidiary Companies, or Agents, or affiliations shall make or control between _____, 193_, and _____, 193_, inclusive, * * *

3. Quantities to move under this agreement during the time it is in force shall be as stated in Paragraph No. 6, with a total minimum of _____ carloads, or _____ net tons, and a total maximum of _____ carloads, or _____ net tons. CARRIER shall not be obligated to carry more than _____ of the maximum quantity stated in this paragraph in any one contract year during the term of this agreement.

4. If the SHIPPER shall fail to tender any shipments to CARRIER in any contract year during the term of this agreement, or shall fail in the performance of any of the obligations resting on it under this agreement, CARRIER shall have the option of cancelling this agreement by written notice mailed to SHIPPER.

5. CARRIER agrees to keep SHIPPER advised of its proposed sailings and arrivals, and SHIPPER agrees to use its best efforts to tender its cargo to CARRIER in accordance with such sailings and arrivals.

In bona fide cases where the proposed sailings and arrivals of CARRIER'S vessels will not permit SHIPPER to effect the deliveries required by it, SHIPPER shall have the privilege of forwarding such cargo via other lines, provided (1) SHIPPER in every such instance shall have given reasonable written notice to CARRIER of its intention to make such shipment via other lines, stating the reason therefor and the line or lines via which SHIPPER proposes to move such cargo; and (2) CARRIER shall then fail to rearrange its sailings to meet such delivery requirements. The amount of cargo shipped by SHIPPER via other lines under the above circumstances shall, at SHIPPER'S option, to that extent reduce the amount of cargo required to be tendered by SHIPPER to CARRIER under this agreement, but CARRIER shall not be liable to SHIPPER for any excess rate paid by SHIPPER to other line or lines, or for any other expense incurred by SHIPPER in shipping cargo by other line or lines.

6. The shipments covered by this agreement are listed below in this paragraph, and shall be classified in accordance with the description in, and shall be carried subject to the rates, rules, regulations, and conditions of, CALMAR STEAMSHIP CORPORATION Westbound Class and Commodity Freight Tariff No. 1, SB–I No. 1, revisions or reissues thereof, but the rate and carload minimum

weight for each commodity herein shall not in any event exceed the rate and carload minimum weight set forth in this paragraph.

Item no.	Commodity	Maximum rate in cents per 100 pounds		Carload minimum weight	Quantity to be shipped under this agreement			
		Carload	Less carload		Minimum		Maximum	
					Carloads	Net tons	Carloads	Net tons

Unlike carriers members of the Gulf conference, Calmar does not publish the terms of the agreement in its tariff. Although the evidence does not support the allegation that Calmar's contract rates are different from or lower than those charged on similar transportation to other shippers, or that the contract rates are not contained in the tariff, it shows some contracts were executed or amended about the date the Intercoastal Shipping Act, 1933, became effective, to run for a period of three or five years thereafter. No new contracts have been executed since July 29, 1933. Under the terms of the contract, if the tariff rate is lower than that stated in the contract, the shipper is charged at the lower rate. It is said that the maximum quantity contracted for does not represent the entire output of the shipper. The testimony on behalf of West Disinfecting Company, Bedford Pulp and Paper Company, and Norwich Pharmacal Company, which have contracts with Calmar, is that often they contract with purchasers of their commodity some time in advance of first delivery, and the contracts with Calmar insure to them the rate stability necessary in their business. 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.

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. Under paragraph 5 Calmar agrees to keep the shipper advised of its proposed sailings and arrivals. This is an obligation not assumed or imposed by the tariff, and the service of keeping the contracting shipper advised of proposed sailings and arrivals results in an undue and unreasonable preference and advantage to the contracting shippers and undue and unreasonable prejudice and disadvantage to other patrons of respondent. 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 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.

Omitting details not here necessary, copy of contract filed of record by Shepard reads in part—

> It is this day mutually agreed by and between Shepard Steamship Co. (hereinafter called Carrier) and the Firestone Tire & Rubber Company (hereinafter called Shipper and/or Consignee) that the Carrier will charge Shipper and/or Consignee present rates on commodities as per attached rider for shipments from New Bedford, Mass., to Los Angeles, California, until January 1, 1935, and that in consideration thereof, the Shipper and/or Consignee will ship on vessels of the Carrier, now operating in Intercoastal Service, all such Commodities from Atlantic Coast to Pacific Coast Terminal Ports, the routing of which is controlled by the above-mentioned Shipper and/or Consignee shipments will run approximately *1,000 tons* per year, and agrees to notify the Carrier sufficiently in advance so that they may arrange to take care of this cargo. Carrier shall not be obligated to lift cargo in excess of its ability to supply space for same on its steamers. * * *

The rider mentioned in the contract shows—

> Shipper and/or Consignee agrees to ship not less than 150 tons per sailing from New Bedford per steamer when requested to place a vessel into that port to lift the tire fabric.
>
> Shepard Steamship Co. agrees to take any size lot when vessel calls at New Bedford to load or discharge cargo.
>
> Shepard Steamship Co. also agrees to allow shipper or Consignee the right to ship via another line provided no sailing available at time shipment must move.
>
> Commodity covered under this contract as follows:
>
> Item #1183 Fabric, Tire or Hose, not rubberized, frictioned, or otherwise treated, carload minimum 24,000#, @ 41½¢ per 100 pounds.

Without stopping to point out inconsistencies appearing on the face of the contract and rider, neither the contract nor rider refer to the rules and regulations contained in the tariff. Under the tariff New Bedford is not a regular port of loading. Cargo will be ac-

cepted for loading at such port only when accompanied by permit issued by Shepard or its agent. The tariff publishes the form of permit which, among other things, contains the notation "No shipments will be accepted after noon on scheduled sailing date." 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. Although the particular contract in question apparently has expired, it should be stated that it was of an exclusive patronage character and what was said by the court in the Menacho case applies here with equal force.

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. 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. However nothing in those acts has deprived the 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.

(*l*) *Competition between members of the Gulf Intercoastal Conference and the United States Intercoastal Conference*

Prior to 1928, controversies between intercoastal carriers operating from and to the Gulf, on the one hand, and intercoastal carriers operating from and to the Atlantic Coast, on the other, related merely to individual rates and individual commodities. Sometime during that year, Redwood Steamship Company, which had withdrawn from membership in the Gulf Intercoastal Conference,

established joint rail-and-ocean rates in conjunction with the Illinois Central Railroad Company on steel and steel articles from Chicago, Ill., to Pacific Coast destinations, which are said to have placed Chicago, through the Gulf ports, on a rate parity with Pittsburgh, Pa., through the Atlantic Coast ports. It is claimed this diverted to the Gulf ports shipments of steel and steel articles formerly moving by way of the Atlantic Coast ports to Pacific Coast destinations. It is also claimed such rate action had the further effect of placing at a disadvantage manufacturers located in the Youngstown, Ohio, territory, which took higher rail rates to the Atlantic Coast ports than the Pittsburgh territory. The record indicates that to meet this rate disadvantage, a considerable portion of the business of one such manufacturer was transferred from Youngstown to Chicago, thereby depriving Atlantic Coast intercoastal carriers of transporting such tonnage. This entire situation was aggravated by the establishment of additional joint rates between rail carriers, barge lines operating over the Mississippi River and waters tributary thereto, and Gulf intercoastal carriers, and joint rates between the barge lines and the Gulf intercoastal carriers. At present there are numerous such rates applicable on westbound and eastbound traffic through Mobile, Ala., Houston, Tex., and New Orleans. In respect to traffic originating in the southeastern section of the country and moving by water to Pacific Coast points, the Gulf carriers operating from Mobile are said to have an advantage over their competitors operating from Savannah, Ga., or Charleston to the extent that the terminal facilities at Mobile, owned and operated by the State of Alabama, are so built as to eliminate handling services and charges therefor, in many instances, between rail carriers and ocean vessels. On brief it is shown, by computations made from exhibits of record, that as compared with the year 1930, the gross revenue of the Gulf intercoastal carriers increased by $1,889,095 in 1931, $2,289,972 in 1932, and $3,035,157 in 1933; and that of the Atlantic Coast competitors, excluding passenger carriers, decreased by $9,839,826, $18,263,950, and $13,803,953, respectively. However, not all of these results may be attributed to the situation just described, for during a large portion of the period in question the Atlantic Coast carriers were engaged in a "pretty savage" rate war, during which each line made its own "quotations."

The joint rail-and-ocean rates and rail-barge-ocean rates are not under the control of the department. The information of record is not sufficient upon which to determine whether the barge-ocean rates or the Mobile terminal situation results in prejudice or disadvantage to the Atlantic Coast intercoastal carriers of the character condemned by the statute. This matter vitally affects the interest of all carriers

concerned. It would seem to be a problem for amicable solution by the affected intercoastal carriers. It is understood negotiations are being voluntarily conducted by them. Should they fail to adjust this matter, it could be the subject of a separate proceeding.

Chartering of vessels to shippers for intercoastal transportation of property

This question came into this case incidentally but inevitably because of its importance in intercoastal transportation. The first section of the Intercoastal Shipping Act, 1933, provides:

That when used in this act—

The term "common carrier by water in intercoastal commerce" for the purposes of this 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.

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 specified 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. It is hardly necessary to state that the provisions of that act 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.

The record discloses that subsequent to the enactment of the Intercoastal Shipping Act, 1933, large tonnage of grain, lumber, sulphur, and fresh fruits has moved between points on the Atlantic Coast and points on the Pacific Coast by way of the Panama Canal in vessels operated by Nelson, Gulf Pacific, McCormick, Quaker, Shepard, American Foreign Steamship Corporation, the Union Sulphur Company, Pacific American Fisheries Company, Northland Transportation Company, American Tankers Corporation, Hammond Lumber Company, Matson Navigation Company, Fairfield Steamship Company, Strachans Southern Steamship Company, Inc., South Atlantic Steamship Company, and W. J. Gray, Jr., under charters to Pacific Continental Grain Company, Kerr, Gifford and Company, Puget Sound Associated Mills, Stauffer Chemical Company, and other shippers, without proper tariffs, or tariffs of any character, on file with the department. It

is shown that between June 17, 1933, and September 15, 1934, nearly 87 percent of all grain moving from the Pacific Coast to the Gulf of Mexico or Atlantic Coast in intercoastal commerce moved in these chartered vessels. When Nelson, Gulf Pacific, McCormick, Quaker, or Shepard was the carrier, the amount per 100 pounds, or ton, resulting under the charter was lower than the corresponding rate published by it in its own intercoastal tariff. In the other instances shown such amount was lower than the lowest published intercoastal rate.

Some of the charter parties are of record. That between the Union Sulphur Company and A. C. Dutton Lumber Corporation, dated May 19, 1933, amended the next day, in effect until cancelled, is deserving of separate consideration. The Union Sulphur Company owns four steamers capable of making 10 or 11 knots, of deadweight tonnage aggregating 28,522 gross tons. Under this charter party it agrees to let, and A. C. Dutton Lumber Corporation, shippers of lumber, agrees to hire said vessels for voyages from certain Pacific Coast ports of the United States to West Indies, Mexican Gulf, and ports on the Atlantic Coast of the United States, subject to certain terms and conditions, one of which is that the charterers may sublet the vessels for all or any part of the time covered by the contract. The contract also provides, in part, as follows:

> The Owners agree to deliver to Charterers a minimum of ten (10) vessels for loading under this charter and the Charterers agree to accept from Owners a minimum of ten (10) vessels for loading under this charter, per year. Subject to Charterers' approval, the Owners may tender up to a maximum of sixteen (16) vessels for loading under this charter per year. It is further agreed between the Owners and the Charterers that when such vessels are accepted for use by Charterers that the same terms and conditions shall apply to such additional vessels.
>
> Vessels to be placed at the disposal of the Charterers at mutually agreed ports on the Pacific Coast * * * Vessel on her delivery to be ready to receive cargo, with clean-swept holds and tight, * * * (and with full complement of officers, seamen, engineers, and firemen for a vessel of her tonnage), to be employed, in carrying lawful merchandise, * * * as the Charterers or their agents shall direct on the following conditions:
>
> CLAUSE 1: That the Owners shall provide and pay for all provisions, wages and consular, shipping and discharging fees of the Captains, Officers, Engineers, Firemen and Crews, shall pay for the insurance of the vessel, also for all the cabin, deck, engine room and other necessary stores, including boiler water, and maintain their class, and keep the vessels in a thoroughly efficient state in hull, machinery, and equipment for and during the service.
>
> CLAUSE 2: That the Charterers shall provide and pay for all the fuel except as otherwise agreed, port charges, pilotages, agencies, commission, consular charges (except those pertaining to the Captains, Officers, and Crew), and all other usual expenses except those before stated, but when any vessel puts into a port for causes for which vessel is responsible, then all such charges incurred

shall be paid by the Owners. Fumigations ordered because of illness of the crew to be for Owners' account. Fumigations ordered because of cargoes carried or ports visited while vessel is employed under this charter to be for Charterers' account.

Charterers are to provide necessary dunnage and shifting boards, also any extra fittings requisite for a special trade or unusual cargo. * * *

CLAUSE 3: That the Charterers, at the port of delivery, and the Owners, at the port of re-delivery, shall take over and pay for all fuel oil remaining on board each vessel * * *

CLAUSE 4: That the Charterers shall pay for the use and hire of the said vessels, on the first delivery of each vessel, at the following rates: * * * per day (or pro rata for part of day) commencing on and from the day of her delivery, as aforesaid, and hire to continue until the hour of the day of her re-delivery in like good order and condition, ordinary wear and tear excepted, to the Owners (unless lost) * * *. It is mutually recognized that market values and operating costs are subject to variations and as this is a continuing charter over an indefinite period of time, it is therefore mutually agreed that if these charter hire rates should subsequently become out of line with such changes in market values and operating costs the Owners and the Charterers hereby agree to adjust such charter hire rates on subsequent deliveries (vessel) so as to fairly reflect such changes in market values and operating costs, or if unable to agree, rates to be determined by arbitration in accordance with Clause 14.

CLAUSE 5: Payment of said hire to be made in New York in cash U. S. currency upon completion of each voyage. * * *

Cash for vessels' ordinary disbursements at any port may be advanced as required by the Master, by the Charterers, or their Agents, Charterers to be promptly reimbursed for such advances by the Owners. The Charterers, however, shall in no way be responsible for the application of such advances.

CLAUSE 6: That the cargo or cargoes be laden and/or discharged in any dock or at any wharf or place that the Charterers or their Agents may direct, * * *

CLAUSE 7: That the whole reach of the Vessels' Holds, Decks, and usual places of loading (not more than she can reasonably stow and carry), also accommodations for supercargo, if carried, shall be at the Charterers' disposal, reserving only proper and sufficient space for ship's Officers, Crew, Tackle, Apparel, Furniture, Provisions, Stores, and Fuel.

CLAUSE 8: The Masters, Officers, Engineers, and Crews (although appointed by the Owners) shall be under the orders and directions of the Charterers; and Charterers are to load, stow, and trim the cargoes at their expense under the supervision of the Masters, who are to sign Bills of Lading for cargoes as presented, in conformity with Mate's or Talley Clerk's receipts. * * *

CLAUSE 9: That if the Charterers shall have reason to be dissatisfied with the conduct of any Master, Officer, or Engineer, the Owners shall on receiving particulars of the complaint, investigate the same, and, if necessary, in its discretion, make changes in the appointments. * * *

CLAUSE 11: That the Master shall use diligence in caring for the cargo. * * *

CLAUSE 23: The Charterers agree, in the event the vessels are used by them to carry freight for hire, either as common carriers or contract carriers in Intercoastal service of the United States, the Charterers will file rates and regulations with the United States Shipping Board to comply with the "Shipping Act of 1933."

Approximately 60 percent of the lumber shipments made by this shipper in intercoastal commerce moves in these chartered vessels. It was admitted the amount resulting under the charter is lower than the lumber rate contained in the tariff of carriers formerly members of United States Intercoastal Conference. This contract does not create a demise of the vessel. The charterers are not owners *pro hac vice*. Although the lumber company reserves the right to give orders and directions to the masters, officers, engineers, and crews, the masters, officers, engineers, and crews are the employees of the owners, upon whom rests the duty of navigation. It is significant that according to the terms of the charter, in the event the vessels are used by the charterers to carry freight for hire, "either as common carriers or contract carriers" in intercoastal transportation, they must file rates and regulations with the department. The Union Sulphur Company files a tariff with the department, SB–I No. 4, bearing the notation "(Not a Common Carrier)", but this tariff does not cover the transportation under consideration.

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 as its failure to observe such rates after they have been published and filed.

BY THE SECRETARY OF COMMERCE:

Except as to certain unimportant changes the foregoing is the report of the examiner who heard the case and proposed the following conclusions:

(1) That 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 transportation between points on its own 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) and 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.

(2) That respondents, formerly members of United States Intercoastal Conference, Calmar and Shepard 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. Each such respondent should be required to cease and desist from such unlawful practices..

(3) That the practice of Shepard to name tariff rates and charges lower by fixed percentages than those of its competitors, American Hawaiian, Panama Pacific, Argonaut, Calmar, Dollar, Isthmian, Luckenbach, McCormick, Nelson, Quaker, Pacific Coast Direct, Grace, Arrow, Weyerhaeuser, or Williams, 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, in violation of sections 16 and 18 of the Shipping Act, 1916. Shepard should be required to cease and desist from such unlawful practice. This finding includes Nos. 152 and 154.

(4) That 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. The basis for such rates and charges cannot be determined or prescribed on the instant record. Such respondents appear in need of additional revenue to enable them to keep their fleets in good repair and maintain modern and efficient service, but this does not warrant requiring Shepard, for instance, to increase its rates and charges to the level of those maintained by respondents operating on basis of "A" or "B" rates, for

such rates do not afford a proper standard. Affected respondents should be allowed sufficient time to file proper tariffs as indicated in (1) above, naming also uniform rates and charges for intercoastal transportation. In the making of such tariffs, consideration should be given, among other things, to the cost of service, rights of shippers, and transportation and traffic conditions. Should they fail to name uniform rates and charges, any affected respondent could be permitted to reduce its rates and charges to the level of those maintained by Shepard. Stability could be attained by refusing further reductions unless a clear showing is made that they are proper.

(5) That no finding is necessary as to the effect, if any, pooling of revenue had on the rates of respondents formerly members of United States Intercoastal Conference.

(6) That the rates and charges in issue in No. 119 are not shown to be unreasonable, unduly preferential or prejudicial, or otherwise unlawful, and the complaint be dismissed.

(7) That the so-called port equalization rules contained in the tariffs of respondents formerly members of United States Intercoastal Conference, Calmar and Shepard, are unlawful, in violation of section 2 of the Intercoastal Shipping Act, 1933, and should be required cancelled.

(8) That the filing of the rates and charges in issue in No. 114, and similar rates and charges named by class "A" 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, and should be required cancelled.

(9) That 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, and such respondents should be required to cease and desist from such unlawful practice.

(10) That 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, and such respondents should be required to cease and desist from such violations of law. This finding includes No. 121.

(11) That respondents Nelson, Gulf Pacific, McCormick, Quaker, Shepard, American Foreign Steamship Corporation, the Union Sulphur Company, and American Tankers Corporation have engaged, or are now 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. Each such respondent should be required to cease and desist from such unlawful practice.

Numerous carriers by water, such as those hereinbefore indicated as participating in through intercoastal routes with American-Hawaiian and other respondents; or such as Pacific American Fisheries Company, Northland Transportation Company, Hammond Lumber Company, Matson Navigation Company, Fairfield Steamship Company, Strachans Southern Steamship Company, Inc., South Atlantic Steamship Company, and W. J. Gray, Jr., shown of record to be contract carriers engaging in intercoastal commerce, have not filed tariffs with the department as required by law. As only carriers filing tariffs for intercoastal transportation were named respondents, these other carriers are not parties to this proceeding. However, to clear all doubt, it is well to repeat that every common or contract carrier engaging in intercoastal transportation is subject to the Intercoastal Shipping Act, 1933, and whether made respondent or not, is required to comply with every provision thereof. Various reasons might be urged in defense of violations of that act shown of record, but they should not be accepted in respect of violations after the act has been construed by the department. Any such violation is punishable by a fine of not less than $1,000 nor more than $5,000 for each act of violation, or for each day such violation continues. Certain specific violations of the act by Puget Sound on-carriers have been set forth in this report. It should suffice to state that each such violation is punishable in the manner indicated, even though no specific recommendation is made herein in respect thereto.

This investigation in many respects is in the nature of an advisory proceeding and no order or orders, except in the complaint and answer cases, should be entered by the department at this time. However, the record contains full information as to each subject of inquiry, except competition between carriers operating from and to the Gulf and carriers operating from and to the Atlantic Coast, and should be kept open for a reasonable length of time for such purposes as the department may deem necessary.

The report was served upon the parties. Exceptions were filed thereto by some respondents and some interveners. No mistake of fact is alleged or shown. The exceptions of Dollar Steamship Lines, Inc., do not state the grounds upon which they are based, and will be given no further consideration. Those filed by Sacramento Chamber of Commerce have been considered, and are found not well taken. Consideration will now be given to the other exceptions filed in the order the conclusions of the examiner are stated.

Shepard Steamship Company excepts to the first conclusion on the ground it is so vague and indefinite as to be incapable of literal compliance. The conclusion follows closely the language of the statute and it is found capable of literal compliance. The exception of Calmar Steamship Corporation 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 of the carrier. As respondents are free to designate in their tariffs as many terminals, public or private, as they wish, the contention of this respondent does not appear to be well founded.

Swayne & Hoyt, Ltd., Gulf Pacific Mail Line, Ltd., and McCormick Steamship Company base their exceptions on the ground, in substance, that it is not practical to publish terminal charges and keep the tariffs current when such charges are not the charges of the carrier performing the transportation service. However, requiring intercoastal carriers to 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 of the aggregate of the rates or charges, or the value of the service rendered to the consignor or consignee is not the invention of the proposed report. Such requirement 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. Many of the difficulties mentioned by these respondents will be eliminated by specifying in the tariffs the particular terminals between which the rates apply. Furthermore in procuring terminal facilities carriers should make proper arrangements to safeguard the obligations imposed upon them by law. Such obligations this department does not have the power to waive. Boston Port Authority excepts to the failure of the proposed report to recommend that delivery of lumber be made at a point accessible to the receiver after the performance by the carrier, without charge, of the service of back-piling. However, from the time this investigation was instituted it was made clear to all parties that its nature did not permit of giving consideration to the handling of any particular commodity at any particular point. Lumber is one of the most important com-

modities handled in intercoastal transportation, and justice to the matters raised by intervener may best be done under a separate proceeding. The questions presented by Harbor Commission of the City of San Diego as to assembling and distributing charges have been disposed of in No. 96, a separate proceeding.

Two exceptions, one by Shepard Steamship Company and the other by Nelson Steamship Company, were filed to the second conclusion. Each is found not well taken.

The third conclusion was excepted to by Shepard Steamship Company. It does not point out the particular matters upon which it relies or wherein the conclusion is in error. Such exception is found not well taken.

The fourth conclusion is excepted to by Shepard Steamship Company, Calmar Steamship Corporation, Nelson Steamship Company, McCormick Steamship Company, Shippers' Conference of Greater New York, and Chain Store Traffic League, which urged differences in intercoastal rates should exist, each on the basis suggested by it, amply discussed hereinbefore. That the agreements governing the United States Intercoastal Conference were the result of compromises which ignored the rights of carriers and shippers, and that such compromises do not afford the proper standard for the future, admits of no doubt. 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.

No exceptions were filed to the fifth conclusion.

Exceptions to the sixth conclusion were filed by American Line Steamship Corporation, Nelson Steamship Company, Harbor Commission of the City of San Diego, City of Oakland, Armstrong Cork Company, and companies associated with that company. Those of Nelson Steamship Company and Armstrong Cork Company and its associates are found not well taken. The Harbor Commission of the City of San Diego urges that Luckenbach Gulf Steamship Company, Inc., and Swayne & Hoyt, Ltd., by means of the Gulf Intercoastal Conference agreement, prevent each other from extending service to the Port of San Diego, and its exception relates to the failure of the proposed report to find such carriers violate section 2 of the Intercoastal Shipping Act, 1933. However, the lawfulness of the Gulf Intercoastal Conference agreement is not involved in No. 126, or in any of the proceedings included in the report. Neither does the record warrant a finding. Any such matter should be the subject of a separate proceeding. What constitutes intercoastal commerce and what carriers by participating therein become subject to the provisions of the Shipping Act, 1916, and Intercoastal Shipping Act, 1933,

are questions clearly discussed in the report, and the matters urged in the exceptions of American Line Steamship Corporation or City of Oakland do not justify reversing the examiner.

The questions as to port equalization rules involved in this proceeding are substantially the same as those disposed of in *Intercoastal Rates of Nelson Steamship Company, U. S. S. B. B. 326*, and the exceptions to the seventh conclusion, filed by Boston Port Authority and Shippers' Conference of Greater New York, are found not well taken.

No exceptions were filed to the eighth conclusion.

The ninth conclusion was excepted to by American Line Steamship Corporation, Luckenbach Gulf Steamship Company, Inc., Swayne & Hoyt, Ltd., and Gulf Pacific Mail Line, Ltd. They are based principally on the effect such conclusion will have on transportation in foreign commerce, on the ground no strong opposition was made of record to the contract rate system, and that such system was approved in *Rawleigh* v. *Stoomvaart et al., 1 U. S. S. B. 285*, to which case no reference is made in the report. It is notorious that intercoastal transportation is not attended by many of the traffic and transportation circumstances attending transportation in foreign commerce, and from the report it is clear that the finding and conclusion therein contained relate to intercoastal transportation and not to transportation in foreign commerce. 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. The fact that no strong opposition was made of record is not a defense.

Shepard Steamship Company and Calmar Steamship Corporation excepted to the tenth conclusion. The grounds for the first exceptions are not stated, and they need no further consideration. As grounds for the second exceptions, the department is referred to the brief filed by respondent in No. 131 and decisions there cited. Neither the matters urged in the brief nor the cases there cited are convincing, and the exceptions are not well taken.

The last conclusion was excepted to by Nelson Steamship Company, Calmar Steamship Corporation, the Union Sulphur Company, and San Francisco Chamber of Commerce. Those of Nelson Steamship Company have been considered and are found not well taken. Those of Calmar Steamship Corporation, while apparently agreeing with the conclusion, state the conclusion does not make clear that the rates of contract carriers must not result in lower intercoastal transportation than the rates of intercoastal carriers operating directly between the Atlantic and Pacific coasts. They point out services of contract carriers are only available to few shippers and permitting

such exclusive shippers to pay less for transportation than paid by shippers who cannot avail themselves of the services of contract carriers will result in unjust discrimination. However, this takes us into the field of what relation, if any, should the rates of contract carriers bear to the rates of common carriers, which is a matter not involved in this proceeding. For this reason such exceptions are not well taken. 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 he Panama Canal. Undoubtedly 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.

Another exception filed by American Line Steamship Corporation is to the language of the report relating to Rules 4 and 5 of Agent Thackara's tariff SB–I No. 4, and to absorptions of charges for loading and unloading rail cars or lighters, or for other services which under certain circumstances are not the duty of intercoastal carriers to perform. Such exception is based on the ground that terminals in practically every port differ greatly in location and convenience to various classes of shippers, and unless carriers generally be permitted to perform the services referred to and similar services without charge, they will not be able to meet the competition of those carriers having the most favorably located terminals. However, the line between proper competition and improper competition must be drawn at some place. The absorptions referred to by this respondent in principle are difficult to distinguish from absorption of any other expense of the shipper. That such absorptions are intended to attract traffic is no justification. The exception is not well taken.

On consideration of all the facts and circumstances of record, including the exceptions, the department adopts as its own the report and conclusions of the examiner. However, appropriate orders will be entered requiring (1) respondents which on July 31, 1934, were members of United States Intercoastal Conference, States Steamship Company, Calmar Steamship Corporation, and Shepard Steamship Company each to amend its tariffs on eastbound and westbound intercoastal transportation in the manner specifically set forth in the first conclusion, and conforming to the seventh and eighth conclusions; and ceasing and desisting from the unlawful practices specifically mentioned in the second conclusion; (2) requiring Shepard Steamship Company to cease and desist from the unlawful practice to name tariff rates and charges lower by fixed percentages than those of its competitor specifically mentioned in the third conclusion; (3) dismissing the complaint in No. 119; requiring members of Gulf Intercoastal Conference each to cease and desist from the unlawful practice of exacting higher rates and charges from shippers who have not executed rate contracts with it than from shippers who have done so, for like intercoastal transportation; (4) requiring Calmar Steamship Corporation and Shepard Steamship Company each to discontinue its contract rate system; and (5) requiring respondents Nelson Steamship Company, Swayne & Hoyt, Ltd., McCormick Steamship Company, Pacific Atlantic Steamship Company, Shepard Steamship Company, American Foreign Steamship Corporation, The Union Sulphur Company, and American Tankers Corporation each to file tariffs as contract carrier by water in intercoastal transportation, as required by section 2 of the Intercoastal Shipping Act, 1933, unless such contract carrier operations are discontinued.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

DOCKET NO. 128

INVESTIGATION—SECTION 19 OF MERCHANT MARINE ACT, 1920

Submitted February 25, 1935. Decided July 12, 1935

Rules and regulations requiring the filing of schedules of export rates by common carriers by water in foreign commerce prescribed.

J. Sinclair and *Roscoe H. Hupper* and *Burton H. White* for America France Line; American Line; American Scantic Line, Inc.; Anchor Line (Henderson Bros.), Ltd.; Anchor-Donaldson Line; Atlantic Transport Company, Ltd.; The Atlantic Transport Company of West Virginia (Atlantic Transport Line); Bristol City Line of Steamships, Ltd. (Bristol City Line); Cairn Line of Steamships, Ltd. (Cairn-Thompson Line); Canadian Pacific Steamships, Ltd.; Compagnie Generale de Navigation a Vapeur (Fabre Line); Compagnie Maritime Belge (Lloyd Royal) S. A.; Cunard Steamship Co., Ltd. (Cunard Line); Den Norske Amerikalinje A/S Oslo (Norwegian American Line); Dominion Line (Canadian/Bristol Channel Joint Service of Bristol City Line of Steamships, Ltd., and Donaldson Line, Ltd.); Donaldson Line, Ltd.; Ellerman's Wilson Line New York, Inc. (Ellerman's Wilson Line); Frederick Leyland & Co., Ltd. (Leyland Line); Furness, Withy & Co., Ltd. (Furness Line); Inter-Continental Transport Services, Ltd. (County Line); "Italia" Flotte Riunite Cosulich-Lloyd Sabaudo-Navigazione Generale (Italia Line); Manchester Liners, Ltd.; National Steam Navigation Co., Ltd. of Greece (National Greek Line); Polish Transatlantic Shipping Co., Ltd. (Gdynia America Line); Rederiaktiebolaget Transatlantic (Transatlantic Steamship Co.); Societa Anonyme de Navigation Belge Americaine (Red Star Line); Ulster S/S Co., Ltd. (Head Line and Lord Line); Oceanic Steam Navigation Co., Ltd. (White Star Line); Aktiebolaget Svenska Amerika Linien (Swedish American Line); and Lamport & Holt Line, Ltd.

George H. Terriberry, *D. H. Walsh*, and *A. C. Cocke* for Lancashire Shipping Co., owners Castle Line; Ozean Linie (Ozean Line); Richard Meyer Co.; Richard Meyer Co. of Texas; Lykes Bros.-Ripley Steamship Co., Inc. (Southern States Line); Wilkens & Biehl (Texas Continental Line); Wilh. Wilhelmsen (Wilhelmsen Line); Lykes Bros.-Ripley Steamship Co., Inc. (Dixie U. K. Line); Larrinaga & Co., Ltd. (Owners, Larrinaga Line); Wm. Parr & Company, as principals (covering its acts as General Agents for the Harrison Line at Texas Ports, except Texas Sabine District Ports); Lykes Bros.-Ripley Steamship Co., Inc. (Dixie Mediterranean Line).

Elkan Turk and *Herman Brauner* for Bank Line, Ltd.; Barber Steamship Lines, Inc.; China Mutual Steam Navigation Co., Ltd., and The Ocean Steam Ship Co., Ltd. (Alfred Holt & Co., Managers), and Kokusai Kisen Kabushiki Kaisha.

Lillick, *Olson and Graham* by *Chalmers G. Graham* for General Steamship Corp., Ltd. (Kawasaki Kisen Kabushiki Kaisha); N. V. Stoomvaart Maatschappij "Nederland" and N. V. Rotterdamsche Lloyd (Pacific-Java Bengal Line); Silver Line, Ltd. Pacific Argentine Brazil Line; Oceanic and Oriental Navigation Co.; Westfal Larsen & Co. A/S; Grace Line, Inc.; Knutsen Line; Latin America Line; Panama Mail Steamship Co.; United Fruit Co. and Transatlantic Steamship Co. Ltd. (Pacific Australia Direct Line).

George F. Foley for American Republics Line; The Booth Steamship Co., Ltd.; Cia de Navagacao Lloyd Brasileiro; Houston Line (London) Ltd.; International Freighting Corp., Inc.; Linea Sud Americana, Inc.; Mooremack Lines, Inc.; Munson Steamship Line; Wilhelmsen Steamship Line and Lamport & Holt, Ltd.

W. F. Taylor, *C. L. Kaufman*, *J. Sinclair* and *Roscoe H. Hupper* and *Burton H. White* for American Hampton Roads Line; Oriole Line and Yankee Line,

Charles Harrington, *George H. Terriberry*, *D. H. Walsh* and *A. C. Cocke* for Compania Maritima del Nervion (Nervion Line); Navigazione Alta Italia (Creole Line) and Navigazione Odero (Odero Line);

Elkan Turk, *Herman Brauner* and *Lillick*, *Olson and Graham* by *Chalmers G. Graham* for Kerr Steamship Company, Inc.; Nippon Yusen Kaisha and Osaka Shosen Kaisha.

F. A. Ryan, *J. Sinclair* and *Roscoe H. Hupper* and *Burton H. White* for United States Line Company (American Merchant Lines) and United States Line Company (United States Lines).

E. S. Binnings, *George H. Terriberry*, *D. H. Walsh*, *A. C. Cocke*, *J. Sinclair* and *Roscoe H. Hupper* and *Burton H. White* for N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij "Holland-Amerika Lijn" (Holland America Line) and Navigazione Libera Triestina S. A.

J. Sinclair and *Roscoe H. Hupper* and *Burton H. White* and *George H. Terriberry*, *D. H. Walsh* and *A. C. Cocke* for Aktiebolaget Svenska Amerika Mexiko Linien (Swedish America Mexico Line) and Det Forenede Dampskibs Selskab (Scandinavian American Line).

Francis J. Haley, *Hunt, Hill & Betts* by *Frank J. Zito*, *J. Sinclair* and *Roscoe H. Hupper* and *Burton H. White* for American Diamond Lines, Inc. (Black Diamond Lines).

Ferguson Smith, *Philip E. McIntyre*, *J. Sinclair* and *Roscoe H. Hupper* and *Burton H. White* for Baltimore Mail Steamship Co. (Baltimore Mail Line).

W. H. Dausey, *J. Sinclair* and *Roscoe H. Hupper* and *Burton H. White* for The Export Steamship Corporation (American Export Lines).

J. H. Jordan, *George H. Terriberry*, *D. H. Walsh*, *A. C. Cocke*, *J. Sinclair* and *Roscoe H. Hupper* and *Burton H. White* for Cosulich Societa Triestina di Navigazione (Cosulich Line).

E. S. Binnings, *George H. Terriberry*, *D. H. Walsh*, *A. C. Cocke*, *J. Sinclair* and *Roscoe H. Hupper* and *Burton H. White* for Compagnie Generale Transatlantique (French Line).

J. Sinclair and *Roscoe H. Hupper* and *Burton H. White* and *Lillick*, *Olson and Graham* by *Chalmers G. Graham* for Hamburg-Amerikanische Packetfahrt Actien-Gesellschaft (Hamburg American Line).

J. Sinclair and *Roscoe H. Hupper* and *Burton H. White*, *George H. Terriberry*, *D. H. Walsh*, *A. C. Cocke* and *Lillick*, *Olson and Graham* by *Chalmers G. Graham* for Norddeutscher Lloyd (North German Lloyd).

J. H. Jordan, *George H. Terriberry*, *D. H. Walsh* and *A. C. Cocke* for Deutsche Dampschifffahrts-Gesselschaft "Hansa" (Hansa Line); Strachan Shipping Company (Strachan Line) and Unterweser Reederei A. G.

E. S. Binnings, *George H. Terriberry*, *D. H. Walsh* and *A. C. Cocke* for Armement Deppe, S. A.

W. B. Garner, *George H. Terriberry*, *D. H. Walsh* and *A. C. Cocke* for Waterman Steamship Corporation (Mobile Oceanic Line).

A. W. Parry, *George H. Terriberry*, *D. H. Walsh* and *A. C. Cocke* for Tampa Interocean Steamship Co. (Gulf West Mediterranean Line).

A. W. Parry for American Gulf Orient Line.

Kenneth Le Blanc, *George H. Terriberry*, *D. H. Walsh* and *A. C. Cocke* for Alfred Le Blanc, Inc., as Principals (covering its acts as General Agents for the Harrison Line at New Orleans, Sabine and East Gulf Ports).

M. J. Buckley, Keith R. Ferguson, Wandless and Lanier by *Edgar G. Wandless, Lillick, Olson and Graham* by *Chalmers G. Graham* for Dollar Steamship Lines, Inc. Ltd.

Elkan Turk, Herman Brauner, George F. Foley and *Lillick, Olson and Graham* by *Chalmers G. Graham* for Prince Line, Ltd.

Victor J. Freeze, Elkan Turk and *Herman Brauner* for American Pioneer Line.

N. O. Pedrick and *George F. Foley* for Mississippi Shipping Co., Inc.

L. L. Bates and *Keith R. Ferguson* for American Mail Line, Ltd. and Tacoma Oriental Steamship Co.

Walter Shelton, H. R. Dorr and *Parker McCollester* for Norton, Lilly and Co.

Parker McCollester for Ellerman and Bucknall Steamship Co., Ltd.

McCutcheon, Olney, Mannon and Greene by *Joseph B. McKeon* for The East Asiatic Company, Ltd.

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

James A. Farrell, Jr. and *L. D. Stapleton, Jr.* for American South African Line, Inc.

William R. Murrin for Page L'Hote Co., Ltd.

Markell C. Baer and *Robert M. Ford* for The City of Oakland.

C. F. Reynolds for San Diego Harbor Commission and San Diego Chamber of Commerce.

James F. Collins for Board of Harbor Commissioners City of Long Beach.

C. D. Arnold for Board of Commissioners, Lake Charles Harbor and Terminal District.

L. D. Estes for American Cotton Cooperative Association.

Haight, Smith, Griffin & Deming for Foreign Tramp Owners.

A. D. Whittemore for American Cyanamid Co. and Phosphate Export Association.

O. W. Tuckwood for Johns Manville International Corp.

H. J. Wagner for Norfolk Port-Traffic Commission.

Charles R. Seal and *G. H. Pouder* for Baltimore Association of Commerce.

Walter H. Brusche for The Merchants Association of New York.

Richard Parkhurst, Charles E. Ware, Jr., Frank S. Davis, and *Walter McCoubrey* for Boston Port Authority.

S. H. Williams for Philadelphia Chamber of Commerce.

William A. Lockyer for Philadelphia Bourse.

S. H. Williams and *William A. Lockyer* for Joint Executive Transportation Committee of Philadelphia Commercial Organizations.

J. P. Magill for Maritime Association of the Port of New York.
Dabney C. Waring for Shippers Conference of Greater New York.
George F. Hichborn for United States Rubber Company.
R. H. Horton for Port of Philadelphia Ocean Traffic Bureau.
Julius Henry Cohen, *Wilbur LaRoe, Jr.*, and *W. H. Connell, Jr.* for Port of New York Authority.

REPORT OF THE DEPARTMENT

This proceeding was instituted by the department for the purpose of determining (1) if conditions unfavorable to shipping in the foreign trade exist as a result of competitive methods and practices employed by owners, operators, agents, or masters of vessels of foreign countries; and (2) what rules and regulations should be made as authorized and directed by Section 19 of the Merchant Marine Act, 1920, to adjust or meet such conditions if found to exist. A copy of the order instituting the proceeding was served upon all carriers by water known to be engaged in the foreign trade of the United States, and public announcement of the investigation and inquiry was made through the press.

In connection with this investigation the Division of Regulation of the United States Shipping Board Bureau has conducted public hearings in San Francisco, New Orleans, and New York, after due notice to all carriers upon whom the order was served and to the public through the press. A considerable volume of testimony under oath has been recorded and briefs have been filed by a substantial number of carriers. At the hearings twenty-two American flag carriers submitted testimony, either individually or as members of Conferences, in support of their contention that in various trades which they serve conditions unfavorable to shipping exist as a result of alleged unfair competitive practices of certain foreign flag carriers. These American flag carriers were supported by over seventy foreign flag carriers who participate in our foreign commerce, and by a large number of shippers. The American flag carriers and the foreign flag carriers referred to, both at the hearings and in briefs, have suggested rules and regulations to be promulgated by the Department under Section 19 to adjust or meet the conditions testified to. Only three of the carriers who appeared at the hearings did not ask for the promulgation of rules and regulations.

For the purpose of this report the carriers by water in our foreign commerce may be grouped into three main classes: (1) Common carriers furnishing either regular or irregular services who have joined in rate-fixing agreements, or conferences, with other common carriers in the same trade, as authorized by law. These carriers will be referred to hereafter in this report as conference carriers. Nearly all

American flag carriers fall within this classification. (2) Common carriers furnishing either regular or irregular services without becoming members of the conferences in the trades in which they operate. These carriers will be referred to hereinafter as nonconference carriers. (3) Carriers transporting on any one voyage cargo supplied by a single shipper only under a single charter party or contract of affreightment. Such carriers will be referred to in this report as tramps, and this distinction between tramps and the other two classes of carriers will be elaborated upon later.

The contention of the carriers who ask that rules and regulations be promulgated under Section 19 is as follows:

In practically every trade the great majority of the carriers, other than tramps, are members of conferences formed for the purpose of stabilizing rates and conditions and approved by this Department or the former United States Shipping Board under Section 15 of the Shipping Act. These carriers allege that in a number of trades there are foreign flag nonconference carriers which are not guided by proper rate-fixing principles. In one form this nonconference method of rate making consists of soliciting freight on the basis that the nonconference carrier will cut any rate the conference may establish by a specified percentage or amount. Therefore any attempt of the conference carriers to meet the rates of nonconference carriers who resort to this method of competition is of no avail. In other instances nonconference carriers without any rate schedules of their own, consistently, and insofar as possible secretly, underquote the established conference rates by whatever amount they deem necessary to get the business away from the conference carriers, and any attempt of the conference to meet such quotations is countered by further underquoting. It is further alleged that in some instances nonconference carriers have used rate cutting as a club to compel the adoption of pooling agreements, rate differentials, or spacing of sailings agreements on such terms as the nonconference carriers dictate. These are the methods of competition which the conference carriers claim are unfair, and at the hearings much evidence was given, not only by carriers but by many shippers, in support of the contention that such methods of competion have produced conditions which require the promulgation of rules and regulations under Section 19 of the Merchant Marine Act, 1920.

The principal trades with respect to which evidence of this character was introduced and dealt with in briefs are as follows:

Atlantic/Far East.
Gulf/Far East.
Pacific/Far East.
Atlantic/United Kingdom and Europe.

Gulf/United Kingdom and Europe.
Atlantic/South Africa.

A summary of conditions existing in each of these trades follows:

ATLANTIC/FAR EAST

In this trade nonconference competition appears to have had more far reaching effects than in any other trade, and conditions in this trade will therefore be dealt with at some length.

Following a prolonged period of severe rate competition, the first conference in this trade was formed in 1905, comprising the only four lines then operating. Some two years later the Ellerman & Bucknall Steamship Company entered the trade. Although this company did not then become a member of the conference it generally maintained the same rates as those established by the conference. For the next ten years this conference functioned without further competition from nonconference carriers. During this period rates remained stable and cargo moved freely in increasing volume. These services, however, were by foreign-flag vessels only, and after the outbreak of the World War all were withdrawn from this trade. In 1914 a Japanese line, the Nippon Yusen Kaisha, inaugurated a service in order to protect Japan's trade with our Atlantic Coast. It was upon this service that American exporters using Atlantic ports had to rely during the war except for occasional neutral foreign-flag steamers which were berthed by the Barber Steamship Company whenever such vessels could be chartered. Services in this trade under the American flag were among the first to be established by the United States Shipping Board following the close of the World War. Nippon Yusen Kaisha continued its service, and most of the members of the former Far East Conference gradually resumed their services. In addition other carriers entered the trade, so that by 1921 fourteen different companies were operating with a total of 146 sailings a year. Conditions, however, were not stable.

In order to bring about stabilization, there was formed on September 1, 1922, under the auspices of the Shipping Board's operating agency, then the Emergency Fleet Corporation, the present Far East Conference; a voluntary association for the purpose of promoting commerce from Atlantic and Gulf ports of the United States to the Far East by providing "just and economical cooperation between the steamship lines operating in such trades." All lines in the trade at that time became members of the conference with the exception of one American flag carrier, the Isthmian Line. This line, however, did not underquote conference rates. The scope of

this conference agreement has been modified from time to time but at present the term "Far East" as used in this agreement includes Japan, Korea, Formosa, Siberia, Manchuria, China, Hongkong, Indo-China, and the Philippine Islands. For some time there has been practically no competition by tramps.

Shortly after the formation of this conference the Pacific Westbound Conference, a similar voluntary association, was formed by steamship companies operating from Pacific Coast ports to the Far East. To prevent destructive competition between each other these two conferences entered into an agreement known as the "Overland Agreement", which provided that rates on commodities originating in the interior of the United States and capable of moving either through Atlantic or Pacific ports should be fixed by joint action of the two conferences. As a result of these three agreements, rates to the Far East from all ports of the United States became stabilized, except rates from the Pacific northwest on commodities of local origin, where both nonconference carriers and tramps were numerous.

From the Atlantic Coast these stabilized conditions continued until June 1928, when Isbrandtsen-Moller Company, operating foreign-flag tonnage, entered the Atlantic-Far East Trade and immediately began cutting the established conference rates. The Far East Conference endeavored to meet this competition but was handicapped because of the Overland Agreement, under which it was necessary to obtain the concurrence of the Pacific Westbound Conference before rate reductions could be made on commodities originating in the interior of the United States. Because of this Isbrandtsen-Moller competition, therefore, the Overland Agreement was terminated in 1930. This step, however, proved inadequate, and on May 6, 1931, in order to more effectively meet Isbrandtsen-Moller's competition, four foreign-flag lines[1] withdrew from the Far East Conference. With the withdrawal of these lines the conference virtually ceased to function. The chaotic conditions which followed demoralized the trade. On September 24, 1931, three of these four lines rejoined the conference with the understanding that within sixty days there would be drawn up a "scheme of rationalization in the form of a cargo pool or other plan", to prevent over-tonnaging. Ellerman & Bucknall Steamship Company, the line which did not rejoin the conference, insisted upon a specific form of rationalization—a pool, or else a rate differential in its favor. Despite many attempts to find an acceptable plan of rationalization nothing was accomplished. The three lines which had rejoined the conference, however, continued in membership.

[1] Blue Funnel, Prince Line, Bank Line, and Ellerman & Bucknall Steamship Company.

In October 1931 Isbrandtsen-Moller informed the conference that "to effect a degree of order in quotations from the Atlantic Coast" it was willing to participate in a "satisfactory pooling agreement" which would involve a limitation in the number of its sailings and adherence to conference rates and practices. The president of the company stated, however, that in any arrangement with the conference he reserved the right to make his own arrangements with certain shippers to the Far East who had been his support in the past. The conference, believing that any such exceptions would involve the extending of unlawful preferential treatment to such shippers, rejected this reservation and the negotiations were discontinued.

It was alleged at the hearings that Isbrandtsen-Moller customarily affords certain shippers more favorable treatment than others. The president of the Barber Steamship Lines, one of the conference carriers, introduced in evidence a letter which he received in the latter part of 1931 from Hans Isbrandtsen, president of Isbrandtsen-Moller Company, in which the statement was made in connection with the possibility of reaching an agreement on rates: "We reserve freedom of action with shipments of Ford Motor Company. The same applies to paper, steel, plumbing supplies, and asbestos products. We do not intend to solicit accounts in these products not with us at this time." The witness who tendered this letter further testified that in connection therewith he had been informed orally by Mr. Isbrandtsen that "he intended to give lower rates to the shippers of those commodities who had been his supporters in the past during the term of any agreement that he might make with the conference, and during the said term for which he might make the agreement with the conference he would expect the conference to charge higher rates to all of the shippers of the same commodities." This witness added that Mr. Isbrandtsen had further stated he would not take any shipments from other manufacturers of the same products. As stated above, these negotiations came to naught.

On December 16, 1931, Ellerman & Bucknall rejoined the conference, but six months later, in an effort to force adoption of a rationalization plan or a rate differential, it again withdrew.

Ellerman & Bucknall's first sailing after this withdrawal was in July 1932. At this time, according to the record, it was the practice of Isbrandtsen-Moller to quote on most commodities 10 percent lower than conference rates. Witnesses for the conference carriers testified that shippers notified them of offers from Isbrandtsen-Moller to meet any reduction by the conference by quoting at all times 10 percent under the conference rates, and letters from shippers to that effect were introduced of record. Inasmuch as Isbrandtsen-Moller declined to participate in this investigation, although repre-

sentatives of the company were present at both the San Francisco and New York hearings, no tabulation of its specific rates is available. Ellerman & Bucknall, however, participated in the hearings, and considerable testimony was introduced by their agent in this country. The rates of Ellerman & Bucknall which are quoted in the tables below were furnished by this agent. They apparently were taken by him from ship's manifests, for this company neither published a tariff nor maintained a rate schedule, its rates being made from day to day at whatever level seemed necessary to get the business away from the conference carriers.

TABLE I.—*Ocean freight rates on representative commodities from United States Atlantic ports to Far East as of July 1, 1932—Comparison Far East Conference rates with Ellerman & Bucknall Steamship Co. rates*

[Rates are per 2,000 lbs. or 40 cu. ft. except where otherwise specified]

	Conference rates	Ellerman & Bucknall Steamship Co. rates
Automobiles	$8.00	$8.00
Agricultural implements	12.00	8.00
Canned goods	16.00	8.00
Cereals	10.00	8.00
Cotton piece goods	14.00	10.00
Dyestuffs	10.00	9.00
Iron and steel bars and beams	4.50	[1] 4.50
Machinery	7.50	7.00
Newspapers, old	4.00	[1] 3.50
Paint	14.00	12.00
Photo material	14.00	12.00
Plumbing supplies	9.00	8.00
Soap	8.00	8.00
Talking machines	7.50	6.50
Tires and tubes (pneumatic)	40.00	30.00

[1] Per 2,240 pounds.

TABLE II.—*Ocean freight rates on representative commodities from United States Atlantic ports to Far East as of Sept. 1, 1932—Comparison Far East Conference rates with Ellerman & Bucknall Steamship Co. rates*

[Rates are per 2,000 lbs. or 40 cu. ft. except where otherwise specified]

	Conference contract rates	Ellerman & Bucknall Steamship Co. rates
Automobiles	$8.00	$6.00
Agricultural implements	12.00	6.00
Canned goods	16.00	8.00
Cereals	10.00	4.00
Cotton piece goods	12.00	4.00
Dyestuffs	9.00	4.00
Iron and steel bars and beams	4.00	3.50
Machinery	7.50	4.00
Newspapers, old	[1] 4.00	[1] 3.50
Paint	12.00	8.00
Photo material	12.00	12.00
Plumbing supplies	9.00	8.00
Soap	10.00	6.00
Talking machines	7.50	4.00
Tires and tubes (pneumatic)	40.00	25.00

[1] Per 2,240 pounds.

TABLE III.—*Ocean freight rates on representative commodities from United States Atlantic ports to Far East as of Dec. 1, 1933—Comparison Far East Conference rates with Ellerman & Bucknall Steamship Co. rates*

[Rates are per 2,000 lbs. or 40 cu. ft. except where otherwise specified]

	Conference contract rates	Ellerman & Bucknall Steamship Co. rates
Automobiles	$4.00	$4.00
Agricultural implements	8.00	6.00
Canned goods	12.00	8.00
Cereals	10.00	4.00
Cotton piece goods	4.00	4.00
Dyestuffs	9.00	4.00
Iron and steel bars and beams	4.00	[1] 3.50
Machinery	4.00	4.00
Newspapers, old	[1] 3.50	[1] 3.50
Paint	12.00	6.00
Photo material	12.00	8.00
Plumbing supplies	8.00	6.00
Soap	5.00	4.00
Talking machines	4.00	4.00
Tires and tubes (pneumatic)	40.00	25.00

[1] Per 2,240 pounds.

It will be noted that in Tables II and III the rates of the conference are headed "contract" rates. Prior to the collapse of the Far East Conference in 1931, it had been the practice of the conference to give on some commodities reduced or "contract" rates to all shippers, large or small, who agreed to give all their business for a period of one year to the conference carriers. Effective September 1, 1932, as a result of the combined competition of Isbrandtsen-Moller and Ellerman & Bucknall, the conference revived this contract rate system and extended it to practically all commodities. This move by the conference was countered by substantial additional cuts in rates by Ellerman & Bucknall as indicated in Table II.

The commodities covered in these tables have been selected as representative. The rates shown for Ellerman & Bucknall, however, must be taken as an approximation for, according to their agent, their rates varied from ship to ship—"they went up and they went down."

Isbrandtsen-Moller, according to written quotations introduced as evidence at the hearings, quoted specific rates 20 and 25 percent below the established contract rates of the conference, and in some instances made even greater cuts. Nothing of evidence indicates that Isbrandtsen-Moller was waging any fight for the adoption of a rationalization plan, as was the case with Ellerman & Bucknall. In fact, the preservation of the conference at remunerative rates was clearly in Isbrandtsen-Moller's best interests, inasmuch as it made it possible for it to fill its ships at the expense of the conference merely by maintaining a differential under the conference. At the hearings, Ellerman & Bucknall declined to state any of its rates for 1934, but

testified that they were higher than during 1933. Witness for this company acknowledged, however, that it had made quotations in the Atlantic/Far East trade on cotton piece goods for 1934 on a percentage basis under the Far East Conference. As will be set forth in this report in connection with the Pacific Coast/Far East trade, it is this company's current practice to make its rates from the Pacific Coast a fixed percentage under the rates of the conference in that trade.

The practices which have been outlined above all have to do with the cutting of freight rates. It was also testified at the hearings that Ellerman & Bucknall and Isbrandtsen-Moller pay more than the customary freight brokerage of 1¼ percent.

Two other nonconference carriers, the Isthmian Line and Mitsui Bussan Kaisha, operate from the Atlantic to the Far East but no complaint was made against them.

At the time Ellerman & Bucknall left the conference in 1932, its Far East service, which for some time had been via the Suez Canal, was rerouted via the Panama Canal, making it possible to add Pacific Coast ports to its itinerary. Other than this there have been no essential changes in services in this trade from 1932 to date. During this period fourteen carriers have been regularly engaged in the trade, ten of which have been operating as members of the Far East Conference with a total of approximately 200 sailings a year. Each of the four nonconference carriers has maintained an average of one sailing per month.

GULF/FAR EAST TRADE

When the Far East Conference was organized in 1922 under the auspices of the Emergency Fleet Corporation, United States Gulf ports were included within its scope, rates from these ports being established through a subcommittee located at New Orleans. This arrangement worked satisfactorily until 1929, when Reardon Smith & Co. began berthing occasional foreign flag steamers at cut rates. This rate cutting finally brought about the resignation of two lines from the conference, namely, the American Gulf Orient Line under the American flag, and the Fern Line under foreign flag. These two carriers do not operate from Atlantic ports to the Far East. Conditions have grown steadily worse until today the Far East Conference is practically inoperative from Gulf ports, and there are now more nonconference carriers than conference carriers. Rates on all commodities are unstable and have reached such low levels, according to one American flag carrier, that continued operation is possible only because good cargoes are obtained from the Far East.

PACIFIC/FAR EAST TRADE

Due to essential differences in the nature of the cargo moving, the Pacific/Far East trade must be considered as divided into two groups of services, one covering the trade from San Francisco and ports south, which will hereinafter be designated "the southern district"; and the other, trade from ports north of San Francisco, which will hereinafter be referred to as "the northern district." Traffic from the northern district, although including a substantial movement of miscellaneous cargo, consists for the greater part of grain, flour, lumber and lumber products, all of which move in sufficiently large parcels to attract tramps. The southern district is more particularly a general cargo trade and the service is almost entirely by liners. All of the American lines, and most of the foreign lines in the Pacific/Far East trade are members of, or by separate agreement observe the rates of, the Pacific Westbound Conference, a voluntary association formed "for the purpose of promoting commerce from, or via, the Pacific Coast ports of North America to the Far East for the common good of shippers and carriers by providing just and economical cooperation between the steamship lines operating in the trade." This conference was approved by the Shipping Board on June 26, 1923. The term "Far East" as used in this agreement today covers Japan, Korea, Formosa, Siberia, Manchuria, China, Hongkong, Indo-China and the Philippine Islands.

From the southern district fourteen lines maintain regular service either as members or associate members [2] of the conference. Two of these, the Dollar Steamship Lines and the Oceanic & Oriental Navigation Company fly the American flag. From the formation of this conference in 1923 no important nonconference competition or tramp competition existed from this district until late in 1926 when the Kawasaki Kisen Kabushiki Kaisha, a foreign flag line commonly called the "K" Line, entered the trade. This line continued to operate as a nonconference carrier until 1932. A former employee of this line testified, on behalf of its present San Francisco agent, regarding its method of rate making during the period when it operated as a nonconference carrier. During that period the "K" Line had no tariff or rate schedule of its own, but secured a copy of the tariff of the Pacific Westbound Conference, adopting a general policy of quoting rates 10 percent under those contained therein. If, however, at any time it became difficult to fill a particular steamer on this basis the "K" Line would make still greater cuts under the conference until the scheduled sailing date of the vessel arrived. After the steamer had sailed, the rates of the "K" Line reverted to

[2] Lines observing conference rates under separate agreements.

the original 10 percent differential under those of the conference. The record shows that substantially this same method has been followed by other nonconference carriers in this and in other trades.

In 1929 Isbrandtsen-Moller entered this trade by diverting its Atlantic Coast steamers to Los Angeles en route to the Far East. According to the testimony of shippers Isbrandtsen-Moller customarily solicits business in this trade on the basis of rates 10 percent lower than those of the conference.

In 1932, when Ellerman & Bucknall resigned from the Atlantic/Far East Conference it rerouted its steamers via the Panama Canal instead of the Suez Canal. This enabled it to enter the Pacific/Far East trade—a trade in which it had not operated before—by adding Los Angeles to the itineraries of its Atlantic/Far East steamers. Later this service was extended to include San Francisco. On July 9, 1932, this company notified the Pacific Westbound Conference of its willingness to adhere to conference rates, rules, and regulations provided the conference would permit it to participate in contracts made by the conference with shippers. At this time three other carriers operating from the Atlantic Coast to the Far East and loading en route at Pacific Coast ports had similar arrangements with the conference. These three lines, however, were all members of the Far East Conference from the Atlantic. Ellerman & Bucknall not only was no longer a member of the Atlantic/Far East Conference, but, as already set forth in this report, by drastic rate cutting, was fighting that conference, which included in its membership these three lines as well as several lines who were also members of the Pacific Westbound Conference. The Pacific Westbound Conference rejected this offer of Ellerman & Bucknall and invited it instead to become a full member, which involved the posting of a $25,000 bond to guarantee observance of the rates, rules, and conditions of the conference. The answer of Ellerman & Bucknall was the inauguration of a campaign of drastic rate cutting from the Pacific Coast, beginning with its first sailing in August 1932. Subsequently the conference offered to accept Ellerman & Bucknall's original proposition to adhere to conference rates if permitted to share in conference contracts. This offer was ignored, as were similar offers at later dates.

At the time of this investigation the rate policy of Ellerman & Bucknall in this trade as stated by its representative was as follows:

1. When conference rate is less than $3 per ton reduce conference rate by 25 cents.

2. When conference rate is $3 to $5 per ton reduce conference rate by 20 percent to the nearest 25 cents.

3. When conference rate is $5.20 to $10 reduce conference rate by 25 percent to the nearest 25 cents.

4. When conference rate is $10 and over reduce the conference rate by 30 percent to the nearest 25 cents.

5. Approximately a dozen commodities were named as exceptions to the foregoing with flat rates specified. These rates ranged from $2.40 a ton to $5 a ton.

Tables IV and V below list representative commodities moving from the southern district, and show the rates thereon of both Ellerman & Bucknall and the Pacific Westbound Conference as of August 1, 1932, and April 1, 1934, graphically illustrating the extent of the rate reductions brought about as a result of the rate-cutting campaign waged by Ellerman & Bucknall in this trade simultaneously with its rate-cutting campaign in the Atlantic/Far East trade.

TABLE IV.—*Ocean freight rates on representative commodities from Pacific coast ports to Far East as of Aug. 1, 1932—Comparison Pacific Westbound Conference rates with Ellerman & Bucknall Steamship Co. rates*

	Pacific Westbound Conference	Ellerman & Bucknall Steamship Co.
Bagging	[1] $12.00	[1] $9.00
Canned goods	[2] 14.00	[1] 10.00
Catsup	[2] 14.00	
Dried fruit	[2] 14.00	[1] 10.00
Garbanzos	[1] 16.00	[1] 8.00
Kerosene (in cases)	[3] .23	[3] .18
Machinery	[2] 7.50	
Milk, canned	7.00	[1] 5.00
Newspapers, old	[1] 3.00	[1] 3.00
Paint	[2] 9.00	[1] 9.00
Rubber, scrap	[1] 5.00	[1] 4.00
Sardines	[3] .25	

[1] Rate is per 2,000 pounds.
[2] Rate is per 2,000 pounds or 40 cubic feet whichever produces greater revenue.)
[3] Per case.

TABLE V.—*Ocean freight rates on representative commodities from Pacific Coast ports to Far East as of Apr. 1, 1934—Comparison Pacific Westbound Conference rates with Ellerman & Bucknall Steamship Co. rates*

	Pacific Westbound Conference	Ellerman & Bucknall Steamship Co.
Bagging	[1] $4.00	[1] $4.00
Canned goods	[1] 5.00	[1] 5.00
Catsup	[2] 5.00	[1] 4.00
Dried fruit	[2] 5.00	[3] 5.00
Garbanzos	[1] 4.00	[1] 4.00
Kerosene (in cases)	[4] .18	[4] .15
Machinery	[2] 6.00	[2] 4.50
Milk, canned	[1] 5.00	[1] 5.00
Newspapers, old	[1] 2.50	[1] 2.40
Paint	[2] 5.00	[2] 4.00
Rubber, scrap	[1] 2.50	[1] 2.50
Sardines	[4] .15	[4] .15

[1] Rate is per 2,000 pounds.
[2] Rate is per 2,000 pounds or 40 cubic feet whichever produces greater revenue.
[3] Rate is per 40 cubic feet.
[4] Per case.

The foregoing tables do not indicate all rate changes during the period of this rate war; they merely report rates as of August 1, 1932, when Ellerman and Bucknall began their rate-cutting campaign and rates as of April 1, 1934, which was immediately prior to the hearing at San Francisco.

In September 1932, the East Asiatic Company, under foreign flag, entered this trade. This company does not load on the Atlantic Coast but operates in the Pacific/Far East trade from both the northern and southern districts. It is one of the few nonconference carriers which actually has a freight tariff of its own. This tariff, however, is based on the Pacific Westbound Conference tariff, and its rates are usually from 10 to 15 percent lower than those of the conference. An official of this company testified that the East Asiatic Company had not joined the conference because of the cut-rate operations of other nonconference carriers; in addition he claimed that a rate differential in its favor is necessary. On some commodities, however, the East Asiatic Company has not followed reductions made by the conference in meeting the competition of Ellerman & Bucknall and Isbrandtsen-Moller.

At the time of the hearings, the fourteen members and associate members of the conference operating from the southern district faced competition from these three nonconference carriers: Isbrandtsen-Moller, Ellerman & Bucknall, and the East Asiatic Company. Rate conditions have been unstable since 1926 due to rate cutting by nonconference carriers, and since 1932 conditions have been demoralized.

From the northern district in the Pacific/Far East Trade ten lines maintain regular service as members of the Pacific Westbound Conference. Four of these are under the American flag. Severe competition by nonconference carriers has existed for the past ten years with the result that freight rates have been in a constant state of confusion. From time to time shippers have appealed to the conference to bring about stabilization. In 1925 lumber shippers purporting to represent 80 percent of the lumber mill production capacity in the Pacific Northwest asked the conference to cooperate in an effort to stabilize export rates on lumber. A committee of lumber shippers and carriers worked on this problem for some time but was finally forced to report that nothing could be "accomplished in the way of stabilization of lumber rates, owing to no control over nonconference lines and their destructive cut rates." From this district there are today five nonconference carriers, all of whom operate under foreign flags. One of these is the East Asiatic Company, which follows the same rate practices from this district as from the southern district. It is the practice of the other four non-

conference carriers to underquote the conference rates by whatever appears to be necessary to get the business, the degree of rate cutting varying on different commodities. In the words of the General Freight Agent of the American Mail Line, which flies the American flag, these carriers "use the conference rates as an umbrella to get the best rate they can. * * * There are a good many rates that by the time you pay your port out-of-pocket charges for getting the cargo into your ship leave very little for the carriage." The conference has been forced to declare rates open from this district on flour to Shanghai and Northern China; on wheat to Japan, Shanghai, and Northern China; on lumber, except hardwood, to Japan, Shanghai, and Northern China, and on wood pulp to all ports. Rates on all commodities in this district are in a constant state of uncertainty, and the commodities on which rates have been declared open are the principal export items from the Pacific Northwest.

ATLANTIC/UNITED KINGDOM AND EUROPE

In the various trades from Atlantic Coast ports to United Kingdom and Europe there are ten freight conferences, as follows:

North Atlantic U. K. Freight Conference.
North Atlantic Continental Freight Conference.
North Atlantic French Atlantic Freight Conference.
North Atlantic Baltic Freight Conference.
North Atlantic/West Coast of Italy Conference.
Adriatic, Black Sea, and Levant Conference.
North Atlantic Spanish Conference.
North Atlantic/French Mediterranean Conference.
United States North Atlantic/Malta Freight Conference.
South Atlantic Steamship Conference.

These are all voluntary associations, approved under Section 15 of the Shipping Act and formed for the purpose of stabilizing rates and conditions and promoting the export trade of this country. The membership of the ten conferences in these trades comprises twelve American flag lines and forty foreign flag lines. Many of these lines are members of more than one conference.

The only nonconference carriers specifically complained against at the hearings are Isbrandtsen-Moller Company and United States Navigation Company. Isbrandtsen-Moller's only eastbound trans-Atlantic service is from North Atlantic ports to Antwerp, Rotterdam, and Havre. The service of the United States Navigation Company is from New York to London, with a sailing approximately every three weeks. These two companies operate chartered foreign flag tonnage in these trades.

Isbrandtsen-Moller entered the North Atlantic/Antwerp, Rotterdam, and Havre trade in September 1931, with ocasional sailings thereafter until February 1932, when the service was placed on a monthly basis. On the 1st of January 1934, its frequency was increased to two steamers a month. In this trade Isbrandtsen-Moller apparently operates without any tariff of its own, underquoting the conference rates by whatever seems necessary to get the business. Concerning Isbrandtsen-Moller's operations in this trade, the Traffic Manager of the American Diamond Lines, an American flag conference carrier in this trade, testified:

> We did attempt to meet the competition, as we thought we had a perfect right to do. We found a situation where the traffic which we had been carrying was being lost to us because of rates 25 percent or more below us, and there was no means of knowing exactly what the rates were.
>
> The net result of our attempt to meet that competition resulted in the following rate reductions—and let me say first, that we attempted to meet the competition by accepting cargo offered us at the competing freight rate of the Isbrandtsen-Moller interests, only to find that the freight rate, in the meeting of it, was immediately slashed still further and undercut still further, until we found that there was no bottom to the thing.

A statement submitted by this witness showed 168 rate reductions attributed to the rate cutting practices of Isbrandtsen-Moller. The majority of these reductions were at least 25 percent below the conference tariff and approximately one-third of them were reductions of over 40 percent.

The United States Navigation Company entered no appearances at any of the hearings, and the evidence regarding its practices is meager; however, according to witnesses of the conference carriers, the practices and methods of this carrier are substantially the same as Isbrandtsen-Moller's.

Concerning the competitive methods of both Isbrandtsen-Moller and the United States Navigation Company in these transatlantic trades, the traffic manager of one American flag carrier testified:

> It is obviously impossible for American steamers to compete with these tactics, although I have sometimes felt that it would be wise for the United State Lines and the American Merchant Lines to cut loose from the conference and meet the nonconference lines on their own ground; but such action would be so costly, not only to ourselves but to other American flag conference lines that we have been reluctant to take this step. Furthermore, if we were to create a situation whereby we met the nonconference lines at every turn by reduction in rates, they probably would disappear from the picture temporarily and return again when rates became stabilized. It seems hopeless, therefore, for the conference lines, even with the highest principles of building up the commerce of the country and at the same time reasonably benefiting themselves, to correct this nonconference parasite; and our hope and prayer is that the Shipping Board will take some action that will bring about a situation that

is reasonable and just to the carrier and shipper and in the general interest of industry and commerce.

In none of these transatlantic trades have conditions as yet become as demoralized as in the Far East trade, but it is clear from the record that Isbrandtsen-Moller and the United States Navigation Company by means of their rate-cutting methods are filling their ships at the expense of the conference carriers who are endeavoring to stabilize the trade. In some of these trades there is no direct competition from nonconference carriers. However, the effects of these rate-cutting practices are not confined to the particular transatlantic trades in which such nonconference carriers are operating, as they carry cargo which is transshipped in the United Kingdom or Europe to other carriers, thereby participating on an indirect through route in competition with direct-line conference carriers. Their rate-cutting practices extend to such indirect through route movements and have a material effect upon the direct-line conference carriers.

GULF/UNITED KINGDOM AND EUROPE

Prior to the World War there were no conferences covering operations from the Gulf of Mexico to United Kingdom and European ports. Each carrier charged whatever seemed necessary to get the business; and the weaker lines consistently underquoted the only lines which attempted any regularity of service. Immediately after the close of the World War, under the auspices of the United States Shipping Board through its operating agency, the Emergency Fleet Corporation, freight conferences were formed to stabilize conditions in this trade. These conferences have continued, except for occasional interruptions, to the present and are now functioning as the following:

Gulf/United Kingdom Conference.
Gulf/French Atlantic Hamburg Range Freight Conference.
Gulf/Mediterranean Ports Conference.

Each of these voluntary associations was formed for the stated purpose of promoting commerce in our Gulf export trade by providing just and economical cooperation between the carriers. All American flag carriers in these trades, five in number, are today members of the conferences, as are nearly all the foreign flag carriers. In recent years the conference carriers have furnished over 90 percent of all the space used for the movement of cargo from the Gulf to the United Kingdom and Continental Europe, and over 80 percent of all the space used to the Mediterranean.

The four principal nonconference carriers are the States Marine Corporation, the Gulf States Shipping Company, S. Sgitcovich &

Company and Vogemann-Goudriaan & Company. The first three of these operate chartered foreign-flag steamers. Vogemann-Goudriaan & Company operates its own ships under a foreign flag. Unlike some of the other trades, there is no evidence that the nonconference carriers in these trades make a practice of applying percentage reductions under the rates established by the conference. Not only do these carriers keep their rates as secret as possible, but ordinarily they do not schedule their steamers in advance. In the majority of instances they first book the nucleus for a shipload from a few of their regular patrons, who are the larger shippers in the trade, and if sufficient cargo is not secured in this way to fill the ship other cargo is taken at whatever rates are necessary to secure it. The ships of these carriers are usually booked full at less than conference rates before shippers generally know that such a vessel is being berthed. It is the contention of the conference carriers that this method of doing business results not only in discrimination between shippers as to rates but discrimination, particularly against small shippers, in the matter of space accommodations. The same contention is made by shippers.

As a general rule these nonconference carriers serve only New Orleans, Houston, and Galveston. To permit cargo to move with equal facility through all Gulf ports, the three conferences out of the Gulf to the United Kingdom and Europe have established the same rates from every Gulf port. Although the conference carriers endeavor to reduce rates promptly to meet nonconference competition, not only to protect themselves but to place all shippers on a competitive level, because of the secrecy with which nonconference carriers operate in quoting rates and berthing vessels such rate reductions frequently cannot be made in time to meet such competition. In many instances shippers located at Mobile have lost business because a competitor located at New Orleans, Houston, or Galveston has obtained rate concessions from the nonconference carriers, who usually do not serve Mobile and other east Gulf ports.

ATLANTIC/SOUTH AFRICA TRADE

There is only one American flag line in this trade, the American South African Line. It is a member of the South African Conference, approved by this Department, of which six foreign flag lines are also members. This conference was formed for the purpose of promoting commerce from United States Atlantic ports to South and East African ports. Under the conference agreement sailings are spaced at regular intervals. At the present time an average of four sailings a month is maintained, of which at least one sailing a month is guaranteed to the American flag line. There is only

one nonconference carrier in the trade, the Baron Line, which uses foreign flag vessels with sailings once a month, and is operated by the United States Navigation Company. This carrier regularly underquotes the conference rates. According to the testimony of the President of the American South African Line, on many occasions the conference carriers have been forced to make drastic rate reductions in an effort to meet the competition of the Baron Line, without producing any increase in the total amount of cargo moving in this trade.

In addition to the services operated to South Africa by the members of this conference and the service of the Baron Line, there is a regular service from the Gulf of Mexico to South African ports on a monthly basis and a regular service from Canada to South Africa. Efforts have been made to secure a cooperative working arrangement between the members of this conference and these other lines to promote rate stability in the South African trade though the various gateways. The lines maintaining the Canadian and Gulf services, however, are stated to be unwilling to agree to maintain conference rates, owing to the rate-cutting policy of the Baron Line in the North Atlantic. Competition in the South African trade between Canadian and American manufacturers is keen and it was pointed out that

> it would undoubedly react to the benefit of the American exporter if he was assured that his Canadian competitor was paying the same ocean rate as himself. Under present conditions the American exporter is faced not only with not knowing what some of his American competitors are paying the Baron Line but is also at a loss regarding the rate being paid by his Canadian competitors.

As a general proposition the lines serving Canadian ports in other trades are members of the conferences in those trades operating from United States ports.

The conditions which have been set forth under the above six headings also exist, but to a less serious extent, in other of our export trades. At one time or another practically every one of our foreign trades has been affected by such practices. In recent years their use 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. It is contended that

as the Shipping Act, 1916, took away the deferred rebate as a legal weapon of defense, so the Merchant Marine Act, 1920, has provided its legal substitute, namely, the appropriate rule or regulation by the Board to prevent cutthroat competition.

Both carriers and shippers testified that "cut rates" have not increased the total volume of our export commerce. Indeed, it was testified by several shippers that in some cases the cutting of rates has decreased the export movement because of the instability which resulted. Stability of rates and services is of vital importance to exporters in making quotations for our export markets, and both shippers and carriers pointed out that in most cases exporters from foreign countries competing in foreign markets against our exporters enjoy this much needed stability because of the conferences functioning in those trades. The use of these 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.

Nonconference carriers employing these methods of competition have been sailing with well-filled ships during a period when conference carriers have been forced to sail with considerable empty space. Shippers who strongly favor the conference system testified to instances where they had switched their business from conference carriers to nonconference carriers, not because they considered the conference rates too high but because other United States exporters competing with them had taken advantage of the low nonconference rates and were using this advantage to undersell them. Conference carriers introduced figures showing loss of traffic to the nonconference carriers in a number of trades. In the cotton trade from the Gulf to the West Coast of Italy, for example, there was a total movement in the 1932–1933 season of 81,753 tons, of which the conference carriers carried 72,700 tons, or 89 percent against 9,053 tons, or 11 percent for the outside carriers. During the 1933–1934 season, out of a total movement of 71,819 tons the conference carriers obtained only 46,968 tons, or 65 percent, while outside carriers lifted 24,851 tons, or 35 percent. It is clear from the record that nonconference carriers are today filling their ships at the expense of conference carriers.

The serious effect upon the rate structure of these competitive methods of foreign flag nonconference carriers is well illustrated in its extreme form in Tables I to V of this report. It was testified on behalf of American flag operators, and foreign flag operators, that the level of rates reflected in those tables is unremunerative. Such rates are far below those prevailing from the principal competing European countries, as illustrated in the following table, compiled from Exhibit No. 104:

TABLE VI.—*Comparison of 1933 rates from United Kingdom to Manila with Far East Conference rates from United States Atlantic ports to Manila*

	Contract rates from United Kingdom (rates apply per 40 cu. ft. or 20 cwt.) [1]	Far East conference contract rates from United States Atlantic ports (rates apply per 40 cu. ft. or 2,000 lbs. except where otherwise shown)
Agricultural implements	$16.10	$8.00
Automobiles	11.50	6.00
Canned goods	20.70	12.00
Cotton piece goods	12.65	4.00
Dyestuffs	14.38	9.00
Machinery	16.10	4.00
Newspapers, old	6.33	[2] 3.50
Refrigerators	18.25	4.00
Soap	11.50	5.00
Talking machines	20.70	4.00

[1] Rates based on exchange at $4.60 to the pound sterling.
[2] Per 2,240 pounds.

Such rates as those generally prevailing in our Far East export trades are clearly insufficient to meet the cost to the carriers of loading and discharging the cargo [3] and operating the ship, to say nothing of depreciation and overhead. In addition, the carriers operating from the Atlantic Coast to the Far East pay substantial Canal tolls.

Only four shippers appeared who in any way favored the nonconference carriers and only three of these have used nonconference carriers. All four desire stable rates but expressed the view that nonconference carriers act as "regulators" to prevent conferences from establishing rates at unduly high levels. However, in our export trades in which there is today no nonconference or tramp competition, neither these nor other shippers made any complaint as to conference rates and practices, but on the contrary shippers specifically testified with respect to two of the more important of those trades that the stable conditions brought about by the conferences have been very beneficial and that the conference carriers have not used the absence of outside competition to maintain rates prejudicial to our exporters. The right of this 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 com-

[3] One of the American flag carriers submitted figures showing a cost to the vessel for stevedoring on loading operations of approximately $1.40 a ton, and a total cost of approximately $2.30 a ton, to the ship at Pacific Coast ports before the vessel left its loading berth.

pared with their foreign competitors, afford protection against such abuses by a conference, apart from the self-interest of the conference carriers. Certainly the proper remedy for any unduly high rate is not cutthroat competition that wrecks the entire rate structure.

A long line of shipper witnesses, many of whom at one time or another have used nonconference carriers, appeared in support of the American flag lines' requests for the promulgation under Section 19 of rules and regulations which would end such cut-rate practices. Every such appearance was voluntary, as no subpoenas were issued. Practically all of these shippers have been engaged in the foreign trade of the United States for years and their testimony is, therefore, founded upon practical experience. If anything, these shippers were more emphatic than the carriers as to the need for stability.

To a great extent export sales are made on a c. i. f. basis. The representative of a large group of shippers of agricultural products testified:

> We desire and must have stability in order to conduct our business in an orderly way. Our sales are made on a c. i. f. basis and sometimes sales are made months in advance for shipment months in advance.

What the lack of stability may mean under these circumstances was stated by a shipper of paints and varnishes:

> In making a quotation c. i. f. you do not always secure the business immediately. It may be months before the business comes in actually as an order, and in the meantime possibly other shippers may have an opportunity to quote lower by securing a lower rate with the outside lines.

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 this report. As the traffic manager of one of the large tire houses testified:

> So far as our company is concerned, I believe it would be almost impossible to do business on anything but a stable basis. In the selling of tires prices are not made every day, nor are they sold on the basis of a certain number. Prices are set for a definite period, during which time there is no adjustment, and unless we have and do know that the freight rate situation is going to be stable, we cannot make a proper basis for arriving at a c. i. f. cost.

Practicaly all tire manufacturers are members of the Rubber Manufacturers' Association, whose Traffic Committee negotiates ocean freight rates with the various conferences. By presenting a united front and using conference carriers this particular industry has avoided rate instability. The fact that our exporters must compete with competitors located in other countries who have this much-needed stability because of the conferences operating from those

countries has already been touched upon. In the words of one shipper:

> Our experience has been that it is very necessary for us to know exactly what our merchandise is going to cost in Manila, or Shanghai, or wherever the case may be. We find very keen competition from France, Belgium, and the United Kingdom, and even from Japan itself. So that we must know essentially what it is going to cost us to lay our merchandise down.

In this connection the general traffic manager of a large tire and rubber company testified:

> With the competition existing in the rubber industry, with plants in foreign countries, such as Germany and Italy and England, and so forth, the difference in the price of tires is a very important item. Orders have been lost for a difference in price as low as one cent a tire. Stabilization of rates, in my opinion, is very essential, so that everyone in bidding on large contracts is using exactly the same steamship rates, and there are no secret rates which may have happened with an outside line, where one fellow may have one rate and somebody else may have a lower rate.

Among the many shippers who testified to the unfavorable repercussion on our foreign markets caused by instability of freight rates was the president of the National Lumber Exporters Association:

> I think that I can say for the hardwood exporting interests that their principal interest is in stabilized rates; that is to say, rates which are uniform over a considerable period of time. The ideal situation would be to have ocean rates stabilized in the same manner that rates in the United States are on railways so that we can look upon them as being something that you can figure on for some time to come. * * * The constant fluctuation of rates has seriously injured the market for our goods abroad.

Another similar pertinent quotation from the testimony of the vice president of a large export house follows:

> It has been our experience that instability of value; that is, uncertainty of prices, retards business. When we had a declining market here on a great many commodities, over a period of years, the buyer was constantly hesitating in placing orders, fearing a further decline in the market before the goods could be shipped or arrive. The same condition applies on freight rates. If there is instability of freight rates, say different lines are competing for business and solicitors offer inducement in the way of lower and constantly increasingly lower freight rates, we do not have stability in c. i. f. prices; you have no control of your price.

The need of equal rates for all shippers and the wide possibility of discrimination where cut-rate methods exist were emphasized by many shippers. As testified by the chairman of the Traffic Committee of the Dried Fruit Association of California:

> We sell for shipment far in advance. That is one reason (for desiring stable rates). Another is that we know our competitors are on the same basis that we are. There is no chiseling on either side of the ocean and everyone is on a fair and equitable basis. We can proceed in a constructive way to market this large product of the State of California.

A representative of the Staple Cotton Cooperative Association, who also appeared on behalf of a number of Mississippi cotton interests testified:

> Normally the cotton handled by these interests will be shipped approximately a third each to New England, to the Carolinas and the southeast, and exported, but in the past two or three years this has not been true insofar as the export trade is concerned, and it is the view of these interests that one of the principal factors affecting the curtailment of their export business has been what is known as the outside steamers coming in or short notice and soliciting cotton tonnage from the larger cotton shippers, the space not being available to the average shipper. We feel that because of this and because of these reduced rates at which the cargo was taken by the outside steamers, that in the majority of instances the cotton was sold at a basis that the average shipper was unable to compete with and as a direct result their export business has been seriously curtailed. It is the view of these interests that some degree of regulation should be made whereby ocean rates could be stabilized to some extent in order that all shippers of cotton, irrespective of their location, might have equal opportunity in the world markets.

Of similar tenor is the statement of an exporter of foodstuffs:

> Where rates are stable it puts everyone on an equal basis and it makes for sounder business, because where the rates are not stable, in quoting prices to the Orient, which usually are c. i. f., no one knows what the other fellow is paying for freight and it creates a condition where there is instability at all times where you are quoting; and not only that, it leaves room for favoritism among certain shippers who perhaps have larger tonnage than the smaller shippers.

In the nature of things the nonconference carrier practicing these competitive methods can only accommodate a small minority of shippers, who, if they profit at all because of such methods do so at the expense of their competitors, who constitute the great majority of our exporters. Furthermore, although some of the nonconference carriers attempt to equalize rates for all shippers of the same commodity on the same vessel, their rates vary from ship to ship. 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. 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.

Certain of the nonconference carriers have been charged with discriminating not only in the matter of rates but in the matter of space accommodations; and the testimony of shipper witnesses gives considerable substance to such allegations. The present investigation

is not the proper vehicle for considering violations of the Shipping Act, 1916, by individual carriers. It is not a complaint proceeding and no respondents have been named. It therefore seems inadvisable at this time to probe into specific violations of one or more of the regulatory provisions of the Shipping Act, 1916.

The fear was expressed by a number of shippers, and also by the conference carriers, that a continuation of the present competitive methods of nonconference carriers, which have already destroyed the rate structure in some trades, would seriously impair the efficiency of the regular services which the conference carriers maintain. Shippers testified to the imperative need for the adequate and dependable services which the conferences have built up. As explained by a shipper of roofing and other related materials:

> I feel that the regular lines' service as established from Pacific Coast ports is the backbone of the American exporter to those countries, and that the invasion of the field by occasional or casual nonconference carriers has a tendency to break down rates. It has a tendency to encourage inferior service, and is a great handicap to American exporters selling commodities in an established market which can be invaded by competitors who use the nonconference lines at lower rates.

The need for regular services coupled with stable rates was well expressed by a lumber shipper:

> It is necessary that we know that we are going to have steamers at certain times, at certain rates. We ship from a number of points in the interior, probably shipping from four or five points for a given steamer, and it is necessary that we know in advance that the steamer will sail at a certain time, to prepare the shipments. As I said before, it is necessary that we know at least sixty to ninety days ahead what those rates are going to be, and that we are going to have sailings at certain dates in order to fulfill orders that we have already taken for commitments abroad.

Another shipper testifying to the necessity for conference services stated:

> In the matter of stability, if we were unable to use conference lines, with the service that they now render, a large part of the shipments we are now making from Rochester would of necessity be transferred to one of our other manufacturing plants. * * * in either Europe or, in the case of the Far East, our plant at Melbourne, Australia.

It is the history of merchant marines that where stability of rates exist, 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.

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 this 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. The American-flag lines who have asked this Department to establish rules and regulations under Section 19 of the Merchant Marine Act were brought into existence as a result of this mandate from Congress. The ends sought by this legislation cannot be achieved and this policy will be defeated unless destructive methods of competition can be prevented.

After a prolonged investigation by a congressional committee, the conference system was legalized under the Shipping Act, 1916, to promote stability and prevent destructive competition between carriers. The advantages of the conference system were summarized in the report of this committee [4] as follows:

> Practically all steamship representatives who testified before the Committee, as well as a majority of the leading American exporting and importing firms who expressed their views on the subject to the Committee, contended that shipping agreements, conference relations, or oral understandings which steamship lines have effected among themselves in nearly every branch of our foreign trade are a natural evolution and are necessary if shippers are at all times to enjoy ample tonnage and efficient, frequent, and regular service at reasonable rates. Such agreements, it is contended, are a protection to both shipper and shipowner. To the shipper they insure desired stability of rates and the elimination of secret arrangements with competitors. To the shipowner they tend to secure a dependable return on the investment, thus enabling the lines to provide new facilities for the development of the trade. Furthermore, such agreements are held to furnish the means of taking care of the disabilities of the weaker lines, whereas unrestricted competition, based on the survival of the fittest, tends to restrict the development of the lines and in the end must result in monopoly.

The opinion was vigorously expressed by a number of carrier witnesses at the hearings during this Section 19 investigation that unless this nonconference competition is curbed a number of conferences will be forced to disband.

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[4] Committee on the Merchant Marine and Fisheries, House of Representatives, 62d Congress (Investigation of shipping combinations under House Resolution 587, Volume 4, page 295).

From the record in this 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. The following practices are hereby 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.

To meet the conditions described in this report 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." Individual American flag carriers and established, approved conferences have suggested various rules and regulations for our consideration. In form the suggested rules and regulations differ but in substance they are the same, and would require all common carriers by water to observe the freight rates established by conferences in our export trades. These suggestions have received careful consideration. Section 19 of the Merchant Marine Act, 1920, lays a mandate upon this Department to prescribe rules and regulations to meet conditions such as those shown by this investigation to exist. It is believed, however, that existing conditions can be corrected, at least to a considerable extent, by rules and regulations less drastic in nature and less restrictive of competition. For the present, therefore, the rules and regulations to be issued should merely require complete rate publicity in a manner that will afford equal opportunity to all shippers to avail themselves of such rates and full opportunity to competing carriers to meet such rates, without prejudice to any additional rules and regulations which may prove necessary.

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. As defined earlier in this 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 this 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.

As a result of this investigation the Department finds, in accordance with this 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. The U. S. Shipping Board Bureau recommended in its report of January 22d that the following order putting into effect rules and regulations effective sixty days after their promulgation be issued:

WHEREAS, The Department by order of the Secretary issued March 9, 1934, instituted a proceeding of investigation and inquiry for the purpose of determining whether conditions unfavorable to shipping in the foreign trade exist as a result of competitive methods and practices employed by owners, operators, agents, or masters of vessels of foreign countries, and for the further purpose of determining rules and regulations to be made under authority of Section 19 of the Merchant Marine Act, 1920, to adjust or meet such conditions if found to exist; and

WHEREAS, Pursuant to such order a full investigation has been made, and the Department on has made a report finding that conditions unfavorable to shipping in the foreign trade to exist as a result of such competitive methods; now, therefore, the following rules and regulations are issued under Section 19 of the Merchant Marine Act of 1920:

1. Every carrier by water engaging in the transportation for hire of property from any port of continental United States, except Alaska and the Canal Zone, to any port of a foreign country or of the Philippine Islands, whether by direct route or by a through route in connection with another carrier or carriers shall file with the United States Shipping Board Bureau of the Department of Commerce a tariff showing all rates, charges, rules and regulations for or in connection with the transportation of such property, and shall make such filing at least thirty days prior to the commencement of loading of any vessel of such carrier with property to be so transported.

2. Every such carrier shall post and keep open to public inspection a copy of each tariff so filed by it, effective simultaneously with such filing, at each of its principal business offices at the United States ports from which its vessels operate, and no such transportation as above described shall be engaged in by any such carrier except in strict accordance with such rates, charges, rules and regulations so held out by it.

3. No change shall be made in any such rates, charges, rules, or regulations so filed and posted except by the filing and simultaneous posting as aforesaid upon thirty days' notice of amendments to such schedules.

4. Upon proper showing of an emergency or for other good cause shown the Department may permit changes to take effect prior to the filing and posting

of such amendments or by such filing and posting upon less than thirty days' notice, or make such other exceptions to these rules as may in its judgment be warranted.

5. The requirements of these rules and regulations shall not apply to the transportation of cargo loaded and carried in bulk without mark or count.

6. The requirements of these rules and regulations shall not apply to carriers transporting on any one voyage cargo supplied by a single shipper only under a single charter party or contract of affreightment.

These rules and regulations shall be effective on and after

In furtherance of the purposes of the rules and regulations prescribed by this order, copy hereof and of the report referred to herein shall be served by registered mail on every carrier by water known to be engaged in the foreign trade of the United States and otherwise given all possible publicity.

The practices condemned in this 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. 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. The issuance of an order, terminating the secrecy which today surrounds the rates of carriers, will enable shippers and others injured by such violations to make more effective use of the remedial procedure established by the Shipping Act and our Rules of Practice.

BY THE SECRETARY OF COMMERCE:

The above report is substantially that prepared by the United States Shipping Board Bureau of this department. Exceptions thereto were filed by some of the parties. Only certain exceptions need be mentioned. Those filed on behalf of Ellerman & Bucknall Steamship Co., Ltd., and Norton, Lilly & Company show that after hearing in this case Ellerman & Bucknall Steamship Co., Ltd., joined the Far East Conference from the Atlantic Coast and entered into an agreement with Pacific Westbound Conference to adhere to the rates and participate in traffic of that conference. These and other 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 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 22d will not be promulgated at this time.

The purpose of this investigation was twofold: (1) to determine if conditions unfavorable to shipping in our foreign trade exist as the result of competitive methods and practices employed by owners, operators, agents, or masters of vessels of foreign countries; and (2) to determine what rules and regulations should be made under authority of section 19 of the Merchant Marine Act, 1920, to adjust or meet such conditions if found to exist. 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 sailings 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.

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. The conclusion is inescapable that the methods and practices hereinbefore condemned also result in giving undue and unreasonable preference to some shippers and in subjecting competing carriers to undue and unreasonable disadvantage.

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. Although the rules and regulations originally recommended by the United States Shipping Board Bureau will not be promulgated at this time, the following rules, which should, to a large extent, adjust or meet conditions herein found to be unfavorable to shipping, will be issued, and the record held open for such further action as seems necessary:

(1) Every common carrier by water in foreign commerce shall file with the United States Shipping Board Bureau of this department schedules showing all the rates and charges for or in connection with transportation of property, except cargo loaded and carried in bulk without mark or count, from points in continental United States, not including Alaska or the Canal Zone, to foreign points on its own route; and, if a through rate has been established with another carrier by water, all the rates and charges for or in connection with transportation of property, except cargo loaded and carried in bulk without mark or count, from points in continental United States, not including Alaska or the Canal Zone, on its own route to foreign points on the route of such other carrier by water. The schedules filed as aforesaid by any such common carrier by water in foreign commerce shall show the point from and to which each such rate or charge applies; and shall contain all the rules and regulations which in anywise change, affect, or determine any part or the aggregate of such aforesaid rates or charges.

(2) Schedules containing the rates, charges, rules, and regulations in effect at the time these rules become effective shall be filed as aforesaid on or before October 1, 1935, and thereafter any schedule required to be filed as aforesaid, and any change, modification, or cancellation of any rate, charge, rule, or regulation contained in any such schedule shall be filed as aforesaid within thirty (30) days

from the date such schedule, change, modification, or cancellation becomes effective.

(3) Any schedule, rate, charge, rule or regulation, or any change, modification, or cancellation thereof, as aforesaid, when filed shall be accompanied by a sworn statement by a duly authorized person that such schedule, rate, charge, rule or regulation, change, modification, or cancellation is the schedule, rate, charge, rule or regulation, change, modification, or cancellation in effect on the date indicated via the line of the carrier, or in conjunction therewith.

The information called for by the foregoing rules will also be available to the public.

An appropriate order will be entered.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 179

APPLICATION OF RED STAR LINIE G. M. B. H. FOR MEMBERSHIP IN NORTH ATLANTIC CONTINENTAL FREIGHT CONFERENCE-AGREEMENTS 1456 AND 4490 AND CONFERENCE AGREEMENT 48

Submitted June 24, 1935. Decided August 27, 1935

Denial of application of Red Star Linie G. m. b. H. for membership in North Atlantic Continental Freight Conference found justified. Basis of denial removed by withdrawal of approval of agreement requiring Arnold Bernstein Line to carry only unboxed rolling material.

Abram L. Burbank, *Cletus Keating*, and *Roger Siddall* for Red Star Linie G. m. b. H.

J. Sinclair for North Atlantic Continental Freight Conference and Trans-Atlantic Associated Freight Conferences; *Carver W. Wolfe* and *J. Newton Nash* for Compagnie Maritime Belge (Lloyd Royal) S. A.; *John W. Crandall*, *Lowell Wadmond* and *William Logan, Jr.*, for American Diamond Lines, Inc. and Black Diamond Steamship Corporation; *J. E. Waldorf* for Hamburg-Amerikanische Packetfahrt Actien-Gesellschaft; *C. O. Van Acheberg* for Norddeutscher Lloyd; and *Roscoe H. Hupper* for N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij.

Thor Eckert for Red Star Steamship Company, Inc.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

Exceptions to the proposed report of the examiner were filed by the parties and Compagnie Maritime Belge (Lloyd Royal) S. A. replied to those of Red Star Linie G. m. b. H. The question for determination is whether denial by North Atlantic Continental

Freight Conference of application of Red Star Linie G. m. b. H., organized under the laws of Germany, for membership in the conference is justified.

In 1920 certain common carriers by water operating between North Atlantic Coast ports of the United States and Canada and ports in France, Belgium, Holland and Germany, but not including German Baltic ports, members of three separate conferences, agreed to sit in conference as permitted by section 15 of the Shipping Act, 1916. Carriers operating to and from ports in France withdrew and a "second edition" of the agreement, which had been given conference agreement number 48, reorganizing the conference under the name of North Atlantic Continental Freight Conference, was received December 29, 1922, from the remaining lines, which in turn abandoned their respective conferences. This agreement was approved by the United States Shipping Board, the functions of which have been taken over by this department. It provided that all owners, agents of foreign owners having no establishment in the United States or Canada and lines duly authorized by the Board, operating steamers within the range of the conference, were eligible for membership in this conference. At time of hearing the conference was composed of American Diamond Lines, Inc., Baltimore Mail Steamship Company, Canadian Pacific Steamships, Ltd., Compagnie Maritime Belge (Lloyd Royal) S. A., Ellerman's Wilson Line New York Inc., Hamburg-Amerikanische Packetfahrt Actien-Gesellschaft (Hamburg-American Line), Inter-Continental Transport Services, Ltd., N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij (Holland America Line), Norddeutscher Lloyd (North German Lloyd), Societe Anonyme de Navigation Belge Americaine, United States Lines Company, and Yankee Line. For reasons fully set forth in the proposed report of the examiner issued in the present proceeding it was impossible to determine whether it conformed to the requirements of law. Subsequent to the service of that report, the parties to the agreement, except Societe Anonyme de Navigation Belge Americaine, submitted a new agreement, which was approved by the department on August 24, 1935, as agreement No. 4490.

On May 20, 1931, the board approved an agreement, given agreement number 1456, submitted on behalf of American Diamond Lines, Compagnie Maritime Belge (Lloyd Royal) S. A., N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij, and Red Star Line, trade name of Societe Anonyme de Navigation Belge Americaine, on one hand, and Arnold Bernstein, on the other. Under an amendment to this agreement, confirmed by "Arnold Bernstein Line, Arnold Bernstein Steamship Co., Inc., Agents", approved by

the board January 18, 1933, the name of "Black Diamond Steamship Corporation (Black Diamond Lines)", was substituted in the place of "American Diamond Lines." Black Diamond Lines is owned by American Diamond Lines, Inc., the vessels of which it operates. The principal objects of this agreement, which is still in effect, are to avoid unreasonable competition, fix fair rates, and agree on matters incidental to proper conduct of the steamship trade. The following is taken from this agreement:

2. Arnold Bernstein Line will restrict its carryings to unboxed rolling material (automobiles, chassis, trucks, tractors and aeroplanes) and shall not carry any boxed material, or general cargo or any other cargo from or to the ports and/or countries herein named, and also agrees not to endeavor to expand its business beyond the approximate amount of its present volume to the detriment of the aforesaid Conference Lines.

3. Arnold Bernstein Line undertakes, as a rule, not to have more than three consolidated sailings per month, or at his option thirty-six consolidated sailings a year, from the United States of America and Canada to Antwerp, Rotterdam and Hamburg, or any other Belgian, Dutch or German port.

4. The total unboxed rolling material trade carried by all of the lines parties to this agreement to Antwerp and Rotterdam is to be divided between the Arnold Bernstein Line and the Conference Lines, on the basis of their respective sailings and carryings during the period from January 1st to April 30th, 1930, a surplus of 5% (five per cent) over their actual carryings being granted to the Conference Lines, but this surplus to be reduced or waived in the event of an abnormal decrease of the general movement of unboxed rolling material should present itself. From actual figures submitted re carryings during said period the percentages are as follows:

Conference Lines 44.95% (which includes the surplus of 5%)
Arnold Bernstein Line 55.05%

The total carryings of the Bernstein Line to Antwerp, Rotterdam and Hamburg combined or to any other ports in the above countries are limited to 15,000 vehicles yearly, on the present average measurement basis, as a maximum. The rate of freight for unboxed automobiles and other rolling material to Antwerp, Rotterdam and Hamburg, and arbitraries to the principal interior points in Europe, shall be fixed and determined by the parties from time to time by mutual agreement, and said rates so fixed shall be observed and adhered to by all parties.

* * * * * * *

7. All the lines interested in this agreement undertake to submit monthly carryings of unboxed material governed by this agreement in order to regularize the situation. As soon as the monthly statements reveal that the actual shares of the Conference Lines and the Arnold Bernstein Line are not in conformity with the percentages fixed, both parties will mutually take such steps, not inconsistent with the regulatory provisions of the Shipping Act, as to remedy the situation. These figures should be handed in not later than thirty days after the expiration of each month. The Conference Lines disposing of an official Secretary in turn, these figures could be submitted to the latter within the stipulated delay.

* * * * * * *

9. This agreement shall remain in force from January 1st to December 31st, 1931, and thereafter from January 1st, 1932 to December 31st, 1935, but subject

to the renewal of the agreement of the Antwerp/Rotterdam North Atlantic Freight Conference.

On June 6, 1933, the parties to agreement 1456 agreed to a change in the percentages provided in paragraph 4 thereof, retroactive to January 1, 1933. As a result of such modification, which was not submitted to the board for approval, Arnold Berstein Line is now allowed 62.5 percent of the total unboxed rolling material transported to Antwerp and Rotterdam by all the lines to that agreement. In part settlement for undercarryings, presumably under paragraph 7 of the agreement, it has been paid slightly more than $184,000 by the other contracting parties. As this sum is said not to be in excess of settlements that would have been made under the original agreement, the parties claim section 15 has not been violated. In November, 1934, Arnold Berstein Line demanded its share of carryings be further increased to 70 percent. This was refused by the other parties. As the result of an agreement dated December 28, 1934, between Arnold Bernstein, International Mercantile Marine Company, and The Chemical Bank & Trust Company, Arnold Bernstein caused the organization of Red Star Linie G. m. b. H., which became possessed of steamships "Pennland" and "Westernland", at the time documented under the laws of Great Britain, and the goodwill and trade name of Red Star Line. Shortly after it was organized, this new company applied for membership in North Atlantic Continental Freight Conference. As its intention was to engage in the transportation of general cargo between points in the United States and Antwerp, carried out by the sailing of the "Pennland" from New York for Antwerp on March 12, 1935, with automobiles and general cargo, its application was denied by the conference upon opposition by Black Diamond Lines and Compagnie Maritime Belge (Lloyd Royal) S. A. which urged the provisions of agreement 1456.

The record shows Arnold Bernstein is a stockholder and director of Arnold Bernstein Line (Arnold Bernstein Schiffahrtsgesellschaft m. b. H), organized under the laws of Germany; that he caused the organization of Red Star Linie G. m. b. H., of which he is director and holder of 98 percent of the stock; that under the agreement of December 28, 1934, such company obligated itself to pay a certain sum of money to The Chemical Bank & Trust Company in part secured by the guarantee of Arnold Bernstein individually, who for that purpose pledged the entire capital stock of the company, and by the guarantee of Arnold Bernstein Line; and that dated February 8, 1935, Arnold Bernstein Steamship Company, Inc., organized under the laws of New York, of which Arnold Bernstein is the owner of the common stock, in letterhead of "Arnold Bernstein Line" and "Red Star Line" sent out a circular to the public stating, in part,

"Captain * * * received word today from Arnold Bernstein in Hamburg, Germany, confirming the purchase of the Red Star Line and its two ships the Westernland and Pennland by his company. * * * These two ships will augment our present fleet. * * * In addition to the two new boats, the three Bernstein liners * * * will continue in their regular service. * * * A proforma copy of the combined sailing schedule will be sent you the early part of next week with the Red Star Line rates. Larger office quarters are now being renovated just alongside of our present office to better accommodate our agents and clients." There are other circumstances of record but these alone warrant treating Arnold Bernstein Line, Red Star Linie G. m. b. H., and Arnold Bernstein as one for the purposes of this 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 1456, would be sanctioning two agreements under section 15 in conflict with each other, contrary to public policy.

In the light of all the facts and circumstances of record, it is clear, however, that agreement 1456 as approved by the board does not reflect the present understanding of the parties. As stated hereinabove 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 1456 will be withdrawn. The parties thereto will be expected to furnish the department, under oath, a full and complete statement of all carryings and payments made under this agreement from its inception up to and including such final settlement as is made.

The application of the 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 1456. For reasons already set forth in this 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 this proceeding, and upon the record now before the department no lawful reason for refusing its admission to membership.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 193

INTERCOASTAL RATES TO AND FROM BERKELEY AND EMERYVILLE, CALIFORNIA. (No. 2)

Submitted July 10, 1935. Decided August 28, 1935

Cancellation of joint rates maintained by McCormick Steamship Company and Berkeley Transportation Company for through intercoastal transportation of property between Berkeley or Emeryville, Calif., and points on the Atlantic Coast found not justified. Suspended schedules ordered canceled and proceeding discontinued.

Joseph J. Geary for McCormick Steamship Company and certain other Panama Canal carriers.

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

Fred C. Hutchinson, *Gwyn H. Baker*, *Harry M. Wade* and *A. W. Brown* for protestants.

Edwin G. Wilcox, *Frank M. Chandler* and *Markel C. Baer* for interveners.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

By schedules filed to become effective May 25, 1935, McCormick Steamship Company proposed to cancel the joint rates at present maintained by it and Berkeley Transportation Company for through intercoastal transportation of property between Berkeley or Emeryville, Calif., and points on the Atlantic Coast. Upon protests filed by City of Berkeley, Berkeley Manufacturers Association, Berkeley Chamber of Commerce and The Paraffine Companies, Inc., the operation of the schedules was suspended until September 25, 1935. Oakland Chamber of Commerce, Board of Port Commissioners of City of Oakland, Certain-teed Products Corporation and members of Hard Surface Floor Covering Manufacturers Traffic Council intervened.

Transshipment of cargo under the rates sought to be canceled takes place at San Francisco, Calif. The establishment of such

rates was found justified by the department in *Intercoastal Rates to and from Berkeley, etc.*, 1 U. S. S. B. B. 365, decided March 5, 1935. The record in that case is stipulated into the record. The report there shows—

> Berkeley, on the eastern shore of San Francisco Bay between Oakland and Richmond, Cal., is approximately 7 miles by water northeast of San Francisco. The only dock there available to shippers generally, known as the Berkeley Municipal Wharf, is leased by the City of Berkeley to Berkeley Port Terminal, Inc., a private organization. It is about 1.5 miles from outer Harbor Municipal Terminals at Oakland and approximately 4 miles from Richmond. Emeryville, also on the eastern shore of San Francisco Bay, is between Berkeley and Oakland. The only dock at this point, known as Emeryville Wharf, is owned by The Paraffine Companies, Inc., and is not available to other shippers. The water in front of these points is shallow. Soundings taken one week before the hearing showed the depth at Berkeley Municipal Wharf at low tide ranged from 5.4 to 8.3 feet, and at Emeryville Wharf at low tide from .3 to 2.4 feet.
>
> Outbound shipments from Berkeley or Emeryville to points on the Atlantic Coast are switched or trucked to Oakland, or move by barges of Berkeley Transportation Company to San Francisco, at which points they are delivered to intercoastal carriers, including McCormick Steamship Company, for transportation beyond. There are no through arrangements or rates on shipments barged to San Francisco. These operations are reversed on inbound shipments. Inbound shipments also move to Berkeley by rail from San Francisco.
>
> Industries located at Berkeley compete with industries at Oakland. The Paraffine Companies, Inc., manufactures paints, roofing, linoleum, and felt base floor covering at its plant at Emeryville. Its principal competitor in the distribution of its products in this general territory, except linoleum, is the Certain-teed Products Corporation with a plant at Richmond. Some of the raw materials used by both competitors are obtained from points on the Atlantic Coast. The Paraffine Companies, Inc., sells linoleum and other floor covering on the Atlantic Coast in competition with eastern manufacturers. Its inbound shipments of raw materials aggregate from 300 to 400 tons and its outbound shipments to eastern markets aggregate from 600 to 1,000 tons per month. The inbound shipments generally move through Oakland. When urgently needed they are barged direct from San Francisco. The outbound shipments are generally barged direct to that point. McCormick Steamship Company maintains intercoastal terminal rates from and to San Francisco, Oakland, and Richmond. It also participates in joint intercoastal rates from and to these points with certain San Francisco Bay carriers. Interchange of traffic with these carriers is made at San Francisco. The rates, whether terminal or joint, are the same from and to all these points. Under the proposed schedules joint intercoastal rates similar in amounts to those from and to these other points would apply from and to Berkeley or Emeryville.

Subsequent to the date of that decision, The Paraffine Companies, Inc. opened its wharf to the public.

Berkeley Transportation Company did not appear at the hearing. In support of the suspended schedules it was testified for McCormick Steamship Company that its desire to cancel the rates involved is due to a feeling on its part that to continue application of " terminal " rates to such places as Berkeley or Emeryville, which cannot be

reached by its vessels because of insufficient water, was likely to place it in an embarrassing position. Also that continuance of these rates is not promotive of any substantial increase in its tonnage. The rates sought to be canceled are not terminal but joint rates. Furthermore what embarrassment the continuance of such rates will bring upon McCormick Steamship Company is not established of record. From an exhibit introduced by this respondent it appears 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 Company asked interested shippers not to use its line, it having announced its intention to cancel its rates with Berkeley Transportation Company.

The record shows that in the event the joint rates are canceled, on intercoastal traffic from or to Berkeley or Emeryville shippers would be required to pay the combination composed of the rates of Berkeley Transportation Company and those of the connecting Canal carrier, which would result in charges higher than those under the joint rates.

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. Berkeley, Emeryville, Oakland and Richmond are nearby places. As has been shown, industries at Berkeley compete with industries at Oakland, and a large manufacturer of paints and other products at Emeryville obtains some of its raw materials from points on the Atlantic Coast and also markets some of its finished products in competition with a manufacturer at Richmond. Prior to March 5, 1935, McCormick Steamship Company maintained terminal rates and also joint rates with certain San Francisco Bay carriers, all similar in amounts, for intercoastal transportation from and to Oakland and Richmond. The purpose of the proceeding hereinbefore cited was to place Berkeley and Emeryville on a rate parity with Oakland and Richmond. This parity now exists and neither the facts presented nor the reasons advanced justify its disturbance. 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.

The department finds that the suspended schedules have not been justified. An order will be entered requiring their cancellation and discontinuing the proceeding.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 174

IN RE AGREEMENT BETWEEN ERICSSON LINE, INC., AND PAN-ATLANTIC STEAMSHIP CORPORATION

Submitted July 16, 1935. Decided September 18, 1935

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., transshipped at Philadelphia, Pa., or Camden, N. J., approved.

Benn Barber, *J. W. O. Von Herbulis*, and *C. C. Hake* for Pan-Atlantic Steamship Corporation; *S. A. Tubman* for Ericsson Line, Inc.; *John Sonderman* for Mooremack Gulf Lines, Inc.; *George Cohee* for Charles Devlin & Company; *Howard Shook* for McCormick & Company; *R. E. D. Mitchell* for A. W. Sisk & Company; *Charles F. Andrews* for Emerson Drug Company; *W. V. Brabham* for S. Schapiro & Sons; *C. F. Johnston* for Locke Insulator Corporation; *L. F. Klein*, *H. Franklin Sheehy*, *Randall J. Thompson*, and *R. B. Wallace* for Moore & McCormack, Inc.; *William E. Thirlkel* for Columbia Paper Bag Company; *J. Frederick Roy*.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

Ericsson Line, Inc., and Pan-Atlantic Steamship Corporation filed exceptions to the first proposed report and petitioned for a rehearing, which was granted. No exceptions were filed to the report on rehearing proposed by the examiner.

Ericsson Line, Inc., and Pan-Atlantic Steamship Corporation, hereinafter collectively termed proponents and individually termed Ericsson and Pan-Atlantic, respectively, are common carriers by

water. The former has a daily service between Baltimore, Md., Philadelphia, Pa., and Camden, N. J.; and the latter has a weekly service between Philadelphia and Camden, on the one hand, and New Orleans, La., Mobile, Ala., and Panama City, Fla., on the other. By memorandum of agreement dated October 27, 1934, submitted for approval as required by section 15 of the Shipping Act, 1916, assigned United States Shipping Board Bureau Agreement No. 3634, proponents propose to establish through routes and joint rates for the transportation of general cargo between Baltimore and New Orleans, Mobile, and Panama City, with transshipment at Philadelphia or Camden. Mooremack Gulf Lines, Inc., hereinafter termed protestant, maintains a direct service between Baltimore and New Orleans, with transshipment at the latter port for traffic destined to Mobile, and protested the approval of the agreement. Protestant's southbound vessels call at Philadelphia after leaving Baltimore, and Ericsson, at protestant's request, often carries cargo from Baltimore to be loaded on protestant's ships at Philadelphia.

The agreement does not disclose the specific rates to be established, but provides that "through rates will be no less than those currently being quoted" between the ports named; and that on traffic moving via Philadelphia, Ericsson is to receive 14 cents per 100 pounds "on carload traffic rated fifth or sixth class or lower in Southern Classification", 18 cents per 100 pounds "on all other carload traffic, including consolidated less-than-carload traffic subject to a minimum weight of 30,000 pounds", and 25 cents per 100 pounds on less-than-carload shipments. Ericsson is also to receive its local dock-to-dock rates between Baltimore and Camden on traffic routed through the latter port. Transshipment expenses at Philadelphia are to be absorbed by Ericsson, and at Camden in equal parts by proponents.

Protestant claims that the net revenue accruing to Pan-Atlantic will be so low as to amount to ruthless competition. It was testified on behalf of proponents that Ericsson's rates from Baltimore to Philadelphia or Camden range from 9 cents to 38 cents per 100 pounds, and that under the joint rates proposed the balance of the through rates accruing to Pan-Atlantic on the various commodities range from 21 cents on canned goods to $2.38 per 100 pounds on other commodities. Using canned goods as an example, Pan-Atlantic's net revenue is to be 16.75 cents per 100 pounds, or $3.35 per ton. After deducting all expenses and charges incident to loading and discharging, there would remain a net figure of $2.20 per ton. Protestant handles shipments from Baltimore destined to Mobile and Panama City, transshipped at New Orleans, upon which the line operating beyond New Orleans receives, on canned goods, 15

cents per 100 pounds, leaving a lower net revenue to protestant on such traffic than would accrue to Pan-Atlantic on shipments of canned goods from Baltimore to New Orleans.

The average time in transit of protestant's vessels from Baltimore to New Orleans is about 11½ days, whereas the average time for traffic moving by proponents' vessels, with transshipment at Camden or Philadelphia, would be about 7½ days.

The record does not show that the proposed through routes and joint rates will be detrimental to the commerce of the United States or in violation of the Shipping Act, 1916. An order discontinuing the proceeding and approving the agreement will be entered.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 194

GULF INTERCOASTAL RATES TO AND FROM SAN DIEGO, CALIFORNIA

Submitted August 7, 1935. Decided September 24, 1935

Proposed increased rates for through intercoastal transportation between San Diego, Calif., and ports on the Gulf of Mexico found justified. Suspension order vacated and proceeding discontinued.

H. R. Kelly and *H. W. Hendrick* for respondents.
C. F. Reynolds for protestants.
Charles A. Bland for Board of Harbor Commissioners, City of Long Beach, Calif.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

By schedules filed to become effective May 30, 1935, and later dates, respondents proposed to make certain changes in the rates for through intercoastal transportation between San Diego, Calif., and ports on the Gulf of Mexico. Upon protests of Harbor Commission of City of San Diego, the operation of the schedules was suspended until September 30, 1935.

Tariffs of respondents Gulf Pacific Mail Line, Ltd., Luckenbach Gulf Steamship Company, Inc., and Swayne & Hoyt, Ltd. (Gulf Pacific Line), members of Gulf Intercoastal Conference, hereinafter designated Canal lines, name rates and charges for eastbound and westbound intercoastal transportation between ports on the Gulf of Mexico and ports on the Pacific coast, and identify San Diego as an outport, as distinguished from a terminal port. Under these tariffs the joint through rate, applying only on shipments moving on through bills of lading, will be the total of the commodity rate between ports on the Gulf of Mexico and Los Angeles Harbor, the port of transshipment, the rate between that harbor and San Diego,

named in the outport section of the respective tariffs, and enumerated terminal and transfer charges at Los Angeles Harbor. The other respondents, hereinafter designated Pacific coast carriers, are named as participating carriers in the tariffs and, with the exception of the California Steamship Company, which does not now operate, are members of the Pacific Coastwise Conference.

The schedules under suspension propose to eliminate from the outport section of the tariffs the present rate of 12.5 cents per 100 pounds on canned goods, any quantity, and the rate of 12.5 cents per 100 pounds on less-than-carload lots of pipe and fittings, thereby leaving a rate of 15 cents per 100 pounds, published in the "Freight N. O. S." item, to apply thereon. All other commodities, including carload lots of pipe and fittings, already take either the 15-cent rate or a higher rate.

The present rules relating to the transfer of cargo between docks of the Canal lines and docks of the Pacific coast carriers at Los Angeles Harbor provide for a truck tonnage charge of 5 cents per ton on all cargo transferred between docks, and a transfer charge between docks ranging from 75 cents to $1.25 per ton, depending upon the location of the docks, subject to an additional provision that connecting carriers on eastbound traffic will deliver to, and on westbound traffic will call at, Canal lines' docks for minimum lots of 100 net tons of pipe and fittings, without charge, thereby rendering inapplicable the truck tonnage and transfer charges referred to. It was testified that note no. 5 of the suspended schedules would extend the application of the latter rule to lots of not less than 100 tons of any commodity, subject, however, to a charge of 40 cents per ton in lieu of the truck tonnage and transfer charges. On lots of less than 100 tons the truck tonnage and transfer charges are to remain in effect.

In support of the proposed changes a member of the Neutral Rate Committee of Pacific Coastwise Conference testified his committee had been instructed to study existing freight rates with a view to increasing them to meet increased operating expenses. Figures obtained by him showed that as to respondent McCormick Steamship Company, "the stevedoring of the coastwise cargo at Los Angeles Harbor for the first three months of 1935 over the first three months of 1934 increased 40.4 cents per ton and that the cost of fuel oil used by this company increased 41.5 percent. The report of the Pacific Steamship Lines, Ltd., comparing January 1935, with January 1934, showed an increase in the cost of fuel oil of 26.5 percent, an increase in stevedoring costs of 49 percent, an increase in crews' wages of 23.5 percent, and an increase in stores and provisions of 20 percent. The report of the Los Angeles Steamship Company

shows an average increase in the first four months of 1935, in comparison with the first four months of 1934, as follows: Stevedoring costs at Wilmington increased 52 percent, stevedoring costs at San Diego increased 42.75 percent and an increase of 17 percent in the provision item. An increase in the ship's pay roll, under the present wage schedule, of 20 percent is also reported." Effective June 17, 1935, the Railroad Commission of the State of California permitted certain increases in the intrastate rates of Pacific Coast carriers respondents here to meet increased operating expenses. The Canal lines offered no evidence in support of the increases in the joint rates, but relied solely on the needs of the Pacific coast carriers as justification for the proposed increases.

Protestants' witness testified that rates between Atlantic ports and San Diego were the same as the rates between Atlantic ports and Los Angeles and contended that the assessment of higher charges from and to San Diego on shipments from and to the Gulf unduly preferred shippers from and to the Atlantic coast and unduly prejudiced shippers from and to the Gulf. The record does not show that the members of the Gulf Intercoastal Conference in any way control the rates from and to the Atlantic coast.

Protestants also 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.

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

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 181

THE TAGIT CO.
v.
LUCKENBACH STEAMSHIP COMPANY, INC., ET AL.

Submitted August 31, 1935. Decided September 27, 1935

Complaint alleging rates for intercoastal transportation of laundry tags from Philadelphia, Pa., to Pacific coast ports are unjustly discriminatory dismissed for lack of prosecution.

No appearance for complainant.
R. H. Specker, *A. L. Burbank*, *E. J. Martin*, and *B. Costello* for respondents.

REPORT OF THE DEPARTMENT

The complaint alleges that the rates maintained by respondents for intercoastal transportation of laundry tags from Philadelphia Pa., to Seattle, Wash., Portland, Ore., San Francisco and Los Angeles, Calif., and other ports on the Pacific coast, are unjustly discriminatory, in violation of sections 16 and 18 of the Shipping Act, 1916.

Copy of the answer filed by each respondent, denying the allegation, was sent complainant. In due course the case was assigned for hearing. Thereafter and before the date of hearing, complainant informed the department it would not be represented at the hearing and expressed the hope the department would act on the information filed with it by complainant. 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, this complaint will be dismissed for lack of prosecution, and it will be so ordered.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 168

JOSEPH SINGER, INVESTIGATOR IN THE DIVISION OF LICENSES, DEPARTMENT OF STATE, STATE OF NEW YORK

v.

TRANS-ATLANTIC PASSENGER CONFERENCE ET AL.

Submitted November 13, 1935. Decided January 20, 1936

Refusal by member lines of Trans-Atlantic Passenger Conference to pay commissions to persons other than their authorized agents on passenger tickets and orders for transportation purchased for customers for passage on those lines between ports in the State of New York and foreign countries not shown to be unreasonably or unduly preferential or prejudicial. Complaint dismissed.

Abraham S. Wechsler and *Joseph Singer* for complainant.
John L. O'Donnell and *Max J. Weiss* for intervener.
Joseph Mayper for defendants.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

The proposed report of the examiner found that there had been no violation of the Shipping Act, 1916, and recommended that the complaint be dismissed. Exceptions to the proposed report were filed by complainant, but they do not show any errors of fact or law.

Article 10 of the General Business law of New York State forbids any person, firm, or corporation, other than railroad or steamship companies and their agents duly appointed in writing, to engage in the sale of steamship tickets and orders for transportation between that State and foreign countries unless a license therefor has been procured from the proper State authority.

The complaint, filed by an investigator in the Division of Licenses, Department of State, State of New York, in his official capacity,

alleges in substance that persons licensed under the State law, unless specifically appointed agents by defendant lines, are not paid commissions 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, which results in unjust and unfair discrimination, unreasonable prejudice and disadvantage to such persons, in violation of sections 14 and 16 of the Shipping Act, 1916.

A petition to intervene, the allegations of which were similar to those of the complaint, was filed by Therese Bernstein and granted.

Defendant lines are members of Trans-Atlantic Passenger Conference, a voluntary association which exists by virtue of Conference Agreement No. 120, approved February 12, 1929, in accordance with section 15 of the Shipping Act, 1916. One of the provisions of the agreement, as modified, is the following paragraph which was approved July 6, 1932:

ARTICLE E: (c) Sub-Agencies—i. e., agencies appointed by a Line on a commission basis for the sale of its passenger transportation. The number of such agencies shall be limited, reduced or increased, with due regard to the requirements of the traffic in such localities and on such bases as may be unanimously agreed upon. The member Lines in order to protect the public and to safeguard their own joint and several interests, shall adopt such rules and regulations as may be unanimously agreed upon to control the conditions of appointment and of cancellation of such agencies, the location of their offices and the scope of their activities, and to govern the relationship of the member Lines, jointly and severally, to such agencies. Such rules and regulations may include provisions for the payment of fees by and the bonding of agencies, the method of sale of passage tickets and orders and the prompt remittance of the proceeds thereof, the keeping and auditing of appropriate records and accounts, the return of unsold tickets and orders upon demand, the restriction of the agency relationship to member Lines only insofar as competitive non-member Lines are concerned, the control of the places and the addresses where the business of the agency may be transacted, the standards to be maintained in order to retain an agency including the minimum amount of business required to be transacted, the standards for advertising the sale of passage tickets, and any other matters relating to the conduct, maintenance and termination of the agency relationship. Violation of any such rule or regulation or default in the performance of any provision thereof by an agency with respect to any one or more of the member Lines, shall be deemed, if unanimously agreed upon, to have disqualified such agency as to all member Lines and the appointment of such agency shall then be cancelled and withdrawn simultaneously by all member Lines.

Application for agencies within the metropolitan area of New York City for the sale of passenger tickets and orders for transportation are made to defendants in an informal way. Thereafter a questionnaire is forwarded by the conference to the applicant, and with that goes an application for coverage under a blanket bond, the beneficiary of which is the chairman and secretary of the conference as

trustee for the member lines. The completed questionnaire, when received by the conference, is placed before what is known as the control committee. Unanimous approval by this committee is essential to being placed on a so-called eligible list, but such approval does not automatically make the applicant an agent. It rests with each individual line thereafter to decide whether it wants to name the applicant its own agent. Appointment by one line does not imply or require appointment by the other lines. Any line may cancel its agency without affecting the agency relationship of another line, but once an agency is in default to any particular line, all other lines must immediately cancel their connections, if any, with the defaulting agency.

In the selection of agencies the control committee ascertains such details as the business engaged in by the applicant, his address, whether the location is on the street level, and whether the applicant is in a condition and position to draw business. Much consideration is given to centers of foreign population, where it is most desirable that there be agencies familiar with the customs, habits, language, and "personal peculiarities" of the particular nationality. In passing upon an applicant's petition neither the conference as an entity nor any officer thereof has a vote. The conference agreement does not govern the appointment of agencies in those regions of New York State outside the metropolitan area of New York City.

Approximately 75 percent of the lines' passenger business comes from the various agencies, and the lines feel it is necessary to control such agencies in order to ensure protection to the public as well as to themselves. It is also necessary that the agency be kept supplied with literature and information on such subjects as governmental restrictions and regulations, travel conditions generally, and rates and fares abroad. Were supervision not maintained it is feared that conditions would become as chaotic as are said to have existed before the conference was formed. The lines cited instances where agencies had defaulted or had violated rules of the agency agreement. Under the license law of New York the licensee must furnish a bond in the sum of $2,000, but in case of default the State does not help the aggrieved party obtain redress. Contrasted with this is the practice of defendants to bond every agency, sometimes as much as $30,000, and always to protect the ticket purchaser regardless of the amount of the bond on the defaulting agency.

The testimony shows the lines are not interested in whether the applicant holds a State license; on the contrary, they endeavor to secure the appointment of trustworthy agents who can produce business in sufficient volume. The lines believe that the payment of commissions to all persons licensed under the New York law might

result in no one agency being able to secure enough business to justify its existence.

The relation of a ticket agent 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 their 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. *B. & W. Taxi Co.* v. *B. & Y. Taxi Co.*, 276 U. S. 518. The Shipping Act, 1916, was not intended as a substitute for the managerial judgment of carriers.

Upon the record the Department finds that the refusal by defendant lines 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. An order dismissing the complaint and discontinuing the proceeding will be entered.

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DEPARTMENT OF COMMERCE

OFFICE OF THE SECRETARY

WASHINGTON

No. 168

JOSEPH SINGER, INVESTIGATOR IN THE DIVISION OF LICENSES, DEPARTMENT OF STATE, STATE OF NEW YORK

v.

TRANS-ATLANTIC PASSENGER CONFERENCE, ET AL

ORDER

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

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

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

JANUARY 20, 1936.

DEPARTMENT OF COMMERCE
UNITED STATES SHIPPING BOARD BUREAU

No. 294

GULF INTERCOASTAL CONTRACT RATES

Submitted November 20, 1935. Decided January 21, 1936

Proposed contract rate system for intercoastal transportation of certain commodities from points on the Gulf of Mexico to points on the Pacific Coast found not justified and unlawful. Suspended schedules ordered canceled.

Elisha Hanson and *Frank Lyon* for respondents.

Edmund J. Karr, J. E. Bishop, F. W. S. Locke, J. C. Stern, J. A. Stumpf, W. S. McPherson, A. D. Whittemore, J. A. Hart, C. J. Maley, W. M. Hatfield, Alfred H. Caterson, Jr., J. W. Jackson, G. A. Dundon, M. F. Chandler, J. P. Daly, E. M. Cole, J. K. Hiltner, Hugo Ignatius, H. W. Wagner, W. P. Rudrow, and *Bernard Fabrikant* for other interested parties.

REPORT OF THE DEPARTMENT

BY THE SECRETARY OF COMMERCE:

By schedules filed to become effective October 3, 1935, carriers parties to Agent Roberts' SB–I No. 3 proposed to establish and maintain rates for transportation of certain commodities from points on the Gulf of Mexico to points on the Pacific Coast, conditioned upon the execution of contracts by shippers, in the following form:

PROCEDURE IN CONNECTION WITH EXECUTION OF CONTRACTS AT CONTRACT RATES

(*a*) Where specific reference is made to this rule in individual commodity items in this tariff, the rates named in such items are contract rates and in the absence of contracts as provided for in this rule, the rates on such commodities will be ten cents per one hundred pounds or two dollars per ton of two thousand pounds higher than the rates named in such items.

Contract rates as provided herein may be secured by any shipper or consignee subject to joint execution by shipper or consignee on the one hand and the Gulf Intercoastal Conference for and on behalf of named carriers on the other of term contract, in the form indicated in Section (*c*) hereof, applying from specific ports of loading to specific ports of discharge, such contract signed by the shipper or consignee to be transmitted by him to the office of the Gulf Intercoastal Conference at New Orleans, Louisiana, or San Francisco, California, and to become effective on the date signed by Secretary of the Gulf Intercoastal Conference for and on behalf of named carriers. (Notice of acceptance and execution of contracts by Gulf Intercoastal Conference will be sent to the shipper or consignee by the Secretary of the Gulf Intercoastal Conference.) Where contract jointly executed as indicated above has not been made, the tariff, or non-contract rates shall apply.

(*b*) Contract rates named in individual commodity items in this tariff referring to Rule 53 expire with midnight of December 31, 1935, subject to orders of United States Shipping Board Bureau, Department of Commerce.

(*c*) MEMORANDUM OF AGREEMENT made this _____ day of _____, between _____, hereinafter called the shipper, and the several steamship lines undernamed, which constitute the Gulf Intercoastal Conference, hereinafter called the carriers, witnesseth:

1. THE SHIPPER, in consideration of the agreement of the CARRIERS hereinafter set forth, agrees to ship by steamers of the Gulf Intercoastal Conference lines, operating from the ports of

Beaumont, Texas
Houston, Texas
Lake Charles, Louisiana
Mobile, Alabama
New Orleans, Louisiana

and other Gulf ports, all of the water-borne shipments which the SHIPPER shall make between the date hereof and _____, inclusive, from the aforementioned ports, and any and all other United States Gulf ports, to the following United States Pacific Coast terminal ports:

Alameda, California
Los Angeles Harbor, California
Oakland, California
Portland, Oregon
San Francisco, California
Seattle, Washington
Tacoma, Washington

and all other Pacific Coast ports, subject to paragraph 6 hereof, of the commodities hereinafter described, quantities being estimated at approximately _____ carloads of _____ net tons.

The shipments contemplated in this clause shall include not only any such shipments made directly by the SHIPPER and in its name, but also any such shipments, however and by whomsoever made, if for the benefit and on behalf of the SHIPPER.

2. THE SHIPPER has the option of selecting, from such steamers of the CARRIERS as shall be operated from the port of shipment, the steamers upon which the shipments are to be made, subject, however, to mutual agreement between the CARRIERS so selected and the SHIPPER as to the quantity per steamer the port or ports of loading and port or ports of discharge.

The booking contract for the carriage of the commodities covered by this agreement is to be individually with the CARRIER specially agreeing to transport same, and not with the CARRIERS generally, and the shipment shall be subject to all the terms, conditions, and exceptions expressed in the freight contract, permits, dock receipts, mate's receipts, and regular form of bill of lading of the transporting CARRIER in use at the time of shipment.

3. In consideration of said agreement of the SHIPPER, the CARRIERS agree to transport from the loading ports specifically named above and from such other loading ports in the United States Gulf at which their steamers may call (provided space is available when application is made therefor), to the Pacific Coast Terminal ports of discharge above named all other United States and Canadian Pacific Coast ports for which cargo may be accepted, subject to paragraph 6 hereof, all of said shipments, and at the following rates by all CARRIERS named herein:

On commodities described in Items of the Gulf Intercoastal Conference Westbound Freight Tariff No. 1–B, SB–I No. 3, as amended or reissued, viz:

4. If the SHIPPER shall make any shipments in violation hereof, this agreement shall immediately become null and void as to all future shipments, and thereupon the SHIPPER shall be liable to the transporting CARRIERS for payment of additional freight on all commodities theretofore shipped with such CARRIERS since the execution of this agreement, in the amount of the difference between the tariff contract rate or rates and the tariff non-contract rate or rates of the transporting carriers in force on such commodities at the time of such shipment.

5. In applying the rate or rates named herein the date of sailing of steamer transporting the cargo from the port at which the cargo is loaded shall govern.

6. This contract is subject to the rules and regulations of the Gulf Intercoastal Conference Westbound Freight Tariff No. 1–B, SB–I No. 3, as amended and re-issued and in effect on the date hereof, and is also subject to any rules, regulations, and orders of the United States Shipping Board Bureau of the Department of Commerce now in effect or which may be put into effect during the term of this contract.

For and on behalf of the CARRIERS:

GULF PACIFIC LINE.
GULF PACIFIC MAIL LINE, LTD.
LUCKENBACH GULF STEAMSHIP COMPANY, INC.,
By GULF INTERCOASTAL CONFERENCE
By_____

_____
(shipper)
By_____
(Address)_____

STATE OF LOUISIANA,
Parish of Orleans.

Before me, the undersigned authority, personally came and appeared C. Y. ROBERTS, Agent, who, being duly sworn, deposes, and says: That hereinabove is a true and correct copy of the form of contract or agreement to be jointly executed by shipper or consignee and the Gulf Intercoastal Conference for and on behalf of named carriers in order to permit application of contract rates as referred to herein.

(Signed) C. Y. ROBERTS, *Agent.*

Sworn to and subscribed before me this 31st day of August 1935.

[SEAL] (Signed) LOUIS A. SCHWARTZ, *Notary Public.*

Upon application to the Gulf Intercoastal Conference, the following additional clause will be shown in contracts executed by a shipper having an affiliate which operates vessels and transports cargo to Pacific Coast ports to which rates named in this tariff apply:

Notwithstanding anything in this agreement to the contrary, it is understood and agreed by and between the parties hereto that Shipper may ship on vessels owned, chartered, managed, and/or controlled by any affiliate of Shipper, whenever such vessels are available, it being understood that for the purposes of this agreement "affiliate" shall be deemed to mean any company a majority of the outstanding stock of which is owned, held, or controlled by the corporation which owns, holds, or controls a majority of shipper's outstanding stock.

The proposed schedules were suspended until February 3, 1936. The Gulf Intercoastal Conference, to which the contract rule refers, exists by virtue of agreement approved under section 15 of the Shipping Act, 1916. It is composed of Luckenbach Gulf Steamship Company, Inc., Gulf Pacific Line, of which Swayne & Hoyt, Ltd. is the operating owner, and Gulf Pacific Mail Line, Ltd., of which Swayne & Hoyt, Ltd. is the managing agent. There are no other common carriers by water at present operating regularly through the Panama Canal in the transportation of general cargo from or to the Gulf.

The record in No. 126, *Intercoastal Investigation, 1935*, 1 U. S. S. B. B. 400, in so far as pertinent here, is stipulated into the record. That case involved a comprehensive investigation into intercoastal transportation. One of the orders entered therein required respondents here involved to discontinue the publication and maintenance of rates which accorded advantages in the westbound transportation of certain commodities to shippers who by written contracts obligated themselves to patronize respondents' lines exclusively in the westbound Gulf intercoastal transportation of such commodities. The contract rate system so condemned varied from the one now proposed only in form. The new rule and rates now under suspension were filed concurrently with other schedules which sought to comply with other orders issued in No. 126. To facilitate a determination as to the lawfulness of this new contract rate system, the department vacated its order condemning the contract rate system involved in No. 126, and at the same time respondents withdrew a petition filed in court attacking the validity of the earlier order. The present proceeding was then instituted.

Respondents first adopted a contract rate system in 1927. Such a system has been in force since that date except from July 1928 to February 1929 during which period the conference was disbanded. It has been and is the custom of respondents to make their contract rates expire on a date named, and to make contracts with shippers for limited periods. The contract period generally has been six months. Upon expiration of the contracts, contract rates are again established and new contracts executed.

No particular rule has been followed by respondents in the selection of the commodities on which contract rates apply. However, such commodities are generally characterized by their heavy and steady movement. The record shows that between January 1, 1934, and June 30, 1935, approximately 63.7 per cent of the total tonnage moving westbound in intercoastal commerce at port-to-port rates via the lines of respondents moved on basis of contract rates, and that over 99 per cent of the traffic in commodities on which contract rates were provided moved under contract rates. No contract rate system is used in the eastbound trade. The amount of 10 cents per 100 pounds, by which the proposed contract rates are lower than the non-contract rates, apparently was arbitrarily chosen by respondents. As explained by the principal witness of respondents:

> A shipper who does not want to execute a contract to my mind must have a very good reason for that. The only reason I can conceive of for a shipper not wanting to execute a contract would be the fact that he wants to hold to himself the right to chisel or avail himself of any tramp steamer that may come along, and to take advantage of that lower rate. That being the case, he pays 10 cents per hundred for the privilege of holding himself out to patronize any cut-rate line that may come along.

The record shows that generally shippers who heretofore have executed rate contracts with respondents are satisfied with the contract rate system and urge its continuance. Only one of such shippers, and representatives of Sudden & Christenson (Arrow Line) and Nelson Steamship Company, common carriers by water engaged in intercoastal transportation between Atlantic and Pacific coasts, testified against the proposed rates and rule.

The reasons which gave rise to the adoption of a contract rate system are summarized by the principal witness for respondents as follows:

> Shortly after the first service was started from the Gulf through the Panama Canal, several years after the inauguration of the Gulf Intercoastal service, the trade was seriously disrupted by vicious rate-cutting practices, resultant rate wars, and so forth, which condition proved not only very unsatisfactory to the steamship lines themselves, but also to the shippers.
>
> This condition not only very seriously defeated the revenues of the steamship lines, but brought about very unstable conditions with shippers, due to the fact that they could not figure what their freight rate would be, nor what their competitors' freight rate would be. As a result of this, considerable thought was given as to what steps could be taken to bring about a stabilized condition both as to service and as to rates. This action was taken both on the part of the steamship lines themselves and at the request of various shippers. The result is what is now known as the contract rate system.

It is upon such benefit to the shippers and to themselves that respondents rely in justification of the suspended rates and rule. It should be remembered, however, that 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. 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, 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.

Sudden & Christenson (Arrow Line) and Nelson Steamship Company object to the proposed rates and rule on the ground, as stated by a witness for one of these carriers, that "the contract system serves to create a monopoly in favor of the Gulf contract carriers." As stated in *Intercoastal Investigation, 1935, supra:*

> * * * 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 create a monopoly in favor of another competitor,

citing *Menacho* v. *Ward*, 27 Fed. 529, which was cited with approval in *Eden Mining Co.* v. *Bluefields Fruit & S. S. Co.*, 1 U. S. S. B. 41. Respondents there as here relied on *Rawleigh* v. *Stoomvaart et al.*, 1 U. S. S. B. 285. That case involved transportation in foreign commerce, and the decision therein has no controlling effect on a proceeding involving intercoastal transportation. As stated in the report in the *Intercoastal Investigation, 1935, supra:*

> It is notorious that intercoastal transportation is not attended by many of the traffic and transportation circumstances attending transportation in foreign commerce * * *

In the *Rawleigh case* the evidence showed that the purpose and ultimate effect of the contract rate system as employed in that trade was to enable the carriers to approximate the volume of cargo that would move over their lines and to insure stability of rates and regularity of service. Operators of vessels in our foreign commerce may at any time and without warning be subjected to severe competition by tramp vessels of any nation. Unlike the intercoastal trade, there exists no statutory requirement that changes in rates be published thirty days in advance, nor is the department given any power to suspend such changes. In so far as ocean tramps in foreign commerce are concerned, they are subject to no regulatory authority whatsoever.

In the present case shippers are in effect given the choice of only two carriers, whereas in the *Rawleigh case* the contract rate system was neither in purpose nor effect monopolistic. Contract shippers, by the terms of their contracts, were afforded the services of at least eleven different carriers, including not only the members of the conference involved but also a non-conference line, the only other carrier in the trade. Furthermore, the record in that proceeding, unlike the record now before the department, indicates the willingness of the conference lines to admit other carriers into conference membership.

It should be understood that the department is not here 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.

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 preference or disadvantage in any respect whatsoever. This 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 no longer than four months. Such provisions of law afford to shippers reasonable rate stability, and 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.

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. An order will be entered requiring the cancellation of such schedules.

DEPARTMENT OF COMMERCE

OFFICE OF THE SECRETARY

WASHINGTON

No. 294

GULF INTERCOASTAL CONTRACT RATES

ORDER

It appearing, That by Suspension Order No. 50, dated September 16, 1935, the Department entered upon a hearing concerning the lawfulness of the rates, charges, regulations, and practices stated in the schedules described in said order, and suspended the operation of said schedules until February 3, 1936; and

It further appearing, That a full investigation of the matters and things involved has been had, and that the Department, on the date hereof, has made and entered of record a report stating its conclusions and decision thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the respondents herein be, and they are hereby, notified and required to cancel said schedules on or before February 3, 1936, upon not less than one day's posting and filing in the manner required by law, and that this proceeding be discontinued; and

It is further ordered, That the cancellations herein ordered may be made in a consecutively numbered supplement to Agent C. Y. Roberts' Tariff SB–I No. 3, without observing the requirements of the Department's tariff rules.

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

JANUARY 21, 1936.